



## THE LAW SOCIETY RESPONSE TO THE LEGAL SERVICES BOARD CONSULTATION ON ENCOURAGING A DIVERSE PROFESSION

### General comments

The Law Society shares the Legal Services Board (LSB)'s desire to encourage an independent, strong, diverse and effective legal profession. We are committed to supporting law firms and in-house counsel to improve diversity at all levels of their business, as well as providing individual members from under-represented groups with the skills to enter and progress in the profession.

However, we believe that the Board's revised guidance loses impact. In the interests of allowing flexibility, it promotes uncertainty and encourages a minimum level response from regulators. The collection of diversity data is essential in providing a good evidence base for our work and we strongly believe that it should continue so that progress can be monitored and gaps identified. More importantly, we think that this is an opportunity for the proposals to have more teeth in terms of specific targets and requirements as well as more details about what the LSB will do if regulators respond inadequately.

The proposed switch to an outcomes focused approach makes sense, but we urge the LSB to be clearer in defining what those outcomes should be. Outcome 1 speaks to continued data collection, which underpins the whole exercise, but then gives the regulators latitude regarding what data they collect and how. We believe that abandoning the model questionnaire is a retrograde step: the regulators, and those they regulate, need to be clear about what should be measured and what will happen if outcomes are not realised.

We also think that the proposed revised guidance focuses too much on managing the regulators and not enough on the long-term goal we all share, that of improving diversity in the legal profession. This will only be achieved if the culture of the profession is addressed and the revised guidance to regulators should provide an opportunity to move towards this. We think it is really important to incentivise firms to move beyond the bare minimum in this area in order to achieve sustained change. In our view a truly outcomes focussed approach means concentrating on the end deliverable and less so on how we get there. Regulators should be encouraged to make clear regulations that employers in the sector are able to follow, in other words, outcomes that everybody understands.

### **Question 1: Is the proposal to switch the focus of the guidance to outcomes beneficial to encouraging the diversity of the profession?**

The Law Society believes that the outcomes need to be challenging and with teeth if they are to be effective. The wording at present needs to be strengthened and clarified.

In principle, we agree that an outcomes focussed proposal would be beneficial. Focus on transparent data collection and a comprehensive evidence base will help in identifying where gaps exist across certain firms and allow bodies like ourselves to use it as evidence for targeted support. However, we think that, as currently drafted, the proposal will not improve discrepancies by itself because there is no reference to measuring the impact of the steps the regulator takes to improve diversity. We are also concerned that the regulators themselves are allowed to decide what information they collect. There should be a clear



framework of outcomes for all regulators which address the diversity issues facing the legal profession and their causes.

By way of example, the paper identifies the gender gap in the senior levels of the profession, but there is nothing in the outcomes linked to the regulators evidencing steps taken to close the gap. Provided the regulator has identified the gap and taken soundings from stakeholders, it will have fulfilled the outcome but nothing will change in practice.

The paper should also require regulators to make their constituents responsible for effecting change as change can only come from within as it is cultural and embedded. At the moment, firms collect data, make statements about the good things they are doing, but do not necessarily pro-actively address the gaps despite knowing where they are. There is also a tendency for firms to focus on one or two particular strands at a time, often race, gender, LGBT or social mobility, and to overlook other protected characteristics. Knowing the data is not enough; there needs to be a targeted push for diversity in the broadest sense.

### **Question 2: Will the proposed guidance allow regulators the opportunity to develop their own approaches to addressing diversity issues in the legal services profession?**

The Law Society agrees that the proposal will allow regulators to access real, up-to-date evidence on the state of diversity in the profession. But we are not convinced that this will effect the changes required at a cultural and behavioural level within the firms. Much will depend on the level of interest the firm has in a particular strand of diversity and also whether the firm holds the regulator in high regard.

While firms may outwardly restate a commitment to diversity, it is unlikely that they will be sufficiently motivated to change policy simply because they now have statistics, unless it somehow impacts on their wider reputation or their attractiveness to applicants or clients.

We are concerned that, as currently drafted, the regulator can say that it knows what the issues are and demonstrate that it is talking about those issues and sharing knowledge with others. But, the outcomes will not be achieved unless regulators make clear to firms what the consequences are likely to be if they fail to meet the outcomes. In an environment where the main driver for firms is every increasing profitability, they don't see how diversity really fits with that.

### **Question 3: To what extent are regulators already demonstrating achievement of the outcomes? If they are not, why do you think is this?**

The Law Society's view is that, while there is some evidence of activity and commitment by regulators, including ourselves, we believe that the barriers for the regulators currently are that they do not control or influence the cultural and behavioural aspects of diversity which are owned by the firms/lawyers. If a firm or lawyer does not want to change, it will not, unless there are sanctions or penalties for not doing so. Many firms are aware of the arguments for the business case for diversity, but without empirical evidence, they tend not to engage. And in the present environment, many are focused on profitability and don't see how diversity really fits with that. Hence our belief in a robust method for gathering diversity data and relevant information.



At the moment, the regulators do ask questions around diversity in their visits and are relatively robust in their probing. However, firms are adept at demonstrating lots of initiatives without being asked about the real impact of the initiatives and how it tracks through into the data to show a cultural shift rather than a one-off. The regulators should think carefully about what the consequences would be for firms if they fail to meet the outcomes.

**Question 4: How can the LSB ensure that the data the regulators collect continues to be comparable?**

The Law Society's view is that a standardised form is the only way to do this and so the model questionnaire in use at the moment should be maintained. However, it would benefit from some updating to reflect recent trends in diversity classification.

The issue is not the collection of the data, and we believe that the uniformity of the questionnaire helps as firms are now familiar with responding to it. Gathering the data is vital to keep pushing actions forward. The issue is more about closing the gaps. We are concerned that this is not only missing at the moment, but also not included in the outcomes in the new guidelines either. We believe that data collection forms should be standardised so that they cannot be modified by firms who wish to avoid providing information on areas where they have a poor record.

We suggest that it would be helpful if the data collection included an opportunity for firms to set out how they will address gaps identified in the data collection.

**Question 5: Given the LSB's proposal to assess regulator performance in this area, what would be the most effective way to carry this out? How long should we allow regulators to implement changes before any potential future performance assessment?**

The Law Society agrees that an 18 month timetable seems sensible. Spot checks on the rigour of the regulators' interviews with firms would be a good start and a proper review of an action plan so that objectives are set by the regulators for themselves, but reviewed by the LSB for progress.

**Question 6: Will the proposed guidance:**

**a. deliver better services for consumers:** it is difficult to see how this could be measured or demonstrated.

**b. support innovation in legal services:** This might happen in terms of more people from different backgrounds in the profession. But, regardless of diversity, lawyers tend to be similar people in approach, outlook and attitude to risk. Innovation would only happen if regulators and firms also focussed on diversity of thought or experience, rather than people with different genders/races/sexualities etc who fit a particular firm or professional mould.

**c. allow regulators to encourage business-led diversity initiatives:** Possibly, but firms may be reluctant of sharing in this way with their regulator and the regulator will not have the resources to make sufficient impact.

**d. encourage a more diverse profession:** Possibly, but we believe that it is unlikely to address the gaps already in the system at senior levels. Currently the data collection



exercise identifies partners as a single group. There are many sub groups within the partner group and whilst the overall stats may show good representation of, say, women or LGBT, it is unlikely to be reflected in the make up of the senior equity. The proposed outcomes are unlikely to address this either. More generally, we think it less likely that diversity in the profession will be improved significantly as any firms will either be interested only in the minimum work to meet their commitments or will be focussed only on particular diversity strands and neglect poor representation among others.