

ACL Response to Increasing Diversity Consultation

Question 1

The LSB has identified a lack of existing data in respect of diversity issues beyond age, gender and ethnicity at entry level in the legal profession, and proposes that an early priority should be to establish a more comprehensive evidence base. We support this proposal in principle.

Question 2

The LSB appears to have made a rational assessment of the significance of the current diversity data. Although the ACL, as a small organisation, has not gathered data about diversity and equality, the historical role of law costs draftsmen as support staff to solicitors has meant that the profession is accessible to a wide pool of talent. Costs lawyers do not have to be graduates to access the ACL's training course, which is provided as distance learning, enabling trainees to learn "on the job".

Question 3

We know of no other diversity research.

Question 4

We know of no other existing diversity initiatives.

Question 5

Several issues arise for the ACL in respect of the need to assist with the LSB's priorities for 2011.

The first, and most important, is that it appears that the ACL will not be required to gather diversity data under the currently proposed regime because the ACL regulates individuals only, not entities, and the proposed data-gathering is at entity level.

If the ACL were required to gather data, it would be difficult for us to do so because of our size and our inexperience at gathering data of any type. Until now, the only information we have requested from our membership on annual renewal is whether they work in-house or independently.

The lack of in-house expertise in this area means that we would have to buy external services to gather diversity data from our membership. This could immediately take the exercise outside the bounds of reasonable and proportionate cost for an organisation the size of the ACL.

Question 6

The ACL supports an evidenced-based approach to policy-making, but argues that the gathering of evidence must be achieved without putting an unreasonable additional regulatory burden on our membership. This is particularly the case with the ACL because a significant proportion of our members' work falls outside reserved legal activities and can be undertaken without being part of the regulated community.

Overly intrusive and bureaucratic regulation will discourage our members from remaining within the regulated community.

Question 7

The ACL does not regulate entities.

As a non-graduate profession where training is carried out by distance learning, there are fewer barriers to accessing entry to the profession than there are, for example, for prospective solicitors and barristers. Additionally, the long tradition of law costs draftsmen working independently, often as self-employed individuals, means that there are also fewer barriers to continuing in the profession while also, for example, undertaking parenting or caring responsibilities.

There is currently no evidence to suggest that the costs lawyer profession is not accessible to, and accessed by, a diverse range of people. We argue that any additional regulatory burden placed on our members must be proportionate to the size of the ACL and the possible benefits to be gained in respect of the regulatory objectives.

Question 8

The ACL's equality and diversity policy is straightforward. As a small organisation, we are able to be flexible in our approach to members' needs. On induction, new trainees are informed of the ACL's policy of non-discrimination and are encouraged to tell the ACL about any special needs or other issues that may affect their participation in the training course.

A standard evaluation framework is likely to be disproportionately bureaucratic for the ACL. It is unlikely that our current policies will be comparable with, for example, the Law Society's in any event, regardless of whether a standard framework is employed.

Question 9

We agree with the LSB's position.

Question 10

The ACL would welcome guidance on data collection and transparency (subject to the caveat about proportionality that we have already raised). We are concerned that a reliance on self-classification by individuals may lead to distorted results in a data set as small as the ACL membership.

Question 11

The approach appears to be sensible.

Question 12

If “sole practitioners” are to be exempt, it must be inferred that our entire membership will be exempt until entity regulation is adopted. The ACL solely regulates individuals.

Question 13

No.

Question 14

In addition to issues about cost and regulatory burden raised above, the ACL has concerns about the privacy of its members, many of whom work in small firms. In a large firm, there may be an element of anonymity because the people gathering and analysing the data are detached from wider workforce. In a small firm, it is less likely that responses can be anonymous. The mere act of asking an individual about, for example, disability or sexual orientation could be an unwarranted intrusion into that person’s privacy.

Question 15

The LSB’s proposal appears to be sensible.

Question 16

The ACL’s prediction is that the more data we endeavour to obtain from our members, the fewer responses we will get. A few “tick-box” questions on the annual membership renewal form may be completed by the majority of the membership. A detailed questionnaire enquiring into beliefs and socio-economic background is likely to be discarded by the majority, leading to a very small data set.

We also have to consider the issue of membership retention as the ACL is not a “closed shop”. If a costs lawyer decides that the regulatory burden place on him by the ACL is too great, he can relinquish his member and carry on practising as an unqualified law costs draftsman the same day. Apart from giving up his right of audience and his right to conduct costs litigation, he can continue to carry out all non-reserved legal activities such as bill-drafting.

Question 17

We believe that data should be collected anonymously to avoid intruding on members' privacy.

Question 18

Please refer to our reply to question 16.

Question 19

The questionnaire appears to be drafted appropriately for the data it seeks to collect. However, it is lengthy and intrusive.

Question 20

The questions appear to be comprehensive and well-drafted. It should be noted that the ACL's members are not "cost lawyers" but "costs lawyers".

Question 21

No suggestions.

Question 22

No suggestions.

Question 23

The ACL would not support the widening of the criteria for data-gathering. As we have speculated above, the more data regulators attempt to collect, the less likely it is that a good proportion of those canvassed will reply.

Question 24

The approach appears to be sensible.

Question 25

The approach appears to be sensible.

Question 26

We consider that the BHA's proposed two-part question on religion is likely to produce a more accurate picture of religious belief and practice than the census question.

Question 27

We believe the proposed questionnaire is already too intrusive and would not support the extension of areas covered. However, if it is decided that all the protected characteristics under the 2010 Act must be included, there appears to be no reason why gender reassignment in particular should be excluded.

Question 28

We agree with the proposed question.

Question 29

The approach appears to be sensible.

Question 30

The ACL supports the LSB's approach.

Question 31

We are pleased to see that the LSB has recognised the inherent difficulties of gathering anonymous data from small firms. We support efforts to protect members' privacy and suggest that small firms be exempt from publishing data which could, by a process of elimination, identify individuals. Such data could still be submitted to the LSB and used to form a wider picture about the profession, but we feel strongly that individual small firms should not be required to publish their diversity data on their websites.

Question 32

Please refer to our response to question 31.

Question 33

There will be no immediate impact on the ACL because, as a regulator of individuals only, it will not be gathering data.

Association of Costs Lawyers
4 March 2011