

RESPONSE TO LSB CONSULTATION ON DIVERSITY MONITORING

Introduction

In compiling this response the Equality and Diversity Team have liaised with the following BSB teams and committees:

- BSB Equality and Diversity Committee
- Standards Committee
- Management Team / all heads of BSB teams
- The Board

The Bar Standards Board (BSB) believes that the Bar should reflect the diversity of our society both in its composition and in the way it promotes equality. This reflects a key regulatory objective of the BSB as defined in Section 1 of the Legal Services Act 2007 (1) (f), “*encouraging an independent, strong, diverse and effective legal profession*”.

The BSB is fully cognisant of its duties, both legal and moral, in promoting and safeguarding the highest standards of legal education and practice, and we are nothing if not pro-active in our approach to equality and diversity. We are already gathering data at entry level across 7 equality strand groups plus socio-economic status, we are strengthening the E&D provisions of the Code of Conduct for the Bar and we are producing useful guidance on fair recruitment processes for chambers.

We therefore embrace the principles of equality and diversity set out in the consultation paper and fully agree that a diverse legal profession harnesses “*the broadest possible range of talent in the meeting of the regulatory objectives*”. The BSB is committed to the promotion and advancement of equality and diversity across all the protected areas and broadly welcomes these proposals to increase diversity and promote equality at the Bar.

However in our view the consultation paper would benefit from greater focus on the underlying purpose of this project. We would welcome a clear overarching LSB strategy together with expected equality outcomes for this project. We are still somewhat unclear as to the exact proposed requirements and timescales for this project.

In summary we consider that the data collection requirements for chambers should initially cover fewer strands and should not be subject to a publication requirement, mirroring the approach taken in the BSB's proposed new equality and diversity provisions of the Code of Conduct (currently under consultation). We think that the move towards monitoring a greater number of strands should proceed at a more measured pace in order to allow chambers time to implement relevant safeguards and to provide the opportunity for obtaining commitment from the profession before new regulatory requirements are introduced.

We consider it imperative that these proposals are piloted with a small number of chambers and firms in order to gauge the likely response from the profession. Pilot chambers should comprise a variety of sizes, practice areas and geographical locations. The pilot sample should also contain chambers that do not currently gather equality data as well as some that do. Piloting the questionnaire and proposed reporting/publication requirements will provide the opportunity to obtain vital feedback from the profession as to how they might work in practice and where the potential issues lie. We are aware of the potential for backlash from the profession if early steps are not taken to obtain goodwill and commitment from the Bar.

Question 1

What are your views on our assessment of what diversity data is currently collected? Are there any other sources of data that we should be aware of?

Information has previously been provided to the LSB on this issue. However for the purposes of this question and so that the position is clear the BSB gathers the following data at the following stages of a barrister's career:

Who	Source	Equality Strands	Published?
Applicants to BPTC and offers – individual level data	BPTC online	All (except trans)	Will be published following establishment of Core Database in 2011
Enrolled student data – aggregated data only	Providers	Race gender disability & age	Yes on Providers' websites, in their annual reports & on

			the Bar Council website
BVC graduates – aggregated data only	Providers	Race gender disability & age	Yes on Providers' websites in their annual reports
Applicants for pupillage- individual level data	Pupillage portal	All except trans	Yes in 2011.
Pupillage – individual level data	Supplementary survey	All strands except Trans	Published in the Review of Pupillage and is being prepared for publication on our website
Starter tenancy and practice - employed and self employed Bar. Records also gather info on barristers who are also QCs at this stage. – Individual level data by chambers	Chambers return (hard copy) through PCF process	Race gender disability & age	Yes on website annually
Exit survey – aggregated data	Currently carried out by a consultant	Race gender disability	Yes, on website
Employed Bar attitudinal survey – aggregated data	Survey of Employed Bar	Race gender disability	Likely to publish survey in near future
QCs	QC Appointments	Race gender and disability	Published on QCA/Bar Council website
Judicial appointments	JAC	Race, gender & disability	Yes (JAC website)

As can be seen from the above table, the BSB is quite advanced in terms of diversity data collection particularly at the early stages of a barristers career. There are of course some gaps in the data which will be filled by our proposed approach to implementing the LSB's requirements.

The BSB is in the process of updating its core database system which will ensure that we can store all data held about members of the Bar, tracked through from initial training to experienced practitioner level and produce effective and meaningful reports. The database will be capable of holding data across a greater number of strands than at present and it is anticipated that the BSB's Chambers Monitoring Scheme will be used to ensure compliance with the new requirements. It is likely that this system will be fully operational by October 2011.

Question 2

What are your views on our assessment of what the available diversity data tells us?

We are unable to agree fully with the assertion that there is not enough data to enable the LSB to make a reliable assessment about important aspects of diversity (including disability, socio-economic background etc) in relation to the Bar.

The BSB currently gathers a wide range of data across the majority of the equality strands and at various stages during a barrister's career. As referred to above, a summary of this data is attached at Annexes A and B.

However we are not complacent and have already made plans to gather qualitative data to support the quantitative data collected. We will be commissioning a biennial survey of the Bar early in 2011 to allow analysis of attitudinal data regarding barristers' experiences at different stages of their working lives with key demographics, including the eight diversity strands and socio-economic background.

Question 3

Is there other diversity research we should be aware of, that we did not take account of in our review of existing literature?

The Bar Council has commissioned a number of research reports but in relation to the BSB the only report not mentioned is "Some Observations on Meritocracy and the Law: the profile of pupil barristers at the Bar of England and Wales 2004-2008' by Anna Zimdars & Jennifer Sauboorah.

Question 4

Are there any other existing diversity initiatives run by approved regulators which are not reflected in our outline of current initiatives?

The BSB runs equality and diversity training courses for members of disciplinary panels. Training is held at the Bar Council offices and covers equality legislation and fair tribunal process.

We are currently consulting on strengthened equality and diversity provisions of the Code of Conduct that will be included within the revised Code of Conduct. The proposals include requirements relating to flexible working, parental leave and harassment policies as well as requirements to train selection panels in fair recruitment and selection processes.

As set out in previous correspondence with you dated 24/11/10 on the subject of the LSB paper "Diversity Initiatives of the Approved Regulators", we note that the paper does not include our following suggested amendments:

- A paragraph detailing the position as regards the current Equality and Diversity Code for the Bar.
- A paragraph detailing the position as regards the current consultation on the new equality and diversity provisions of the Code of Conduct.
- A paragraph discussing the BSB's Recruitment Toolkit for chambers.
- A paragraph detailing the BSB chambers monitoring scheme which monitors compliance with the equality and diversity provisions of the current Code of Conduct for the Bar.

Question 5

What are your views on the immediate priorities for 2011 we have identified? If you disagree with our priorities in relation to equality and diversity, what should they be (bearing in mind the regulatory objectives, the Equality Act obligations and the Better Regulation principles)?

1. *“Gathering an evidence base about the composition of the workforce to inform targeted policy responses”*

The BSB considers it sensible to ensure that all policy is supported by an accurate and updated evidence base. However we have some concerns about the pace of the change proposed in the consultation paper.

The BSB favours a step by step approach to diversity data collection, a gradual increase in the number of equality strands monitored, rather than an immediate move to data collection across all 8 strands plus socio-economic status. In our view it is preferable that chambers gather and analyse data well across fewer strands, than try to do “too much too soon” which could result in mistakes being made particularly where the resources are not in place to handle the quantity of data collected. Data can only be used to inform policy responses if it is analysed, chambers will need time to put systems and resources in place so that this can be done effectively.

2. *Evaluating the effectiveness and impact of existing diversity initiatives*

It is clearly important to ensure that diversity initiatives are targeted and effective; however the consultation paper does not explain why the LSB considers gathering diversity data on the practising Bar will provide regulators with the information needed to evaluate specific diversity initiatives.

To illustrate this point, consider a drop in any given year in the number of practising female barristers in chambers. This may be attributable to a number of factors and it would be unfair to conclude from it that a BSB diversity initiative has been unsuccessful. It may be the case that women are leaving the self-employed Bar due to a combination of pressures, such as lack of support during early parenthood, cuts to legal aid or the introduction of ABSs. We would

welcome some clarification from the LSB as to how quantitative data on the profession might be reliably linked to the success or otherwise of specific diversity initiatives.

We would be interested in learning more about what actions the LSB proposes to take in order to evaluate the effectiveness and impact of Approved Regulator diversity initiatives. We look forward to working collaboratively with the LSB and other ARs in this area.

3. Promoting transparency about workforce diversity at entity level as an incentive on owners /managers to take action (both in terms of “peer pressure” and better information for corporate and individual consumers and potential employees, which they can use to inform their choice of law firm).

We are not persuaded that placing a requirement on chambers to publish diversity information about its workforce alone will necessarily result in chambers taking action to advance equality, particularly where this is not a requirement of the Code of Conduct.

There are several aspects to this issue set out below:

Incentive on Managers/Owners

Chambers do not have managers or owners, the nearest comparison that can be made is with Heads of Chambers.

Anecdotal evidence from the profession indicates that recommendations, rather than Code requirements, are likely to be acted upon only by those chambers that are already committed to equality. For example a large number of chambers do not have adequate parental leave policies, a recommendation of the currently voluntary “Equality Code for the Bar”. Raised concerns in this area have resulted in the development of new equality Code of Conduct provisions on parental leave, currently under consideration.

We are unaware of any evidence that suggests Heads of Chambers are likely to take meaningful action to advance equality on the basis of data collection alone. We urge the LSB to be cautious in placing a heavy reliance on transparency driving action.

Better information for Corporate and Individual Consumers

This is more relevant for the solicitors' profession than the Bar. The majority of self-employed barristers do not provide services direct to the client and the client does not usually involve him/herself in the selection of a barrister. It is therefore difficult to see how this benefit applies to the majority of the practising bar.

In public access cases, and others where the client has some control over the selection of a barrister, there is a risk that diversity information about chambers could be used to discriminate rather than promote equality. It is possible that a client in a public access case may look at the diversity data on chambers workforce and use it to make a discriminatory decision about which set to use. Chambers advertising a majority openly gay and lesbian workforce for example may find themselves on the receiving end of such discrimination.

We would be interested in learning more about steps that could be taken to prevent such unintended consequences.

Long term Strategy

We are unclear as to the long term overarching strategy for this project. It is important that transparency is not the sole aim and intended outcome of the exercise. The paper does not clarify whether these proposals are intended as an interim measure to drive change or whether they are intended as a long term permanent requirement. If an interim measure, it is not clear how the monitoring policy will evolve if data collected indicate that over/underrepresentation is remaining static or that the numbers are "getting worse".

Question 6

Do you agree that a more comprehensive evidence base is needed about the diversity make-up of the legal workforce?

The answer to this question depends on the purpose of the exercise. We would welcome further detail from the LSB on the outcomes it expects from this project as well as some demonstration of a causal link between the gathering of data across these strand areas and the achievement of such outcomes.

There are clearly some key equality issues that will not be addressed through monitoring as numbers by themselves rarely tell the full story and are prone to misinterpretation. Bar Council research indicates that flexible working and combining work at the self employed Bar with parenthood pose particular issues for women. It is not clear to us why a more comprehensive evidence base about the diversity of the legal workforce would assist in targeting policy to deal with this particular issue.

As stated earlier in this response the BSB believes it would be better to ensure that chambers gather accurate and reliable data across fewer strands than to proceed at pace towards a full 9 strand approach.

Question 7

What are your views on our proposal that in principle approved regulators should impose regulatory requirements on the entities they regulate, requiring them to publish data about the diversity make-up of their workforce?

Overarching Principle

We are concerned that emphasis is being placed solely on the diversity characteristics of the chambers workforce rather than level of commitment to equality and diversity in chambers. We are of the view that the latter is of greater importance and that the former may be potentially misleading. In essence, the ethnicity, gender or sexual orientation of individuals within chambers is (and in our view should be) irrelevant if chambers can demonstrate its commitment to the principles of equality and diversity in all areas within its remit. Consumers are likely to be swayed towards sets providing high quality legal services over those which simply comprise representative numbers of people from particular minority groups.

At its January 2011 meeting, the BSB EDC discussed the proposals with the LSB's Regulatory Project Manager Michael Stacey who stated that transparency at this level was "likely to generate debate about racism/sexism in the legal sector". Whilst such debate is of course welcomed, there is no guarantee that this exercise will drive the change that is needed. In our view measuring chambers' commitment to the principles of equality and diversity, by for

example ensuring fair recruitment criteria and processes are used, is more likely to generate the positive outcomes for equality we all seek.

We consider it imperative that the LSB pilots these proposals with a small number of chambers and firms in order to gauge the likely response from the profession. This will make it possible to ascertain where the potential pitfalls lie, refine the questionnaire and proposed reporting process where necessary. We are concerned that imposing a monitoring trawl on this level without conducting an initial pilot may result in backlash against both the LSB and the BSB from the profession. It could also result in the loss of goodwill, as the profession may view the approach as rushed and untested.

It is our view that the data collection requirements for chambers should cover fewer strands and should not be subject to a publication requirement, as is set out in the BSB's proposed new equality and diversity provisions of the Code of Conduct. A less burdensome data collection requirement is likely to result in increased capacity for smaller chambers to take action where inequality is revealed. Indeed the proposed new equality provisions of the CoC require chambers to take action where race and gender (and in all probability disability) monitoring data indicates inequality and we believe that it is right and practicable for chambers to do so at this level.

Entity Regulation

As the LSB is aware, the BSB does not currently regulate entities. We are therefore not in a position to require any entity to provide information to us. However it is possible for the BSB to place data collection requirements on Heads of Chambers or on individual barristers to ensure the relevant data collection systems are in place at their place of work.

Resource Implications for the BSB

Consideration needs to be given to the resource implications of these proposals both for ARs and chambers. If data collection on this scale is made a requirement of Code of Conduct, this will necessarily impact on the BSB in a number of areas including the BSB's Professional Conduct Department (responsible for dealing with non-compliance and breaches of the Code). The degree of impact is impossible to judge at this stage but it is likely to be considerable

particularly if significant numbers of chambers fail, or refuse, to comply with the new Code requirements.

We have concerns that some chambers, particularly those undertaking publicly funded work, are already under significant pressure in terms of resources. There is a real risk that requiring chambers to gather data on this scale would add to such pressures, possibly overwhelming some of the more vulnerable sets where BME and female practitioners are more likely to work. We are interested in learning more about the LSB's equality impact assessment of these proposals particularly in terms of the likely impact on small chambers.

Publication Requirement

The BSB is concerned that a requirement to publish diversity data may pose data protection risks for small chambers where even publication of percentage figures may identify individuals. We are not persuaded that publication of diversity data is absolutely necessary to improve equality at the Bar and we are troubled by the potential prospect that publication of personal information might lead to discrimination against identified individuals.

The data collection requirement on employers imposed by the Equality Act 2010 covers only those employers of more than 150 staff. We are interested to know more about the LSB's reasons for going beyond what is expected from the statutory duty to publish equality information for employers.

There is a risk that the proposed requirements may result in a backlash against the LSB/BSB from the profession and potentially Bar wide non-compliance. The BSB's recent experience of implementing the complaints signposting requirement, which provoked a heated response from the profession, is a useful analogy. We believe that the response on this issue was due to the lack of consultation and preparation of the profession for it. We would therefore urge caution in moving too fast on regulatory measures so that goodwill and commitment may be secured in advance of implementation. The signposting requirement experience suggests that a step by step piloted approach is to be favoured over a sudden move to 9 strand monitoring requirements for chambers.

Question 8

What form should the evaluation of existing initiatives take? Should there be a standard evaluation framework to enable comparison between initiatives?

This question cannot be answered usefully in this format. We recommend that the research teams from the relevant regulators meet to discuss a detailed response. The BSB agrees that individual initiatives need to be evaluated to measure their effectiveness but would add that there should be an agreed method of comparing the relative value of these initiatives.

Question 9

What are your views on our position that regulatory requirements on entities to take specific action to improve performance (including targets) are not appropriate at this stage?

In theory, the requirement on chambers to gather data in order to identify disparities should carry with it an attendant requirement to take action to remedy inequality where possible. The BSB's own experience of the Chambers Monitoring Scheme indicates that chambers are more likely to take action where there is a mandatory requirement to do so. There is also the issue of goodwill to be considered here. If action by chambers is not required, some barristers may feel that they have disclosed personal information for little purpose, there being no obligation on chambers to act where evidence of inequality is revealed. There is a real risk that this could have a negative impact on those involved by raising expectations of action and change that are subsequently not met.

It is therefore arguable that if the LSB wishes chambers to take action to address any adverse impact on equality raised by data gathered, it should require regulators to impose requirements on chambers to do so.

That said there are resource implications which require consideration before a decision on this issue is made. Those sets undertaking publicly funded work, which are more likely to contain BME and female practitioners, are already under pressure and it seems likely would suffer adversely were a remedial action requirement brought into force.

Question 10

Do you think we should issue statutory guidance to approved regulators about diversity data collection and transparency?

We are unclear about the expectations of the LSB as regards presentation of diversity data. Guidance on presentation issues, including whether data should be presented in numbers or percentages, would be welcome.

One of the difficulties in drafting this response has been the lack of clear and specific proposed requirements in the consultation paper. It would be useful if the LSB could set out list of specific proposed requirements in order that we can usefully contribute to discussions on what the accompanying guidance should contain.

Question 11

What are your views on our proposal to agree standard data categories with approved regulators, to ensure comparability of diversity data within the legal workforce and with other external datasets?

The BSB is of the view that, whilst it would be useful to have some consistency between regulators on how diversity data is collected, it is also important to recognise that there may be valid reasons for slightly different categories in order to monitor issues that relate particularly to one profession e.g. the monitoring of different socio-economic groups may be different for different professions.

In addition, changing data categories that have been used previously could mean that any longitudinal data analysis loses some year on year comparability. It will be necessary to consider each category and make a case by case assessment of the value of changing or retaining it.

Some guidance on this issue would be useful; however it would need to take into account that in some instances it is not a case of comparing “like with like” between the professions.

Question 12

Do you have any comments about our proposals in relation to the individuals the data collection and transparency requirements should cover?

The reasons for gathering data on non-barristers are not clear from the consultation paper. It would be useful if the LSB could clarify what it considers a “good” chambers or firm to look like in terms of non-barrister makeup and what actions it anticipates should be taken in order to deal with inequalities discovered through this process. We are also unclear about how far the non-barrister monitoring is intended to go, for example whether or not it will cover all non-barrister staff and whether or not contractors would also be covered.

We have some concerns about the potential for monitoring of non-barristers to “skew” the data and provide a misleading picture of a particular chambers or the profession. For this reason we consider it imperative that the LSB provides some guidance on how data should be gathered and presented.

Despite these concerns the BSB considers that monitoring of non-legal staff may be useful depending on the purpose for which the data is gathered. In particular relating to the barrister profession, the white male dominance of clerks is often cited as a cause of discrimination within chambers and therefore when considered together with qualitative evidence on for example work allocation, some useful conclusions may be drawn.

However in order to give an informed response to this question, we require clarification as to the extent and intended outcomes of the proposals. We would also welcome further detail on whether or not the LSB intends that chambers or ARs cross reference quantitative with qualitative data in this area.

Question 13

Should the framework include the collection of information on in-house lawyers?

It seems sensible to exclude in-house lawyers from entity level regulatory requirements as the relatively small number of in house lawyers in any organisation would mean publication of diversity data would be highly likely to identify individuals.

However as a regulator we believe it is right to continue to gather diversity information on the employed Bar and to publish aggregated data following analysis. To exclude the employed Bar from the BSB’s work in this area may have the unintended effect of skewing the data, as both women and BME practitioners are better represented at the employed than self-employed Bar.

Question 14

What impact do you consider these new regulatory requirements will have on regulated entities?

It is our view that the impact on entities would be largely the same as that on chambers.

Question 15

What are your views on our proposal that in general firms and chambers should be required to collect data from their workforce annually, while smaller firms and chambers (fewer than 20 people) should only be required to collect the data every three years?

We consider less onerous reporting requirements for smaller chambers to be a fairer approach than requiring chambers of all sizes to collect data on an annual basis.

However as set out above, our concerns for smaller chambers are more closely related to the administrative burden of the exercise itself and the publication requirement rather than the frequency of data collection.

Question 16

What are your views on our proposal that data should be collected about all the protected characteristics listed above, plus socio-economic background? If not, on what basis can the exclusion of one or more these characteristics be justified?

The BSB does not favour the “exclusion” of particular groups from this process; however we are of the view that a phased approach starting with gender, disability, race and social class would be more sensible than an immediate transition to a full 9 strand monitoring programme.

Requiring chambers to gather data across all 9 strands risks challenge from the profession on the grounds that it does not have strict statutory backing, an issue lawyers may raise. In addition we have concerns that such a wide ranging monitoring scheme may result in lower returns due to the perception that the BSB is going “too far” in its requests for personal information.

Rather than focusing on whether or not particular characteristics should be excluded, we ask the LSB to consider its rationale for requiring chambers to include all 8 strands plus socio-economic status despite official guidance advising caution in this area. Indeed paragraph 27 (p. 8) of the consultation paper itself states:

“The proposed specific duties include a requirement for public bodies with 150 or more employees to publish data at least annually on equality in their own workforces. There is no mandatory requirement to cover all of the protected characteristics and indeed it is acknowledged that some organisations may not be ready to ask about the more sensitive characteristics such as sexual orientation or religion or belief”.

We have concerns about the ability of chambers, particularly the smaller sets, to deal with the more sensitive categories and the possible risk of disclosure. This could have an unintended reverse impact for example individuals being discriminated against following disclosure of their religion, sexuality or transgender status.

Trans-Barristers

The Bar Council Report of the Analysis of Demographic Data collected from the Practising Bar in November 2007 showed that there were 7 trans barristers in practice in 2007. Although it is of course possible that there are higher numbers than this in practice now, the numbers are highly likely to be negligible. For this reason it seems disproportionate to conduct monitoring in this area and potentially risk-ridden if the results are to be published.

In our view a more sensible approach to promoting trans equality in the profession might be to work with trans practitioners to establish the issues for trans people within the professions. We are not persuaded that the collection of numbers is likely to result in meaningful progress for trans equality.

Sexual Identity/Orientation

The likelihood is that many chambers will have gay and lesbian people within the workforce. It is therefore less a question of numbers or representation and more a question of whether or not individuals feel comfortable to be “out” in the workplace.

It is therefore unclear to us why gathering data on the numbers of gay and lesbian practitioners will assist in tackling issues such as harassment, bullying and discrimination in this area. For this reason the new equality provisions of the Code of Conduct focus on the requirement for chambers to have anti-harassment policies and the general requirement not to discriminate against others.

In addition, given the intensely personal nature of the subject area, we feel that it would be more sensible to concentrate on the collection of qualitative data so that policies can be more targeted at improving equality and the experience of gay and lesbian practitioners in chambers.

Question 17

Do you think that data should be collected anonymously or enable individuals to be identified (please explain the reason for your answer)?

We can see no justification for collecting data in a way that enables individuals to be publicly identified and would have grave concerns about the potential harm that could be caused by identification of individuals in this way. Confidentiality must be guaranteed. Without this, returns are likely to be low.

Question 18

Is there a way of integrating data collection with the practising certificate renewal process that still achieves our objective of transparency at entity level?

The Bar Council records team routinely captures data on race, gender, disability and age through the chambers return process. With the introduction of the new core database, capable of storing information on the other equality strands, it will be possible for such information to be gathered through this process on an annual basis. Compliance with new data collection requirements could be monitored through the BSB's Chambers Monitoring Scheme which assesses chambers compliance with various requirements of the Code of Conduct.

Question 19

Do you have any suggestions on how to improve the model questionnaire?

- Gender reassignment – The BSB does not support the gathering of quantitative data in this area unless it is by way of an anonymous survey. It would be inappropriate to gather such data through the practising certificate renewal process or at chambers level due to potential identification issues.
- Disability –We suggest replacing this question with, “do you consider yourself to be disabled according to the definition set out above?”
- Religion – We are concerned that the gathering and publication of entity level data in this area could lead to discrimination by prospective clients. If this data is to be gathered in our view the section should be entitled “Religion or Belief”, following the protection afforded to both religious and non-religious people by the Equality Act and previous legislation. We therefore suggest that the question reads “what is your religion or belief?”
- Sexual Identity – As set out above we are concerned that the gathering and publication of entity level data in this area could lead to sets being discriminated against by prospective clients. As regards the question, in our view it is slightly longwinded. We consider “what is your sexual identity” would suffice.
- Flexible working – the questionnaire does not cover the issue of provision for flexible working in the workplace.
- The questionnaire does not cover access to and cost of childcare, a key issue for women at the Bar.

Question 20

What are your views on the proposed categorisation of status in the model questionnaire?

The proposed categories do not include pupils or practice area. We are already gathering data on practice area and across the early stages of a barrister’s career i.e. at pupillage/BTPC stage. This enables us to analyse whether the numbers from different groups differ at different levels of seniority.

Question 21

What are your views on the proposed questions about job role as set out in the model questionnaire? Do you have suggestions about additional/better measures of seniority? Do you have suggestions on a category of measure to encompass a non-partner senior member of staff i.e. CEO who holds an influential or key role in decision-making of an organisation?

Questions a) and d) do not lend themselves well to the work of the Bar and are unlikely to elicit information of value.

Question 22

Do you have any suggestions about how to measure seniority in the context of an ABS?

We are not persuaded that measuring seniority broken down by the 9 areas can be done in a way that protects anonymity. It is therefore in our view inappropriate to require the breakdown and publication of such information.

Question 23

Should we collect any additional information, such as that suggested in paragraph 129?

Please see the response to question 20 on this point.

It would be useful to know why the LSB is proposing that the BSB should gather data on nationality and country of first qualification.

Question 24

Do you have any views on our proposed approach to collecting data on disability?

Please see comments above in response to question 19.

Question 25

What are your views on our proposed approach to collecting data on sexual identity?

Please see comments above in response to question 19.

Question 26

Do you think we should follow the Census approach to collecting data on religion and belief? If not, what alternative approach do you suggest?

Please see comments above in response to question 19.

Question 27

Do you think a question should be included in the model questionnaire about gender reassignment? If not, what other means should be used to build an evidence base in relation to gender reassignment issues in the legal workforce?

Please see comments in response to question 15 on this issue.

Question 28

If a question is included on gender reassignment, do you agree with our proposed question?

In our view it is not appropriate to include a question on gender re-assignment for the reasons outlined above in our response to question 16.

Question 29

What are your views on our proposed approach to include a question on caring responsibilities?

It is unclear why the question on caring responsibilities for elderly relatives is followed up by a question asking respondents to detail the number of hours worked per week, yet the question on child caring responsibilities has no such follow up question.

In addition the questions do not investigate whether a person is single or not. This means that someone whose spouse/partner is at home looking after dependants whilst they are at work is classified in the same category as someone who works and also has responsibility for dependants. Clearly those in the latter category experience a greater impact on their working life, ability to progress and career prospects.

Question 30

What are your views on our proposed approach to measuring socio-economic background?

The BSB will be using the BPTC monitoring questions on attending a fee paying school as well as the attached format for parents' occupation (Annex C). This method is widely used in social science and was also used in analysing the data for the BSB Wood Review of Pupillage in 2010, (see p.172). Heath, A. F., J. Martin and Beerten (1998) 'A comparison of Registrar General's Social Class' with an approximation derived from the long version of the new National Statistics socio-economic classification and the 8 categories derived from The National Statistics and Socio-Economic Classification (NS-SEC)' Workshop of Validation, Essex University.

Question 31

Do you have any comments about our proposed approach to publication requirements?

Please see our response to question 7 which deals with this issue.

Question 32

Do you have any views on special arrangements that should be considered for firms and chambers of all sizes when publicising sensitive information at different levels of seniority?

We are not persuaded that there is a legitimate need to publish sensitive personal information about people in chambers.

As set out earlier in this response, by imposing such requirements the BSB risks alienating the profession and prompting profession wide non-compliance or “prefer not to say” returns. The publication of sensitive personal information about the religion or sexual orientation of members within chambers for example, could lead to consumers of barristers’ services making discriminatory choices about the sets they instruct. The paper does not discuss any proposed safeguards to protect barristers from such consequences and therefore this remains a real risk.

Question 33

What are the main impacts likely to be on approved regulators when implementing this framework?

In order to provide an informed response to this question we would welcome clarification from the LSB on the following issues:

- Timescales for the project including the dates by which it expects:
 - The BSB to have developed new regulatory requirements
 - Chambers to have started collecting data
 - Chambers to have published data
 - The BSB to have analysed entity level data
 - The BSB to submit its first report on data on the profession to the LSB

- Its decision regarding whether or not chambers of all sizes will be required to publish diversity data.

- How it will oversee the project and measure its success or failure.

- How diversity data should be presented in annual reports to the LSB and published at entity level.

- What guidance it will provide to ARs on taking action against chambers “to improve their diversity makeup”¹.

¹ Paragraph 7 p.3

- Its final position on which protected characteristics data collection will (as opposed to “should”) cover.
- What benchmark the LSB will be using to measure improvement in terms of increasing diversity.
- Whether pupils should be included in this project.
- What guidance it will be provide to ARs on carrying out anonymous surveys as opposed to gathering diversity data through the practising certificate renewal process.
- How it envisages ARs should “investigate the issue of pregnancy and maternity²” with the profession.
- Whether the requirement to publish is a requirement to publish online or in other formats.
- How personal information will be protected if data is to be broken down by levels of seniority in chambers.
- Whether it is intended that transparency on this level is an interim measure or whether the LSB intends to impose these requirements on a permanent basis.
- How the LSB intends to evaluate the progress of this initiative.

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² Para 154 p.40