

**Response of the City of Westminster and Holborn Law Society
to the Legal Services Board (“LSB”) Consultation
“Increasing Diversity and Social Mobility in the Legal
Workforce: Transparency and Evidence”**

1. The City of Westminster and Holborn Law Society

The City of Westminster and Holborn Law Society (“CWHLS”) enjoys perhaps the most diverse membership amongst local Law Societies, encompassing as it does, a membership ranging from larger firms, including those which have been called in recent years “the silver circle” down to small high street practices and individual in-house solicitors, including those working for public bodies and government. Our membership includes those who practice at all levels of the profession, including those who regularly represent solicitors in SRA investigations and members of the Solicitors Disciplinary Tribunal, and those who have practised extensively in the field of solicitors’ negligence and professional indemnity insurance.

Membership is voluntary and CWHLS is run by a committee comprising 33 solicitors representing a very wide range of specialisms. Its work is carried out by 11 specialist sub-committees, one of which, the Professional Matters Sub-Committee, concentrates on matters such as regulation of solicitors, and matters affecting their practice, including matters relating to professional indemnity etc.

2. Introductory Comment

2.1 We agree equality and diversity are extremely important issues facing the profession. We believe that the profession should lead the way in ensuring proper compliance with equality legislation. However we strongly disagree with the LSB’s approach to the subject, which shows little regard for personal privacy and could be counterproductive as explained below.

2.2 The LSB consultation paper seems, on occasion to be suggesting positive discrimination. It is necessary to bear in mind that positive discrimination is still discrimination and likely to be illegal. Paragraph 8 says: “*Some stakeholders will want us and approved regulators to go further, and set targets for the profession as a whole or for individual firms or chambers...If change does not happen we will listen further to the arguments and consider evidence of the (voluntary) use of targets by firms and chambers to inform a decision about whether targets might be used as a regulatory tool in the future to bring about the necessary change.*” Beyond the reference to “voluntary” in parenthesis, the whole tone of this suggests that persuasion with sanctions is contemplated. That is alarming.

2.3 Paragraph 21 states the LSB’s statutory objective to be “*to encourage an independent, strong, diverse and effective legal profession.*” In this consultation the LSB appears to be going beyond that remit and straying into the area of positive discrimination. We believe that the direction of the

approach proposed by the LSB tends towards a mythical firm or chambers comprised of equal parts male and female staff at all levels, with appropriate quota of BME lawyers and LGB lawyers. Although we believe that the professions need to have more regard to equality, we do not think that a tick box quota system is the answer. In some respects, such a system is damaging to the standing of people who have worked hard to reach their positions because there will be a perception that people are not there on merit but are there to fill quotas. This seems the natural result of the LSB proposals.

2.4 Paragraph 28 accepts: “*We recognise that nothing in the 2010 Act obliges regulators to impose a requirement on regulated entities to collect and publish diversity data about their workforce.*” We agree.

2.5 The legal profession has always been more diverse than would be suggested by the stereotypical view often presented. As the profession has grown immensely in recent years, so it already attracts people from less traditional backgrounds, and that is almost certain to continue. If it is held back by the cost of qualification or a decline in demand for legal services caused by such matters as cuts in legal aid, that will not be remedied by collecting or publishing diversity data.

2.6 The legal profession has in the past generally been regarded as being of a high standard because it produced practitioners of a high quality. It must follow that those who choose to enter the profession from the same background as previous members are likely to be at least as good members of the profession as those from other backgrounds. To discourage them from entering or to make them feel unwelcome in the profession is against common sense and likely to be counter-productive. Great care needs to be taken when presenting equality and diversity initiatives that this does not appear to be the desired result of the initiative. The effect of the publication requirements would suggest that firms or chambers should limit their intake of people of such background regardless of merit. Many would argue that the legal profession should aspire to be “colour blind” and similarly “blind” to such matters as racial or social origin, disability or sexual orientation in its dealings with its members or potential members. We note with surprise that this is not an aspiration shared by the LSB.

Paragraph 23 states: “*Judges uphold the rule of law and ought to reflect the diversity of society.*” This is a non-sequitur, and the reasoning behind the statement is not explained. We are also concerned that the LSB, as a body overseen by the government, should not be perceived as interfering with the judicial selection process. That is a matter for the Judicial Appointments Commission. We do accept that the judiciary can only benefit from a strong and effective legal profession but we do not believe that the LSB should attempt to influence the judicial selection process.

2.7 Paragraph 54 states: “*We consider that diversity drives professionalism and business success.*” We do not follow this reasoning. It may be reasonable to suggest that diversity will (or at least may) be beneficial to the profession if it

is driven by professionalism. To put it the other way round (that diversity drives professionalism) makes no sense.

We think that it makes no sense to say that business success is driven by diversity. It is reasonable to suggest that diversity may lead to business success if it is driven by selection on merit. It may (although we do not think that this is what the LSB had in mind) open up business opportunities specifically related to the racial or other profile of specific members of a firm. An Asian or a gay solicitor may have specific contacts with potential clients from those minorities. There are some firms which consist largely or wholly of members of ethnic minorities. They may serve clients from those communities who in practice welcome speaking to members of their own community who understand their needs and speak their language. If this consultation is taken literally those firms are open to criticism for not being diverse. Another approach however is to say that these firms have responded to a market need. We are not convinced that it is appropriate for a regulator to interfere in the market for legal services in the manner proposed.

2.8 Paragraph 79 states: *“Legal businesses of all types have a moral obligation to adopt a commitment to diversity through their practices if they are committed to the rule of law. In addition, if we could create commercial incentives to increase workforce diversity this could be a powerful driver for modifying behaviour.”* This says contradictory things. Adopting a commitment to achieving a diverse workforce goes well beyond eliminating unlawful or improper discrimination or encouraging diversity within proper bounds. Creating commercial incentives to increase workforce diversity is effectively concentrating on the outcome, which is to encourage positive discrimination. It will lead to formal or informal quotas. That is unlawful. It is also potentially cruel and unfair (as well as discriminatory) to those held back to enable a quota or target to be filled. In our view there is no moral duty to go down that path.

2.9 In Annex C it is stated: *“The legal profession and wider legal workforce should reflect the society it serves.”* The legal profession is becoming more diverse, and is likely to continue to do so. To force the pace is in our view wrong and likely to be counter-productive to the wellbeing and good name of the profession. It is also patronising to members of minority or non-traditional groups who wish to enter the profession, and is unlikely to be welcomed those from those groups who have already entered the profession on their own merits. We also refer to what we say in 2.8.

Questions:

Q1 – Q6 Diversity data.

We are not experts in this field however the LSB seem to have summarised much of the available data. We are, of course, aware of the report of Lord Ouseley commissioned by the SRA which is not mentioned in the consultation paper but which made three relevant findings:-

1. There was not enough information available to judge whether there was an issue with institutional racism
2. There did not appear to be any concern about disproportionate outcomes affecting BME solicitors in disciplinary proceedings.
3. There was a disproportionate number of BME solicitors in smaller firms.

The report was commissioned because of concerns that high numbers of BME solicitors were facing disciplinary or regulatory action by the SRA. Part of the reason for that was that a vastly higher number of small firms face such action than larger firms. There was no evidence that the ultimate outcome was affected by race.

The Law Society conducted a survey of its members following Lord Ouseley's report. We understand that the return on that survey was disappointing and did little to further the aims it was intended to serve.

It is important to recognise that diversity data is not just a tool for measuring the effectiveness of social policies, it is sensitive information which affects people's lives. It should only be gathered where collection is necessary and proportionate. Although we have no concerns about the collection of diversity data for internal use and in circumstances of confidence, we are concerned about the effect that mandatory publication of such data may have on individuals. If such data is to be published, it should not be on a firm/chambers level but at most on a regional level. Individual firm/chambers data should only be available to those with a proper interest such as regulators.

We should also mention that diversity data, in itself, might not reveal a true picture; the truly important issue is whether the profession offers equal opportunities and equal treatment. For example, many women leave the profession because of family commitments. Some go into academia, some into research to fit their families better. Just because a firm has a woman in partnership does not mean that it has effective family friendly policies which help women to remain in the profession and further their career after starting a family.

Question 7: Firms to publish diversity data

We are concerned that requiring entities to publish diversity data will not make them address equality issues properly. It will result in a situation where form is more important than substance. If such proposals lead to an informal quota system, which does not operate on merit but rather appearance, the result is likely to be very damaging for the profession and the public alike.

Entities may feel increasing pressure to have "token" representatives of minority groups. If there is a general perception that promotion is not merit based, this could result in bad feeling within the workplace and result in bullying and ostracism. Legal professionals work in a difficult and stressful field and need the support of their colleagues. If that support is taken away, it can add to the risk of serious stress related problems. We are also concerned that annual publication could lead to identification of individuals. Where the information is based on obvious characteristics, this is not a

problem however there are serious issues surrounding the disclosure of mental health problems and sexual identity and these do not seem to be addressed at all in the paper.

Question 8

We agree that the approved regulators should share information on what initiatives seem to be working well but it should be remembered that existing initiatives are not the only options. The LSB should encourage approved regulators to keep the efficacy of programmes under review and share that data however it should not be assumed that the initiatives are directly comparable, or indeed, that they are intended to serve identical purposes or will have the same effect in another context or branch of the profession.

Question 9.

We agree that the LSB should not impose targets or quotas for the reasons set out in this response.

Question 10.

The make up of the branches of the legal profession is not uniform. Similarly, the approach to equality and diversity needs to be flexible to ensure that entities can deliver equal opportunities in a way which suits the needs of their customers and serves the overriding public interest in access to justice. We do not see that issuing guidance at this stage is going to assist although the LSB should keep the issue under review.

Question 11

Subject to our reservations about invasion of privacy and potentially contributing to harassment and victimisation, we agree that the LSB should set a coherent standard for the collection of diversity data across the branches of the profession. We would however reiterate our concerns that the collection of such data should not be overly intrusive.

Questions 12 and 13: Individuals

We are very concerned about the impact the LSB proposals will have on individuals. No account seems to have been taken of the risk that an individual will be identifiable as a result of the annual requirement to publish diversity data. This is a very serious concern.

We do not agree with the LSB proposals. It cannot be right that concerns about diversity should lead to interference with the right to privacy and respect for one's private life and religious beliefs, furthermore, the LSB will be asking questions about disability, including mental health concerns. This is extremely sensitive personal information and should not be published lightly. The proposals of the LSB do not provide sufficient protection for those suffering from disabilities and mental health problems. This needs to be addressed fully.

We do not believe that allowing the answer "I prefer not to say" will provide sufficient protection for vulnerable individuals.

We do not see that there is any justification for differentiating between in-house lawyers and those in private practice on the grounds that in house lawyers do not serve the public. If the aim is to increase diversity in the profession through transparency at entity level, why should the nature of the client receiving professional services be taken into account?

Questions 14, 15 and 16

We do not think that the LSB should be engaging in this exercise at all. The proposals are onerous and unnecessarily intrusive. They run the risk of alienating employees and increasing bullying and harassment.

The information requested delves into deeply personal and sensitive matters. There is no justification for the collection of such data in the manner proposed.

Question 17

If the proposal remains for the data to be published, it should not be collected at all. If the data is to be collected to measure trends on an internal basis, it should be collected anonymously to avoid embarrassment and minimise the likelihood of disingenuous answers.

Question 18

We do not believe that transparency at entity level is either necessary or desirable. It follows that we do not believe that the process should be integrated with renewal of practising certificates.

Questions 19,20 and 21

We believe that the questionnaire is fine for information collected in confidence. It goes well beyond what we would expect to see firms publishing, even on an anonymised basis.

Question 22

Seniority in an ABS should clearly be measured by reference to responsibility and experience, as in any other firm.

Question 23.

No

Questions 24- 26

Again, if the data is to be published, we do not believe it should be collected as described or at all. If the data is for internal use only, we have no objection to the data being processed as described.

Questions 27-28

We do not believe that a question on gender reassignment is appropriate, particularly if the information obtained is to be published on a firm level. There remains a great deal of social stigma attached to such issues and we would suggest that the person involved deserves to be recognised as their chosen gender without facing intrusive

questions and the prospect of their private lives becoming workplace gossip or public knowledge.

Questions 29 –30

This information is arguably less sensitive however it is something which is intensely personal for the person concerned.

Question 31

As noted above, we are very uneasy about the LSB's publicity proposals. It seems to us to put privacy at risk.

We are not concerned with the proposition that firms should be accountable to their regulator for ensuring equality, our principal concern is that individuals should not be victimised because of disclosure of sensitive information about them.

Questions 32 and 33

We have no further comment.