



LSB Consultation Paper
on the proposals to increase diversity and social mobility
in the legal workforce
The CLC's response
9th March 2011

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Introduction

1. The Council for Licensed Conveyancers (the CLC) was established under the provisions of the Administration of Justice Act 1985 as the Regulatory Body for the profession of Licensed Conveyancers. As set out at section 28 of the Legal Services Act 2007 the CLC must, so far as is reasonably practicable, act in a way -
 - (a) which is compatible with the regulatory objectives (set out at section 1 of the Legal Services Act 2007), and
 - (b) which it considers most appropriate for the purpose of meeting those objectives.
2. Further, the CLC must have regard to -
 - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
 - (b) any other principle under which regulatory activities appearing to it to represent the best regulatory practice.

The purpose of the CLC

3. To set entry standards and regulate the profession of Licensed Conveyancers effectively in order to:
 - secure adequate consumer protection and redress;
 - promote effective competition in the legal services market; and
 - provide choice for consumers.

Consultation

4. The CLC welcomes the opportunity to respond to the LSB's consultation paper on proposals to increase diversity and social mobility in the legal workforce.

Diversity

5. The CLC considers a diverse and socially mobile legal workforce to be in the interest of the workforce itself, those who would aspire to join it, and the diverse communities which it serves. In order to determine how well this objective is currently being met - and therefore how far there is still to go - we agree that the legal sector must first be confident that the diversity and social mobility profile as it currently stands is recorded. The content and extent of information currently available varies across the Approved Regulators and we fully support the intention to address this, applying consistent categories across the regulated sector.

Consultation Questions

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?

6. We are not aware of any additional data sources.

Question 2 - What are your views on our assessment of what the available diversity data tells us?

7. We agree that good progress appears to have been made at entry level for women and persons of Black or Minority Ethnic (BME) origin in the professions of solicitor and barrister. However, we note that the 2001 Census BME figures are used as the benchmark against much more recent entry figures. This may make the figures look slightly more representative than they actually are; the national population BME profile is likely to be higher than that of 10 years ago. In addition, referencing a headline BME figure means that it is unclear if there is under-representation from particular BME groups. It is mentioned that data on age is also collected on these professions but no breakdown is provided.
8. We agree it would appear that entry progress has not yet trickled up to senior levels. With the sectors and management levels cited continuing to be predominantly represented by white male graduates from higher socio-economic backgrounds then, even taking into account some degree of life/career-progression choice, there would appear to be significant barriers in play. This would appear to be reinforced by the average earning disparities identified between male and female, and white and BME solicitors.
9. We agree that efforts should be focused initially on analysing these apparent issues of ethnicity and gender retention and progression. Gender and BME data for the remainder of the profession needs to be assessed before it can be concluded that retention/progression is an issue which permeates the regulated communities of all Approved Regulators.
10. We also agree that data on equally important aspects of diversity – such as disability and socio-economic background – are not currently systematically captured. This needs to be addressed. Should this not be the case there is a very real threat that diversity will remain narrowly defined as age, gender and ethnicity only.
11. In addition, we agree that data should be collected on the legal workforce and not just Authorised Persons. Data about every person involved in delivering access to justice to citizens should be captured and not just those who directly provide the legal services. To this end our Licensing Authority application commits us to gathering data on all persons employed within a licensable body, not just the applicant's Authorised Persons.

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?

12. We are not aware of any other relevant diversity research.

Question 4 - Are there any other existing diversity initiatives run by approved regulators which are not reflected in our outline of current initiatives?

13. We do not have any current diversity initiatives to declare primarily because our current activities which aim to deliver positive diversity outcomes are not classified internally as 'diversity initiatives'. Our application to regulate litigation and rights of audience aims to deliver increased access to the legal profession. Likewise by showcasing the diverse profiles of licensed conveyancers through corporate publications our website aims to promote increased access to the legal profession. Furthermore, our ongoing review of the qualifications framework aims to offer a more flexible route for the legal workforce in the areas that we regulate.
14. As we acquire more comprehensive diversity data we will be better placed to determine the need for more targeted diversity initiatives.

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)?

15. We agree with the proposed immediate diversity priorities save promoting transparency about workforce diversity at entity level. We are of the view that an incremental approach should be adopted to promoting transparency with the immediate focus on transparency at the Approved Regulator level. We are not convinced that the publication of such information is critical to consumers of legal services, neither is there evidence to indicate that the current and emerging risks to consumers arise from the lack of transparency at entity level.

Question 6 - Do you agree that a more comprehensive evidence base is needed about the diversity make-up of the legal workforce?

16. The need for a more comprehensive evidence base refers not only to the categories used but to the data sources referenced i.e. data from *all* Approved Regulators and *all* persons employed within all bodies providing regulated legal services.

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?

17. We agree that regulated entities should be required to collect and publish by the Approved Regulator on an aggregate basis about the diversity of their workforce. We consider it proportionate in the first instance that publication of aggregate data by the Approved Regulator is the only new regulatory responsibility. We do not consider it appropriate at this time that regulated entities should be mandated to take action to improve the representation of particular groups.

Question 8 - What form should the evaluation of existing initiatives take? Should there be a standard evaluation framework to enable comparison between initiatives?

18. We agree with a standard evaluation tool to review effectiveness of initiatives rather than for comparisons between initiatives. It appears unrealistic to develop a tool to compare diversity initiatives when such an approach is not used to compare 'projects' in other aspects of managing organisations. The evaluation should include the (quantitative and/or qualitative) evidence base which prompted the initiative; the reasons behind the resultant policy direction; the resources allocated to the initiative; its intended outcomes; the actual outcomes; and the resultant evidence base to corroborate these conclusions.
19. A standard evaluation framework would be of benefit to ensure that each diversity initiative is subject to the same standard and scope of evaluation. Discretion to provide supplementary information should be afforded.

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?

20. We agree. Please see response provided at 17.

Question 10 - Do you think we should issue statutory guidance to approved regulators about diversity data collection and transparency?

21. We have no objection to the issuing of statutory guidance on this subject, subject to its requirements being proportionate as presented within this consultation response.

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?

22. In order that the diversity profile of the legal workforce as a totality, as well as the regulated communities of individual Approved Regulators, can be captured and assessed it is considered essential that all regulated entities, regardless of their regulator, use the same diversity categories. To ensure consistency across the sector standard data categories must be agreed across all regulated communities.

Question 12 - Do you have any comments about our proposals in relation to the individuals the data collection and transparency requirements should cover?

23. The data collection requirements should cover those who directly support the delivery of legal services in addition to Authorised Persons. Only then will the diversity profile of the legal workforce as a whole be captured.

Question 13 - Should the framework include the collection of information on in-house lawyers?

24. We consider that the information could be helpful if it highlights a possible correlation between the profile of in-house lawyers and difficulties of progress in private practice.

Question 14 - What impact do you consider these new regulatory requirements will have on regulated entities?

25. There would of course be a resource impact upon regulated entities in surveying, collating, summarising, considering and publishing the results. However, the resources implications may be somewhat countered by the level of support provided to facilitate the collection of the data. This should be provided on Approved Regulators' websites so it is available for regulated communities to download. It would also be beneficial for Approved Regulators to provide spreadsheet based tools to help support the collation of this data.

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?

26. It is unclear whether the proposed differential approach based on the size of the organisation calls to question the value of collecting the information on an annual basis, particularly as the majority of the legal profession operate in firms with fewer people. Is the profile of firms likely to change significantly annually to justify an annual requirement, particularly as the variations in the data profiles in such firms is unlikely to result in different decision-making at such firms? We are of the view that a similar time frame should apply to all firms but we favour a requirement to collect the data every three years. If firms wish to collect the data annually, they are free to do so but in terms of proportionality and comparability, we are of the view that every three years for all firms seems more appropriate.

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?

27. We support the collection of data about all of the protected categories at the same time. We note that the questionnaire will offer the opportunity for the respondent to decline to answer a question should they wish not to disclose information they consider too sensitive.

Question 17 - Do you think that data should be collected anonymously or enable individuals to be identified (please explain the reason for your answer)?

28. Data should be submitted anonymously to encourage a higher rate of return.

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?

29. We are moving away from a licence renewal process though we will obviously retain an annual regulatory process of information provision (accompanied by a regulatory fee). We acknowledge that collecting the data through the annual regulatory process would ease the administrative burden. However, the regulatory return is completed online by a representative of the regulated entity and we do not see a way of enabling potentially 100+ persons in a regulated entity to directly input into this process. Should such a method be discovered this would then be at the expense of regulated entities owning their own diversity profile data.
30. Should it be agreed that diversity data will be collated on an annual basis we may indeed require this to be submitted as part of the annual regulatory process. However, the regulated entity will need to collate the data prior to the submission and not as an integral part of it.

Question 19 - Do you have any suggestions on how to improve the model questionnaire?

31. Once a full-round of diversity profiling has been carried out and the LSB has summarised and published the findings, it may be beneficial to tailor the form in response to thematic self-declarations. For instance, if there are a significant number of responses from persons declaring a particular ethnicity which is not currently specified in the options the form could be re-issued offering the ethnicity as an option.
32. Feedback about specific sections of the questionnaire is provided below.

Question 20 - What are your views on the proposed categorisation of status in the model questionnaire?

33. The range of options available at (b) is open to a respondent choosing more than one (i.e. they could hold a managerial role in IT) without clearer instructions. There is a case for managerial status to be moved to the Job Role section and to be accompanied by a senior management declaration option.
34. The scope of 'any other fee earning role' could be unclear and may benefit from the citing of examples as provided under the option of 'any role directly supporting a fee earner'. Likewise it is unclear whether the examples of 'any other fee earning role' relate to supporting the fee earner in a fee earner role as against supporting the practice e.g. a practice manager and barrister clerk tend to primarily support the organisation. The 'IT/HR/other corporate services role' option is perhaps too expansive and should be differentiated into distinct options. Otherwise, a potentially large number of persons will be captured under this option with little meaningful data on what their role pertains to e.g. customer service.

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?

35. Question 2(c) regarding 'significant responsibility for decision-making' should be more clearly defined. The question cites the example of being a member of a chambers management committee but does not indicate relevant job roles in other legal areas.
36. Question 2(d) seeks to determine whether the respondent works independently and asks whether they make occasional or frequent reference to their supervisor. As the frequency of reference may be attributable to the working practices of the individual rather than their role we are not convinced of the validity of this question as the primary issue seems the degree of supervision

Question 22 - Do you have any suggestions about how to measure seniority in the context of an ABS?

37. We consider the use of generic senior roles as used in other sectors supports comparability especially if respondents are requested to indicate which status closely matches their role. In addition, we would not suggest that the questionnaire should require a respondent to declare themselves as the entity's Head of Legal Practice or Head of Finance & Administration. This would not allow the respondent to answer the questionnaire anonymously.

Question 23 - Should we collect any additional information, such as that suggested in paragraph 129?

38. There may be some value in collecting the additional information suggested. However, nationality is likely to be picked up through the ethnicity 'any other' categories and the size and type of firm is likely to be relevant only if it is decided that diversity data should be collected from in-house lawyers.

Question 24 - Do you have any views on our proposed approach to collecting data on disability?

39. The preamble to the disability questions should be made more succinct so it states only how the Equality Act defines a disabled person, rather than the legislation that it pre-dated it.
40. Distinction should be made between the options of 'Other' and 'Prefer not to say'; there is a considerable difference between those having a disability which is not specified in the options and those wishing to withhold information on their particular disability.
41. Providing examples of impairments is beneficial. In order that they do not lead the respondent to consider the definition too narrowly defined they may be better placed within brackets and introduced as examples only.

Question 25 - What are your views on our proposed approach to collecting data on sexual identity?

42. We agree with the proposed sexual identity approach.

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?

43. The categories of sex, ethnicity or age are applicable to all persons. It is therefore appropriate that they are directly asked to which group they belong. In contrast, a person may or may not have a religion or belief. As it is similar to disability in this respect we consider it appropriate that the religion and belief question approach should be similar to that applied regarding disability - i.e. asking in the first instance whether or not the respondent has that particular characteristic - and where the individual declares that they do have a religion they are then offered the opportunity to declare it.

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?

44. We acknowledge that gender reassignment is a potentially sensitive area meaning persons may not wish to disclose this information. Not to ask the question in the first place guarantees that no such information will be disclosed but also implies this diversity strand does not carry equal weighting of importance to the others. Should the question receive little response then specific and targeted qualitative research could be taken forward in this area. If this is the case, more positive declarations are likely to be generated in the event of responses being submitted to a third party rather than to the respondent's employer.

Question 28 - If a question is included on gender reassignment, do you agree with our proposed question?

45. Paragraphs 146-150 do not mention any organisations which were consulted or any templates referenced in formulating the approach. Therefore we do not understand the reasoning behind the open-ended 'further information' section which follows the gender reassignment question. If the question could obtain data regarded as 'protected information' – i.e. gender recognition certificate applications - it should either be removed or the introduction to the section must make very clear that the person agrees to the disclosure and the information should only be provided if the questionnaire is completed anonymously (and where the relevant person could not be otherwise identified).

Question 29 - What are your views on our proposed approach to include a question on caring responsibilities?

46. Caring responsibilities is a relevant aspect of workforce diversity. However, part (a) of the question possibly does not go far enough in acknowledging this diversity. It asks only whether the respondent has a child under the age of 18; it cannot be assumed that because someone has a child that they have a caring responsibility for them i.e. a respondent may have a child but not be

the only or main carer. Likewise, it is unclear whether foster parents are adequately covered by the proposed questions.

Question 30 - What are your views on our proposed approach to measuring socio-economic background?

47. We agree this is a difficult area within which to capture valid information. We consider that gathering data on type of school attended and whether the parent attained a university degree provides sufficient information. However, we would suggest that (a) could be slightly re-phrased so it does not appear to imply the question applies only if the respondent's parents/carers are alive e.g. 'Have either of your parents/carers...' could be replaced with 'Did/have...'.

Question 31 - Do you have any comments about our proposed approach to publication requirements?

48. We consider it a fundamental requirement that individuals are made aware that information is provided anonymously and on a voluntary basis. There must also be clarity about the form in which the information will be published, and where it will be published. We are unconvinced that a link on the front page of the entity's website to the published information is appropriate or necessary.

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?

49. Even if data is submitted anonymously, individuals may be capable of being identified where there are only a few persons at a particular level of seniority. This risk is applicable irrespective of the firm size. We therefore consider that information which could be regarded as particularly sensitive – i.e. sexual orientation and gender reassignment; perhaps also religion and faith - should not be included in this breakdown.

Question 33 - What are the main impacts likely to be on approved regulators when implementing this framework?

50. The main impact will come from appropriate systems in place to be able to collate and analyse the information. We will also need to link the data to individual records so we are aware of the diversity profile of particular entities. This should help inform our impact assessment of regulatory actions and policy proposals.
51. We will also need to revise our regulatory arrangements accordingly and raise awareness amongst the regulated community of the proposed regulatory responsibilities, their reasons and impact.