

**Increasing diversity and social mobility in the legal workforce:
transparency and evidence**

Consultation Paper on proposals to increase diversity and social
mobility in the legal workforce

A Response by the Institute of Legal Executives

Introduction

1. This response represents the views of the Institute of Legal Executives (ILEX) as an Approved Regulator (AR) under the Legal Services Act 2007 (hereinafter “the 2007 Act”). This response follows consultation with ILEX’s Equality and Diversity Working Party, including the President of ILEX.
2. We welcome the opportunity to respond to the above consultation on increasing diversity and social mobility in the legal workforce. ILEX is focused and committed to equality and diversity in relation to the members it represents, the staff it employs and its stakeholders. As the Legal Services Board (LSB) consultation recognises our data is not exclusively focused on “authorised persons” but our membership as a whole. ILEX has already been recognised by the Ministry of Justice (MoJ) as a diverse organisation which has an “all are welcome” approach to its members, turning away no one via subscribed mandatory requirements but ensuring progress is achieved through vigorously tested capability. ILEX has thrived over the past 40 years in recruiting those interested in pursuing a career in law regardless of their socio–economic background or qualifications.

Executive Summary

3. Subject to the points highlighted below, ILEX in principle has no objections to the collection of data to increase transparency at an entity level in order to increase diversity in the legal workforce.
4. That said, at present ILEX is not an entity regulator, and the priorities mentioned in the above paper, in particular the need to “promote transparency about workforce diversity at an entity level” is not currently strictly applicable to ILEX. In any event, the majority of Legal Executive lawyers work for SRA authorised entities and as such there is a potential of unnecessary duplication, together with the unnecessary duplication of limited resources. However, we support the main thrust of the proposals to facilitate a culture change to ensure that regulated entities become more transparent about their workforce in terms of diversity, subject to the

caveat that it must be arms length rather than reliance on enforcement via a regulatory objective. As such, we do not support a mandatory scheme. ILEX is of the view that it should be possible to build on existing diversity initiatives that already exist at entity and AR level rather than imposing new monitoring requirements. Any such requirements would have resource implications in respect of smaller entities and difficult to enforce by the Approved Regulators (ARs). We also have concerns about the dangers of publication and the end use of diversity data.

5. In this submission ILEX addresses the issues in the Consultation paper in the order that they are raised. However, where we have answered directly we will refer to the question number, otherwise we have only answered those questions where we have specific knowledge, information and concern.

Existing Data

Questions 1 to 4

6. ILEX has nothing to add in respect of the existing data in respect of questions 1 to 4.

The Legal Services Board's Proposals

Questions 5 to 11

7. In terms of the immediate priorities, the majority of Fellows of the Institute are employed by SRA regulated entities. The proposal to extend the collection of data so as to include the entire workforce will invariably mean that Legal Executive lawyers, working for entities regulated by the SRA or Council of Licensing Conveyancers, will be included in the collection of diversity data by the aforementioned ARs. In view of this there is a potential for duplication by the ARs in the collection of the proposed data and a danger of "double counting". As the LSB paper acknowledges at

paragraph 49 ILEX is the only AR at present to have diversity data in respect of its entire membership.

8. ILEX has no principle objections to the collection of data at entity level but we have concerns in respect of a mandatory scheme and a requirement for firms to publish their data. ILEX is of the view that it should be possible to build on the many existing diversity initiatives at entity and AR level rather than imposing new regulatory and monitoring requirements. In the absence of further evidence or a more comprehensive IA, ILEX fails to see how the proposals will improve diversity in respect of progression and retention. As the consultation paper rightly highlights, it is not at entry level but at retention level that the picture becomes less clear in terms of reflecting the diversity of the population.
9. ILEX does have some concerns on the collection, publication and use of data. For example, it would have resource implications on the smaller firms; it may expose those smaller rural firms to unnecessary damaging scrutiny; or the collection and publication may be disproportionate to the size of the firm. Similarly, there is also a real danger, especially in smaller firms or barrister chambers, that it would identify individuals notwithstanding the individual has made no response or the response is “prefer not to say”. These firms and/or chambers also have a duty of confidentiality to their workforce. The collection of anonymous data would not prevent an individual from being identified if the regulated entity is small.
10. For the reasons above, we do not support a mandatory scheme that imposes a regulatory requirement on the ARs to ensure publication. ILEX believes education and voluntary adherence is the key to success, and a much more effective use of limited resources as well as being proportionate and consistent with the Better Regulation principles.
11. In Principle, ILEX has no objections to the LSB issuing statutory guidance under s162 of the 2007 Act if the circumstances so require and having

regard to the consultation responses and/or further research. However, we would reject the notion that guidance is used to impose a regulatory requirement on the ARs in respect of diversity data collection and transparency. In this sense, we believe that the relevant statutory provisions themselves will be very important. The regulatory objective under section 1 (1) of the 2007 Act is “*encouraging* (our emphasis) an independent, strong, diverse and effective legal profession”. Similarly. The 2010 Act talks about a body exercising public functions (including the LSB and the ARs) to “*have regard to the need*” of the new public sector due to come into force in April 2011. It seems to ILEX the language used in the consultation may have been interpreted as a mandatory requirement and not guidance. We therefore seek further clarification.

Implementation Issues

12. ILEX already collects data from all entire membership levels and not just authorised persons for the purposes of the 2007 Act. For example, the data already includes those Fellows who work in-house. This data assists ILEX in policy formation and targets those groups who are currently under represented. In view of this we have no objection that data collection should encompass the entire legal workforce.

Impact Issues

13. The impact on regulated entities was discussed above at paragraph 9 above. Given the lack of an impact assessment, we are not convinced with the LSB’s statement that the burden on smaller firms will “not be unmanageable”. Relatedly, there is no mention of the very real scenario that an individual may be identified notwithstanding that s/he may have made no response to a questionnaire or stated “prefer not to say”. The proposals appear to be giving scant regard to the fact that some of the data collected is “sensitive personal data” for the purposes of the Data Protection Act 1998 (the 1998 Act). All regulated entities have a duty of confidentiality towards their employees and it is important that the proposals strike the right balance.

14. If the data collection scheme is other than voluntary, it will invariably impose additional resource issues, in terms of enforcement, on ARs especially on the smaller regulators.

15. In terms of the range of indicators and characteristics, in principle we have no objections that data should include all the protected characteristics under the 2010 Act, in addition to the socio-economic backgrounds of the respondents subject to the issue of confidentiality. The risk of a breach of confidentiality is much greater for smaller regulated entities. As pointed out above, an individual may still be capable of being identified notwithstanding that the survey is anonymous, thus potentially breaching confidentiality under the 1998 Act or the Gender Recognition Act 2004.

Questionnaire

16. In terms of the questionnaire, we have no further questions save that the questionnaire must be capable of being incorporated into the ARs existing data, particularly since the nature of the collection of data is very personal to the individual. As such, the questionnaire should be a template for all ARs to use to ensure consistency of wording and collection.

ILEX 09/03/11

