
Response to the Legal Services Board Consultation Document
Increasing diversity and social mobility in the legal workforce: transparency and evidence
submitted by
Michael Blackwell¹

Background

1. I am a solicitor and practiced law in the City for several years prior to returning to LSE to pursue academic research. I am now a PhD student conducting research at LSE into judicial diversity and its impact. As the consultation document identifies (para.23) this is strongly connected with diversity in the legal profession and so the topic of your consultation is familiar to me.
2. I hold an MSc in Social Research methods and am based in the Methodology Institute of the LSE, where many of my colleagues advise on large social surveys. I am also a Student Fellow of the Royal Statistical Society. Accordingly I am familiar with issues concerning survey design and analysis.

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?

3. In addition to the data you cite you may find relevant the empirical data that I am including in my paper for the Socio-Legal Studies Association conference in Brighton, provisionally entitled *Old Boys' Networks, Family Connections and the English Legal Profession*. It especially concerns educational background (which is strongly correlated with socio-economic class) and gender. The paper is not yet complete, but will be ready for the conference in early April. ***If you wish, I can send you a copy of the paper once completed.***

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

4. The comment in paragraph 40 that the numbers "compare favourably" is strongly questionable.
5. First, as you suggest in paragraph 44, these headline figures generated by grouping together all BME groups potentially masks the under-representation of certain communities. In education it is often the case that some ethnic groups (such as Chinese and Indians) often, on average, out-perform others (such as Afro-Caribbean boys).
6. Secondly, if the "ideal" is equality then a significant under-representation of the white community in undergraduate law admissions (77% of admissions compared to 92% of the population) is a concern. However, these figures may over-estimate the difference, as a potentially a better comparison would be to the percentage of 17 year-olds from BME communities (which may be different to the population as a whole).
7. In paragraph 42 you state that "We continue to see white graduates from higher socio-economic backgrounds overrepresented in large city firms and the Bar, while BME lawyers, women and people from less well-off backgrounds are concentrated in small High Street

¹ Non-practicing solicitor and doctoral student, Methodology Institute, London School of Economics and Political Science.
Email: m.c.blackwell@lse.ac.uk; website: www.mcblackwell.com

practices." You do not however, except with regard to the following paragraph concerning BME solicitors, cite any evidence in support of this generalisation.

8. In paragraph 43 you cite pay differentials among solicitors associated with gender and race. However, such headline figures are unlikely to reflect causation. More insight would be gained from controlling for factors such as PQE and area of law which may well explain some of this difference.

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?

9. See response to question 1 above.

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?

10. Creating data aggregated at entity level will provide some headline statistics, but it is limited in its ability to provide meaningful insight into the underlying processes associated with social mobility and diversity in the legal profession.
11. As accepted by the Bar Council Report on *Entry to the Bar Report*, chaired by Lord Neuberger of Abbotsbury², individual level data is necessary to properly understand how characteristics such as race, gender and socio-economic background affect success in a legal career. I particularly refer you to Appendix 7 to that report prepared by Professor Martin Chalkley, which explains the importance of collecting individual level data.
12. A potential disadvantage of requiring firms and chambers to publish aggregated data is that it would undermine any attempts of other regulators to collect individual level data, as it would be over-burdening the profession. Accordingly, we could be substituting potentially misleading headline aggregated data for more insightful statistics generated by the collection of individual level data.
13. Indeed, the consultation document seems to see a benefit to non-aggregated data (in para.116) commenting, non-anonymised data would "provide them a much richer data set about the characteristics of individual authorised persons, linked to other regulatory data - enabling sophisticated analysis about progression and retention and about issues of disproportionality in regulatory decision making"

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?

14. You note how the Law Society and Bar Council (para.30-31) both produce annual statistical reports, those of the Law Society being rather more extensive. Those surveys have used existing categories for over a decade so it is possible to see changing trends within each of the branch of the professions. Arguably, it is more important to compare these changes over time within the branches professions than to be able to make comparisons across professions. Accordingly, any changes that would impede comparisons with previous years are *prima facie* undesirable. Also, certain profession specific questions may provide very pertinent statistics when considering diversity and social mobility.

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

² <http://www.barcouncil.org.uk/news/EntrytotheBar/>

15. If data is to be aggregated, there are clear issues with extending the transparency requirements "to the entire legal workforce (for example including paralegals, legal secretaries, barrister's clerks and other support staff who directly support the delivery of legal services)." (para.100) Depending on how the data is aggregated this may mean that, for example, an under representation of women as partners is off-set by an over representation as legal secretaries.
16. Also, arguably more important than looking at support staff, is to include job applicants. These should be applicants for both the positions of fully qualified lawyers and also trainees/pupils. This would allow analysis of whether under representation is a function of adverse-selection of certain groups or, alternatively, certain groups disproportionately wishing to pursue particular careers. Obviously, the correct remedial action will depend on which of these is the case (of the extent of both).
17. It may at present be easier for the Bar to generate statistics on pupillage applicants than for solicitors. This is because many applications for pupillage are made through a centralised on-line "pupillage-portal" whilst applications for training contracts are made directly to the individual law firms. A way to address this would be to require those applying for training contracts to register with the SRA and be supplied with a reference number, which would then have to be used on applications for training contracts. Unfortunately, this would need to be separate from student enrolment with the SRA as many applications for training contracts are made prior to the completion of the academic stage of training. The likely additional cost could be off-set by a modest fee for such registration. Law firms would then report the reference numbers of candidates that applied, which were interviewed and which were offered training contracts. A policy question would be whether the additional costs are small in comparison to the gains from transparency, accountability and, potentially, improved diversity and social mobility.

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

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?

18. Data should be collected so individuals can be identified and individual-level data can be used for analysis, for the reasons stated (above) in my response to Question 7.
19. Transparency at entity level could be achieved by the regulator who renews the practicing certificate publishing aggregate level data.

Questions 20 to 23: Measuring Seniority

20. This question potentially suffers from being in the form of generalised questions that are not targeted at particular jobs but people who generally work in legal organizations. From the accompanying commentary I understand that these questions are designed to measure seniority.
21. For example, for solicitors it would be useful to know their level of PQE and if they are styled as partners. A further question may be useful on whether they are equity or salaried partners. For barristers it would be useful to know if they are QCs. Further, it would be useful to know the main area of law that they practise in and any other areas of law that form a significant part of their practise.
22. It is unclear whether question 2(b) only applies to "regulated individuals", as it refers to "*other* regulated individuals ". This should be clarified in the final questionnaire, if necessary a "not

applicable" box should be inserted. Some non-regulated individuals, such as group secretaries and HR may have a role in supervising and managing regulated individuals.

23. Further, it is not desirable to refer to "regulated individuals" – or at the very least you must spell out its meaning. If the questionnaire is to be completed by support staff they may not be familiar with the terminology of the Legal Services Act.
24. In question 2(c) you should avoid asking about "significant responsibility", which is ambiguous. Richer data may be obtained by asking what percentage of their working-time is spent on such tasks. In any event, these tasks are not necessarily indicative of seniority. A group secretary may spend more of their time on these tasks than a junior partner in a department. It would not follow that the group secretary is more senior.
25. Question 2(d) asks whether people work independently of supervision. This is as likely to depend on practise area and firm type as much as on seniority. For example, in a City law firm a trainee solicitor in a property department may have considerable independence. In contrast a very senior solicitor in a tax department may work under close supervision from a partner.

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?

26. Para 150 states "there is a policy question about whether including a question on gender reassignment in the model questionnaire is the most effective means of building an evidence base about gender reassignment issues in the legal workforce, or whether specific and targeted qualitative research is more appropriate. "
27. There is no valid statistical purpose for including such a question. Still less for publishing the results by law firm. The Office for National Statistics *Trans Data Position Paper*³ notes how "anecdotal evidence suggests that non trans individuals completing questions on transgender 'mess around' giving inaccurate responses and leading to bias in the data" (p9) Given the very small proportion of trans individuals in the population it is unlikely, especially given concerns about inaccurate responses, that the statistical results would be meaningful. That is to say statistical tests could not show it likely that trans individuals are under-represented in any firm or chambers. However, reporting results by year could lead to suspicion falling on joiners/leavers when the numbers change each year.
28. It is not true to say "If we do not ask a question about gender reassignment, then we are guaranteed to get no data; however, if the question is asked we may get at least some useful data." (para.150) It would be possible to get very useful data by other means. For example, you could place advertisements in *The Law Society Gazette* and *Counsel* asking trans lawyers to contact you, for interviews or focus groups. These could be conducted under the strictest anonymity (clearly, for focus groups you would need to get the other participants to agree to preserve each other's anonymity). This would be far better as it would give you access to "thick description" of real trans people's experiences in the legal workplace, rather than potentially misleading numbers.

Question 29: What are your views on our proposed approach to measuring socio-economic background?

29. I agree that attempting to use the ONS style surveys in such a self-completed questionnaire may be confusing and may not yield accurate data.

³ <http://www.ons.gov.uk/about-statistics/measuring-equality/equality/equality-data-review/trans-data-position-paper.pdf>

30. However, in addition to asking whether a parent went to university they should also ask which university each of their parents attended and which university they attended. Particularly at the Bar, there is a huge dominance of graduates from two universities – Oxford and Cambridge. For example my research has identified that 65 per cent of all QCs appointed since 1965 are graduates of these universities – and a significantly greater proportion of the judiciary appointed to the High Court and above over this period are graduates of these universities. As is well know, there is significant public concern⁴ that these the graduates of these universities are disproportionately drawn from higher socio-economic groups. The questionnaire should allow for the fact that individuals may be graduates of several universities.
31. Also, I have identified in my research that a particularly relevant issue for social mobility in the legal profession is whether at least one parent is a solicitor or barrister. Among QCs and judges appointed since 1965 a large proportion have a father who is a barrister or solicitor. Accordingly, I suggest that you include a question asking whether one or more of their parents is or has been a solicitor or barrister.

Offer of further assistance

32. I hope you find these comments constructive and helpful. As mentioned at the outset of this submission, I have a good knowledge of the substantive issues concerning this topic, as well as technical issues concerning surveys. Accordingly, should you wish, ***I would be very happy to work with you and offer further advice concerning survey design, analysis or substantive issues concerning this topic.***

Michael Blackwell
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⁴ <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100308/debtext/100308-0001.htm>