

**Legal Services Board consultation:
*‘Increasing diversity and social mobility in the legal
workforce: transparency and evidence’***

Response from the Solicitors Regulation Authority

March 2011

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Legal Services Board consultation: “Increasing diversity and social mobility in the legal workforce; transparency and evidence”

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Introduction

1. The Solicitors Regulation Authority (SRA) is the independent regulatory body of the Law Society for England and Wales. We regulate individual solicitors, other lawyers and non lawyers with whom they practise, solicitors’ firms and their staff.
2. We support the Legal Services Board (LSB)’s commitment to work with the approved regulators in seeking to encourage diversity, in particular around the promotion of the transparency of workforce diversity across the legal services professions.
3. We welcome the opportunity to take part in this consultation, and have set out our comments below.

SRA comments

Q1. 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?

4. The SRA has recently provided data for the Legal Services Board (LSB)’s Regulatory Information Review, as per the attached spreadsheet. This provides a diversity breakdown for all solicitors on the Solicitors’ Roll, and includes also Registered European Lawyers, Registered Foreign Lawyers, and Exempt European Lawyers that we regulate.



E&D strands
breakdown 2010_12_

5. We publish equality and diversity (E&D) data on our website (<http://www.sra.org.uk/sra/equality-diversity/reports.page>). Our Senior Management Team and our internal Diversity Working Group are provided with regular reports setting out our position as a regulator in progressing diversity initiatives.
6. There remain some gaps in the information we have available. For example, we currently hold disability data for less than half of the practising population we regulate, and religion and sexual orientation data for just over a quarter. We are reliant on individuals we regulate voluntarily providing us with this data, and updating the SRA with any changes to the information they provide. For categories such as religion and sexuality data has only been collected since our Diversity Census exercise, which we completed in July 2010 (information is available on our website: <http://www.sra.org.uk/sra/equality-diversity/diversity-census.page>). However we do hold extensive data for age, gender and ethnicity,

and we have used this to support our equality impact assessments (EIAs) and reports for internal and external use over a number of years.

7. We do not currently record information on socio-economic or pregnancy and maternity categories (and would query how we might approach the latter given its transitional nature). Our application processes have now started to be delivered online, the first of which is student enrolments, which is now being facilitated through our website rather than using paper-based methods. E&D questions form part of this application process, and will be part of other online communications we carry out with our regulated community. This provides us with an opportunity to begin capturing data for equality strands such as those listed above, and for others such as gender reassignment.

Q2. What are your views on our assessment of what the available diversity data tells us?

8. Available diversity data highlights barriers faced by some individuals who may experience discrimination, and reinforces the information we also hold on the profession - for example we know that black and minority ethnic (BME) solicitors are overly-represented in small or sole practitioner firms that we regulate.
9. The collation of comprehensive data on the make-up of the existing legal workforce will provide an opportunity for a systematic evaluation of impact and effectiveness. Where inequalities have been found to exist, we should use those findings to tackle disadvantage, and should not wait for additional diversity data to be collected before action is taken.
10. We know there are existing inequalities in the legal profession from research that has been undertaken by a number of organisations. The Law Society for example found that BME solicitors practice in personal injury, immigration and family specialisms, often in high street practices (see the link to this research below). This has been ascribed to a combination of contributing factors such as lack of information, discrimination and the necessity of obtaining a training contract.

Q3. Is there other diversity research we should be aware of, that we did not take account of in our review of existing literature?

11. We would highlight reports such as the Law Society's targeted research studies, including:
 - Ethnic diversity in law firms – understanding the barriers (November 2010)
 - Obstacles and barriers to the career development of woman solicitors (November 2010)
 - The career experience of LGB solicitors (November 2010)

Q4. Are there any other existing diversity initiatives run by approved regulators which are not reflected in our outline of current initiatives?

12. The SRA carries out various diversity initiatives internally and externally, both to promote awareness for our own employees of equality and diversity considerations, and also to work closely with our stakeholders on diversity matters. These include providing learning opportunities and events through our annual Diversity Week, and meeting regularly with members of our

regulated community including representatives of the Black Solicitors Network, the Solicitors Sole Practitioners Group, and the Lawyers with Disabilities Division.

Q5. 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)?

13. The immediate priorities identified must be to achieve a greater understanding of the diversity composition of existing workforces across the legal services marketplace in England and Wales. Our view is that this information will need to be collected over a four to five year period before we have enough data that can appropriately analyse and direct resources to potential areas identified as requiring support.
14. We carried out a Diversity census exercise with our regulated community to improve the E&D data we had about the profession in 2009 and into 2010. Unfortunately this resulted in a disappointingly low response rate, despite a strong and positive publicity campaign which included a supporting statement for our key practitioner groups, and support from some firms we regulate. While this should be a priority, it can be a difficult area in which to see results.
15. We feel that resources should be allocated to reduce inequalities through targeted projects or schemes where we have *already* identified potential inequalities within the legal sector. This is verified by the LSB's current diversity research findings.
16. Where we are looking to promote transparency at entity level rather than individual level, we feel it is justified to collect diversity data. However whether this will then inform choice of law firm for different consumers is difficult to ascertain. Legal services providers should be judged on their quality of outcome for all consumers, and not only their diversity make-up.
17. The collation and publishing of data must be the responsibility of each firm. We are interested in understanding more about the extent to which this information should be available for consumers. There could potentially be a danger that some consumers could choose to use the services of a firm if legal practitioners of a particular demographic make up a large or full percentage of that particular firm. We would want to be confident that any published data should not perpetuate inequality, but should instead provide consumers with information to make informed choices.
18. Smaller legal service providers may require support from their representative body and approved regulator to publish their diversity data, and there may also be Data Protection issues that may arise in relation to those working in small firms and sole practices. We would want to understand the extent to which smaller firms could be impacted through their experiences obtaining professional indemnity insurance on the open market. The use by Insurers of any information published would again be a factor requiring careful thought.

Q6. Do you agree that a more comprehensive evidence base is needed about the diversity make-up of the legal workforce?

19. We agree that a comprehensive evidence base is needed, especially in areas where diversity information is minimal or not readily available. We are aware that a lot of work to date has successfully focused on entry to the legal profession, where women for example make up a substantial proportion of entrants, certainly amongst our regulated community. However statistical information shows only a quarter of law firm partners are women, and only 3.5% of partners in the biggest 150 firms we regulate are BME. Therefore, we feel it is important to address these barriers, and we would like to understand more fully how the LSB intends to use the data and address the issue of career progression.

Q7. 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?

20. We note the LSB's conclusion at paragraph 74 of the consultation paper that "*transparency is a powerful incentive to change behaviour*". We would be interested to know if the LSB has confirmed cases and / or data where managers of organisations have changed recruitment procedures or policies because of a requirement to publish information.

21. We agree with the idea of voluntary self-classification by individuals, which should be communicated with the message that the provision of workforce diversity data is not used to benefit the firm or individual, rather to help identify and reduce barriers within the profession for some groups of people who may experience disadvantage.

22. We are interested to better understand the LSB's views regarding the monitoring of consumer demand for '*diverse workforces*' (paragraph 79 of the consultation paper). We would like to see a diverse profession offering the best outcomes for consumers rather than simply showcasing that a firm for example appears statistically diverse on paper.

23. The consultation paper acknowledges that there are a number of law firms who, in line with good practice guidelines, already publish workforce diversity data, and we anticipate that the transition for larger law firms in publishing workforce diversity data will be relatively straightforward. There may be a potential capacity issue for smaller and sole practitioner firms to publish diversity data, who may require support in setting up systems to enable this data to be collected in the first instance. In addition because of the low staff ratio within smaller firms it may be possible to identify a specific member of staff within data if it was to be published. Diversity data such as ethnicity is classified as sensitive data under the Data Protection Act (DPA). Therefore, it is essential that any publication is done in line with the DPA and the confidentiality of such practitioners must be upheld.

Q8. What form should the evaluation of existing initiatives take? Should there be a standard evaluation framework to enable comparison between initiatives?

24. We agree that there should be a standard evaluation framework to enable comparison between different initiatives. We think it is important for regulators to work together on initiatives and research which would enable resources, expertise and capacity to be shared. This would in addition avoid duplication of work and reduce resources being expended on less effective initiatives. The LSB may be well-placed to co-ordinate these activities. It is important that the LSB work with the regulators to develop an evaluation framework.

Q10. 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?

25. We do not think that this is an appropriate and proportionate measure to take. Targets may increase resentment within firms who will be potentially asked to begin collating diversity information. It is important, as already proposed, that entities have the opportunity to make their own judgements on any actions they feel is necessary to improve the diversity make-up of their workforce. Targets may also create confusion with an understanding around 'positive action' methodology.

Q12. Do you think we should issue statutory guidance to approved regulators about diversity data collection and transparency?

26. We think this would be necessary to enable data to be categorised in a consistent manner. It will also allow for data sets to be compared with firms of similar sizes.

Q13. 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?

27. Without a standardisation of data, the way workforce diversity data is published will be open to interpretation by different firms. Where firms are already proactive in collecting information, or wish to collect additional information, they can continue to do so.

Q14. Do you have any comments about our proposals in relation to the individuals the data collection and transparency requirements should cover?

28. The new regulated landscape post-October 2011 may incorporate new types of commercial enterprise providing legal services and reserved legal activities to consumers. Equality data collection and transparency must extend to these new entities.

Q15. Should the framework include the collection of information on in-house lawyers?

29. We believe that the framework should include in-house lawyers. Currently we do not have a strong overview of the diversity make-up of in house lawyers within our regulated community, although we would welcome opportunities to explore barriers potentially experienced by in-house lawyers, and to understand whether there is a diverse mix of employed in-house lawyers within different organisations.

Q16. What impact do you consider these new regulatory requirements will have on regulated entities?

30. We believe that there will be a semblance of resistance by a proportion of regulated entities. We feel that if approved regulators do not duplicate the diversity information they already collect from regulated entities, then the transition in collecting this information may be less complicated. We certainly would not seek to ask entities to provide us with diversity information in more than one format. We also have to be mindful of the fact that smaller entities may face different challenges and may need additional support in collecting this information.

31. We have previously received some negative comments from our regulated community in response to our Diversity Census, and we are aware that we, alongside other approved regulators, will need to promote the profession-wide benefits of collecting and publishing diversity data.

Q17. 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?

32. We do not agree that smaller firms and chambers should only be required to collect this data every three years. With some smaller firms the attrition rate of solicitors and lawyers can be very high and it may be good to explore the reasons behind this (where applicable) and any risks this poses from a regulatory perspective.

33. If data is not requested annually it may be more difficult to obtain comparable data with other firms. That said, we need to be careful not to put additional burden on small firm who are already under pressure in these difficult economic climate and are having to deal with changes in the legal and regulatory landscape.

Q18. 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?

34. We feel that data should be collected about all the protected characteristics. However collecting information on socio-economic background may be more complicated, and we would argue that the guidelines for collecting and identifying socio-economic data will need to be very clear.

35. Some regulated entities may argue that, as socio-economic data is not included within the legal requirements of the Equality Act 2010, collecting it creates unnecessary effort and resource requirements for firms that are already being asked to cope with considerable regulatory changes through the Legal Services Act 2007. However the response here must be that socio-economic background is a source of inequality, and research has highlighted this as being one of the key barriers to progression in the legal sector.

Q19. Do you think that data should be collected anonymously or enable individuals to be identified (please explain the reason for your answer)?

36. We do not think individuals should be identified. In potentially collecting workforce diversity we are moving towards change in the legal sector to identify potential discrimination and barriers that some individuals from excluded groups face. In some firms workplace culture may not be conducive to an open and transparent dialogue with employees about issues of diversity. For example an employee may not want to disclose their sexual identity as they may perceive this would limit or even destabilise career opportunities.

Q20. Is there a way of integrating data collection with the practising certificate renewal process that still achieves our objective of transparency at entity level?

37. Practising certificate renewals should be a simple and transparent process. Diversity information may be better collected separately to the renewal process to ensure that renewals are not blocked by incomplete diversity data information requirements. We are committed to collecting the required diversity information in parallel with the renewals we use, but we do not wish to embed it within the same form for the reasons described above.

Q21. Do you have any suggestions on how to improve the model questionnaire?

38. We have no specific suggestions.

Q22. What are your views on the proposed categorisation of status in the model questionnaire?

39. We have no comments.

Q23. 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?

40. We have no comments.

Q24. Do you have any suggestions about how to measure seniority in the context of an ABS?

41. We are currently preparing a licensing framework for ABS and as part of this will introduce authorisation processes to identify ownership and key accountabilities. The roles of Compliance Officer for Legal Practice and Compliance Officers for Finance and Administration are likely in practice to provide consistent and quality dialogue with ABS, and there may be scope to approach seniority issues through these channels.

Q25. Should we collect any additional information, such as that suggested in paragraph 129?

42. If it is proposed to collect information on nationality it may also be feasible to collect information on:

- parents / grandparents country of birth;
- first, second or third generation; and
- languages spoken other than English.

Q26. Do you have any views on our proposed approach to collecting data on disability?

43. We think this question is important; the data we currently hold relating to disability diversity data is minimal.

44. However there is a potential conflict of interest for individuals who may not wish to declare themselves as having a disability which may affect their suitability to work, for example a learning disability or mental health condition. We are unclear about the extent to which individuals will wish to disclose some of this information.

Q27. What are your views on our proposed approach to collecting data on sexual identity?

45. Stigma attached to an individual's sexual orientation continues to be held by some individuals and by some organisations, as evidenced by the Law Society's study into this area (see paragraph 11 of our response) and is experienced in different ways by different individuals. Therefore we agree with the approach to collect data on sexual identity as linked to the ONS indicators.

Q28. Do you think we should follow the Census approach to collecting data on religion and belief? If not, what alternative approach do you suggest?

46. We agree that data collection on religion and belief should remain consistent with the ONS categories. When potentially requesting entities to complete this information, we feel that along with the other categories, it must be made clear that this information will not be used to differentiate or discriminate against individuals with a religious affiliation. Failure to suitably anonymise this category may potentially be harmful to individuals who are of a specific faith that is vilified by, for example, far right groups.

Q29. 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?

47. As a protected characteristic in the Equality Act 2010 we agree this question must be included. Specific and targeted qualitative research should also run parallel to the data collection work to provide greater understanding of the professional impacts experienced by people going through or having completed gender reassignment.

Q30. If a question is included on gender reassignment, do you agree with our proposed question?

48. We agree with the proposed question on gender reassignment.

Q31. What are your views on our proposed approach to include a question on caring responsibilities?

49. This question will highlight and identify potential barriers that individuals with caring responsibilities may face. It may identify one of the reasons of why, for example, individuals with caring responsibilities find their career paths sometimes alter from colleagues without equivalent responsibilities. We agree with the question being included.

Q32. What are your views on our proposed approach to measuring socio-economic background?

50. As per our earlier comments, we believe that data should be collected from all of the protected characteristics, although we consider however socio-economic data can be particularly challenging to request, define and capture. While we agree the LSB is right to approach the collection of data in this category it may prove to be a problematic process.

Q33. Do you have any comments about our proposed approach to publication requirements?

51. We agree that once data has been collected and collated it should be published in an anonymised basis.

Q34. 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?

52. We do not have any views on this, although we need to ensure that the collection and publication is done within the Data Protection Act requirements.

Q35. What are the main impacts likely to be on approved regulators when implementing this framework?

53. We consider that the main impacts will be:

- time constraints;
- being required to implement the framework within rigid timelines. Its important that the LSB allows for flexibility in how regulators approach this requirement.
- collecting the information twice as we need to collect on individual basis and will need to continue to meet our obligations as a public authority
- integrating additional data set requirements into system processes;
- providing a consistent message with other regulators to ensure that firms begin to collect this information;
- providing support to firms where required; and
- answering questions and queries relating to the collection of diversity data information.



**The independent regulatory body of the Law Society of
England and Wales**

www.sra.org.uk

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