

Response to Legal Services Board consultation on increasing diversity in the workforce

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We work both with women lawyers and with law firms to increase the retention and promotion of women. We have held director-level HR and Organisational Development roles in law firms and have a combined professional experience of over 30 years, 6 years of which have been as independent consultants. Our particular interest in this consultation is how the proposals might impact on women going forward.

We are responding to the questions posed by question number – we have not retyped them:

Question 1

We agree with your view on the data which is currently collected. However, there are gaps, especially relating to those who have left the professions altogether – where are they and what are they doing and why and paralegals who are not ILEX.

While we would agree that statistics can be very useful in giving an initial feel for the issues which will need to be addressed – understanding the human response to those statistics is even more important in considering potential solutions and how change could actually be achieved.

Question 2

We agree with your assessment. In our experience of working in the legal professions for over 30 years you will almost certainly find that senior support management tree does not reflect the diversity of the total support team and that the vast majority of secretaries are women.

Question 3

Regular reporting on partner promotions, and surveys on lawyers' attitudes to their firms and client satisfaction with their firms are carried regularly undertaken by the legal press – The Lawyer, Legal Week , Legal Business etc– these perhaps have less academic rigour but nevertheless provide useful data of year on year changes. Likewise surveys undertaken by pressure groups, such as the Association of Women Solicitors and consultants such as ourselves often provide a deeper level of understanding of the issues.

Question 4

Not that we know of.

Question 5

Priorities:

We would suggest that although you may need more evidence about areas where there is currently little data, you should not hold back on taking action in areas where the data already collected points to issues which need resolving. In any event, there will not be one solution to fix every issue you identify through the statistics; each will probably need an individual response.

On the impact of diversity initiatives – it would be useful to know which are the most effective and why so that they can form best practice models. However, it would also be useful to fund research into the effectiveness of diversity initiatives already being undertaken at the entity level. Law firms act a little like sheep; typically they copy what their competitors are doing – so when they hear that a competitor has introduced a new ‘initiative’ they will follow suit. So resource invested in to understanding which initiatives are actually making a difference would have a major impact on the industry as a whole.

Question 6

We agree.

Question 7

We agree.

Question 8

Many initiatives will have slightly different objectives and therefore it will be difficult to draw sensible comparisons and evaluations between them using a single evaluation framework. A system of evaluation which elucidates the objective, method employed to achieving the objective, that assesses results achieved against the objective would enable a Best Practice system to be developed but would also recognise the range of diverse approaches.

Question 9

We disagree with your proposed approach.

We use here the example with which we are particularly familiar, namely the small proportion of women reaching senior positions in law firms.

It has been known for years that only a small proportion of women joining City firms as trainees eventually make it through to partnership. Firms have known this for a long time. Both the legal news press and the national press regularly publish the statistics. The Law Society has been conducting research and publishing the results for years. Many firms have even been publishing their own statistics on their websites for years and over 180 of them have now signed up the Law Society’s Charter which requires them to publish. Yet has this exposure of the dismal proportion of women partners made any difference or embarrassed firms into increasing the number of women promoted? No it hasn’t. We know that clients often ask for diversity statistics when asking firms to pitch for business or pitch for a place on their panel. Yet in our experience that information is never used to determine who should actually become the supplier of choice, it operates as little more than a tick box exercise; no effort is made by clients to use the statistics to demand firms achieve greater diversity, by increasing for example, the number of women in the partnership. If further evidence were necessary of the lack of impact which the publication of statistics has on improving diversity,

last month, we conducted a small survey across a number of businesses on just this issue. We presented our findings at an event in support of International Women's Day. The results showed that over 84% respondents did not seek information about diversity from their suppliers, and that 88% would neither choose a supplier nor use diversity statistics to choose a supplier. Supplier selection is predominantly about commercial issues, like price, quality and reputation rather than improving diversity or matching values. Currently then, the evidence suggests that law firms are not embarrassed by their statistics and their clients are only peripherally interested in them. That is not to say that firms are doing nothing to try to work on the situation. We know that many have put in place a number of initiatives aimed at increasing the number of women partners and retaining women lawyers for long enough for them to become partners. The reason for this is entirely economic. Partnership income grows by partners generating more income. There is a limit to what a single partner can generate with their team. So growing the number of partners is critical to increasing income. Increasing the partnership through lateral hires is risky – too few work out in practice. So the only avenue left is to appoint more internal candidates to become partners. With so many women leaving and so few senior lawyers left (as women will have made up the majority of the intake) from whom to make appointments to partnership - firms have no choice but to begin to address this issue and many are doing so by introducing numerous initiatives eg part-time partners for a limited period, mentoring, etc to support women make it through.

Targets to increase the number of women made up to partnership have been set by a couple of City firms and applauded as a small step in the right direction. We would go further and propose that firms are made subject to quotas – a minimum of 30% women partners by 2015. This reflects the approach being proposed by the European Commission in relation to women on boards rather than the somewhat weaker conclusions drawn by Lord Davies of voluntary targets.

Quotas ensure that a tipping point can be reached quickly which would just take the diversity issue off the table. It would certainly work for women lawyers (as well as other underrepresented groups) in law firms and, in our view, would be an entirely proportionate response to what remains an intractable issue.

Question 10 and 11

We agree.

Question 12

We agree

Question 13

We believe it is very important to collect full data on in-house lawyers eg the proportion of women in senior positions, general counsel, etc.

Question 14

No major impact

Question 15

We think this would be a reasonable compromise.

Question 16

We agree with this proposal.

Question 17

We believe that data should be collected electronically using a standard system supplied by the regulated bodies so that those completing the information can do so safe in the knowledge that their firms cannot link the name of the person responding to their response. Firms should be required to publish the totality of the statistics for their organisation. If such a system were to be developed then we would recommend that it be compulsory for all regulated lawyers to complete the form. If anonymity cannot be guaranteed, then statistics would have to be collected anonymously to protect those who are concerned about possible discrimination or eg. a pregnant women who is not yet ready to disclose her pregnancy because she fears that the disclosure will impact the quality of the work she is given to do.

Question 18

If the safe system described in our response to question 17 were to be developed – it would be possible to integrate practising certificate data with the collection of these statistics as only the Law Society would be able to see the name of the respondent.

Question 19

Question 20

We think you should include registered European and foreign lawyers

Question 21

We would suggest that you define what you mean by general describing words which would enable you to collect data on people at different phases of their career, eg. Junior (someone with up to 3 years post qualification experience), mid-level (3 to 5 years post qualification experience), senior (5 years or more post qualification experience), of counsel etc. You should collect data about partners to find out the whether they are equity, fixed equity share or salaried. Also you should collect data on non legally qualified people such as directors, heads, managers, etc. and professional support lawyers. Collecting data about QC's is important though, not because the chambers / firm has the power to appoint a QC but because it could show whether chambers or the firm provides an environment that supports all members to achieve QC status. What is key here is recognising that you won't necessarily get the categories absolutely right but anyone working in a regulated entity will recognise themselves and be able to tick a box which will give you data which is of some use. You should recognise too that sometimes the CEO or Chairman is a partner and sometimes they are called managing and senior partner respectively. As long as you give a short description of who is included you will get useful responses. Often non practising barristers hold senior managerial roles in law firms but are not client facing and so do not hold a practising certificate so it would be useful to know them too.

Question 22

No

Question 23

Yes

Question 24

No views

Question 25

We agree

Question 26

Yes we think you should follow the census approach

Question 27

Yes it should be included

Question 28

We agree with your proposal.

Question 29

We broadly agree with your approach except that we also know that sometimes women feel they are marginalised once they say they are pregnant and often do not return after maternity leave because of the way they felt they were treated during their pregnancy. We are not sure how you get at this issue, but if no questions are asked about it eg. are you pregnant; are you on maternity leave; do you intend to return to the same firm after your maternity leave, how were you treated when you announced your pregnancy; then there will be no opportunity to assess the impact of this on women's working lives. It is of course also important to ask questions around caring responsibilities.

Question 30

We agree

Question 31

No we agree

Question 32

We feel people should be allowed their privacy from their firm but that overall statistics should be collected. Hence our suggestion above in our response to question 17 on the method used to collect this data.

Question 33

We are not in a position to comment.