

Promoting fair access to a diverse legal profession

Introduction

1. The Legal Services Board welcomes the establishment of the Panel for Fair Access to the Professions. We believe that its work complements the Government's Legal Services Reform agenda and the Legal Services Board's emerging work programme. In particular, by maintaining a sharp focus on questions of social mobility and accessibility, its work has the potential to give both sharper focus and enhanced momentum to the various related initiatives currently underway in various parts of the profession.
2. As the Legal Services Board is currently in start-up mode, we have not attempted to undertake a major information gathering exercise in response to the Panel's call for evidence. We understand that individual Approved Regulators and the Ministry of Justice will be providing data on current activity in some detail.
3. Instead, we have sought to identify:
 - areas where the Board believes that there is potential for action;
 - synergies with the Board's own emerging agenda; and
 - ideas for maintaining momentum in implementation.
4. In all cases, these suggestions start from the Board's firm belief that it is vital that the dynamism and priority being shown in the recruitment of the Panel and its aggressive timetable is maintained through the process of implementation, as the issues to be tackled are ones which call for sustained ambition and action in the long-term. We therefore look to help the Panel frame a long-term strategy in addition to specific initiatives.

Background – the role and duties of the LSB

5. The Legal Services Act 2007 (the "Act") imposes various duties upon the LSB. The Board has a primary duty to comply with the 8 regulatory objectives of that Act whenever carrying out its work. A specific regulatory objective is to:

"encourage an independent, strong, diverse and effective legal profession".

This objective is underscored by the other regulatory objectives – in particular:

"protecting and promoting the interests of consumers"; and

"protecting and promoting the public interest".

6. It is noteworthy that these objectives also apply to the 8 licensed regulators which the Board oversees. Hence the duty in respect of diversity, which in the eyes of the Board clearly applies to questions of social composition, as well as gender, ethnicity

and other categories of identity, is clearly shared by all regulators of the legal professions.

7. The regulatory objectives are key duties of the Board, but the following duties and powers it has in relation to promoting access to a diverse legal profession are also noteworthy:
 - the duty to assist in the maintenance and development of standards of regulation, education and training;
 - the duty to establish a Consumer Panel to represent consumers' interests and the duty to consider representations made to it by that Consumer Panel (moreover, once the Consumer Panel has been established, the Board may request it to carry out research); and
 - the duty to assess how the activities of ARs and licensing authorities (who will be the regulators of the new Alternative Business Structures ("ABSs")) have affected the regulatory objectives and the duty to take into account those objectives when authorising regulators to license bodies. The Board may direct a licensing authority to alter its regulatory arrangements, where appropriate.
8. It is therefore clear that the Board has both clear obligations, but also, through its various powers of direction in the legislation which are planned to be brought into effect at around the turn of the year, clear opportunities to enforce policy decisions in this area. While our preferred mode of operation in this kind of structural issue will be partnership working with the Approved Regulators and other interested partners, we will act decisively where necessary if we believe that statutory duties are not being properly addressed.

The Board's Current Work Programme

9. The LSB's "**Draft Business Plan 2009**" identifies the Board's medium-term aims in relation to promoting access to a diverse legal profession, emphasising the importance of this issue. The Draft Business Plan goes on to identify the LSB's approach and to set deliverables for the end of 2009/beginning of 2010. The plan will be finalised shortly in the light of the Board's consideration of the outcome of the consultation exercise which closed on 13 March.
10. The strategic context is that the Board believes that it is essential for the legal profession to be, and to be seen to be, open to anyone with the requisite abilities and ambition, irrespective of background and that it selects, promotes and retains the most meritorious candidates from the widest pool of talent. In other words, questions of progression and retention must be addressed with the same degree of attention as question of entry: if they are not, then progress made through innovation at entry will rapidly dissipate as the "grapevine" will continue to spread negative perceptions of the profession and industry.
11. However, this is not uniquely a matter of social justice. Change is needed to ensure that:
 - the legal profession inspires confidence in the public by reflecting the full social diversity of the population. This is important in terms of the Board's obligations to both citizens and consumers. On the former, public confidence

in the profession helps the Board to address its responsibility to support the rule of law. On the latter, as the ABS agenda gathers pace, it can be argued that firms with a visibly more diverse base will offer more responsive and flexible service – and gain themselves through a “brand loyalty” advantage in many sub-markets;

- the industry makes the best use of the widest possible pool of talent, developing a reputation as an “employer of choice” to minimise inefficiencies arising from high turnover rates; and
- the industry is best placed to compete in a labour market, where, even taking account of current economic difficulties, the competition for talent in the medium-term will remain intense, given the shrinking numbers of 18-25 year olds relative to the overall population.

12. Against that background, the Board has identified a number of specific deliverables for its first year of operation with a bearing on the Panel’s agenda. These are to:

- review current work on professional diversity within the legal sector to identify gaps and facilitate sharing of best practice;
- facilitate constructive working relationships between the profession, the Approved Regulators (“**ARs**”) (e.g. the Law Society and the Bar Council) and providers of legal education to encourage fresh thinking in both academic and vocational course design (and the interplay between them) to encourage diverse entry and remove structural barriers to wider participation;
- ensure that diversity and mobility issues are integral to the model of regulatory excellence which we plan to develop and against which we will work with Approved Regulators to identify gaps and action needed.

13. Detailed plans will be developed in each of these areas over the coming months as our permanent staffing comes on stream. We will work closely with the Panel in ensuring the maximum alignment with its emerging thinking in doing so. But it will be as, if not more, important for the Board to engage with individual Approved Regulators and educational interests as their evidence will be crucial in pinpointing areas for action and in ensuring delivery of targeted interventions. The Board’s initial thinking is that two issues could merit particular focus:

- the progression of minorities and other marginalised groups within the legal profession; and
- the interaction between the legal profession and its educational providers.

14. The Board has also stated in its Draft Business Plan that it wishes to have an immediate tangible impact by driving forward a small number of specific diversity initiatives with the help of the ARs. To this end, the Board has identified the following areas as requiring specific research:

- education initiatives that teach about citizens’ rights and responsibilities and which can inspire interest in law as a profession (e.g. the Galleries of Justice in Nottingham);

- the role of paralegal or legal executive work as a route into the legal profession;
- low-cost but effective ways of encouraging social mobility into the legal profession (e.g. work-experience schemes);
- investigation into whether the costs of educating lawyers post-graduation are proportionate and whether some of that education can take place at an undergraduate level; and
- investigations into the diversity initiatives successfully piloted in the legal professions of other jurisdictions as well as in other professions within the UK.

In the short-term, the Board would encourage the Panel to identify and review relevant evidence in these specific areas (which fall within the broader ambit of the areas which we understand that the Panel has identified as requiring investigation) in order to decide which of them merit early action or applied research in the medium-term.

Securing Long-Term Change

15. More generally, the Board believes that the close connection between some of its objectives and the remit of the Panel makes it the right entity to take forward, long-term, the drive to ensure fair access to the legal profession at a strategic level and reporting on the implementation of the specific initiatives agreed between Government and the professions in the short-term. We believe that such initiatives will only command credibility if they are underpinned by specificity of outcomes, clear project management and delivery arrangements and rigorous evaluation.
16. To the extent that its resources allow, the Board stands ready to assist in all of these areas. There will undoubtedly be a need for limited targeted investment by the Board and Approved Regulators in research on these issues and the extent to which that can be achieved by re-ordering existing priorities will need further study. But the aim needs to be to identify low-cost solutions based on behavioural, rather than structural change, that will more than justify the investment in the medium term in terms of better outcomes and avoided costs of recruitment or failure to retain.
17. We look forward to working with regulatory colleagues, the Ministry of Justice and the Panel on the next phase of this work.

Legal Services Board

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