LEGAL SERVICES BOARD

Meeting: Legal Services Board

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Title: Equality, diversity and inclusion update: January 2022

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Status: Official

Purpose of the paper

1. The paper presents the draft sector-wide statement on tackling counter-inclusive misconduct through disciplinary sanctions. It also summarises our progress on wider Equality, diversity and inclusion (EDI) work.

Recommendation(s)

2. The Board is invited to **note** progress on to the joint statement on tackling counter-inclusive misconduct through disciplinary sanctions and **note** the update on our wider work on EDI.

Background

3. We last updated the Board on our EDI work at the meeting in July 2021 (paper 21 (41)) and since then we have been working hard on a number of fronts to promote a more strategic approach which better connects our main partners across the sector and aligns our work programmes. We have made substantive progress in the following areas:

    a) Following informal consultation with regulators and tribunals we have drafted and sought commitment to publish a joint statement on tackling counter-inclusive misconduct (see paragraphs 5-9);

    b) We have commissioned the Bridge Group on behalf of the Judicial Diversity Forum (JDF) to assist in developing a high-level framework for the evaluation of judicial diversity initiatives and this work is underway (see paragraphs 10-11);

    c) We have been increasing our ability to hold regulators to account for proper consideration of EDI impacts when developing policy. We have strengthened the requirements to demonstrate consideration of EDI in our new rules for changes to Regulatory Arrangements, approved in December 2021, and the revised Practising Certificate Fees (PCF) Rules, introduced in January 2021. Regulators must conduct an initial equality impact assessment and if this finds an adverse impact on persons with (any of the) protected characteristics, a full equality impact assessment must be carried out and submitted with applications.

d) Board decision-making on the OLC and SDT budgets incorporates EDI considerations. EDI is one of the acceptance criteria for the OLC budget. The challenge panel for recent SDT budget rounds explicitly focused on EDI issues leading to changes to the SDT's KPIs and reporting.

4. We have paused our plans to review the LSB Diversity guidance in order to focus on collaboration with regulators through the Regulators Equality, Diversity and Inclusion Forum. The outputs of the work of the group will inform our decision on what is required to explain our expectations on EDI in the future.

Joint statement on misconduct and sanctions

5. Our aim is to have cross-sector commitment to tackling counter-inclusive misconduct, in particular, in the use of disciplinary sanctions.

6. We previously updated the Board in July 2021 noting that we held a roundtable with the BSB, BTAS, SDT and SRA to explore a sector-wide statement on the use of disciplinary sanctions to minimise, as far as possible within the current schemes of enforcement, variability in the sanctions applied to counter-inclusive misconduct. Since then we met with the other regulatory bodies, obtained agreement to the proposal and we drew up a draft statement which outlined the following principles:

   a) Counter inclusive misconduct is serious and challenged and dealt with appropriately

   b) A commitment to addressing concerns about apparent inconsistencies in the sanctions applied in cases, for example, of sexual misconduct, racial harassment and bullying

   c) The regulators and tribunals will support each other in ensuring a consistent message to promote understanding that counter inclusive misconduct must and will be tackled effectively wherever it is found.

7. The draft statement of principles was circulated to all regulatory bodies, tribunals and we also sought views from the Bridge Group as well as the Law Society's Disability and Inclusion committee. The draft statement at **Annex A** takes account of the comments received so far (a few comments are awaited).

8. The feedback comments broadly fell into three categories:

   a) Suggestions on clarifying the term counter-inclusive misconduct and improving the statement to be more inclusive in terms of the language we use and allowing those who are affected by such misconduct to see that they are covered by the statement.

b) Ensuring that the discretion and independence of BTAS and SDT are not fettered while making it clear that such behaviour has no place in a professional environment.

c) Seeking an understanding of how the operational implementation of the principles will be followed up to determine its impact.

9. We have addressed these points in the statement and our next steps are to finalise the revised statement and coordinate the communication plan for publication of the statement.

High level design and evaluation framework for the Judicial Diversity Forum

10. In December 2021, the JDF published its priorities and actions for 2022 which, for the first time, groups partner interventions around five priorities of:

a) Supporting a diverse pool of professionals who have the skills and experience to apply for judicial appointment at all levels (led by the Legal Professions).

b) Supporting diverse professionals to see a judicial career as an attractive option and ensure they are supported and encouraged to apply for judicial careers (led by Judicial Diversity Forum (JDF), Legal Professions, Judicial Appointments Commission (JAC), Ministry of Justice (MOJ), Judiciary).

c) Ensuring application processes are open and fair (led by the JAC).

d) Supporting retention and progression through the judiciary (led by the judiciary).

e) Evaluation and measurement (supported by LSB via Bridge Group).

11. It would be impossible for the judiciary to increase its diversity without a more diverse regulated community. Therefore connecting the LSB's focus on EDI across that regulatory community with the JDF focus on the diversity of the judiciary brings a more holistic approach. We are specifically supporting the JDF to identify and apply interventions that have the greatest impact and to create an agreed understanding about *what good looks* like for judicial diversity. We commissioned the Bridge Group to help develop a theory of change framework for the design and evaluation of diversity interventions and initiatives. A common framework will help JDF members better understand the impact of their initiatives focused on addressing barriers for underrepresented groups, and therefore better tailor and align future work. This will complement the work that we hope to carry out with the regulators through the EDI Forum.

Regulatory body update

12. We generally seek annual progress updates from regulatory bodies against the LSB diversity guidance[1]. Given the current and planned actions, and principally our focus on collaboration, we took the decision that a detailed review of performance against the guidance would not provide any significantly new information at this time. Instead, and as part of our annual regulatory performance assessment information request, we asked the regulatory bodies to provide a short summary of the actions that they have taken in 2021. This is contained in **Annex B**.

13. Regulators have continued to improve their approaches to tackling EDI challenges, collect data and improve their engagement with the legal profession. However, there still appears to be a lack of understanding of the relative success of particular actions targeted at addressing inequality, which is more evident with the smaller regulators.

Regulator's EDI Forum

14. We have recently joined the Regulators Equality, Diversity and Inclusion Forum. Our ambition for the EDI forum is that through the active collaborative effort of the regulators, tangible actions will be agreed which will start to produce a step-change in inclusiveness across the legal profession. The EDI forum agreed to new terms of reference, which include the following priorities:

    a) building a good understanding of diversity in the legal profession and how our regulation impacts on different groups in the sector

    b) increasing our understanding of the barriers to entry and progression in the legal sector and how to address the challenges

    c) working together to develop effective and consistent approaches to evaluating equalities interventions

    d) developing capacity and capability through sharing learning and best practice

    e) improving our understanding of the needs of consumers from all backgrounds, supporting access to justice and consumer information

15. The initial focus of the LSB in the group will be to identify interventions that have an impact to counter inclusive practices that contribute to the barriers on entry, progression and at staying in the profession.

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1 https://legalservicesboard.org.uk/what_we_do/regulation/pdf/2017/S162_Guidance_For_Regulators_On_Encouraging_A_Diverse_Profession.pdf

Future focus and next steps

16. Building on the considerable progress so far, the next phase of our work will continue to focus on delivery and collaboration:

    a) publication of the statement on *Tackling counter-inclusive misconduct through disciplinary sanctions* will send a strong signal of the commitment of the key regulatory partners to unite in promoting and enacting a consistent approach

    b) Our involvement in supporting the JDF brings a real opportunity to connect the judiciary and legal profession more cohesively in a shared effort to identify tangible actions of what will create positive change based on evaluation of diversity interventions and initiatives

    c) Collaboration through the Regulators Equality, Diversity and Inclusion Forum will ensure that we identify and then take action to improve our understanding of the regulated community, the impact of regulators initiatives and drive change in the sector. A priority will be pooling our experiences to identify the types of counter-inclusive behaviour and practices which we must eliminate.

    d) Using our regulatory levers thought our approval of regulatory arrangement changes and PCF applications to ensure that regulators demonstrate their understanding of the impact of their regulatory actions on those with protected characteristics.

    e) Expanding our evidence base through dedicated research on the experiences of professionals and the impact of counter- inclusion inclusive behaviours, subject to the outcome of the business plan consultation.

Risks and mitigations	
Financial:	N/A
Legal:	N/A
Communications and engagement:	When all parties have approved the text of the joint statement we will agree the communication plan for promotion of the Joint statement.
Equality and diversity:	This paper sets out how we are advancing our work to address the challenges set out in the *Reshaping legal services* sector strategy and ensure we have a more diverse and inclusive profession.
Resource:	No additional resources are required.

Annexes

Annex A – Tackling counter-inclusive misconduct through disciplinary sanctions
Annex B – Summary: EDI progress by Regulatory bodies

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
Annex A	Exemption section 22 (future publication)	31 March 2022

Annex A

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[FoIA exempt Section 22]

Annex B

Summary: EDI progress by Regulatory bodies

Progress against the three expectations demonstrating:

1 An understanding of the composition of their regulated community;
2 An understanding of the barriers to entry and progression within the regulated community, and a programme of activity to mitigate those barriers with measures in place to evaluate effectiveness; and
3 Measures in place to understand any differential impact on protected characteristics within their disciplinary/enforcement procedures.

1. <u>An understanding of the composition of their regulated community</u>
   1.1. All regulators are now able to demonstrate a basic level of understanding of the composition of their regulated community which is an improvement from June 2020. Data collection and response rates have improved, as have the analyses of the data.
   1.2. While the collection of data on the regulated community has increased we still see gaps in diversity data particularly around information around disability, maternity and pregnancy, social mobility and caring responsibilities.
   1.3. We have used the Regulatory Performance framework to encourage regulators to improve their understanding of their regulated communities.
   1.4. While there are improvements that can be made, most notably in improving response rates and question design, the majority of regulatory bodies still place more emphasis on the collection of data rather than using the data they hold to inform and take action to address the issues facing the legal sector. This was outlined in the Bridge Group report in 2021.

2. <u>An understanding of the barriers to entry and progression within the regulated community, and a programme of activity to mitigate those barriers with measures in place to evaluate effectiveness</u>
   2.1. There have been improvements in the understanding of the groups who face barriers, with a focus on women, those from a minority ethnic background and disabled people. The BSB and SRA are the only regulators carrying out meaningful analysis and evaluation of their activities, but evaluation activity is still at an early stage. There has been limited action by the other regulators.
   2.2. We intend to work with the regulators through the EDI forum on methods of evaluating activities. The Bridge Group proposed using a Theory of Change model (which we use internally for all LSB projects) and we will discuss this and other approaches further with the regulators at future meetings.

3. <u>Measures in place to understand any differential impact on protected characteristics within their disciplinary/enforcement procedures.</u>
   3.1. All regulators are aware of the need to monitor the demographic of those against which disciplinary action is taken. Only the BSB and SRA publish information with other regulators having fewer cases and therefore anonymising the data would not be possible, nevertheless, analysis is carried out and this issue is monitored.