Bridge Group
research
action
equality

Legal regulation to promote diversity and inclusion: literature review

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Contents

Executive summary

A. Over the past fifteen years, there has been a growing focus on diversity and inclusion in the legal profession, with specific attention to protected characteristics such as gender and ethnicity, and more recently to socio-economic background (SEB). This focus has been recently intensified by, for example, the Black Lives Matter protests that have drawn attention to systemic injustices in labour markets and wider society. Attention to this area is now likely to be more important than ever, as the pandemic exposes and exacerbates existing inequalities.

B. In 2019, the Legal Services Board (LSB) published its first formal assessment of the regulators' progress against four outcomes introduced in the LSB's guidance for encouraging a diverse profession from 2017. They found that the regulators had made positive progress against the four outcomes although there was still "some work to be done to ensure they continue to build a thorough understanding of the diversity profile of their regulated community and progress against the outcomes."

C. The LSB commissioned the Bridge Group (BG) to undertake a literature review of enforceable legal regulatory interventions in the UK that promote diversity and inclusion. The primary focus areas of this review are to address: what regulatory interventions legal services regulators are implementing as a response to the requirements above; whether these interventions are being evaluated; and the outcomes from these evaluations. Building on this, the broader purpose of the study is to support the LSB in understanding the extent and limits of current regulatory interventions to promote diversity and inclusion across the legal services sector – and to provide evidence on the most effective interventions which could have a more positive effect, including with reference to other sectors.

D. We have drawn on a variety of sources, including searches of academic and policy literature focused on the legal sector and beyond, and interviews with regulators in the legal and other broadly comparable sectors to investigate how they have used regulatory interventions to help drive change.

E. We find evidence of only modest activity among regulators and a weak evidence base for what is effective. In part, we find this is a consequence of: ambiguity about what constitutes activity in this area; dispersed responsibility and accountability; and an underpinning theory of change that is vague and differently understood between stakeholders.

F. Diversity data collection and analysis have been the main focus of the regulators in law. The purpose of this practice is equivocal, its implementation variable, and evidence from the wider literature counsels that, unless associated with accountability, data collection may only ever effect minor change. Despite these challenges, data monitoring can be useful, including as a means to measure and benchmark change – as opposed to directly encouraging or enabling it.

G. The extent of current interventions beyond data monitoring is sometimes opaque and, although there is much activity taking place (when also considering activity from membership bodies and individual organisations), there appears to be a lack of strategic approach and collaboration between regulators within the legal sector, and with regulators beyond the sector.

H. There is significant debate in academic and policy literature around these questions and in relation to the diversity and inclusion agenda. This includes, for example, whether voluntary or compulsory interventions are best placed to drive change. To support the LSB in navigating this complex and wide-ranging landscape, we provide a table outlining the key interventions in the legal sector to advance diversity and inclusion, as discovered in our review and interviews. These are not presented as an exhaustive list of interventions, but they do include a range of enforceable 'hard' interventions and 'soft', optional activities, with the latter often originating from individual organisations or membership bodies. As part of this analysis, we outline broadly the relative resource and impact typically associated with each intervention.

I. Reflecting on this and the LSB's regulatory role, we consider in detail the balance between enforceable regulatory obligations, and optional interventions including support, collaboration and engagement – with our interviewees at legal regulators often expressing a strong desire for the LSB to provide oversight, direction, and guidance, and not to be too directive. We provide a list of interventions and initiatives which have been tried. and discuss associated resources, impact, pros, and cons to illustrate what can be achieved within this scope.

J. In the reflections, we draw out the key issues that include: the requirement for clarity of purpose and expectation from the LSB; challenges with ownership and expertise; and role ambiguity. We also recognise that legal regulators share similar challenges and opportunities compared with those in other sectors. For example, other regulators point to considerable resistance to change amongst 'middle managers', where change is likely to have the greatest effect but where buy-in is currently least evident.

K. In our concluding recommendations, we suggest a logic framework for approaching this topic, from which flow several practical actions that are presented alongside

examples from other sectors. These include the need to define a clear ‘theory of change’ to direct activity and to agree shared measures of success. While this research highlights the limitations and challenges associated with data monitoring, we offer practical advice on how this can be undertaken in the best way (and identify this practice as necessary, but no means sufficient, to progress diversity and inclusion). We also offer examples and practical advice on how collaboration and convening can be facilitated to greater effect by the LSB.

L. This research has only been possible thanks to the generosity and openness that colleagues from across regulators have shown in their discussions with the Bridge Group. The engagement from regulators that we have experienced in these discussions offers evidence that further positive change is achievable; and that while the base on which to build is modest, there is much evidence of willingness and impactful practice.

Summary of findings

Introduction

1. **Context**: Over the past fifteen years, there has been a growing focus on diversity and inclusion in the legal profession, with specific attention to protected characteristics such as gender and ethnicity, and more recently to socio-economic background (SEB). This focus has been recently intensified by, for example, the Black Lives Matter protests that have drawn attention to systemic injustices in labour markets and wider society. Attention to this area in future is likely to be more important than ever, as the pandemic exposes and exacerbates existing inequalities.

2. **Rhetoric over action**: Despite significant rhetoric in relation to diversity and inclusion within the legal sector, there has been limited change. As noted in the LSB's own recent State of the Legal Profession report,[i] the sector is characterised by significant vertical and horizontal segregation, as women and minorities are often concentrated in areas that are lower paid and/or in less senior positions.

3. **The LSB's assessment of outcomes**: In 2019, the LSB published its first formal assessment of the regulators' progress against the four outcomes introduced in the LSB's revised guidance for encouraging a diverse profession in February 2017.[ii] They found that the regulators had made positive progress against the four outcomes although for a minority there is still "'some work to be done to ensure they continue to build a thorough understanding of the diversity profile of their regulated community and progress against the outcomes." We add to this here to highlight some concerns around data monitoring and pointing to some opacity in terms of the scope of additional actions and the relationship with outcomes, as measured by better representation of under-represented groups across the profession.

Data Monitoring

4. **Data monitoring and transparency**: In terms of regulatory interventions, the primary enforceable requirement is for regulators to continue to build a thorough understanding of the diversity profile of its regulated community (beginning at entry), how this changes over time, and where greater diversity in the workforce needs to be encouraged. The LSB's own rationale for prioritising data collection was to improve transparency on the workforce diversity at the entity level, and to gather an evidence basis about the composition of the workforce to inform targeted policy responses.

5. **Variable compliance**: Most legal regulators are actively involved in data collection, though compliance amongst regulated entities tends to vary quite substantially. There is uncertainty within legal services regulators, and considerable uncertainty within their regulated bodies, about the purpose of data collection and monitoring. Uncertainty also extends to concern that the data being asked for is too personal and there is a lack of trust and a lack of confidence amongst regulated entities about the purpose of these exercises.

6. The concerns from regulated bodies falls broadly into three areas: firstly that the request for data is too invasive, challenging individuals to release information that they are likely to see as sensitive and personal; secondly, that it is unclear what specific purpose the gathering of data serves, indicating that the case for data monitoring has not been as widely and effectively communicated as necessary; and thirdly a distrust of how the data may be used in future, with concerns that 'relative underperformance' on any individual metric might be used against an individual employer. There is a sense amongst regulators that this leads to poor data as recipients give incomplete responses. Questions were raised in interviews more specifically about data on disability, which is considered to be typically inconsistent and largely incomplete.

7. **Ambiguity about the purpose of data collection**: Regulators are also expected to use data, evidence and intelligence about the diversity of the workforce to inform, and evaluate the effectiveness of, regulatory arrangements, operational processes and other activities. We found limited evidence that regulators use data these ways, which is likely to correspond with limited understanding of the purpose of data collection and uncertainty about how to act in response. Some regulators suggest that the limited approaches to data collection (combined with ambiguity about why data is being collected and the associated requirements) emphasises that the LSB should identify key challenges and how they can be addressed.

8. With respect to apparent ambiguity on the LSB's requirements, as expressed by regulators, there is some evident contradiction here since the LSB do clearly set out their expectations on diversity data in policy statements and in regulatory performance documents. In one sense, the LSB is being asked for flexibility while simultaneously being asked to be more prescriptive and perhaps directive in their approach. This is not surprising perhaps because contradictions and tensions characterise this agenda. This may represent the regulators own sense that they are caught between competing demands, with perhaps the LSB asking for more action, while regulated entities resist what they see as oversight and control.

9. Regulators also point out that the LSB must acknowledge the heterogeneity of the sector, given that regulators operate with different scale, different communities, and encounter different opportunities to enact change. We advise that a more tailored approach is likely to be more effective, given that there is no uniform model in terms of how to respond. This underlines the necessity for the LSB to engage in additional support and advice, working with the legal services regulators to drive change.

10. **Data monitoring may not drive change**: Uncertainty on the part of the legal services regulators and their regulated bodies in terms of the purpose of data monitoring is reflected in the wider literature, which questions whether this is an effective intervention in itself. Data can of course act as a useful benchmark in terms of current patterns of inclusion and exclusion, and inform action and evaluation. However, the LSB does not require regulated entities to engage in concerted action to improve the representation of particular groups, and the emphasis on transparency implies a belief that this will exert reputational pressures on firms that will be one lever helping to drive change.

11. **Diversity is too complex to be changed via a reporting rule**: Issues around data monitoring have been explored in depth by legal academic Steven Vaughan in relation to the SRA and the BSB. The highlighted challenges are detailed below. His study indicates that data monitoring alone is unlikely to drive change because, for example: the way in which data is published by firms does not allow easy comparison between them; there is no link between transparency and accountability; and transparency can in fact be used by organisations to achieve legitimacy and deflect or avoid blame.

12. Further, diversity is an extremely complex matter which is not easily amenable to change via a reporting rule, which is considered to be a relatively blunt tool. There is also some danger that data collection is attempted in lieu of action with efforts here distracting from practical interventions which might drive change. In other words, a focus on the collecting of data can be presented as evidence a of commitment to Equality, Diversity & Inclusion (EDI), without there being significant change to diversity or inclusion among the workforce. Organisations can deploy monitoring activity as demonstrating action without engaging meaningfully in change.

13. **Evaluation and methodological challenge**: This leads to consideration of whether the effect of data monitoring as an enforceable regulation is evaluated and if so, with what outcomes. Taking the latter question first, it is very difficult to assess outcomes of data monitoring as measured for example by inclusion of otherwise marginalised groups because no clear measures of success were set by either the LSB or legal service regulators.

14. **Measures of success not set**: A compounding challenge with setting measures of success is that the nature of the challenge varies significantly depending on, for example, location, professional area, and more generally within the context of solicitors compared with barristers. Measures of success might reasonably be defined by legal service regulators, based on careful analysis of data that applies to their purview.

15. It appears that regulators have been reluctant to engage in such activities, and there are a number of explanations for this, including that they: are uncertain how to do so; are wary about the quality of the data; and/or do not have adequate confidence that they can motivate regulated entities to act even where they have specific evidence about what should be addressed.

16. **Correlation, causality and confounding variables**: With respect to evaluation, even where measures of success have been established, it is highly problematic to evaluate the impact of data monitoring in response to these. Even if outcomes do improve, for example following the implementation of data monitoring, there are almost always too many potential confounding variables to isolate cause and effect.

17. One solution to this challenge is to work systematically from data to collect more targeted interventions with a specific objective in mind, and with proxy indicators and measures built in over the short, medium and longer term. In what follows we suggest that legal service regulators should be pushed to adopt this approach with their regulated entities, employing 'theory of change'. We consider this point, and the methodological challenges relating to evaluation in the diversity agenda (and in relation to understanding 'what works'), in the extensive section below.

Other interventions beyond data monitoring

18. **Interventions beyond data monitoring are often opaque**: Beyond data monitoring, interventions by regulators aimed at improving diversity and inclusion appear to vary quite significantly in their nature and extent. Regulators differ quite substantially in terms of their public reporting on how they operationalise the requirements of the LSB, with most providing little or no information.

19. An underpinning challenge here is consistency in identifying what constitutes an intervention within the scope of diversity and inclusion: this is defined widely and inconsistently by legal service regulators, and these interventions may be owned or driven by different teams/sections within the regulator. This makes it problematic to compile a definitive list of activities; and this compounds the opacity within the agenda that we noted in relation to data

monitoring. In short, there appears to be no consistency within regulators in terms of how they manage and approach diversity and inclusion issues amongst regulated entities, or how they report on, and are accountable for, these measures.

20. **Limited evaluation of what does exist**: Given this opacity and the wider methodological challenges, it is almost impossible to identify with any certainty impact on outcomes, and to explore the nature of this and how it has been evaluated. However, our interviews would suggest that there is very limited if any attention to the impact of interventions on outcomes for under-represented groups, and that interventions that do exist are rarely if ever formally evaluated.

21. While regulators expressed a desire for evaluation, they often commented that evaluation places intense pressure on finite resources, and that it requires expertise and a standardised approach.

22. **Lack of a strategic response**: Opacity about what regulators are doing in relation to diversity and inclusion is unlikely to be deliberate on the part of regulators, but rather is likely to reflect in part their own uncertainty in terms of how to manage this complex agenda. Opacity does though indicate a lack of strategic thinking on the part of regulators in terms of what problems they should address, and how they should address them. To some extent, interventions and activities seem more *ad hoc*, and this is an area which is likely to benefit from further support and guidance from the LSB.

23. **Collaboration between regulators is limited**: There was minimal evidence in this study that regulators in the legal sector are collaborating with each other or indeed other regulators to share good practice. There is an expectation of regulators that they should collaborate with others to encourage a diverse workforce, including sharing good practice, data collection and other relevant activities, and that the regulator should be accountable to its stakeholders for its understanding, its achievements and plans to encourage a diverse workforce.

Convening and Compulsory Interventions

24. **The LSB's regulatory role:** Interviewees discussed preferences in terms of the LSB's regulatory role. They expressed a desire for the LSB to carefully balance their responsibilities, by providing oversight, direction, and guidance, without being too directive. This would correspond with the approach taken by the majority of regulators outside the legal sector, which also take a relatively soft approach to compliance, preferring to reward compliance and

provide support, rather than introducing punitive measures for non-compliance.

25. **Stick not carrot:** As far as the emphasis has been on data monitoring as the primary obligation on legal services regulators, interviewees suggested that the LSB's historical approach has focused on the stick at the expense of the carrot, with less attention to support, collaboration, and engagement. This may be slightly exaggerated, since the enforceable requirements appear relatively light touch. However, this does underline the necessity for the LSB to engage in close communication and support with regulated bodies to help drive cultural awareness of what can be done, and how to do it.

26. As an extension to this, there is an opportunity for the LSB to further clarify their expectation of, and encouragement for, regulators to use their enforcement powers within their regulated communities. This may help regulators understand that the LSB's aim is to support regulators in using all available actions to address diversity and inequality issues.

27. Some interviewees at regulators called for further consultation before the LSB announce any additional changes to regulation on EDI. We also highlight that representative bodies also need to be part of the discussion since they are often better placed to win 'hearts and minds' and to enact culture change than the regulators themselves. Irrespective of the extent to which the LSB currently takes a consultative approach, these comments suggest there will be value in the LSB reconfirming and more explicitly demonstrating their desire and commitment to work collaboratively in supporting regulators' actions to increase diversity and inclusion.

Summary

28. **Requirement for clarity and support**: Overall, regulators suggested that inaction around EDI resulted from a range of factors, amongst which were lack of clarity around what the LSB expected of them, or what initiatives are aimed at achieving, and why. There is of course variation between regulators in terms of their response which we cover in further detail in what follows, some of which is explained by the different contexts in which they operate. However, while reasons for inaction might be characterised as buck-passing, it is possible that there is a lack of clarity and understanding on both sides which could be productively addressed. This perception of lack of clarity exists and needs to be addressed. It is within the LSB's control to repeat and reinforce the key messages of expectation through multiple communication routes, ensuring that regulators access it, hear it, and go on to embed it in their planning and their action.

29. **Problems with ownership and expertise**: Regulators also pointed to the idea that there was a lack of clarity between the regulators and representative bodies in terms of responsibility for EDI, and that there might be duplication of effort here, or even competition. They argue that it is important to distinguish between campaigning activities and regulatory activities. Within their own bodies, they are occasionally uncertain about whether some diversity and inclusion staff have the specialist skills and training required to help drive this complex agenda.

30. **Role ambiguity**: This latter point relates to the ambiguity of role identified by interviewees with respect to some diversity and inclusion practitioners within regulated bodies. They can occupy a position that feels closer to 'campaigner', where being too close to the issues can compromise dispassion, limiting more strategic approaches. This may cloud their vision in determining the most effective and appropriate activities to pursue to achieve strategic change. More generally, greater clarity could be provided between what is best delivered by representative bodies, as convenors, what is best delivered by regulators, and what is best delivered from within regulated bodies.

31. **Challenges shared in other sectors**: While there are clearly significant challenges with respect to regulation, diversity and inclusion in the legal sector, the LSB should be aware that these challenges are experienced in many other sectors too. There is evidence of good practice in other sectors where additional levers have been used along with a more sophisticated approach to evaluation, which we share in the exposition below. However, regulators in a variety of sectors are also struggling with similar issues in relation to what works in diversity, how best to use their regulatory power in this contentious and sometimes controversial area, and precisely how to measure and evaluate any impact they have. In relation to the first point here, regulators identify considerable resistance to change within the legal sector itself, especially amongst 'middle managers', where change is likely to have the greatest effect but where buy-in is currently least evident. There is also variable buy-in depending on the regulated community, which is likely to relate in part to different challenges and starting points. This underlines the necessity for the LSB to develop robust and meaningful levers which are also sensitive to the particular regulated community and the diversity challenge that has been prioritised for action and intervention.

Reflections and Recommendations

32. The analysis so far may suggest a somewhat pessimistic conclusion. It is then useful to consider briefly why change has been slow to take effect – to provide a context for the recommendations that follow, and to emphasise that there are no silver bullets.

33. As noted, the limited success of diversity initiatives in driving change can be attributed to the sheer complexity of the problem. Changing organisational cultures and structures to facilitate diversity and inclusion is a massive task, but which can be likened to change management more generally. Experts in change management often divide problems into one of three types: critical, tame and wicked. Critical problems are associated with crisis and need immediate action. Tame problems are those with known solutions that are within existing expertise – they can be approached and addressed using a relatively logical and structured approach.

34. Wicked problems are extremely complex, and hold a multitude of other problems within them. Often there is no known solution and once one issue has been addressed, another arises. A particular problem with the diversity agenda which makes it 'wicked' is that not everybody accepts what the nature of the problem is, or even that it exists. There is also considerable uncertainty about how it can be resolved, or indeed what 'success' might look like, not least because equality can be defined in many different ways, and there is considerable debate about which inequalities are also unfair. This sheer complexity of this agenda is then one reason why it is so resistant to change.

35. Recommending onward action extends beyond the scope of this assignment, but we offer below some initial reflections on where the LSB could most effectively focus next steps.

Recommendation and example	Note
Take a more systemic approach. Regulators that appear to be gaining more purchase here are doing so by encouraging a more systematic approach and attaching their activities to a 'theory of change', whereby they identify key issues, and then set out clear plans about how to address this issue, over what timescale, and in relation to what short, medium and longer measures of success. *See, for example, the approach taken by: the Office for Students, which obligates regulated institutions to produce 'Access and Participation Plans'; and the Financial Conduct Authority Charter.*	We recommend that legal services regulators are encouraged and supported by the LSB to adopt a more systemic approach. One way this could be achieved is by asking them to adopt a 'theory of change' (TOC) approach. The TOC is a planning tool often used in agendas of this nature which requires in-depth planning, the identification of concrete interventions, anticipated measures of success, and clear timescales. The TOC can be used both to plan and to help evaluate success. Each regulator might then be expected to adopt such an approach, since this would require them to use data more carefully to identify key challenges, and to think more systematically about how these can be addressed. Requiring regulators to be accountable and regulators requiring regulated entities to be accountable is important. The LSB could require regulators to complete this exercise and report on it at regular interventions, thus acting as a stronger lever. However, regulators would have considerable flexibility to construct plans that feel relevant and sensitive to their context, thus enabling autonomy and perhaps reducing resistance.
Data monitoring as a driver for change. The primary focus of regulatory interventions to date has been on data monitoring. As noted, compliance has differed depending on the regulator and some regulators still have only a partial picture of the demographic composition of their workforce – there is more broadly a disconnect between data collection and action**.** Additional information and clarity on the purpose of data monitoring and further support is required, which should include expert advice on using data to inform evaluation.	In particular the following will be important: • Specificity about the purpose of data collection, the questions that it will be deployed to answer, and the way in which the evidence arising will be used • Correspondingly, the modes of analysis most appropriate to apply to answer these questions and resources to apply this analysis • Guidance on the data to collect and how to increase response rates, based on best practice

See, for example, the development of Access Accountancy, which has at its heart guidance to ensure consistency of diversity data collection, and a facility for benchmarking (over time and against peers) key diversity metrics.	• A facility for validating and aggregating this data, and for robust and meaningful benchmarking between organisations, building on e.g. the platform developed by the SRA
Convening and collaborating should be more purposeful and action oriented, and there is an important role here for the LSB. There is evidence of convening within some regulators (and some sharing externally with other regulators e.g. between the SRA and the FCA), but little evidence of convening and collaboration between regulators - and a desire for the LSB to step into this space. Such collaborations could be centred around data sharing, with reference to Access Accountancy above, and themed around areas of practice and evaluation approaches that apply across the legal sector. *See, for example, the recently formed 'Diversity taskforce in financial and professional services', commissioned by HMT and BEIS and run by the City of London.*	Additionally, an important factor in advancing diversity and inclusion in the law is the behaviour and expectations of clients to the sector. Exploration of the way in which the procurement of legal services supports, or works against, diversity and inclusion is an area in which convening regulators with other sectors, e.g. financial services, is likely to be progressive. The recently established government task force, investigating diversity among senior roles in professional services is an important foundation for action and change, on which this project could be usefully built.
Continue to use various levers: We recommend that legal services regulators in the legal sector are encouraged and supported by the LSB to reference best practice at other regulators, in order to use	It is important to note here that change may be driven by a combination of measures, but these do not necessarily rely only on enforceable interventions. Instead, the LSB can work with legal services regulators to convene, collaborate, and educate which, judiciously applied along with some more stronger levers, may have a more productive effect. Though it is recognised that regulators cannot make regulated firms' decisions for them in relation to hiring

their convening power to help focus action and drive change.	and progression culture, guidance from regulators is limited and may also not be informed by the latest evidence.
Consider specific interventions. To assist the LSB as they plan regulatory interventions in future, we have provided a non-exhaustive list of regulatory interventions aimed at diversity and inclusion, implemented by legal and non-legal regulators, along with their impact, and the pros and cons. We also share a similar non-exhaustive list of diversity and inclusion interventions used by organisations.	These tables are provided with caution. For example, one previous scholarly attempt to investigate what works in diversity and inclusion argued that: "Perhaps the most important, general takeaway finding . . . is that the effects of a given organizational practice often vary—across social groups, organizational levels, labor markets, and industries."[iii] Bearing this point in mind, these tables illustrate the tensions and ambiguities in the diversity agenda, where studies repeatedly show that there is no one way to drive change and that further, the effect of many interventions is difficult to measure but may be relatively limited overall.

36. In sum, how to define equality and how to ensure it is realised are highly contested ideas over which there is no consensus. One way to look at this, though, is to suggest that more radical approaches to equality are arguably more successful in driving changes in outcomes, especially when implemented in a wider societal and political context where inequalities have been reduced. It is useful to note that radical does not necessarily mean extreme but does suggest that it is vital to get to the 'root' of the problem in order to solve it. Recent administrations in the UK have prioritised a liberal approach to workplace equalities, which place a heavier emphasis on freedom and choice. Within the latter, equality is expected to be realised *within* a system which is arguably characterised by extreme competition for resources, which is not always conducive to equalities of outcome. While there is no panacea here, this is one explanation for relatively slow progress to date.

37. This helps to explain why despite apparently significant efforts directed at diversity within organisations, and associated expenditure, change is likely to remain incremental and slow. As noted, bearing these points in mind, in what follows we provide a list of interventions and initiatives which have been tried and discuss associated resources, impact, and pros & cons. The aim is to illustrate what can be achieved within these clear restraints.

Summary of diversity and inclusion interventions in the legal sector

38. In this section we provide a *non-exhaustive* list of interventions, with a broad indication of the required resources to implement, and the anticipated impact based on the available evidence.

39. It is important that this is approached with a degree of caution as the inputs and outcomes are likely to vary significantly depending on the context. This is a significantly abridged version of the more detailed table available at Appendix A, and is illustrated as outlined below.

Resources	
	High – requires long-term significant investment of time and budget
	Medium
	Low – requires relatively low levels of time and budget, and possibly over a shorter period of time
Impact	
	Low – the evidence indicates that this intervention will engender a relatively low effect, and possibly over a shorter period of time
	Medium
	High – the evidence indicates that this intervention will engender a significant, lasting positive effect

Type of intervention	Indicative resource	Indicative impact
Hard (Enforceable) Interventions		
Quotas	H	M
Targets	M	M
Data Monitoring and Transparency	M	M
Qualification routes and associated funding models	M	H
Written statement on equality and diversity policy and a written plan	L	M
Named equality and diversity officer and/or committee	M	M
Diversity Training	H	L
Round Tables and Task Forces (e.g. Race Equality, Disability)	M	M
Soft (optional) Interventions		
Flexible and Part-Time Work	M	H
Early outreach and wider approaches to attraction	M	L
Collaborative advocacy groups	L	H
CV Blind Recruitment	L	L
Contextual Recruitment	L	H
Work allocation systems	M	M
Mentoring, Coaching and Sponsorship	M	M
High Potential Programmes	M	M
Employee Resource and Affinity Groups	M	M
Diversity Committee	L	M
Diversity/Unconscious Bias Training	M	M

The diversity and inclusion agenda in the legal sector

Key findings in this section

- Diversity in the legal profession has received increased attention amongst employers and educators over the past fifteen years, and interventions and initiatives proliferate. The focus has primarily been on gender and to a lesser extent ethnicity where there is some limited evidence of improvement in outcomes in statistical terms

- Socio-economic background or social class has received less attention to date, and where this is not the case, the focus has been on improving access rather than career progression. There has also been less attention to understanding the impact of intersections between different diversity characteristics, such as gender, ethnicity and class, or how to address associated challenges

- More recently, improved data collection has allowed more granularity at the organisational level and this is helping to guide interventions and initiatives. This is a positive development, although greater transparency with regard to data must be accompanied by accountability to drive change within organisations

40. We start here by providing a brief review of relevant academic and policy literature before summarising key themes from interviews with regulators in terms of their perspectives on progress towards diversity and inclusion.

41. Over the past ten years, diversity in the legal profession has received increased attention amongst employers and educators, motivated mainly by endogenous concerns about equality and access to talent, and in response to exogenous pressures from policy makers and the media. Historically, the focus has been on protected characteristics, especially gender and to a lesser extent ethnicity, where distinct patterns of inclusion and exclusion persist. For example:

    - Evidence collated by the Law Society[iv] demonstrates that with women and Black, Asian and Minority Ethnic (BAME) lawyers remain under-represented at senior level. While the proportion of women solicitors working in private practice increased to 49% in 2018, the proportion of private practice partners who are women was just 31%. Further, 35%

of white private practice solicitors were partners compared to 25% of BAME solicitors

- The same study found that women, black, Asian and minority ethnic and disabled lawyers were concentrated in in-house legal departments or smaller firms, pointing to barriers in large firms, which are often the most prestigious and remunerative

42. Overall the Bar in England and Wales compares favourably in terms of gender and ethnic representation with some other professional employment groups but not always with the university educated population at large. Earnings, choice of employment status and geographic location (associated with attainment patterns and earning premiums) have been identified for those having graduated from Oxbridge and with high grades. According to the Bar Council's own figures, there is considerable social stratification within the profession.[v] A disproportionately high number of barristers attended a private secondary school (at least 17% of barristers compared with 7% of the general population). There is also a marked income gap between women and those from ethnic minorities compared with their white, male counterparts.[vi]

43. While statistical representation of women and people who are ethnically diverse has improved, especially when viewed over a relatively long time-scale, there is still a distance to travel, including for example to reach gender parity at senior levels of the profession. There are multiple explanations for inequalities on the basis of gender and ethnicity, ranging from theories of occupational segregation, which point out that under-represented groups self-sort into particular roles on the basis of perceived 'fit', and are sorted into roles by recruiters on a similar basis, in relation to which gender and racial stereotypes play a key role. Psychological theories focus on factors such as homo-social reproduction, where hiring managers recruit in their own image, and through unconscious bias.

44. While the focus within the academic literature and in the profession itself has historically been on protected characteristics, more recently attention has turned to socio-economic diversity, where extensive research has pointed to a range of factors contributing to associated inequalities, originating on both the supply and demand side. These include unequal educational attainment, access to careers guidance, university access, financial obstacles, access to work experience, and the recruiting practices of employers. Again, according to the Law Society,[vii] the majority of solicitors' parents (63%) were in occupations classified as professional rather than intermediate or working-class, compared with 34% of the population. In 2019, solicitors were more likely to have attended independent or fee-paying schools than society in general (23% compared to 7%), although this proportion is lower amongst

solicitors admitted more recently. This reflects perhaps encouraging efforts to achieve increased diversity amongst entry hires (through cross-sector initiatives, and from within individual firms).

45. However, much less attention has been paid to how trainees in the profession may progress differentially by socio-economic background. The focus has been primarily on who gets in, with far less regard for who stays on, who gets ahead, and how. Further, issues with socio-economic diversity in terms of access and progression may be most acute in large firms and Bridge Group research in 2020 found that over 50% of partners in a group of leading law firms in the City of London were white men who had been educated privately.[viii]

46. It is therefore important that socio-economic background is considered alongside protected characteristics in this review, and this is especially the case as Bridge Group and other research has consistently demonstrated that this aspect of diversity can have an important intersecting and compounding effect when considering protected characteristics, especially in 'elite' professions such as the law. The economic scarring of CV-19 are intensifying the societal and organisational challenges relating to equality, and often heightening competition for clients, contracts, and talent. The effects of Brexit on these areas are currently uncertain but one impact may have been uncertainty which for some organisations has contributed to lower investment and reduced recruitment. Both events may exacerbate the 'risk aversion' and individual hoarding of opportunities (i.e. at the macro level) that studies have identified as being key factors that stall progress in diversity and inclusion. Black Lives Matter has also focused our attention on addressing racial inequalities and prejudice. Socio-economic equality is a key factor in understanding and taking action to addressing this as, for example, Black employees are much more likely to be from lower socio-economic backgrounds.[ix]

47. The figure overleaf is provided for illustrative purposes, and outlines these stages, focusing specifically on the solicitor route. It is not intended to be a comprehensive review of the factors, nor of the literature associated with it, but it highlights the range of ways in which different factors affect access to the profession.

Factors affecting diversity in the legal profession – focusing here on the solicitor route

School attainment and information, advice and guidance	Attainment at school, or college, is critical to the prospects of aspiring solicitors, since high attainment is the ticket to selective universities, continues to be used as screening criteria amongst two thirds of leading legal firms, and affects candidates' ability to secure a training contract. There is a strong correlation between background and school attainment, including for many minority ethnic groups and by socio-economic background.[1] Wider experiences at school matter, too: there is evidence that school pupils from less advantaged backgrounds make subject choices that negatively affect their prospects, and that the quality of information, advice and guidance is weaker for these pupils.[2]
University access	Lack of diversity in the legal sector is partly a construct of the corresponding lack of diversity in the applicant pool. Larger employers typically target the most selective universities, whose students apply in high numbers; students at these universities are more likely to have been educated at selective or fee-paying schools, or be from relatively affluent backgrounds.[3] Alongside ready access to employers, students who attend these universities also typically have access to: higher status professional networks; academic staff with links to leading firms; finance to support travel for placements and other work experiences; and are more likely to develop non-educational competencies that have a premium in the legal profession.[4]
Perception of the profession	Research indicates that students from lower socioeconomic backgrounds may self-select out of the application process in relatively high numbers, even when educated at elite universities. "This can be explained in part because some of the activities conducted during campus visits may reinforce elite firms' image of exclusivity, so that students from these backgrounds may feel that they will not fit in, or that their academic credentials might not be acceptable".[5]
Access to work experience	Work experience aids entry to the legal market in many ways. The working knowledge and practical experience gained makes students more attractive to prospective employers, while providing direct links to firms who offer training contracts. However, access to work experience can be limited by networks that enable introductions (for example through their university, or family), and by the amount of time available (for example, an individual with caring responsibilities, or who has a need to earn additional income.)[6]

1 www.gov.uk/government/publications/state-of-the-nation-2016

2 *Ibid*

3 www.hesa.ac.uk/news/04-02-2016/performance-indicators

4 www.gov.uk/government/uploads/system/uploads/attachment_data/file/434791/A_qualitative_evaluation_of_non-educational_barriers_to_the_elite_professions.pdf

5 *Ibid*

6 https://research.legalservicesboard.org.uk/wp-content/media/2010-Diversity-literature-review.pdf

Completing the LPC	The LPC is a year-long course, when studied on full-time basis. It is a crucial part of the pathway leading to a career as a solicitor, and typically requires access to significant funds for those students who do not secure employer funding. There is also a great deal of risk attached to the investment; a high proportion of students who undertake the LPC do not secure a training contract.[7] This is changing in relation to the SQE, of course, and there is an equivalent route to the bar that is equally restrictive.
Training contract	Before a person who has completed the LPC can practise as a solicitor they must also complete a two-year training contract. Securing a training contract is much more competitive than gaining a place on the LPC. The firm in which a solicitor receives their training can affect pay, conditions and career prospects. Recruitment practices vary, usually dependent on the size of the firm, creating different barriers to the profession depending on the firm individuals apply for. There is an equivalent route relating to the bar and pupillage.
Recruitment practices of legal firms	Recruitment and selection processes typically deploy a specific notion of 'talent' which may further advantage candidates from higher socio-economic backgrounds. Firms seek out the "brightest and best", however, definitions are not uniform across the sector, or indeed within individual firms. The predictive validity and reliability of performance measures prior to entering the profession (such as type and name of institution attended, and qualification scores) is not as established as many assume. And the use of proxy measures of quality may disproportionately disadvantage those from lower socio-economic groups. A range of non-educational skills and attributes are also sought, most acutely by elite firms, including the capacity to present a "polished" appearance, display strong communication and debating skills, and act in a confident manner at interview.[8]
Progression in the legal profession	Increased diversity at entry to the legal profession is not the only objective. Individuals from lower socio-economic backgrounds may encounter more problems climbing the career ladder than their more privileged peers. Research has shown a negative correlation with numerous characteristics, such as ethnic origin, gender and social class, and the chance of progressing to high ranks within the profession, for example becoming a partner in a firm.

[7] https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page

[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434791/A_qualitative_evaluation_of_non-educational_barriers_to_the_elite_professions.pdf

48. To date, there have been relatively few interventions specifically aimed at managing these intersections and which are also focused on career progression, though some organisations have experimented with reverse mentoring, coaching and sponsorship.

49. The legal sector has been more engaged in activities aimed at improving access according to socio-economic background and/or ethnicity, from outreach and the provision of internships and work experience for under-represented groups, to skills training, mentoring, and other forms of targeted support. These 'supply-side' initiatives have now been accompanied by demand-side initiatives, such as the use of contextual data in recruitment, and CV-blind recruitment techniques, to eliminate or reduce bias. These activities have been most widely adopted by large firms where the problem is perhaps more acute, and budgets are more extensive. As noted, there is some evidence of modest success, especially as reported by third sector bodies working with law firms. For example, Rare Recruitment works with many of the top law firms and reports that 61% of more disadvantaged candidates are hired when organisations adopt their contextual data recruitment system.[x] There is though limited evidence that the demographic profile of new entrants to large and elite firms has changed in any dramatic way.[xi]

50. A similar story is evident in relation to gender diversity. The legal sector has implemented a vast number of initiatives over the past twenty years, again moving from a dominant focus on the supply side (in other words the characteristics of diverse groups) to concentrating on demand side (in other words, how employers make decisions about who to hire and promote).

51. Interventions have moved some distance from original activities such as assertiveness training for women, towards the provision of high potential programmes, mentoring and sponsorship, the much wider provision of flexible work, and the use of quotas. Again, as demonstrated by the statistical evidence outlined above, the success of these interventions is mixed and often relatively limited at best. As we will come on to demonstrate, 'what works' in relation to diversity interventions is relatively opaque, in part as a result of considerable methodological challenges. In addition, 'what works' is highly contingent, depending on the societal backdrop, the particular organisational setting, the specific identity characteristic, and the intervention itself. It is simply impossible as a result to provide a list of practices which have universal efficacy and it must also be acknowledged that the evidence to date suggests that in terms of improved outcomes as assessed in numerical terms, most diversity interventions

have had only a very limited effect. We explain why this is the case in further detail below.

52. It is worth noting here that the diversity agenda has come under considerable scrutiny in a critical academic literature, and elsewhere.[xii] One of the key questions is what drives change. Over the past fifteen years or so, diversity has been situated predominantly in relation to a business case, where diversification and inclusion is associated with higher organisational performance.

53. However, not only is this business case difficult to prove, and relatively contingent, but it also suggests that once managers are persuaded that discrimination is irrational, they will act accordingly, to appoint on the basis of 'merit.' This is problematic in part because merit is a highly mutable term, which is generally interpreted to reflect the characteristics of people already in positions of privilege. There is also relatively limited evidence that hiring practices evolve in this way, not least because recruitment decisions almost always rely on a range of other influences including tradition, history and precedent. There is also controversy over whether change is best motivated by a voluntary or compulsory agenda and we will return to this subject below, which is directly relevant as we assess the impact of enforceable regulatory interventions.

Activity to support diversity and inclusion among legal regulators

Key findings in this section

- Regulatory interventions carried out in legal services focus primarily on data monitoring. This literature reveals relatively limited reported activity beyond this key intervention, perhaps because activities are themselves sometimes quite limited or because responsibility for diversity and inclusion is quite diffuse within regulators, who have not always taken a strategic or systemic approach to considering what challenges exist and how they can be addressed

- Diversity and inclusion are considered important agenda items by regulators, but interviewees at those regulators recognise that progress to date has been slow. There is commitment to the agenda and an appetite for change, but regulators may feel at times that they operate in this space against the wider focus of the sector. A key challenge for regulators is also in identifying which approaches will have the greatest positive outcome, how to evaluate interventions effectively, and how to direct finite (and often limited) resources into the most effective interventions

- Regulators operate at different scales, which impacts on the resource they can direct towards activity in this area, with smaller regulators having perhaps less confidence in their enforcement powers. This suggests scope in turn for the LSB to explore the facilitation and/or encouragement of more collaborative working between regulators, which they would welcome but suggest is relatively absent currently

54. In this section, we focus predominantly on the first research question, namely what regulatory interventions are carried out in legal services to improve diversity and inclusion outcomes. We note that beyond data monitoring, activity levels are quite low and very opaque. We consider why that is the case, including in relation to the LSB's own role.

55. The key enforceable regulation currently in place is data monitoring. Given that this is central to the diversity and inclusion agenda as operationalised by the LSB and legal service regulators, issues around data collection are discussed in further detail in the next section, including why this was prioritised by the LSB itself, and what impact it has had.

56. For now, it is useful to note that a large amount of work has been conducted to get close to full compliance on data monitoring from most regulators. Although there have been significant improvements here, it is not clear to all regulators or regulated entities what the purpose of monitoring is. This lack of clarity is likely to affect compliance and should be addressed.

57. Other requirements on regulators are that they should use data to inform development of, and evaluate the effectiveness of, its regulatory arrangement, operational processes, and other activities. Regulators are also expected to collaborate with others, including to share good practice, and account to their stakeholders for understanding and achievements, and plans to encourage a diverse workforce.

58. We find limited evidence amongst regulators of activities in the areas above. Information which is in the public domain from each regulator explaining how they operationalise these expectations differs a great deal. Overall, the BSB appears to have offered the most comprehensive guidance, including a written statement on the equality and diversity policy, and a written plan, having a named equality and diversity officer, and a note that authorised bodies take action with respect to findings from data monitoring. In addition to data monitoring the report sets out the requirements that: Chambers have a written equality and diversity policy; there is diversity training; “objective and fair criteria” are used in selection processes; and Chambers monitor “the number and percentages of its workforce from different groups”. Where disparities are seen in workforce data, Chambers are obliged to take “appropriate remedial action.”

59. Similar information from other regulators is more limited. The SRA states that all regulated firms have to collect, report and publish data about the diversity make-up of their workforce every two years, and that their next collection exercise will be in 2021. ICAEW have about 12,000 regulated bodies in their community, about 350 of which deal in Probate – it is only these 350 who fall under the LSB’s oversight. The ICAEW do publish some data and have a broader page on diversity on their website.[xiii]

60. Interviews highlighted that regulators are engaged in additional activities. These included informal round table groups and support networks to focus on specific issues – for example LGBT+ networks. These appear to be semi-formal gatherings of diversity and inclusion specialists and/or those with a particular interest. These were positioned by regulators as an effective way to "test the temperature" in organisations on particular issues, and a chance to exchange ideas and approaches. For example, BSB have a race equality task force, and are introducing task forces for disability and for religion & belief. These are framed as spaces to exchange ideas and to gain insight into challenges being faced by these groups in the sector.

61. Some regulators provide good practice guidance on, for example, recruitment and selection. They underline though that they are not in a position to 'require' particular practices – instead they can provide guidance on what could be done and the regulated members are wholly responsible for who they recruit.

62. However, our impression is that regulators often struggle to provide a comprehensive list of activities and interventions. There may have been some obfuscation here, on the basis that activities are often quite limited. However, an alternative conclusion that we draw is that responsibility for diversity and inclusion is quite diffuse within regulators, who have not always taken a strategic or systemic approach to considering what challenges exist and how they can be addressed, working with regulated entities. EDI interventions also sit under various headings within regulators, including supervision, enforcement, education and training, and not all of our interviewees had oversight across each of these areas. This is problematic to the extent it leads to relatively *ad hoc* approaches, which make it less likely that they will be accompanied by clear measures of success and/or plans for evaluation.

63. Building on this, interviewees offered significant insight into the challenges experienced by legal services regulators in driving diversity and inclusion agendas, and which help to explain why activity has been quite limited. It is important from the outset to acknowledge that the regulators operate at different scales, which in turn impacts on the resource they can direct towards activity in this area. The smaller regulators in particular are clearly aware of the limited scope within which they can operate and are less confident of their enforcement powers.

64. This suggests there is considerable scope for LSB to explore the facilitation and/or encouragement of more collaborative working. Interviewees commented broadly on various levels of interest and desire for greater collaborative working.

The absence of more extensive collaborative working currently suggests that the environment is not as conducive to collaboration as it could be, and the LSB may wish to explore the scope to create and encourage greater collaborative efforts between regulators.

65. While matters of diversity and inclusion are considered to be important, interviewees recognise that progress to address them has been slow. Within the regulators it is clear that there is commitment, though this often feels like travelling uphill, and against the wider focus of the sector. However, diversity and inclusion does feature centrally in regulators' strategic commitments. Interviewees recognise invariably the need for cultural change and more progressive approaches in relation to diversity and inclusion, typically characterising the sector as broadly 'old fashioned'. The challenge for regulators is in identifying which specific progressive approaches will have the greatest positive outcome; the absence of significant evaluation (for reasons discussed elsewhere) hinders all regulators in determining how to direct finite (and often limited) resources into the most effective interventions.

66. There is widespread recognition that many groups are under-represented and, corresponding with the latest research, this lack of representation is most acute at senior levels, and in particular areas of the law. The lack of diversity on governance councils / boards, and on disciplinary tribunals, is specifically identified as problematic: this is based both on concerns over their understanding of diversity issues and the associated implications, and on the competency of those on boards and disciplinary tribunals actively to address diversity and inclusion issues in their structural decision making.

67. Regulators acknowledge that within individual regulated bodies there are champions for diversity and inclusion, but they are not always as well heard as they would like to be and may be working against the current organisational culture. This is likely, at least in part, to be a consequence of the lack of seniority among some diversity and inclusion leads. In considering the factors contributing to this, interviewees identify a series of consistent themes, as outlined in the paragraphs below.

68. First, those in 'middle management' roles in regulated bodies are seen as a blocker; this contrasts with what interviewees observe as broader 'buy-in' at other levels of seniority. There are diversity and inclusion specialist staff who are clearly bought in, there are senior leadership who are bought in (or at least "give that impression") but those in middle management making decisions about work allocation, recruitment, and progression are seen as more challenging. This ties

to an overall focus from the regulators on identifying activities and interventions that engage with diversity and inclusion, and culture change, as a primary focus.

69. Second, interviewees believe there is broad and sector-wide resistance to change, and resistance to being monitored (whilst noting that this resistance appears to have reduced over recent years as monitoring has become more normalised). In other cases, regulators see apathy as the key challenge. The identified view from regulated bodies here is that they are already doing enough through work at the point of access, with less regard to progression and inclusion. This is not untypical across the professional employment sectors, where resolving diversity as the point of recruitment/access is inaccurately identified as a solution to both diversity and inclusion at more senior roles – this echoes extensive Bridge Group research in this area,[xiv] including advice on effective practices of inclusion and progression.

70. Regarding access, it is important to clarify the extent of regulators influence and control: “we aren’t in control of who an organisation hires. That ultimately lies with them” [anonymised quote]. As a typical example, completion of the data survey is the only prescriptive rule that is applied consistently across all regulators, and even then it is applied with varying tactics and approaches. Here regulators are keen to see responding normalised and embedded into standard culture, and to take a softer approach to engaging their community.

71. A significant concept identified through interviews is a questioning of the assumption that those from under-represented backgrounds are best equipped to address the challenges occurring in the regulated body where they are employed. This is the idea that the broader culture “assumes that people of colour…those from disadvantaged backgrounds, are all equipped to deal with discrimination, as well as equipped to address organisational cultures” [anonymised quote]. This points to a combination of awareness raising and culture change that many of the regulators are looking to achieve as a foundation upon which other diversity and inclusion activity can then be delivered.

72. We identified that regulators are trying to find a balance. They are wary of bringing additional and disproportionate requirements on their regulated communities, especially if the purpose (for example monitoring of particular data) is unclear and/or resisted by regulated bodies. Regulators are keen to enact softer, more supportive persuasion to bring bodies into compliance rather than engage directly in enforcement. “It is far more effective to bring the

community with us through our soft power of persuasion and support than it is to use our formal regulatory powers." [anonymised quote].

73. Indeed some regulators shared how they are doing this through convening and consulting, and their ability to bring bodies into compliance. This all points to less focus being placed on formal use of regulatory powers, and more on the softer powers that can bring a community forward collectively. This current balance of applying regulatory and 'softer' levers indicates an opportunity for greater clarity between the LSB and the regulators, and between the regulators and their regulated communities, on overarching aims and direction of travel regarding diversity and inclusion.

Evaluation and identifying effective practice

Key findings in this section

- Regulators are aware that there is an absence of evaluation work in relation to diversity and inclusion initiatives and are keen to see this rectified. Limited evaluation to date relates partly to lack of relevant expertise and experience within regulators, and partly to the challenges associated with evaluating interventions of this sort. Regulators need further guidance in terms of how to address these challenges effectively, but should this be provided, also point to limitations of budget and resources

- Most regulators have, as noted, focused primarily on data monitoring, the impact of which is uncertain. While outcomes for some groups in some circumstances may have improved following the introduction of this rule, it is impossible to say that data monitoring was the causal factor, because there are many other confounding variables which prevent us from establishing this relationship

- The problem of correlation versus causality is one that afflicts attempts to evaluate diversity and inclusion interventions much more widely than just this sector. However, it is also worth noting that some diversity interventions have been introduced not on the basis of clear evidence that they work, but more to secure legitimacy in the legal field. One example is unconscious bias training which is widely used by firms in the legal sector despite limited evidence that it has a positive effect on outcomes for under-represented groups

74. In the sections above we have outlined the main regulatory interventions being adopted across the legal sector, with a particular focus on data monitoring. This section summarises challenges with the primary enforceable regulation imposed by the LSB on legal service regulators, which is the data reporting rule.

75. These problems originate in compliance, and in relation to practicality, including whether regulatory rules such as this have a significant impact contributing towards improved outcomes for under-represented groups.

76. Building on Vaughan's research (explored in more detail from paragraph 105 onwards), we have pointed out that there are significant problems with

associating a reporting rule for data monitoring with progressive change, not least because in addition to problems with compliance there is no necessary relationship between transparency and accountability.

77. In this section we focus on the second and third research questions; in other words outcomes and evaluation, as discussed by our interviewees and as identified in relation to an extensive previous literature on diversity and inclusion. Our headline points are: there are serious difficulties in assessing the relationship between regulatory interventions and outcomes; there is an absence of evaluation work; but also, that there is a real challenge in evaluating interventions, for reasons which we outline below.

78. Starting with our interviews with regulators, numerous challenges associated with evaluation were highlighted – though there is also evidence of progressive practice. This includes, for example, one regulator that embeds evaluation and monitoring questions into project development plans, to ensure it is at least thought about during the project initiation stage. Another regulator has an open call (from regulated bodies) for evidence and evaluation but is not getting a strong response.

79. As one interviewee identified, change is likely to be modest (if it takes place at all), and certainly slow, if the sector is primarily focused on “outreach in schools”, “reverse mentoring” and other activities of this nature. It was acknowledged that there is no evidence that these interventions deliver impact, and scepticism about how they contribute to culture change within organisations. They may feel good, and may have minor impact on recruitment and access, but do not seem to have any impact on inclusivity and progression.

80. All regulators are aware of the limitations of evaluation across the sector and their regulated bodies and are keen to see evaluation become more widespread. The challenge is not knowing how to embed advanced evaluation into practice. There is a stated need for guidance and case studies on how to do this effectively (either at the level of the regulator or more likely at the level of the regulated bodies).

81. Among interviewees there is a fundamental recognition of the “challenge of isolating the variable” when evaluating activity; and recognition that there often isn’t the budget, resource or expertise to run deep evaluation that might enable this. More specifically, and from the literature, there are challenges with evaluation of a data reporting rule. Beyond compliance with the regulatory intervention itself, which is often quite low, both at the firm and individual level,

there is little evidence that the impact of this intervention has been evaluated in any other sense, or that this can easily be done.

82. The LSB did not set targets as part of this regulatory intervention, though one purpose of setting this rule was to draw attention to areas in which certain groups are under-represented and encourage initiatives in response. While many organisations in the legal sector have introduced a range of initiatives in areas such as gender, ethnicity, and socio-economic background since 2011, it is not clear whether they have done so in response to this reporting rule, and there is no current evidence that would suggest that they have.

83. There is some evidence that, along with initiatives introduced, there has been some improvement in access in parts of the legal sector, since this intervention was introduced. However, as noted by the LSB, progress has been relatively slow. For example, in magic circle law firms, women represented around 19% of female partners around the time the reporting rule was first introduced, in 2011. In 2020, this has hardly changed. Allen & Overy has 18% female partners, Clifford Chance has 23%, Linklaters 24% and Slaughter and May 20%.

84. It is interesting to note that change in the accountancy sector, where there is no such regulatory rule, has also been slow but has possibly been slightly more substantial from a relatively low base. This suggests that change, to the extent it does happen, is driven by a range of factors including societal shifts which are not related to interventions such as these.

85. Even if there has been more change than reported in the point above, it is currently almost impossible to know whether this is the result of the regulatory intervention itself, or some other indirect or unrelated cause. This would require further research, almost certainly by an independent researcher.

86. It is possible that data monitoring places more general reputational pressure on regulated entities, and thus motivates change in a relatively indirect way. However, it is equally possible that this sort of pressure has encouraged or enabled a relatively superficial approach.

87. This point can be understood in relation to a wider academic literature which suggests that organisations often adopt ‘best practices’ in response to a variety of pressures (in the academic literature, this process is known as ‘institutional isomorphism’). This can be defined as a situation where organisations in the same field (in this case legal) adopt practices not necessarily because they are *effective* but because they confer *legitimacy,*[xv] so that managers can defend

their uptake as logical and valid, and perhaps safeguard reputation as well. Securing legitimacy is vital to most organisations and this is often secured by making sure they conform with the field or sector's established 'norms.'

88. These pressures towards similarity and therefore legitimacy are theorised as originating from three main pillars. The first of these is *Coercive*, where pressures are exerted on organisations by others on which they depend and/or as a result of cultural expectations from society (this could include governmental mandates or financial reporting requirements for example).

89. The second pillar is *Mimetic*, where uncertainty in decision making encourages organisations to imitate each other. Models and practices therefore diffuse through different organisations in the same field as they share and imitate 'best practice,' or as they are spread and shared by consulting firms. This could include a situation where managers are faced with a complex problem and have insufficient information to make a decision on how to respond. In these circumstances, organisations might adopt practices that have been adopted by peer group firms, especially where those peers are successful and high status. Often, they do so not because these practices have been proven to work, but because this reduces perceptions of risk within the organisation and appears the legitimate choice.

90. The third pillar is *Normative*, where pressures are brought about by professions, via for example similar education, as well as licensing or credentialing, which encourage organisations within the same field to adopt similar practices.

91. While this may seem a little abstract, the notion of isomorphism is relevant to the reporting rule, as we could suggest this acts as a form of coercive pressure, encouraging law firms and other entities towards data monitoring and reporting. However, this does not imply action or change, precisely because data monitoring does not in itself imply quotas or targets.

92. The impact is in fact highly ambiguous. For example, where firms report diversity statistics, if they do not look notably worse than their peers, this may paradoxically *cement* legitimacy and reduce pressure to change. Further, where organisations adopt specific practices because of these sorts of pressures it is often reported in the academic literature that the pursuit of legitimacy is related to relatively superficial and cosmetic interventions. In other words, compliance with a reporting rule may offer reputational gains but does not in itself signal a commitment to the type of deep seated cultural or structural change that could lead to significantly changed outcomes. Again, this is especially exacerbated if

the rule is ‘decoupled’ or only loosely associated with an organisation’s core purpose. Since the core purpose of most law firms and other regulated entities is not diversity, this amplifies a situation in which interventions are at least partly for show.

93. The notion of institutional isomorphism has other implications here, including that these pressures towards similarity are especially likely in the context of uncertainty, and where there are higher relative perceived risks. Since the legal sector is often required to manage uncertainty and risk, it has often been seen as especially susceptible to such pressures. One implication is that law firms often seek to differentiate themselves and their brand, they often tend to deploy remarkably similar processes and practices overall, of which diversity and inclusion is one. Again, this could be considered positive, where it encourages the uptake of relevant policies and practices. However, to complicate matters further, diversity & inclusion is itself considered a practice that has been adopted by corporates in pursuit of legitimacy, perhaps to secure reputation, rather than effectiveness.

94. A further difficulty is that diversity interventions are rarely evidence based.[xvi] This is partly because we have limited information about ‘what works’ in diversity. This can be explained due to limited rigorous analysis of this subject in the academic literature, which has tended to be divided between two main poles. A mainstream approach has focused on the ‘business case’ and sought to find a positive relationship between diversity and organisational performance. It has failed to do so conclusively, as a vast body of academic research has come up with ambiguous results.

95. A critical literature picks up on this failure and describes the philosophical and practical failures of the diversity agenda, and this is where Vaughan’s work, outlined above, most obviously fits. Overall, there has been less research from either perspective which has examined the impact of specific interventions, in relation to outcomes. That which does exist suggests that the impact of many interventions is limited and heavily contingent on the societal backdrop, the organisational context, the intervention, and the identity characteristic.

96. In the absence of this information, this underlines that practices are often adopted not because they are effective, but because other similar firms have done so already and these practices therefore signify and confer legitimacy. A classic example here is unconscious bias (UB) training, which has been very widely adopted in the legal sector. One way this can be explained is that adopting UB training confers legitimacy and suggests a commitment to change,

while on the other hand, failing to adopt this practice may be expected within organisations to have the opposite effect. However, there is almost no evidence that UB training has a positive effect on outcomes.[xvii]

97. Measurement of impact is also hindered by the problem of correlation versus causality. It is sometimes the case that following a diversity intervention outcomes for a particular group are improved. As one example, in 2015, the 30% Club published a report: 'Diversity Disclosure: What the European Capital Markets Industry Publicly Discloses About Diversity'.[xviii] In this report, they noted that the data shows that greater disclosure is linked to increased diversity, as measured by female representation on boards.

98. For organisations that do disclose the percentage of women on their board (a third of the sample in this report), the average female board representation is 24%, which is a third higher than the average of those that do not explicitly disclose. The authors argue that public disclosure also sends a clear signal of intent and provides insight into how companies approach diversity, what they are tracking, what they want to improve, what goals they are setting, and what they are doing to achieve those goals – and that even if the numbers do not look good, disclosure allows companies to acknowledge their starting point and to feed an open discussion on important and often controversial issues.

99. However, one problem with this type of reporting is that it is not always possible to know for sure whether that is the result of the intervention itself, or some other factor, due to the sheer number of confounding variables. More specifically, it is impossible to know if disclosing diversity data contributed to higher numbers of women on boards in this occasion and it is also possible that this suggests a reverse correlation. In other words, organisations with more female board members, are simply more likely to disclose data.

100. These problems are especially likely for a reporting rule such as data monitoring in the legal profession, which is highly general, rather than focused on a specific target group. Of course, some initiatives may be driven by that reporting rule, the effect of which could be evaluated. However, as already noted, it is currently not clear whether the reporting rules have had this effect, and this would require further research.

Data monitoring as the main intervention

Key findings in this section

- Diversity monitoring is the key enforceable regulatory intervention expected by the LSB, introduced in 2011 following a period of consultation. The aim was to gather an evidence base about the composition of the workforce and promote transparency. Compliance with this rule varies across regulators and the entities they regulate, and many expressed concerns about the purpose of data collection and the danger that misreporting creates an inaccurate picture.

- While the aims behind data monitoring are sound, it is questionable whether they are effective in driving change. One problem is that the focus on compliance comes at the expense of accountability within organisations to take concrete actions which deliver improved outcomes for under-represented groups. One problem is that diversity & inclusion is a complex problem, but that data monitoring is a relatively blunt tool. Another is that while transparency was envisaged to help clients put pressure on firms to act, in practice it tends not to hold firms accountable in this way.

- It may be important for the LSB to continue to communicate the purpose of data monitoring to regulators and others, including as a means to help identify priority areas for action, and inform the development of more accurate and meaningful forms of evaluation.

101. Diversity monitoring is the key enforceable regulatory intervention as expected by the LSB and is discussed at length here. We focus on:

    - the reasons why data monitoring has been prioritised;
    - how this affects compliance;
    - the extent to which any impact has been evaluated; and
    - how that might be achieved.

102. Overall, from our interviews, there is considerable wariness around data monitoring across legal services regulators and, they report, from regulated entities, and from individual legal practitioners. For example, concerns include that the data being requested is of a personal nature and that without clear

understanding or articulation of why it is being collected, which is absent to date, there is a real risk of either misreporting or "prefer not to say" type answers. Additionally there is anecdotal suspicion (noted in three of the interviews) that data on disability goes unrecorded (i.e. individuals with a disability identify as having no disability), and this is seen to be most prevalent regarding issues of mental health and/or neuro-diversity.

103. The diversity monitoring rule was introduced in 2011 by the LSB following a period of consultation on how best to meets its regulatory objective on diversity. A review of academic literature, research, and stakeholder engagement including a diversity forum had revealed that there was a lack of comprehensive data on the make-up of the legal profession, particularly at the level of individual firms and chambers, and that there was no systematic evaluation of the effectiveness of any investment of resources and effort in diversity. Additionally, available statistics suggested that while the profession was relatively diverse at entry level, it was less so at senior levels, and corporate consumers were demanding more information in relation to purchasing decisions.[i]

104. Data monitoring was therefore established by the Board of the LSB as an immediate priority to "gather an evidence base about the composition of the workforce to inform targeted policy responses" and for "promoting transparency about workforce diversity at entity level." The LSB also concluded that requiring action to improve the representation of particular groups was not the way forward at this point. They gave no reason for this, although this is perhaps because the consultation was itself controversial and requiring quotas would have been more so.[ii]

105. More detailed explanation of why the reporting rule was prioritised is provided in the section below, along with explanation for why this makes the rule less effective, as provided by legal academic Steven Vaughan.

106. More generally, it is questionable whether regulatory interventions based on data monitoring of this type are effective in driving change. Perhaps the best source of information on similar interventions is in Corporate Social Responsibility (CSR), which is discussed in further detail in point 122 below, along with information on the role of other regulatory interventions outside the legal sector, in areas such as financial services and education.

107. In the legal sector, the researcher who has conducted most work examining compliance with regulatory interventions and their effect is academic Steven

Vaughan who has covered this subject in several papers. We summarise his important findings and research here.

108. In a paper published in 2015, Vaughan examines the LSB rule requiring collection of data on workforce diversity and the publication of that data by the legal profession, "the first . . . direct regulatory intervention taken with regard to diversity in the legal profession" (p2301), focusing on the entities regulated by the SRA.

109. In relation to compliance, he points out that from an initially slow start, by 2014 compliance with the reporting rule was quite high, with over 70% of staff giving some diversity data to their firms. However, response rates varied significantly depending on the firm and the category. Further, there was considerable potential for the data to give misleading results, including on ethnicity for example, where figures suggested that people from BAME backgrounds were over-represented compared to the population, at senior levels, without pointing out that the majority were in very small and thus less remunerated practices.

110. In relation to impact of the rule itself, he makes three main arguments. First, that the rule was not necessary, as the majority of large law firms in the UK were already disclosing (although he also acknowledges that the rule did lead to more disclosure of diversity data at the individual law firm level, specifically, a more than 25% increase on firms ranked 11-15 and 51-100).

111. Second, that even if there were good grounds for the LSB's rule, it was likely to face significant challenges, and there are in turn three main reasons why:

- Scholarship on diversity in legal practice paints this issue as complex, multifaceted, and nuanced – and therefore not amenable to change via a reporting rule, which is a relatively blunt tool

- There is little evidence in fields including CSR and corporate governance to suggest that reporting rules have significant impact on the behaviours of regulated entities (for further discussion of which see point 122)

- Work on the demand-side pressures in the legal profession suggest that clients will not in fact hold firms accountable, even when data is available

112. Third, Vaughan points out that aggregated diversity data presented by the regulators is blunt, lacking statistical sophistication, and the regulators have done little with the data they have gathered. As a result, there has been limited change in the behaviours of law firms with regard to the reporting rule.

113. To expand on some of the points above, one reason why Vaughan suggests that data monitoring is problematic is that the LSB expected that workforce transparency will allow "consumers . . . to identify where the diversity profile of a particular firm varies from what might be expected when compared with competitors."[iii] However, as he points out, this suggests that data published by firms will allow this comparison, when in fact this is not the case because uniformity is not required by the LSB nor by the SRA. Different firms, he says, publish data in different ways and in different places.

114. Further, while transparency was heavily prioritised by the LSB as they introduced this rule, they did not appear to explain the link between transparency and accountability. Vaughan underlines that a reporting rule is a step in the right direction – and that it can never be a panacea but does also suggest that the scope and its operationalisation could be improved. He offers five recommendations for how it could be improved:

- Require firms to have a section on their website headed 'Diversity' with a subheading requiring 'Diversity Statistics', and to store their workforce data here each year

- Require firms to report qualitatively on the D&I initiatives they have in place and to provide an assessment of their impact

- Require firms to present their data in a uniform manner and to cross-tabulate that diversity data

- Require firms to give data on recruitment, retention and promotion decisions. As he says, "Transparency is about making clear exercises of power as it is about anything else."

- Learn from the Law Society in relation to the clear presentation and interpretation of workforce diversity data

115. In 2017,[v] Vaughan published a second relevant paper focusing on how the BSB operationalised statutory guidance in respect of the Bar. This study drew from data gathered from the websites of 160 chambers, to show significant non-

compliance with the reporting rule. For example, while there is data on gender for 98% of the practising Bar, there is data on socio-economic background for only 19% of the practising Bar (2015a, p8). He noted that the BSB conducted its own review of the implementation of its equality and diversity rules.[vi] This suggested that barristers were unwilling to complete diversity monitoring and around a third of chambers interviewed at this time said that they objected on the basis of invasion of privacy. In total, 9% of chambers said their barristers objected to the data questionnaire covering "sensitive" matters such as sexual orientation.[vii]

116. Overall, it would appear that while the data monitoring rule was intended to encourage regulators to put more pressure on the entities they regulate to introduce a range of additional measures, this does not seem to have happened to date. The LSB conducted its own first review of the operationalisation of the July 2011 statutory guidance on diversity data collection and reporting in 2013. This found that diversity data was being collected on the legal profession in a number of areas where data had not previously existed, and that the concept of data collection and reporting was seen as having value by the regulators and by many in the profession.[1] However, as we will go on to demonstrate, compliance has been extremely patchy and there is limited evaluation of the effects, although we add the caveat that there are many related methodological challenges.

117. The LSB published a second report on regulators' progress against the July 2011 statutory guidance in 2015. This concluded that while actions by the regulators had led to the development of a "robust evidence base on diversity", the use of that data by the regulators lacked statistical sophistication.[1] It called on regulators, where they regulate entities (e.g. law firms, Chambers), to, "make sure they have actions in place to ensure firms and chambers publish a summary of their workforce broken down by level of seniority and each characteristics in our guidance (except sexual orientation and belief)".[1]

118. Regulators argued that there is now strong monitoring of compliance with data collection across all regulators, most commonly tied to membership/registration processes, or with direct follow up with those who do not comply in order to address the absence. The dominant view appears to be that it is preferable "to bring everyone into compliance, rather than use regulatory force".

119. There is limited attention to the relationship between data monitoring and outcomes, and almost no evidence of evaluation. In relation to outcomes, one issue across the sector there is significant uncertainty about is measures of

success. One implication is that success is measured predominantly in relation to compliance. There is also an understanding that reducing the proportion of returns that contain a “prefer not to say” type response is a legitimate target and could be interpreted as a change of organisational culture. However, the ultimate aim for those we spoke with is cultural change, and there is a clear desire to learn ways to evaluate this. Overall, the primary measures of success identified are around completion of the relevant survey/data return, and some measure of willingness to come forward if experiences are unacceptable (i.e. tied to use of complaints processes etc).

Practice and evaluation from other sectors

Evidence from the literature

Key findings in this section

- Regulators have not typically looked to other sectors for learning and case studies of practice, although they are keen to share such information and see examples of activities and evaluation practices.

- A review of relevant literature reveals that beyond the legal field, there is limited evidence that regulatory interventions such as data monitoring drive change. More muscular and perhaps radical interventions, such as data quotas, suggest ambiguous effects. For example, evidence looking at quotas designed to improve numbers of women on boards does suggest that they work where they are attached to hard sanctions for non-compliance, and this is especially true where there is more gender equality at the societal level. This evidence demonstrates that attempts to drive change and their success are unavoidably related to the wider P/political context. This is not surprising since the entire agenda relates to the activities aimed at improving or protecting status or power, which is how politics is defined.

- Overall, this is a complex and contested area and, given limited appetite for more radical interventions, the relative impact of the carrot or the stick is likely to be highly contextual, underlining the necessity to engage in careful evaluation of interventions to understand 'what works'.

120. We were surprised to hear that regulators had not typically looked to other sectors for learning and case studies of practice. There is scope for this to be undertaken, with those being interviewed keen to see examples of activities and evaluation practices.

121. Looking beyond the legal field, and away from a sole focus on diversity and inclusion, there is little evidence that regulatory interventions such as data monitoring drive progressive change.

122. A useful comparator is corporate social responsibility (CSR) and corporate governance, where transparency has been a guiding principle for a quarter of a century at least, including data reporting on matters that affect stakeholders, which extends to diversity and inclusion. There is some evidence that this has

caused organisations to modify their behaviour, and some that suggests there is an association between organisations that value CSR and their market value. However, there is very limited evidence showing *how* organisations have modified their behaviour as a result of having to disclose diversity data.

123. It is also useful to consider disclosure in relation to the gender pay gap in the UK where the gender pay gap increased for many companies after the reporting rule was introduced.[xix]

124. Another question is whether change is driven more effectively as a result of compulsory or voluntary measures, and how this affects performance, in relation to which an interesting comparator is the question of women on boards. Over the past fifteen years or so, there has been growing concern globally about male dominance of corporate boards. One stream of literature has focused on the business benefits of diversity, and though a clear business case has been reported in mainstream press, as noted, this is considerably more ambiguous in peer reviewed academic literature. One paper published in 2015[xx] compared the effectiveness of using legislative or regulatory means to increase female representation with allowing firms to voluntarily fix their own non-legally binding targets. The authors found that the relation between gender diversity and performance is positive in countries using the voluntary approach but negative in countries using the regulatory approach. They conclude that public policy aimed at increasing the number of women on corporate boards should be introduced gradually and voluntarily rather than quickly and coercively to avoid sub-optimal board composition.

125. A more recent study in 2019 examined a similar subject to ask whether self-regulation using voluntary principles of good governance is effective in improving female representation on boards in Austria. They found that self-regulation is ineffective, unless supported by additional forces. This was because nominators do not in fact expect benefits to derive from gender-diverse boards, and non-compliant companies face little pressure to change due to the small number of companies that have already adopted respective code recommendations. They recommend: the introduction of concrete targets for female representation and the public monitoring of fulfilment; and, the establishment of a credible threat that mandatory quotas will be imposed if diversity goals are not achieved.[xxi]

126. A paper also published in 2019 found slightly different results again. This examined the relationship between board quotas, how gender equal a country is, and women's board representation in the EEA in the period 2006 to 2018.

This found that where there is more gender equality at societal level coupled with board quotas (particularly with hard sanctions), there are more women represented on corporate boards. The authors add to previous research showing that board quotas work best in countries that are more gender equal, and that quotas work more or less efficiently depending on sanctions. They found that board quotas with hard sanctions work best, regardless of the level of gender equality in a country. Having a code of governance, when associated with higher levels of gender equality, is also associated with higher levels of women's board representation. In contrast, board quotas with soft sanctions are associated with results that are only marginally better than not having any measure in place.

127. The strength of the carrot over the stick has been examined more generally in relation to diversity and inclusion. With the take-up of this agenda during the late 1990s, the focus is said to have moved overall to the latter, in contrast to obligations enshrined in law. This transition has been hotly debated in the academic literature, with some critics suggesting that voluntary interventions are unlikely to drive change, especially when driven by the business case. This is explained because, contrary to what is often published in mainstream press, the business case is highly contingent. Further, it suggests that managers will appoint and promote on rational and therefore neutral criteria when persuaded to do so on the basis of commercial benefits. However, this ignores the fact that managers rarely do either on a rational basis, but instead tend to rely on tradition, history and precedent. The argument is then that real change will only be driven by more muscular, regulatory interventions.

128. There is no consensus here. One study summarised the issue as follows: "Proponents of voluntarism insist that regulation leads to a compliance culture and a backlash which may discourage proactive action; proponents of regulation suggest that employers cannot be relied upon to prioritize equality and diversity issues over other business concerns in the absence of legal requirements and sanctions".[xxii] The authors of this study advocate for a more nuanced position to suggest that there is not in fact a clear separation between regulation and voluntarism, and firms may in fact have more discretion under legal requirements, and yet be constrained in their actions under the voluntary approaches to diversity. They conclude that explaining why some measures fail and others succeed is more complex than separating them between the carrot and the stick.

129. As to the effect of regulatory interventions, academic literature comes up with ambiguous results. There are several implications of these previous findings for

the levers that might be available to legal regulators, including that self-regulation is not always the most effective way to drive change, but that compulsory measures may not be more successful overall. The latter are also likely to face clear resistance from those who are regulated and there is some evidence that performance can be affected if suitable numbers of qualified people are not already available. Further, given that the legal sector is itself diverse in terms of the size and specialism of different organisations, deciding on what should be made compulsory would be a challenging task.

130. Overall, it would appear that a combination of measures may be most effective, closely tailored to the circumstances in which organisations find themselves as regulators seek to engage the hearts and minds of those they regulate. Despite the problems outlined above, data monitoring is useful to measure and benchmark change, rather than encouraging it.

Evidence from our interviews

Key findings in this section

- As part of this research, we engaged regulators from outside of the legal sector through interviews, reported here on the basis of anonymity. This found that regulators in other sectors encounter a similar set of challenges compared to those in the legal sector, including with respect to collecting comprehensive data and acting on it. One way that regulators have got around this problem has been to model the demographic profile of the sector using proxy measures, though this is recognised as being incomplete and only indicative, as it lacks, for example, data on ethnicity and social mobility.

- Another challenge shared by regulators inside and outside the legal sector is how to evaluate interventions and how to engage members. Like legal service regulators, others also noted that their powers are limited and must be deployed with sensitivity. They also point to diversity within their sectors in terms of the size of regulated entities, with larger organisations most likely to afford a diversity function.

- Regulators expressed a wish to consult with those in other sectors more frequently as they believe they would benefit from opportunities to 'share and compare'. For all regulators, clarity of definition around who is responsible and accountable for diversity and inclusion, and under which operational function diversity and inclusion related activities should sit, were widely considered beneficial for regulators and their regulated communities alike.

131. As part of this research, we engaged regulators from outside of the legal sector through interviews. These were conducted with anonymity to allow for open and free discussion. We have used our findings from these interviews to help inform our discussion below.

132. Regulators in other sectors encounter a similar set of challenges compared to those in the legal sector. One issue is with data and, although this does depend on the context, other regulators also struggle to acquire a complete picture of the demographics of their sector. Several are aiming to rectify this by placing a greater emphasis on data collection and monitoring, and the legal services

sector may be ahead of some peers in this sense already. To some extent, they rely on government sponsored initiatives such as gender pay gap reporting for insights and information. One way that regulators have got around this problem has been to model the demographic profile of the sector using proxy measures, though this is recognised as being incomplete and only indicative, as it lacks, for example, data on ethnicity and social mobility.

133. One regulator is currently exploring what it can do to establish a more comprehensive picture of the baseline from which progress can be measured, and which will be followed up with regular reporting. They are working from the basis that the challenge is likely to differ significantly depending on the location in the sector, and different employers will have different priorities. One aim of establishing a better baseline is to better understand the nature of the challenge so that the regular can act with more knowledge in support.

134. Regulators were keen to remind us that their role does not just apply to the demographic composition of the regulated community but also to the population that community serves. There was a sense that objectives could be aligned here, as more diversity in the sector would enable better service to clients. This is considered especially important in the financial services sector where there are vulnerable communities and where a more diverse sector may be better equipped to understand key issues allowing more appropriate responses.

135. A key challenge experienced by regulators outside the legal sector is how to engage members. Like legal service regulators, others also noted that their powers were not infinite, and that they had to be deployed judiciously and with sensitivity (not wanting to play their hand too strongly as it might “show just how limited our powers really are”).

136. They also pointed to diversity within their sectors in terms of the size of regulated entities, and noted that larger organisations are often better able to afford a diversity function. One regulator finds that their convening powers are more meaningful when working with larger organisations while smaller firms are more difficult to engage and perhaps have different expectations. This problem was especially pronounced for firms operating in areas of the country which are not especially ethnically diverse, highlighting the requirement for communications and action plans to be carefully tailored. This regulator was keen to encourage larger organisations especially to collaborate and to put competition aside in order to collectively address diversity challenges. The extent to which these regulators are able to encourage and/or facilitate greater

collaboration across their respective regulated communities is being explored by all of them.

137. There was recognition that organisations often pay lip service to diversity and inclusion. While there is engagement, and firms are saying the right things, one regulator acknowledged in particular that they have been doing so for several years, with little evidence of real change, with rhetoric not filtering into the cultures of organisations. This sense of frustration is arguably matched in the legal sector. One representative of a regulator said that: “there are cohorts of people in organisations saying the right thing but they feel that they have to and they don’t believe it or understand how to actually make that change. The sector is miles away from making this happen, but the best policies are the ones which become part of day to day interaction and change the culture.”

138. Some of the regulators suggested that their organisations are not always clear about the expectations that their regulator has of them. As in the legal services sector, it is not clear whether this lack of clarity is in one sense a deliberate evasion or a genuine difficulty with interpreting and enacting regulatory roles. The regulators from other sectors identify the role of ‘myth busting’ about what is expected and what is possible by providing information and knowledge about how to enact specific initiatives. The extent to which regulators are able to communicate their expectations clearly, and have those expectations heard and acknowledged, is a challenge across all sectors.

139. Regulators outside the legal sector also struggle with evaluation. An important discussion at one is that cost-benefit analyses of diversity interventions is extremely challenging, which is a subject which “comes up time and again” with regulated entities. They pointed out that any regulatory intervention has to have a clear cost-benefit analysis attached to it, as it is imposing a burden on firms, which must be justified. However, as noted, they find it difficult to prove this case, which returns us to questions around the contingency of the business case noted already. They likened this to a chicken and egg situation as making this case may be assisted by different data, but this data collection is resisted without evidence of the benefits. However, they also pointed out that in a world of imperfect information, a plausible business case should suffice. In terms of evaluation, regulators also pointed to the difficulties with identifying meaningful measures of success.

140. Regulators would like to consult with those in other sectors more frequently and would welcome more opportunities to do so, although this does exist to some extent in existing fora, including UKRM. These conversations have confirmed

that in this space regulators share many of the same challenges and are exceedingly likely to benefit from opportunities to ‘share and compare’.

141. As in the legal services sector, regulators in other sectors find that diversity work is taking place under a number of departmental headings, and one task is to coordinate and manage these different areas into a coherent strategy which can be formalised into a clear set of principles and expectations for regulated entities. This indicates that a clarity of definition, that acknowledges the breadth of language, and operational function, under which diversity and inclusion related activities are undertaken, would be beneficial for regulators and their regulated communities alike.

Appendices

- Appendix A: detailed table of diversity and inclusion interventions in the legal sector
- Appendix B: scope and purpose of this study
- Appendix C: Legal Services Board and the scope of regulators
- Appendix D: interview topic guides
- Appendix E: references

Appendix A: detailed table of diversity and inclusion interventions in the legal sector

	Resources	Impact	Commentary
Quotas			Quotas have been used in a range of jurisdictions and sectors worldwide, perhaps most famously to improve female board member representation. Quotas have been successful in many areas, and this is most likely where they are associated with clear negative consequences for non-compliance, such as fines. Downsides are that they are perceived as unfair by some groups which can lead to a backlash and it is not clear whether changes can be sustained over the longer term.[xxiii] In countries such as Norway, quotas have apparently led to an issue of 'golden skirts' where a small number of women are present on numerous boards. There is some evidence that quotas are likely to be more successful overall where societal is already more equal. This has important implications for the UK which is one of the most unequal societies of all industrialised Western economies. The FCA have considered whether to make diversity requirements a part of the premium listing rules (similar to the approach taken by NASDAQ in the US).
Targets			Quotas have not been adopted in the UK (where positive discrimination is not legal though its close relation positive action is). In the UK to date, the preferred approach has been to use targets, once again, especially to increase the percentage of women in senior positions, including corporate boards. There is some mixed evidence that this approach has been successful. For example, the Davis Review and now the Hampton-Alexander report constructed targets for female representation on boards and this does appear to have had some effect.[xxiv] It was expected that the 33% target for women on boards in the FTSE100 would be met in 2020. This is positive and might be attributed to both reputational pressures caused by this high-profile initiative and the threat of more draconian measures including quotas if organisations do not comply. It is unclear whether these improvements can be sustained however, if pressures are relaxed. Targets adopted by organisations have had less success overall suggesting that without this external oversight they may have less impact. Over the past ten years many law firms as well as peers in sectors such as investment banking have

		implemented targets though a key feature is that these have been repeatedly missed. Requirements or considerations can also feature as an integral part of procurement and commissioning in some supply chains, with the practice most prominent in the public sector. This can include minimum requirements in relation to diversity (e.g. % of females in senior positions) to diversity interventions featuring as part of the wider scoring methodology for procuring services. There is, however, minimal evidence for a) the extent to which this practice is apparent, b) the extent to which any requirements and considerations are actually implemented in the procurement process, c) correspondingly, whether this really has any positive overall effect. Overall, while client demand is often framed as a key part of the business case, it is not often clear whether clients do in fact hold organisations to account.
Data Monitoring and Transparency		Data monitoring and transparency has also been widely used, including by the LSB itself. As noted in this report, the effect has been limited, in part as a result of limited compliance, and in part because data monitoring and reporting has not been associated with accountability for change. This can be attributed to limited knowledge and understanding of how to drive change, but organisations have not been required to be transparent about how they have responded to inequalities, or to provide granular information, such as who applies to the firm and who gets in. This sort of transparency is though recommended because it helps to illuminate mechanisms of exclusion and how they relate to unequal power. A key driver for many organisations including in the legal sector is legitimacy and this is partly secured by suggesting that hiring and promotion take place on the basis of merit, which in turn helps to justify claims to expertise and high rewards. Where data demonstrates this is not the case, this undermines the legitimacy of organisations, and may represent one motivation to act. Of the legal regulators, the BSB is perhaps most advanced in this area, since it expects Chambers to take action with respect to findings from data monitoring, to monitor “the number and percentages of its workforce from different groups” and where disparities are seen in workforce data, to take “appropriate remedial action.” However, there is relatively little evidence demonstrating how this has been operationalised by Chambers and acted on and especially, whether or how it has led to change.

		Another example of data monitoring and transparency outside the legal sector is the use of gender pay gap reporting in the UK. The effect again is ambiguous. While some reports suggest that this has caused organisations to act, others suggest that in many companies the gap has widened following the introduction of reporting[xxv]. Clearly, the efficacy of this approach can only be determined over a longer timescale than this, but it is by no means guaranteed. However, there is evidence that transparency in pay implemented at the organisational level can be effective. For example, a US study published in 2015[xxvi] looked at individual compensation before and after management implemented organizational procedures aimed at increasing pay accountability and pay transparency in the company's performance-reward system. This included a performance reward task force responsible for monitoring and analysing pay decisions and ensuring that only performance-related factors were used to inform the distribution of rewards. As a result, gender-, minority-, and nationality-based gaps in the distribution of performance-based bonuses were significantly reduced.
Qualification routes and associated funding models		Qualification and entry routes are especially important in the law in determining who gets in, and how this relates to SEB. The legal sector has recently introduced the new Solicitors Qualification Exam (SQE) which purports to reduce costs and qualification barriers. Research by the Bridge Group[xxvii] suggests that the SQE could help to address diversity challenges in the profession, including by providing more dependable data, and to help better understand diversity issues and inform potential solutions, and help both employers and aspiring solicitors make choices. The SQE could increase the range and choice of legal training, while also driving down the costs through competitive pressures. However, there are some risks that the SQE could exacerbate a two—tier profession where certain qualification routes are considered more prestigious than others, and that this is mapped on to SEB. Notably, however, the law is one of only a few professions where to qualify people must borrow large amounts of money at significant personal risk, and many are shut out by the high cost of training. While the SRA has not advocated for public funding for the SQE, it has lobbied in relation to the reduction in the Disabled Students Allowance and noted that it will affect access. Further diversification at entry may rely on different and more equitable funding models as

		well as attention to legal apprentices though again, it is important that alternative entry routes do not exacerbate issues of social stratification within the profession.
Written statement on equality and diversity policy and a written plan.		Amongst legal regulators, the BSB is the only one that expects Chambers to provide a written statement on equality and diversity policy or a written plan. Again, there is limited information on the efficacy of this approach in driving change, perhaps because once again, it is not associated with accountability. This is perhaps one area where the LSB could act, to expect regulated entities across the sector to devise more coherent and actionable plans and make it a requirement that they report on progress on an annual basis. This could be facilitated using the Theory of Change approach outlined above.
Named equality and diversity officer and/or committee.		Again, having a named equality and diversity officer is a policy required of Chambers by the BSB, and again, there is no specific evidence on its impact in this context. A wider evidence base does suggest though that organisations which have a named diversity officer, along with a dedicated committee, may also on average demonstrate better outcomes for otherwise under-represented groups. A seminal study here was conducted by Dobbin, Kelly and Kalev in the US, based on statistical analysis of over 800 organisations.[xxviii] This found that assigning responsibility for diversity management to a specific committee or dedicating staff positions to this task (and therefore increasing accountability) was one of the few practices that was consistently related to managerial positions. This fits with research in the social psychology tradition which suggests that bias is less likely where decision makers suspect that their judgement will be scrutinised and therefore links to the importance of accountability.[xxix]
Diversity Training		Diversity and especially unconscious bias training is very widely used by large corporates including entities within the legal sector. Evidence suggests that this is one of the least effective practices in driving change. One issue here is of course that it is very difficult to measure the impact of diversity training, including where it relates to unconscious bias, as there are many confounding variables that get in the way. However, evidence that does exist suggests that at best any positive effect is short-lived and at worst it may exacerbate the issues as trainees are more likely

		to enact their biases, rather than less. Overall, UB training is a highly individualised approach which is problematic not only because it is very difficult to debias individuals but also because discrimination also arises from systems and structures. The study mentioned above (Dobbin et al) found that diversity training was one of the practices least associated with improved outcomes for under-represented groups.
Round Tables and Task Forces (eg Race Equality, Disability)		As an example, the BSB have used roundtables and have set up various task forces in order to help educate regulated entities, and use their convening power to help share information, knowledge and support. There is again little evidence of their efficacy and for the BSB it is perhaps too early to say. This is also a strategy increasingly used by a wider range of regulators outside the legal sector but again, there is little clear evidence of the effect on interventions by regulated entities, or outcomes, as yet. There is a willingness to, and interest in, engaging more with activities of this type across the regulator community, but with some reticence regarding the seniority of those who participate, and by extension the likelihood of direct impact within regulated bodies.

Soft (Voluntary)

Indicative interventions

	Resources	Impact	Commentary
Structure			
Flexible and Part-Time Work			Flexible and part-time work has been one of the primary interventions implemented by organisations to enable gender equality, and it is widely used in the legal sector. Alternative working patterns (AWP) aim generally to recognise the impact of maternity and women's historical greater responsibility for care, and respond, though increasingly this approach is aimed at all parents and those who need it. AWP are positioned as a structural intervention on this table, though are notionally focused on changing cultures too, especially the culture of long hours which permeates many institutions, including law firms. Providing AWP can be relatively resource intensive, though the impact has been marked as good here. This does though come with caveats. Depending on the organisation and job role, alternative working patterns have helped women, especially, remain in the workforce.

			However, AWP have had a less obvious impact on enabling equality of outcome, because many organisations – especially leading firms in the legal sector - remain defined by extreme competition and very long hours. This means that those working AWP tend to be characterised as a deviating from the full-time, always available, ideal 'norm' and the adoption of these patterns is often seen as extremely career limiting. This is an example of where diversification conflicts with commercial concerns. A more productive approach would be to fundamentally change structures and working patterns for all, and perhaps change leverage ratios so that there are more people available to complete work. However, in law firms especially, leverage ratios between partners and associates are generally arranged to maximise profit, and changes that would enable better work/life balance across the board are often resisted.
Early outreach and wider approaches to attraction			A progressive recruitment policy means reaching out to inspire talented individuals whose backgrounds might have prevented them from applying to the organisation, and providing innovative paths of entry to a rewarding career. Over many years, organisations, regulators and membership bodies have delivered outreach activities with schools and community groups – including open days, talks and informal work experiences. These are though often organised ad hoc, and rarely evaluated. Measurement of the effect is difficult here including because where interventions take a relatively broadcast approach it may not be possible to follow career outcomes for participants. It is likely that this sort of intervention is life-changing for some participants, but there is also a danger that aspirations are raised for young people who have limited opportunity to realise these goals, as a result of a range of factors including educational disadvantage. Overall, it is recommended that firms take both broadcast and targeted approaches, with the latter focusing on young people aspiring to the particular sector, and providing more intensive and focused support. Related to this, there has been a strengthening lobby opposing unpaid and unadvertised internships. This is an important development and many organisations are now offering 1+1 programmes, where for every internship offered through networks of clients and colleagues, another must be offered to a young person from an under-represented group. This has been an effective way to distribute opportunity more widely.

Collaborative advocacy groups			The role of collaborative groups within sectors have become increasingly prominent. At their most effective they have multiple purposes, including: the collection and benchmarking of data; engendering peer pressure between organisations to advance positive change; building a collective lobby for change in specific areas; sharing best practice; and developing collaborative programmes. Examples of these initiatives include Access Accountancy, PRIME (in the legal sector) and the recently established government taskforce on diversity in the professional services.
CV Blind Recruitment			CV-blind recruitment is often used by organisations wishing to diversify on the basis of ethnicity, socio-economic background and sometimes gender. It works on the basis that selectors often have biases against certain groups, and that these can be reduced where names which indicate ethnicity and gender, and educational background, are removed at the point of selection. This originates in the behavioural insights approach sometimes known as nudge theory. CV blind recruitment techniques have been found successful in reducing bias, although outcomes do vary. Some firms have found for example that this technique exacerbates issues, perhaps because in the absence of other information, recruiters are more likely to actively seek out signals of suitability which relate perhaps to class. Equally, some firms claim that it is important to be aware of an individual's background in order to compensate for relative disadvantage for example. This is a practice that like many others can be successful, but requires careful evaluation in the particular context to determine the impact.
Contextual Recruitment			Contextual recruitment is another technique often used in the context of SEB. It comprises systems which are used in graduate and other forms of recruitment to assess a candidate's performance against the performance of their school and in relation to a range of other factors signalling relative disadvantage. This has been relatively widely adopted and providers of systems suggest that firms that use it have been able to eliminate the negative impact of background on outcomes. However, there is less information currently available from firms on whether this has caused them to substantially diversify their intake as a result, or on the career outcomes for people appointed in this way.

Work allocation systems		An important challenge in professional services is that historically career enhancing work has been allocated more often to white men, compared for example to women and minorities. With respect to gender, this is partly because of stereotypes, as women have been seen as better equipped for 'housekeeping' work on large transactions, while men have been seen as more suitable for the client-facing work which is high profile and helps build networks, reputation and thus careers. Similar processes may happen with respect to people who are ethnically diverse, as a result of bias and favouritism amongst senior lawyers. Firms have often made repeated attempts to introduce systems which address this issue, for example by using centralised work allocation systems, so that decisions are taken away from partners and based on individual availability and gaps in skills and knowledge. Again, the impact is likely to have been variable with perhaps more success in organisations which already have a more corporate structure, and less so in partnerships, where senior leaders continue to have a great deal of autonomy and personal discretion in how they build teams, and are often able to evade formal rules.
Mentoring, Coaching and Sponsorship		Mentoring and coaching has been used to support people from under-represented groups including with respect to improve confidence and to understand both the formal and informal rules required for promotion. More recent approaches have been reverse mentoring whereby under-represented groups help senior leaders understand the challenges they face. Mentoring and coaching have met with variable success in relation to outcomes. One problem has been that it is very difficult to replicate the informal networks that generate 'success' using formal processes. Partly in response, more recent attempts have been aimed at more direct forms of sponsorship, where senior figures intervene more actively to support people's careers, including to provide them with career building projects and introductions to supporters and people who can facilitate their progress. Robust research analysing the impact of these interventions is lacking but this approach does seem to have had more impact overall.
High Potential Programmes		Many firms have used high potential programmes to identify potential leaders from under-represented groups and provide them with intensive support. Again, these programmes do appear to have had

		some success. As just one example, in 2010 leading Big Four firm PwC reported having put together a Female Partner Sponsorship programme which identified 26 female partners with senior leadership potential[9]. They were matched with senior male executives who introduced them to their contacts and involved them in high-profile assignments. Three years later, the firm reported that it was (pleasantly) surprised at the results: 60 per cent of the women had moved into a leadership role, such as joining the executive board, or were running a business unit; 90 per cent had been promoted. This does seem promising although of course no control group and it is though difficult to know what percentage of these senior women might have achieved promotion without this support, especially given that they had been selected for this programme precisely because they had already been identified as having significant potential. Nevertheless, while overall PwC has just 20% female partners, this is a definite improvement since 2006 when the equivalent figure was 13% and in a recent promotion round, 40% of new equity partners were female.[xxx] This does suggest some improvements though it is difficult to isolate which interventions work, and this is likely to rest on a combination of several.
Employee Resource and Affinity Groups		Employee resource and affinity groups have been increasingly popular in large corporates over the past ten to fifteen years. They are aimed at providing information and support for under-represented and minority groups and in the City are also often used for business generation purposes, as a means to network across organisations and firms. Again, it is difficult to discern or isolate the impact of this sort of intervention which may be more marked in relation to the experience of inclusion rather than numerical outcomes. However, this is difficult to know for certain as there has been limited research examining outcomes.[xxxi]
Diversity Committee		See regulatory and legal table above.
Diversity/UB Bias Training		See regulatory and legal table above.

Appendix B: scope and purpose of this study

The key research questions for this study are:

- What regulatory initiatives are currently carried out in legal services to improve diversity and inclusion outcomes?
- Have they been evaluated?
- What evidence is there of positive impact on outcomes?

These are important questions to provide insights into the role and impact of regulatory initiatives to date. An important objective for the LSB is to ensure that they are deploying the best mechanisms to engage legal regulators (and in turn regulated entities) in the diversity agenda. This concern is in part motivated by the recent State of Legal Services report produced by the LSB, which identified that while there has been some progressive change in relation to diversity and inclusion within the profession, this has been relatively slow. It is therefore important to understand whether the right levers are currently being pulled by the LSB to help drive change, and how the LSB and legal services regulators could build on and improve good practice in future.

The methodology for this research comprises:

- Extensive searches of relevant academic literature which has examined the role of regulatory interventions in driving change, both in the legal sector and in relation to diversity and inclusion, in other comparable sectors, and in relation to a wider set of priorities, including for example Corporate Social Responsibility;
- Interviews with six regulators in the legal sector (outlined in the appendix and including the LSB), to understand their approach to their responsibilities in this area and in relation to evaluation; and
- Interviews with three regulators in comparable sectors - the FCA, OfCom and the Office for Students (OFS).

In sum, we have investigated a variety of sources, including literature searches focused on the legal sector and beyond, and interviews with regulators as well as those in other sectors, to understand how they have used regulatory interventions used in other sectors have helped drive change. This has extended beyond the original scope of the tender specification as additional lines of enquiry have emerged as the study has developed.

We have also conducted a review of academic literature which highlights wider challenges in the diversity agenda, including in relation to interventions and evaluation. One of the key questions we have addressed is whether change is driven more effectively by voluntary or compulsory measures.

This review is limited to the United Kingdom. Regulatory interventions in this context are those initiatives that have a binding, enforceable obligation on those who are regulated and not limited to those initiated by legal services regulators but may include wider obligations. These include regulatory arrangements (e.g. education and training, enforcement, supervision etc); and activities that are undertaken to pursue the regulatory objectives, such as encouraging an independent, strong, diverse and effective legal profession.

Activities undertaken by professional bodies, such as the Law Society and Bar Council, are out of scope of this literature review.

Appendix C: Legal Services Board and the scope of regulators

The Legal Services Board (LSB) is the oversight regulator for legal services approved regulators in the Legal Services Act 2007. These bodies directly regulate the lawyers practising in England and Wales.

The LSB approved regulators in England and Wales which are covered in this review include the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB), the Chartered Institute of Accountants in England and Wales (ICAEW), Chartered Institute of Legal Executives (CILEX), Council for Licenced Conveyors (CLC).

The overall responsibility of the LSB is regulation of approved regulators (see above) and the Solicitors Disciplinary Tribunal; oversight of the Office for Legal Complaints; making recommendations to amend the list of reserved legal activities; setting up voluntary arrangements to improve standards, if required.

The LSB has a commitment to promoting diversity and inclusion so that 'everyone who needs legal services can access them regardless of their background, and that the profession reflects the society it serves at both entry and senior levels.' To do so, it strives to influence and shape how approved regulators and legal service providers address diversity and inclusion[xxxii]. The LSB has gone through several evolutions since being formed in 2010, and they are currently on their second set of D&I policy and guidance.

Consistent with the information in the section above, the LSB's State of Legal Service 2020 report found that progress in improving diversity and inclusion in the legal services sector has been slow. They report some success (higher proportions of BAME lawyers in most professional groups compared to the UK workforce, and parity of both black solicitors and barristers on this basis; more LGBTQ+ lawyers than the UK population average; three-quarters of legal executives and licensed conveyancers are female, while three in ten costs lawyers are from BAME backgrounds.) However, it is notable that better representation is sometimes more evident in less prestigious and remunerative parts of the profession. The State of Legal Service report went on to say that lawyers with disabilities face daily discrimination, and that there is substantial over-representation of lawyers who were privately educated[xxxiii].

The LSB imposes a common duty on all legal services regulators not to discriminate on the basis of characteristics protected in law. In addition, current LSB statutory

guidance published in 2017 has four outcomes and requires the regulatory bodies to establish the most effective ways to comply with the guidance. The four outcomes are:

- The regulator continues to build a clear and thorough understanding of the diversity profile of its regulated community (beginning at entry), how this changes over time and where greater diversity in the workforce needs to be encouraged.

- The regulator uses data, evidence and intelligence about the diversity of the workforce to inform development of, and evaluate the effectiveness of, its regulatory arrangements, operational processes and other activities.

- The regulator collaborates with others to encourage a diverse workforce, including sharing good practice, data collection and other relevant activities.

- The regulator accounts to its stakeholders for its understanding, its achievements and plans to encourage a diverse workforce.

In 2020, the LSB set out that within the current outcome framework, what good regulatory performance looks like on equality matters. Regulatory bodies should have:

- an understanding of the composition of their regulated community;

- 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

- measures in place to understand any differential impact on protected characteristics within their disciplinary/enforcement procedures.

The LSB has a range of equality objectives and those most relevant to this review are Objective 1: 'Through our regulatory oversight role, encourage and work with the approved regulators to promote equality and diversity, including developing a diverse workforce across the legal sector at all levels by:

- Assessing regulators' implementation plans to gather and evaluate diversity data.

- Reviewing and monitoring the progress made by regulators in delivering their implementation plans.

- Continuing to engage with approved regulators and others on how best to enhance a more diverse workforce across the legal sector.'

The literature review here responds to the objective above and is focused on whether and how enforceable regulatory interventions implemented by the LSB are evaluated and the associated effects.

The primary enforceable regulation is the LSB's mandatory guidance first introduced in in 2011, requiring the regulators over which is has oversight to put into place rules that relate to diversity monitoring and reporting across the legal profession, and this is also the primary focus of this review.

The LSB expects regulators to concentrate on the following characteristics: Age; Caring responsibilities; Disability; Gender (reassignment and identity); Marriage and civil partnership; Pregnancy and maternity; Race; Religion or belief; Sex; Sexual orientation; Socio-economic background. The LSB state that 'Regulators have flexibility to develop their own diversity data collection approach and should review their collection method to ensure it collects the best possible data by the most appropriate method, particularly with respect to sensitive characteristics. However, the regulator should maintain the ability to report on trends across characteristics since 2011.'

In its guidance in 2011, the LSB set out a "suggested approach" (2011, Annex B, 12) made up of four limbs: (i) a requirement on firms and chambers to conduct a diversity monitoring exercise; (ii) the recommended use of a model diversity questionnaire; (iii) a requirement for firms and chambers to publish workforce data; and (iv) a joined-up, consistent approach across each of the regulators. Further guidance for regulators is provided in the LSB's 'Guidance for Regulators on Encouraging a Diverse Profession.xxxiv'

Appendix D: interview topic guides

For Legal Sector Regulators' interviews

Background

The Legal Services Board has commissioned the Bridge Group to undertake a literature review of legal regulatory interventions in the UK that promote diversity and inclusion. The aim is to identify if these interventions are evaluated and, if so, what evidence there is of a positive impact on outcomes. The scope of the review will include materials from academic publications, and grey literature, including policy documents, reports, and evaluation summaries.

As part of this exercise, we are undertaking interviews with key colleagues at the legal regulators, to understand fully the activity being delivered and to account for your experiences and insights. We will also speak with regulators in other sectors to understand what we can learn from approaches elsewhere.

The Bridge Group is wholly independent of the Legal Services Board. We have recently undertaken similar research projects in the financial services, broadcasting, and real estate sectors. More information can be found on our website: www.thebridgegroup.org.uk

Interview Protocol

Interviews with regulators are a critical part of this research. Each interview will use the interview topics listed below as a framework on which to build the discussion. All interviews will be run by experienced Bridge Group researchers. Your involvement in the research is confidential; no comments will be attributed. The Bridge Group has extensive data security protocols in place, which form part of our contractual agreement with the Legal Services Board.

Topic Guide

- Please describe your role at your organisation.
- How would you characterise your organisation's overall approach to diversity and inclusion? What is motivating and informing your work in this area?
- If applicable, which aspects of diversity does your organisation prioritise? Why?
- Where does responsibility for diversity and inclusion sit, and what accountability is in place for this area of work?

- What specific success measures, if any, does your organisation have in place for diversity and inclusion?

- Broadly, in the profession, what do you regard as the main challenges and opportunities in relation to diversity and inclusion?

- Please characterise how you engage with members in relation to diversity and inclusion. What is the role of the regulator? What is within your control and influence, and what is not?

- Please summarise the activities that your organisation undertakes to support diversity and inclusion in the profession (distinguishing those that are enforceable, i.e. regulatory obligations).

- Why have certain regulatory interventions been prioritised as enforceable? Who decides this and how? What is your view on compliance in relation to this?

- What approach do you take to evaluating the effectiveness of your activities in diversity and inclusion? – how does this vary, if at all, depending on whether an action is enforceable?

- Are there evaluation practices that you would like to develop?

- Based on the evidence you have gathered, what is working well, and what is less effective?

- How will your approach to diversity and inclusion develop in the next one to three years - what steps is the organisation planning?

- To what extent is there sharing of practice within your regulated areas, and / or between regulators in the legal profession?

- What learning have you drawn from regulators in other sectors to inform your work – or more widely from other types of organisations?

- Reflecting on your organisation and the sector more generally, how are the types of skills and qualities you need from employees changing? Are changes to the 'way work is done' (including the impact of technology) affecting this?

- How can the Legal Services Board play the most effective role in supporting diversity and inclusion across the legal profession?

- Are there areas that we have not covered that you would like to discuss?

For Non Legal Sector Regulators' interviews

Background

The Legal Services Board has commissioned the Bridge Group to undertake a literature review of legal regulatory interventions in UK that promote diversity and inclusion. The aim is to identify if these interventions are evaluated and, if so, what evidence there is of a positive impact on outcomes. The scope of the review will include materials from academic publications, and also grey literature, including policy documents, reports and evaluation summaries.

As part of this exercise, we are undertaking interviews with key colleagues at the legal regulators, to understand fully the activity being delivered, and to account for experiences and insights. We are also speaking with regulators in other sectors to understand what we can learn from your approaches.

The Bridge Group is wholly independent of the Legal Services Board. We have recently undertaken similar research projects in the financial services, broadcasting, and real estate sectors. More information can be found on our website: www.the-bridgegroup.co.uk

Interview Protocol

Interviews with regulators are a critical part of the research. Each interview will use the interview topics listed below as a framework on which to build the discussion. All interviews will be run by experienced Bridge Group researchers. Your involvement in the research is confidential, no comments will be attributed. The Bridge Group has extensive data security protocols in place, which form part of our contractual agreement with the Legal Services Board.

Topic Guide

- Please describe your organisation and your role.
- How would you characterise your organisation's overall approach as regulator to diversity and inclusion? What is motivating and informing your work in this area?
- If applicable, which aspects of diversity does your organisation prioritise? Why?
- Where does responsibility for diversity and inclusion sit, and what accountability is in place for this area of work?

- What specific success measures, if any, does your organisation have in place for diversity and inclusion?

- Broadly, in your sector, what do you regard as the main challenges and opportunities in relation to diversity and inclusion?

- Please characterise how you engage with members in relation to diversity and inclusion. What is the role of the regulator? What is within your control and influence, and what is not?

- Please summarise the activities that your organisation undertakes to support diversity and inclusion in your sector (distinguishing those that are enforceable, i.e. regulatory obligations).

- Why have certain regulatory interventions been prioritised as enforceable? Who decides this and how? What is your view on compliance in relation to this?

- What approach do you take to evaluating the effectiveness of your activities in diversity and inclusion? – how does this vary, if at all, depending on whether an action is enforceable?

- Are there evaluation practices that you would you like to develop?

- Based on the evidence you have gathered, what is working well, and what is less effective?

- How will your approach to diversity and inclusion develop in the next one to three years - what steps is your organisation planning?

- To what extent is there sharing of practice within your regulated areas, and / or between regulators in the sector?

- What learning have you drawn from regulators in other sectors to inform your work – or more widely from other types of organisations?

- Reflecting on your organisation and the sector more generally, how are the types of skills and qualities you need from employees changing? Are changes to the 'way work is done' (including the impact of technology) affecting this?

- Are there areas that we have not covered that you would like to discuss?

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