

Increasing diversity and social mobility in the legal workforce: transparency and evidence

Consultation paper on proposals to increase diversity and social mobility in the legal workforce

This consultation will close on **09 March 2011**

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Executive Summary

1. This paper discusses our policy proposals in relation to increasing diversity and social mobility at all levels of the legal services workforce. It focuses on the role of providers (firms and chambers) and approved regulators in this process, and does not directly address the separate but related issues of:
 - ensuring access to legal services for diverse groups of consumers
 - the potential for reforms to the existing framework for legal education and training, which could create additional opportunities to open a career in legal services to the widest possible pool of talent.

2. The Legal Services Board (“the Board”) and approved regulators have an objective under the Legal Services Act 2007 (“the 2007 Act”) to encourage an independent, strong, diverse and effective legal profession.¹ A diverse workforce is also a key enabler to delivering some of the other regulatory objectives, in particular:
 - protecting and promoting the interests of consumers
 - improving access to justice
 - promoting competition
 - protecting and promoting the public interest.

2. In addition, the Equality Act 2010 (“the 2010 Act”) introduces a new public sector equality duty which is due to come into force in April 2011. This requires a body exercising public functions (including the Board and approved regulators) to have regard to the need to:
 - eliminate unlawful discrimination, harassment and victimisation;
 - advance equality of opportunity between different groups; and
 - foster good relations between different groups.

3. Over the past year we have been considering how best to work with approved regulators to achieve our shared regulatory objective on diversity and meet our obligations under the 2010 Act in relation to the diversity of the legal workforce. We have reviewed existing academic research, commissioned and published new research and established a Diversity Forum bringing together approved regulators and professional/representative bodies. We have also engaged with a number of interest groups and academics working in the field.

4. This work has highlighted the following issues:
 - The lack of comprehensive data on the make-up of the existing legal workforce across the full range of diversity strands, particularly at the level of individual firms or chambers;

¹ Section 1(1)(f) of the Legal Services Act 2007

- While there is a significant investment of resources and effort in diversity initiatives, particularly at entry level, there is no systematic evaluation of their impact and effectiveness;
 - The statistics that are available in relation to the gender and ethnicity of solicitors and barristers at different levels of seniority illustrate that while the profession is relatively diverse at entry level in relation to these characteristics, the picture at the more senior levels is still one of white male dominance. This view is supported by qualitative studies². Therefore retention and progression for women and black and minority ethnic (BME) practitioners is a significant issue;
 - Corporate consumers of legal services are increasingly demanding information about an organisation's performance in relation to equality and diversity and using this as a criterion for purchasing decisions.
5. We are required by the 2007 Act to have regard to the Better Regulation Principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.³ Having regard to these principles, we have worked with others to devise a proportionate policy approach to increasing diversity in the legal workforce that strikes the right balance between the need to take decisive action to meet the regulatory objectives, and the requirement to minimise unnecessary regulatory burdens.
6. The Board has established the following immediate priorities that it expects approved regulators to address during 2011 in order to meet the regulatory objective about encouraging diversity:
- gathering an evidence base about the composition of the workforce to inform targeted policy responses
 - evaluating the effectiveness and impact of existing diversity initiatives
 - promoting transparency about workforce diversity at entity level as an incentive on owners/managers to take action (both in terms of 'peer pressure' and better information for corporate and individual consumers and potential employees, which they can use to inform their choice of law firm).
7. We are not proposing that there should at this stage be any regulatory requirement on entities to take action to improve the representation of particular groups in their workforce, beyond the general equality duties that already exist for the regulated community in law (e.g. non-discrimination) or requirements that are imposed by purchasers. Neither are we raising an expectation that approved

² Barriers to the Legal Profession, http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/barriers_to_the_legal_profession.htm

³ Section 3(3)(a) of The Act

regulators should take regulatory action against firms or chambers with low numbers of employees from diverse groups. Rather, we are proposing that as a first step to achieving our statutory obligation to advance equality of opportunity it is appropriate to simply require regulated entities to be transparent and allow them to make their own judgements about any action they feel is necessary to improve their diversity make-up. It will remain voluntary for individuals to respond to the diversity questions – firms or chambers will simply be required to report responses (even if there is no response or the response is “prefer not to say”).

8. We recognise that a number of firms and chambers already publish diversity information, and go beyond this by setting targets and putting in place action plans. Some stakeholders will want us and approved regulators to go further, and set targets for the profession as a whole or for individual firms or chambers. We are minded to reject that option at this stage. We applaud those firms and chambers that already go further than our proposals and encourage more firms and chambers to join them. However, we do not think the case is yet made for regulators to set targets for firms (or indeed for us to set targets for approved regulators). We consider that transparency and greater clarity about the existing make-up of the profession will encourage more firms and chambers to take action to deliver diversity. If change does not happen we will listen further to the arguments and consider evidence of the (voluntary) use of targets by firms and chambers to inform a decision about whether targets might be used as a regulatory tool in the future to bring about the necessary change.
9. This consultation focuses on the two key issues connected with delivering these priorities:
 - achieving transparency at entity level;
 - appropriate and consistent data categories in relation to each of the relevant characteristics.
10. Transparency about diversity is important because it makes firms and chambers accountable for their decisions. It is within the power of the managers of firms and chambers to address the issues about retention and progression – they recruit, promote and retain the workforce and establish the culture of the profession.
11. There are a number of levers available to influence the behaviour of businesses – including imposing regulatory requirements and highlighting the moral case for change. If we could create commercial incentives to increase workforce diversity, this could also be a powerful driver for modifying behaviour. Such incentives could manifest themselves in a number of ways: (i) directly through corporate or individual consumer demand for a diverse workforce; (ii) through a change in culture enabling firms to attract the best talent and therefore ultimately

offer a better service to their clients delivered through a workforce drawn from a range of backgrounds.

12. Embedding transparency as a regulatory requirement will provide consumers (both corporate and individual) with better information and enable firms or chambers to demonstrate their competitive edge based on a culture and ethos that values diversity. It will also lead to public accountability and enable interest groups to highlight inequality and lobby for change. There are encouraging signs that transparency is already beginning to drive change - for example public sector purchasers and corporate consumers who have signed up to the Law Society's Procurement Protocol. We want to build on that work by embedding this transparency across the legal workforce. The most sophisticated and powerful consumers are already choosing suppliers of legal services partly because of their performance in relation to equality and diversity. The proposals we outline here will make better information available so that individual consumers may choose a supplier on this basis if they so wish.
13. Our expectation is that approved regulators should require firms/chambers to gather and publish data about the diversity of their workforce as a regulatory obligation. We propose that the data collection and transparency requirements extend to the entire legal workforce (for example including paralegals, legal secretaries and other support staff who directly support the delivery of legal services). There should be a mechanism for reporting this data to approved regulators, and for them to pass this information to the Board to enable a picture to be built up of diversity across the sector. Our starting point is that this should encompass all of the characteristics relevant to the new public sector equality duty (age, race, disability, religion or belief, gender reassignment, sex, pregnancy & maternity and sexual orientation), plus socio-economic background.
14. We acknowledge that there is not necessarily a one-size-fits-all approach, and approved regulators will need some flexibility in implementing data collection and transparency requirements as part of their broader regulatory framework. For example, some approved regulators already gather some diversity data as part of the practising certificate renewal process or via education providers.
15. Therefore we have written to approved regulators, alongside this consultation, asking them to provide the Board with:
 - an assessment of their current evidence base about the diversity of their regulated community across all eight diversity strands plus socio-economic background (covering what they hold and an analysis of strengths, weaknesses and gaps)
 - an outline of how they propose to promote transparency at entity level, and any areas where they propose this departs from the approach set out in this document (with justification)

- an explanation of the steps taken to ensure that diversity initiatives are targeted based on the evidence and evaluated for their impact.

16. The responses from approved regulators, together with responses to this consultation document, will help inform the Board's final decision on next steps and whether guidance should be issued under s.162 of the Act.

17. We do not underestimate the scale of the challenge that we and approved regulators face – it is one that has been grappled with since at least the time of the Benson Commission on Legal Services⁴ in the late 1970s. There is no silver bullet, and the proposals outlined in this consultation paper are not the whole answer. However, we hope that they represent an important and significant step forward in bringing diversity issues into the mainstream and ensuring firms and chambers are held accountable for their progress. If the necessary cultural change can be driven by consumer demand, this is likely to have a far greater impact than diversity initiatives alone.

18. A summary of all the questions we are asking is at Annex A. We look forward to receiving your consultation response.

⁴ Chapter 35 of the final report deals with discrimination in relation to gender and ethnicity (Source: The Royal Commission on Legal Services, Final Report (1979), Cmnd 7648).

How to Respond

Our consultation period ends at 5 p.m. on **9 March 2011**. The consultation period is 12 weeks.

In framing this consultation paper, we have posed specific questions to help inform our final decision. These questions can be found in the body of this consultation paper, and also as a consolidated list at Annex A. We would be grateful if you would reply to these questions, as well as commenting more generally on the issues raised (where relevant). Where possible please can you link your comments to specific questions or parts of the paper rather than making general statements.

We would prefer to receive responses electronically (in Microsoft Word or pdf format), but hard copy responses by post or fax are also welcome. Responses should be sent to:

Email: consultations@legalservicesboard.org.uk

Post: Michael Mackay,
Legal Services Board,
7th Floor, Victoria House,
Southampton Row,
London WC1B 4AD

Fax: 020 7271 0051

We intend to publish all responses to this consultation on our website unless a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential. We will record the identity of the respondent and the fact that they have submitted a confidential response in our decision document.

We are also keen to engage in other ways and we would welcome contact with stakeholders during the consultation period.

If you have any questions about this consultation, please contact Michael Stacey, Regulatory Project Manager by telephone (020 7271 0089), e-mail (michael.stacey@legalservicesboard.org.uk) or by post at the address above.

Background

19. This paper discusses our policy proposals in relation to increasing diversity and social mobility at all levels of the legal services workforce. It focuses on the role of providers (firms and chambers) and approved regulators in this process, and does not directly address the separate but related issues of:
- ensuring access to legal services for diverse groups of consumers;
 - the potential for reforms to the existing framework for legal education and training, which could create additional opportunities to open a career in legal services to the widest possible pool of talent.
20. Over the past year we have been considering how best to meet the challenge of increasing diversity and social mobility in the legal workforce - having regard to our statutory obligations, existing data and research, and the action already being taken by approved regulators and a wide range of other organisations. This section sets out background information about these matters.

Statutory obligations

Legal Services Act 2007

21. The Board and approved regulators have a shared objective under the Legal Services Act 2007 (“the 2007 Act”) to encourage an independent, strong, diverse and effective legal profession.⁵ A diverse workforce is also a key enabler to delivering some of the other regulatory objectives, in particular:
- supporting the constitutional principle of the rule of law;
 - protecting and promoting the interests of consumers;
 - improving access to justice;
 - promoting competition;
 - protecting and promoting the public interest.
22. In July 2010 we published a document outlining in more detail what we consider the regulatory objectives mean⁶. In relation to the diversity, we set out our view that:
- “a diverse legal profession is one that reflects and is representative of the full spectrum of the population it serves so as to harness the broadest possible range of talent in the meeting of the regulatory objectives. We consider that for public interest reasons and good business sense as much as for meeting this regulatory objective that the legal industry should reflect the population it serves. At entry, retention and progression we will support approved regulators in ensuring that there are no artificial barriers or discriminatory hurdles to legal*

⁵ Section 1(1)(f) of The Act

⁶ The Legal Service Board website,

http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf

careers caused by regulation. We will promote equality and diversity through our regulatory framework and we expect approved regulators to do the same.”

23. The legal profession includes the pool of candidates eligible for future judicial appointment. Judges uphold the rule of law and ought to reflect the diversity of society. A diverse judiciary can only be delivered from a diverse profession, and this further underlines the importance of delivering progress in relation to this regulatory objective. The Advisory Panel on Judicial Diversity, chaired by Baroness Neuberger, made a specific recommendation that the Bar Council, Law Society and ILEX do further work to improve the diversity profile of members of the professions who are suitable for judicial appointment at all levels.⁷

Equality Act 2010

24. The Equality Act 2010 (“the 2010 Act”) introduces a new public sector equality duty which is due to come into force in April 2011. This requires a body exercising public functions to have regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between different groups; and
- foster good relations between different groups.

25. This duty will apply to the Board and approved regulators in relation to their regulatory functions.

26. In addition, the Government Equalities Office (GEO) has recently consulted on whether to add some of our approved regulators to the list of specified bodies in Schedule 19 to the 2010 Act in respect of their public functions. The proposal is to add the Law Society and General Council of the Bar to Part 1 of Schedule 19 and make them subject to the additional specific duties imposed by the Minister in regulations made under s.153. It is also proposed by the GEO to add the following approved regulators to Schedule 19 but not make them subject to the specific duties:

- Chartered Institute of Patent Attorneys
- Council for Licensed Conveyancers
- Institute of Legal Executives
- Institute of Trade Mark Attorneys

27. The proposed specific duties include a requirement for public bodies with 150 or more employees to publish data at least annually on equality in their own workforces. There is no mandatory requirement to cover all of the protected characteristics, and indeed it is acknowledged that some organisations may not be ready to ask about the more sensitive characteristics such as sexual orientation or religion or belief.

⁷ Recommendation 12, The Report of the Advisory Panel on Judicial Diversity 2010.

28. We recognise that nothing in the 2010 Act obliges approved regulators to impose a requirement on regulated entities to collect and publish diversity data about their workforce. However, we find it difficult to see how the Board and approved regulators can comply with their duties under the 2010 Act or meet the regulatory objective under the 2007 Act, without an understanding of the existing make up of the legal workforce in relation to these characteristics.

Existing data

What data is collected

29. Approved regulators already collect some diversity data about individual practitioners – either through the practising certificate issue/renewal process or through surveys. The data is published at aggregate level, rather than at the level of individual firms or chambers.
30. In relation to solicitors, the Law Society’s REGIS database includes information about the age, gender and ethnicity of practising certificate holders. Ethnicity data is known for approximately 88% of practising certificate holders and can be broken down by size of firm and level of seniority. An annual statistical report is produced analysing trends in the profession.⁸ The Solicitors’ Regulation Authority carried out a diversity survey in 2009 which was sent to all practising certificate holders. This covered a broader range of diversity strands and included an updated categorisation in relation to ethnicity data. The results are currently being analysed.
31. In relation to barristers, the Bar Council also collects data on age, gender and ethnicity of practising certificate holders. In 2008, ethnicity data collected through this mechanism was known for 88% of self-employed barristers and 78% of employed barristers.⁹ The Bar Council carried out a demographic survey of all barristers in 2007, covering a broader range of diversity strands (including disability, sexual orientation, gender reassignment, caring responsibilities and schooling). The response rate was 35% and an analysis of the results has been published¹⁰.
32. Other approved regulators also collect some diversity data about those they regulate. The Institute of Legal Executives collects data through a membership survey covering disability, ethnicity, gender and socioeconomic status. The Council for Licensed Conveyancers collects data on gender and age. The

⁸ The Law Society website

<http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/statisticalreport.law>

⁹ The General Council of the Bar (The Bar) website

<http://www.barcouncil.org.uk/assets/documents/Analysis%20of%202008%20BME%20and%20gender%20030409.pdf>

¹⁰ The Bar Council website

<http://www.barcouncil.org.uk/assets/documents/Report%20of%20the%20Analysis%20of%20Demographic%20Data%202007.pdf>

Chartered Institute of Patent Attorneys and Institute of Trade Mark Attorneys both collect information on gender and university attended/qualification gained. The Master of Faculties collects data on gender.

33. In addition to the aggregate data routinely collected by approved regulators, significant efforts have been made by various parties to encourage individual firms and chambers to collect, and in some cases publish, workforce diversity data.
34. The Black Solicitors Network has produced an annual Diversity League Table since 2006. This examines the demographic profile of voluntarily participating firms and chambers in terms of gender, ethnicity, disability and sexual orientation at different levels of seniority, and ranks their performance. In 2009, 49 solicitors firms took part (of 180 which were invited), along with 23 barristers chambers (of 60 which were invited to take part).
35. The Law Society Diversity and Inclusion Charter was launched in 2009. The Charter is a public commitment by providers of legal services, regardless of practice size, to develop and implement best practice in equality, diversity and inclusion - as employers, as providers of legal services, as purchasers of goods and services and in their wider roles in society. One of the commitments made by Charter signatories is to "Publish annually the diversity profile of our UK employees". Signatories are encouraged to monitor six equality strands – age, gender, ethnicity, sexual orientation, religion and disability. Over 160 practices have signed up to the Charter and an annual report has been produced outlining the progress made so far.¹¹ Of the 82 signatories who committed to the Charter before April 2010, over 90% collect data on age, gender, ethnicity and disability, and more than 50% cover sexual orientation and religion.
36. In 2005, the then Parliamentary Under Secretary of State for Justice wrote to the top 100 law firms and top 30 barristers chambers requesting that they publish demographic data about their staff - a number did so and keep this information regularly updated. Other individual firms and chambers have taken the initiative and begun collecting and publishing diversity data and taking other action to increase diversity which goes beyond that required of them by others.
37. Purchasers of legal services are also increasingly imposing requirements on providers, particularly public sector and large corporate consumers.
38. The Crown Prosecution Service (CPS) has published an Expectations Statement for the Bar in relation to equality and diversity matters when seeking to work, and when working, for CPS. The Attorney General has also published an

¹¹ The Law Society website
<http://www.lawsociety.org.uk/productsandservices/inclusioncharter/annualreport.page>

Expectations Statement for Civil and Criminal Panel Counsel and their Chambers. Both statements set an expectation that Chambers will “monitor all applicants for pupillage and membership by disability, ethnicity and gender and likewise monitor all appointees, and monitor all staff, pupils and members in chambers.” Chambers should make the results of this monitoring available to the CPS or Attorney General respectively as required.

39. Alongside its Diversity and Inclusion Charter, the Law Society promotes a Protocol on Legal Procurement. This encourages purchasers of legal services to collect and consider standard diversity information from any law firms tendering for legal work using a model questionnaire. There are currently 29 signatories including some large corporations.

Question 1

What are your views on our assessment of what diversity data is currently collected? Are there any other sources of data that we should be aware of?

What the data tells us

40. The data that is available illustrates good progress at the entry level for both gender and ethnicity:
- 60% of newly qualified solicitors in 2008/09 were women¹² (1978/79: 25%¹³, 1998/99: 53%¹⁴);
 - 53% of those called to the Bar in 2008/09 were women¹⁵ (1978/79: 24%¹⁶, 1991/92: 41%¹⁷);
 - 28% of newly qualified solicitors in 2008/09 self classified as BME¹⁸ (1998/99: 13%¹⁹);
 - 18.7% of pupil barristers in 2007/08 were BME²⁰;
 - 33% of ‘home’ (UK) students accepting places on undergraduate law courses in 2009 were BME²¹;

¹² The Law Society website

<http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/statisticalreport.law>

¹³ The Royal Commission on Legal Services, Final Report (1979), Cmnd 7648, Volume 1, p.496.

¹⁴ The Law Society website

<http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/statisticalreport.law>

¹⁵ The Bar Council website

<http://www.barcouncil.org.uk/assets/documents/called%20to%20the%20Bar%20by%20Ethnicity%20and%20Gender%20Apr%2009.pdf>

¹⁶ The Royal Commission on Legal Services, Final Report (1979), Cmnd 7648, Volume 1, p.496.

¹⁷ The Bar Council Annual Report 1992.

¹⁸ The Law Society website

<http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/statisticalreport.law>

¹⁹ The Law Society website

<http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/statisticalreport.law>

²⁰ The Bar Council website

<http://www.barcouncil.org.uk/assets/documents/BVC%20Stats%2010709.xls>

These numbers compare favourably with the ethnicity profile of the population as a whole – the 2001 Census showed 7.9% of the population was from a non-white ethnic group.²²

41. However, it is much less clear that progress is being made on retention and progression. Only 25% of partners in solicitors firms are women and the latest survey by the Black Solicitors Network shows only 3.5% of partners are BME in a survey of the top 150 firms.²³ Among the courts based judiciary (as opposed to the tribunals judiciary) 19.4% of judges were women in April 2009, and 4.5% were BME.²⁴ This does not reflect the diversity of the population or the rising numbers of women and BME lawyers entering the profession – practitioners who one would otherwise expect to grow in seniority. There is evidence that the numbers of women and BME lawyers entering the profession has been increasing for a number of years. For example, in 1996, 58% of students accepted to study law degrees were women²⁵ and BME students accounted for 13% of admissions across all subjects at all universities.²⁶ This cohort is now at or nearly at the stage of being considered for partnership in solicitors firms (8 – 9 years post-qualification experience). However, the anticipated ‘trickle up’ effect has not materialised.
42. For example, 25% of BME solicitors in private practice have partner status, compared with 38% of white solicitors.²⁷ We continue to see white graduates from higher socio-economic backgrounds overrepresented in large city firms and the Bar, while BME lawyers, women and people from less well-off backgrounds are concentrated in small High Street practices. 50% of BME solicitors work in firms with four or fewer partners. Only 28% of white solicitors work in firms of this size.
43. There is also evidence of significant pay differentials. For example, a 2007 Law Society survey found that male solicitors earn on average £19,000 more than females, while white solicitors earn, on average, £10,000 more than BME solicitors.²⁸

²¹ UCAS statistics, obtained from Statistical Enquiry Tool <http://search1.ucas.co.uk/fandf00/index.html>

²² The ONS website, <http://www.statistics.gov.uk/cci/nugget.asp?id=455>

²³ Black Solicitors Network (BSN), Diversity League Table 2009: A Demographic Survey of the Legal Profession, Table 22 on p.118

²⁴ The Report of the Advisory Panel on Judicial Diversity 2010, Para 20 (p.15)

²⁵ UCAS statistics, obtained from Statistical Enquiry Tool <http://search1.ucas.co.uk/fandf00/index.html>

²⁶ BSN, Diversity League Table 2009: A Demographic Survey of the Legal Profession, Table 22 on p.118

²⁷ The Law Society website

<http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/statisticalreport.law>

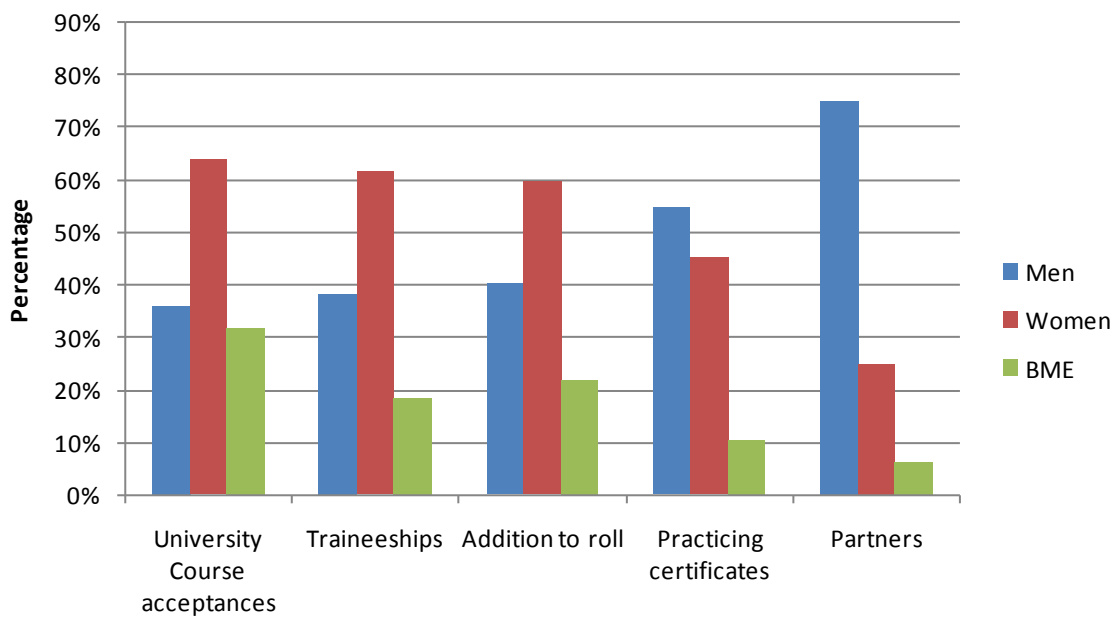
²⁸ Law Society (2008) Earnings and work of private practice solicitors in 2007

<http://www.lawsociety.org.uk/newsandevents/news/majorcampaigns/view=newsarticle.law?CAMPAIGNSID=404156>

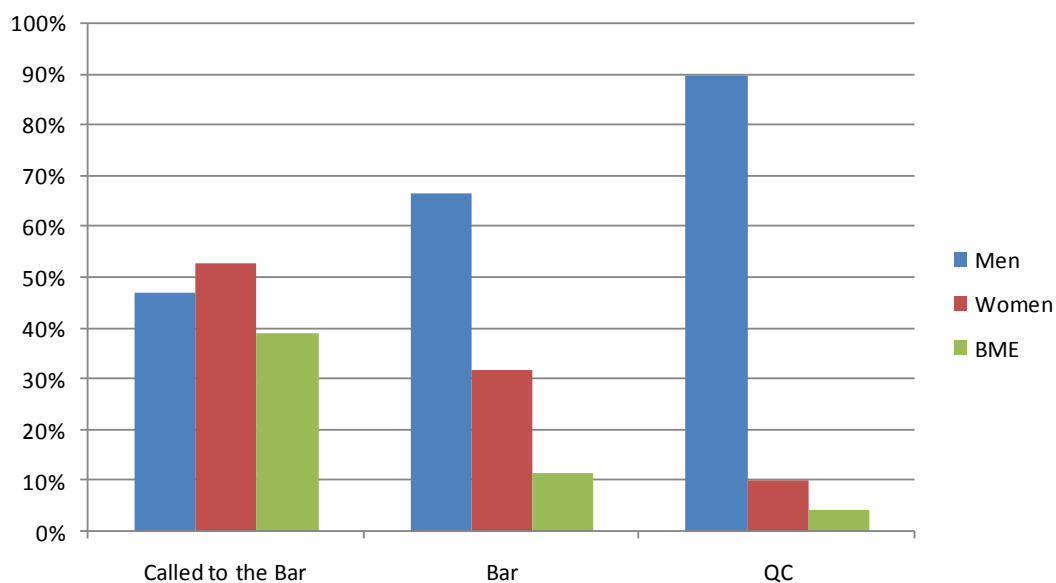
44. In addition, there is a concern that the impressive headline figure for BME entrants as a whole could mask significant under-representation for some groups (for example, African-Caribbean men or Bangladeshi women). This figure may also be distorted to some extent by lawyers from other jurisdictions coming to work in law businesses in England and Wales.

45. The charts below illustrate the gender and ethnicity split of solicitors and barristers at various career stages according to the 2009 figures.

Solicitors, 2009 (Source: The Law Society)



Barristers, 2009 (Source: The Bar Council)



46. A membership survey run by ILEX in 2008/09 suggests (based on a 20% response rate) that 78% of the Institute’s members are female and nearly 13% are BME. 82% of respondents stated that neither of their parents had attended university. These figures are not directly comparable with the figures for solicitors and barristers since only Fellows of the Institute (36% of respondents to the survey) are “authorised persons” for the purposes of the 2007 Act.
47. The data outlined above enables the Board and approved regulators to assess age, gender and ethnic diversity in the legal profession. Given the broadly encouraging picture in relation to gender and ethnic diversity at entry level, we have decided to focus our efforts initially on analysing issues of retention and progression.
48. However, there is insufficient data available to enable us to make a reliable assessment about other important aspects of diversity – including disability, sexual orientation, religion or belief, caring responsibilities, gender reassignment and socio-economic background. This suggests that an early priority should be establishing a more comprehensive evidence base.
49. In addition, the data that is currently available also focuses almost exclusively (with the exception of ILEX) on the legal profession (i.e. “authorised persons” under the 2007 Act), rather than the wider legal workforce. We consider that to deliver the regulatory objectives as a whole requires not just a diverse profession, but also a diverse *legal workforce*. Regulated entities are subject to discrimination law, but there are strong arguments beyond these statutory requirements for them to take action to increase the diversity of their whole workforce – to meet public expectations, to produce a workforce better able to understand the needs of diverse clients, to broaden the pool of talent available and to demystify the profession for those who aspire to go on and qualify.

Question 2

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

Research

50. Statistical data cannot fully explain the reasons for the underrepresentation of women and ethnic minority practitioners at senior levels, or identify the barriers faced by practitioners from non-traditional backgrounds or those with protected characteristics. To do this, we also need to understand the experiences and perceptions of those who are part of the legal workforce or aspire to be a part of it.

51. To help build an understanding of these issues, we have produced and published a review of existing academic literature about diversity in the legal workforce entitled *Barriers to the legal profession*.²⁹ The report shows that the predominance of white, male lawyers from the highest socio-economic groups does not occur mainly as a result of overt discrimination, but rather barriers to entry and progression occur over the lifetime of individuals seeking a legal career. These barriers are present at every stage of an aspiring lawyer's career: initial education; university; work experience; post-graduate education; training contract or pupillage; and in career progression.
52. We have also commissioned original qualitative research by a team of leading academics entitled *Diversity in the Legal Profession in England and Wales: a qualitative study of barriers and individual choices*.³⁰ This explored the career patterns of female and BME professionals, at a variety of career stages including pre-entry, in a range of specialisms and sectors, and in several locations, to investigate the extent to which their career trajectories were the product of individual choice or the culture, structure and institutions of the solicitors' profession and the Bar, or a mixture of the two.
53. The main themes emerging from the research include:
- the fragmentation of the profession and consequent nuanced nature of respondents' experiences;
 - the legacy of the profession's white, male elitist origins and the significance of cultural stereotypes;
 - the importance for career success of personal relations/ bonding and socialising;
 - the long hours' culture and emphasis on commitment (rarely defined);
 - the lack of transparency of some key procedures and practices in some organisations.
54. Some of the barriers identified in the research might also be positive life choices made by female solicitors (and others) about not wanting to dedicate their lives to work as partnership has typically required. Understanding the choices some make about leaving or not seeking partnership (and why they believe there is no positive alternative) is essential if the culture of the profession is to change and become more open to innovation. We consider that diversity drives professionalism and business success, and that the culture of the profession needs to change to ensure that ambitious and able individuals can thrive and progress regardless of their backgrounds or personal circumstances.

²⁹The Legal Services Board website, http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/barriers_to_the_legal_profession.htm

³⁰The Legal Services Board website, http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/Board_diversity_in_the_legal_profession_final.pdf

55. The research, along with many other studies, also highlights the importance of socio-economic background as a factor in gaining entry to the profession and subsequent progression within it. For example, a 2008 survey by the Sutton Trust³¹ found that more than 50% of partners in the most prestigious law firms attended independent schools, and the young partners of today are almost as likely to have been educated in private schools (71%) as the older partners of twenty years ago (73%). This issue of social mobility was highlighted by the Panel of Fair Access to the Professions in its 2009 report *Unleashing Aspiration*.³² We are involved in collaborative work with other professions to implement the recommendations of the report.
56. Other organisations are also commissioning research into diversity and social mobility which aids our understanding of these issues, including the Law Society and interest groups.
57. We recognise that there is still much more to do to understand the issues across the full range of diversity indicators – particularly beyond gender and ethnicity which have been the focus of existing research.

Question 3

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

Existing diversity initiatives

58. We have already acknowledged the significant commitment demonstrated by professional bodies, interest groups, education providers and individual firms and chambers to initiatives to encourage greater diversity in the profession. These initiatives represent a positive step forward and we are encouraged by the priority they are afforded.
59. Through our Diversity Forum of Professional Regulators, we have been encouraging approved regulators and professional bodies to evaluate the impact of these initiatives to ensure that resources are targeted in the most efficient and effective way. We have also been discussing ways in which the different branches of the profession can work more effectively together to maximise the impact of these initiatives. We have published an outline of current initiatives run

³¹ The Sutton Trust (2009), *The Educational Backgrounds of Leading Lawyers, Journalists, Vice Chancellors, Politicians, Medics and Chief Executives*
http://www.suttontrust.com/research/educational-backgrounds-for-submission/ST_MilburnSubmission.pdf

³² Department for Business Innovation and Skills (BIS) website,
<http://www.bis.gov.uk/assets/biscore/corporate/migratedd/publications/p/panel-fair-access-to-professions-final-report-21july09.pdf>

or directly supported by approved regulators³³ (a summary is provided at Annex B). There are also a number of other initiatives that are run by other organisations – for example the Inns of Court and individual firms or chambers.

Question 4

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

Diversity in other professions

60. In considering the current diversity profile of the legal profession, we have looked at levels of diversity in other professions as a comparator.

Architecture

61. Ethnic minorities are well represented on architecture courses, with around 18% of all architecture undergraduates being from an ethnic minority. However, this representation does not progress to the profession, with only around 2% non-white practising architects. Architecture continues to be a predominantly male profession. Representation of women at entry level is particularly low in comparison with law, medicine and dentistry; only 13% of practising architects are female.³⁴

Veterinary Medicine

62. Around 41% of the profession are female, according to the membership database. However, men are much more likely than women to occupy senior roles; 72% of female survey respondents are either full-time or part-time assistants, contrasting to the 43% of male respondents who are partners. Just 2% of the profession are minority ethnic, according to the membership database, although ethnicity is only known for 36% of the membership.³⁵

Accountancy

63. ICAEW membership data shows that in 2004, 26% of chartered accountants were women. This distribution was greater in the younger age groups, with 38%

³³ Diversity Initiatives of Approved Regulators, http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/diversity_initiatives_of_approved_regulators_the_report.pdf

³⁴ Commission for Architecture and the Built Environment (2004) Architecture and race: A study of black and minority ethnic students in the profession <http://www.cabe.org.uk/files/architecture-and-race-students.pdf>

³⁵ Institute of Employment Studies (2006) The UK Veterinary Profession in 2006: The Findings of a Survey of the Profession Conducted by the Royal College of Veterinary Surgeons http://www.rcvs.org.uk/shared_asp_files/uploadedfiles/97d3daf0-9567-4b2f-9972-b0a86cfb13c7_surveyprofession2006.pdf

of those aged 31-35 and 47% of members under 30 being female.³⁶ There are still relatively few black accountants in senior management positions with the UK's accountancy firms. Just 5.9% of partners of top 20 firms are from ethnic minorities and the average percentage of female partners in the top 50 firms is just 9.7%.³⁷

Medicine

64. 56% of all UK domiciled student entrants to medical school were women.³⁸ However, women are not well-represented across the profession. Women represent 37% of all hospital medical staff.³⁹ but are clustered into the lower status speciality of General Practice, with only 4% of surgeons and a quarter of hospital consultants found to be women.⁴⁰
65. 28% of UK domiciled students offered a place at medical school were from an ethnic minority background. Students from Asian backgrounds made up 69% of all accepted ethnic minority students. In 2008, 40% of medical staff (of known ethnic origin) working for the NHS in England hospital and community health services were from ethnic minority backgrounds. To some extent, this reflects the dependence of the NHS on overseas-trained physicians, but it also reflects the strong representation of ethnic minority students in UK medical schools.⁴¹

³⁶ Crompton, R and Lyonette, C (2007), Women's career success and work-life balance in the accountancy and medical professions in Britain. GeNet Working Paper No. 26
<http://www.genet.ac.uk/workpapers/GeNet2007p26.pdf>

³⁷ Accounting Magazine, 2007 http://www.managingdiversity.co.uk/news_article.php?ID=18172596

³⁸ British Medical Association (2009) Equality and diversity in UK medical schools
http://www.bma.org.uk/images/eocreport_tcm41-192128.pdf

³⁹ British Medical Association
http://www.bma.org.uk/equality_diversity/gender/Medicalwomenscene.jsp

⁴⁰ Roberts, J. (2005), The Feminisation of Medicine. BMJ Careers 330 13-5

⁴¹ British Medical Association (2009) Equality and diversity in UK medical schools
http://www.bma.org.uk/images/eocreport_tcm41-192128.pdf

Our proposals

Better regulation principles

66. The 2007 Act requires us to have regard to the Better Regulation principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
67. The available evidence indicates that there are significant inequalities in relation to the gender and ethnic diversity of the legal workforce, so action is required to meet the regulatory objectives and duties under the 2010 Act. In relation to other aspects of diversity, there is insufficient evidence to make an assessment of the action required.
68. Having regard to the Better Regulation principles, we have sought to devise a proportionate policy approach to increasing diversity in the legal workforce that strikes the right balance between the need to take decisive action to meet the regulatory objectives, and the requirement to minimise unnecessary regulatory burdens.

Our Priorities

69. The Board has established the following immediate priorities that it expects approved regulators to address during 2011 in order to meet the regulatory objective about encouraging diversity:
- gathering an evidence base about the composition of the workforce to inform targeted policy responses;
 - evaluating the effectiveness and impact of existing diversity initiatives;
 - promoting transparency about workforce diversity at entity level as an incentive on owners/managers to take action (both in terms of 'peer pressure' and better information for corporate and individual consumers and potential employees, which they can use to inform their choice of law firm).
70. Each of these priorities is discussed in more detail below.

Question 5

What are your views on the immediate priorities for 2011 we have identified? If you disagree with our priorities in relation to equality and diversity, what should they be (bearing in mind the regulatory objectives, the 2010 Act obligations and the Better Regulation principles)?

Evidence based policy

71. There is currently a lack of data about many aspects of diversity in the legal workforce – in particular disability, sexual orientation, religion or belief, caring responsibilities, gender reassignment and socio-economic background.
72. Policy interventions and initiatives are likely to have the greatest impact where they are targeted based on evidence. Focusing policy based on a proper understanding of the evidence is essential if we, and approved regulators, are to operate efficiently and effectively and support the delivery of the regulatory objectives. Without an evidence base to underpin our approach, policy interventions are less likely to succeed and may result in resources being expended unnecessarily or inefficiently. They may also result in disproportionate burdens on the regulated community for little or no benefit.
73. We therefore regard it as an essential first step to build a more comprehensive evidence base about the diversity make up of the legal workforce. Once we have that evidence base, we can consider, with approved regulators, what additional targeted and proportionate steps we as regulators should take to improve diversity and social mobility in the legal workforce.

Question 6

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

Transparency at entity level

74. Transparency is a powerful incentive to change behaviour. A requirement to publish information makes the managers of organisations think twice about their actions because it opens the information up to a greater level of scrutiny.
75. Transparency requirements are being used increasingly in public policy as a tool to increase accountability. The government is committed to public sector transparency through the Public Sector Transparency Board and Public Data Transparency principles.
76. The same approach can be applied to regulated entities in the legal services sector. We see potential in applying the principle of transparency to workforce diversity data as a means of putting the onus on the managers of regulated entities to be accountable for the decisions they make. It is the firm or chambers that recruits the workforce, establishes the culture, trains and promotes employees and allocates work; it is therefore the firms or chambers that are best placed to drive action.

77. We are clear that data about diversity must be collected on the basis of voluntary self-classification by individuals. It will remain voluntary for individuals to respond to the diversity questions – firms or chambers will simply be required to report responses (even if there is no response or the response is “prefer not to say”).
78. Another advantage of transparency at entity level is that it will help establish issues of equality and diversity as mainstream regulatory issues. A commitment to increasing diversity and social mobility should not merely be a “nice to have” for those firms and chambers that see it as a matter of corporate social responsibility; all firms and chambers should be obliged to make such a commitment and translate it into action. Transparency should lead to external pressure such as scrutiny from their peers and the public and a desire on the part of organisations to maintain their reputation with clients which may have taken a number of years to build.
79. We acknowledge that there are a number of incentives for firms and chambers to employ and retain a diverse workforce and/or demonstrate a commitment to diversity. This essentially starts at the individual level where each approved regulators’ code of conduct will set out a professional obligation to adhere to a set of rules on conduct in relation equality and diversity issues. Imposing regulatory requirements and highlighting the moral case for increasing diversity are two levers for change. Legal businesses of all types have a moral obligation to adopt a commitment to diversity through their practices if they are committed to upholding the rule of law. In addition, if we could create commercial incentives to increase workforce diversity this could be a powerful driver for modifying behaviour. In relation to the publication of diversity data, such incentives could possibly manifest themselves in a number of ways. Firstly, directly through corporate or individual consumer demand for a diverse workforce (or a firm that demonstrates its commitment to diversity). Secondly, through a change in culture enabling firms to attract the best talent and therefore ultimately offer a better service to their clients delivered through a workforce drawn from a range of backgrounds that is better able to understand and respond to the needs of clients.
80. The GEO has recently launched a Cross-Government Equality Strategy which makes reference to introducing the new public sector Equality Duty aimed at removing “...top-down targets and bureaucratic processes that the current duties entail and instead require public bodies to publish data on the equality results in their services and their workforce”.⁴² The Government’s Equality Strategy sets out how the Government will work with businesses, local communities and citizens to promote good practice, transparency and accountability. This includes

⁴² HM Government (December 2010), ‘The Equality Strategy – Building a Fairer Britain’, pg.23 <http://www.equalities.gov.uk/pdf/GEO%20Equality%20Strategy%20tagged%20version.pdf>

promoting voluntary gender pay reporting in the private and voluntary sectors with the potential for this to be made mandatory in the future depending on the success of the voluntary arrangements.

81. Embedding transparency as a regulatory requirement will provide consumers (both corporate and individual) with better information on which to base their purchasing decisions and enable firms or chambers to demonstrate their competitive edge based on a culture and ethos that values diversity. It will also lead to public accountability and enable interest groups to highlight inequality and lobby for change.
82. Our proposals build on the work already done through the Black Solicitors Network Diversity League Table and the Law Society's Equality and Diversity Charter. It has been shown as workable in practice, with over 70 major firms and chambers participating in the BSN league table last year. The next step is to spread this best practice to the profession more broadly, and encompass a wider range of diversity indicators, through the introduction of new regulatory requirements.
83. We do not envisage that approved regulators would be under an obligation to rank the performance of individual firms or chambers based on the data they publish – but it would be open to the Black Solicitors Network or other interest groups to do so based on the published information.
84. There are a number of practical issues to be addressed in implementing such a requirement, and these are explored in more detail below in the section entitled "Implementation Issues".

Question 7

What are your views on our proposal that in principle approved regulators should impose regulatory requirements on the entities they regulate, requiring them to publish data about the diversity make-up of their workforce?

Evaluating the effectiveness and impact of existing initiatives

85. At present there is no systematic approach taken to evaluating the impact and effectiveness of diversity initiatives run by approved regulators, professional bodies, interest groups and education providers. This means that resources are potentially being expended on ineffective initiatives. Resources would be better targeted on initiatives that have been properly evaluated against clear objectives and are proven to work.
86. We therefore regard evaluating the impact of existing initiatives as a priority. The results of this exercise, together with the collection of a better evidence base about the make-up of the existing workforce, will enable decisions to be taken

about how resources can be targeted on future initiatives in the most efficient and effective way. It may be that a standardised approach to evaluation could be taken to enable the relative effectiveness of different initiatives to be compared.

Question 8

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

Specific regulatory requirements and targets

87. We are not proposing that there should at this stage be any regulatory requirements imposed by approved regulators on regulated entities to take action to improve the representation of particular groups in their workforce, beyond the general equality duties that already exist for the regulated community in law (e.g. non-discrimination) or requirements that are imposed by purchasers. Neither are we raising an expectation that approved regulators should take regulatory action against firms or chambers with low numbers of employees from diverse groups. Indeed, we do not assume that having low numbers of individuals with particular characteristics in particular firms or chambers is necessarily a cause for concern, provided the firm/chambers can justify it and demonstrate the steps they have taken to promote greater diversity.
88. Rather, we are proposing that as a first step it is appropriate simply to require regulated entities to be transparent. This will give them the opportunity to make their own judgements about any action they feel is necessary to improve the diversity make-up of their workforce.
89. Once approved regulators have a more comprehensive evidence base, and the transparency requirements at entity level are in place, they (and we) can consider what further action is necessary and appropriate to improve the performance of the entities that they regulate in relation to increasing diversity and social mobility.

Question 9

What are your views on our position that regulatory requirements on entities to take specific action to improve performance (including targets) are not appropriate at this stage?

What we intend to do next

90. We have asked approved regulators, alongside this consultation, to provide the Board with:
- an assessment of their current evidence base about the diversity of their regulated community across all eight diversity strands plus socio-

economic background (covering what they hold and an analysis of strengths, weaknesses and gaps);

- an outline of how they propose to promote transparency at entity level, and any areas where they propose this departs from the approach set out in this document (with justification);
- an explanation of the steps taken to ensure that diversity initiatives are targeted based on the evidence and evaluated for their impact.

91. We will consider their responses alongside the consultation responses before deciding what further steps we should take, including whether we should issue guidance to some or all of the approved regulators.

92. Our expectation is that approved regulators should require firms/chambers to gather and publish data about the diversity of their workforce as a regulatory obligation. There should be a mechanism for reporting this data to approved regulators to improve their evidence base about their regulated community, and a mechanism for them to pass this information to the Board to enable a picture to be built up of diversity across the sector.

93. Implementing data collection arrangements and requirements in relation to transparency at entity level is a matter for approved regulators. We acknowledge that there is not necessarily a one-size-fits-all approach, and approved regulators will need some flexibility in implementing data collection and transparency requirements as part of their broader regulatory framework.

94. The remainder of this consultation document focuses on two key issues:

- achieving transparency at entity level;
- appropriate and consistent data categories in relation to each of the relevant characteristics.

Guidance

95. We have already discussed with a number of stakeholders (including approved regulators) the best approach to implementing data collection and transparency requirements, and considered some of the practical issues. A detailed discussion of these issues appears below.

96. We will consider in light of consultation responses and proposals from approved regulators whether to formalise this work into guidance to approved regulators under s.162 of the 2007 Act on best practice in diversity data collection and transparency.

Data categories

97. It is important to ensure that however diversity data is collected by approved regulators, it is categorised in a consistent way to enable it to be aggregated. It is also important to ensure comparability with other diversity data as far as possible

– for example data about other parts of the legal workforce and external datasets (such as the Census data about the general population or data collected by educational institutions).

98. As a general principle we tend to specify outcomes, and not prescribe the approach approved regulators should take to meeting them. However, in this instance there is a strong case for consistency in order to deliver a comprehensive picture of diversity across the profession and wider legal workforce as a whole. We consider that the work required to collate different approaches in order to achieve a comparable dataset would be disproportionate compared with collecting data in a uniform manner in the first place.

Question 10

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

Question 11

What are your views on our proposal to agree standard data categories with approved regulators, to ensure comparability of diversity data within the legal workforce and with other external datasets?

Implementation issues

99. We have identified the following issues in relation to our proposal to collect diversity data and introduce a requirement for transparency at entity (i.e. firm or chambers) level.

Coverage

100. Diversity across the whole legal workforce is required to support the delivery of the regulatory objectives – we are not only concerned with the diversity of authorised persons. We propose that the data collection and transparency requirements extend to the entire legal workforce (for example including paralegals, legal secretaries, barrister’s clerks and other support staff who directly support the delivery of legal services).

101. We do not propose that this exercise extends to in-house lawyers. They do not serve the public directly, and some diversity data is already collected about individuals as part of the practising certificate issue/renewal process. Data is also collected on sole practitioners, who we also propose should be exempt. However, we would expect ARs to publish aggregate data about in-house lawyers and sole practitioners if they do not already do so.

102. Where a range of different legal professionals work together in the same entity, the approved regulator responsible for the entity should impose the regulatory requirement to collect the data about the whole workforce.

103. Consideration also needs to be given to the best way to collect data from businesses licensed under the Alternative Business Structures (ABS) regime from October 2011. Our expectation is that licensing authorities will impose requirements for transparency about diversity data from day one. The requirement will need to extend to the part of the relevant organisation that is licensed as an ABS. This is particularly important because success in removing barriers to progression cannot necessarily be measured only by looking at whether the diversity make-up of traditional firms or chambers changes to reflect the wider population. Changes to the legal market and new, innovative business models also create opportunities to increase the diversity of the legal workforce by introducing greater flexibility (for example through virtual law firms) – and female or BME lawyers may lead innovation and chose not to pursue a career within a traditional firm.

104. Further thought is also required about whether data could be obtained from other entities directly engaged in supporting the delivery of legal activities, such as the legal process outsourcing organisations.

Question 12

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

Question 13

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

Impact on firms

105. Undoubtedly some stakeholders will regard the proposed requirements as a disproportionate regulatory burden, particularly on small firms.
106. There will be a resource impact on regulated entities in surveying their members/employees and collating and publishing the results. However, we consider that this impact will be small and is justified by the nature of the challenges outlined earlier in this paper.
107. The time taken for each individual to answer the questionnaire is likely to be no more than five minutes. There will be some administrative effort required in preparing a summary, and some management time will need to be spent considering the results. Approved regulators may be able to provide support in the form of simple spreadsheet based tools to ensure the effort required is minimal. There is the potential to automate the survey through an online survey tool, rather than completing it on paper.
108. Many firms and chambers already carry out a similar exercise voluntarily, which suggests that the burden is not unmanageable. We recognise that in small organisations the turnover of staff is likely to be relatively low so the diversity data may not change significantly from year to year. We therefore propose that smaller firms and chambers with fewer than 20 people within the scope of this exercise should only be required to complete a data collection exercise every three years, whereas larger organisations should carry out the exercise annually. The application of publication requirements to small firms and chambers is discussed at paragraph 166.
109. We are not persuaded that there ought to be a complete exemption in relation to small firms or chambers. Such an exemption could be considered if we were proposing to introduce targets or requirements to undertake certain initiatives. However, the current proposal is just to build a picture of the nature and depth of the issue and in our view will impose only a minimal additional regulatory burden. Issues relating to data protection and publication requirements in the context of smaller organisations are discussed further below.

110. We do not take the imposition of new regulatory requirements lightly, but we consider that the proposed approach is proportionate given the nature of the challenges to be addressed to make the objective of a diverse profession a reality. It will be important to put in place a strong communications strategy alongside the implementation of the framework, highlighting the issues and justifying the action required.

Question 14

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

Question 15

What are your views on our proposal that in general firms and chambers should be required to collect data from their workforce annually, while smaller firms and chambers (fewer than 20 people) should only be required to collect the data every three years?

Range of indicators

111. Our starting point is that data collection and transparency by regulated entities should encompass the relevant protected characteristics for the purposes of the new public sector equality duty⁴³ under the 2010 Act, plus social-economic background. The relevant protected characteristics⁴⁴ are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

112. As discussed above, we find it difficult to see how the Board and approved regulators can comply with their duties under the 2010 Act when carrying out their public functions, without a better understanding of the diversity make-up of the legal workforce in relation to all these characteristics. Our proposed approach to measuring these characteristics is discussed further below, including a proposal to broaden data collection about pregnancy and maternity to encompass caring responsibilities generally.

⁴³ s.149 of the Equality Act 2010

⁴⁴ s.149(7) of the Equality Act 2010

113. Social mobility is a high priority for the Board, approved regulators and the government, and work is on-going to address the recommendations of the Milburn Panel on Fair Access to the Professions. We propose that indicators of socio-economic background should be included in the data collection framework because of its particular relevance to the legal profession.

Question 16

What are your views on our proposal that data should be collected about all the protected characteristics listed above, plus socio-economic background? If not, on what basis can the exclusion of one or more these characteristics be justified?

Anonymity

114. If we were just to look narrowly at the best way of achieving transparency at firm/chambers level, the most effective approach is likely to be an anonymous survey conducted at that level. However, the challenge is to consider how best to integrate such an approach with the other requirements imposed on individual authorised persons and regulated entities in a way that avoids duplication where possible, and enables individual authorised persons to supply the information only once.

115. At the heart of this issue is the question of whether the information should be collected by approved regulators as part of the practising certificate renewal process, or through an anonymous survey conducted at firm/chambers level.

116. The advantages of integrating the process with the practising certificate process are that:

- approved regulators already collect some diversity information (age, gender and ethnicity) through this route so the range of indicators could simply be expanded, avoiding duplication;
- it would provide them a much richer data set about the characteristics of individual authorised persons, linked to other regulatory data - enabling sophisticated analysis about progression and retention and about issues of disproportionality in regulatory decision making;
- it is more likely to be perceived as a routine regulatory request and therefore more likely to be completed than a separate diversity-focused exercise.

117. However, the disadvantages of such an approach are that:

- individuals may be less willing to disclose sensitive personal information if it is not anonymous, resulting in more “prefer not to say” responses;
- it would not be possible to capture diversity information about the wider legal workforce as non-authorised persons are not required to have a practising certificate;

- it would not support the objective of putting the onus on firms/chambers to collect and publish the data, meaning they are less likely to “own” the problem.

Question 17

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

Question 18

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

Model questionnaire

118. We have developed a model questionnaire with recommended sample questions for each diversity indicator. The questionnaire is attached at Annex C.
119. The Board would encourage firms and regulators to adopt this questionnaire in relation to their own diversity monitoring practices as this will help maintain consistency in the aggregated information. The categories used in the questionnaire have been carefully considered. For example, we have included ‘Prefer not to say’ as an option for each category as some people may avoid completing the entire form merely to avoid declaring one or two categories. We intend to pilot the proposed model questionnaire during the consultation period.
120. The questionnaire is intended to be universal. It could be problematic to have separate questionnaires tailored to a particular branch of the profession, since it is likely to become increasingly common for different combinations of legal professionals to work together within the same entity.
121. The specific approach to measuring each characteristic is discussed further below.

Question 19

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

The job profiles of respondents

122. Alongside diversity data, some other data will need to be collected about the role of individuals – for example their professional qualification and their job role. This will ensure there is a true picture of diversity across the branches of the profession and also at different levels of seniority. It will also enable more sophisticated analysis of the aggregate data by approved regulators, helping to pinpoint problems areas that require further exploration.
123. One of the key issues to be addressed is retention and progression – for example the representation of women and BME practitioners at the most senior levels. It follows that the data collection framework should include some classification of the seniority/role of individuals within the legal workforce.
124. When considering ‘seniority’ in this context we are not concerned primarily with the number of years of post-qualification experience an individual lawyer has. Our primary concern is to assess the extent of involvement an individual has in the management of an organisation providing legal services – for example whether they are the head of their organisation, or the degree of autonomy they have in managing their own workload.
125. We have therefore included two preliminary questions in the model questionnaire to categorise the role and level of seniority of participants in the data collection exercise.
126. The first question we propose to ask is about the status of the respondent.

1. Status

(a) If you are an authorised person⁴⁵ for the purposes of the Legal Services Act 2007 (i.e. you hold a practising certificate issued by one of the approved regulators), please indicate your status-

Barrister	
Solicitor	
Legal Executive (Fellow)	
Licensed Conveyancer	
Patent Attorney	
Trade Mark Attorney	
Cost Lawyer	
Notary	
Prefer not to say	

⁴⁵ Section 18(1) of the Legal Services Act 2007

- (b) If you do not fall into any of the categories listed above, please indicate whether you fulfil:**

Any other fee earning role	
Any role directly supporting a fee earner (e.g. legal secretary, administrator, barristers clerk, practice manager, legal assistant, paralegal)	
A managerial role (e.g. Director/non-lawyer Partner/Chief Executive/Practice Director or similar)	
An IT/HR/other corporate services role	
Prefer not to say	

The second question is about the job role of the individual.

2. Job role

- (a) Do you have a share in the ownership of your organisation?**

Yes	
No	
Prefer not to say	

- (b) Do you have responsibility for supervising or managing the work of other regulated individuals or employees?**

Yes	
No	
Prefer not to say	

- (c) Do you have significant responsibility for decision making in relation to your organisation's business (including in securing new business) which, in a barristers chambers we consider to mean being a member of a chambers management committee or equivalent?**

Yes	
No	
Prefer not to say	

(d) Do you work independently with only occasional reference to a supervisor (if applicable) or frequently consult your supervisor in relation to your work?

Work independently	
Frequently consult	
Prefer not to say	

127. We have also considered whether there are other measures of job role/seniority which could supplement those suggested here. It is difficult to devise generic categories of job titles (associate/assistant/junior tenant etc) that are equally applicable across different areas of practice. Measures based on years of post-qualification experience or accreditations are also problematic as they do not necessarily reflect the 'seniority' of the individual. For example, QC is not necessarily a good measure of the organisational seniority of a barrister or solicitor, and the appointment of QCs is not within the control of firms and chambers in any case. We could also include separate categories for salaried partners and equity partners, and for practice support lawyers. Other indicators of seniority might include membership of panels such as CPS panels or insurer panels or other accreditation such as that achieved via Quality Assurance for Advocates once implemented.

128. We have also considered that depending on the business model within a firm or chambers, there may be some categories of job roles for individuals that hold positions in upper managerial levels i.e. Chief Executive Officers (CEOs), who are not lawyers but play a key role in decision-making processes of an organisation.

129. There is a range of other data that could be collected about individual respondents to enable more sophisticated analysis, particularly in relation to aggregate data. Some possibilities include:

- country of first qualification
- nationality
- size and type of firm
- practice area

Question 20

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

Question 21

What are your views on the proposed questions about job role as set out in the model questionnaire? Do you have suggestions about additional/better measures of seniority? Do you have suggestions on a category of measure to encompass a non-partner senior member of staff i.e. CEO who holds an influential or key role in decision-making of an organisation?

Question 22

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

Question 23

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

Measuring each characteristic

130. We have sought advice from the Equality and Human Rights Commission (EHRC) on the best approach to measuring each characteristic. We have sought to follow an approach that complies with best practice and is aligned as far as possible with external datasets such as the national Census.

Sex

131. The same question format as the Office for National Statistics (ONS) 2011 Census questionnaire for England will be adopted for this category, which asks the survey respondent to name their sex. A separate question will be asked on gender reassignment and will not be included in this category.

Age

132. The question format adapted in this category is to ask the survey respondent to indicate from a list of age bands, the category that most appropriately fits their current age in years. The advice sought from the EHRC was that this question was robust; however, to maintain consistency with data collection the age bands must be the same so information can be aggregated appropriately.

133. The Board contemplated adopting the same question format as the ONS 2011 Census questionnaire for England which asked the survey respondent to indicate their date of birth. The reasoning behind not adopting the same approach was that the personal preference for some respondents may not to

reveal their exact age in terms of years and may find that fitting their current age in years into an age band may be more acceptable and therefore yield a higher response rate. This may also add a further level of protection in terms of anonymity depending on the structure of the chambers or firms.

Ethnicity

134. The same question format as the ONS 2011 Census questionnaire for England will be adopted for this category. The question asks the survey respondent to indicate their ethnic group from a list of named ethnic groups. The list of ethnic groups in the ONS Census questionnaire is considered the most up to date question format available (and differs from the previous Census questionnaires). The Board sees it as important to keep consistency with the ONS categories so comparisons with general population data can be made once the information has been collated and aggregated.

Disability

135. The question format for the category measuring disability will follow the example set out in the EHRC staff survey monitoring form with the exception of the definition of disability as the original EHRC questionnaire used the definition of disability from the Disability Discrimination Act 1995 (DDA). The Board has updated this question by using the definition of disability from the 2010 Act which has now come into effect and replaces the DDA. The definition in the 2010 Act differs slightly from the definition in the DDA, which also required the disabled person to show that an adversely affected normal day-to-day activity that involved one of a list of capacities such as mobility, speech, or hearing. The question will give a brief description of the 2010 Act and define the term 'disabled' according to the 2010 Act. The survey respondent will then be asked to indicate from a self-analysis of the definition provided if they consider themselves to have a disability. If the survey respondent answers 'yes', they will then be prompted to make another self-analysis by indicating the type of impairment which applies to them from a list of disabilities. In the event that the disability is not listed, the survey respondent has the opportunity to record their disability as 'other' and provide further definition by writing in a space if necessary.

136. The Board investigated the question format used in the ONS 2011 Census questionnaire, which asks the survey respondent to indicate if their day-to-day activities are limited because of health problems or disability which is expected, or will, last for 12 months, and which gives an option of answering 'yes – limited a little', 'yes – limited a lot' or no. The Board considers that the ONS example is appropriately structured to measure disability or impairment from someone who may or may not be involved in regular work as it also includes problems relating to old age. The EHRC staff survey monitoring form includes a question on disability and we consider this is more appropriate to measure staff in a

workplace as it specifically defines the issues and asks for a greater level of detail on the type of disability affecting the survey respondent. This greater level of detail will help inform policy responses in the workplace.

Question 24

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

Sexual orientation

137. The Board has sought advice from Stonewall in developing the thinking around the inclusion of sexual orientation monitoring in the proposed framework.
138. In terms of the question format adopted for this category, the Board has considered the format of best practice recommended in Stonewall's workplace guide on 'How to monitor sexual orientation in the workplace' issued in 2006⁴⁶. This asks the survey respondent their sexual orientation and gives a list of categories. The Board has also considered the format as set out in the measuring sexual identity – a guide for researchers issued by the ONS in April 2009⁴⁷ in which the question developed by the ONS concerns respondents' perceptions of their sexual identity. The ONS indicates that as sexual identity is the component of sexual orientation most closely related to experiences of disadvantage and discrimination, asking about it will enable firms to fulfil their legislative requirements. By using the standard question set out by the ONS, data collectors will be better able to benchmark their data against that collected by the ONS as well as data collected elsewhere. The ONS further indicates that the question has been rigorously tested for acceptability and provides high quality data. In addition, the question has also been formally adopted by the cross government National Statistics Harmonisation Group as a harmonised standard.
139. The guidance produced by the ONS regards sexual orientation as an umbrella term which encompasses several dimensions including sexual identity, attraction and behaviour. For the purposes of the 2010 Act, sexual orientation is not defined in terms of any specific dimension. The guidance states that self-perceived sexual identity is a subjective view of oneself. 'Essentially, it is about what a person is, not what they do. It is about the inner sense of self, and perhaps sharing a collective social identity with a group of other people'. The question on sexual identity is asked as an opinion question, it is up to respondents to decide how they define themselves in relation to the four

⁴⁶ Stonewall

<http://www.stonewall.org.uk/other/startdownload.asp?openType=forced&documentID=614>

⁴⁷ The ONS, 'Measuring sexual identity – a guide for researchers', Newport, April 2009
<http://www.ons.gov.uk/about-statistics/measuring-equality/equality/sexual-identity-project/guidance/index.html>

response categories available. It is important to recognise that the question is not specifically about sexual behaviour or attraction, although these aspects might relate to the formation of identity. A person can have a sexual identity while not being sexually active. Furthermore, reported sexual identity may change over time or in different contexts (for example, at home versus in the workplace).

140. As a justification for measuring sexual identity as opposed to the wider term of sexual orientation, the guidance indicates that no single question would capture the full complexity of sexual orientation. A suite of questions would be necessary to collect data on the different dimensions of sexual orientation, including attraction, behaviour and identity, and to examine consistency between them at the individual level. Although legislation refers to sexual orientation, research during question development by the ONS deemed sexual identity the most relevant dimension of sexual orientation to investigate given its relation to experiences of disadvantage and discrimination. Testing showed that respondents were not in favour of asking about sexual behaviour in a social survey context, neither would it be appropriate in general purpose government surveys.

141. The Board has therefore adopted the question on sexual identity set out in the ONS guidance and this is included in the model questionnaire.

142. Further to the recommendations set out in Stonewall's workplace guide the category to measure an individual's gender reassignment status will not be included in this question but asked under a separate category.

Question 25

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

Religion or belief

143. The question format in the ONS 2011 Census questionnaire for England asks the survey respondent to indicate their religion from a list of named religious groups – the same basic question was used in the 2001 Census.

144. However, we recognise that there are particular difficulties in measuring religion or belief, and acknowledge that there has been considerable debate about how best to measure this particular characteristic in the 2011 Census. The British Humanist Association (BHA) and others have argued that the Census data on religion produced by the 2001 Census gave a wholly misleading picture

of the religiosity of the UK⁴⁸. The BHA argue that it is a closed question which assumes that respondents would have a religion, inflating the number of respondents ticking a religious box and reducing the number of those ticking 'none'. They consider that the answers are more likely to reflect cultural affiliation than actual religious belief or practice, and have campaigned for a more open question or a two-part question (i.e. (a) Do you see yourself as belonging to any particular religion? Yes/No; (b) If so, which?)

145. In general, we consider it is important to keep consistency with the ONS categories so comparisons to general population data can be made once the information has been collated and aggregated. We have therefore included the ONS question in the model questionnaire. However, we would appreciate views about the use of an alternative question along the lines suggested by the BHA.

Question 26

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

Gender reassignment

146. Issues relating to gender reassignment are particularly sensitive and individuals may not be comfortable disclosing this information. However, there is currently extremely limited data available about these issues within the legal workforce. Since gender reassignment is a protected characteristic under the 2010 Act, we consider it important to make attempts to gather an evidence base in relation to this characteristic.

147. The Bar Council included a question on gender reassignment in its 2007 demographic survey of barristers; nine barristers, representing 0.2% of respondents to the survey, replied that they did not have the same gender as assigned at birth and few respondents selected “prefer not to say”.

148. An additional issue with collecting information about gender reassignment is that the Gender Recognition Act 2004 prohibits the disclosure of “protected information” in relation to a person who has made an application for a gender recognition certificate, and makes such disclosure a criminal offence⁴⁹. However, the Act also makes clear that it is not an offence to disclose protected information where:

- the information does not enable the relevant person to be identified; or
- the person has agreed to the disclosure of the information

⁴⁸ British Humanist Association, Census 2011, <http://www.humanism.org.uk/campaigns/Census-2011>

⁴⁹ s.22 of the Gender Recognition Act 2004

149. Having consulted policy officials in the Ministry of Justice, we consider that it is feasible to devise an approach that complies with the legislation - if the survey is anonymous, responding is optional and absolute clarity is provided as to the purposes for which information will be used. In short, we do not consider there is a legal barrier to including a question on gender reassignment in the model questionnaire.

150. However, we acknowledge the concern of some approved regulators that this issue is particularly sensitive and that including a question in the survey may not yield much data. If we do not ask a question about gender reassignment, then we are guaranteed to get no data; however, if the question is asked we may get at least some useful data. Nonetheless, there is a policy question about whether including a question on gender reassignment in the model questionnaire is the most effective means of building an evidence base about gender reassignment issues in the legal workforce, or whether specific and targeted qualitative research is more appropriate.

Question 27

Do you think a question should be included in the model questionnaire about gender reassignment? If not, what other means should be used to build an evidence base in relation to gender reassignment issues in the legal workforce?

Question 28

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

Pregnancy and maternity

151. The Board has discussed in detail the merits of including a category measuring pregnancy and maternity. This characteristic is of particular relevance to the issue of progression and retention of women in the legal profession who choose to take time out of their careers to have a family, and we propose to include this category in the framework. Recent and past research has shown that women taking time out of their career to have a family is one of the barriers to achieving higher levels of seniority within a firm⁵⁰. The feedback from approved regulators on including this topic as a diversity indicator has been

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For example Law Society (2010) *Obstacles and Barriers to the career development of woman solicitors*, <http://www.lawsociety.org.uk/secure/file/189203/e:/teamsite-deployed/documents/templatedata/Publications/Research%20Publications/Documents/Female%20lawyers.pdf>

positive. It has also been suggested that a question is included on caring responsibilities.

152. The Board has sought guidance on best practice in measuring pregnancy and maternity and unfortunately was unable to find a specific question relating to this topic; perhaps this is because it is one of the newer protected characteristics introduced through the 2010 Act. In researching this topic, we have found that there is a robust set of evidence and sample questions which relate to caring responsibilities.

153. We acknowledge that pregnancy and maternity are important and relevant issues in addressing barriers to retention and progression in the legal workforce. Following discussions with stakeholders we consider that the best approach would be to integrate pregnancy and maternity with the broader issues of caring responsibilities. It is proposed that a leading question will be asked about whether the survey respondent has a child or children under the age of 18 years. In answering this question it is assumed that the respondent will have some caring responsibilities if they have children. This will be followed with a question on other types of caring responsibilities which has been derived from the ONS 2011 Census questionnaire content. The survey respondent is asked if they 'look after', 'give any help' or 'support' family members, friends, neighbours or other because of long term disability or old age. This question will further define the number of hours per week that is dedicated to this caring responsibility which is not part of paid employment, to determine the level of impact of caring activities on a respondent's day to day life.

154. We would encourage the approved regulators to investigate the issue of pregnancy and maternity. In particular the impact on women's career progression within the legal profession would benefit from further targeted and qualitative research. We also recommend approved regulators ensure this work is encompassed in their existing research and equality and diversity work programmes.

Question 29

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

Socio-economic background

155. The Board has sought advice from the Sutton Trust in developing the thinking around the inclusion of socio-economic background monitoring in the proposed framework. Our initial discussions with The Sutton Trust confirmed our initial research into this topic that it is a difficult category to measure and gain accurate

information, particularly across a wide age range (because of developments in education, individuals changing circumstances and societal changes). The Sutton Trust however indicated that there is support for the inclusion of a category on socio-economic background and suggested the format for questioning which includes a measure on parent's education background. The recommended question format was supplied by the Sutton Trust and has been used previously in a survey conducted through an online monitoring questionnaire on the Sutton Trust's 'School Programme application form'. The Board considers that this question alone does not fully explore socio-economic background and therefore has considered the inclusion of wider questioning to gain a deeper insight into this category.

156. We sought the views of our Diversity Forum of Professional Regulators. The Bar Council referred us to the 'Agreed Equality Monitoring Questionnaires on Access to the Profession for the Bar Professional Training Course (BPTC) Online'. It was considered that the BPTC monitoring form was robust in that the survey has been running for several years and more specifically it has a greater relevance to the legal profession in that it monitors the diversity of aspiring lawyers. The BPTC monitoring form included a question on attendance to a fee paying school and determining if financial awards were received when attending a fee paying school of 50% or more of school fees.

157. The Board has considered using the ONS socio-economic classification⁵¹ to ask a question about the highest socio-economic category identified with at least one parent. However, we consider that a question based around a self-analysis which asks a survey respondent to choose from a list of designated 'socio-economic categories' was not only a complicated approach but may cause confusion or misinterpretation leading to inaccurate information recorded in this category.

158. The Board has therefore adopted a simplified approach and propose that the Sutton Trust recommendation of a question on parental educational background is included along with the Bar Council questions on attendance at fee paying schools (including whether fees were subsidised).

Question 30

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

⁵¹ The ONS, The National Statistics Socio economic Classification (NS-SEC)
<http://www.ons.gov.uk/about-statistics/classifications/current/ns-sec/cats-and-classes/category-descriptions/index.html>

Data protection

159. Provision of data by individuals will remain voluntary – we are suggesting that the requirement should be on entities to request the data from members/employees and publish the results (including response rates).
160. We recognise that approved regulators may already be (or may wish to consider) collecting some or all of the data in such a way that it can be linked to individual records. This could be valuable in relation to a whole range of issues – for example considering whether there is disproportionality in relation to particular groups when taking regulatory action; and enabling more sophisticated analysis of the likely impact of policy changes if the data could be linked with other information about the individual practitioner (e.g. practice area or geographical location).
161. An option for individuals to provide their name or identifier could be included – placing the onus on the individual to decide what information they are content to disclose. If the data set does include a name or other unique identifier, it would be sensitive personal data for the purposes of the Data Protection Act 1998 and adequate systems would need to be put in place to safeguard it.
162. There is also the possibility that even in an anonymised data set an individual is identifiable from entity-level data if there are only a small number of people who are members/employees of the organisation. It may be possible by a process of elimination to deduce the responses provided by a particular individual. This will need to be considered when determining publication requirements (see below).
163. Our view is that it is feasible to devise a data collection and publication framework which complies with the relevant legislation across all of the diversity indicators mentioned above. If data is provided anonymously and voluntarily by an individual, with clarity about the purposes for which it will be used, then the processing of their data within the DPA definition will be done with their consent. While some of the indicators concern particularly sensitive issues, if the provision of data is voluntary then it is for the individual to decide whether they wish to disclose it.
164. We encourage firms and chambers to ensure they have appropriate and robust internal handling processes when dealing with personal information to ensure data is kept secure and confidential. This will support the existing procedures and protocols carried out for the handling of all personal information mandated by data protection legislation.

Publication requirements

165. It is important that transparency is achieved at entity level – both to provide information to consumers and to ensure that accountability lies with the entity.

Some law firms are already publishing data about some diversity indicators on their websites, and we would like to make this the norm. A requirement to publish the data online in a specified format and report it to the relevant approved regulator is likely to be sufficient. Approved regulators may need to consider other practical issues - such as how to deal with regulated entities which do not have a website. Another issue to address may be around how to ensure that the data is not “tucked away” (e.g. a requirement for there to be a link to the data on the front page of an entity’s website).

166. We propose that firms/chambers will be required to publish on their websites a summary of whatever data is supplied, broken down by levels of seniority, and a response rate for their whole workforce against each characteristic. As mentioned above, there is a potential issue with individuals being identifiable from the data where there are a small number of members/employees within an entity. This may affect the willingness of individuals to respond to some questions because of a concern that sensitive personal information may be revealed by the published results.
167. We consider that individuals must be made aware that providing the data is voluntary, and there must also be clarity about the form in which the information will be published. This will enable them to make an informed decision about whether to supply some or all of the diversity information requested. In some cases this may lead to individuals choosing not to disclose particular information.
168. Our preference is for this publication requirement to apply to firms and chambers of all sizes. However, we recognise that there is a concern raised by some stakeholders about the sensitivity of some of the data being collected and published. In response to these concerns, we have considered the option of imposing a different publication requirement on smaller organisations (with fewer than 20 people in the scope of the data collection exercise) that only covers the publication of aggregate data for the whole organisation, rather than data broken down by levels of seniority. However, we do not propose to pursue this because we regard the issue of the publication of sensitive information around particular diversity indicators as a matter that could apply to all firms regardless of their size. If data about a large firm is broken down by levels of seniority, there may still be a very small number of individuals in a particular category and the arguments about sensitivity would be equally relevant (for example there may be small number of equity partners in a large firm and the published results may show that within the category of owners/equity partners there is one individual who wishes their sexuality or gender reassignment to be statistically recorded but does not wish to be identifiable from any published data). We would like to seek views from respondents about whether special arrangements should be put in place concerning the publication of information about characteristics that are

regarded as particularly sensitive (e.g. sexual orientation and gender reassignment) and if so, what will these special arrangements should be.

169. We (the Board), as an organisation of 33 people and a Board of 9, carried out our own diversity survey earlier in the year against all the diversity indicators we propose are covered in this consultation paper. We found that it required minimal effort to complete the exercise and we achieved a response rate of 79%. The results of the survey are available on our website⁵².

Question 31

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

Question 32

Do you have any views on special arrangements that should be considered for firms and chambers of all sizes when publicising sensitive information at different levels of seniority?

Impact on Approved Regulators

170. There will inevitably be a resource impact on approved regulators in implementing a data collection and publication requirement on regulated entities. The aim should be to keep the exercise as simple as possible so as to minimise these impacts. However, the Board has demonstrated a clear commitment to progress in this area, which is required to meet the regulatory objectives. Approved regulators should therefore be ready to commit resources to putting in place an effective and proportionate data collection framework.

171. If there are issues with putting the appropriate systems in place quickly, there may be a case for imposing an interim requirement on regulated entities to collect and publish the data until the approved regulators have the means to collate and analyse it.

Question 33

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

⁵² The Legal Services Board website, http://www.legalservicesboard.org.uk/about_us/our_staff/our_diversity/index.htm

Next steps

172. As outlined above, the Board will consider responses to the consultation document alongside proposals from approved regulators about how they plan to approach delivering our priorities. The Board will then take a final decision about the next steps that are appropriate, including whether to issue statutory guidance under s.162 of the 2007 Act.
173. We are also seeking firms or chambers that would be willing to participate in a pilot of the model questionnaire during the consultation period, to test its effectiveness in practice.

Annex A: A list of questions raised in this document

Question 1

What are your views on our assessment of what diversity data is currently collected? Are there any other sources of data that we should be aware of?

Question 2

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

Question 3

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

Question 4

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

Question 5

What are your views on the immediate priorities for 2011 we have identified? If you disagree with our priorities in relation to equality and diversity, what should they be (bearing in mind the regulatory objectives, the Equality Act obligations and the Better Regulation principles)?

Question 6

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

Question 7

What are your views on our proposal that in principle approved regulators should impose regulatory requirements on the entities they regulate, requiring them to publish data about the diversity make-up of their workforce?

Question 8

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

Question 9

What are your views on our position that regulatory requirements on entities to take specific action to improve performance (including targets) are not appropriate at this stage?

Question 10

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

Question 11

What are your views on our proposal to agree standard data categories with approved regulators, to ensure comparability of diversity data within the legal workforce and with other external datasets?

Question 12

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

Question 13

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

Question 14

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

Question 15

What are your views on our proposal that in general firms and chambers should be required to collect data from their workforce annually, while smaller firms and chambers (fewer than 20 people) should only be required to collect the data every three years?

Question 16

What are your views on our proposal that data should be collected about all the protected characteristics listed above, plus socio-economic background? If not, on what basis can the exclusion of one or more these characteristics be justified?

Question 17

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

Question 18

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

Question 19

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

Question 20

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

Question 21

What are your views on the proposed questions about job role as set out in the model questionnaire? Do you have suggestions about additional/better measures of seniority? Do you have suggestions on a category of measure to encompass a non-partner senior member of staff i.e. CEO who holds an influential or key role in decision-making of an organisation?

Question 22

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

Question 23

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

Question 24

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

Question 25

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

Question 26

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

Question 27

Do you think a question should be included in the model questionnaire about gender reassignment? If not, what other means should be used to build an evidence base in relation to gender reassignment issues in the legal workforce?

Question 28

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

Question 29

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

Question 30

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

Question 31

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

Question 32

Do you have any views on special arrangements that should be considered for firms and chambers of all sizes when publicising sensitive information at different levels of seniority?

Question 33

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

Annex B: Summary of main diversity initiatives run or supported by Approved Regulators

AR	Initiative	Summary
Chartered Institute of Patent Attorneys (CIPA)	Cracking Ideas	An invention competition
CIPA	Publication in the New Scientist	A publication on alternative careers for scientists, in which the IP profession was featured heavily
CIPA	Informal interviews	CIPA arranges informal interviews with a recently qualified attorney for any university student wanting to find out what a career in the profession involves.
Institute of Legal Executives (ILEX)	VQ Day	ILEX attends this annual event alongside colleges and schools to increase the knowledge of this vocational path
ILEX	B-Live Foundation	ILEX partners with this organisation to support over 200,000 young people from state and independent schools to help manage and maximise their personal and career development.
ILEX	Careers fairs and UCAS events	ILEX attends a range of pre-1992 and post-1992 universities to encourage academic staff and law students to consider a broader range of options both during and after their degree subjects
Institute of Trade Mark Attorneys (ITMA), CIPA and ILEX	Benevolent Funds	ITMA is currently setting up a benevolent fund for members who experience hardship. CIPA has a similar scheme already. ILEX has a benevolent fund for those who require help with a sudden financial hardship.
The Bar Council	Mock Trials	Around 2,500 students participate in a national competition, taking on the role of barristers, witnesses, court staff and jurors in mock trials.
The Bar Council	Speak up for other – a career as a barrister	All schools in England and Wales with students in year 11 up to university are invited to have a barrister come in and give a talk, around 500 schools a year take up this opportunity
The Bar Council	Careers Day	Events are held in London, Leeds, Cardiff and Birmingham. These events include a slot on applying for a Degree in Law, how to complete a strong application and what the degree involves.

AR	Initiative	Summary
The Bar Council	The Social Mobility Foundation	A placement scheme of one week is run to help individuals to understand the requirements of working in the Bar.
The Bar Council	Links with Bristol Law Society and local chambers	Leeds university has been connected with ten barristers who will participate in the careers events run throughout the year.
The Bar Council	Annual essay competition	An annual essay competition for law undergraduates, CPE, BPTC students and pupils. Prize money is around £9,000
The Bar Council	The Pupillage Portal	The Bar Council states that all vacancies for Pupillage must be advertised on the Pupillage Portal, ensuring that all pupillages are advertised in one area.
The Bar Standards Board	Aptitude Test	The BSB is currently piloting an aptitude test to assess students for suitability for the BPTC to decrease the large number of students undertaking the BPTC and not gaining a pupillage after.
The Bar Standards Board	The Recruitment Toolkit	The BSB is developing a Recruitment Toolkit for chambers which will provide guidance on fair recruitment processes. It is intended that the toolkit will be published in 2011 and will be free to download from the BSB's website
The Junior Lawyers Division (JLD), The Law Society	Network event	The JLD has recently organised a network event for members seeking a training contract in Manchester, to be held later elsewhere, providing contacts, guidance and alternative routes to becoming a solicitor.
The Law Society	Today's Children; Tomorrow's Lawyers	Run by the Black Lawyers Directory, supported by the Law Society. Around 1,000 ethnic minority and disadvantaged children in Leeds, Birmingham, Manchester and London are provided online information, attend events and visit law firms
The Law Society	Mock Trials	Children from schools with a high proportion of ethnic minority students are invited to acquire a taste for the legal profession, with the help of established ethnic minority lawyers
The Law Society	Pathways to Law	Run by the Sutton Trust and the College of Law. 300 places awarded on a two year programme during years 12 and 13. Students take part in lectures,

AR	Initiative	Summary
		debates, mock trials, careers coaching and university guidance.
The Law Society	Publication in The Voice Magazine	A recent article targeted at 14-21 year old ethnic minority students
The Law Society	Careers events at universities	In collaboration with the Black Solicitors Network, the Association of Muslim Lawyers, Society of Asian Lawyers and the Lawyers with Disability Division, held an event in London in October 2010, open to first and second year undergraduates.
The Law Society	Diversity Access Scheme	Universities are approached by the Law Society to offer free places on the LPC to successful applicants, who are also offered a mentor and work placement. Successful applicants must demonstrate that they are in financial hardship and have exhausted all other means of funding.
The Law Society	Bursaries	Around 25 bursaries are awarded to students completing the LPC. Students must demonstrate that they have explored other possibilities and are experiencing "extreme adversity".
The Law Society, the Bar Council and ILEX	Inspiring Futures	Careers events on the necessary ability, requirements and benefits of entering the profession, with around 60 to 100 state school children attending these events
The Notary Society	Open Day	The Society runs an open day in London every year, attended by representatives from the Faculty Office, Cambridge University and the profession, to inform around 70 delegates about the profession and how to become a notary.
The Solicitors Regulation Authority	Piloting of the work-based learning scheme	Individuals who are already working in a law firm and who have completed the LPC, but are not qualified, will be able to qualify through a period of structured learning.

Annex C: Model Questionnaire

What is the purpose of collecting this data?

The main purpose of collecting this data is:

- To gather an evidence base about the composition of the legal sector workforce across a wide range of diversity indicators, to enable regulators to make informed decisions about action to increase diversity in the legal workforce;
- To achieve transparency about workforce diversity at the level of individual firms or chambers.

Why is this important?

The legal profession and wider legal services workforce should reflect the society it serves. To achieve a profession which is truly representative at all levels requires regulators and the profession itself to identify barriers to entry and progression and begin to break them down. By doing this, we will ensure the legal workforce is open to the widest possible pool of talent.

The Legal Services Act 2007 includes a specific regulatory objective to “encourage a strong, independent, diverse and effective legal profession”. The Equality Act 2010 also puts approved regulators under a duty to advance equality of opportunity between different groups.

How does is this questionnaire structured and do I need to answer each question?

This questionnaire is structured by asking a series of questions based on the list of indicators below. The collection of data on these indicators is intended to fill the gap in the existing information available about the diversity of the legal workforce. The questions cover:

- job status and role
- age;
- sex;
- gender reassignment;
- disability;
- ethnic group;
- religion;
- sexual identity;
- socio-economic background;
- caring responsibilities.

While we encourage all participants to answer each question, this survey is voluntary for you to complete. Each question includes the option of indicating ‘Prefer not to say’ if you do not feel comfortable answering any question.

How will data protection and anonymity be ensured?

You are asked to provide this data anonymously. By completing the questionnaire, you consent to the use of this data for the purposes of providing published summary data about the characteristics of the workforce in your organisation (firm, chambers etc). Your anonymous responses will also be reported to professional regulators to enable analysis be carried out on trends in the legal services workforce.

The summary at the level of your organisation (firm, chambers etc) may include a breakdown of responses against each diversity indicator by Job status and role, but will not include any analysis that links responses against different diversity characteristics. For example, the analysis may indicate that there are 10 female partners and 10 Christian associates, but will not say that there are 5 female partners who are Christian, 3 of whom are gay or lesbian and 2 of whom consider themselves disabled.

Provision of data is voluntary, and it is up to you to decide whether you wish to disclose it.

How will the data be interpreted & what baseline will be used for comparison?

The data will be published by your organisation on their website. This will encourage your organisation to think about what action is appropriate to try to increase diversity within your workforce. It will enable corporate and individual consumers to take account of your organisation's performance in relation to diversity when deciding whether to select you as a service provider. The information will then be aggregated by the approved regulator on their relevant branch of the profession and supplied to the Legal Services Board to form a baseline of the legal workforce.

What changes to approved regulators equality work could happen as a result of collecting this information?

This information will help professional regulators to understand the profile of the existing workforce and identify particular areas that require further exploration and action (for example barriers to progression for individuals with particular characteristics). The aggregate data will also enable professional regulators to measure the impact of changes to the regulatory structure (such as the impact of Alternative Business Structures), as it will enable changes in the diversity profile of the workforce to be identified.

The questionnaire will start on the following page

Questionnaire

Please answer each question in turn by choosing one option only - with the exception of question 6 on disability as you may choose as many options that apply to you. If you do not wish to answer the question please choose the option 'Prefer not to say' rather than leaving the question blank.

1. Status

(a) If you are an authorised person⁵³ for the purposes of the Legal Services Act 2007 (i.e. you hold a practising certificate issued by one of the approved regulators), please indicate your status-

Barrister	
Solicitor	
Legal Executive (Fellow)	
Licensed Conveyancer	
Patent Attorney	
Trade Mark Attorney	
Cost Lawyer	
Notary	
Prefer not to say	

(b) If you do not fall into any of the categories listed above, please indicate whether you fulfil:

Any other fee earning role	
Any role directly supporting a fee earner (e.g. legal secretary, administrator, barristers clerk, practice manager, legal assistant, paralegal)	
A managerial role (e.g. Director/non-lawyer Partner/Chief Executive/Practice Director or similar)	
An IT/HR/other corporate services role	
Prefer not to say	

⁵³ The [Legal Services Act 2007](#), Part 3, Section 18 1) For the purposes of this Act "authorised person", in relation to an activity ("the relevant activity") which is a reserved legal activity, means - (a) a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity (other than by virtue of a licence under Part 5), or (b) a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity.

2. Job role

(a) Do you have a share in the ownership of your organisation?

Yes	
No	
Prefer not to say	

(b) Do you have responsibility for supervising or managing the work of other regulated individuals or employees?

Yes	
No	
Prefer not to say	

(c) Do you have significant responsibility for decision making in relation to your organisation's business (including in securing new business) which, in a barristers chambers we consider to mean being a member of a chambers management committee or equivalent?

Yes	
No	
Prefer not to say	

(d) Do you work independently with only occasional reference to a supervisor (if applicable) or frequently consult your supervisor in relation to your work?

Work independently	
Frequently consult	
Prefer not to say	

3. Age

- (a) From the list of age bands below, please indicate the category that includes your current age in years:

16 - 24	
25 - 34	
35 - 44	
45 - 54	
55 - 64	
65+	
Prefer not to say	

4. Sex

- (a) What is your sex?

Male	
Female	
Prefer not to say	

5. Gender reassignment

- (a) Is your gender identity the same gender you were originally assigned at birth?

Yes	
No	
Prefer not to say	

- (b) Please provide any further information about your gender identity if you wish:
-

6. Disability

The main purpose of the Equality Act 2010 (EA) is to streamline and strengthen anti-discrimination legislation in Great Britain. It provides the legal framework that protects people, including disabled people, from discrimination. It replaces a range of anti-discrimination legislation, including the Disability Discrimination Act 1995 (DDA) and subsequent amendments. The EA generally defines a disabled person as someone who has a mental or physical impairment that has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities.

- (a) Do you consider yourself to have a disability according to the terms given in the EA?

Yes	
No	
Prefer not to say	

- (b) If you have answered yes, please indicate the type of impairment which applies to you (by ticking next to it below).

People may experience more than one type of impairment, in which case tick all the types that apply. If your disability does not fit any of these types, please mark 'Other'.

Physical impairment, such as difficulty using your arms or mobility issues which means using a wheelchair or crutches	
Sensory impairment, such as being blind / having a serious visual impairment or being deaf / having a serious hearing impairment	
Mental health condition, such as depression or schizophrenia	
Learning disability, (such as Down's syndrome or dyslexia) or cognitive impairment (such as autism or head-injury)	
Long-standing illness or health condition such as cancer, HIV, diabetes, chronic heart disease, or epilepsy	
Other/Prefer not to say, such as disfigurement (specify if you wish)	

7. Ethnic group

(a) What is your ethnic group?

Prefer not to say	
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Asian / Asian British

Bangladeshi	
Chinese	
Indian	
Pakistani	
Any other Asian background (write in)	

Black / African / Caribbean / Black British

African	
Caribbean	
Any other Black / Caribbean / Black British (write in)	

Mixed / multiple ethnic groups

White and Asian	
White and Black African	
White and Black Caribbean	
White and Chinese	
Any other Mixed / multiple ethnic background (write in)	

White

British / English / Welsh / Northern Irish / Scottish	
Irish	
Gypsy or Irish Traveller	
Any other White background (write in)	

Other ethnic group

Arab	
Any other ethnic group (write in)	

8. Religion

(a) What is your religion?

No religion	
Buddhist	
Christian (all denominations)	
Hindu	
Jewish	
Muslim	
Sikh	
Any other religion (write in)	
Prefer not to say	

9. Sexual identity

(a) Which of the following options best describes how you think of yourself?

Heterosexual or straight	
Gay or Lesbian	
Bisexual	
Other	
Prefer not to say	

10. Socio-economic background

- (a) Have either of your parents/carers completed a university degree course or equivalent e.g. BA, BSc or higher? (This includes degrees completed in the UK, overseas, and/or by distance learning).

One	
Both	
Neither	
Prefer not to say	

- (b) Did you mainly attend a state or fee paying school between the ages 11-18?

State	
Fee paying	
Prefer not to say	

- (c) If you attended a fee paying school, did you receive any kind of financial award to cover 50% or more of your school fees?

Yes	
No	
Prefer not to say	

11. Caring responsibilities

- (a) Do you have a child or children under the age of 18?

Yes	
No	
Prefer not to say	

- (b) Do you look after, or give any help or support to family members, friends, neighbours or others because of either:

- Long-term physical or mental ill-health / disability
- Problems related to old age?

(Do not count anything you do as part of your paid employment)

No	
Yes, 1 - 19 hours a week	
Yes, 20 - 49 hours a week	
Yes, 50 or more hours a week	
Prefer not to say	

Thank you for completing this questionnaire