

## **RESPONSE TO THE CALL FOR EVIDENCE ON THE JUDICIAL APPOINTMENTS PROCESS BY THE HOUSE OF LORDS SELECT COMMITTEE ON THE CONSTITUTION**

### Introduction

1. The Legal Services Board is the independent body responsible for overseeing the regulation of lawyers in England and Wales. Our goal is to reform and modernise the legal services market by putting the public and consumer interests at the heart of the system. The Board is independent of Government and of the legal profession. It oversees ten separate bodies, the Approved Regulators, which themselves regulate the circa 120,000 lawyers practising throughout the jurisdiction. The Board also oversees the Office for Legal Complaints, which runs the newly established Legal Ombudsman scheme.
2. Our clear focus is on delivering the eight regulatory objectives, set out in the Legal Services Act 2007. These are:
  - protecting and promoting the public interest
  - supporting the constitutional principle of the rule of law
  - improving access to justice
  - protecting and promoting the interests of consumers
  - promoting competition in the provision of services in the legal sector
  - encouraging an independent, strong, diverse and effective legal profession
  - increasing public understanding of citizen's legal rights and duties
  - promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality.
3. Given our statutory role as an independent regulator, we do not consider it appropriate to comment on the operation of the judicial appointments system generally. This submission focuses solely on the theme of increasing the diversity of the judiciary (question 7 in the call for evidence), where we consider there is an important and legitimate role for regulators to play in contributing to the achievement of a more diverse judiciary.

### The importance of a diverse legal profession

4. Both the legal profession and the judiciary should reflect the diversity of the society they serve. In July 2010 we published a document outlining in more detail what we consider the regulatory objectives mean in practice. In relation to 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 careers caused by regulation. We will promote equality and diversity through our regulatory framework and we expect approved regulators to do the same.”*

5. When considering diversity, we include the protected characteristics for the purposes of the new public sector equality duty under the Equality Act 2010:
  - age
  - disability
  - gender reassignment
  - pregnancy and maternity
  - race
  - religion or belief
  - sex
  - sexual orientation
6. We also consider social mobility to be a high priority, and an additional dimension of diversity. There is extensive research to suggest that socio-economic background acts as a barrier to entry and progression in the legal profession.
7. There is an important relationship between the diversity of the judiciary and the diversity of the pool of those eligible for appointment. The latter is related to the diversity of the legal profession at all levels. This was recognised by the Advisory Panel on Judicial Diversity, chaired by Baroness Neuberger, which 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.

### The evidence

8. We have 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*.<sup>1</sup>

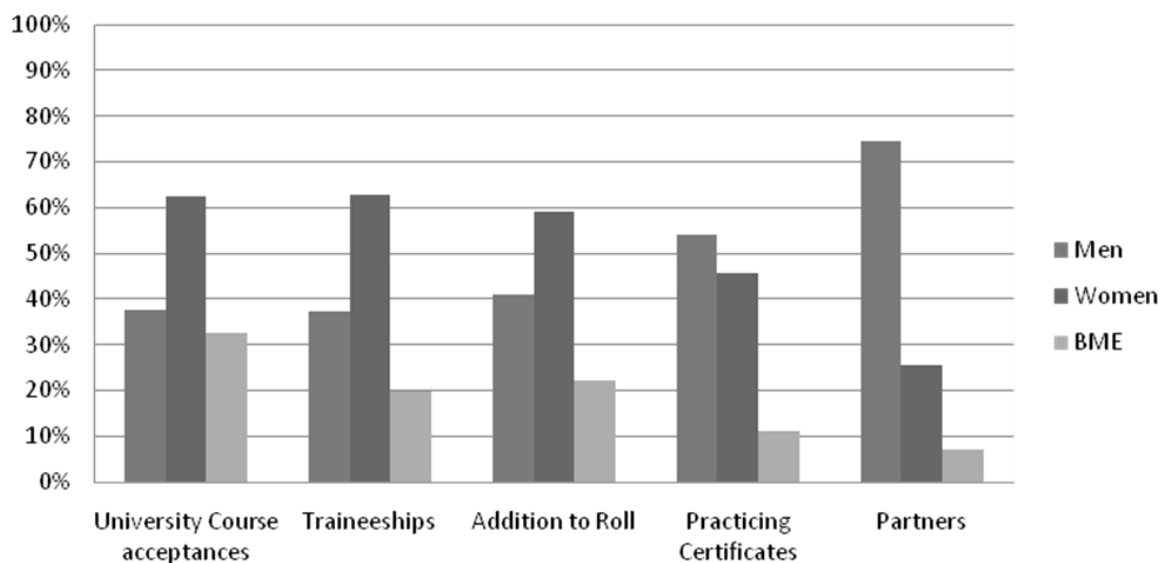
---

<sup>1</sup> Available on the Legal Services Board website:  
[http://www.legalservicesboard.org.uk/what\\_we\\_do/Research/Publications/pdf/Board\\_diversity\\_in\\_the\\_legal\\_profession\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/Board_diversity_in_the_legal_profession_final.pdf)

9. 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.

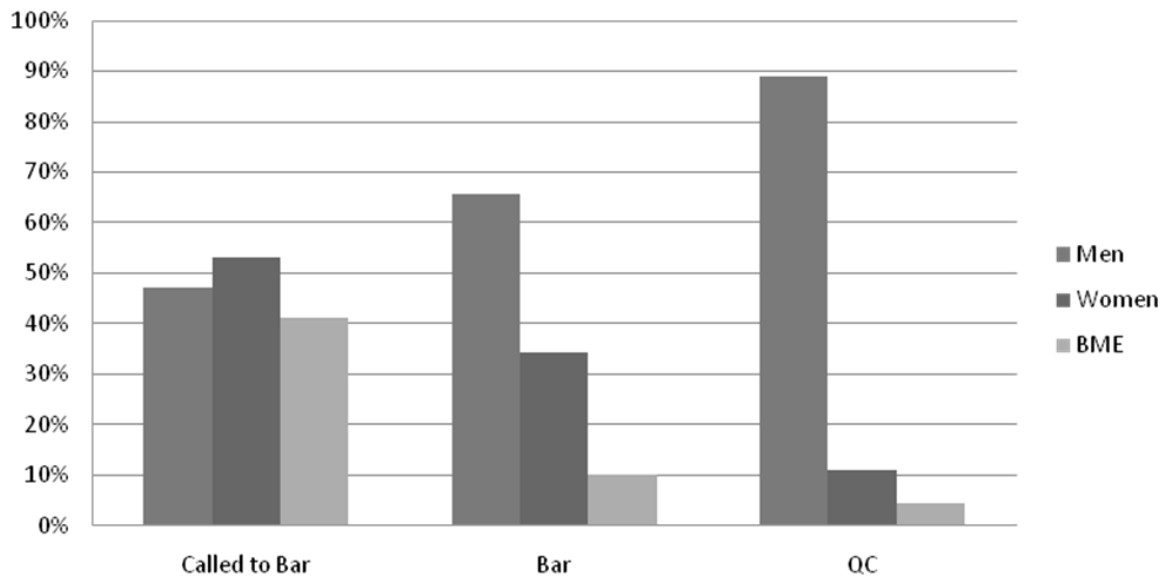
10. There is reasonably comprehensive aggregate data about the gender and ethnicity profiles of the solicitors and barristers professions. This suggests that significant progress has been made with increasing the diversity profile of new entrants to the profession. However, it is much less clear that progress is being made on retention and progression. The charts below summarise the latest data, and illustrate the relative lack of diversity at the more senior levels of the profession.

**Trends in the solicitors' profession 2010**



Source: The Law Society (2011) Trends in the solicitors' profession: annual statistical report 2010

## The diversity of the Bar 2010



Source: Bar Council (2011) Bar Barometer: Trends in the Profile of the Bar

11. 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, pregnancy and maternity, gender reassignment and socio-economic background. Our preliminary assessment of past data and existing research studies shows that the picture has been reasonably stable over several years. While there has been some trickle up effect this is not occurring at a pace commensurate with the increased diversity on entry to the profession<sup>2</sup>. An early priority is therefore establishing a more comprehensive evidence base to inform policy interventions.

### What we are doing to increase diversity and social mobility in the legal workforce

12. While we recognise the significant efforts being made by the professional bodies to encourage greater diversity and social mobility in the legal workforce, we also consider that regulators have an important role to play in driving action. Voluntary action by interest groups and providers can be effective, but regulation can help ensure that the onus is put on individual firms and chambers to take action. This action could be about removing structural or cultural barriers for particular groups, encouraging applications from particular groups, or putting in place specific schemes to support particular groups of staff and develop their potential.

13. We do not suggest that the principle of appointment on merit should be compromised, either within the legal profession or the judiciary. However, it may be necessary for those recruiting and promoting individuals to be more

---

<sup>2</sup> For example see "Old Boys' Networks, Family Connections and the English Legal Profession", Blackwell, M, 2011

conscious of possible biases in how merit is defined and assessed and to recognise that different approaches can be equally effective.

14. We are challenging the approved regulators that we oversee to set high expectations of those who they regulate. We will act decisively where necessary if we believe that statutory duties are not being properly addressed.
15. The Board has established the following immediate priorities that it expects approved regulators to address during 2011/12 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).
16. 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. Greater transparency will act as a strong incentive on firms and chambers to prioritise work to encourage diversity and social mobility. It is not the whole answer to the diversity challenge, but it will establish a strong foundation for future policy interventions, which should be targeted based on the available evidence. We expect to publish further details in the course of July and will share these with the Committee.
17. In addition to the work we are doing specifically on the diversity of the legal workforce, we are also seeking to embed the principles of equality and diversity across the legal services regulatory framework. For example, we are working with our Approved Regulators to open up more entry routes into the profession, including non-graduate routes, which will help open the profession to the widest possible pool of talent. We are involved with the work to respond to the report of the Panel on Fair Access to the Professions.

## Conclusion

18. We strongly support the principle that diversity is a legitimate factor to bear in mind as part of the appointments process.
19. We are currently working to strengthen our links with the Judicial Appointments Commission, to identify how regulators can contribute more effectively to making progress on increasing diversity alongside the work

being done by professional bodies and representative groups. Our proposals for gathering a more comprehensive evidence base and promoting transparency by individual firms and chambers are the first step in this process.

Chris Kenny  
Chief Executive

29 June 2011