

The current state of legal diversity - regulator performance, collaboration and stakeholder accountability

Westminster Legal Policy Forum: Next steps for improving diversity and inclusion
in the legal sector

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Introduction: the current state of legal diversity

1. Thank you for inviting me to speak here today
2. As many of you will know, the Legal Services Act 2007 sets out eight regulatory objectives for both the LSB and the frontline regulators of legal services:
 - a. Protecting and promoting the public interest
 - b. Supporting the constitutional principle of the rule of law
 - c. Improving access to justice
 - d. Protecting and promoting the interests of consumers
 - e. Promoting competition
 - f. Encouraging an independent, strong, diverse and effective legal profession
 - g. Increasing public understanding of the citizen's legal rights and duties
 - h. Promoting and adhering to the professional principles.
3. Despite the obvious overlap, there are sometimes tensions between these regulatory objectives. There is no hierarchy of importance under the Act. We seek to achieve a balance, ensuring proper consideration of all these factors when undertaking our work.
4. But our responsibility in regards to diversity is clear: we have a duty to encourage an independent, strong, diverse and effective legal profession.
5. As many of you will be aware, regulation of the legal profession in England and Wales is administered through a complex number of bodies. The Legal Services Board has oversight

responsibility; independent of the legal profession and of government.

6. But one advantage of this structure is that our oversight role enables us to gain insights into developments and challenges which impact across the entire legal profession.
7. First, a word on semantics. Because language is important. BAME is a term often used by politicians and the media to discuss black, Asian and ethnic minority people. But does anyone actually refer to themselves as BME or BAME? Some people prefer to talk in terms of race and ethnicity. Others are comfortable with the word black or black British or British/Indian. The Parker report refers to people “of colour” in the context of challenging the largest listed companies to improve diversity on corporate boards. There are similar challenges in relation to terms used in relation to sexual orientation, gender identity and transgender. In using the term BAME today, I am mindful of its shortcomings, but I use the term to enable us to engage in this important discussion.
8. Second, the importance of data. Data is powerful. Data gathering has provided invaluable insights into the diversity profile.
9. But data is not an end in itself. We’ll hear today from Jane Malcolm at the SRA, Helen Whiteman at Cilex and Amit Popat at the BSB on what regulators are doing as a result of data results. How has regulatory policy been developed and influenced? And, importantly, can we see the impact on any systemic problems in the sector?
10. So how is the sector doing when it comes to diversity? Progress is being made: overall the legal services sector is becoming more diverse.
11. More than 50% of all practising solicitors are women; whilst black, Asian and minority ethnic (BAME) lawyers now account for 21% of lawyers working in law firms (SRA data for 2017). That compares favourably to the UK generally, where women make up 47% of the workforce; and BAME people make up 11% of the workforce.
12. Further up the career ladder, a cursory glance at the statistics provides a seemingly positive insight: black, Asian and ethnic minority solicitors are represented at partnership levels commensurate with the numbers entering the profession. As I’ve said: 21% of solicitors are BAME; and we see 20% BAME partners.
13. But the reality behind the statistics is more complex. The SRA has told us that BAME partners are far more likely to be sole practitioners or to work in small firms [more than a third (34%) of partners in sole practice come from a BAME background]. The largest firms (50 plus partners) have the lowest proportion of BAME partners – only 8% (and this has risen by only 1% since 2014). Further,

there are significant differences if you break down the figures: the proportion of Asian lawyers in law firms is 14% compared to 6% of the UK workforce (Asian lawyers make up two thirds of all BAME lawyers)

14. The SRA data also shows that solicitors with a disability are reflected at partnership in line with the percentage entering the profession; but here the issue is that the numbers entering the profession underrepresent the proportion of society with those characteristics. Only 3% of solicitors describe themselves as disabled, which is significantly lower than the Government's estimate of 10% for the wider UK workforce. Underreporting of disability is a big issue. Mental health and well being is a topical issue; the Law Society's junior lawyers' division has some pretty shocking findings in this regard – available on TLS website.
15. The FT reported recently (25 May) that GCHQ is actively seeking neurodiverse individuals to improve problem solving and innovative thinking; the legal profession is also waking up to the potential of individuals with aspergers, dyspraxia, dyslexia and on the autism spectrum (a recent event at the Law Society in mental health awareness week highlighted the work already being done in this space to recognise the contribution such individuals can make).
16. Only in relation to gender do we see a massive gap between the number entering the solicitor profession, and the number making it through to partnership. Women make up 59% of non-partner solicitor community but only a third at partnership level – (and the picture is even worse in the largest firms, where female representation in partnership falls to 29% for firms of 50 or more partners). This is not simply the impact of motherhood nor a matter of waiting for bright female solicitors to progress; the Law Society research identifies a more systemic issue, which we'll hear more about later on today from Christina Blacklaws.
17. At the Bar the gender imbalance is similar – around 37% of those called to the bar in 2018 were women, while the percentage of QCs who were women was 19%. NB provision of data is gathered using the BSB's online portal but provision of the data is voluntary – no obligation to disclose. In a number of instances there are numbers preferring not to answer.
18. The representation of BAME people at entry level at the self-employed bar was 13¹% in 2018, while 8% of self-employed QCs were BAME.
19. Interestingly, if you look at chartered legal executives, a staggering 76.8% of that profession are women, and BAME representation in that profession is largely in line with the wider workforce.

¹¹ Statistics from bar standards board website
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20. And there is some good news in relation to solicitors too! The SRA data can also track social mobility and it shows that a majority of solicitors overall were educated at state school, and the law is attracting high numbers of those who are first in their family to attend university, and these first in the family people are making it through to partnership in disproportionately higher numbers.
21. There's still a long way to go and it's clear more needs to be done to encourage greater representation of certain groups at entry level, and to ensure that - whether at partner level or among the ranks of the judiciary - the top tiers of the professions continue to reflect the improvements that can be seen in the wider profession.

So why is diversity important?

22. The LSB's vision is for legal services that everyone can access and trust.
23. Last year we outlined our strategic priorities for 2018-2021. Our work on diversity is at the core of our objective to increase innovation, growth and the diversity of services and providers.
24. A key part of this has been our revised guidance for regulators, in which we introduced four new outcomes which we assess the frontline regulators performance against.
25. In our LSB 2019 business plan we set out our new five-year policy objectives relating to:
- a. ongoing competence,
 - b. public legal education and
 - c. technology.

We are very interested in how technology is impacting on the delivery of legal services and what this means for consumers (and for the diversity of legal services providers and increased innovation and competition in the legal services market); and how regulation can ensure sufficient protection for consumers when things go wrong.

26. In relation to PLE, we plan to map the PLE landscape and engage with possible partners to explore how the LSB can help improve access to justice by building legal capability.
27. For many people, the first step is understanding that they have a legal problem. There is a huge amount of publicly available information on legal rights, including on government websites. But the volume and complexity of information can be daunting.
28. Many individuals (including well-educated and well-off individuals) are vulnerable at the point of accessing legal services. It is often a distress purchase. Events which require legal advice such as:

- a. divorce,
 - b. probate on death of a family member,
 - c. confusion about immigration status,
- are also times of high emotional, and often financial stress.

29. Consider then the increased vulnerability of those who are:

- a. critically ill,
- b. elderly,
- c. less well-educated and
- d. less well-off,

Or those facing more serious threats of homelessness, domestic violence, the withdrawal of benefits needed to care for a disabled child or the possibility of deportation.

30. As important as diversity is for those in the profession, it is equally important that those using legal services see a profession that represents society. As consumers, we don't just need legal information, but access to good quality legal advice from a profession that is reflective of the society it serves.

31. The Legal Services Consumer Panel echoes this sentiment, too: part of their vision is for consumers to receive legal advice from a diverse workforce which is more reflective of society as this will better serve consumers.

32. When I spoke at this conference last year, I touched on the Lammy Review into the treatment of BAME individuals in the criminal justice system. The Review highlighted that trust in the criminal justice system is low.

33. Part of the problem is the lack of diversity in the criminal justice system. One of the findings that particularly struck me is that many BAME defendants do not trust the advice given to them by their own solicitors – a 'them and us' culture exists which can result in missed opportunities to have their sentences reduced by up to a third.

34. The Law Society has long highlighted concerns that solicitors are being driven away from criminal defence work as a result of LASPO reforms. [And this impacts on diversity: SRA data shows that firms mainly doing criminal work have a higher proportion of BAME lawyers (33%); meanwhile firms

doing mainly corporate work have 19% BAME lawyers.

35. There is also a concern that unconscious bias, or even racism, are impacting outcomes for certain parts of society in other instances of interaction with mental health tribunals, including reliance on psychiatrist reports. On 14 May, I heard Umar Kankiya, senior associate and head of mental health at Sternberg Reed speaking at the law society. He talked about evidence that showed disparate outcomes for young black men who are ten times more likely to be diagnosed with psychotic disorders and four times more likely to be sectioned under the Mental Health Act².

36. This is why diversity matters so much. It is one of our eight regulatory objectives but critical to achieving the others.

37. *Access to justice, the public interest and the consumer interest are best served by a diverse legal profession that reflects the users of legal services and understands their needs.*

Regulator performance:

38. Moving on to consider regulator performance. Our role is to support and challenge the regulators to do more to address these issues?

39. In our own work and in conversations with other organisations working to improve diversity, it's clear that data and evidence is crucial. We won't be able to address the problem if we don't have evidence of where the issues lie.

40. That's why our diversity outcomes for the regulators are based on collecting data, and using it to inform development of regulatory activities, facilitate collaboration with other organisations and using it as a tool for stakeholder accountability.

41. I'm pleased to say that, overall, the frontline regulators have made positive progress against the four outcomes we set, and going forward we will continue to monitor their efforts as part of our core performance assessment framework.

Collaboration:

42. One of the things we were keen to stress in our report was the importance of collaboration in addressing diversity issues. Later this morning, you'll hear from the SRA, BSB and CILEx Regulation about some of the diversity initiatives they are undertaking. Diversity is an area where

² Need more community led care, better inpatient units and new rights for those detained to challenge the treatment they are given

the regulators collaborate through the Regulatory Group. We'll also hear about the role of Legal Choices and the SRA's regulatory reform programme about broadening access to justice.

43. In our report, we were particularly positive about the performance of the SRA against our outcomes and indeed, if you're interested – I highly recommend a visit to their website to see their diversity toolkit.
44. It's a great interactive tool which allows you to input various protected characteristics such as age, gender, sexual orientation, disability, race and ethnicity, and see how the proportion of solicitors with those characteristic differs at partner level from the proportion in the solicitor community as a whole. In fact, many of the statistics I read out earlier were taken from that page.
45. We welcome the SRA's diversity work with regard to BAME and female solicitors in senior leadership. They have encouraged and highlighted what better representation of female and BAME solicitors means. This includes putting in place fair recruitment and promotion policies or more of these solicitors in senior leadership positions.
46. The Bar Standards Board also has extensive data on its website, presented in clear bar charts and broken down into self-employed practitioners, sole practitioners, dual capacity practitioners and employed practitioners; and also by reference to under 5 years call, 15+ years of call and QC.
47. It is our hope that regulators of all sizes can capitalise on the good work being done in the sector, and share best practice, data and information on diversity so as to make sure that no legal professionals or consumer is not able to benefit from progress that is made.
48. This isn't just limited to regulators – there are many areas where firms and organisations working together on diversity should facilitate great improvements.
49. I'm sure Dame Laura Cox will speak about this in more detail, but I wanted to mention some of the work LSB has been involved with as a supporting member of the Judicial Diversity Forum.
50. Many of you will have seen that the Pre-Application Judicial Education (PAJE) programme launched in April 2019. It supports talented lawyers from underrepresented groups to feel more equipped, confident and prepared when considering applying for a future judicial role.
51. This is the first joint initiative of the Judicial Diversity Forum, which is made up of the Judiciary, Ministry of Justice (MoJ), Judicial Appointments Commission (JAC), The Bar Council, The Law Society of England and Wales and the Chartered Institute of Legal Executives (CILEx). The LSB is

a supporting member and I have attended the Forum meetings this year on behalf of the LSB.

52. Forum members are committed to delivering actions that attract applicants for judicial roles from all backgrounds to achieve a more diverse judiciary.
53. PAJE offers participants from all legal backgrounds the opportunity to develop their understanding of the role and skills required of a judge, through a series of digital resources including 10 short engaging online videos and four podcasts, developed by the Judicial College, which show judges talking about their work and the Judiciary.
54. These digital resources cover a number of topics such as judge-craft, decision-making, judicial ethics, resilience and equality and diversity. They are available to everyone to view on an unlimited basis on the UK Judiciary YouTube page.
55. Encouraging applicants from underrepresented groups is very important. It is very exciting to see the launch of this initiative which has been planned over last two years and which is a great example of collaboration across the representative bodies, the MoJ and the Judiciary to tackle a systemic problem, and one which I hope is just the first of its type.

Stakeholder accountability

56. Finally, I've been asked to say a few words about stakeholder accountability. Through events like this and through our disclosures on our websites, we strive for transparency and accountability.
57. Everyone has a part to play: As regulators we can't deal with all of the issues ourselves. We celebrate the work of the professional bodies, the MoJ, the Judicial Diversity Forum and many other stakeholders.
58. There are so many organisations working to improve the diversity of the profession. Three women working in the field of law firm innovation have recently launched a new network– She Breaks the Law – to support female leaders who are breaking the mould and delivering legal services differently.
59. To mark International Women's Day, the Law Society published 39 recommendations to help legal businesses deliver equality for women in the law. These formed part of the latest report in the Women in Leadership in Law project, which has involved research with 12,000 legal professionals worldwide.

60. Research suggests that unconscious bias is the greatest barrier to career progression for women solicitors. Where they live is also a factor – London has the lowest proportion of female partners. The culmination of the project will be an international symposium on the power of gender equality to transform the business of law in June in London, which I am very much looking forward to attending.
61. Diversity is key to improving access to justice and addressing unmet legal need, particularly of the most vulnerable parts of society. Regulators and professional bodies are working together to make the legal profession more reflective of society. A big part of this is treating everyone with dignity and respect, so bright people are attracted to a career in the law, the culture within law society enables good people to progress to the senior levels on merit; and the public interest is served by a strong, diverse and effective legal profession which enhances respect for the rule of law, improves access to justice and better serves consumers.