

Meeting: Legal Services Board

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Item: Paper (23) 41

Title: Establishing board appetite for intervention on EDI

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Status: Official

Introduction: Purpose of the paper

1. The LSB has been building momentum in our efforts to encourage an independent, strong, diverse and effective legal profession. As Board is aware, we are working towards a statutory policy statement with a view to increasing the pace of progress, which remains slow in many areas. As we develop options, we are seeking a steer from Board as to the degree of intervention it is content to contemplate. This is driven by an emerging conclusion that real change will only occur with fundamental challenge to existing structures and models.
2. Recognising the appetite expressed by the Board for thematic generative discussions, we invite the Board to consider the following question to determine the strategic direction of this work:
 - What is the Board's appetite for interventions that may challenge and even disrupt the status quo of the practices, processes and cultures that limit progress towards a diverse profession?
3. The Executive will use this steer to set the breadth of its policy development work, returning to Board later in the year for further engagement on options.

Recommendation(s)

4. The Board is invited to **discuss** their views and experience on the direction that the LSB should take.

Timing

5. We propose to return to Board in autumn with a sighting paper on the statement of policy and publish the consultation in December 2023.

Background

6. Dismantling the barriers to a diverse and inclusive legal profession at all levels is one of the nine challenges identified in our Reshaping Legal Services strategy.¹
7. Since 2019 we have strengthened our approach considerably. For example, we have:
 - a. Put EDI at the heart of our performance assessment system
 - b. Strengthened significantly our expectations around data collection, monitoring and evaluation
 - c. Issued a joint statement with the regulators and main tribunals as to the importance of disciplinary sanctions in tackling counter-inclusive activity (eg sexual misconduct etc)
 - d. Made a significant contribution to the Judicial Diversity Forum in terms of its strategic direction
 - e. Commissioned and carried out research into the impact of regulation, and on the lived experiences of legal professionals.
8. More recently, our October 2022 conference reinforced the scale of this challenge while highlighting useful case studies about effective change, such as the work of Thursfield Legal Limited to eliminate their gender pay gap. We further engaged the sector on turning evidence into action to tackle EDI challenges at our June research event in collaboration with Clifford Chance, presenting the findings of our study on the lived experiences of legal professionals: Barriers to getting in, being in and getting on.²
9. In April-May this year, we received responses from all regulatory bodies to an EDI Questionnaire, which sought details on regulators' EDI strategies, data collection and monitoring, regulatory activities and evaluation. Subsequently, we held an internal policy development workshop at the June away day to inform the development of our statutory statement of policy. Some emerging findings from our analysis of questionnaire responses are included in Annex A.
10. Finally, the Executive has refreshed its understanding of the public sector equality duty (PSED) in a recent workshop. The PSED requires us to have due regard to the need to:
 - a) Eliminate unlawful discrimination, harassment and victimisation.
 - b) Advance equality of opportunity between people who share protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation).

¹ <https://legalservicesboard.org.uk/our-work/reshaping-legal-services-a-sector-wide-strategy>.

² <https://reshapinglegalservices.org.uk/2023/05/15/from-evidence-to-action-tackling-the-edi-challenges-in-the-legal-services-sector/>; <https://legalservicesboard.org.uk/wp-content/uploads/2023/05/The-lived-experiences-of-legal-professionals.pdf>.

- c) Foster good relations between people who share a protected characteristic and those who do not.

While we already take account of the PSED in carrying out our statutory functions, we consider there is opportunity to remind regulators of the extent of the duty and its importance to their EDI work.

LSB evidence and insights

11. However, our research and engagement activity is suggesting that there is scope – and perhaps a necessity – for regulatory interventions to address more directly some of the structural challenges in the sector.
12. For example, our “lived experience” research with legal professionals highlighted a range of cultures and practices in the sector that are likely to be contributing to exclusion. They included the impact of the “billable hour”, the impact of long hours cultures and a failure to engage sufficiently with reasonable adjustments.
13. The Bridge Group literature review³ for the LSB highlighted a general absence of regulatory interventions to improve EDI in the sector (although since we published the report there have been important developments including the SRA’s interventions on workplace fairness). The Bridge Group also highlighted the importance of regulators evaluating the impact of their EDI initiatives and utilising a Theory of Change methodology – a specific and measurable description of the change we want to achieve. Through our existing diversity guidance, we have sought to encourage regulators to adopt a robust approach to evaluation. However, we received limited evidence of these impacts in the responses to our recent EDI Questionnaire.
14. The Bridge Group summarised a spectrum of hard and soft interventions we could make – presented here for illustrative purposes - on the final two pages of the Annex to this paper – ranging from continuing to use our convening powers and influence to encourage regulators to enhance the pace of change, to using hard regulatory levers such as our to mandate collection of a centralised and comparable data set from each regulator.
15. Dr Louise Ashley’s recent session with the Board highlighted how, despite public commitments to EDI, current initiatives in the City of London may in fact perpetuate inequality by continuing to favour those from privileged backgrounds (in terms of family, status, class and gender etc).⁴ Her central premise is that in order to effect real change there will inevitably be winners and losers and the exclusivity and status afforded to the decision-makers would need to be ceded.
16. On behalf of the Judicial Diversity Forum, we also commissioned the Bridge Group to review the evaluation practices of the JDF partners and to propose a

³ <https://legalservicesboard.org.uk/wp-content/uploads/2021/05/Bridge-Group-Legal-Regulation-Literature-Review.pdf>.

⁴ [Class and the City of London: my decade of research shows why elitism is endemic and top firms don't really care \(theconversation.com\)](https://www.theconversation.com/class-and-the-city-of-london-my-decade-of-research-shows-why-elitism-is-endemic-and-top-firms-dont-really-care).

new design and evaluation framework for the JDF's diversity and inclusion initiatives, which included adopting a theory of change methodology.⁵ The Bridge Group identified nine high-level goals for the JDF to monitor and evaluate progress against which can be applied to different stages of the talent pipeline, and recommended agreeing targets for inputs and impact to promote a shared understanding of the purpose of JDF members' activities.

17. To establish a clear vision for the sector, our analysis will consider:

- The current balance between interventions which seek to improve outcomes for individuals from under-represented groups – such as a cohort of a talent advancement programme – versus those which tackle systemic barriers to entry and progression that disproportionately impact those from particular groups.
- The extent to which the Theory of Change has become embedded in regulators practices and whether the LSB can make better use of its information gathering powers to request specific and relevant information regarding the aims and outcomes of existing interventions.
- Whether a roadmap to a truly diverse profession requires quotas or hard targets to increase the representation and/or experience of currently under-represented groups, particularly at senior levels, with a range of shorter- and longer-term goals.

Data transparency

18. Understanding the current state of play and measuring the extent of progress across the profession is an important part of our oversight role. The LSB has taken steps to present a comprehensive picture of progress via our diversity data dashboards and is working as a member of the Judicial Diversity Forum to improve understanding of the diversity of the talent pipeline for the judiciary.⁶ However, there remain methodological differences between regulatory bodies in how they collect data (such as frequency of collection, inconsistency in recording sex and gender identity data).

19. There remain gaps in data collected on the representation of groups by seniority, and varying levels of depth on characteristics such as disability (beyond basic declaration), neurodivergence and socio-economic background. Marriage and civil partnership data is reported by two regulatory bodies while pregnancy and maternity data is reported by only one.

20. Intersectionality, considering the relationship between multiple characteristics that impact an individual's experience, is generally not focused upon within diversity monitoring. There may be limitations in achieving this due to small sample sizes in parts of the profession and concerns about the ability to identify individuals from returns.

⁵ https://legalservicesboard.org.uk/wp-content/uploads/2022/11/Bridge-Group-report_Strengthening-the-evaluation-of-JDF-partners-diversity-initiatives.pdf.

⁶ <https://legalservicesboard.org.uk/research/diversity-dashboard-0#dashboard>.

21. In preparing our statement of policy on EDI, our analysis of existing evidence will consider:

- The extent to which regulators are tackling barriers to improved transparency on progress by updating surveys and encouraging individuals to return their data.
- How much more can be achieved by updating our guidance to regulators on data collection and using the Legal Regulators EDI Forum to promote greater harmonisation and completeness of collection.
- The extent to which the LSB should utilise its information gathering powers to request information specifying relevant time periods and categories. There may also be a role for the LSB to collect and/or present data on intersectionality.

Enforcement

22. Collectively our duties under the Legal Services Act 2007 (to promote the regulatory objectives) and the Equality Act 2010 (PSED) require us to consider and work towards eliminating discrimination by dismantling barriers to a diverse and inclusive profession, promoting a zero-tolerance approach to processes, behaviours and cultures which counter these efforts. In this context, our analysis of existing evidence will consider:

- The extent to which regulators have set clear expectations for individuals and organisations and specified the resulting action should these standards not be met.
- The extent to which regulators mobilise their enforcement powers to follow up on concerns, including the evidence collected to inform this approach, the number of reports received and any resulting action.
- The extent to which the LSB mobilises its own enforcement powers to ensure regulators are taking reasonable and proportionate steps to meet the challenge of counter-inclusive practices.

Conclusion

23. To make an informed, evidence-led decision about the regulatory interventions we should choose to achieve the possible impact, we will invest time and resource over the coming months to work up a range of options for intervention. We seek a steer from Board as to the degree of ambition we should adopt in carrying out this preparatory work.

24. To this end, we want to understand:

- What is the Board's appetite for interventions that may challenge and even disrupt the status quo of the practices, processes and cultures that limit progress towards a diverse profession?

25. In considering these issues, we are conscious that the regulators have access to different levels of dedicated resource on EDI projects and that regulated communities may face specific challenges not seen elsewhere in the profession.

However, we consider that there are many shared challenges within the sector that require a robust, collaborative and ambitious approach to achieving change.

Next steps

26. Following a steer from Board on the nature and ambition of our statement of policy, we will scope and draft the statement in anticipation of returning to Board in autumn to update on our progress.

Risks and mitigations	
Financial:	N/A
Legal:	The programme aims to use the LSB's regulatory tools and influence to accelerate progress which may involve risks of legal challenge to any interventions proposed. However, the legal team remain engaged throughout to ensure that the objectives are delivered in accordance with and in fulfilment of our statutory remit and duties.
Communications and engagement:	N/A
Equality and diversity:	This programme is key to meeting our regulatory objective to encourage a diverse profession and to meet the challenge identified in our sector-wide Reshaping Legal Services strategy to dismantle barriers to a diverse and inclusion profession at all levels.
Resource:	N/A
Environmental:	N/A

Annexes

Annex A – Extracts of sources cited in Board appetite for action on EDI

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
NA	NA	N/A