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

Emerging findings – our analysis of regulators' EDI Questionnaire responses

EDI strategies	*Setting objectives*	• Some regulators have opted for a separate EDI strategy while others incorporated this into their core strategy. • Strategies do not always clearly define what the principles of equality, diversity or inclusion mean in practice. • Some highlighted the value of the EDI Regulators Forum in informing priorities.
	Governance	• EDI is generally a periodic agenda item for regulators' Boards. • Regulators demonstrated varying levels of oversight, from a designated EDI steering groups/task forces to only ad hoc discussions on progress. • It is not always clear how roles and responsibilities regarding EDI are structured. • Some mentioned the role of reviews and audits
	Comms	• Periodic newsletters, events and engagement with diversity groups tend to focus on raising awareness. • Strategies could better consider how to ensure the regulated community buys into EDI activities. • Regulators do not generally measure the impact of how they communicate their strategy.
Data collection and monitoring	*Types of data collected*	• Higher response rates are needed on socio-economic diversity and caring responsibilities. • Current approaches do not maximise potential for an intersectional analysis of barriers. • There is currently limited nuance in data on diversity by seniority to account for the range of senior roles across the profession. • Some regulators conduct thematic reviews on live concerns.
	Improving completeness	• Making data collection a compulsory part of renewal process leads to higher completion rates. • Some utilise comms campaigns to encourage responses, sometimes in collaboration with representative bodies. • It can take a long time for those with fewer resource to chase responses.

	How data informs activities	• There is a focus on using data to identify barriers to progress. • We noted a lack of investment in research on what effective interventions might look like – considering new, innovative approaches.
Regulatory activities and evaluation	*Regulatory activities*	• Some referenced enforcing professional standards/ rules in relation to EDI activities. • There is a continued focus on initiatives relating to gender and ethnicity with some going beyond this consider other characteristics, such as disability. • Increasing interest in social mobility due to City of London's Socioeconomic Diversity Taskforce.
	Evaluation methodology	• Equality impact assessments were highlighted by some in relation to evaluation. • Some evaluation methodologies are under development – with opportunity for us to influence this. • Overall, there was limited reference to theory of change in responses.
	Data on evaluation	• While some regulators have an extensive list of EDI activities, we received limited data on evaluation. • There are missed opportunities to identify specific, measurable outcome indicators to aid evaluation and improve transparency on progress.

Bridge Group – Legal regulation to promote diversity and inclusion: literature review[1]

Summary

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

[1] https://legalservicesboard.org.uk/wp-content/uploads/2021/05/Bridge-Group-Legal-Regulation-Literature-Review.pdf.

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

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

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

Reflections and recommendations

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

6. As noted, the limited success of diversity initiatives in driving change can be attributed to the sheer complexity of the problem. Changing organisational

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

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

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

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

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

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

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

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

Summary of diversity and inclusion interventions in the legal sector

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

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

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

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