

## Annex B – The case for regulatory intervention

### The case for regulatory intervention

1. The case for regulatory intervention is fundamentally based on a) the evidence we see on persistent gaps in diversity and continued prevalence of key systemic barriers to equality and diversity in the legal profession and b) deficiencies in regulators' practices to meet statutory obligations to encouraging equality and diversity in the profession.
2. The LSB has engaged extensively over the past number of years with key stakeholders from across the sector to understand more about the existing and emerging barriers to equality and diversity in the profession. We have also commissioned independent evidence building exercises to enhance our understanding of the barriers to equality and diversity and to explore potential solutions to tackling these barriers. Our evidence base comprises:
  - The LSB's Diversity Dashboard, which collects diversity data on regulated professionals in law (based on diversity reports published by the regulators we oversee and benchmarked against national general/working populations);<sup>[1]</sup>
  - An independent literature review to support the LSB in understanding the extent and limits of current regulatory interventions to promote diversity and inclusion across the legal services sector;<sup>[2]</sup>
  - LSB-led qualitative research with legal professionals from underrepresented groups into the nature and impact of counter-inclusive practices and ways to address them;<sup>[3]</sup>
  - An innovative LSB-led systems mapping tool that visualises the interactions of various systemic (structural, cultural and personal) barriers to encouraging equality and diversity in the legal profession;<sup>[4]</sup>
  - An LSB-led statistical study of the diversity of barristers, solicitors and chartered legal executives at different stages along their respective career path to joining the judiciary (on behalf of the Judicial Diversity Forum);<sup>[5]</sup>
  - Wider data and evidence on equality and diversity issues from regulators, representative bodies, professional interest organisations, civil society groups, and academics; and
  - Ongoing engagement and discussions with key partners and stakeholders within and beyond the legal services regulation sector.
3. Our analyses of evidence on barriers to equality and diversity in the profession have highlighted clear evidence of deep-rooted systemic barriers to equality and diversity in the profession, including:
  - Obscured and inaccessible pathways into the profession, including financial hurdles and elitist attitudes on the image of a typical legal professional;
  - Women, minoritised ethnic groups and disabled lawyers, in particular, remain underrepresented in the professions, particularly at senior and management levels;

- Bullying, harassment, discrimination and other forms of behavioural misconduct are particularly prevalent in parts of the legal profession and are experienced most often by the most marginalised groups in the profession (e.g., women, minoritised ethnic groups, and disabled lawyers); and
  - Lawyers' mental health and wellbeing are routinely compromised as a result of cultures of excessive working hours, high workloads, lack of autonomy, and input-based performance metrics widely used in the profession (e.g., billable hours) – again, these specific issues are often experienced most acutely by the most marginalised groups in the profession (e.g., minoritised ethnic lawyers).
4. In addition to the systemic barriers identified in the profession itself, we have also identified significant opportunities to improve regulators' approaches to encouraging equality and diversity in the profession.
  5. Since an independent review of regulatory efforts to advance this agenda in 2021,<sup>[6]</sup> efforts from regulators have increased. Data monitoring, the inclusion and promotion of relevant standards in professional duties, guidance, and research are the most common interventions pursued by regulators. However, not all regulators are taking a consistently strategic and proactive approach, and there is little evaluation work taking place across the regulators to demonstrate the impact of their interventions. The LSB is also aware that, in some cases, regulatory processes may be contributing to barriers to equality and wellbeing in the profession, particularly through disciplinary and enforcement processes.<sup>[7]</sup>
  6. The case for regulatory intervention is clear. The risks of doing nothing or not enough include: a profession that is not representative of the public that it serves and a profession that is characterised by inequitable, exclusionary and unhealthy practices. Failure to act could also leave regulators vulnerable to legal challenge for breach of relevant statutory duties. Acting effectively to respond to the ongoing issues in the profession will encourage an equal, diverse and inclusive profession that delivers more effectively for consumers and the wider public, and, critically, will maintain public trust and confidence in the profession and sector.

<sup>[1]</sup> <https://legalservicesboard.org.uk/research/diversity-dashboard-0>.

<sup>[2]</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/05/Bridge-Group-Legal-Regulation-Literature-Review.pdf>.

<sup>[3]</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/05/The-lived-experiences-of-legal-professionals.pdf>.

<sup>[4]</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2024/08/Mapping-Systemic-Barriers-to-EDI-in-the-Legal-Professions-Final-1.pdf> and <https://lsbedi.kumu.io/mapping-systemic-barriers-to-equality-diversity-and-inclusion-in-the-legal-professions>.

<sup>[5]</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2024/08/20240627-SQW-and-LSB-Profiling-the-diversity-of-the-judicial-pipeline-Final-report.pdf>.

<sup>[6]</sup> See the Bridge Group's review of legal regulators' efforts to encourage equality and diversity in the legal profession (2021): <https://legalservicesboard.org.uk/wp-content/uploads/2021/05/Bridge-Group-Legal-Regulation-Literature-Review.pdf>.

<sup>[7]</sup> See, for example, <https://www.sra.org.uk/sra/research-publications/overrepresentation-reports-sra/> and <https://www.barstandardsboard.org.uk/static/b7187653-eeee-4a8e-bc8ad70973c27b72/2150dd24-34ec-44bd-845b6b500bbb7a30/BSB-Regulatory-Action-Diversity-Analysis-2019-2024.pdf>.