

LSB consultation: Encouraging a diverse legal profession

A response by the City of London Law Society (CLLS)

Introduction

The CLLS represents City lawyers through individual and corporate membership, including some of the largest international law firms in the world. The CLLS represents over 22,000 solicitors who are members of the profession in the City of London. They represent 12% of all practising solicitors. The CLLS responds to a variety of consultations on issues of importance to its members through its specialist committees. This response has been prepared by the CLLS ESG and Professional Rules and Regulation Committees.

Before dealing with the questions raised in the consultation, we would raise some wider issues in relation to the process adopted by the LSB. Our understanding is that the proposed outcomes are put forward as a Policy Statement under Section 49(2) of the Legal Services Act 2007. Whilst in this instance the proposals are laudable, it is not clear to from the document that the LSB has had regard to “*the principle that its principal role is the oversight of approved regulators*” (see Section 49(3)). Nor is there any direct reference to the LSB’s obligations under Section 3(3) of the LSA. In this regard we particularly have in mind that the proposed Outcome 4 includes essentially directing approved regulators and licensed bodies as to what their codes of conduct should contain. We would have expected the consultation to provide a more detailed explanation as to why the LSB considers that the Policy Statement is an appropriate exercise of its statutory powers.

Our responses to your questions:

Q1a. Do you agree that these proposed outcomes will help to address the barriers to encouraging a diverse legal profession? Are there any further, or alternative, outcomes we should consider?

We agree the proposed outcomes will help address the barriers to encourage a diverse legal profession. To ensure the effectiveness of these outcomes, it is essential that both the core and enhanced expectations be specific, measurable, achievable, relevant and time- bound (SMART). Robust scrutiny of underlying data is critical in identifying areas of concern and informing targeted action.

Q1b. Do you agree that the proposed outcomes should be pursued by regulators through a set of specific expectations?

Agreed. Specific expectations however must retain sufficient flexibility; otherwise, they risk becoming misaligned with the reality those in the profession face. The key objective is to encourage meaningful behavioural change. We would also emphasise the importance of adaptability and regular review to ensure the expectations are realistic and practical.

Q1c. Do you agree that the proposed structure of core and enhanced expectations under the general outcomes offers an effective way to set a clear minimum standard for all regulators, while also encouraging regulators to consider additional steps, where appropriate?

Agreed. We must also ensure that the core expectations are audited/assessed to ensure outcomes are met.

Outcome 1 – Regulators take strategic, evidence -based and collaborative actions to encourage a diverse legal profession

Q2a. Do you agree with the proposed Outcome 1?

We agree with an evidence-based approach to diversity data collection and monitoring as a means of gaining a clear understanding of diversity within the profession and where further progress is required. This should be supported by accountability mechanisms, report progress transparency, and measurable objectives. Effective collaboration is required with regulators and relevant stakeholders generally, and to prevent duplication. We are in support of data publication and the creation of SMART action plans, with risk management and evaluation.

Q2b. Do you agree that the proposed expectations will help regulators to pursue Outcome 1? Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

We agree the proposed expectations will help regulators to pursue Outcome 1. We would also support individual diversity data collection providing a holistic view of diversity across the profession, including those working outside authorised law firms. Under the core expectation ***‘taking further appropriate steps to identifying barriers....’*** emphasis should be placed on liaising with those in the profession to understand lived experiences.

Q2c. Are there any enhanced expectations that would be better placed under core expectations under Outcome 1? Are there any core expectations that would be better placed under enhanced expectations under Outcome 1?

If the enhanced expectation '*horizon scanning for emerging barriers and opportunities*' is placed as a core expectation in the future it could ensure that these barriers are addressed sooner or prevented from developing.

Outcome 2 – Regulators take effective steps to ensure regulatory approaches, processes and decision-making support equality and fairness and do not undermine efforts to encourage a diverse profession

Q3a. Do you agree with the proposed Outcome 2?

Yes, particularly, the suggestion all expectations here be core expectations. We agree regulators need to identify and address impacts on protected and other diversity characteristics and take steps to ensure fairness in disciplinary and enforcement processes.

Q3b. Do you agree that the proposed expectations will help regulators to pursue Outcome 2? Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

Yes. As stated, equality impact assessments should be conducted at the earliest possible stages of policy development. Training for disciplinary and enforcement processes should be mandatory and outcomes focused; the training should be evaluated. Remedial plans should be clear, measurable, and sufficiently timely where disproportionate impacts have been identified.

Q3c. Are there any enhanced expectations we could set for regulators to pursue Outcome 2?

Independent audits could be considered to assess fairness, and defined wellbeing frameworks as a means of providing support to all parties in disciplinary and enforcement processes.

Outcome 3 – Regulators support fair, flexible, and accessible pathways into, within and back into the professions that encourage a diverse legal profession

Q4a. Do you agree with the proposed Outcome 3?

We agree with the focus on developing clear and inclusive pathways into the legal profession, ensuring equality of access, and promoting diversity. Additionally, the importance of ensuring comprehensive and accessible information is publicly available to enable prospective candidates to make well informed decisions about their routes into the profession.

Q4b. Do you agree that the proposed expectations will help regulators to pursue Outcome 3? Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

Yes. Beyond the expectations included, addressing retention within and progression through the profession and measurable ways change can be led. Consideration should be given to the recent white paper from the government and inclusive pathways for all aspiring legal professionals. Further, more detail, specifically on training and positive impact on neuro-inclusion.

Q4c. Are there any enhanced expectations that would be better placed under core expectations under Outcome 3? Are there any core expectations that would be better placed under enhanced expectations under Outcome 3?

No.

Q4d. Are there any additional expectations, either core or enhanced, we should set under Outcome 3 to reduce barriers faced by authorised persons when moving between and/or re-entering the professions (e.g., following a prolonged absence from practice for health, caring or other reasons)?

Flexible working arrangements are essential for those already working in the profession. Whilst the consultation considers flexible routes into the profession, it is equally important to ensure flexibility throughout life in the profession. Such arrangements are vital for those moving between roles or re-entering the profession. These options should be clearly communicated from the outset to enable individuals to make informed decisions when entering the profession and feel supported should their circumstances change whilst in the profession.

Outcome 4 – Regulators ensure their frameworks effectively support authorised persons to uphold professional conduct, behaviours, and competencies that encourage a diverse legal profession

Q5a. Do you agree with the proposed Outcome 4?

Yes, particularly the need for core expectations that set clear standards in codes of conduct not to bully, harass, victimise, or discriminate against others. We also support the inclusion of competence frameworks (fair treatment and respect for colleagues) and an additional standard and competence requirement for managers to ensure fair, compassionate, and inclusive management. Clear channels to raise concerns are vital.

Q5b. Do you agree that the proposed expectations will help regulators to pursue Outcome 4? Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

Agreed. The core expectations here however must be measurable. There should also be a core expectation analysing wellbeing data/ feedback specifically. There is reference to wellbeing in relation to development, but not explicitly about wellbeing frameworks. Mandatory reporting could

be considered as a requirement, but we would need to ensure this is proportionate for smaller firms (where Black, Asian, and other minority ethnic groups are overrepresented).

Q5c. Are there any enhanced expectations that would be better placed under core expectations under Outcome 4? Are there any core expectations that would be better placed under enhanced expectations under Outcome 4?

‘...encouraging and supporting authorised firms to promote diversity in leadership and inclusive leadership practices’ would be better placed as a core expectation.

Q6a. Do you agree our proposed timelines for implementation are achievable?

Please refer to Q6b.

Q6b. Are there any reasons why a regulator would not be able to meet these milestones? Please explain your answer.

We would suggest engaging with the regulators to agree to a sensible timeline to meet these milestones. Whilst emphasising that this is a priority, this must be balanced against the reality of the demands on regulators at a time of increasing regulation and chronic underfunding.

Q6c. Do you have views on whether and how the LSB could take additional steps to support compliance with the proposed statement of policy (e.g., through either formal or informal outputs, such as guidance and/or other relevant resources)?

Not at present.

Q7a. Have you identified any equality impacts (both positive and negative), we haven’t considered which, in your view, may arise from our proposed statement of policy?

We are extremely supportive that the proposed statement of policy is outcome focused. We would strongly suggest specific and targeted guidance and real-life illustrative case studies.

Q7b. Do you have any evidence relating to the potential impact of our proposals on specific groups with certain protected characteristics, and any associated mitigating measures that you think we should consider?

No. Please refer to Q4b re: neuro-inclusion.

Q7c. Are there any other wider equality issues or impacts that we should take into account and/or any further interventions we should take to address these in our proposed statement of policy?

Not at present.

Q8. Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?

No.

Q9a. Do you have any comments on how the LSB, either independently and/or in partnership, might develop further measures alongside the proposals set out in the consultation to encourage a diverse profession?

Not at present, however it may be helpful to highlight best practice from a range of tier/size law firms to spark ideas and inspire confidence that this is achievable.

Q9b. Do you have any views on whether the LSB could take additional steps alongside setting expectations for regulators in the draft statement of policy to encourage a diverse profession? If yes, please share your reflections on the most appropriate and potentially effective routes the LSB could take to achieve this.

No.

Q9c. Do you have any further comments on our proposals that you would like to share?

No.

If you need any further information, or have any queries, please do not hesitate to contact the Chairs of the CLLS ESG Committee (Roger Leese - Roger.Leese@CliffordChance.com) or the Professional Rules and Regulations Committee (Iain Miller IMiller@kingsleynapley.co.uk).

Yours faithfully

Kevin Hart
Legal Policy Analyst
City of London Law Society
kevin.hart@clls.org