



Informing Progress - Shaping the Future

Response to the Legal Services Board consultation:
Encouraging a diverse legal profession.

March 2026



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FOIL represents over 8000 members. It is the only organisation which represents solicitors who act for defendants in civil proceedings.

The response was drafted following consultation with the membership.

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Response to the Legal Services Board consultation: Encouraging a diverse legal profession.

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?

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

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

Working to promote an inclusive and diverse legal profession is a key issue for FOIL and its member firms, and it welcomes the opportunity to respond to the new draft proposals.

The 2017 statutory guidance and the work by the LSB and the individual regulators since then has led to some improvements which are to be welcomed, but the slow progress towards change and the serious issues which are highlighted in 'Annex B: The Case for Change' make clear that there is still much to do if the legal profession is to harness the talent of all individuals, benefit from the gains in productivity and effectiveness which evidence shows arise from diverse and healthy work cultures, and fully represent the society to serves.

It is of concern to note from Annex B that the Bridge Group's report in 2021 concluded that only "*modest*" activity was being undertaken by regulators and that there was a "*weak evidence base for what is effective*". There was limited evidence of regulators using diversity data to inform their regulatory practices. Reading more deeply into the report, it highlights that data collection and analysis have been the main focus of the regulators in law. The report's conclusion is that, unless associated with accountability, "*data collection may only ever effect minor change*".

There was uncertainty within the regulators "*in terms of how to manage this complex agenda*"; a lack of strategic thinking on the part of regulators in terms of what problems they should address, and how they should address them; there was little sign of collaboration and the sharing of good practice.

It is clear from the available evidence that improving inclusion and diversity is a significant challenge: a multi-faceted issue requiring intervention on numerous fronts, with a determined and focused effort required by all - the LSB, the regulators it oversees and regulated entities - to achieve real change. It is important that this is led by a strong steer from the top, starting with the LSB. As a starting point, FOIL welcomes the intention to put in place a new statement of policy to replace the current policy.

It must be recognised that having a statement of policy in place, however carefully considered and well-intentioned, is insufficient in itself to drive change. In short, it is essential that both the LSB and the regulators which it governs, walk the talk.

There are concerns that in introducing recent developments and facing challenges within the profession, which should have prompted consideration of DEI issues, the LSB and the regulators within its remit have failed to do so. For example, the issues and concerns around the new SQE examination, particularly around divergent pass rates and the deterrent effect of high costs, highlight both the importance of delivering equality and fairness in practice and the focus that is required to achieve that. By way of further example, the decision in *Mazur v Charles Russell Speechlys* [2025], raises issues regarding its potentially disproportionate impact on some members of the profession with protected characteristics, but there appears to have been little mention of the issue. It is critical that the new statement of policy goes beyond monitoring, understanding and measuring, to require effective and measurable action to achieve the statutory objective, and that DEI is not a silo: the issues must be recognised and addressed especially where DEI of just one facet of the situation, to reduce the risk that it is overlooked.

The proposals

On the basis of the points made above, FOIL is supportive of the proposed Outcomes, welcomes specific expectations for regulators and agrees that the structure of core and enhanced expectations give a clear steer on minimum standards whilst encouraging additional action. However, FOIL believes there are short comings in the proposed approach, particularly with regard to the identification of good practice, enforcement and measurement of success.

What does good look like?

The Bridge Group report notes that “*measures of success might reasonable be defined by legal service regulators, based on careful analysis of data...*” but regulators have been reluctant to engage in such activities, with the reasons for such reticence including “*they are uncertain how to do so; are wary of the quality of the data and/or do not have adequate confidence they can motivate entities to act where they have specific evidence of what should be addressed.*” It is essential that the collation of data is not seen as an end in itself, but as a tool and if the mindset of the regulators highlighted in the Bridge Group report is still limiting action, that must be addressed. It is unclear from the consultation paper how the LSB intends to do that.

It is clear from the published evidence, that there is a lack of strategic thinking amongst regulators on DEI issues, and what steps they should take to address them. It is noted that in 2020 the LSB introduced three criteria “*to clarify what we believe good regulatory performance looks like on equality matters*”, the three being: an understanding of the composition of regulated communities; an understanding of barriers to entry and progression within the profession and a programme to mitigate those barriers; and measures in place to understand any differential impact on protected characteristics within disciplinary/enforcement procedures.

Despite the intention to clarify what good looks like, these criteria are still very high level. Annex B, para 86, reports that whilst regulators have commitments within their strategies to encourage diversity, these are rarely SMART and *“it is difficult to decipher specific interventions, whether these are carried out in a SMART way, and what the desired results of activities are.”*

FOIL believes there would be merit in the LSB adopting a more detailed approach on what good looks like and how it can be measured. FOIL believes it would be helpful to consider providing guidance along the lines of that provided by the Professional Standards Authority, like the LSB an overarching regulator, responsible for the conduct of frontline regulators. The PSA introduced its Performance Review evidence matrix in 2023:

www.professionalstandards.org.uk/sites/default/files/attachments/Professional-Standards-Authority-Standard-3-evidence-matrix.pdf

An evaluation of the new approach in 2025, indicated it had delivered significant improvements:

www.professionalstandards.org.uk/sites/default/files/attachments/Evaluation%20of%20our%20new%20approach%20to%20assessing%20regulators%20against%20our%20EDI%20Standard%2028May%202025%29.pdf

The evaluation does note that the new approach created more work for regulators, although the regulators themselves considered the approach to be proportionate. Whilst an approach requiring additional resource would not be appropriate to all aspects of regulation, the issues around DEI are proving so intractable that FOIL believes the additional focus and resource would be justified.

FOIL also notes with interest the approach taken by RICS:

www.rics.org/content/dam/ricsglobal/documents/standards/dei-hub/Diversity-Equity-and-Inclusion-homepage.pdf

Obviously RICS is a frontline regulator, unlike the LSB, but it is notable that its guidance is in contrast, for example, to that provided by the SRA on complying with Principle 6, updated in September 2025. The RICS guidance takes a positive approach, providing guidance on positive steps that can be taken by firms of different sizes, to encourage diversity. The SRA takes a different approach, focusing on what not to do, with little advice or guidance on positive steps that could be taken to achieve culture change.

Enforceability and accountability

It is essential that the measures to be introduced by the new statement of policy lead to meaningful action. FOIL notes that there is no indication in the paper of how the expected Outcomes will be enforced and how regulators will be held accountable in meeting the required standards. The intractability of the problems indicate that expectations and requirements will not in themselves achieve change and FOIL believes that delivery should itself be a formal additional Outcome.

Outcome 1 requires regulators to publish strategic action plans with measurable goals. FOIL would agree with those requirements but believes the concept of measurable should begin with the LSB. What are the KPIs for regulators in delivering? How is success to be measured? What will be expected if a regulator fails to deliver on the Outcomes?

It is noted that the terminology within the consultation refers to “*encouragement*”, which is also referred to in the title of the paper. FOIL understands that this echoes the statutory position under Section 1(1)(f) of the Legal Services Act 2007 but, just as the LSB has interpreted this objective to put in place mandatory requirements on data collation, FOIL believes a tougher approach to other aspects of DEI delivery is now required. As the Bridge Group report identifies, there is a need for the LSB to “*develop robust and meaningful levers*”.

In view of the drift on delivery evidenced in the Bridge Group report and Annex B, FOIL believes the LSB should put in place a much stronger delivery framework. This is particularly important in the light of the current performance review assessments from March last year, in which both the SRA and the Bar Council - by far the two largest legal regulatory bodies – were both assessed as “*Insufficient*” for Operational Delivery. The use of standard business tools could be adopted to identify specific areas of poor performance and put in place measures to remedy the position, for example, the adoption of enforcement protocols; the setting of thresholds and timelines, and clarity on the consequences of inadequate delivery, for example, remedial action plans, enhanced monitoring, and/or public performance ratings.

Lessons can be learnt from other sectors. When regulators fall short in delivery there should be the potential for an independent review, similar to the Ockenden Review into the Shrewsbury and Telford Hospital NHS Trust maternity services. Independent scrutiny is a powerful tool to incentivise appropriate action and ensure that the reasons for failure are understood and lessons learnt to improve future performance.

The ultimate delivery on the statutory objective, of course, rests on the regulated entities. Whatever the effort exerted in putting into place regulation that seeks to deliver on the requirement in the Act, if there is insufficient change within law firms, the statutory objective will not have been met. FOIL believes that in view of the limited progress that has been made to date on increasing diversity within the profession, regulators should be required to make more use of their powers to ensure regulated entities meet the required standards. Perhaps, for example, by introducing a requirement for regulated entities to produce an annual DEI action plan, with appropriate drivers on delivery. The proposed additional standards and competence requirements for managers under Outcome 4 could include measurable, specific obligations to encourage deliver, for example targeted CPD credits, certification, and audit. This would seem justified in view of the pointer within the Bridge Group report, that ‘middle managers’ can be very resistant to change – a group where change is likely to have the greatest effect “*but where buy-in is currently least evident.*”

FOIL believes a more prescriptive approach to enforcement of DEI policy is one of the robust levers the LSB could deploy, whilst still being sensitive to the requirements of the specific regulated communities.

Q2a. Do you agree with the proposed Outcome 1?

Q2b. Do you agree that the proposed expectations will help regulators to pursue Outcome 1?

Q2c. Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

FOIL agrees that a strategic, evidence-based approach is essential to achieving progress on diversity and robust data is at its core.

Although data gathering has been at the heart of DEI regulatory policy for some years, it is clear that practice on the ground is patchy and inconsistent, with a lack of understanding of why data is being collection and how it can/should be used. It would be helpful if more guidance were to be provided on what is meant by “*high-quality diversity data monitoring*”, and how that can best be obtained. The Bridge Group research found a lack of trust and a lack of confidence amongst regulated entities about the purpose of data collection and highlighted the need for specificity about the purpose of data collection and the way it will be used and guidance on the data to be collected and how to increase response rates, based on best practice.

FOIL is very supportive of the requirement for strategic action plans with measurable goals. There should also be a reference to setting reasonable timescales.

FOIL would agree that collaboration with others in the sector is essential to harmonise data and share best practice and would emphasise that the LSB has a significant role to play here, perhaps by way of the legal regulators EDI forum.

It would be appropriate for horizon scanning to be a core expectation. The landscape is constantly shifting and it is important that regulators are aware and prepared. There is a need for regulation to keep abreast of new challenges and Gen Z priorities: flexible working, values-based leadership, mental health support and ethical AI use.

The involvement of stakeholders should also be a core expectation. The Bridge Group report highlights the importance of “*representative bodies being part of the discussion since they are often better placed to win ‘hearts and minds’ and to enact culture change that the regulators themselves.*” The consultation paper itself highlights the importance of collaboration. Whilst it mentions a number of types of organisations regulator might work with, including representative bodies, voluntary sector organisations, professional interest groups, regulators outside the sector or working in other jurisdictions and further and higher education providers, there is no mention of regulated entities themselves, which can provide invaluable insights into best (and poor) practice and disincentives and hurdles on the ground.

Q3a. Do you agree with the proposed Outcome 2?

Q3b. Do you agree that the proposed expectations will help regulators to pursue Outcome 2?

Q3c. Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

Yes, FOIL agrees with Outcome 2.

The core expectations include the provision of equality impact assessments during consultations but FOIL believes this requirement should go wider, with assessments prepared when major developments occur or significant reform is proposed. As mentioned above, the introduction of the new SQE and the *Mazur* judgment are two recent areas where an equality impact assessment would have been helpful.

It is unclear what is intended by “*remedial plans*” and more information and guidance would be helpful.

The requirement “*to safeguard wellbeing for those involved in enforcement*” is vague and weak, with no indication of what that might involve or how it might be delivered. More detailed, focused requirements would be helpful.

Q4a. Do you agree with the proposed Outcome 3?

Q4b. Do you agree that the proposed expectations will help regulators to pursue Outcome 3?

Q3c. Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

Yes, FOIL agrees with Outcome 3.

There is a significant focus in the Outcome on initial intake into the profession, although it is recognised in Annex B that, whilst there have been improvements in ensuring a diverse intake, issues around progression remain a significant problem. The Outcome should be expanded to ensure the focus is also on advancement, and on those returning to the profession after time away.

The proposed enhanced expectation “*regulators should also consider publishing disaggregated outcomes data, gathering data on educational backgrounds*”, should be a Core Expectation.

There is currently a lack of transparency on provider performance, which should be addressed as part of the Outcome.

The reference to “*encouraging firms to offer inclusive training and work experience opportunities*” is an important part of achieving a diverse intake into the profession. The suggestion that regulators “*encourage*” is weak: it would be better to additionally propose support, guidance and the sharing of best practice.

Q5a. Do you agree with the proposed Outcome 4?

Q5b. Do you agree that the proposed expectations will help regulators to pursue Outcome 4?

Q5c. Are there any further expectations beyond those we have included that would support regulators to pursue this outcome?

The vocabulary used with regard to professional conduct and competence is important. It is recognised that addressing many of the issues highlighted in the consultation requires culture change. Challenging unconscious bias is important: in DEI, perhaps more than any other area of regulation, it is not enough to desist from certain behaviours: building a positive mindset, open to change and challenging established viewpoints and practice is equally important. The Outcome should go further than requiring duties to be embedded in codes of conduct, it should require regulators to actively foster best practice beyond the bare bones of the rules.

As mentioned above, the SRA's guidance on meeting Principle 6 is almost entirely negative – focused on behaviours to avoid. The 'nudge' principle has been shown to be a powerful tool in achieving change, and it is likely that a more positive approach, giving examples and emphasising best practice, could achieve much in changing the thinking of members of the profession who adhere to the rules and perhaps do not think of themselves as falling short in delivering on Principle 6. FOIL would highlight again the RICS approach, mentioned above.

Guidance and competency frameworks will need to be developed to meet the Outcome. There is likely to be a strong requirement for analysis, liaison and understanding of best practice to ensure these tools can deliver. This should be emphasised in the Outcome, with collaboration and liaison with other bodies and stakeholders a core requirement, to understand fully the issues and provide a firm platform for change.

FOIL strongly welcomes the requirement for specific conduct and competence standards for managers and would highlight the need for the expected behaviours to be both measurable and assessed.

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

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

Yes, the proposed timelines appear achievable.

The timeline for the LSB ends three months after publication of the final statement, when responsibility passes to the regulators to demonstrate their deliver of the Outcomes.

The LSB is working under a statutory regime that provides only a general steer, to encourage an independent, strong, **diverse** and effective legal profession. There is concern that, within a multitude of other obligations, there is the potential in the future for a focus on DEI to falter and lose significance.

FOIL believes it would be appropriate for the LSB to demonstrate its long-term commitment to a diverse profession by future-proofing its statement of policy, perhaps by publishing a long-term delivery plan alongside the statement, with multi-year targets and commitments to publish regular progress reports.