

Response to the Encouraging a Diverse Legal Profession Consultation by the Society of Legal Scholars (SLS)

Introduction

This response was drafted by the Equality, Diversity and Inclusion Committee of the Society of Legal Scholars on behalf of the Society. The Society of Legal Scholars is the learned society for the advancement of legal education and scholarship and is the principal representative body for law academics in the United Kingdom and Ireland.

Overview

We are broadly supportive of the proposals. Our key suggestions would be:

- Consider a fifth outcome focusing on increased research and education links with universities
- Make clear how the LSB will incentivise regulators to pursue the enhanced expectations
- Provide clarity on how the LSB will facilitate experimentation and learning in regulators around EDI and engage with practice in other nation states (e.g. Scotland)
- Consider expanding the proposed expectations under outcome 2
- Consider making the enhanced expectations in relation to outcomes 3 and 4 core expectations and expanding the core expectations for outcome 3
- Consider new challenges to EDI, particularly the impact of AI on legal jobs and the implications for diversity

Responses to specific 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 are supportive of the proposed four outcomes and believe that they will help to encourage a diverse legal profession. We do, however, believe that there is a need for an additional fifth outcome that focuses on 'Increased research and education links'. Much of the foundational research into barriers and interventions comes from academia. A more formal link with universities could help ensure policies are informed by robust and independent scholarship, and long-term evaluation. Additionally, given

that most of the professions will come from (legal) education providers, there is a need to engage with universities and other providers around barriers of entry to education to ensure that the pipeline is as diverse as possible. This is because it will be difficult to ensure diversity in the professions if there is a lack of diversity in those graduating.

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

Yes.

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?

We are generally supportive of this approach. What will be important though is how the LSB uses its regulatory powers to encourage regulators to strive for the enhanced expectations. Without there being some sort of incentive, there is a danger that once the core expectations are met, regulators will stagnate. Then, until the core expectations are revised, limited progressive action will be taken. It is not clear from the consultation how the LSB will encourage regulators to pursue enhanced expectations, so it will be crucial to have a clear plan for this and provide clarity to regulators why they should want to pursue the enhanced expectations. It will also be important to ensure that the enhanced expectations are not too prescriptive and that there is room for experimentation and learning from regulators. This could perhaps utilise some form of peer review so regulators can learn from each other and develop best practices together.

Q2a. Do you agree with the proposed Outcome 1?

Yes.

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 that the proposed expectations will help regulators to pursue Outcome 1. As with our answer to Q1a, it is important that regulators engage with universities to

better understand the educational pipeline and barriers to practice. It would be important to know where the different barriers exist in practice. This includes why pupils opt not to study law at university when they had that desire previously, why law students (and those of other disciplines) having wanted to work in the legal profession at the start of the degree make the decision not to go into the relevant professions by the time that they graduate, and the demographic characteristics of those opting against law.

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?

We support the enhanced expectations being separate from the core expectations. Particularly important is 'horizon scanning' as it allows regulators with greater capacity and forward-looking remits to lead, while others focus on foundational data and strategy. It is key to ensure regulators work together to share data and reduce duplication of efforts. In particular, it would be useful for the LSB to provide clear examples of what effective horizon scanning looks like to regulators.

Q3a. Do you agree with the proposed Outcome 2?

Yes.

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?

We agree with the proposed expectations. We believe that the expectations should be expanded in two clear ways though. First, when disproportionality in disciplinary outcomes is found, a regulator should publish a clear action plan to address it. Second, the use of equality impact assessments should be used beyond consultations and be used for all decision making.

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

One suggestion would be for regulators to explore contextualised decision-making approaches in 'fitness to practice' in order to help mitigate unconscious bias.

Q4a. *Do you agree with the proposed Outcome 3?*

Yes.

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?*

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?*

Here many, if not all, of the enhanced expectations do not seem particularly onerous and possibly essential to achieving the core expectations (e.g. if you do not have outcomes data you cannot effectively promote diversity). Given the success of alternative routes to authorisation (discussed in para 75), it would be useful to have more of an oversight of barriers. Collecting diversity data at different stages across the different routes into the profession and throughout professional life will help with this.

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)?*

An additional core expectation is for clear, supportive 'return to practice' protocols for those taking extended leave, with steps like refresher courses, mentorship, and reasonable CPD requirements.

Q5a. *Do you agree with the proposed Outcome 4?*

Yes.

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?*

We agree that the proposed expectations will help regulators to pursue Outcome 4. To further promote inclusive conduct, regulators could encourage firms to develop clear

standards that ensure all team members feel able to ask questions, raise concerns, and contribute ideas without fear or unfair reprisal or detriment.

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?*

We believe that the one enhanced expectation (that firms have an evidence-informed EDI strategic plan) should be a core expectation as it differs from the other core expectations and is essential in advancing professional conduct and competence.

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

Yes.

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

Some of the smaller regulators may face capacity constraints. The LSB will play a crucial role in facilitating resource-sharing and good practice exchange to support all regulators.

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)?*

The LSB should act as a central hub to share good practice and facilitate peer review and learning of regulators around topics such as effective action plans, equality impact assessments and data frameworks. There can also be engagement with practice in other nations, for example engagement with the practice in Scotland around [equality and diversity guides](#) and setting up [EDI networks](#). Additionally, given the support for research mentioned in the consultation (e.g. on page 17) consideration should be given to how this research will be funded to ensure it is as effective as possible.

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?*

A key emerging consideration is the impact of AI on legal jobs and the implications this will have on access to the professions, particularly if the negative impacts will

disproportionately fall on groups with protected characteristics. It would be useful for this to be explored so regulators can take proactive measures to address any emerging inequality.

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?

The consultation document mentions protected characteristics but some characteristics are discussed more than others, with some (e.g. sexual orientation) not being discussed at all. It is important to ensure that action is taken by regulators to address all protected characteristics rather than only taking action in relation to certain ones. Additionally, the consultation document discusses engaging with relevant intersectional groups but does not consider how to do this and particularly how to attract relevant participants.

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?

There is a likely disproportionate administrative burden to sole practitioners and small firms from underrepresented backgrounds, although it is not obvious what can be done to address this. It would be helpful for more explicit links to be made between profession diversity and access to justice. For example, by asking regulators to consider how diversity initiatives have enhanced service to underserved communities.

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

It would be beneficial to acknowledge the upfront administrative and analytical costs for regulators and firms but advance that these are justified by long-term systemic benefits with the profession being seen as more legitimate, innovative and trusted. It would also be beneficial to encourage the development of practical metrics to demonstrate return on investment from diversity initiatives.

***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?*

***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.*

The LSB could use its coordinating power to host forums on important diversity challenges (e.g. the potential challenges of AI, AI bias, accessibility). The LSB could also encourage (and possibly help fund) strategic research partnerships between regulators and academic institutions. Finally, progress on these diversity outcomes should be clearly reflected and assessed within the LSB's Regulatory Performance Assessment processes.

Members of the Equality, Diversity and Inclusion Committee of the Society of Legal Scholars

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