

# Survey Response Document

A public consultation on the LSB's proposed statement of policy

Confirmed

#00000108

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## Before you respond

This survey relates to the LSB's proposed statement of policy on 'Encouraging a diverse legal profession.'

We recommend you read [the consultation document](#) on our website before you respond.

For each set of questions in this survey, we have included a reference to the relevant paragraphs in the consultation document.

If you have any problems completing this survey, please email us on [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

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Proposed statement of policy

These questions relate to **paragraphs 30-43** in the [consultation document](#).

We are proposing to issue a statement of policy under [section 49 of the Legal Services Act 2007](#) to encourage a diverse legal profession.

Our draft statement of policy sets out four outcomes which regulators must pursue:

- **Outcome 1:** Regulators take strategic, evidence-based and collaborative actions to encourage a diverse legal profession.
- **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.
- **Outcome 3:** Regulators support fair, flexible, and accessible pathways into, within and back into the professions that encourage a diverse legal profession.
- **Outcome 4:** Regulators ensure their frameworks effectively support authorised persons to uphold professional conduct, behaviours, and competencies that encourage a diverse legal profession.

These outcomes are supported by core expectations (which all regulators are expected to meet) and enhanced expectations, recommended for greater impact (which regulators should also consider meeting).

The extent to which regulators should consider meeting the enhanced expectations will depend on both the specific risks and opportunities relevant to them and their regulated professions. This could include, but would not be limited to, evidence of stagnant or slow progress, evidence of a need for greater intervention to tackle more complex barriers, and/or where regulators have determined additional action is needed in pursuit of the outcomes.

In circumstances where a regulator has taken steps to meet the core expectations, yet barriers to a diverse legal profession persist, then it should consider meeting the enhanced expectations.

**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?**

**Answer:**

The problem with all broad policy statements is that their objectives are good but unless regulators are provided with tangible evidence and suggested ways of addressing barriers (what we know works) that are also evidence based, then a) this becomes an additional burden and b) the process of trying to gather such evidence can lead to duplication or 'reinventing the wheel'. There is already a wealth of both academic and practitioner data available for more targeted interventions/ suggestions to be made. Pooling evidence and data that both identify common barriers and good practices would be more directive way of achieving these objectives. Currently, they feel 'high level', obscure and strategic, rather than practical.

Is there a way that the LSB could be a repository of evidence, data and skills or know how to access these resources. Otherwise, in my experience talk will be the main outcome rather than action.

Can regulators achieve these objectives by other means - i.e. insisting that on going training in key areas of diversity and inclusion identified by evidence, is part of a fitness to practice requirement of all legal professionals?

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

**Answer:**

Yes, though this document remains somewhat vague as to what these expectations will be.

**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?**

**Answer:**

Again, they appear vague and in disseminating evidence based research to practitioners, they are most interested in HOW they can practically enact change.

It is difficult to dispute the 4 outcomes and core expectations but many will ask what is required of them in practice and many will want to do the right thing but will ask for practical examples of how to achieve this.

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## Outcome 1: Strategic, evidence-based and collaborative action

These questions relate to **paragraphs 44-58** in the [consultation document](#).

We propose that regulators must pursue the following outcome:

- **Regulators take strategic, evidence-based and collaborative actions to encourage a diverse legal profession.**

We are also proposing the following expectations under this outcome.

Under core expectations, we propose that regulators must:

- Have effective, high-quality data monitoring processes in place (including publication of data) to support a clear and thorough understanding of the diversity profile of the regulated community over time and where greater diversity needs to be encouraged.
- Take further appropriate steps to identifying barriers to an equal, diverse, healthy and inclusive profession.
- Develop and publish evidence-based strategic action plans with SMART objectives, risk management, and evaluation.
- Ensure accountability at governing body level and report progress transparently.
- Work collaboratively with other regulators and stakeholders to share learning, harmonise data monitoring, and promote sector-wide consistency.

Under enhanced expectations, we propose that regulators should also consider:

- Horizon scanning for emerging barriers and opportunities (e.g., technology, demographic shifts, evolving consumer needs).
- Building on the strategic action plan to drive greater results, by including additional elements such as outcomes-based targets for activities, further accountability measures and enhanced evaluation practices.
- Designing and evaluating interventions with regulated communities; foster a culture of continuous improvement.

See our [draft statement of policy](#) for a detailed description of the proposed expectations.

### Q2a. Do you agree with the proposed Outcome 1?

Answer:

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?**

**Answer:**

Data is important to answer the how many questions, but can't always drill down to answer the why questions. Other research might identify structural barriers - e.g. access to education, socio-economic circumstances, non-standard circumstances etc. What is lacking is any qualitative evidence based in lived experiences of the groups you are trying to include. Some of these groups will also be harder to reach than others. Working collaboratively is good but working coproductively to co-create solutions and identify barriers could yield more insights.

These objectives again feel very high level. Where there is embedded or systemic prejudice that is less visible or apparent a radical culture change is likely to be needed. This means direct contact and power sharing relationships may need to be formed with under-represented communities.

**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?**

**Answer:**

collaborative action - might be better conceptualised as coproduction

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## Outcome 2: Fair regulatory approaches and decision-making

These questions relate to **paragraphs 59-69** in the [consultation document](#).

We propose that regulators must pursue the following outcome:

- **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.**

We are also proposing the following expectations under this outcome.

Under core expectations, we propose that regulators must:

- Identify and address impacts on protected and other diversity characteristics (including socio-economic background) arising from new or updated regulatory policies or actions.
- Provide equality impact assessments when formally consulting.
- Take steps to ensure fairness in disciplinary and enforcement processes, including appropriate training, data analysis, remedial plans, and support for wellbeing of all parties.

Given the critical nature of pursuing fair processes and decision-making in regulatory practices, we deem the expectations proposed under Outcome 2 to be core expectations that must be met by all regulators. This is because the core expectations are all fundamental to the pursuit of fair regulatory approaches and decision-making. This should ensure a consistent approach across all regulators.

However, we encourage responses to our consultation that identify suitable enhanced expectations that can support the pursuit of this outcome which regulators should also consider adopting.

See our [draft statement of policy](#) for a detailed description of the proposed expectations.

### **Q3a. Do you agree with the proposed Outcome 2?**

**Answer:**

Agree, but it is assumed that the regulators are capable of identifying the unfairness, bias and sources of poor well-being they are trying to eliminate in the first instance.

It is not always possible to know what we don't know.

**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?**

**Answer:**

Having worked co-productively with disabled people in both the legal profession and in a government policy context I would argue that regulators need to be expected to do the same, if they are to start to understand some hidden barriers (i.e. to begin to understand what we don't know).

Too often EIAs for example become tick box exercises and a duty to consult and work co-productively with groups with protected characteristics would help prevent this.

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

**Answer:**

Please see answers above.

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## Outcome 3: Accessible, flexible and inclusive pathways into and through the profession

These questions relate to **paragraphs 70-82** in the [consultation document](#).

We propose that regulators must pursue the following outcome:

• **Regulators support fair, flexible, and accessible pathways into, within and back into the professions that encourage a diverse legal profession.**

We are also proposing the following expectations under this outcome.

Under core expectations, we propose that regulators must:

- Ensure that training routes to qualification, approved by the regulator, are designed to support equality of access and encourage diversity, while maintaining professional standards.
- As applicable, set and monitor standards for authorised training, qualification and/or assessment providers that support diversity goals.
- Make relevant information publicly available to support candidates' informed decisions, including costs and outcomes.

Under enhanced expectations, we propose that regulatory should also consider:

- Where appropriate, publishing outcomes for legal training disaggregated by diversity characteristics.
- Collecting and publishing data on education and training background of authorised persons.
- Where applicable, encouraging firms to develop work placement and training programmes that foster diversity and inclusion.

See our [draft statement of policy](#) for a detailed description of the proposed expectations.

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

**Answer:**

Yes. In relation to disability, however, the SQE route has not always been smooth for disabled candidates.

'Professional standards' are sometimes viewed as incompatible with reasonable adjustments, which is a misunderstanding of their purpose - to provide a more level playing field and greater equity.

**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?**

**Answer:**

The expectations should help regulators pursue outcome 3 but I am aware of concerns that legal regulators do not understand reasonable adjustments. These are not 'special favours' and should not be regarded as such. Further training and monitoring may be required in this area to ensure the adjustment process is fair and equitable.

Research suggests that work placement and training programmes are particularly valuable to disabled candidates and employers but are not always offered part-time. The Legally Disabled? research recommended that if the disability gap in the profession was to be narrowed reserved work experience or training contracts should be considered for this group. Evidence from employers who ran such schemes also found targeted work experience programmes allowed employers to gain valuable confidence working with disabled applicants that led to changes in policies that affected other parts of the workforce advantageously e.g. greater flexibility in job design or a better understanding of stress and mental health (the latter can often accompany a physical impairment).

**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?**

**Answer:**

Training and assessment procedures (e.g. those implemented to facilitate reasonable adjustments) would be more effective if designed and delivered by disabled people with lived experience. Co production and co-creation would be a valuable additional expectation.

**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)?**

**Answer:**

The Legally Disabled? research found that there was a lack of support for disabled people who had experienced career breaks due to ill-health. Unlike women in the profession who could take advantage of 'returner schemes' no such equivalent appeared to exist for disabled people or anyone returning after a significant health related absence. It was also reported that there was a poor understanding among employers of the legal concept in the EQA of 'disability leave'. The EHRC and ACAS have issued clear guidance on this but it is not well understood generally.

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## Outcome 4: Professional conduct and competence

These questions relate to **paragraphs 83-120** in the [consultation document](#).

We propose that regulators must pursue the following outcome:

• **Regulators ensure their frameworks effectively support authorised persons to uphold professional conduct, behaviours, and competencies that encourage a diverse legal profession.**

We are also proposing the following expectations under this outcome.

Under core expectations, we propose that regulators must:

- Have and monitor clear standards in codes of conduct for all authorised persons to not bully, harass, victimise or discriminate against others and to treat those with which they engage fairly and with dignity and respect.
- Provide practical guidance and resources to support compliance.
- Have and monitor competence frameworks that include mandatory training on professional standards, including fair treatment and respect for all colleagues, at entry and throughout careers.
- Have and monitor additional standards and competence requirements for managers to ensure fair, compassionate, and inclusive management.
- Support authorised persons and regulated persons in firms to identify and use appropriate channels to raise concerns about conduct.
- Where applicable, require authorised firms to understand and address diversity gaps and wellbeing and inclusion challenges, and to report on these to the regulator.
- Where applicable, encourage and support authorised firms to design, implement, and monitor workplace policies that advance equality, encourage diversity, and foster inclusive and healthy work environments.

Under enhanced expectations, we propose that regulators should also consider:

- Where applicable, encouraging and supporting authorised firms to promote diversity in leadership and inclusive leadership practices.
- Where applicable, encouraging and supporting authorised firms to develop and implement evidence-informed strategic plans for fair, diverse, healthy, and inclusive environments.

See our [draft statement of policy](#) for a detailed description of the proposed expectations.

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

**Answer:**

Yes, and would welcome the introduction of such provisions.

**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?**

**Answer:**

In terms of expectations these are excellent although evidence suggests that some of these will be easier to implement and meet where there is a professional HR function. This means that large scale organisations are more likely to conform than smaller legal firms, chambers etc.

As the legally disabled research showed: bullying and harassment of disabled legal professionals is widespread in the profession and those enduring it strongly expressed the view that an external complaints process was required. Without this they feared victimisation and negative career consequences.

Disabled people at all levels are being driven out of the legal profession because they cannot get reasonable adjustments they are entitled to or they experience acute stress associated with them. This needs to be resolved if diversity and inclusion is to be achieved.

In enforcing standards it must also be remembered that disabled people themselves are not standard and don't usually fit the 'norm'. Greater sensitivity is needed in some cases where so called standards may be perceived to not be met but their are mitigating disability related circumstances. Our research found this to be a particular problem where disabled people were sole practitioners or where they ran or worked in small firms. It needs to be recognised that mental health difficulties can develop as a consequence of long term health conditions of impairments and cases may not always be straightforward. Signposting support and ensuring adequate confidentiality is available to access this support is necessary.

**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?**

**Answer:**

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## Implementation and monitoring

These questions relate to **paragraphs 121-123** in the [consultation document](#).

We are proposing a phased implementation timeline, as set out below.

- **Phase 1 (0-3 months post publication of final statement):** The LSB works closely with regulators to ensure a clear understanding of the aims and expectations of the statement of policy.

- **Phase 2 (3-6 months post publication of final statement):** Regulators assess current activity against the outcomes and expectations to identify gaps and set out clear plans that show how and when regulators will meet the core expectations and, where relevant, enhanced expectations.

- **Phase 3 (12 months post publication of final statement):** Regulators will be able to demonstrate that they have taken or are planning to take effective steps to pursue the outcomes by meeting expectations (including, where relevant, the enhanced expectations) in the statement, with time-bound plans to meeting these within a reasonable timeframe if not yet met.

We are also seeking views on whether the LSB could take any further action to support compliance. This could be through formal guidance and/or informal resource and best practice sharing that could be provided alongside the final statement of policy.

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

**Answer:**

yes, and providing examples of best practice/ resources would be very valuable

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

**Answer:**

**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)?**

**Answer:**

As intimated elsewhere, in relation to disability examples of best practice, training and challenging embedded attitudes is required to illustrate the barriers disabled people face. There is too much taken-for-granted ableism and structural ableism in the profession. Positive action is needed and very much allowed in the case of disability. 'Compliance' is not enough and becomes defensive. Opening up conversations and encouraging culture change to improve disclosure are needed.

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## Equality Impact Assessment and Impact Assessment

These questions relate to **paragraphs 124-128** (Equality Impact Assessment, q7) and **paragraphs 129-132** (Impact Assessment, q8) in the [consultation document](#).

**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?**

**Answer:**

I am doing this response in a bit of a rush, so I can only really refer you back to what I have already said.

**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?**

**Answer:**

I'm happy to speak further about the Legally Disabled? research. This suggests that disabled people confront a lot of complex barriers in the profession that need to be better understood. I would always recommend working co-productively with disabled people for the very reason that they are a relatively under-researched group with a very diverse set of circumstances and experiences. One size cannot fit all and it is for this reason that some of the proposals may have unforeseen and unintended consequences.

**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?**

**Answer:**

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

**Answer:**

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## Further steps to encouraging a diverse profession

We are also seeking views from respondents to the consultation on steps we could take alongside setting expectations for regulators in our [draft statement of policy](#).

You can read the details about these plans in **paragraphs 133-134** of our [consultation document](#).

**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?**

**Answer:**

Focus groups with disabled legal professionals would be a good source of additional information. Legally disabled? is now 6 years on and it would be good to know if anything has changed and if so, what?

**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.**

**Answer:**

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

**Answer:**

I am participating in a stakeholder group so hopefully I can express my views further there. Apologies I have left this response so late. Pressures of other commitments. However, thanks for the reminders and I do hope some of this contribution is of help.