



## **Bar Council response to the LSB Consultation on revised guidance for regulators on encouraging a diverse profession**

1. This is the response of the General Council of the Bar of England and Wales (its representative function) to the Legal Services Board consultation on revised guidance for regulators on encouraging a diverse profession.
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

### **Overview**

4. The Bar Council (as a Representative body) is committed to a "profession of all, for all". We welcome the opportunity to input into the LSB's consultation.
5. We also welcome the LSB's recognition that data collected by the regulator supports all stakeholder activity across the legal profession.

### **Q1. Is the proposal to switch the focus of guidance to outcomes beneficial to encouraging the diversity of the profession?**

6. Yes. Giving the BSB greater flexibility will, we trust, in turn give chambers greater flexibility and opportunity to focus on meeting the needs of their own organisations,

shifting their focus from 'box ticking' to ensuring diversity reporting and diversity initiatives support business objectives.

**Q2. Will the proposed guidance allow regulators the opportunity to develop their own approaches to addressing diversity issues in the legal services profession?**

7. Yes.

**Q3. To what extent are regulators already demonstrating achievement of the outcomes? If they are not, why do you think this is?**

8. It is relatively easy for regulators to evidence the delivery of activity (e.g. the introduction of policies in chambers such as fair recruitment, fair allocation of work, parental leave and flexible working policies); it is much more difficult for any regulator to demonstrate diversity 'outcomes', specifically the impact of equality and diversity initiatives. Key issues such as access to the profession and retention of women are subject to a wider environmental and societal pressures. For self-employed barristers, legal aid cuts have reduced the number of pupillages available and earning potential in the publicly funded arm of the profession. This has negatively impacted on both social mobility and the retention of women trying to balance work and family commitments.

**Q4. How can the LSB ensure that the data the regulators collect continues to be comparable?**

9. The Bar Council supports the LSB's proposal to remove the model questionnaire from guidance. The current LSB/BSB monitoring questionnaire<sup>1</sup> and specifically the questions 'About You' do not reflect the set up in many chambers for both members and staff and is confusing for respondents. Being better able to frame questions to suit chambers' structure will make completion of the form more meaningful for participants.

10. We agree with the LSB's proposal to continue to focus on:

- Age
- Gender
- Disability
- Ethnic Group
- Religion or belief
- Sexual orientation

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<sup>1</sup> Page 25 – BSB Suggested Monitoring Questions

[https://www.barstandardsboard.org.uk/media/1596730/bsb\\_equality\\_rules\\_handbook\\_june\\_2014.pdf](https://www.barstandardsboard.org.uk/media/1596730/bsb_equality_rules_handbook_june_2014.pdf)

- Socio-economic background
- Caring responsibilities

11. We would support a formal mechanism being put in place to ensure each regulator works together to agree common definitions (e.g. in socio-economic background) in order that we are able to compare progress between barristers and solicitors/other parts of the legal profession.
12. We would also support some relaxation on reporting requirements with respect to sexual orientation and religion & belief as currently required by the BSB, whereby the regulated entity is currently prevented from publishing information<sup>2</sup>. We believe this should be at the discretion of the regulated entity subject and not a regulatory imposition, subject to protecting an individual's anonymity.

**Q5. Given the LSB's proposal to assess the regulator performance in this area, what would be the most effective way to carry this out? How long should we allow regulators to implement changes before any potential future performance assessment?**

13. It takes time for any initiatives introduced to improve diversity to make any significant impact. We would recommend any requirement to report on progress acknowledges that programmes (e.g. policies to support gender retention/women to return to the profession after having a family) can take between 3 to 5 years to have any impact. We also encourage the LSB to recognise that annual reporting thereafter is expensive and resource intensive, providing little meaningful new data, whereas revisiting data every 3 to 5 years allows initiatives time to have some impact.

**Q6. Will the proposed guidance:**

- a) Deliver better services for consumers?
- b) Support innovation in legal services?
- c) Allow regulators to encourage business-led diversity initiatives?
- d) Encourage a more diverse profession?

14. Yes. The Bar Council is confident allowing greater flexibility to regulators in order that they can focus on improving diversity allow (c) which will we trust improve diversity, in turn hopefully supporting (a), (b) and (d).

**Bar Council**

**2 December 2016**

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<sup>2</sup> Para 10, page 20

[https://www.barstandardsboard.org.uk/media/1596730/bsb\\_equality\\_rules\\_handbook\\_june\\_2014.pdf](https://www.barstandardsboard.org.uk/media/1596730/bsb_equality_rules_handbook_june_2014.pdf)

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