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Regulator

CLC Response to LSB Consultation: Encouraging a diverse profession

The CLC is grateful to the Legal Services Board for its consultation on [revised guidance to the front line regulators in the area of diversity and inclusion](#). As an overarching concern for the legal profession, this is an area where we believe there is scope for collaboration and the spreading of best practice on the basis of clear direction and leadership from the Legal Services Board itself.

We answer each of the consultation questions in turn.

1) Is the proposal to switch the focus of the guidance to outcomes beneficial to encouraging the diversity of the profession?

The proposed outcomes

It strikes us that Outcomes 1, 2, 3 and 4 in the consultation are in fact inputs by the front line regulators (although their implementation by the regulators might arguably be outcomes for the LSB).

The CLC hopes that the LSB will work to develop a more outcomes-focused approach that could also apply to the regulators themselves and clients of legal service providers.

This could be supported with guidance around measuring diversity, increasing education and outreach to grow support for the diversity and inclusion agenda and embed approaches that deliver real change.

Measuring outcomes

Outcomes in diversity and inclusion are best measured through changes to the make-up of the population that is being focused on, in this case the regulated community, as well as changes to policies and procedures that actively support that change. The proposals in this consultation make up some of the inputs that might help achieve such outcomes.

Overlooking this fact is a classic trap in diversity and inclusion work. Too often inputs are measured – often because of a reluctance to set objectives for changing the profile of an organisation or profession. The result can be a plethora of programmes and initiatives that fail to make a difference.

Setting an agenda for diversity and inclusion in legal services

It is not unreasonable for the LSB to prescribe the Outcomes (although that description is inaccurate in this instance for what is proposed are actually input measures), in fact it is

welcomed. However, we need to be clear about what our ambition is in relation to Diversity and Inclusion in the legal sector.

The change that is required may vary between regulators, but there are common themes around, for example:

- Career progression for women
- Entry and progression for BAME people
- Entry and progression of disabled people and their ability to be open about and seek adjustment for their disability
- Social mobility – recruiting and promoting people from less well-off backgrounds
- The ability for LGBT+ people to be themselves in the workplace at no cost to their career

Setting ambitions for change here can be tricky, but this might properly be the role of the Legal Services Board. They might set a blanket aim for the sector of, for example, moving closer to mirroring the make-up of the population in England and Wales (or individual regions) or require regulators to set their own, tailor-made ambitions. But there are other outcomes to be assessed too.

Questions for the LSB to address in identifying desired outcomes might be:

- How can regulators demonstrate that there are no negative impacts on D&I in their policies and approaches?
- How can regulated entities demonstrate that recruitment and progression policies and their implementation are not disadvantaging particular groups?
- What is the benchmark against which change in populations should be assessed?

An outcomes focus may free up the regulators to take approaches tailored to the specific circumstances of their regulated communities and can generate a range of approaches from which we can all learn. Diversity and inclusion is an area where collaboration and the sharing of best practice in delivering the outcomes can be very valuable.

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

It may, but as noted above, it fails to address the key question of how to assess whether real change has actually been delivered.

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

We can only speak for the CLC. We have collected and analysed diversity data on the profession that we regulate. That is used to inform policy as we consider potential diversity and inclusion impacts of proposals as part of the development process. The data has also been made available and promoted to the regulated community. So far it is difficult to discern much evolution in the regulated community.

4) How can the LSB ensure that the data the regulators collect continues to be comparable?

The LSB could require collection of an agreed data set, leaving the methodology up to the front line regulators. Flexibility will be important when dealing with small and very small

organisations in which it is possible for individuals to be identified from demographic data provided. The CLC would wish to ensure that we can secure data from small firms and be able to use it in an anonymised way. We also need to seek to reassure those who may fear identification and consequences that might flow from it if they provide us with the data.

The Legal Services Board could also compile an annual set of general population data for England and Wales, which all frontline regulators could use to measure the performance of the professions for which they are responsible. If the LSB provides a dataset against which all other datasets must be measured, it would ensure that they would all cover an essential core, without being prescriptive, or discouraging the investigation of a wider range of issues that might fall outside the ambit of this core population data.

The benefits would be broader than that, however, as there are gross inefficiencies in having each of the frontline regulators attempting to cobble together their own population data from disparate public data.

5) Given the LSB's proposal to assess 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?

An 18 month lead in, from the time the new measures are agreed to the first time the LSB evaluates the performance of frontline regulators, should be achievable.

However, if the LSB intends to evaluate the performance of the regulators it would be good to have a clearer idea of what it is that would constitute good performance as outlined in answer to question 1

6) Will the proposed guidance:

a. deliver better services for consumers?

It is a long way from the inputs set out in the guidance to better outcomes for consumer. A more diverse profession should serve the whole of society better than a less diverse one.

b. support innovation in legal services?

That is not immediately clear. However, it is widely recognised (and supported by research) that diverse workforces deliver better outcomes for clients and the business itself.

c. allow regulators to encourage business-led diversity initiatives?

The changes may encourage business-led innovation, but whether or not it does so will probably depend on how regulators exercise the freedom they have to develop approaches to diversity. In collecting diversity data, the CLC has encountered the usual types of resistance on the grounds that the questions are intrusive or too personal. The data collection outlined in the proposed guidance will need to be accompanied by an effort to deliver cultural change and a commitment to diversity from employers and the decision-makers within firms.

d. encourage a more diverse profession?

This is the issue where the revised guidance is most likely to deliver positive outcomes, as it will enable regulators to examine matters in greater detail, where doing so would be appropriate, and to adapt more quickly to changing social and political conditions.

For instance the current guidance does not distinguish between sex and gender, making it impossible to gauge whether or not there are issues in relation to gender reassignment. Likewise, the ethnic categories are too poorly framed to capture the relevant protected characteristics of people who might suffer ethnic abuse; for instance the current categories offer no way to distinguish eastern Europeans (who may be suffering from a post-Brexit backlash) or religiously non-observant Jews (who would not be able to be identified through the current data (because they would tick an agnostic/atheist box) but who may be targeted for abuse by resurgent anti-Semites).

By carefully monitoring relevant protected characteristics, the CLC hopes that it can provide reassurance to people from all marginalised backgrounds that we are committed to the development and protection of a diverse profession, with opportunity for all.

CLC
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