

BSB submission to LSB proposed statement of policy on encouraging a diverse legal profession

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By email: consultations@legalservicesboard.org.uk

The Bar Standards Board is grateful for the opportunity to respond to the Legal Services Board's proposed statement of policy on encouraging a diverse legal profession. We will respond to some of the specific questions below, but we will start with some general observations:

- We support the **outcomes** that the LSB is seeking to achieve. Indeed, these align well with a significant amount of work that the BSB is already undertaking, or planning to do (some of which is summarised below.) We agree that more progress is needed and this will be reflected as a priority in the BSB's new 5-year strategy.
- However, we do not believe that the LSB's proposed approach (setting detailed, mandatory, core expectations of all regulators) is the most effective or proportionate way to achieve the outcomes.
- As a frontline regulator, we have our own duties under the Equality Act 2010 (the Public Sector Equality Duty) and under s28 of the Legal Services Act 2007. The latter requires us to act, so far as is reasonably practicable, in a way which is compatible with the regulatory objectives, and which **we consider most appropriate** for the purpose of meeting those objectives (emphasis added.) It is important that each regulator has the flexibility to act in the way that it considers most appropriate. Such prescriptive requirements from the LSB may fetter our ability to do that.
- We believe it would be more appropriate for the LSB to set out examples of good practice in guidance that the regulators might draw on in meeting the proposed outcomes, recognising that the priorities will differ for each regulator and profession.
- As an example, the LSB has referred to Baroness Harman KC's review of bullying and harassment at the Bar. The BSB is committed to working with the Bar Council and others to address the report's recommendations, and this will be our key priority over the next year or two. Our assessment is that collaborating with the profession to change the culture at the Bar will have the biggest impact in this area. Introducing new rules alone will not achieve that aim. Other regulators will have identified their own priorities, and should be free to pursue them.
- Our recent experience of consulting on these issues has shown a commitment from the profession to diversity and to equality of opportunity. Broader concepts such as inclusion were more controversial, and

stakeholders noted that the relevant regulatory objective refers only to diversity. If the LSB were to introduce mandatory requirements, it may be helpful to ensure that they are clearly linked to the scope of the regulatory objectives.

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?

Yes, subject to the comments made elsewhere.

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

No, for the reasons given above.

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?

No, for the reasons given above. We would welcome non-prescriptive guidance from the LSB on how the regulators might meet the outcomes.

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?

Subject to our general comments above, broadly yes. We would have no objection to the expectations being described as good practice for the regulators to consider, but we do not see the justification for such detailed mandatory requirements. We note that the consultation document refers (in the table at p17) to 'identifying barriers to an equal, diverse, healthy and inclusive profession.' This seems rather broad, given the scope of the relevant Regulatory Objective, although we note that the annex focuses more specifically on encouraging a diverse profession. Nevertheless, the level of prescription proposed is unnecessary.

Also, core expectation IV could be interpreted as a requirement to ‘harmonise’ data collection approaches with other regulators. It is unclear whether the LSB intends this to be a requirement, or merely an example of what collaboration might look like. Whilst we can see the advantages of benchmarking across the sector, we are not sure this should be a mandatory requirement. As we have noted elsewhere, a better approach would be for the LSB to identify possible examples of good practice for the regulators to consider.

The BSB is already doing the following in support of this outcome:

- We collect diversity data annually through Authorisation to Practise, and keep the quality of this under review;
- Our Equality Rules set requirements for the profession to collect and analyse diversity data in relation to recruitment, retention, and work allocation;
- We regularly conduct and publish qualitative research reports to understand the barriers to equality, diversity, and inclusion;
- We collaborate on best practice with other regulators, including the LSB, via the legal regulators' EDI Forum;
- We have committed to enhanced supervision, which will provide high quality data monitoring. We will set our more information about our proposed approach in our strategy for 2026-31;
- We are committed to publishing specific and measurable equality objectives, under our PSED obligations, which will be developed and reviewed as part of our new strategy.

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?

N/A – see our general comments about the approach.

Q3a. Do you agree with the proposed Outcome 2?

Broadly yes, although as noted above, the inclusion of ‘fairness’ goes beyond the wording of the relevant regulatory objective. Of course we support the need for fair enforcement processes – if this is the LSB’s intention (as appears to be the case from the subsequent expectations) it would be helpful to clarify that the fairness in question relates to enforcement processes.

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?

Subject to our general comments above, broadly yes. We would have no objection to the expectations being described as good practice for the regulators to consider, but we do not see the justification for such detailed mandatory requirements. In particular, under expectation III(c), we are committed to identifying and tackling patterns of inconsistent outcomes in our enforcement processes. However, it is important to recognise that it can be difficult to identify the causes of such outcomes, and hence to put in place effective remedial measures.

The BSB already does the following in support of this outcome:

- We are committed to carrying out robust equality impact assessments in all our regulatory decision-making. This includes policy development and implementation, as well as BAU.
- We regularly analyse our enforcement process by protected characteristic and are committed to continuing to do this as we implement changes to our enforcement process (those changes have been subject to robust EIAs).
- We are in the process of engaging a support service to help those involved in bullying and harassment cases.
- We routinely signpost to LawCare, Victim Support and Well-being at the Bar resources.

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

N/A – see our general comments about the approach.

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?

Yes, subject to our general comments about the LSB's approach.

The BSB already does the following in support of this outcome:

- Our authorisations framework rests on four principles that align with those proposed: accessibility, flexibility, affordability, and high standards.
- We have an apprenticeship route in development, cited by the LSB as an example of best practice in relation to this outcome.
- We will keep our approach to Education and Training under review.

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?

N/A – see our general comments about the approach.

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)?

No.

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?

See our general comments above about the LSB's overall approach. In particular, we note the references in the expectations to a 'fair, healthy and inclusive professional environment'. This seems to go beyond the Regulatory Objective to encourage a diverse profession, and the terms are not defined. As such, we think such language is inappropriate for a mandatory requirement. We understand what the LSB is seeking to achieve, and therefore would recommend that the LSB focuses on good practice guidance rather than mandatory expectations.

We also query the extent to which a mandatory standard for managers would be applicable to every profession. At the Bar, the majority of the profession is self employed, and so does not have a 'manager' in the traditional sense. Whilst we agree that there is a need to look at the role of chambers in encouraging diversity in the profession, this is an example of how the prescriptive approach that the LSB suggests may not be appropriate across the sector.

The BSB already does the following in relation to this outcome:

- Our core duties set expectations and standards to prevent discrimination and promote diversity.
- Following the Equality Rules consultation, we have committed to producing guidance that makes these expectations and standards clearer and consistent.
- Our Equality Rules require chambers to set action plans to implement their Equality and Diversity Policy.
- We are currently working with the Bar Council to implement the recommendations of the Harman review into bullying and harassment at the Bar. This will lead to additional guidance that makes our expectations and standards clearer and more consistent. We will also review and amend relevant rules in the Code of Conduct. This is a good example of where regulators should be free to set their own priorities in the light of relevant evidence. We judge that implementation of Harman should be our key focus in this area for the next year or two.

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?

N/A – see our general comments about the approach.

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

It depends on the approach that the LSB ultimately takes. We have outlined some of the work that is already ongoing. For the next year or two, the BSB has prioritised working in collaboration with the profession to address the recommendations of the Harman Review. If the LSB were to require us to undertake significant additional activity beyond what is planned, it would be difficult to do so without an impact in other areas.

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

See above.

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 focus on non-mandatory good practice guidance, backed up by its performance assessment process.

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?

N/A

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?

N/A

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?

N/A

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

N/A

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?

N/A

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.

N/A

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

N/A