

SRA BOARD

3 March 2020

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This paper will be published

Our work to promote Equality, Diversity and Inclusion in the profession - reporting and future work

Purpose

- 1 This paper reviews our external work to promote equality, diversity and inclusion (EDI) in the profession and proposes three reports for publication.

Recommendations

- 2 The Board is asked to:
 - (a) note our work to promote equality, diversity and inclusion in the profession over the last five years and our planned next steps, as set out in annex 1
 - (b) note our annual work summary as set out in annex 2
 - (c) note the figures and trends from the 2019 workforce diversity data exercise as set out in annex 3.

If you have any questions about this paper please contact: Jane Malcolm, Executive Director External and Corporate Affairs, jane.malcolm@sra.org.uk, 07813 432583

Equality, Diversity and Inclusion considerations

Consideration	Paragraph nos
The paper focuses on EDI and provides an overview of the work we have done over the last five years	
This paper also covers the 2019 firm diversity data collection.	

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Our work to promote Equality, Diversity and Inclusion in the profession - reporting and future work

Background

- 3 We have delivered a significant programme of work on EDI over the last five years, in line with the Legal Services Act objective 'encouraging an independent, strong, diverse and effective legal profession' and the diversity outcomes set by the Legal Services Board (LSB), as below:
 - a. building a better understanding of diversity in the profession
 - b. using evidence about diversity to inform and evaluate our regulatory arrangements and operational processes
 - c. working collaboratively
 - d. being more accountable about our diversity work.
- 4 We are also covered by the [Equalities Act](#) public sector equality duty which requires us to have due regard to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
 - Advance equality of opportunity between people who share a protected characteristic and those who do not
 - Foster good relations between people who share a protected characteristic and those who do not.
- 5 Our work to promote EDI as an employer is threaded through our People Strategy. It is fundamental in helping us to show leadership in promoting greater diversity in the profession and in being fair and inclusive in how we work with the profession and the public. We report on our work as an employer through our [annual workforce diversity report](#) and publish our annual gender pay gap figures through the [Law Society Group gender pay gap report](#).
- 6 We also publish an [annual report](#) that sets out how we meet our public sector equality duty as an organisation. Providing this report gives us a complete year on year set of reporting, allowing us and others to track progress and identify areas for further action, research and collaboration. We believe we should continue to publish this type of annual report to show in an accessible way that we are fully meeting the requirements of the Equalities Act and attach the draft report for 2018/19 at annex 2.
- 7 As we look ahead to the next Corporate Strategy, we think it is timely to take stock of our progress over the last five years and look at next steps. We have summarised our work over the last five years and next steps at annex 1, which we propose publishing as a record of our work to date.

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Discussion

- 8 A diverse and inclusive legal profession benefits both the providers of legal services and those who use their services. It is important that the sector attracts the best people from every background and has a diversity of thinking - and there is evidence that businesses benefit from a 'diversity dividend'. As part of ensuring access to justice, legal services should be seen as relevant for everyone and that means a profession that reflects the communities it serves.
- 9 As the regulator of over 80% of the legal sector in England and Wales, we have an important role to play in promoting diversity in the profession – not only on protected characteristics but for key factors such as social mobility. But there is a great deal to do to achieve a fully diverse profession and no one organisation can effect the change needed on its own. This is an area of work where we and many others, including the Law Society, specific interest groups, wider diversity groups, legal and other regulators, firms, local and national groups all have a part to play.
- 10 Our strategic approach over the past five years has been to focus on three main areas, set out in our [EDI strategy from 2014 to 2017](#):
 - a. developing a diverse workforce and inclusive culture
 - b. making sure our approach to regulation is proportionate, fair and free from bias
 - c. working with others to promote a more diverse and inclusive profession.
- 11 A key part of that strategy was to mainstream EDI across the organisation and this meant bringing our EDI work into the heart of our governance arrangements and strategic planning. This has proved successful, making EDI central to our thinking both as a regulator and as an employer. Our EDI priorities from 2017 were therefore included within our [Corporate Strategy 2017 - 2020](#) and the Board took on direct oversight of this work from our EDI Committee.
- 12 All three areas of our EDI work, as set out in paragraph 10, are important in their own right, complement each other and help us meet our public sector equality duty.
- 13 In addition to our annual reporting as described in paragraphs 5 and 6 above (covering our EDI work as an employer and our wider work as required by the Equalities Act), every two years we collect and publish data on the diversity profile of the legal workforce.
- 14 This exercise covers all those employed in solicitor firms and provides the most comprehensive picture of the demography of the legal sector. The data is used by many organisations and interest groups, providing an effective way of monitoring change in the sector, indicating how effective interventions have been and showing where more needs to be done to achieve a truly diverse legal workforce.

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- 15 The data is presented through a data tool on our website which allows users to filter the data by firm size, location and work type. We model the raw data to get a better picture by using recognised statistical techniques to estimate what the responses would be if we had complete answers from everyone and no-one selected prefer not to say.
- 16 Alongside the [data tool](#), we publish a review of the key findings, comparing the firm data to the profile of the in-house solicitor population (taken from data provided by solicitors through their mySRA account) and highlighting key changes and trends. This report complements the data tool and is in a standardised format to increase accessibility and usefulness for readers. We promote the information and the key changes through a news release and social media.
- 17 We received data from 96 percent of firms (9,678) in the latest survey carried out in the summer of 2019, up from 92 percent in 2017. The report on findings from the 2019 workforce diversity data can be found at annex 3. Amongst other findings, we can see that the proportion of women and Black, Asian and minority ethnic (BAME)¹ partners is increasing, but the increase is in small rather than large firms. There is also an increase in BAME solicitors in in-house roles, largely in the private sector.

Discussion

- 18 We plan to build on our work to date as we further develop our outward facing EDI focus.
- 19 Activity for the future will include:
- a. improving understanding of the diversity of the solicitor profession by collecting more and better quality through solicitors' diversity profile on their SRA accounts. We will work to align the diversity categories in this profile with the firm diversity survey and improve the disclosure rate.
 - b. increasing our reach and impact through collaborative work with organisations such as the Law Society Divisions, Sole Practitioners Group, Stonewall, the Sutton Trust, the Black Solicitors Network, the Fawcett Society, Interlaw, LawCare, Women in the Law, Equalities and Human Rights Commission, LawSmart and Legally Disabled, gaining invaluable insight from the people and organisations we work with.
 - c. looking at how we can use these relationships to drive action - for example, building on discussions we have during Black History Month each year to encourage more firms to take positive action to tackle the

¹ We recognise the ongoing discussion about, and challenges with, terminology that reflects the diversity of our communities and their experience. We are using BAME because of its widespread currency and use in many relevant studies and reports.

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lack of representation of Black, Asian and minority ethnic solicitors² at senior levels in the larger firms

- d. building the EDI resources we make available to firms, focusing on issues we have identified such as disability inclusion and illustrating through case studies how improvements can be made. We will look to work with others, such as the Law Society, the City of London Law Society and the Sole Practitioners Group, to develop and promote resources.
 - e. continuing to monitor the issues that arise from the complaints we receive and the outcomes of the cases we prosecute, with a view to providing additional guidance as required, as well as working with the profession and others to bring about change
 - f. introducing new IT systems which, in conjunction with planned changes in how we record cases in our disciplinary processes, will significantly improve our data, making future monitoring and regular reporting more efficient
 - g. evaluating the impact of our regulatory reform programme, including the impact on all aspects of diversity in the profession, including social mobility, and on the experience of people who use legal services
 - h. gathering baseline data to help us evaluate the impact of the SQE against our two intended outcomes (the greater assurance of consistent, high standards at the point of admission and the development of new and diverse pathways to qualification, which are responsive to the changing legal services market and promote a diverse profession by removing artificial and unjustifiable barriers).We will publish annual performance data, a full review after five to seven years and again after seven to 10 years.
 - i. continuing to look carefully at the design and implementation of SQE to ensure that it is a fair assessment
 - j. implementing an EDI mentoring scheme, based on work we did with Stonewall and the Law Society on LGBT mentoring, to build inter-firm collaboration on all areas of diversity.
- 20 There are also some key areas of work which we believe we can understand better with the help of some analysis and research. We are planning to look at two areas in particular – differential attainment in professional assessment and disproportionality in our processes.
- 21 Since the 2011 start of the [Legal Education and Training Review](#), our work on the education and training of the profession has culminated in our proposals for

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a single common assessment for all aspiring solicitors – the Solicitors Qualifying Examination (SQE). The two objectives for SQE are the greater assurance of consistent, high standards at the point of admission and the development of new and diverse pathways to qualification, which are responsive to the changing legal services market and promote a diverse profession by removing artificial and unjustifiable barriers.

- 22 We commissioned [research by the Bridge group](#) on the impact SQE may have on social mobility and published information about the [attainment gap in legal education and training](#) to support our impact assessment of the proposals to introduce the SQE. As our equality impact assessment and the Bridge report show, there is likely to be some benefit for people from less affluent backgrounds because those from ‘earn as you learn’ routes will be assessed in the same way as those from academic routes. There will be work to do to promote the opportunities that SQE brings for those who may have traditionally thought that law as a career was unattainable or unaffordable.
- 23 There is a well evidenced attainment gap affecting Black, Asian and minority ethnic (BAME³) students - at all levels of education and training and professional assessment in multiple sectors. Our [annual monitoring](#) of the Legal Practice Course, Common Professional Examination, Period of Recognised Training and the Qualified Lawyer Transfer Scheme clearly demonstrates this, as do studies across many disciplines, including pharmacy, medicine and higher education as a whole⁴.
- 24 We know that the SQE will not resolve the attainment gap, or its drivers, but we believe we can achieve a fair and consistent assessment through good design, question setting and marking, and close monitoring and quality assurance once the SQE is up and running. However, it is likely that the attainment gap will persist, as it does elsewhere, because the reasons seem to be complex and rooted in wider societal issues. We are looking ahead to increase understanding of those issues.
- 25 In addition to the possibility of undertaking research, a key component of our evaluation of the SQE will be longitudinal work, monitoring performance over several cohorts of candidates once the SQE is introduced.
- 26 On the disproportionate representation of particular groups in our disciplinary processes, much of our recent work has been influenced by the findings of Professor John’s 2014 major review of EDI in our enforcement work, the [Independent Comparative Case Review](#) (ICCR). This focused on the overrepresentation of (BAME) solicitors in some of our regulatory outcomes.

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⁴ https://www.pharmacyregulation.org/sites/default/files/qual-research-into-ra-performance-among-black-african_candidates_final_1.pdf
<https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2019/bame-student-attainment-uk-universities-closing-the-gap.pdf>

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- Professor John analysed our data, reviewed our processes and considered complaints that had been made, finding no evidence of discrimination. His report recommended some improvements to our processes and considered some of the external factors that may be responsible for a higher proportion of BAME solicitors being brought within our investigation and disciplinary work.
- 27 This is not a new issue - the Law Society published a report about BAME solicitors in its disciplinary work in 2006, before the SRA was established as an operationally independent regulator in 2007. The profile is also not unique to the legal profession and most regulators and authorities, including medicine and dentistry, show the same pattern of BAME overrepresentation⁵.
 - 28 Since the SRA was established, we have commissioned three external reviews of our investigation and disciplinary work to examine and understand the profile of solicitors coming into our processes and the outcomes. The most recent was Professor John's review, before that, we commissioned [Pearn Kandola](#) to review our regulatory decisions data in 2010, which was recommended by [Lord Herman Ouseley](#) in his report about the same issues published in 2008.
 - 29 None of the reviews we commissioned found evidence of discrimination, but they did identify key factors affecting the profile of solicitors referred to us. These include limited years post qualification, working in small firms and establishing sole practices after only a few years in practice – all categories where BAME solicitors are significantly overrepresented.
 - 30 Each review provided recommendations for us and others, which have helped to shape our approach to EDI.
 - 31 Our quality checking and area specific file reviews suggest that BAME solicitors continue to be over-represented in our processes. We continue to have no evidence of discrimination in our processes and no corporate complaints alleging discrimination have been upheld by our Independent Reviewer.
 - 32 There is increasing interest from the LSB in the profile of people in the regulators' disciplinary processes and they have said that they would welcome clear reporting of this aspect of regulators' work.
 - 33 The introduction of our Standards and Regulations and Enforcement Strategy and our own commitment to transparency also make it timely to look again at this complex and difficult issue, ahead of the evaluation of the impact of our reform programme.
 - 34 Therefore we plan to look at the profile of solicitors in our investigation and disciplinary work in 2018/9, with a view to including in our 2020 [Upholding Professional Standards report](#).

⁵ https://www.gmc-uk.org/-/media/documents/fair-to-refer-report_pdf-79011677.pdf and <https://www.gov.uk/government/publications/lammy-review-final-report>

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Recommendations: the Board is asked to:

- (a) note our work to promote equality, diversity and inclusion in the profession over the last five years and our planned next steps as set out in annex 1**
- (b) note our annual work summary as set out in annex 2**
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Next steps

- 35 Subject to comments from the Board, we will publish all three reports in March 2020.
- 36 We will keep our EDI work under review and consider the key themes supporting our 2020/23 Corporate Strategy.
- 37 We will take forward work to monitor the profile of solicitors in our investigation and disciplinary work in 2018/9 and include in our 2020 [Upholding Professional Standards report](#).

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Supporting information

Links to the Corporate Strategy and/or Business Plan

- 38 The recommendations support strategic aim five to “work better together and with others to improve our overall effectiveness, our responsiveness and the delivery of our regulatory functions.” Publishing our work on EDI and the updated diversity data will raise awareness of diversity in the profession, can be used to track trends across the profession and inform our work. It also helps demonstrate how we are meeting the public sector equality duties.

How the issues support the regulatory objectives and best regulatory practice

- 39 The information will help us promote a diverse profession (regulatory objective six) by improving the data we hold about diversity in the profession and publishing our EDI priorities and a review of our work in these areas. The collection and reporting of clear and consistent diversity data and the review of our work will support transparency and accountability, as well as helping us to target our work, in line with the better regulation principles.

Public/Consumer impact

- 40 Promoting a diverse profession is in the interest of consumers who will have greater choice in the legal market and whose confidence will be increased by seeing a profession that reflects their community.

What engagement approach has been used to inform the work and what further communication and engagement is needed

- 41 We will update the firm diversity data tool and publish the data analysis and the EDI reviews on our website.
- 42 Once the information has been published, we will plan engagement with our key stakeholders (including the Legal Services Board, the Ministry of Justice, the Law Society, and other legal regulators).

What equality and diversity considerations relate to this issue?

- 43 This work is focused on equality, diversity and inclusion.

Author Jane Malcolm

Contact jane@malcolm@sra.org.uk (07813 432583)

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Annex 1 [Our work on EDI over the last five years](#)

Annex 2 [Our work on EDI 2018/19](#)

Annex 3 Findings from the firm diversity data survey 2019 – to follow