

SRA BOARD
1 February 2022

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This paper will be published

Next steps for our work on diversity in the profession

Reason for paper	This paper reports on our planned work to promote diversity in the profession over 2022 and 2023 following the Board's workshop discussion on 20 July 2021.
Decision(s)	<p>The Board is asked to:</p> <ul style="list-style-type: none"> a) approve the work programme set out in paragraphs 9 – 27, covering how we improve our data collection, work on access to the profession, a sharp focus on retention and progression in large firms and leading by example. b) note the planned evaluation approach at paragraphs 28 and 29 c) note that we are also reviewing legacy projects to ensure resources are targeted where we can make the most difference.
Previous Board and committee consideration	The Board discussed the issues referred to in this paper at its EDI workshop session in July 2021, considering the work we have done to date to promote diversity in the profession and providing direction for what more we can do to make a difference.
Next steps	<p>Subject to Board views, we will take forward the actions outlined in the paper, and develop a more sophisticated theory of change approach to evaluating our EDI work.</p> <p>We will review projects from previous years so we can keep a sharp focus on our work to address progression and retention, particularly in large firms.</p>

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

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**Next steps for our work on diversity in the profession****Purpose**

- 1 Promoting and supporting a diverse profession is a key part of our work, helping to ensure a profession that reflects the communities it serves, attracts the best talent from every community and benefits from diversity of thinking. This paper covers our planned work in this area over 2022 and 2023 following the Board's workshop discussion on 20 July 2021.

Recommendations

- 2 The Board is asked to:
 - a) approve the work programme set out in paragraphs 9 – 27, covering how we improve our data collection, work on access to the profession, a sharp focus on retention and progression in large firms and leading by example.
 - b) note the planned evaluation approach at paragraphs 28 and 29
 - c) note that we are also reviewing legacy projects to ensure resources are targeted where we can make the most difference.

Background

- 3 At a workshop on 20 July 2021, the Board considered our approach to equality, diversity and inclusion (EDI) and discussed a range of proposals for actions that we could take to 'move the dial' on diversity in the profession. This discussion took place in the light of our [five year review of our equality, diversity and inclusion work](#), published in March 2020.
- 4 As part of these discussions, the Board agreed that any actions we decided to take should be based on evidence, including from the latest firm diversity data collected in late summer 2021, and it was important for us show leadership through our own work on diversity at the SRA. We have taken this into account when determining the EDI actions that we are planning to take forward in relation to the profession, and our internal work on our own diversity, which we will be reporting to the Board separately.

The case for taking further steps to promote diversity in the profession

- 5 We have been using our regulatory and 'soft' powers over some years to promote equality, diversity and inclusion in the profession. Our regulatory powers include the collection and publication of diversity data, setting high ethical standards through our guidance and enforcement of Principle 6 and our Standards and Regulations. Our soft powers include influencing and nudging the sector by showing leadership, providing resources to promote good practice, research and raising awareness through events, sponsorship and collaboration with others.

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- 6 We will be continuing to use the full range of these powers to drive high ethical standards and providing clear guidance and resources for law firms to support compliance. Current work in this area includes the development of guidance for the profession on our approach to sexual misconduct, addressing unfair treatment of staff in law firms by proposing a new rule to clarify our expectations on treating people fairly, providing guidance on what firms can do to promote wellbeing in the workplace, and sharing good practice in our thematic report on workplace culture. We will continue to provide wider resources for the profession, publish diversity data and work with others to support good practice across all areas of equality, diversity and inclusion. Our research programme also includes two major EDI projects – one to look at the attainment gap in professional assessment, commissioned from Exeter University, and one to better understand the over-representation of Black, Asian and minority ethnic solicitors in our enforcement processes.
- 7 Considering the most recent findings from the firm diversity data 2021, diversity in the profession overall has improved in recent years, but there are still ‘glass’ and ‘class’ ceilings in relation to the profile at more senior levels, and across firms of different sizes. We know that career development, progression and retention are significant issues for specific groups.
- 8 The focus of this paper is to identify the actions we can take to better understand and address the issues which we have set out in the four sections below.

Understanding the sector through better data

- 9 To understand the barriers that we know exist for some groups in the profession, we need good diversity data. Whilst we have comprehensive data about diversity across the profession built up over a number of years, there is more work to do to get a level of granularity which allows us to see beyond the broad picture.
- 10 We want to improve the diversity data from solicitors we collect through mySRA. This will develop our capability for intersectional analysis so as to understand, for example, career progression in a more sophisticated way. We are working with the Law Society and others on the next stage of our campaign to encourage diversity data declarations through mySRA.
- 11 In particular, we believe there is significant under-declaration by disabled people working in law firms, with the proportion of lawyers who are prepared to declare they have a disability considerably below what we see in the wider UK workforce. Research¹ suggests a variety of reasons why disabled lawyers are reluctant to disclose their disability. We are working with others to promote the importance of declaration and on areas that will help to change the culture in the sector, for example the initiatives set out in paragraph 6.

¹ [Legally Disabled? The career experiences of disabled people working in the profession](#)

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- 12 The majority of law firms report their workforce diversity data to us every two years as required. 90% reported in 2021, after what was a difficult year particularly for small firms. We will follow up with those firms that did not submit their data using the type of approach we have taken in our Anti-Money Laundering and transparency work.
- 13 We will also revisit the categories we use for future firm diversity data collections, including looking at equity and non-equity partners (which will help to support the work with large firms set out below) and say more in our reporting on the differences we are seeing across firms of different sizes.
- 14 Furthermore, we plan to review how law firms are publishing their own diversity data in Q3 and Q4 of this year and explore how best to encourage, support and ultimately enforce publication, with a view to implementation in Q1 of the next business year. Again, we think this is particularly important for large firms.

Fair access to the profession

- 15 We have been working to address the barriers to progression over a number of years, introducing the new Solicitors Qualifying Examination (SQE) in 2021. The two main objectives of the SQE are to ensure that everyone meets the same consistent, high standards at the point they become a solicitor and to promote new and diverse pathways to qualification, while removing unjustified barriers. It is in everyone's interest that talented people from all backgrounds can become solicitors. The [results](#) from the very first assessment of candidates taking SQE 1 have been positive and show the exam was robust, fair and reliable and we will be closely monitoring the impact of the SQE over time.
- 16 We recognised that across professional assessments in many sectors there are patterns of differential attainment for some groups of candidates and as anticipated, this has been seen in the results from the first SQE assessment. We know the reasons for this are complex and, as well as ongoing review and analysis, we have appointed Exeter University to carry out in-depth research to better understand the factors driving the attainment gap for these groups in professional assessments, so that we can do everything we can to address the issues.

A focus on the greatest challenges to diversity in the profession

- 17 Some of the greatest challenges to diversity and inclusion in the profession are to be found in the largest law firms, despite the commitment and leadership that many such firms demonstrate in pursuing diversity initiatives. Findings from the 2021 firm diversity data shows that in the largest law firms there is significant underrepresentation of Black and Asian partners, slow progress for women at partnership level, continued underrepresentation of disabled lawyers and overrepresentation of lawyers from more privileged backgrounds.

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- 18 The patterns we see in our data and this research suggest a greater focus is needed on the barriers to retention and progression in the larger firms. We will work with key organisations such as the City of London Law Society and large law firms themselves to understand the types of actions that have the potential to drive progress and are effective in addressing workplace practices which affect retention and progression. We will also consider the potential impact and regulatory burden of imposing further requirements on larger firms against the potential benefits this may bring through increased transparency and accountability.
- 19 We will work collaboratively to explore the potential for expanding the reporting and publishing requirements for larger firms, in particular to report and publish additional, more nuanced data and a narrative to highlight the actions they are taking to identify any gaps.
- 20 Law firms with 250 or more employees are already required to publish their gender pay gap data, although the pace of change has been slow in the legal sector, where the pay gap is much higher than in the UK as a whole. As [reported by the Law Society](#) the average gap in the mean hourly pay was 14% in the UK and 20.3% in law firms and the average gap in median pay was 12.6% in the UK and 32.4% in law firms.
- 21 There is evidence that [pay gap reporting can make a difference](#). The government continues to consider whether to make ethnicity pay gap reporting mandatory, but in the interim there is support for publishing this data on a voluntary basis, with guidance available from a range of sources, including the [Law Society](#). We are exploring publishing our own ethnicity pay gap data this year and will work with the Law Society and others over this year and 2022/23 to encourage consistent pay gap reporting by the larger firms, including for ethnicity.
- 22 To better understand the issues affecting retention for particular groups, as covered in the [Rare Recruitment report](#) on the “ethnicity stay” gap in 2020 and research from [Legally Disabled?](#), we will deploy ‘exit questionnaires’ with a proportion of the solicitors who chose not to renew their practising certificate or come off the Roll, to establish whether their reasons have a diversity related component. Based on this information, we will report on our findings to Board in Q1 of 2022/23 and use them to inform next steps.
- 23 We know our [EDI resources](#) for the profession are widely used and provide a good opportunity to capture and share good practice from large firms. We plan to expand the range and are currently working on additional resources on race equality, pregnancy and maternity, disability and social mobility.

Leading by example

- 24 As well as leading by example in our approach to ethnicity pay gap reporting, as mentioned at paragraph 21, we are also looking at other ways to promote diversity within our own organisation. We publish our [workforce diversity data](#)

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each year across the categories we require of law firms and as we review our most recent data, can see there is more to do. Our most recent data will be published in Q2 and the Board will be considering the actions we can take to promote diversity in our workforce at all levels at a future meeting.

- 25 We will explore the impact of setting aspirational diversity targets for ourselves, a practice adopted by a number of the larger law firms.
- 26 In addition, we have reviewed how we carry out equality impact assessments for our key policy proposals and our wider work, and are rolling out a training module for staff.
- 27 We will continue to be transparent about the overrepresentation of men and solicitors from a Black, Asian and minority ethnic background in our enforcement processes in both the reports we receive and in the cases we take forward for investigation, with our latest report due to be published in Q3. We are in the process of procuring a research partner to look at these issues, focusing on the sociological factors that drive this overrepresentation, and how the structure of the legal sector may contribute to this. We are also commissioning a review of our decision making at the initial stage of our enforcement process, for the purpose of providing external independent quality assurance.

Recommendation: the Board is asked to approve the work programme set out in paragraphs 9 – 27, covering how we improve our data collection, work on access to the profession, a sharp focus on retention and progression in large firms and leading by example.

Next steps

- 28 Subject to the views of the Board we will progress the work programme set out above.
- 29 In order to understand the impact of our work to promote diversity, we need to develop a more sophisticated evaluation framework with a range of indicators to measure progress. The diversity profile of the profession, including at senior levels and across all firm types is the ultimate indicator, but this is of course dependent on the work of many organisations and individuals as well as factors outside the legal sector. It is widely accepted that establishing a causal link between changes at a sector level and the work we and others are doing is a real challenge.

Recommendation: the Board is asked to note the planned evaluation approach at paragraphs 28 and 29

- 30 We will build on the work we have commissioned to evaluate our regulatory reforms and the Solicitors Qualification Examination and develop a theory of change approach to evaluating our EDI work. We will collaborate on this with the Legal Services Board and the frontline legal regulators through the EDI

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Forum we have set up, while benefitting from the Judicial Diversity Forum's work in this area. We also plan to commission expert support in 2022/23 to develop our approach.

- 31 Our current work programme includes projects from previous years that we are currently assessing and may sit better with other organisations. We are reviewing these so we can keep a sharp focus on our work to address progression and retention, particularly in large firms.

Recommendation: the Board is asked to note that we are also reviewing legacy projects to ensure resources are targeted where we can make the most difference.

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CLASSIFICATION – PUBLIC**Supporting information****Links to the Corporate Strategy and/or Business Plan and impact on strategic and mid-tier risks**

- 32 The work reported in this paper relates to objective 1 to “set and maintain high professional standards for solicitors and law firms as the public would expect and ensure we provide an equally high level of operational service”. It is in addition to key EDI work set out in our business plan and will help to mitigate the relevant risks in our risk registers.

How the issues support the regulatory objectives and best regulatory practice

- 33 The actions we are planning to promote EDI will help us meet our regulatory objective to promote a diverse legal profession and meets our commitment to be transparent in meeting best regulatory practice and to meet the LSB’s diversity outcomes.
- 34 We have been mindful of the regulatory burden on law firms in identifying these further actions, seeking to be proportionate so we do not overburden the profession, and targeted in seeking to mitigate the risks of not having a profession that is diverse. We are seeking to be accountable ourselves by seeking to implement actions we recommend for others (publishing our ethnicity pay gap data) and developing an evaluation framework so we can report openly on the impact of our work in this area in a more effective way. We are seeking to provide consistency and clarity in the guidance we provide and to promote understanding of our approach to EDI, and engage with law firms to promote transparency at a firm level about workforce diversity.

Public/Consumer impact

- 35 The information in this report will be published and will help to build confidence that the solicitors’ profession is representative of the community it serves.

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

- 36 The actions we are planning to promote EDI have been informed by our engagement with the LSB and frontline regulators, in particular through our new Legal Regulators EDI Forum, set up in 2021 so we can collaborate on EDI and work more effectively on sector wide EDI issues, our regular close engagement with the Law Society. We also engage closely with diversity groups in the profession, including in planning our current business plan, to take account of their views. And through engagement directly with individual law firms as well as through regular meetings with the Sole Practitioners Group and the Central London Law Society, representing the City firms. We will continue with this engagement to inform our implementation of the actions set out in the paper.

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What equality and diversity considerations relate to this issue?

37 In determining the actions we are planning to take forward, we have taken into account research and findings from our latest diversity survey to identify some of the key challenges for diversity and inclusion in the profession (set out in the paper). The range of actions highlighted are broad enough to impact positively on all protected characteristics, with a focus on the challenges for particular characteristics where appropriate.

How the work will be evaluated

38 One of the proposed actions is to develop a framework to evaluate our work to promote EDI and developing this we will use a range of indicators to measure success for each of the actions identified including: the trends in diversity in the profession, levels of declaration/ participation in collecting diversity data, participation in our engagement activities and response rates to our surveys or any calls for evidence.

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