



The Law Society

## **Consultation on the SRA's Equality Framework and Engagement Strategy for 2011/12**

Law Society response

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supporting  
solicitors

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## **Response to the consultation**

### **Introduction**

This response has been prepared by the Law Society, the representative body for more than 140,000 solicitors in England and Wales. The Law Society negotiates on behalf of the profession, and lobbies regulators, government and others.

The Law Society welcomes the opportunity to respond to this consultation on the equality framework and engagement strategy produced by the SRA setting out their direction of travel in relation to equality, diversity and human rights. This response has been considered in light of the SRA's regulatory objectives, obligations in regard to equality and diversity in the Legal Services Act 2007 and the Equality Duty.

These regulatory objectives include:

- Improving Access to Justice
- Encouraging an independent, strong, diverse and effective legal profession

The SRA's stated goals in relation to these objectives are stated as:

- Fair Employer: recruit, develop and retain a diverse workforce
- Fair Regulator: open, proportionate, non-discriminatory and transparent
- Inclusive and Stakeholder focused organisation

The Law Society believes that the SRA's equality framework would be a more robust document if it had clearly defined goals for the stated areas of work, as well as identifying measurement and reporting processes. We believe that quantitative data is essential in order to understand the SRA's overall progress in relation to equality and diversity and that the SRA have missed an opportunity to outline exactly how compliance will be regulated. In our view, this document reads as more aspirational than practical, which leaves room for a misunderstanding of the SRA's commitment to its objectives.

The most important aspect of the SRA's equality framework and engagement strategy should have been the high level explanation of how the SRA will achieve its goals and objectives in regard to the way it regulates the profession, but this is missing. The SRA should have set out clearly against each objective how progress will be measured and monitored. When the SRA do further develop its objectives it will be essential for the profession to understand how these will be met and how the regulatory processes will support the implementation of outcome-focused regulation (OFR) and compliance with the incoming Principle 9 and Code of Conduct. A further update from the SRA on these matters is essential.

## **EQUALITY OBJECTIVES**

**Q1: We would welcome your comments on our objectives and whether there are any other actions that you feel we should prioritise above the ones identified?**

### **Objective 1: Promoting diversity in the workplace**

The Law Society agrees that an objective to promote diversity in the workplace is a necessity for the SRA. The conclusions set out in the Pearn Kandola report on disproportionate outcomes and the Equality Impact Assessment results on recruitment activities undertaken by The Law Society Group clearly indicate the need for more progress in this area.

We welcome the expressed commitment to address under-representation of the ethnicity and disability balance of staff within the SRA workforce. We assume that reference to the gender balance of staff is to an under-representation of men within the SRA workforce. We note that it is not referenced specifically under this objective, but both age and socio-economic background are of growing importance and are worthy of specific measures.

The Law Society accepts that the SRA will provide further detail in relation to the objectives in due course but believe it would have been helpful for them to have set clear goals in relation to levels of improvement. It is noticeable that little detail is provided in terms of activities which could be undertaken in order to achieve this objective, and it would have been helpful for the SRA to have outlined this. It is difficult to assess the quality of the proposal without clear goals, indicators of the focus of activities and clear measurement mechanisms.

In relation to recruitment it would have been more informative if the SRA had set goals and outlined a broad commitment to a positive action scheme aimed at recruiting ethnic minorities and disabled people. Importantly, this activity should not just be targeted at entry level staff but should be used to attract and diversify the composition of management groups, Boards and committees. Ensuring disabled people are represented within senior grades will assist the SRA to further develop its understanding, and ability to manage effectively, disability within the workplace. It will also assist the SRA to develop systems of regulation which are fit for purpose and encompass the necessary flexibility to respond to the needs of disabled solicitors.

For the SRA to achieve this objective it will be necessary to make an investment in the organisational understanding of disability equality, and we encourage the SRA to explore this as part of any targeted positive action programme aimed at improving the representation of disabled people within the SRA workforce. Undertaking an Equality Impact Assessment of recruitment activity within the SRA will be crucial in understanding the relevant issues and setting out a programme to achieve the necessary change in equality of opportunity.

The statistics provided by the SRA in relation to staff experience of both bullying and harassment by colleagues (10.7%) and those who believed they had witnessed

discrimination in the workplace (17%) is cause for concern. It may be necessary for the SRA to formulate specific management performance targets in relation to managing workplace behaviour and improving the workplace environment. We note that the SRA has committed to introducing bullying and harassment training and while we agree that this is a necessity, we also believe that it is clear performance measures in regard to equality and diversity that need to be embedded in performance reviews if the required change is to be realised.

The Law Society welcomes the SRA's plans to hold a range of diversity events, as this will be effective at raising awareness. We hope that the SRA can use these opportunities to gain feedback from staff on how to affect behavioural change and improvements in equality and diversity management in the working environment.

## **Objective 2: Promoting diversity at Board and committee level**

We note that the SRA does not currently publish diversity data about its Board and committee members, but think that this would be helpful in order to be able to measure success and inform the scope and level of recourse needed to effect change.

The SRA makes reference to positive action methods which have been successful in increasing the diversity of adjudicator panels. It would be useful for the SRA to explore what the success factors were and apply them more widely to other Boards and committees or indeed within the SRA workforce, which would help to achieve objective 1.

The Law Society notes that equality and diversity training is offered to Board and committee members but it would be helpful for the SRA to indicate whether this training is mandatory or not, for sitting on the Board and/or committees. We believe that the requirement for equality and diversity training should be mandatory and that the SRA should monitor compliance with the requirement. We advocate that any committee or Board member should not be able to seek re-election or another term if they have not undertaken this training. It would also be helpful to have an indication as to how the work of the Board and committees is monitored to ensure that equality and diversity decisions are quality checked. This would both manage risk and help identify future training and development needs for these groups.

In our view, there is very little detail on what the goal is for this objective or how it will be achieved in practice. This makes it difficult to discern the SRA's level of commitment to this objective.

## **Objective 3: Developing our people for new ways of working**

We note that the SRA intends to appoint Equality Champions to support equality and diversity initiatives across the organisation. As the SRA already has equality and diversity specialists aligned to particular parts of the business, we believe that more specific information on the role of the champions should be provided. For example,

will the champions receive additional equality training and what will be the scope of their role? Also, will it be part of their KPI's and performance evaluation for the purposes of remuneration?

The Law Society recognises that the SRA has a strong expert resource to facilitate Equality Impact Assessments and it would be helpful to understand how this function and role will contribute to the framework measurement and performance management. While we recognise that the role of Equality Champion has merit, it would be valuable to have a clear understanding of how ownership and accountability for equality and diversity issues will be integrated and measured in the broader range of roles and responsibilities within the SRA's workforce.

We believe that the SRA needs to focus more on equality and diversity performance measures and targets. Whilst 'softer' awareness approaches such as awareness events, champions and engagement based activities/processes/support mechanisms are useful, it is measures and targets that will increase levels of performance on equality and diversity in the workforce.

#### **Objective 4: Embedding equality in the work we are doing to transform our organisation**

The SRA has set out a number of challenges it faces in terms of embedding equality within its workforce. We believe that information on management performance measures to ensure that the transformation programme improves standards in relation to equality and diversity are required. We note that the opportunity for the SRA to improve and the potential benefits of having a more robust approach to organisational equality and diversity delivery does not seem to have been addressed.

The Law Society believes it is vital that robust Equality Impact Assessments underpin any move to a single site and that significant steps are taken to mitigate the impact of this process. The fact that one in three of the SRA's staff work flexibly, as well as the needs of disabled staff with mobility issues, are important considerations for the SRA when evaluating a move to a single site. While the benefits of the SRA being on one site are accepted, the financial justification will need to be clearly set out as there may be high costs attached to mitigating the impact on staff with caring responsibilities and any disabled staff due to increased commuting time and cost. This is an important area of risk for a number of reasons but not least if the SRA is to improve the diversity profile of its staff.

The SRA also sets out its intention to provide staff with guides on effective procurement. While we accept that this is an important activity, the strategic need to ensure Tier One Suppliers are engaged through a robust procurement process which meets Equality Duty obligations, is logically the area to address as it is the highest risk. The Law Society is willing to work with the SRA to achieve this and to share the tools, processes and lessons learned through undertaking a pilot equality and diversity compliant procurement process.

## **Objective 5: Supporting small firms in managing the transition to outcome-focused regulation and the introduction of Alternative Business Structures**

The Law Society welcomes the SRA's commitment to support small firms managing the transition to OFR and the introduction of ABS. In our view, road shows and additional guidance for small firms on these matters are a minimum requirement from the SRA.

We would advocate that as the SRA receives ABS licence applications, it seeks to research the geographical spread of ABS organisations and utilise this information to predict the potential initial equality impact of the introduction of ABS in the short term. This would allow the SRA to develop more targeted interventions to support small firms. It would be reassuring if the SRA set out details of when it would propose to undertake research into the effect on diversity of ABS. In our view, 2-3 years after the introduction of ABS would seem a plausible time period to formulate data for research and equality impact purposes.

This objective directly reflects the regulatory objective set out in the Legal Services Act to "encourage an independent, strong, diverse and independent legal profession". With this in mind, it would be useful if there was information on possible mitigating actions, even if these can only be expressed in broad terms at present. It is important that the SRA is prepared for the implications in terms of equality impact following the introduction of ABS.

The SRA sets out a framework of activity which will enable a flexible approach to issues as they arise. We recognise that it is difficult for the SRA to commit resources to an issue whose scale is unknown, but it would be prudent if the framework takes account of the possible potential for an adverse impact on diversity following the introduction of ABS. It would also be useful if the SRA is able to demonstrate that it is prepared to undertake positive action to protect diversity within the profession. The Law Society would be willing to work with the SRA to provide support, information, guidance and to ensure issues can be tackled proactively as they emerge following the introduction of ABS.

## **Objective 6: Continuing to closely monitor the disproportionate outcomes for BME solicitors and firms and seeking where possible to reduce that disproportionality**

As the actions set out in the Pearn Kandola report will form the basis of meeting this objective, it is important that the SRA meets its stated timeframes in terms of reporting on implementing the recommendations and whether the actions have resulted in the desired reduction of disproportionality.

The consultation states a commitment to reducing disproportionality, but it does not take the opportunity to set out what actions have been taken already and what level of success has been achieved. This would be helpful to allow those consulting with the SRA to gauge the success of interventions to date and so promote a sense of confidence in future activities. The lack of detail here could be interpreted as a lack of

real commitment to this objective which would be disconcerting to the profession, particularly BME solicitors who have repeatedly raised the issue of inequality in regulatory outcomes for their colleagues and peers. We believe that more information is required on the scope of research that the SRA will undertake to understand trends in relation to the introduction of changes to ARP and ABS and the disparity of outcomes already identified. It would be helpful if the SRA had set out how they will work with the Legal Ombudsman (LeO) and the Legal Services Board (LSB), as well as other relevant stakeholders, to achieve a better understanding of all the issues and demonstrate a joined up approach to tackling inequality and disadvantage.

## **Objective 7: Improving how we respond to those in the profession with a disability**

We note that the SRA acknowledges the issues with disability equality in the wider profession and regulated community of disabled solicitors, however, the actions set out to achieve this objective are vague and do not reflect the breadth of the issue concerning disability equality.

The SRA is aware of anecdotal evidence which suggests a gap in understanding within the profession of how to manage disability effectively. This is compared to thinking around gender equality and to some extent race equality where the issues are well known and actions are visible to address this, if not always successful at present. The gap in the effective management of disability is both in respect of employees and in delivering services. We note that the SRA has set out some minimum standards around reasonable adjustments in the new Code of Conduct. However, this alone will not tackle the current issues which are both widespread and demonstrate that the legal profession is not able to translate the social model of disability into its professional approach. Disabled people are protected by equality legislation and the SRA should develop robust plans for improving awareness to the issues they face. The Law Society would welcome working with the SRA to improve understanding of disability issues in the profession and to develop workshops and guidance aimed at supporting the new Code of Practice and Principle 9 in the SRA's Handbook.

The Law Society believes that the SRA have missed an opportunity to set out how they will deal with complaints around poor service provision for disabled people and further areas for joined up working with the LeO and the LSB. In terms of working with the regulated disabled community, we are concerned over the proposal to set up an advocate's scheme for disabled solicitors. The Law Society has a Lawyer's with Disabilities Division and it would seem more practical and sensible for the SRA to promote this to disabled solicitors as a resource for support and guidance, regarding being a disabled solicitor and the potential barriers facing disabled solicitors. This forum would be invaluable to the SRA in consultations about regulatory impediments to practising as a disabled solicitor. This consultation does not describe the ways in which the SRA is prepared to flex the regulatory outcomes and indicative behaviours in the Code of Conduct to take account of "more favourable treatment" in respect of disabled people. However, the SRA is bound by the Disability Equality Duty and it is encouraging that the SRA has committed to working with Disability Specialist organisations to ensure regulatory processes are robust and do not place disabled solicitors at a substantial disadvantage.

In our view, the SRA should remind all providers of the LPC who have a relationship with the SRA that they have an obligation under the Equality Act to make reasonable adjustments. If there is a contract/supplier relationship between the providers and the SRA, the obligations under the Disability Equality duty can be passed along to the provider through the contracting relationship. Given the widespread anecdotal evidence of disability discrimination throughout the legal sector, the SRA should consult on researching the extent of current barriers to disability equality for disabled students, solicitors and clients. The Law Society will contribute to this process through our willingness to engage and educate its members; providing suitable guidance to members to help them meet the desired standards in relation to providing equality of access and opportunity for disabled people to all aspects of the legal sector.

The SRA should also be mindful of the obligation to provide accessible websites and intranet systems which is something not mentioned at all within the equality framework and this obligation should be adhered to internally as well as encouraged for firms. Providers of LPC training should be encouraged to comply with the law and be mindful of providing accessible learning tools when utilising electronic learning media such as e-books and e-learning.

#### **Objective 8: Better understanding the needs of consumers and the wider public**

The Law Society welcomes the SRA's commitment to developing a consumer network to inform decision making. However, there are other basic steps that the Law Society expects to see set out in relation to public and consumer education, which are not outlined within the equality framework. These are,

- Commitment to provide public information in plain English and/or easy read
- Ensuring accessible documents and website content
- Ensuring website accessibility and improved usability/navigation experiences
- Diversity Monitoring of engagement work with the public and consumers

Without these commitments and an understanding of the processes that the SRA will implement to improve work with consumers and the public, the equality framework does not seem complete. To be effective in this area it will be crucial to have joint working with the LeO and the LSB and this is not set out in any detail. Understanding the limitations of any memoranda of understanding with these organisations regarding referring and/or notification of complaints and the follow through process will be important in safeguarding confidence in relation to undertaking public and consumer engagement exercises. Duplication of effort between the LeO, LSB and SRA in regard to public engagement is an identifiable risk that the SRA should seek to mitigate through its relationship with these other organisations. Setting out some of the principles of these working relationships would have been useful for the SRA to have outlined in this consultation.



## **Objective 9: Encouraging a diverse profession**

The first area that the SRA notes it will be focusing on to meet this objective is the LSB's proposals on collecting and publishing diversity data, which the LSB recently consulted on. The Law Society responded to this consultation and agreed with the LSB's proposal that firms should be required to conduct surveys about the diversity of their workforce as a regulatory obligation, on the basis that it is important for diversity data to be sought in order to build up a more comprehensive evidence base about the diversity make-up of the legal workforce.

However, we strongly opposed the part of the LSB's proposal to the effect that diversity data should be published at entity level. Data on equality and diversity is sensitive data under the Data Protection Act 1998 and it is important that consideration is given to how it is stored and used. The publication of data can, even if conducted anonymously, result in individuals being identifiable. In our view, the only way publication of data can ensure anonymity of individuals is for firms not to publish individual data sets but to instead publish subsets of information on sectors i.e. commercial law, sole practitioners, in-house lawyers, corporate in-house lawyers etc as trends, and also trends for the entire sector.

The second area that the SRA will be focusing on is undertaking work to explain to firms how they can comply with the new Handbook (both Principle 9 and the Code of Conduct). However, there is no mention of how the SRA will regulate equality and diversity and this feels like a significant omission. The SRA has issued a "warning card" around compliance with equality and diversity (rule 6) and yet no further insight has been provided to demonstrate how the SRA will enforce compliance with the new Handbook. It is important for the profession to understand how the SRA will be involved with equality and diversity complaints and how the SRA will work with the LeO and the LSB on concerns relating to equality and diversity. Significantly, it is not clear from the consultation whether in relation to employment practices and discrimination against solicitors with protected characteristics, the SRA will simply rely on tribunal judgements before taking action. The threshold for proving discrimination claims is high and these claims typically have lower success rates compared to other complaints brought to employment tribunals.

Increasingly, the Law Society is being made aware of issues related to age in the profession, particularly in respect of recruitment, and we would welcome some further development of objective 9 to encompass strategies for addressing age related discrimination in the profession. The Law Society invites the SRA to attend the Firms Diversity Forum meetings to engage and consult with solicitors on possible approaches to regulating equality and diversity more effectively.

The third area that the SRA will be focusing on to meet this objective is looking at further opportunities for promoting access to the profession. The Law Society believes that promoting non-traditional routes of qualification is important to ensure access to the profession and to maintaining a diverse legal profession. However, more action is needed to address inherent discrimination issues such as Equal Pay, which are backed up by significant pieces of research. It is acknowledged that access routes into the profession and into commercial sectors of the profession are often more difficult for ethnic minorities and women. This is demonstrated through

Law Society research in 2010 on barriers for women, BME and LGB solicitors (<http://www.lawsociety.org.uk/practicesupport/equalitydiversity/reports.page>) and it is important that the SRA seeks to address these issues. In our view, not doing so will undermine the SRA's commitment to tackle discrimination within the legal profession.

## **PUBLISHING EQUALITY INFORMATION**

### **Q2: Do you have any comments about our proposals to collect and publish data about our regulatory work?**

The Law Society recognises that the SRA is required to publish sufficient information to demonstrate that they have complied with their general equality duty, and are supportive of this.

### **Q3: Is there any other regulatory outcomes data that you feel we should be collecting and/or publishing?**

We are supportive of the proposed SRA plan to publish information on regulatory outcomes. However, we advise caution about publishing data which may be disproportionate in outcomes for BME members, particularly where actions outlined in the Pearn Kandola report have not yet been implemented.

### **Q4: Do you find the format of the 2008 and 2009 regulatory objectives data easy to understand?**

Yes, the format was understandable although it would be useful for the SRA to produce Easy Read versions to ensure the widest possible audience can access and understand the data.

### **Q5: Do you have any comments on our proposals to publish equality impact assessment reports?**

The Law Society is supportive of the SRA's proposals on publishing Equality Impact Assessments.

### **Q6: If you have accessed and read equality impact assessment reports that we have published in the past, do you have any comments on how these could be improved?**

We strongly recommend that the SRA rely solely on evidence based conclusions within its Equality Impact Assessments (EIAs), rather than focusing simply on evidence which supports pre-decided policy positions. The flaws in the EIAs which have been published previously have been a reliance on assumptions rather than evidence to support policy positions. There is established case law to indicate this is

a risky approach and we would discourage the SRA from publishing further EIAs with assumption based conclusions.

## **ENGAGEMENT STRATEGY**

**Q7: Do you have any comments on our engagement principles and is there anything you think we should add?**

The Law Society is supportive of the engagement strategy but feel it should reflect all of the protected characteristics, and that significant effort should be made to engage with disabled groups. We are aware this work is on-going and encourage the SRA to communicate this further when they add more detail to their proposed objectives.

**Q8: Have you found any of our recent methods of engagement to be particularly helpful?**

We have found the SRA's recent efforts at engagement good and generally helpful.

**Q9: Do you have any further suggestions about how we could do things differently?**

The Law Society believes providing on-line opportunities to respond to questionnaires would be a helpful addition to engagement processes and might encourage more responses from individual solicitors and those with an interest and knowledge of equality issues within the legal sector.

## **EQUALITY IMPACT**

**Q10: Are there any other equality issues that we should take into account in preparing our Equality Framework?**

Although socio-economic considerations are not part of current legislation, it is an important issue to the profession as highlighted by the work of the Milburn Commission. Therefore a focus on these issues would be broadly welcomed by the profession even if no specific objectives can be developed as a priority at this time.

**Q11: Do you have any further comments about our proposals for equality and diversity at the SRA?**

We believe that the SRA should be as proactive as possible in resolving internal equality and diversity issues. Undertaking a closer working and a "critical friend" relationship with HR services would be helpful to ensure that the strategic diversity needs of the organisation can be met. Developing performance measures around

equality and diversity will be necessary in driving the required internal change within the SRA.