

**LETR 2020 Forum Response to:**

**The LETR Research Team's "Discussion Paper 02/2011: Equality, Diversity & Social Mobility"**

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The evidence and feedback available from our members suggests a strong commitment to equality, diversity and social mobility within the solicitors' profession and there is evidence that awareness of the diversity agenda has 'come of age' in recent years.

For example, the Law Society's Diversity & Inclusion Charter was launched in 2009 and now has 240 (and counting) signatory firms representing over one third of all qualified solicitors in England & Wales. The Charter sets out an extensive framework of specific performance indicators for firms to work towards in order to improve their diversity profile and practices.

Schemes such as PRIME (launched in 2011) also demonstrate the growing momentum on the part of law firms to get actively involved with diversity and access initiatives, including at Key Stages 3 & 4. At the local level, individual firms are doing a lot of work to reach out into their local communities. They also spend considerable amounts of time and effort at the graduate recruitment stage looking for talent beyond the 'standard', 'elite' graduate profile.

Diversity and access is by no means a 'new' consideration within the solicitors' profession; the Milburn Report (2009) (at page 19) captures and acknowledges this in the data on the percentage of solicitors educated in the independent sector: around 68% in the late 1980s, falling to around 55% in the early 2000s. But we emphasise developments in recent years because they point to a potentially significant change in awareness and activity. These initiatives are evidence of an on-going process of cultural education and change in which the solicitors' profession is questioning assumptions and challenging practices that may work against diversity and social mobility. This process has accelerated and matured in recent years and it is realistic to hope that its effects will have an impact on the diversity and access data in due course (which the Discussion Paper acknowledges is patchy in relation to recent trends). We acknowledge that we have in no way reached the end of the road, and we are fully committed to making further and continual improvements.

However, given the deep-seated issues around educational attainment at both school and degree level highlighted in the Discussion Paper, attempts to address diversity and social mobility through the traditional graduate recruitment and training process only will inevitably prove challenging.

It seems to us that the central issue is **flexibility of entry** into the profession. At para 82, page 24 of the Discussion Paper, the Research Team observes:

*[...] there may be a case for (further) reducing actual and potential barriers to alternative training regimes that could ensure trainees are able to obtain appropriate and equivalent skill by means other than existing training, and for linking access more closely to capability-based assessments. There is a risk, of course, that such developments will simply move the bottleneck higher and create greater competition among newly qualified lawyers, but one difference is that, at that stage, at least those*

*seeking employment are fully qualified, and may have greater mobility and opportunity on the basis of that qualification.*

In broad terms, we would agree with this but it is critical that we are clear on what “fully qualified” must mean in order for any mobility benefits and opportunities to accrue within the solicitors’ profession: it must be work-based and benchmarked against a reliable and industry-approved set of professional standards. Absent this, any resulting professional qualification (for example through a ‘qualifying LPC’ or ‘national bar exam’ for England and Wales) would have little market credibility and would be an exercise in window dressing and statistical manipulation which would have little or no impact on diversity **within the practising solicitors’ profession**. In this context, we agree with the Research Team’s summary (at para 113, page 36 of the Discussion Paper):

*As debates around the Law Society Training Framework Review acknowledged, creating more flexible entry routes to the profession may help increase diversity, but only if the value of those alternatives is respected and assured, otherwise there is a danger that flexibility and expansion may also generate new forms of discrimination (Julian Webb and Fancourt 2004)*

There have been some very interesting developments and initiatives around flexible entry into the profession: for example, the SRA’s Work Based Learning Pilot and, more recently, the developments around a qualification framework for paralegals starting at school-leaver level (which could in principle form a first step in a continuum towards higher-level qualifications as a “Qualified Paralegal”, Chartered Legal Executive and, perhaps, solicitor). The latter is perhaps a particularly relevant perspective given the Research Team’s findings that the problems around diversity and social mobility start early and, ideally, require interventions before the graduate level.

It seems to us that greater flexibility in the routes to qualification as a solicitor are of vital importance not just for diversity and social mobility but also for ensuring high-level legal services professionals in **non-commercial** areas of law. We recognise that if the training contract remains the ‘only’ way to qualify as a solicitor (CILEX route noted), it seems inevitable that the number of qualified solicitors working in non-commercial areas will continue to decrease over time given that training contracts are increasingly concentrated around the ‘Top 100’ commercial law firms (according to the most recent Chambers Student Guide survey, 120 commercial law firms accounted for 2,251 qualifying solicitors in 2011; in the same year 5,441 new training contracts were registered, according to the Law Society’s Annual Statistical Report for 2011). In this context, we agree with the Research Team’s remarks at para 81 page 24 of the Discussion Paper:

*[...] reliance on the market means that training opportunities for solicitors in particular tend to be shaped by the larger firms, often with a strong commercial law bias. Consolidation of high street firms and the growth in ABSs may create new opportunities in some areas of private client work, but increasing financial constraints on legal aid and the growing vulnerability of smaller firms and the third sector may also mean that there are increasingly few opportunities for lawyers to train in social justice/social welfare settings. This could have significant longer term implications for access to justice, particularly for many in BME communities.*

However, it is important to bear in mind the diversity of roles that exist within the legal services sector and that ‘access to the profession’ shouldn’t be measured with reference only to ‘solicitors’ and ‘barristers’. It is imperative that paralegals, legal executives and other legal services professionals should have routes available to ‘cross-qualify’ should they wish to do so, but it is rather arrogant (and incorrect) to assume that all legal services professionals wish to be solicitors or barristers. For example, only 30% of Chartered Legal Executives want to become solicitors (see para 93 page 28 of the Discussion Paper) and “relatively few” actually exercise this option despite it being (in the words of the Research Team) “relatively straightforward” to do so by completing the LPC. (In reality, having to do the LPC is in fact anything but straightforward – in its current regulatory form it is for most a major cost and time barrier, and without a prior offer of a qualified solicitor’s job at the end of it, it is no surprise that this route appears unattractive to the majority of those within that 30%).

The challenge is therefore to accept and embrace the diversity of legal professionals operating at different levels and in different areas within the legal services sector whilst endeavouring to ensure that those who are willing and able to cross-qualify sideways or ‘upwards’ are able to do so. This is where the regulatory attention on diversity and social mobility in the legal education and training context should fall and we would look with interest upon any recommendations for positive change in this area.

However, we do not feel that it is the role of the regulator to venture into setting arbitrary targets and quotas on diversity and social mobility. Improving the statistics must and should be the product of genuine and permanent cultural improvements driven by a self-regulating profession.

London, 2 July 2012