Discussion Paper 02/2011

Equality, diversity and social mobility issues affecting education and training in the legal services sector.

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I - Introduction

1. Equality, diversity and social mobility are a central and overarching concern of this Review, highlighted in a number of aspects of the research team's remit. They constitute an important part of both the socio-economic and regulatory contexts. Advancing equality of opportunity is widely seen as a significant function of services such as higher and professional education. Ensuring equality of opportunity is also an important legal and regulatory objective for both further and higher education institutions, approved regulators, and legal service providers. It is notable in this context that one of the regulatory objectives of the Legal Services Act 2007 is to encourage an independent, strong, *diverse* and effective legal profession (s. (1)(f) - our emphasis). The values embedded in this section can be read independently, and they are also linked: diversity in recruitment and retention strengthens the legal profession and enhances the services which it provides. [1]

2. Moreover, Government, advised by the Panel for Fair Access to the Professions, has indicated that the lack of progress on social mobility within the professions, including the legal professions, is a continuing concern,[2] and a further report from the Panel is expected to be published shortly.

3. This paper is based and builds on earlier drafts which were circulated for comment to members of the Review's Consultation Steering Panel in November 2011 and February/March 2012. Much of the paper is literature-based. It thus draws substantially on Part 7 of the draft LETR literature review. Key or representative citations are included here where appropriate. Reference has also been made to a number of recent literature reviews which have been helpful in compiling this meta-review (Brooks 2008; Crawford et al. 2011; PARN 2009; Richardson 2008; Perry and B. Francis 2010; R. Sullivan 2010)

4. In this paper we do three things. First we provide, so far as we can, a general map of the sector in terms of its demographic composition, drawing primarily on the literature reviewed as part of Phase 1 of LETR, but also on some preliminary research data of our own. Secondly, we explore the ways in which existing education and training practices might constitute initial and continuing barriers to access, and are hence a potential constraint on diversity and social mobility. Thirdly we ask questions. This paper is a discussion paper. It is not intended at this stage to provide regulatory solutions. The work of the research team is first and foremost to undertake research that will inform the regulators in making their regulatory choices after we have completed our work. This paper thus contributes to an exploration of the underlying issues and problems, seeks to highlight significant knowledge gaps, and begins to explore solutions. It will also inform analysis of the equality impact of any regulatory or structural changes that

[1] Though this objective can also be considered problematic precisely because it contains a multiplicity of aims, and the terms used are relatively opaque. It might also be argued that it involves some functions that might be better treated as representative rather than regulatory (Smedley 2011, 9).

[2] See, eg, 'Clegg: Legal profession is not doing enough on social mobility' *Legal Futures,* 20 December 2011 at http://www.legalfutures.co.uk/latest-news/clegg-legal-profession-is-not-doing-enough-on-social-mobility (last accessed 27 December 2011).

may be proposed. We will consult more fully on proposed regulatory options in July, before moving to our final report and recommendations in December 2012.

5. Issues of equality, diversity and social mobility have generated a very extensive research and policy literature. Pragmatically, this also made the topic a logical starting point in our work.

6. It should be noted that in this paper we place a greater emphasis on diversity and social mobility than equality. This is not to suggest that equality is a no longer an issue in the legal services sector. Rather, it reflects two things that are matters for the review in their own right. First, there is a problem that there is currently very limited data on the sector as regards protected characteristics other than gender and ethnicity. This significantly limits what we can reliably say at this stage. We return to this problem at various points in the paper. Secondly, approaches to diversity and (even more so) social mobility are, by contrast with equality, and perhaps of necessity, less governed by existing regulation. Like any employers, employers in the legal services sector are subject to anti-discrimination legislation, and professional codes and regulations also add, in some cases, to the positive duties imposed on entities and individual members of the professions.[3] The extent to which regulatory tools and interventions can and should contribute to maintaining and enhancing diversity and social mobility in legal education, training and recruitment is thus a very relevant consideration for the Review.

7. The remainder of this paper is divided into nine substantive sections. In the next section we consider basic definitional and conceptual issues concerning equality, diversity and social mobility. In Parts 2 to 8 we look at the evidence for the relative impact of various key stages in the education and training of a potential legal services provider. From there we will look at what published research already tells us about possible diversity and social mobility strategies, summarise the findings of our work so far, and identify a range of questions to which we would welcome responses from stakeholders and other interested parties.

8. A summary of the main points of discussion commences at page 33 of this paper, and this is used to lead into the questions on which we invite comment.

2 – Understanding equality, diversity and social mobility

Definitions

9. Equality, diversity and social mobility are related but nonetheless distinct concepts. To start with a fairly practical definition, the Skills for Business Network distinguishes equality and diversity thus:

[3] For example, the BSB Equality Code requires all members of chambers' recruitment committees to undertake equality and diversity training; the SRA Code of Conduct requires firms to have systems and controls in place to achieve the equality and diversity outcomes of the Code; CLC requires firms to behave consistently with its model equality policy.

Equality is the current term for 'Equal Opportunities'. It is based on the legal obligation to comply with anti-discrimination legislation. Equality protects people from being discriminated against on the grounds of group membership i.e. sex, race, disability, sexual orientation, religion, belief, or age.

Diversity implies a wide range of conditions and characteristics. In terms of businesses and their workforces it is about valuing and reaping the benefits of a varied workforce that makes the best of people's talents whatever their backgrounds. Diversity encompasses visible and non-visible individual differences. It can be seen in the makeup of your workforce in terms of gender, ethnic minorities, disabled people etc., about where those people are in terms of management positions, job opportunities, terms and conditions in the workplace.

Diversity potentially extends beyond the protected characteristics defined by the Equality Act 2010, to encourage employers (etc) positively to embrace difference in all its forms. Diversity and equality approaches thus may be seen as complementary strategies for enhancing the fairness of workforce recruitment and development, by focussing on the need to change both behaviours and beliefs. However, the need to ensure equal treatment will also set some limits on what can be achieved in terms of diversity. There are also concerns that each serves to individualise what are fundamentally social or collective disadvantages (Ashley 2010; Kirton and Greene 2005; Liff 1997), and that each is vulnerable to processes of compromise and evasion which sustain the status quo (Braithwaite 2010; Janette Webb 1997).

10. **Social mobility**, by comparison, is a relatively difficult concept to define (Crawford et al, 2011). It can describe either *horizontal mobility* , that is, movement from one position to another within the same social level - for example, by changing jobs or geographical location without altering occupational or socio-economic status (SES) - or, more commonly, *vertical mobility*, that is, the extent to which an individual or group may improve or worsen their position in the social hierarchy. This paper is primarily concerned with vertical mobility.

11. Social mobility policies are directed towards reducing disadvantage, which is usually defined by reference to some concept of SES or social class (definitions of these concepts, in turn, vary). Rather like diversity, therefore, social mobility is not restricted to the characteristics protected by equality legislation, and recognises that specific interventions may be required to support other disadvantaged groups where the root causes of disadvantage may be less proximally linked to protected characteristics (eg, the question of whether white working class[4] males are disadvantaged in education more by class than by gender or ethnicity).

The complexity of disadvantage

12. Concerns about equality, diversity and social mobility reflect the underlying intractability of the issues, reflecting a complexity of disadvantage which makes the effects of policy intervention

[4] The use of the term 'working class' is possibly contentious. Some see it as outmoded, whereas others argue that a return to focus on class inequality is long overdue (Runnymede Trust 2009). Despite, or perhaps because of, its relative imprecision the term is still widely used by researchers in the field (Archer and Hutchings 2000; Archer, Pratt, and Phillips 2001; G. Plummer 2000; Reay, David, and Ball 2005; Anna Zimdars 2011). Its use may be justified, and is justified here, on the basis that 'class' is still at the centre of how many people in Britain define themselves. For an example in the legal services context, see Francis (2011, 80).

both quite difficult to predict, and prone to the law of unintended consequences. Complexity emerges in three ways relevant to our work.

13. First, the available evidence suggests that, whilst prior educational attainment is perhaps the most significant explanatory factor, there is no single or predominant barrier to access or cause of disadvantage. Social disadvantage is particularly persistent in the UK, which has a highly stratified society relative to most developed countries. Whilst the early years of education are beyond the reach and remit of this Review, they help shape the environment in which universities and the professions operate and should be understood as such.

14. Problems of social inequality are deeply embedded, and have tended to widen rather than narrow since the 1970s. In 1979 about ten per cent of children lived in households whose income was less than half the national average. By 1993, the figure was 33 per cent (K. Jones 2003, 112). The impact of social disadvantage emerges extremely early in childhood and tends to be reinforced throughout the early years and schooling. Educational attainment by age 11 is already a significant predictor of later life chances (Chowdry et al. 2010, 14–15). Social class tends to be seen as the strongest predictor of a child's educational attainment, though research also suggests that parental education has some independent effect on educ tional and occupational attainment (Egerton 1997; Lampard 2007). However, there is ultimately no single cause, but a complex matrix of factors that impact on diversity and social mobility, many reflecting intergenerational disadvantages. This highlights the difficult, structural, nature of the problem, and the need for early intervention. As we shall see, for those seeking to enter the legal market failing to get good GCSEs, not gaining the right A-levels; not getting work experience in law firms/chambers while at school; attending the 'wrong' university; graduating with a 2:ii, and simply being too 'working class' are all individually and collectively potential barriers to access (Sullivan 2010).

15. Secondly, gender, class and ethnicity, etc, may have both independent and dependent/cumulative effects on life chances and social mobility. Equality laws, it has been argued are not well equipped to address the types of inequality or stereotyping experienced by people who suffer multiple or 'intersecting' forms of discrimination from, say, the effects of gender and ethnicity, or ethnicity and class; moreover empirical research on 'intersectionality' suggests that individuals construct a relatively complex range of discrete stereotypes for different intersectional categories –young Afro-Caribbean men may be judged differently from their older counterparts, or black men from inner cities differentiated from ther black males, and so on. Some groups may even experience conflicting stereotypes: black women may thus be viewed either as responsible 'matriarchs' or as irresponsible single mothers Kennelly 1999; Shih 2002). Whilst the intersection between gender and ethnicity is obviously important, intersections with and between other 'markers' such as disability, sexual orientation and social class are also likely to be significant, though they have been much less researched. A number of writers have thus noted the tendency in policy debates in the legal profession to overlook the continuing role of social class (Nicolson 2005; Sommerlad 2008).

16. Thirdly, at the risk of stating the obvious, ameliorative measures may also have differential impacts on equality, diversity and social mobility, and may have significant incidental or unintended side effects.

Social mobility: a central issue for education and the professions?

17. Social mobility in particular has become a major concern for education policy at all levels. It is widely recognised that social class is a key predictor of educational achievement, and that low educational attainment in turn is a significant factor in building and maintaining an intergenerational cycle of disadvantage (Perry and B. Francis 2010; Schoon 2008). This is a particular challenge in the UK where the social class gap in educational achievement is one of the widest among developed nations (Perry and B. Francis 2010). Continuing failure to address such structural inequality may not only undermine equal opportunities, but also curb economic growth (OECD 2010).

18. Policies to enhance social mobility are sometimes seen as interfering in the 'meritocratic' basis of selection, and as a threat to standards, but at the same time a lack of diversity is also used to point to the possible failures and hidden cultural biases of standard conceptions of merit. Mobility policy also links to deeper questions about whether 'massification' and 'widening participation'[5] fundamentally change the nature and functions of the univer ity (R. Jones and Thomas 2005; Tapper and Palfreyman 2004; Jane Thompson 2000).

19. The expansion of UK higher education and the deployment of a range of 'wi ening participation' strategies have without doubt had an impact. The Higher Education Initial Participation Rate[6] (HEIPR) has increased from 39% to 40% over the period from 1999 to 2008. Participation rates amongst young people are even more positive, with rates of participation (measured using the Young Participation Rate[7]) increasing from 30% in the mid 1990's to 36% at the end of the 2000s. This means that young people today are over 20% more likely to go on to higher education than in the mid 1990s (HEFCE 2010,1). This is, of course, generally seen as econo ically, socially and culturally a 'good thing'. It should enhance social mobility; it potentially widens the recruitment pool for graduate occupations, but at the same time, unless there is a significant expansion in

[5] Widening participation (WP) has been a feature of HE policy and strategy since at least the 1980s. It is an umbrella term used particularly in post-compulsory and higher education. It encompasses policy and information on three key areas: improving **access** to educational opportunities, increasing the **participation** rates of students from traditionally underrepresented groups and improving the rates of **retention** for students from these groups once admitted to higher education institutions.

[6] The Higher Education Initial Participation Rate ("HEIPR") measures the proportion of people participating in, rather than simply entering higher education. It has been constructed to include all first time entrants to higher education aged between 17 and 30. Entrants are only included if they remain engaged in their programme of study for a minimum of six months. It excludes all education colleges and students in privately provided (and funded institutions), as well as students studying outside the UK. The HEIPR measures the sum of participation rates for each age 17–30, roughly equivalent to the probability that a 17 year old will enter higher education by age 30.

[7] The Young Participation Rate ("YPR") is constructed by summing the entrants aged 18 from one academic year and the entrants aged 19 from the *following* academic year and then dividing this total by the cohort estimate. The resulting rate shows what proportion of a young cohort has entered HE by age 19 (HEFCE, 2005:254).

the graduate job market, it also potentially increases competition for entry-level graduate jobs, and thereby raises challenges for recruitment and selection.

20. We will come back to whether there is evidence of increased competition and its impact on access to the legal professions below. For now, we note simply an apparent paradox that requires explanation: that whilst participation in HE has expanded, many of he professions, including law, are becoming more rather than less socially exclusive (Milburn 2009). The Milburn report demonstrates, through comparing the backgrounds of individuals at the top of the legal profession today with their counterparts ten or twenty years ago, an increase in the proportion of individuals from independent schools from 68-73% in the case of barristers, 70-74% in the case of judges and 55-68% in the case of solicitors (Milburn 2009, 6).

21. The Panel on Fair Access to the Professions has called for social mobility to be the top social policy priority for government (Milburn 2009). Whilst recognising that the causes of the "closed shop society" are cumulative and complex, the Panel has been broadly critical of the professions themselves for not doing enough to enhance mobility. In its final report the Panel made over 80 recommendations intended to enhance access to a wide range of professional careers. A number of these recommendations are directly relevant to the Review, and will be highlighted below.

3 – Admission to Law School[8]

22. Demand to study law has been consistently strong over many years. In 2009/10 there were 29,211 applicants to first degree courses in law[9] in England and Wales, 19,882 (68.1%) of whom were accepted (Fletcher and Muratova 2010). Competition for places can be fierce, particularly amongst the most popular universities, with ratios of applicants to admissions easily exceeding 10:1.[10]

[8] 'Law school' is used here in the generic sense commonly adopted in UK higher education to describe a university law department, or equivalent entity. It does not denote a centre for exclusively professional or vocational training.

[9] This phrase is used as a term of art by the Law Society Annual Statistical Report to describe those courses identified by HESA as single honours degrees in law. These are qualifying law degrees (QLDs) which satisfy the academic stage of training for solicitors and barristers. However they are not the total sum of QLDs. It is not possible to definitively quantify the number of students on QLDs. Some joint degrees include pathways which enable students to graduate with a QLD, and QLDs may have pathways which enable students to transfer (either by choice or necessity) to a non-qualifying award. HESA statistics indicate that it is likely that this figure thus underestimates the number of students actually undertaking a QLD. It also excludes this undertaking postgraduate 'senior status' law degrees or the CPE/Graduate Diploma in Law. Unless the context indicates otherwise, all references in this paper to national statistics for law degrees should be interpreted as referring to data for first degrees in law as here defined.

[10] Harris and Beinart (2005, 318) reported an overall ratio of applications to places of 9.7:1 in 2002-03, as compared to 12.8:1 in 1994-95 (Harris and M. Jones 1997, 60). Both surveys reported wide institutional variations in the ratio, with the range in 2002 being from 1.3:1 to 24.6:1. Both surveys also noted that while the application to place ratio tends to be higher in pre-92 universities, some of the highest ratios actually occur in the post-92 sector.

23. In this section we look briefly at two things: the demographic make-up of the law school, which tells us who is being admitted, and the determinants of access. These between them enable us to infer a number of conclusions about the barriers to access that exist or may exist.

24. Demographically, the profile of law students in England and Wales has changed quite significantly since the 1980s. We look at the profile in terms of the protected characteristic and social class, not least because these provide an important potential benchmark for how the sector is performing at later stages in the career cycle.

Gender

25. Age participation rates[11] demonstrate that, across the sector, the level of young women's HE participation had caught up with that of men by 1992, and now generally exceeds it (Broecke and Hamed 2008, 2).[12] A recent report published by HEFCE states that 40% of young women now enter higher education compared with 32% of young men (HEFCE 2010, 2). Law reflects this pattern by attracting a higher proportion (62%) of women students to study for a first degree in law (ECU 2011, 6).

Ethnicity

26. BME students accounted for 31.2% of students studying for a law degree in 2009/10.[13] This figure has been more or less consistent since the mid-2000s. By contrast, in 2009/10, BME students comprised 19.6% of the total undergraduate population (ECU 2011, 24). As this indicates, BME students are significantly over-represented at law school. As regards most ethnic groups, substantially higher proportions of BME students read law as compared to their white counterparts (eg, 6.1% of blacks and 8.1% of Asian students as against 3.1% white - ECU 2011, 26-7).

27. This headline trend does not, however, preclude some marked variations between ethnic group participation. The low participation rate of African Caribbean students in law has been particularly marked (Carr and Tunnah 2004, 9), while the participation rate of (home) Chinese students has remained static for a number of years (ECU 2011,26-7). Data from the Law Society's Cohort Study in the 1990s indicated that ethnic minority law graduates were significantly more likely than their white equivalents to have studied at a new university (R. Sullivan 2010, 5, 6).

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[11] The age participation rate, or age participation index (API) has been used to measure the proportion of young people electing to enter higher education. It is defined as 'the number of UK- domiciled young (aged under 21 years) initial entrants to full-time and sandwich undergraduate courses of higher education in Great Britain, expressed as a proportion of the averaged Great Britain 18 to 19 year old population'. It explicitly excludes entrants to part-time courses of higher education, as well as excluding students aged over 20 (Ramsden, 2005:13). As a result of concerns regarding the API's fitness for purpose, it has been superceded by the HEIPR.

[12] Though note that, since API has been replaced by HEIPR, it is technically difficult to substantiate this claim.

[13] BME female acceptances (32.6%) were slightly higher than males (31%) (ECU 2011).

This pattern is consistent with a range of more recent studies of HE participation in general (Chowdry et al 2010, 23; ECU 2011, 104), and evidence that individuals of Black, Indian, Pakistani and Bangladeshi origin are disproportionately less likely to attend a high status institution than their counterparts from other ethnic backgrounds (Chowdry et al, 2010:27). A number of these effects may also be differently gendered.[14] and African-Caribbean men in higher education has been well documented, with the percentage of African-Caribbean men aged 18-19 participating in higher education currently standing approximately 6% below the national average. More recent law-specific data would be helpful given the increasing numbers of BME students in law over the last decade.

Social class

28. We also lack current, reliable, data on the social class composition of law school. The data that exist demonstrate a widening of class origins from the 1960s to the mid-1980s, possibly levelling off thereafter, with around 60% in the mid-1990s drawn from professional and managerial origins (Department of Constitutional Affairs 2004; P. McDonald 1982; Shiner and Newburn 1995; Julian Webb 1986) . Analysis of UCAS data from Scotland, though not wholly comparable, demonstrates little change in social class composition within that jurisdiction between the mid-1990s and 2000 (Anderson, Murray, and Maharg 2003).

Age

29. Across the whole HE sector 58% of all law students (including postgraduates) are aged 21 and under, This compares with an average of 48% across the sector. The figure soars to 74% of full-time undergraduates (ECU 2011, 74-5). BME students are slightly more likely than average to be aged under 21. Studies conducted in the mid-2000s suggest a significant intersection of age and ethnicity in the part-time law student population, which tends to be older, and more BME in origin than the full-time population. Part-time students are also less likely to have A levels, and more likely to attend a post-92 university (A. Francis and I. McDonald 2005, 2006; A. Francis 2011).

Other protected characteristics

30. There is limited data on other protected characteristics by discipline of study. HESA data record that, in 2009-10, across the UK and in all disciplines, 10.2% of the undergraduate population declared a disability, whereas only 6.2% of undergraduate law students so declared (ECU 2011, 51, 56). This is below the median point in the range of subject areas used by HESA (ECU 2011, 57). Over half (55%) of those declaring a disability have a specific learning difficulty, such as dyslexia (ECU 2011, 50).

31. National data are not currently produced for the other protected characteristics. In general disability, sexual orientation, religion, and pregnancy/maternity status amongst HE students

[14] Historically, particularly low participation rates have been recorded for Bangladeshi women and African Caribbean men. However, as Chowdry et al (2010, 23) demonstrate, Bangladeshi participation is now also recorded as proportionately higher than white participation, having largely closed the gap with other South Asian applicants. But this whole trend in part may be a reflection of the change in counting method engendered by the move from APR to HEIPR.

have been far less widely discussed and researched than gender, race and ethnicity, though there is a growing secondary literature in relation to some these areas. This reflects in part the fact that there has been no historic requirement on HEIs to maintain equality data for factors other than gender, ethnicity and disability. Under the Equality Act 2010, universities will now be obliged to gather data on all protected characteristics, so as to comply with the public sector equality duty. This may make a significant difference to institutions' ability to target resources and interventions in areas of unmet, or possibly unidentified, need.[15]

Factors shaping access

32. Turning to those factors that shape access, the most significant appears to be prior educational attainment, and particularly the emphasis on A level entry.

33. Our research indicates that, within the Sutton 13, standard offers[16] range from A*AA to AAB, with the majority expecting AAA.[17] Published requirements amongst the recruiting universities represent, as one would expect, a broader range of achievement than the 'pre-92s',[18] roughly from ABB through to BCC and possibly below. Harris and Beinart (2005, 325) found that the gap in median[19] standard offers between pre- and post-92 universities was 100 tariff points (equivalent to one extra B grade): 340 tariff points (AAB) at pre-92s, as compared with 240 points (BCD equivalent) at the new universities surveyed. The two private universities (University of Buckingham and BPP University College) both publish standard offers of 300 tariff points – equivalent to three Bs at A Level. The College of Law has set the tariff for its new accelerated LLB slightly higher, at 320 points (ABB).[20]

34. Requiring high grades at A level and GCSE, and looking for evidence of a high stock of cultural knowledge, are all likely to narrow the pool of 'suitable' applicants (Bibbings 2006; A. Zimdars, A. Sullivan, and Heath 2009). It has been suggested that greater use of additional and possibly even alternative admissions criteria, including a stronger focus on factors such as motivation, capacity for independent working, and organisational skills, the use of standardised aptitude

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[15] For example, Equality Challenge Unit research has found that one in five LGBT (lesbian, gay, bisexual and trans) students has had to take time out of their studies to deal with issues related to their sexual orientation, including dealing with cases of harassment and discrimination (Valentine, Wood, and P. Plummer 2009).

[16] The standard offer represents the normal attainment expected by that university. It should, however, be understood as no more than indicative of the actual level of achievement within a cohort. The mean tariff points across a cohort may, in some cases, vary markedly from the standard offer, for a variety of reasons. Standard offers may not just reflect relative demand or existing status, we believe they may also be used strategically in an attempt to raise standards in and/or enhance the reputation of a law school.

[17] The introduction of the new A* grade has itself caused concern. Sir Martin Harris, director of the Office for Fair Access, warned that the new grade could strengthen private schools' grip on elite universities (*The Guardian,* 2 August 2010). There is some evidence to support his view: according to the Independent Schools Council, in the Summer 2010 examinations, 18% of entries from independent schools were awarded an A*, compared with a national average of 8% (*The Guardian,* 28 August 2010).

[18] The distinction between pre- and post-92 universities refers to the fact that the former polytechnics were collectively granted university status in 1992 as a consequence of the Further and Higher Education Act. A number of smaller former Colleges of Higher Education have also subsequently been granted university status.

[19] The median refers to the mid-point on a range of items as opposed to its arithmetic mean or average. The median is usually used as an indication of relative distribution. Eg, whether the median is above or below the mean of a set of numbers gives us an indication of whether and in what way that distribution is skewed.

[20] A level grades attract "tariff points" as follows: Grade A = 120 points, Grade B = 100, Grade C = 80, Grade D = 60, and Grade E = 40. AS levels attract half the tariff points of the equivalent A level grade.

tests, and additional contextual information could benefit non-standard applicants (Bibbings 2006, 82).

35. In addition to A levels, the type of school attended appears generally to hav some independent effect. This is most apparent in recruitment to elite universities. Students from private schools are as likely to attend 'Sutton 13' universities as those students from state schools who achieve two grades higher than them at A-level (The Sutton Trust 2004).

36. Other factors that have been considered in terms of their potential impact on diversity and fair access to university include:

- *Aptitude tests:* aside from the Law National Admissions Test (LNAT), which is used by a small number of law schools, aptitude tests have been little used in admission to law schools. The extent to which they have a positive or negative impact on diversity is d bated. A recent UK study of the potential value of the general SAT reasoning test concluded that it has some predictive power, in the absence of other attainment data, but that it did not add significantly to the predictive power of GCSEs and A levels (Kirkup et al. 2010). LNATs own data indicates some evidence of differential results according to ethnicity and social class.[21] Dewberry's recent report for the LSB suggests that, if an LNAT score of 17 was used to define admission to law schools using the test, then 51% of white candidates would be admitted, 30% of Black African candidates and 27% of Indian and Pakistani candidates (Dewberry 2011, 32). Differences are likely to be attributable to a number of factors, including access to additional coaching prior to taking the LNAT. Bursaries covering the test fee are available to UK and EU applicants in receipt of certain benefits, but no financial support is available for coaching for the test.

- *Use of contextual admissions data:* contextual data may include information such as applicants' SES, receipt of free school meals (FSM), levels of average attainment in an applicant's school, and such like. The idea is that contextual data may be used to help understand and locate a candidate's performance relative to others in h s/her cohort. Its use is encouraged by the Government's recent higher education White Paper.[22] We do not know the extent to which contextual information is currently being used either generally or specifically by law schools. It is likely that institutions have been using contextual data (though not necessarily recognising it as such) for years in the context of mature and non-A

[21] http://www.lnat.ac.uk/analysis-of-lnat-results-n10142-s11.aspx

[22] Department of Business, Innovation and Skills, *Higher Education: Students at the Heart of the System* (Cm 8122, June 2011):

> 5.18 The use of contextual data to identify candidates with the ability and potential to succeed on a particular course or at a particular institution is not a new phenomenon. Many institutions have been using such information on the basis that there is good evidence that for some students, exam grades alone are not the best predictor of potential to succeed at university. The Gove nment believes that this is a valid and appropriate way for institutions to broaden access while maintaining excellence, so long as individuals are considered on their merits, and institutions' procedures are fair, transparent and evidence based

level entry candidates. This issue in itself may be worthy of further research. The more significant, or controversial issue is the extent to which contextual data should also be taken into consideration in setting A level offers to 'disadvantaged' students. The use of contextual data is supported by research data from HEFCE and other studies – some ongoing - which demonstrate that students from lower-performing schools do better than those from high-performing ones in final-year results, thereby justifying reducing the standard offer to such applicants see, eg, (Smith 2010; Anna Zimdars 2007). But there are also challenges in terms of assessing the appropriate range of contextual data to be used, assuring its validity, and achieving fairness and consistency in its use.

- *The introduction of fees:* so far there is no clear evidence that the introduction of fees has had an impact on participation rates among poorer students (Chowdry et al 2010, 5).

- *Fear of debt:* There is no evidence that concerns about debt independently influences subject choice at university (Callender and Jackson 2008).

4- The university experience

37. The number of law graduates has more than doubled since 1989. HESA data record that in 2009-10, over 58,000 students were studying for first degrees in law, a 3% increase over the previous year, [23] and an increase of over 13,000 students on 2002-03 figures (see Harris and Beinart 2005, 320). There were also 14,000 students studying the subject part-time in 2009.

38. From the perspective of equality, diversity and social mobility, there are three potential 'barriers' that may impact social and ethnic groups sufficiently differently to be considered:

Degree performance

39. Degree attainment is a key determinant of access to the legal profession. It is widely acknowledged that a 2:i, at least for most of the larger training providers, has become the norm. The proportion of good degrees awarded has been increasing across the board, from around 38-40% in the late 1970s, to about 60% by the middle of this decade (see Richardson 2008, 4). Figures for law are broadly in line with this trend, though consistently slightly below the average. Over half of law graduates (56.6%) in the summer of 2009 achieved firsts or 2:i classifications. There is some evidence to show that the percentage increase in first and upper-second class law degrees has been more marked in pre-1992 than in post-1992 universities (Harris and Beinart 2005, 332), and among full-time as compared to part-time students (Harris and Beinart 2005, 333).

40. Looking at diversity trends, more women graduated with firsts and upper seconds than men: 58.0% as opposed to 54.2%. (Fletcher and Muratova 2010, 6). This is broadly consistent with

[23] With a full-time (f/t) undergraduate population of over 1.3M, f/t law students thus account for 4.36% of the total. Note that a 3% increase in law student numbers was below the 5% increase recorded for the sector as a whole.

general trends across the sector (Richardson 2008, 6).[24] There are no figures showing the class of law degree awarded to different ethnic groups, but general studies reporting on various datasets from the mid 90s to the mid 2000s have consistently shown that white students are more likely to graduate with a good degree than students from any other ethnic group (see Richardson 2008, 10-11; ECU 2010, 9). The attainment gap remains largest between white and black students, at about 29% (ECU 2011, 92). On this basis any raising of entry criteria to vocational training could be predicted to have an unequal impact on BME applicants. Overall, disability does not appear to play a significant independent role in predicting attainment (DIUS 2009).

Finance and debt

41. In 2004, 82% of law students surveyed for the Law Society reported that they were in debt, with 76% of those owing more than £5,000 (Norman 2004a, 37). There is general evidence that, once at university, disabled students and students whose families did not provide financial support are most likely to be more impacted by debt (Metcalf 2005). Data also suggest that males, students from lower socio-economic backgrounds, and those studying at lower tariff (post-92) institutions are more likely to experience above average indebtedness (Purcell and Elias 2010, 17). Whilst the impact on debt and student participation of the various fee regimes introduced since 1998 has been explored in a number of studies, none of them has focussed specifically on law students.

42. Not surprisingly, there is some evidence that financial constraints and levels of indebtedness impact the ability of students to take on unpaid work placements (Shiner and Newburn 1995, 39), or progress to postgraduate training (Purcell and Elias 2010, 18-19). Research by PARN has found that student debt combined with a low entry-level income may be deterring applications to some professions from lower socio-economic groups (PARN 2009, 11). Such findings may have added relevance in the context of the SRA's current consultation on removing the minimum salary for trainees.

Work experience

43. Work experience will understandably be regarded by recruiters as relevant evidence of interest in and commitment to a legal career, some may even make it a pre-condition for access. Obtaining formal work experience during university is thus a critical step in securing a training contract or pupillage: 70% of solicitors in practice in 2009 had obtained experience of the profession before qualification (Law Society of England and Wales 2011, 4); at least one BPTC provider also makes it a condition of entry to the course (BSB, 2010).

44. Evidence suggests access to work experience is not equitably distributed. Access to formal work experience is shaped by a mix of credentials and ascriptive criteria: a combination of social capital, high UCAS tariff scores, attendance at a pre-1992 university and prior informal work experience - often achieved through personal or familial connections with the profession (A. Francis and Sommerlad 2009, 2011). Large scale research, now quite dated, suggests students who gain work experience with solicitors and barristers have tended disproportionately to have

[24] Though it should be noted that, after controlling for prior attainment, there is no clear evidence to suggest that gender itself is a significant predictor of degree outcome (Kirkup et al. 2010).

been drawn from private schools and Oxbridge; BME students are also less likely to obtain legal work experience (Shiner 1997). A range of diversity initiatives may have helped reduce the gap, but again there is a lack of meaningful data on current trends. A voluntary Common Best Practice Code for High Quality Internships[25] was launched by the Gateways to the Professions Collaborative Forum. The aim of the Code is to help overcome the social and cultural barriers often associated with internships, and the inability of many individuals to access work experience because of limited financial resources. A variety of legal organisations have signed-up to the Code, and all approved regulators have been encouraged to do so.

45. Can curriculum interventions, such as clinical courses and accredited work placements, modules on career planning and development, and formal mentoring make a difference? There is some limited supporting evidence from research data, but there are also concerns that this is not the proper role of an academic legal education, or that it too encourages a deficit approach which makes non-traditional students and the universities responsible for a problem that is primarily caused by recruitment practices.

CPE/GDL

46. About one-fifth of the solicitors' profession (Law Society of England and Wales 2011), and over a third of new pupil barristers (Sauboorah 2011b) are non-law graduates. However, there has been very little published research specifically on the CPE/GDL. Shiner and Halpern (1995) demonstrated that BME and lower SES students were less likely to take the CPE than a law degree, so that the CPE/GDL of itself may contribute to narrowing the social class of the profession. This issue would benefit from further research.

The future Impact of HE funding reform

47. The headline changes proposed by the Browne Review and taken up (in part) by the Government's higher education White Paper, published in June 2011 have significant consequences for social mobility in general and for access to law, specifically. At this stage what follows is, of course, speculation, but it constitutes our best estimate, based on the White Paper itself, on published policy analysis by HEPI and others, and the background papers to the White Paper prepared by BIS, which are in some important respects at odds with the position adopted in the White Paper.

The reforms

48. The most widely discussed policy change has been the raised cap on tuition ees in England. This predates the White Paper. Against the recommendations of the Browne Review, the Government did not remove the fee cap entirely, but permitted universities to charge tuition fees of up to £6000 without conditions, or up to £9000 provided that appropriate access agreements were put in place. Contrary to Government expectations, the majority of HEIs chose to negotiate new access agreements with OFFA and (initially) set fees at or close to the £9000

[25] Available at http://www.agcas.org.uk/agcas_resources/357-Common-Best-Practice-Code-for-High-Quality- Internships

upper limit. Consequently the Government could not make the savings it had identified in its Autumn 2010 Spending Review, which were based on the assumption of average fees (after waivers) of £7500. The White Paper reforms were, in part, a response to this problem. For our purposes there are three critical elements to Government policy: first, although the White Paper itself is equivocal about expansion or contraction of the sector,[26] Government expenditure plans assume no increase in student numbers. Within this context, the White Paper then proposed to create two new market control mechanisms:

- a competitive market for 'high achievers' – ie students who obtain AAB or better at A level ('AAB+ students'). This is estimated to comprise about 65,000 applicants who will be taken 'off quota'[27]
- remaining places are to be allocated via a 'core and margin' system, so all institutions will be allocated a reduced number of core places, while those with fees (after waiver) of £7,500 or less will be permitted to compete for additional numbers from the 'margin'. The margin will comprise initially 20,000 places, but the White Paper proposes a gradual substitution process as more places are moved out of the core and into the margin. This appears to be the primary mechanism proposed for forcing fees down to the desired average, and has already led to 27 institutions re-negotiating their access agreements for 2012-13 to bring their average fees below £7,500.

49. These changes add a significant layer of complexity and possibly uncertainty to the system. Marginal numbers will need to be bid for on an annual basis, thereby foreshortening planning cycles and increasing risk for institutions that may be increasingly dependent on marginal numbers. Bids will be assessed against criteria set by the Funding Council (HEFCE), and allocations will be determined by HEFCE expert panels, rather than the market.

Funding reforms in Wales

50. Reforms to HE funding in Wales have broadly followed the English model, with eight out of the ten Welsh universities charging at or near the £9,000 maximum. One fundamental difference, however, is that the Welsh Assembly Government will pick-up the majority of the bill for Welsh students regardless of where they study, and for other EU students studying in Wales (excluding those from England, Scotland or Northern Ireland). It is anticipated that Welsh students will pay fees of roughly £3,400 a year, with the balance up to £9,000 met by a tuition fee grant. These plans are costed on the basis of a 35% cut to Welsh university direct funding. In 2012/13 students from Wales will also receive a full Assembly Learning (maintenance) Grant of £5,000 where their or their parents' household income is below £18,370 and a partial grant where the household income is between £18,370 and £50,020 – it is thus a more generous scheme than its English equivalent.

[26] "We have no target for the 'right' size of the higher education system but believe it should evolve in response to demand from students and employers, reflecting particularly the wider nee s of the economy."
[27] The current funding mechanism for home undergraduate students essentially limits recruitment by setting target numbers for each institution, with financial penalties for over-recruitment.

51. The Welsh universities will also need to respond to a 'core and margin' model similar to that being introduced in England, where about 8% of places will be redistributed to institutions charging less than £7,500. However, in Wales 26.5 per cent of all undergraduate places are due to be reallocated to institutions with lower fees.[28] On the back of a pattern of historic underfunding of higher education, relative to both England and Scotland since 2000, this has caused some concern amongst universities. At present only Glyndwr University is planning to charge students less than £7,500 a year, meaning that all Welsh universities except Cardiff University (which scores well against the other allocation metrics) risk losing significant student numbers if they do not cut their fees in 2013-14.

Consequences for recruitment to undergraduate law

52. Despite expectations that the new fee levels in England would have a strong deterrent effect on admissions, data at the January UCAS deadline indicate only a 3.8% fall in law applications for 2012 entry, well below the headline figure of a 7.4% drop in overall application numbers.

53. As regards the longer term, it is not possible at this stage to quantify the likely effects. The changes may result in some continuing upward recruitment, in so far as there is still excess demand in the system. Law's reputation as a low cost-high demand subject will continue to make it popular with universities and colleges, though the extent of such recruitment will depend on how core and margin places are allocated. If the allocation of marginal places does not favour law, or primarily enables expansion at lower-status post-92s or in the FE sector, where current demand is limited, then the overall effect could be to marginally reduce the law student population. There are also likely to be some relocation effects across the sector, particularly for students at the upper end as increased competition for AAB+ students takes effect, and possibly for those who marginally fail to achieve AAB, who may find they are at greater risk of missing out on restricted core places at their first-choice, higher status, universities. The proposed move towards equalisation of the funding regime for part-time students may facilitate greater part-time access, though, as Francis notes (2 11, 43) part-time provision exists predominantly in the post-1992 sector, and the incentives may not be enough to encourage elite institutions to extend access to (more) part-time students.

54. However, even if overall numbers of law students are maintained, or even increase, there is a risk that the changes to the funding system will lead to a fall in the numbers of students with equality and diversity characteristics, for reasons that we will now explain.

Consequences for social mobility and diversity

55. The White Paper proposes increasing grants and maintenance loans available to low-income students, including a proposed new National Scholarship Programme. In 2012/13 students from England will receive the full maintenance grant of £3,250 where their or their parents' household income is below £25,000, and a partial grant where the household income is between

[28] HEFCW Circular 17 January 2012: Strategic reallocation of student numbers 2013/2014, available at http://www.hefcw.ac.uk/documents/publications/circulars/circulars_2012/W12%2003HE%20Strategic%20Reallocation%20of%20Student%20Numbers%202013_2014.pdf

£25,000 and £42,600. These will also be supplemented by institutional bursaries and scholarships that are set out in individual access agreements with OFFA. These are welcome in diversity terms and should improve disadvantaged students' experience of university, and their opportunities to graduate with good degrees. However, the overall effectiveness of these measures may be reduced by the complexity of the system, and the fact that in other respects the consequences of the funding reforms are unlikely significantly to support diversity and widening participation.

56. First, capping student numbers at existing levels is itself a potential constraint on mobility. This is recognised by the BIS *Economics* paper,[29] but is rather sidestepped in the White Paper itself. If numbers are capped, then widening participation can only be achieved by substitution, either by increasing achievement within disadvantaged groups, or by positive action at the expense of candidates who may be seen, in traditional terms, as equivalent or better on 'merit'. This may be a particular challenge in relatively high demand areas such as law where admissions criteria are high, and there is a relatively large pool of well-qualified applicants.

57. Secondly, the focus on AAB+ students may further distort the system as a result of three likely consequences of the reforms:

    (a) If, as is likely, non AAB+ quotas are cut for selecting universities, these institutions will have to recruit more AAB+ students if they are to maintain student numbers and continue to charge net fees above £7500.

    (b) The competition for AAB+ students leads to a merit-based scholarship "arms race", which will tend disproportionately to benefit students from traditional backgrounds.[30]

    (c) If the most selective universities do want to recruit more non-traditional students with 'contextual' offers, their ability to do so may be constrained by the limited non-AAB+ quota. It is notable that HEFCE has retained a 20 per cent minimum threshold student number control in 2012-13, specifically to assist institutions with a high proportion of AAB+ students to meet their commitments to fair access.

58. There is thus a real risk that these trends will increase the concentration of AAB+ students in higher status institutions, thereby reinforcing the existing social segregation between institutions,[31] and limiting the scope for widening participation in the very institutions identified by Milburn as critical to social mobility efforts.

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[29] "increasing the numbers participating in HE is key to improving overall levels of social mobility in the UK, in order to ensure that everyone with the ability to succeed in HE is able to benefit from the advantages and increased opportunities that it brings."

[30] See, eg, 'Universities to pay cash incentives to attract students' *Daily Telegraph,* 20 November 2011, available at http://www.telegraph.co.uk/education/universityeducation/8901375/Universities-to-pay-cash-incentives-to-attract-students.html

[31] Interestingly "this risk was identified in the BIS impact assessment but not in the equality impact assessment" (John Thompson and Bekhradina 2011, para. 128).

59. Thirdly, the 'core and margin' system may also have unintended consequences.[32] It may reduce funding to those post-92 universities that so far have done much of the heavy work in widening participation: there is some evidence already that this is happening as a con equence of the initial funding allocation announced in March 2012.[33] This could cause a diminution of quality in part of the sector where teaching costs are already higher than average.[34] Moreover, there is a risk that the system will redistribute places to lower status universities and FE colleges, particularly if bid price becomes a significant criterion for allocating marginal numbers. If this is so, it will likely affect disadvantaged applicants disproportionately, as they are less likely to achieve the grades necessary to compete for the reduced number of places available at higher status institutions, thereby maintaining, or possibly even deepening, existing inequalities.

60. Lastly, as noted earlier, evidence thus far indicates that concerns about indebtedness have not significantly impacted participation. However, the impact of the amount of debt anticipated post-2012 has not been tested, particularly on the attitudes of non-traditional students. The increase will be substantial for some. Where students are paying at or near the £9,000 maximum, it has been predicted that average debt on leaving university could rise to £59,100 as compared to £26,100 for those starting in 2011-12.[35] For some prospective entrants to the legal profession, the need to fund the vocational year would add significantly to that figure. Much may depend not just on measures to facilitate access, but on the ability of Government and institutional information and outreach initiatives to manage or dispel some f those concerns.

5 – Professional training (barristers/solicitors)

61. As is well-known the numbers entering professional training are currently high in relation to the number of training opportunities available.[36] Numerically, this means that the LPC/BPTC do not act as significant bottle-necks, restricting access to the jobs market, though the current market situation may raise other questions about whether economic disincentives cause any category of applicant to self-select away from professional training. But equally the lack of hard data on trends at this stage prevents us from answering such questions in a meaningful way.

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[32] The majority of respondents to HEFCE's 2011 consultation on its funding proposals raised concerns about unintended consequences on social mobility, widening participation and student choice. As a consequence HEFCE made a number of technical adjustments to its proposals for distributing margin numbers –see HEFCE Circular Letter 26/2011, 20 November 2011, available at http://www.hefce.ac.uk/pubs/circlets/2011/cl26_11/. Initial allocations of the margin were announced in March 2012.

[33] Allocations are published at http://www.hefce.ac.uk/news/hefce/2012/grant/march.htm.

[34] Thompson and Bekhradina (2011) cite a study by JM Consulting (2004) which found that ensuring 'preparedness for HE' and other additional costs of teaching relatively disadvantaged students increased real tuition costs by 31 per cent.

[35] http://www.bbc.co.uk/news/education-14488312

[36] Over the last five years the numbers on the BVC/BPTC have remained relatively constant at around 1,600-1,700, with about an 80% first-time pass rate. The annualised percentage growth rate is low at 0.6% (Sauboorah 2011a, 25). The ratio of new graduands to pupillages is currently in the region of 1:3. Raw LPC numbers are significantly higher, but with a comparable first-time pass rate. Thus, in 2008/09 there were 5824 first-time passes (Dixon 2011). Consequently there have been more than 5 new LPC graduands for every four training contracts, though as Dixon (2011) notes these figures underestimate the level of competition once successful re-takes are factored in. A fuller analysis appears in section 7 of the LETR Literature Review.

62. In terms of access, both the LPC and BPTC/BVC have tended to recruit more or less proportionately by gender. It is notable perhaps that the proportion of women seeking entry to the solicitors' profession more closely mirrors the undergraduate population than does the figure for the BVC/BPTC. Sullivan (2010: 15) observes that she would expect the Bar figure to be higher. However, there could be a number, and combination, of reasons why this is so, (for example, it has been suggested elsewhere that men are generally over-represented in self-employed professions (Anna Zimdars 2010, 121)), but, at present, there is a ack of research positing a causal explanation for this difference.

63. Interpreting published ethnic data on access to the LPC and BPTC is more difficult. In terms of headline figures, 31% of Law Society student members in 2010 were from BME backgrounds, as compared to 44% on the BPTC - though even more striking is the statistic that 60% of BPTC applicants in 2009-10 were BMEs (Carney 2011a). However, as over 40% of applicants and a fifth of actual BPTC students are non-EU nationals, it is not clear from this published data what proportion of ethnic Bar students are 'home' BME students.[37] These figures compare with the approximately 32% of BME students at the undergraduate stage, noted above. There is thus no clear quantitative evidence of discriminatory effects at this stage, but given the nature of that data, their existence also cannot properly be ruled out. Data from the Law Society Cohort study indicated, conversely, that BME students had been far less successful in securing LPC places than their non-minority ethnic peer group (Shiner, 1997).

Debt and sponsorship

64. Both the LPC and BPTC require a high financial investment by trainees – particularly for full-time applicants, with course fees of between £10,000 and £15,000. Debt is widespread. Norman (2004b) found that 84% of trainee solicitors were in debt, with the majority (64%) owing between £5,000 and £15,000. We would expect those figures to be appreciably higher today. 68% of BPTC applicants in 2009-10 expected to be in debt on the completion of pupillage (Carney 2011a) – though this figure needs to be treated as an underestimate as a high proportion of international applicants expected to complete training with no debt. Nearly one-third of applicants expected to owe more than £15,000, with over 11% anticipating a debt of over £30,000.[38] This last group is made up almost entirely of UK students (Carney 2011a, 21-2). There is a serious lack of data on the impact of such high fees and additional costs on students' career choices, and also little evidence of capacity amongst providers to reduce costs given existing course requirements.[39] It is notable that the Wood Report regarded the insolubility of the cost problem as the major barrier to increasing access, diversity and equality of opportunity at the Bar (BSB 2008, 73).

[37] The Bar data are also made more difficult to interpret by a high non-response rate to ethnic monitoring: see eg Sauboorah (2011) – 22% non-response in 2009-10.

[38] These figures may in turn be conservative. Estimates among those actually attending the BVC in 2009-10 appear on average to be higher, which may indicate that applicants were underestimating the cost of the BVC/BPTC year itself - compare Carney (2011b, 17).

[39] The Wood Report on the BVC (BSB 2008)made some recommendations which it recognised might marginally reduce costs, but concluded that neither duration nor, it followed, cost could be significantly reduced without impacting quality.

65. There is limited data on the scale and importance of sponsorship to access. One study indicates that sponsorship, a scholarship or bursary was a source of financial support for approaching 40% of trainee solicitors, and the primary source for about 8% of them (Norman 2004b), whereas 18.4% of BVC students received support from Inns of Court scholarships and grants.[40] It is not possible accurately to assess the equality and diversity impact of such funding without detailed analysis of both successful and unsuccessful applicants. This is likely to be a demanding exercise if carried out across the sector.

66. The bulk of sponsorship appears to be provided on the basis of merit rather than need, or, in some instances, a combination of merit and need. Being an Oxbridge graduate appears significantly to raise the likelihood of sponsorship for both the LPC and BVC/BPTC (Shiner and Newburn 1995; Carney 2011a). Purely merit-based sponsorship is, of course in the existing social context likely to have a limited impact on social mobility.

67. Access and diversity might also be enhanced by increasing the flexibility of these training regimes. Specifically, this could facilitate greater opportunities for trainees to 'learn as they earn'. Increasing flexibility is, however, a complex and challenging idea, the discussion of which extends well beyond access and diversity, as debates on the Law Society's Training Framework Review showed. We return to this theme later in this paper, but recognise that it will also need to be discussed later in this Review, in the context of possible larger changes to the system of legal education and training.

Other issues

68. The lack of portability or 'market value' of these awards outside the legal profession has been identified by some as both a general concern and a particular issue for social mobility.

69. LPC and BPTC Diplomas are credit-rated, and a number of institutions enable students to 'top-up' their award - commonly to an LLM, though additional time and cost commitments associated with undertaking additional study after completing the diploma may be a disincentive. While the professional and regulatory bodies are properly concerned to ensure that the courses remain focussed on their primary purpose of preparing for practice (see, eg, BSB 2008), there has been no suggestion of imposing any formal bar to such developments. There may be two issues worth exploring here. One is whether more could and should be done to develop general commercial 'nous' and some basic business skills (particularly with the potential proliferation of new business models within the sector) which would be bot sector-relevant and potentially transferable to other roles. The second is whether providers do enough to highlight the transferability of the skills already developed on these programmes to both their students and to alternative employers.

[40] There is no equivalent institutional source of scholarships for the LPC, though the Law Society Diversity Access Scheme offers some financial assistance to disadvantaged students, and some LPC providers also offer bursaries and scholarships, though the latter also appear to be primarily merit-based.

70. A number of studies have also identified the importance of information gaps at this stage. Thus, Fletcher's study in 2004 notes that LPC students wanted to see greater transparency around recruitment criteria and practices, and the publication of ethnic minority recruitment data. The Wood Report on the BVC highlighted marked levels of dissatisfaction about information on pupillage (BSB 2010). Closing such gaps would be of use to all trainees, but is likely to be of added value to non-traditional students.

6 – Solicitors and Barristers: Recruitment, Training and Progression

71. Broad patterns of recruitment for both trainee solicitors and pupil barristers have been relatively stable over the past five years. Tables 1 and 2 show a year-on-year comparison of gender and ethnicity respectively for the trainees of both professions between 2005 and 2010.

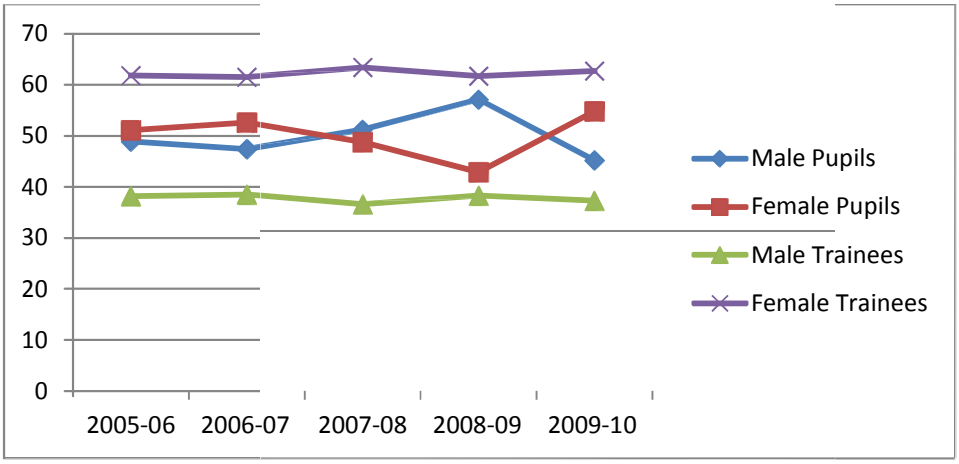

Table 1: Five year comparison of pupils and trainees by gender

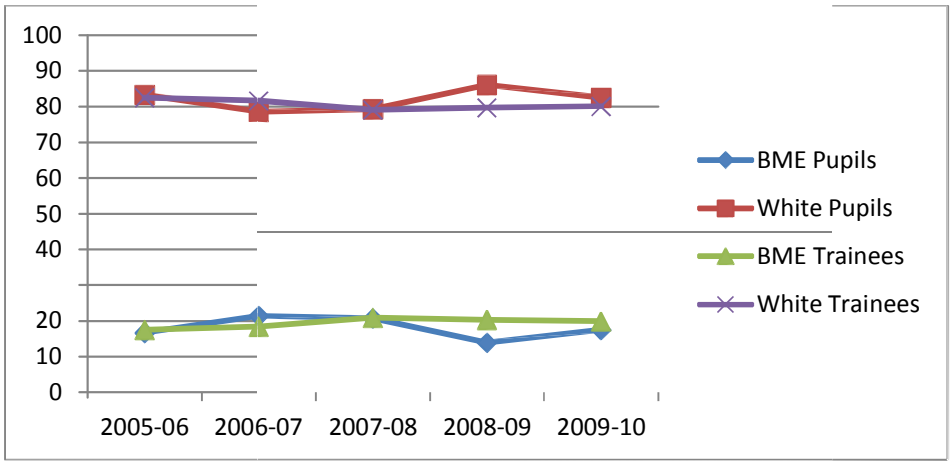

Table 2: Five year comparison of pupils and trainees by ethnicity

72. It is notable that the proportion of women entering practice at the Bar is markedly less than the equivalent populations of both women law graduates and women trainee solicitors, and below the university population comparator (Zimdars 2010, 124). In terms of pupils' ethnicity, however, there is little consistent difference. Zimdars' four year average identifies 19.6% of new entrants as BME. In 2008/09 there was both a substantial decline (17.5%) in first six pupillages offered (Sauboorah 2011b, 8), and a sharp decline in BME numbers, to 13.9% (Sauboorah 2011a, 33). In 2009/10, however, BME entry largely recovered, at 17.5% of new pupillages, despite the fact that new pupillages remained slightly below their 2008/09 level.

73. In assessing how the solicitors' profession and the Bar perform in terms of ethnic diversity, the question of comparator is crucial. As against the general population, the professions could both be considered to be performing 'well', on the basis that BME persons constituted 7.9% of the total population (2001 Census) and around 13% of the working age population. They do slightly less 'well' when measured against the 15% of the general university population (Zimdars 2010, 123-4). Moreover, when we compare with the figures of (about) 32% of undergraduate law 'starters', or 31% of Law Society student members, and 25.8% of pupillage applicants (Carney 2011b), there appears, *prima facie,* to be appreciable ethnic under-recruitment. But it does not prove that there is necessarily discrimination in recruitment processes. At most it begs the question whether, and if so to what extent, existing recruitment criteria impact BME applicants unequally. This point underlines a broader issue relevant to the discussion of recruitment targets or diversity quotas. The kinds of statistical comparison used illustratively here involve value judgments based on broad, and not necessarily comparable, data. Care therefore needs to be taken in interpreting and using the same. Such comparisons might be more meaningful if we had data mapping changing career preferences and intentions by reference to gender and diversity categories, and were able more readily to account for those preferences.

74. The Bar Council and Bar Standards Board have published a useful range of data on pupils' social and academic background. Data in the Wood Report on pupillage (BSB 2010) demonstrates that those who successfully obtain pupillage are drawn heavily from professional and managerial backgrounds. Nearly one-third have attended fee-paying schools, and numbers have consistently been heavily skewed towards the academic elite, with a far higher proportion of Oxbridge graduates and students with First Class honours than would be predicted from population norms. Drawing on recent cross-sectional data, the preference for Oxbridge and Firsts, relative to pupillage applicants, is also striking (Table 3):

2009-10	Pupillage applicants (Carney 2011b)	New pupils (Sauboorah 2011b)
Oxbridge	12.6%	23%
First class degree	14.9%	23.5%

Table 3: Comparison of the percentages of Oxbridge graduates and holders of First Class degrees among pupillage applicants and new pupils

75. This would appear to be consistent with the Wood Report's conclusion that "the principal qualification for obtaining pupillage appears to be "high educational achievement"(BSB 2010). The extent to which this perpetuates or actually accentuates earlier ethnic and class effects is moot. The Wood Report also concludes that, without further information on the characteristics of those who are rejected, it is not possible to make a proper judgment of the fairness of recruitment processes, and notes that research to compare successful and unsuccessful applicants is underway. Such research is to be welcomed, though Zimdars (2010, 131) concludes that, even on the data we have "there still seems scope to expand the intake of new barristers from lower social-class origins and to recruit from a larger number of universities."

76. Comparable recent data has not been published for trainee solicitors, however what research there has been also indicates a significant Oxbridge/pre-1992 university bias in recruitment. The Cohort Study indicated that Oxbridge applicants who had gained a lower second or below were, on balance, more likely to be offered a training contract than those from other 'old' universities or post 1992 institutions who achieved better; 79% of those who gained a first or upper second from an old university were offered a training contract in comparison to 60% of those who had achieved the same from a new university.

77. Overall there is insufficient research to draw firm conclusions about the fairness of recruitment processes. Nevertheless, there are trends that are a cause for concern in terms of equality and diversity, notably:

- The use of A levels as a selection criterion. This obviously risks re-inscribing the inequalities of the secondary education system straight back into the workplace, and may undermine much of the widening participation work being done by universities;

- The significance of prior legal work experience in recruitment decisions (discussed above), which evidence suggests is often not allocated on a fair basis;

- The extent to which legal recruiters focus their interest and resources on a narrow range of universities.

78. As a number of studies highlight, these recruitment practices are not anti-diversity as such. Rather they can be seen primarily as a means by which recruits are brought into the firm who have the kinds of cultural capital that will facilitate their entry into the firm's social (and training) milieu, and ensure their (perceived) acceptability to clients. It can thus be seen as part of a process that involves elements of 'professional closure' (by restricting access) (Bolton and Muzio 2007; Sommerlad 2007), 'upmarket branding' (Ashley 2010, 721) and 'identity regulation' of those within the organisation (Cook and Faulconbridge n.d.). These practices may influence recruitment decisions not just at entry level, but also in relation to the recru tment of para-professionals and those who are seeking to transfer between roles and organisations. It leads, albeit perhaps unintentionally, or at least incidentally, to the reproduction of a relatively homogenous profession in terms of educational background.

79. From the perspectives of the diversity and access to justice objectives of the Legal Services Act, is it appropriate that the market acts as the primary gatekeeper of access to a publically regulated profession? Arguably there are two key problems with reliance on a purely market mechanism.

80. First, as the ebb and flow of demand changes, so too will the level of access to the profession. When demand is high, the market will take what it can get, but in times of recession, access may have less to do with one's potential ability as a lawyer, than one's ability to get on the first rung of the ladder. The system as a whole is neither consistently capability-based [41] nor is it strongly meritocratic. Whilst many of the students who succeed clearly do so on (historic) merit, this does not mean that those who fall at this hurdle *lack* merit, and do not deserve, or are not qualified to obtain access to the profession.

81. Secondly, 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.[42] This could have significant longer term implications for access to justice, particularly for many in BME communities.

82. Hence 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 a d equivalent skill by means other than existing training,[43] 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.[44]

Career progression/retention

83. A wide range of research has demonstrated negative correlations between ethnic origin, gender and social class, and progression both from training into associateships or tenancy, and into higher levels in the profession. Concerns have been expressed over a number of years that women and BME practitioners are disproportionately leaving the profession, or at least leaving private practice because of the challenges they face in that environment. Studies also show how

[41] Assessment of capability is future-orientated, focussed on assessing potential to fulfil the role. Assessment centre tests and exercises are increasingly used by larger legal employers to try and gauge capability, but this tends to follow an initial sifting that is based largely on traditional academic criteria.
[42] We would add our voices to those that have expressed concern at the impact of the cessation of the Legal Services Commission's sponsorship of training contracts in the legal aid sector.
[43] In this context we note that work on the SRA's work-based learning pilots is continuing and will be taken into consideration as part of the Review.
[44] There may also be a case in this context for reviewing the rules on practising on one's own account.

key career 'choices' are also being shaped by ethnicity and/or gender or disability – decisions as regards areas of practice, for example.

84. The primary issue for this Review, however, is whether current training regimes actively contribute to, or at least do not ameliorate, differential effects on career progression and retention. While there is a very extensive literature on equality and diversity in career progression, relatively little of it focuses on training issues. Nevertheless a number of key themes can be highlighted:
    - The relative lack of good management skills is recognised as a training gap in the sector (Skills for Justice et al 2010), and as a factor perpetuating informal and unfair working practices see eg (Insight Oxford Ltd 2010; Law Society of England and Wales 2010).
    - An absence of support structures, particularly coaching and mentoring, and diversity networks. These are seen as important to redress the balance of informal support and mentoring which "was reported as characterising most respondents' workplaces, and the fact that in practice this meant that powerful senior figures (generally white men) tended to foster the careers of young white men." (Sommerlad et al 2010, 7).
    - A need for diversity training has been noted in a number of studies, and particular gaps, such as developing managers' awareness of LGB issues, have been highlighted (Interlaw Diversity Forum 2010, 24). Sommerlad et al (2010) recommend that diversity training should take place at several career points including the LLB, LPC and BPTC stages and for qualified lawyers (as CPD). They suggest consideration should also be given to the regulators requiring training of current senior partners/line managers.

85. There has been relatively little independent research into practice at the Bar since the Shapland studies in the early 1990s. Nevertheless it is likely that additional and different challenges arise in the context of self-employed practice at the Bar. The chambers model itself may constitute a challenge for the kind of entity regulation that would support the development of collective equality and diversity obligations.[45] The lack of employment relationship and employment rights exacerbates retention problems, especially for women. There may be limited scope for flexible working. While it is becoming harder to generalise, chambers have tended to be relatively loosely-coupled and lightly managed organisations. Fee earners do not co-exist in a hierarchical employment relationship with each other, and are individually responsible for their CPD. Cost of training and access to training may present greater challenges in this environment, though there has been a divergence of evidence and opinion on this issue (cf Bar Council 1991; ACLEC 1997, Neuberger 2007).

86. Developing from this final point, the equality and diversity impact of CPD is obviously of relevance to the Review. There is little evidence generally that the cost of CPD has a negative impact on equality and diversity in professions. In the context of the legal services sector specifically, the cost of CPD may be an issue for the smaller professions and paralegal bodies, and, given the make-up of those groups, the creation of or increase in CPD requirements may

[45] Again this is an issue that has wider ramifications for training regulation and will be considered 'in the round' later in the Review process.

well have equality and diversity implications, the impact of which will need to be assessed.[46] At this stage, however, it is too early to offer a more detailed evaluation.

87. Finally, we close this section with an unrelated observation. We note the evidence that BME solicitors appear more likely to regard creating their own practices as a significant means of progressing in the profession (Law Society of England and Wales 2010). We also note the evidence that a disproportionate number of complaints are being brought against BME solicitors, and the concern that this raises in the Ouseley Report (SRA 2008) that there are unmet training needs relating, eg, to the ethics and practice of running a legal practice. This raises both a specific question for the SRA and solicitors' profession regarding those training needs, and a more general equality question for the Review: whether there are equivalent disproportionalities elsewhere in the sector, and whether there are specific gaps in the support available to legal services providers which, if addressed, in training, at the start of their career or through CPD, might reduce such disproportionality.[47]

7 – Access to other regulated occupations

88. The size of the total legal services sector in England and Wales is uncertain. One recent estimate suggests it may be in the region of 300,000 persons.[48] Around half of this number is employed in regulated occupations, that is, either as persons authorised to deliver reserved legal activities under the Legal Services Act 2007, s.18, or as regulated immigration advisors. Within the legal services sector in 2010 there were 136,556 authorised persons, and a further 4150 regulated immigration advisers, making a total of 140,706 directly[49] regulated individuals.[50] Solicitors and barristers comprise the largest of these regulated groups, together accounting for approximately 89% of the total regulated workforce.

89. At this stage it is not possible to generate accurate diversity profiles for all o the regulated occupational groups, nor for the unregulated workforce. This lack of comprehensive data has been commented upon by the Legal Services Board in its work on the diversity objective under the 2007 Act. In July 2011, the LSB published guidance to approved regulators regarding the need for regulated entities to provide baseline diversity data on their workforce by the end of 2012 (Legal Services Board 2011). This should provide a useful addition to the evidence base available to regulators, policymakers and researchers. This reporting requirement does not, of

[46] For example, the cost of CPD has already been highlighted in our research by the Institute of Professional Willwriters.
[47] This is an issue we will explore directly with regulatory, representative and key diversity bodies as part of our programme of research.
[48] International Financial Services London puts the UK wide figure at about 320,000 in 2010.
[49] These figures thus exclude paralegal and support workers in the sector who are employed by regulated entities but are not themselves authorised to deliver reserved legal or immigration services. A high proportion of members of other regulated professions are employed in solicitors' practices. Unpublished SRA data thus indicate that 40% of the fee earners employed by solicitors' firms are not solicitors. It is ot clear from these data what proportion of them are authorised persons. Such individuals are *indirectly* regulated by virtue of their employment in regulated entities. The data also exclude those – eg will writers - who deliver unreserved legal services through unregulated entities or on their own account.
[50] Claims management companies are regulated by the Ministry of Justice as entities, not individuals, and so are excluded from this analysis.

course, extend to OISC or the Ministry of Justice, neither of which currently publish individual level diversity data on their regulated communities.

90. The lack of statistical data is, unfortunately, symptomatic of the absence of any developed research agenda, let alone established literature, relating to most of the occupations here considered. Information on the unregulated sector is, not surprisingly, even more sparse.[51] In the remainder of this section we will therefore focus on the limited information that we have been able to identify so far (our work is continuing in this area), and the issues that it highlights, though the limitations of the data inevitably prevent us from drawing any strong, evidence-based, conclusions at this stage.

Chartered Legal Executives (CILEx)

91. Chartered Legal executives are a non-graduate entry profession. There is no prescribed minimum educational standard, though 4 GCSE passes at Grade C or above (including English Language) are recommended. Demographically, CILEx members are drawn from a far wider social background than solicitors: 85% of them come from families where neither parent went to university; three out of four are women, and 2% have a disability. Twelve per cent are from BME backgrounds, which is markedly below the levels recorded for the other large professional groups. This figure rises to 29% of students, which could suggest higher non-progression by BME students.[52] In 1997 15% of Chartered Legal Executives had degrees (Sidaway and Punt 1997, 14). The Chartered Institute has been seeking to extend its reach into the graduate recruitment market, and law graduates can achieve a CILEx qualification by completing three level 6 practice modules as a 'Graduate Fast Track Diploma'. This route has reported a 58% year-on increase in enrolments in 2011.

92. CILEx itself considers that its members encounter a number of significant barriers to progression within the legal profession: amongst these, the attitudes of other legal professionals stand out. Unpublished research by CILEx states that 22% of CILEx members report that their careers had been held back by the attitude of colleagues at work. Francis similarly notes that Chartered Legal Executives in practice may tread a fine line between those who are treated as equal fee-earners, and enjoy similar levels of autonomy to their solicitor colleagues and those who negotiate the more difficult terrain of subordinate professionalism: being seen as either a 'failed solicitor' or 'glorified' legal secretary/paralegal (A. Francis 2006, 2011). Francis's work also highlights that these distinctions are potentially gendered: that male legal executives, particularly in larger firms, may more readily wield autonomy, or else "more naturally" choose to leave the profession and re-qualify as solicitors (A. Francis 2011, 76, 78-9). There is also some indication (though not quantified) that the Chartered Legal Executive route has been coming under

[51] The lack of regulation or even of co-ordinated membership organisations obviously accounts for much of the difficulty here. Notable exceptions are will writing and 'licensed' paralegals, for whom professional associations exist. The research team will be commencing the bulk of its work on the unregulated sector in April-May 2012.

[52] This is not straightforward, however. The CILEx route to qualification has a number of qualification points – some members choose not to qualify beyond Level 3, this is not necessarily 'non-progression' in the sense of 'dropping-out' of training. Nevertheless it would be helpful to identify trends at each stage and whether (and if so why) different groups are/are not progressing beyond Level 3.

pressure from the number of LPC graduands who, unable to obtain a training contract, are working as paralegals (Skills for Justice et al 2010, 22–23), though, at the same time, it should be noted that the number of CILEx lawyers qualifying has continued to increase.

93. This leads us into the question of mobility between professional titles. Chartered Legal Executives can relatively straightforwardly convert to solicitor status, should they wish to do so. Sidaway and Punt (1997, 32-3) found that 30% of their overall sample of Chartered Legal Executives wanted to become solicitors. However, statistics indicate that relatively few Chartered Legal Executive lawyers actually exercise their option to cross-qualify by completing the LPC. The numbers vary year on year, but have only once exceeded 200 since 1996/97. In 2008/09 the number of former Chartered Legal Executives admitted to the roll of solicitors was 147, or 1.7% of all admissions (Dixon 2011, 7). There is no published data on the equality characteristics of those who become solicitors.

94. Sidaway and Punt also noted that firms spent relatively little on 'paralegal' training (a term that they used to include CILEx). Whether this is a continuing issue, and if so to what extent it could of itself act as a barrier to career progression, including co-qualification under an alternative/additional title is unclear. Dixon's figures also indicate that the impact of the Chartered Legal Executive route on the potential diversity of the solicitors' profession is, numerically at least, quite limited. By contrast it is notable that Chartered Legal Executives do not have an equivalent pathway into the Bar, which maintains its status as a purely graduate profession.

Notaries and Scriveners

95. Notarial training was reformed in the wake of the Courts and Legal Services Act 1990, at which point the process of apprenticeship, which, it was said, had given the profession rather the air of an "exclusive gentleman's club" (Shaw 2000, 146) was abolished and replaced by a formalised system of 'academic' training.[53] The data we have at present does not offer any indication of how, if at all, the change in training regime has affected the diversity of the profession. There is, of course, also a substantial overlap with the solicitors' profession. The Facu ty Office is reported as 'anticipating' that 80% of notaries are dual qualified as solicitors (Smedley 2011, 12).

96. The overall number of notaries appears to have declined over the last decade, from about 1,300 in 2000 (Shaw 2000)to less than 900 today. There has been no published research on the gender and ethnic diversity of the notarial profession. Our own analysis, using the published register of notaries held by the Faculty Office indicates that the profession is predominantly male (77% of gender- identifiable registered members).

Patent and Trade Mark Attorneys

[53] Unless already qualified as notaries public within the EEA, notaries must be solicitors or barristers or hold a degree and have passed, or be exempted from, examinations in European Union law, constitutional/public law, property law, contract, Roman law/civil law, trusts, wills & probate, business law, conflicts of law and notarial practice. The full training requirements for Notaries and Scriveners are set out in the Notaries Qualification Rules 1998 and Scriveners (Qualifications) Rules 1998, both as amended.

97. These are graduate entry professions. Again there are no detailed diversity figures currently available. The profession sees itself historically as predominantly male, though the number of women entering the IP professions has been said to have 'grown steadily' (Musker 2010), though this has not been quantified. The Intellectual Property Regulation Board (IPReg) has recently highlighted the relative lack of diversity among students who choose to study the scientific disciplines at university and the link this has to diversity in the patent profession, which requires scientific qualifications (Legal Services Board 2011, para. 20).

Licensed Conveyancers

98. Although there are currently no diversity figures available, the indicators are that the profession is predominantly female. The gender breakdown for students registered with the CLC in December 2010 shows that women are a substantial majority of that category - 82% or 516 out of a total of 629 persons (Council for Licensed Conveyancers n.d., 12). A total of 120 new students were registered during 2010, a small decrease on 2009. The CLC has opined that this reflects the impact of the current economic climate on expenditure on training and development within the profession (Council for Licensed Conveyancers n.d., 12).

Costs Lawyers

99. Costs lawyers are also a non-graduate entry profession; minimum entry requirements are 4 GCSE passes at grade C or above, including English and Maths, or equivalent. Students may also be admitted on the basis of passing a specific aptitude test offered by the Association of Costs Lawyers (ACL). Based on the current published list of members, just under 10% of the profession are graduates, and 3.6% are dual-qualified as CILEx. In terms of demographics, 62% of gender-identifiable practitioners are male.

100. Unlike CLC, there is evidence of recent growth in student numbers. In December 2011, ACL reported that the numbers applying to train as costs lawyers had virtually doubled from 65 to 112 between 2010 and 2011. This is attributed by ACL to the profession's enhanced status under the LSA, and its raised profile in the wake of the Jackson reforms to civil justice.[54]

8- Diversity initiatives

101. There are currently numerous diversity initiatives in place seeking to enhance access to legal education and the professions, such as Pathways to Law, PRIME, the Pegasus Access Scheme and the Professions for Good initiative. Such initiatives may be useful in providing a wide range of information[55] and support, including mentoring and access to work experience, to teenagers and older students who might not otherwise consider a career in law. A recent paper published by the LSB usefully identifies a wide range of such activities, though it offers little in the way of

[54] '"Unprecedented rise" in number of students training to become costs lawyers' *Legal Futures,* 7 December 2011, available at www.legalfutures.co.uk/regulation/other-lawyers/unprecedented-rise-in-number-of-students-training-to-become-costs-lawyers

[55] The lack of accurate information about the impact of academic choices, and more generally about 'how to succeed at law' has been highlighted by diversity groups as a significant gap in a number of studies (Law Society of England and Wales 2010; Sommerlad 2008)

evaluation (LSB 2010). We do not intend to repeat those large amounts of descriptive information here, but this work does highlight the extent of activity being undertaken by a range of professional bodies and groups, often working in conjunction with charitable institutions, HEIs, community groups and others. At the same time the LSB report does not account for other access and outreach work by schools, HEIs and others that is geared more generally to widening participation in HE. This also cannot be discounted.

102. When we look at the volume of organisations and activities involved, however, this emphasises the fragmentary and complex nature of provision. These initiatives undoubtedly make some difference at the level of the individuals supported, but collectively, it is rather less clear what scale and reach such initiatives have, and in particular whether they actually have an impact on eventual recruitment opportunities and decisions. It has also been argued that many such initiatives are largely confined to large corporate law firms, and the in- ouse sector, and are in general likely to reach only a limited number of individuals, and hence unlikely to produce significant or rapid changes to the overall diversity of the profession (Somm rlad et al. 2010).

103. The underlying point is that there is relatively little published (or indeed, so far as we can tell unpublished) research and evaluation, identifying and assessing the impact r effectiveness of such interventions. This seems to be a pressing concern, and one that has also been highlighted by the Legal Services Board in both its Diversity Forum of Professional Regulators, and its 2010 consultation on diversity.[56]

104. In looking at the effectiveness of diversity initiatives, a number of general points can be made from the literature.

105. First, the need for clear, high quality information on both the opportunities and risks associated with a career in the legal services sector has been highlighted. Much current institutional activity by universities, schools, representative and regulatory bodies focuses on providing both general information (eg through careers websites, etc) and more targetted information and guidance through outreach activities, including taster days, information packs, summer schools, etc. There is a clear recognition in both theory and practice that focusing policy interventions on encouraging disadvantaged pupils at age 18 to apply to university is unlikely to have a major impact on reducing the gap in university participation (Chowdry et al 2010, 20). Nevertheless, it appears that quite a high proportion of outreach activity re ains targeted at year 12 and 13 students (often at supporting potential high achievers to access 'good' universities). While these schemes, like Pathways to Law, may be effective in what they do, much of the research points also to the need for earlier interventions to attract and motivate students at the critical pre-GCSE phase (cp Milburn 2009, recs. 4, 10).

106. Secondly, there appears to be growing recognition among experts that effective engagement with disadvantaged young people needs to adopt a more collaborative and collective approach. There are underlying concerns that some outreach activity both

[56] See http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/diversity_consultation_publish.pdf

individualises and (unintentionally) pathologises non-participation (Archer 2007, Perry and Francis, 2010). Outreach thus may assume a 'deficit' approach, whereby its job is to provide 'top-down' expertise, and fill gaps in knowledge. By contrast, Perry and Francis (2010, 17) argue that effective engagement is characterised by:

- A focus on educational engagement and ownership by working-class young people, as a precursor to achievement
- Addressing working-class young people as a group, irrespective of 'ability': emphasising collectivist rather than individualistic approaches
- Attention to vocational routes and careers in addition to academic routes
- A focus on, and valuing of, the existing knowledge of working-class young people.

107. These pointers remind us of the significance of BME and working-class social and cultural attachments (cp. Archer and Hutchings 2000, Archer et al 2001, Reay et al 2005) and also the extent to which 'high achiever' approaches involve 'skimming off the cream' and potentially alienating many of those they seek to target. They also remind us of the relative nature of disadvantage. Some initiatives focus on opening up the professions to the most disadvantaged, but these may not always be the most effective in either social or economic terms (Crawford et al 2010). Moving someone from the bottom to a higher rung on the ladder still makes a difference, as does focussing on raising achievement for those nearer the middle of the distribution.

108. Thirdly, it follows from the above points that a particular issue for the professional representative bodies to consider may be whether current initiatives focus too much on attracting disadvantaged young people to a specific professional career, and, in particular, whether more might usefully be achieved by collaborative work led by a range of bodies, presenting a variety of career paths and 'levels' across the legal services sector.

109. Lastly, the issue of the role of the profession regarding diversity initiativ s is also one that highlights important questions about the proper role for regulation. Moreover, it demonstrates the importance of finding the right balance and appropriate tools across, or between, conduct of business (COBR) and training regulation. The distinction may be profound, particularly as regards agreeing and then achieving the proper objective of regulation, and whether that requires the use of defined targets or works better chiefly by facilitating good practice and enabling processes, with only limited prescription. To illustrate this with a rather crude example, we can probably agree that assuring equal access to training is an appropriate, baseline, regulatory function. However, whilst voluntary participation in diversity initiatives could support the development of such access, to set diversity targets, or actively require legal service providers by COBR to take positive steps to engage in diversity initiatives would be a very different approach, and one that might be considered disproportionate or counter-productive. By contrast, using training regulations to facilitate diversity (for example by recognising mentoring in such schemes as a proper CPD activity) might provide less direct leverage for change, but could be regarded as a more proportionate, enabling approach, that is less likely to be met with creative compliance.

110. Whether equality and diversity, from a *regulatory* perspective, is primarily about ensuring processes or achieving outcomes is thus a fundamental question. Is it sufficient for regulators to

set and enforce standards to facilitate fair and open access to the profession, or should specific diversity targets be created? Or is there something in between, for example: reinforcement of good practice by periodic oversight of the composition of the profession, to satisfy regulators that there is no fundamental or inherent defect in selection processes?[57] If targets are desirable, then they will need to be set with care, and that is likely to require better data than we currently have available.

9 - Conclusions, summary and questions

111. Our review of the literature and other work undertaken so far highlights both the undoubted progress that has been made in increasing equality and diversity in legal education and training, and the widespread concerns that not only is there still more that could be done, but that work on increasing social mobility is losing ground.

In brief

112. We have highlighted a number of significant challenges in building greater diversity and social mobility into the system. This review particularly identifies the embedded and, in some contexts, seemingly quite intractable barriers to participation that exist. The picture painted is thus of a system where early social and educational inequalities have a long reach forward from childhood into (young) adulthood, often reinforced by institutional barriers created by a system that actually rewards the most socially advantaged.[58] In terms of access to the profession, the qualification process, requiring as it does a mix of strong credentials and ascriptive attributes, creates successive barriers to entry which tend significantly to reduce the opportunities for those from the most disadvantaged backgrounds. There are unlikely to be 'quick fixes' to a problem that is, in many respects, shaped by intergenerational patterns of advantage and disadvantage. On the other hand, though, perhaps care also needs to be taken to ensure that this intractability does not in turn become an excuse for inaction. Complex problems that span the activities of a range of social actors may give rise to a phenomenon of 'floating responsibility', whereby, although the need for action is widely acknowledged, responsibility for taking it tends to drift between the various players, often not adhering to any one of them (Bauman 1994, 7).

113. The point has been made to us that the legal professions are not responsible for correcting the shortcomings of the education system. We certainly acknowledge that argument, but there is still the question how far the professions should take responsibility for perpetuating or even re-inscribing the effects of some earlier inequalities into their training and recruitment systems. The need and scope for appropriate and proportionate regulatory coordination and steering in this regard is a matter on which we would welcome comments.

[57] We are grateful to Derek Wood QC for his suggestion that the problem might be framed in this way.
[58] We are also aware that this does not necessarily describe the experience of those who seek to change career later in life, some of whom may be differently disadvantaged by virtue of age, prior learning and work experiences.

114. We should perhaps also acknowledge that we have already encountered a sense of 'research fatigue' from some lawyers with protected characteristics, and so e scepticism that there is any real will to change across the sector. Opinions have been expressed that the Training Framework Review ultimately did little to address equality of opportunity, and that, whilst the Wood Reports were clearly aware of the problems, they ultimately made few substantive recommendations that addressed diversity issues.

More flexible training routes?

115. Not all pathways to the profession are treated the same: all degrees may be equal, but some are clearly more equal than others. The fact that movement into the legal services market is not closely regulated by undergraduate subjects studied and qualifications obtained at university, when combined with highly socially stratified HEIs, has already given us a system in which the importance of *where* one studies can often outweigh *what* one studies (Brennan 2008). Similar issues arise with later stages of training: not all LPCs or BPTCs may carry the same value in the marketplace, and an alternative pupillage or a work-based learning portfolio completed with a variety of training bodies may not carry the same weight as a traditional pupillage/training contract. A CILEx-trained lawyer may also face barriers to progression that have little or nothing to do with their competence.

116. 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). Differences, it seems, breed hierarchies. This also begs a much larger question: how do we address discrimination by the market, within a system that increasingly looks to the market for regulation?

117. Increasing flexibility in terms of entry routes and admissions criteria, etc, may also be a double-edged sword. A phenomenon described as 'maximally-maintained inequality' (Raftery and Hout 1993) has been identified as explaining why 'middle class' students may initially be better placed to exploit diversity-led changes in education systems, with consequently slower or more hidden trickle down effects to the policy's real target audience. The short term consequences of this need also to be borne in mind in evaluating the impact of reforms.

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Summary and questions

In the remaining pages, we highlight the primary findings from this discussion paper, and explore some potential solutions. Many of these are tentative. We therefore also ask questions and invite specific feedback on matters raised by this paper (we also welcome comments more generally on any of the issues discussed).

Note that our aim at this stage is still to map practices and experiences and invite views from stakeholders. This paper does not set out to suggest that these areas are necessarily all appropriate subjects for direct regulation. Some might be a step (or more) removed from prescription: appropriate processes which might inform guidance on ways in which the regulatory objective of enhancing diversity could be achieved within a more outcomes or principles-based approach to regulation.

Access to Law School

The process of admission to law still tends to favour those with traditional credentials and the social capital to access good schools and good universities. Nevertheless, HE, including legal education, has made considerable progress in terms of gender equality, and diversity. Most BME groups are proportionally over-represented in HE, though recruitment among some black as opposed to Asian communities is still relatively weak.

However recruitment is itself stratified, with BME students significantly more likely to study at post-92 universities. This has obvious consequences in high demand-high status subjects like law, where recruitment, particularly to the large law firms, still seems to draw heavily on the 'top' pre-92 universities.

Pupils from independent schools are massively over-represented at elite universities. While the diversity of HE has improved, class inequalities have actually widened, as 'massification' of the sector has disproportionately benefitted the better-off.

The use of 'contextual information' in admissions processes does not appear to be widespread at present, though its greater use could potentially enhance diversity and social mobility, however there are also risks attached. Planned changes to the HE funding regime from 2012 may negatively impact the ability of high status institutions to recruit more students based on contextual data.

Question 1: To what extent is contextual information being used in admission decisions to academic and vocational law courses, and if so what kinds of contextual factors are being taken into account?

Question 2: Do the difficulties of ensuring continuity and consistency in the use of contextual information at undergraduate/vocational/recruitment stages militate against its use in the legal education and training system?

The use of aptitude tests is not widespread, and academic opinion of their value as diversity and equality tools is mixed, at best.

Question 3: Would you welcome greater use of standardised (aptitude) testing at the academic stage? (Please give reasons why/why not)

There is no evidence that the introduction of fees has (at a systemic rather than individual level) created a significant disincentive to enter HE. The impact of debt itself is obviously more variable, and to some degree socially stratified. There is evidence from the Cohort Study that debt accounted for a significant level of non-progression to professional training, but that predates the introduction of new fee and funding regimes. The impact of higher university fees in England post-2012 (and of

increasing costs in Wales) remains to be seen, though there appear to be widespread concerns in the HE sector that they will have a negative impact on widening participation.

Question 4: Are you aware of any more recent evidence that suggests the findings of the Cohort Study regarding the impact of student debt on progression still hold true?

Question 5: Do you or your organisation have any direct evidence of the impact of the planned fee arrangements for 2012 on widening university participation?

Question 6: Should the relevant approved regulators have any role in offering guidance to law schools on admissions criteria and/or practices in respect of qualifying law degrees?

The law school experience

Obtaining legal work experience whilst at school and/or university is a critical measure of success, but research raises important doubts about equality of access to work experience and the distribution of places.

Question 7: A number of diversity initiatives are seeking to make access to work experience more equitable. Are you aware of any evidence to show that these initiatives are being reflected in changing recruitment practices and trends?

Question 8: More generally, would you support the creation of some kind of central clearing house for a pool of legal internships?

A number of law schools offer clinical legal education, internships, and credit-based work placement schemes. There may be scope for university law schools to use curriculum developments and interventions more to enhance the opportunities for non-traditional students by, eg, embedding work experience and career development skills into the curriculum. At present it is not clear how widespread or effective such initiatives are/might be. On the other hand, there are also concerns that this is not the proper role of an academic legal education, or that it too encourages a deficit approach which makes non-traditional students and the universities responsible for a problem that is primarily caused by recruitment practices.

Question 9: Do you have any reliable evidence of how widespread clinical and legal work experience programmes are across law schools in England and Wales? Are you aware of specific examples of effective practice that you think we should know about?

Question 10: Is there a role for regulation/guidance in encouraging or requiring clinical and/or legal work experience as part of the qualifying law degree?

The professional stage

Competition and (perhaps more importantly at present) cost factors for the LPC/BPTC may increase the intensity of pressure on diversity and social mobility at this stage. There is some (mostly dated) evidence that educational attainment has been a significant hurdle to entry to the LPC/BPTC. It is not clear to us to what extent contextual factors are used in recruitment to the LPC/BPTC.

Question 11: Are you aware of any recent evidence to suggest that cost is a significant barrier to wider participation in vocational training.

Question 12: To what extent (if any) is contextual information used in informing admissions decisions to the LPC and BPTC? Should its use be increased?

There is limited data on the impact of sponsorship on diversity. The bulk of sponsorship appears to be provided on the basis of merit rather than need, or, in some instances, a combination of merit and need.

Question 13: What role (if any) should regulation play in setting criteria or guidance for the offering of sponsorship by training providers and/or professional bodies?

Question 14: What additional measures (if any) should be introduced regarding the monitoring by the relevant approved regulator of funding awards for BPTC/LPC?

Question 15: In principle, could/should the professional law schools (offering the BPTC/LPC) be required to offer scholarships linked to financial need as a condition of validation?

Other diversity and social mobility concerns include the possible lack of portability or market value of these awards outside the legal profession.

Question 16: What evidence is there (if any) that lack of portability of LPC/BPTC is a problem or constraint? Could/should more be done to increase the general value of these qualifications in the graduate jobs market, without diminishing their professional relevance?

An aptitude test is being introduced by the BSB, and the Law Society has also shown interest in the use of aptitude testing as an entry tool at the vocational stage.

Question 17: In your view, is the introduction of aptitude testing something that is more likely to have a positive, negative or neutral impact on diversity at the vocational stage?

Entry to the profession, career progression and retention

Expansion of HE numbers has been identified by BIS as a key to increasing social mobility. As noted, however, this is unlikely in the short term given constraints on university funding. Even if possible such expansion would not necessarily increase access to the profession, but, as Sullivan (2010), and others note, only increase competition for entry to the profession. Over-capacity at LPC and BPTC stages indicates that these are not a significant (numerical) barrier, though they may act as a further socio-economic filter based on cost, attainment and ascriptive requirements. Although the legal profession performs 'well' relative to population norms, there appears, *prima facie,* to be appreciable ethnic under-recruitment relative to the earlier stages of education and training. Whilst this does not prove that there is necessarily direct discrimination in recruitment processes, it does beg the question whether, and if so to what extent, existing 'meritocratic' and a criptive recruitment criteria impact BME applicants unequally.

Since the numbers of training opportunities are determined by the market, we need to consider ways of making these more accessible to disadvantaged applicants, and possibly also ways of

opening up alternative or additional avenues to qualification to reduce the bottleneck at this stage. In this context notions of progression potentially need to be extended beyond the traditional career routes to consider how mobility might be better encouraged through recognition of national standards, apprenticeship and other forms of vocational training (in the wider sense of that term), and transition between the range of legal services sector occupations (cp Milburn 2009, recs. 68, 72, 73)

Question 18: In your view, are there existing regulatory provisions or standards that have a negative impact on fair access to the legal professions?

Question 19: Are there existing regulatory barriers that, in your view, unduly limit training opportunities in the in-house or third sectors?

Question 20: Are there other measures that the regulatory or representative bodies could introduce that would increase alternative training opportunities outside of private practice?

At no point in this paper have we sought to define what a "diverse" profession might actually look like, nor have we ventured an opinion on the use of targets or quotas.

Question 21: What equality, diversity and social mobility outcomes (if any) would you wish to see prescribed by approved regulators in respect of legal education and training?

Question 22: Is there a case for introducing recruitment targets for equality and diversity purposes, and if so, should these be measured against general population, or general university, or law school, or other norms?

There is limited evidence of training gaps or needs that restrict career progression and retention.

Question 23: There have been long-term criticisms of a lack of support for returners-to-work. Are there gaps in relation to return-to-work programmes, or entity training obligations to returners that should be addressed by the approved regulators?

Question 24: are you aware of any other significant training gaps or needs that appear significantly to limit career progression and retention of a diverse workforce?

Sommerlad et al (2010) recommend that (i) diversity training should take place at several career points including the LLB, LPC and BPTC stages and for qualified lawyers (as CPD). (ii) Approved regulators should also specifically require diversity training of senior staff in firms/chambers/ABSs, such as senior partners, heads of chambers, COLPs, heads of department and other senior and line managers.

Question 25: Do you agree that (i) diversity training should take place at several career points including the LLB, LPC and BPTC stages and for qualified lawyers (as CPD); (ii) approved regulators should also specifically require diversity training of senior staff in firms/chambers/ABSs? If so why, if not, why not?

Other regulated occupations

At this stage, analysis of issues among other regulated occupations is limited by a relative absence of literature and reliable published data. A component of LETRs research work will be to explore diversity issues in these parts of the sector in greater depth.

There is little evidence generally that the cost of CPD has a negative impact on equality and diversity in professions. In the context of the legal services sector specifically, the cost of CPD may be an issue for the smaller professions and paralegal bodies, and, given the make-up of those groups, the creation of or increase in CPD requirements may well have equality and diversity implications, the impact of which will need to be assessed.

Question 26: Do you have any concerns, and are you aware of any evidence, that CPD costs currently have a negative impact on equality and diversity in respect of any part of the regulated workforce?

Question 27: Are concerns about their adverse equality and diversity impact currently acting as a brake on the introduction of CPD requirements, or on other innovations in training developments, in your part of the sector?

Question 28: In your opinion, would a periodic (eg 5 yearly) re-accreditation requirement have any disproportionate impact on equality and diversity in your part of the sector? Are you aware of any evidence in support of that opinion?

There is some evidence of both formal and informal (attitudinal) barriers limiting mobility between different regulated occupations in the sector. This will be considered more fully in the context of reforms/recommendations aimed at increasing flexibility of training and development across the sector.

Diversity initiatives

The range of existing diversity initiatives is complex. Diversity initiatives can and do transform individual lives, but there are concerns regarding their tendency to individualise solutions to (collective) disadvantage, their effectiveness in targeting need, cost-effectiveness and possible lack of co-ordination. Current outreach and diversity initiatives also tend to focus on students at 15-18, with less emphasis on the equally critical pre-GCSE phase.

Question 29: Are you aware of successful examples of outreach work with younger pupils (11-14)?

Attracting disadvantaged high achievers through schemes like Pathways to Law and Reach for Excellence clearly makes some difference, but these tend to work within the existing educational/recruitment framework, when the assumptions of that framework may be a significant part of the problem. As with much outreach activity, laudable though it is, it risks drawing attention away from the role of professional rules and institutions, of HE cultures, and the government policies that render HE participation “unthinkable” (Archer 2007) for some. As demonstrated earlier in this paper, these wider factors also need to be considered and addressed by policy initiatives.

A particular issue for the professional representative bodies to consider may be whether current initiatives focus too much on attracting disadvantaged young people to a specific professional

career, and, in particular, whether more might be achieved by collaborative work led by a range of bodies, presenting a variety of career paths and 'levels' across the legal services sector.

At a sector level, the ability of a body like the LSB to take some coordinating role in debating and shaping diversity initiatives is useful, but, if constructed purely around the regulatory bodies, one must ask, is there a risk that it may become too focussed on regulatory solutions, and does it also disregard the potential role of the unregulated sector as a further mechanism for advancing social mobility? We believe a good case could be made out for creating a sector-wide body or grouping to lead and coordinate diversity initiatives.

Question 30: Do you agree that there should be a sector-wide, non-regulatory, body to co-ordinate diversity initiatives? (Please give reasons why/why not)

Data needs and research gaps

Our review of the literature highlights a number of significant gaps in the research data, relatively few of which can be addressed, even in a short-term fashion by LETR.

As the Milburn Report (2009) acknowledges, good quality data on diversity and social mobility is a pre-requisite to action. A range of data is now published by both the Law Society and the Bar Council/BSB. There are, however, some gaps in the published data, particularly as regards SES, and some standardisation of data categories would be helpful (though this may be addressed in the context of the LSB requirements regarding sector equality and diversity data). It is perhaps disappointing in terms of transparency that the latest Law Society data is only available in its (relatively) unabridged form behind a paywall.

There is an argument that publication of specific equality and diversity data by the academic and professional law schools should be encouraged, perhaps even mandated as a condition of recognition or validation. We ask whether this would be a proportionate requirement, and would complement measures already taken to require diversity data from firms and chambers. The Equality Act 2010 requires HEIs to gather a broader range of equality and diversity data, so that much more of this data should be available within HEIs. The publication of some basic comparative diversity data on legal education providers might itself act as a lever for change.

Question 31: Do you agree that law schools should publish equality and diversity data in respect of their law courses? (Please give reasons why/why not)

Most of the existing evidence relates primarily to three equality characteristics: gender, race/ethnicity, and, to a much lesser extent, pregnancy/maternity. This in itself highlights a very real and significant gap in terms of both baseline information and research on the other protected characteristics. Disability, age, sexual orientation, and religion have been far less widely discussed and researched than these others, though there is a growing secondary literature emerging. As the LSB consultation on diversity data demonstrated, the collection of data across the range of protected characteristics is a sensitive matter, and it may well be necessary to progress gradually in this regard.

More research into, and independent evaluation of, diversity initiatives would be useful, though we acknowledge that there are challenges in terms of cost and funding, particularly where such initiatives are based in charitable and community groups.

Finally: the performance of the approved regulators

The Legal Services Act objectives provide a benchmark against which the performance of the approved regulators may be judged. In your view, *as regards legal education and training*:

Question 32: In your view, have the approved regulators (or any one of them – please specify) done sufficient to embed the social mobility and fair access agenda into their future strategic planning?

Question 33: Is there any other regulatory action that should be taken by the approved regulators (or any one of them) to ensure that progress on fair access and social mobility is embedded in the work of the regulated profession(s).

Question 34: Is there any other regulatory action that should be taken by the approved regulators (or any one of them) to ensure that progress on fair access and social mobility is embedded in the work of the academic and/or professional law schools?

Responses

Please e-mail your response to letrbox@letr.org.uk, putting 'Equality and Diversity response' in the subject line.

Responses must be received by 5pm on 2 July 2012

Note: a Word document extracting all of the above questions can be downloaded from the LETR website at *http://letr.org.uk/publications/briefing-and-discussion-papers/*

List of abbreviations used

ABS	Alternative business structure (under Legal Services Act)
ACL	Association of Costs Lawyers
ACLEC	Lord Chancellor's Advisory Committee on Legal Education and Conduct
BIS	Department for Business, Innovation and Skills
BME	black and minority ethnic
BPTC	Bar Professional Training Course
BSB	Bar Standards Board
BVC	Bar Vocational Course (now BPTC)
CILEx	Chartered Institute of Legal Executives
CLC	Council for Licensed Conveyancers
COLP	Compliance Officer – Legal Practice (under Legal Services Act)
CPD	continuing professional development
CPE	Common Professional Examination (Course)
FE	further education
GCSE	General Certificate of Secondary Education
GDL	Graduate Diploma in Law (see also CPE)
HE	higher education
HEFCE	Higher Education Funding Council for England
HEFCW	Higher Education Funding Council for Wales
HEI	higher education institution (university or HE sector college)
HESA	Higher Education Statistics Agency
IPS	ILEX Professional Standards
LETR	Legal Education and Training Review
LGB/LGBT	lesbian, gay, bisexual/and transexual
LLB	Bachelor of Laws
LNAT	Law National Admission Test
LPC	Legal Practice Course
LSB	Legal Services Board
OFFA	Office for Fair Access
OISC	Office of the Immigration Services Commissioner
SES	socio-economic status
SRA	Solicitors Regulation Authority
UCAS	Universities and Colleges Admissions Service

References

Anderson, Simon, Lorraine Murray, and Paul Maharg. 2003. *Minority and Social Diversity in Legal Education in Scotland*. Edinburgh: The Stationary Office. http://www.scotland.gov.uk/Publications/2003/03/16713/19581.

Archer, Louise. 2007. 'Diversity, equality and higher education: a critical reflection on the ab/uses of equity discourse within widening participation'. *Teaching in Higher Education* 12: 635–653.

Archer, Louise, and Merryn Hutchings. 2000. '"Bettering Yourself"? Discourses of Risk, Cost and Benefit in Ethnically Diverse, Young Working-Class Non-Participants' Constructions of Higher Education'. *British Journal of Sociology of Education* 21(4): 555–574.

Archer, Louise, Simon D. Pratt, and David Phillips. 2001. 'Working-class Men's Constructions of Masculinity and Negotiations of (Non)Participation in Higher Education'. *Gender and Education* 13: 431–449.

Ashley, L. 2010. 'Making a difference? The use (and abuse) of diversity management at the UK's elite law firms'. *Work, Employment & Society* 24(4): 711–727.

Bauman, Zygmunt. 1994. *Alone again: ethics after certainty*. London: Demos.

Bibbings, Lois S. 2006. 'Widening Participation and Higher Education'. *Journal of Law and Society* 33(1): 74–91.

Bolton, S. C., and D. Muzio. 2007. 'Can't Live with "Em; Can"t Live without 'Em: Gendered Segmentation in the Legal Profession'. *Sociology* 41(1): 47–64.

Braithwaite, Joanne P. 2010. 'Diversity Staff and the Dynamics of Diversity Policy-Making in Large Law Firms'. *Legal Ethics* 13(2): 141–163.

Brennan, John. 2008. 'It's Not Always What You Know - Why Graduates Get Jobs'. In *Hochschule im Wandel. Die Universitat als Forschungsgegenstan*, ed. B. Kehm. Frankfurt: Campus Publisher.

Broecke, Stijn, and Joseph Hamed. 2008. *Gender Gaps in Higher Education Participation: An Analysis of the Relationship between Prior Attainment and Young Participation by Gender, Socio-Economic Class and Ethnicity*. London: Department for Innovation, Universities and Skills.

Brooks, Rachel. 2008. 'Accessing Higher Education: The Influence of Cultural and Social Capital on University Choice'. *Sociology Compass* 2(4): 1355–1371.

BSB. 2010. *Review of Pupillage: Report of the Working Group*. Bar Standards Board. http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Annex_B_Pupillage_REPORT.pdf.

———. 2008. *Review of the Bar Vocational Course: Report of the Working Group*. Bar Standards Board. http://www.barstandardsboard.rroom.net/Educationandtraining/aboutthebvc/bvcconsultation/.

Callender, Claire, and Jonathan Jackson. 2008. 'Does the fear of debt constrain choice of university and subject of study?' *Studies in Higher Education* 33: 405–429.

Carney, Caroline. 2011a. *An analysis of the Backgrounds of BPTC Applicants in 2009/10*. Bar Council/Bar Standards Board. http://www.barstandardsboard.org.uk/media/1087949/bptc_applicants_2009.10.pdf.

———. 2011b. *Pupillage Portal Survey 2010: An Analysis of the Backgrounds of Pupil Portal Applicants in 2010*. London: Bar Council/Bar Standards Board. http://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/pupillage-statistics/.

Carr, Helen, and Eddie Tunnah. 2004. *Examining the effectiveness of the undergraduate law curriculum in preparing black Caribbean students for entry into the legal profession*. Coventry: UK Centre for Legal Education. http://www.ukcle.ac.uk/projects/past-projects/tunnah/.

Chowdry, Haroon et al. 2010. *Widening Participation in Higher Education: Analysis using Linked Administrative Data*. London: Institute for Fiscal Studies. http://www.ifs.org.uk/wps/wp1004.pdf.

Cook, Andrew, and James Faulconbridge. 'A Legal Aristocracy? Recruitment Practices and Elite Reproduction in English Global Law Firms.' http://www.lancs.ac.uk/professions/professional_ed/docs/a_legal_aristocracy.pdf.

Council for Licensed Conveyancers. 'Annual Review for the year ended 31 December 2010'. http://www.clc-uk.org/about_us.php.

Crawford, Claire et al. 2011. *Social Mobility: A Literature Review*. London: Department for Business, Innovation and Skills. http://www.bis.gov.uk/assets/biscore/economics-and-statistics/docs/s/11-750-social-mobility-literature-review.

Department of Constitutional Affairs. 2004. 'Entry to, and Retention in, the Legal Profession: A Discussion Paper'.

Dewberry, Chris. 2011. 'Aptitude testing and the legal profession'. http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/aptitude_tests_and_the_legal_profession_final_report.pdf (Accessed August 8, 2011).

Dixon, David. 2011. *Entry to the Solicitors' Profession 1980-2010*. London: The Law Society. http://www.lawsociety.org.uk/new/documents/2011/trendsinentry1980-2010.pdf.

ECU. 2011. *Equality in higher education: statistical report 2011 Part 2: Students*. London: Equality Challenge Unit. http://www.ecu.ac.uk/publications/files/equality-in-he- tats-11-part-2-students.pdf/view.

Egerton, Muriel. 1997. 'Occupational Inheritance: The Role of Cultural Capital and Gender'. *Work, Employment & Society* 11(2): 263–282.

Fletcher, Nina, and Yulia Muratova. 2010. *Trends in the solicitors' profession. Annual statistical report 2010*. London: The Law Society.

Francis, Andrew. 2011. *At the Edge of Law: Emergent and Divergent Models of Legal Professionalism*. Farnham: Ashgate.

———. 2006. '"I"m Not One of Those Women's Libber Type People but…': Gender, Class and Professional Power within the Third Branch of the English Legal Professi n'. *Social & Legal Studies* 15(4): 475–493.

Francis, Andrew, and Iain McDonald. 2005. 'Part-time law students: The forgotten cohort?' *The Law Teacher* 39(3): 277–298.

———. 2006. 'Preferential Treatment, Social Justice, and the Part-time Law Student - The Case for the Value-added Part-time Law Degree'. *Journal of Law and Society* 33(1): 92–108.

Francis, Andrew, and Hilary Sommerlad. 2009. *Access to Legal Work Experience - Interim Findings*. Coventry: UK Centre for Legal Education. UKCLE PDF project. http://www.ukcle.ac.uk/projects/current-projects/francis/.

———. 2011. 'Access to legal work experience and its role in the (re)production of legal professional identity'. *International Journal of the Legal Profession* 16(1): 63–86.

Insight Oxford Ltd. 2010. 'Obstacles and Barriers to the career development of woman solicitors'. http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/researchpubs/view=researchpubsarticle.law?PUBLICATIONID=433054.

Interlaw Diversity Forum. 2010. 'The career experience of LGB solicitors'. http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/researchpubs/view=researchpubsarticle.law?PUBLICATIONID=433055.

Jones, Ken. 2003. *Education in Britain: 1944 to present*. Cambridge: Polity Press.

Jones, Robert, and Liz Thomas. 2005. 'The 2003 UK Government Higher Education White Paper: a critical assessment of its implications for the access and widening participation agenda'. *Journal of Education Policy* 20: 615–630.

Kennelly, Ivy. 1999. 'That Single Mother Element: How White Employers Typify Black Women'. *Gender and Society* 13: 168–192.

Kirkup, Catherine et al. 2010. 'Use of an aptitude test in university entrance: a validity study'. http://www.suttontrust.com/research/use-of-an-aptitude-test-in-university-entrance/.

Kirton, Gill, and Anne-Marie Greene. 2005. *The Dynamics of Managing Diversity*. 2nd ed. A Butterworth-Heinemann Title.

Lampard, Richard. 2007. 'Is Social Mobility an Echo of Educational Mobility? Parents' Educations and Occupations and Their Children's Occupational Attainment'. *Sociological Research Online* 12(5). http://www.socresonline.org.uk/12/5/16.html (Accessed January 14, 2012).

Legal Services Board. 2011. *Increasing diversity and social mobility in the legal workforce: transparency and evidence. LSB response document and accompanying statutory guidance issued under Section 162 of the Legal Services Act 2007*. London: Legal Services Board. http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/decision_document_diversity_and_social_mobility_final.pdf.

Liff, Sonia. 1997. 'Two routes to managing diversity: individual differences or social group characteristics'. *Employee Relations* 19(1): 11–26.

LSB. 2010. 'Diversity Initiatives of Approved Regulators'. http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/diversity_initiatives_of_approved_regulators_the_report.pdf (Accessed August 8, 2011).

McDonald, Pauline. 1982. '"The Class of 81": A Glance at the Social Class Composition of Recruits to the Legal Profession'. *Journal of Law and Society* 9(2): 267–276.

Metcalf, Hilary. 2005. 'Paying for University: The Impact of Increasing Costs on Student Employment, Debt and Satisfaction'. *National Institute Economic Review* 191: 106–117.

Milburn, Alan. 2009. *Unleashing Aspiration: The Final Report of the Panel on Fair Access to the Professions*. London: Central Office of Information. http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/media/227102/fair-access.pdf.

Musker, David. 2010. 'IP attorney litigators: will they fly or die?' *Journal of Intellectual Property Law & Practice* 5(8): 602–607.

Nicolson, Donald. 2005. 'Demography, Discrimination and Diversity: A New Dawn for the British Legal Profession'. *International Journal of the Legal Profession* 12(2): 201–228.

Norman, Louise. 2004a. *Career Choices in Law: A Survey of Law Students*. London: The Law Society.

———. 2004b. *Career Choices in Law: A Survey of Trainee Solicitors*. London: The Law Society.

OECD. 2010. 'A Family Affair: Intergenerational Social Mobility across OECD Countries'. In *Economic Policy Reforms: Going for Growth 2010*, Paris: OECD Publishing.

PARN. 2009. *Socioeconomic Barriers into the Professions: A Literature Review*. Professional Associations Research Network/Equality and HumanRights Commission. http://www.parnglobal.com/socioeconomic-barriersliterature-review.htm.

Perry, Emma, and Becky Francis. 2010. *The Social Class Gap for Educational Achievement: A Review of the Literature*. London: RSA. http://www.thersa.org/__data/assets/pdf_file/0019/367003/RSA-Social-Justice-paper.pdf.

Plummer, Gillian. 2000. *Failing Working-class Girls*. London: Trentham Books.

Raftery, Adrian E., and Michael Hout. 1993. 'Maximally Maintained Inequality: E pansion, Reform, and Opportunity in Irish Education'. *Sociology of Education* 66: 41–62.

Reay, Diane, Miriam David, and Stephen J. Ball. 2005. *Degrees of choice: social class, race, gender and higher education*. Trentham Books.

Richardson, John. 2008. *Degree Attainment, Ethnicity and Gender: A Literature Review*. York: Higher Education Academy.

Runnymede Trust. 2009. *Who Care about the White Working Class?* Runnymede Trust. www.runnymedetrust.org.

Sauboorah, Jennifer. 2011a. *Bar Barometer: Trends in the Profile of the Bar*. London: The Bar Council. http://www.barcouncil.org.uk/about/statistics/.

———. 2011b. *Pupillage Survey 2009/10: An Analysis of the Backgrounds of Pupils Registered in 2009/10*. Bar Council/Bar Standards Board. http://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/pupillage-statistics/.

Schoon, I. 2008. 'A Transgenerational Model of Status Attainment: the Potential Mediating Role of School Motivation and Education'. *National Institute Economic Review* 205: 72–82.

Shaw, Gisela. 2000. 'Notaries in England and Wales: Modernising a profession frozen in time'. *International Journal of the Legal Profession* 7(2): 141–155.

Shih, Johanna. 2002. '"Yeah I could hire this one, but I know its gonna be a problem": How Race, Nativity and Gender Affect Employers' Perceptions of the Manageability of Job Seekers'. *Ethnic and Racial Studies* 25: 99–119.

Shiner, Michael, and Tim Newburn. 1995. *Entry into the Legal Professions: The Law Student Cohort Study, Year 3*. London: The Law Society. Research Study 18.

Sidaway, J, and T Punt. 1997. 'Paralegal Staff in Solicitors' firms'. http://www.opengrey.eu/item/display/10068/415425.

Skills for Justice et al. 2010. *Professional and Financial Services Cluster Report*. http://www.skillsforjustice.com/Research/Research-reports.

Smedley, Nick. 2011. 'The smaller approved regulators'. http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf (Accessed August 8, 2011).

Smith, Steve. 2010. 'Hard facts show that contextual admissions are right and fitting'. *Times Higher Education*. http://www.timeshighereducation.co.uk/story.asp?storycode=410957 (Accessed January 22, 2012).

Law Society of England and Wales. 2011. *Diversity Profile of the Profession: A Short Synopsis*. London: The Law Society.

———. 2010. 'Ethnic Diversity in Law firms: Understanding the barriers'. http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/researchpubs/view=researchpubsarticle.law?PUBLICATIONID=433052.

Sommerlad, Hilary et al. 2010. 'Diversity in the Legal Profession in England and Wales: A Qualitative Stufy of Barriers and Individual Choices'. http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/lsb_diversity_in_the_legal_profession_final_rev.pdf (Accessed August 8, 2011).

Sommerlad, Hilary. 2007. 'Researching and Theorizing the Processes of Professional Identity Formation'. *Journal of Law and Society* 34(2): 190–217.

———. 2008. '"What are you doing here? You should be working in a hair salon or something": outsider status and professional socialization in the solicitors' profession'. *Web Journal of Current Legal Issues* [2008](2). http://webjcli.ncl.ac.uk/2008/issue2/sommerlad2.html (Accessed June 16, 2011).

SRA. 2008. *Independent Review into Disproportionate Regulatory Outcomes for Black and Minority Ethnic Solicitors*. Solicitors Regulation Authority. http://www.sra.org.uk/ouseley/.

Sullivan, Rosaline. 2010. *Barriers to the Legal Profession*. London: Legal Services Board. http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/literature_review_on_diversity2.pdf.

Tapper, Ted, and David Palfreyman, eds. 2004. *Understanding Mass Higher Education: Comparative Perspectives on Access*. 1st ed. Routledge.

The Sutton Trust. 2004. *The Missing 3000: State school students under-represented at leading universities*. http://www.suttontrust.com/research/the-missing-3000/.

Thompson, Jane, ed. 2000. *Stretching the academy : the politics and practice of widening participation in higher education*. Leicester: NIACE.

Thompson, John, and Bahram Bekhradina. 2011. *Higher Education: Students at the Heart of the System. An Analysis of the Higher Education White Paper*. Oxford: Higher Education Policy Institute.

Valentine, Gill, Nichola Wood, and Paul Plummer. 2009. *Experience of lesbian, gay, bisexual and trans staff and students in higher education*. London: Equality Challenge Unit. http://www.ecu.ac.uk/publications/lgbt-staff-and-students-in-he.

Webb, Janette. 1997. 'The Politics of Equal Opportunity'. *Gender, Work & Organization* 4(3): 159–169.

Webb, Julian. 1986. 'Law Students and Legal Practice: The Socialisation Effects of English Legal Education'. LLM by research. University of Warwick.

Webb, Julian, and Amanda Fancourt. 2004. 'The law society's training framework review: On the straight and narrow or the long and winding road?' *The Law Teacher* 38(3): 293–325.

Zimdars, A., A. Sullivan, and A. Heath. 2009. 'Elite Higher Education Admissions in the Arts and Sciences: Is Cultural Capital the Key?' *Sociology* 43(4): 648–666.

Zimdars, Anna. 2007. 'Challenges to Meritocracy? A Study of the Social Mechanisms in Student Selection and Attainment at the University of Oxford'. unpublished PhD thesis. Universiy of Oxford. http://economics.ouls.ox.ac.uk/13935/.

———. 2011. 'The Competition for Pupillages at the Bar of England and Wales (2000-2004)'. *Journal of Law and Society* 38(4): 575–603.

———. 2010. 'The profile of pupil barristers at the Bar of England and Wales 2004-2008'. *International Journal of the Legal Profession* 17(2): 117–134.