

Two sides of the diversity coin

How useful are the SRA's diversity questionnaires when the response rate is less than half of the profession, asks **Susanna Heley**

It's that time again. Summer in the legal services world comes complete with the inestimable joy of equality and diversity questionnaires. 2013 is the second year that law firms have been required to collate diversity data for submission to the SRA. Firms are also obliged to publish a summary of some of the details collected, a new requirement which is being introduced for the first time. This year, the SRA is not providing an online questionnaire for firms as it did last year. Instead it expects firms to make their own arrangements to obtain the data as a result of feedback received from last years exercise. That said, the SRA will only be able to accept reports in a format consistent with the standard diversity questionnaire. Firms must make their reports to the SRA online by January 2014.

The purpose of the exercise is to encourage firms to consider their approach to equality and diversity and monitor compliance with the SRA Handbook principle 9. The requirement for firms to publish diversity data is imposed by the Legal Services Board which has stated in various consultations that one of its key aims is to ensure that the diversity profile of the legal profession reflects, as best it can, the society which it serves. The aim, in publicising such details is, effectively, to shame firms into improving their diversity profile.

The collation and partial publication of diversity data remains a relatively controversial requirement because it is quite intrusive. Some of the characteristics the questionnaire asks about are obvious – such as gender – others, such as sexuality, religious belief or even socio-economic background are characteristics which people feel they should be able to choose to disclose.

Bureaucracy

In fairness, individuals do not have to disclose these details and firms do not currently have to publish data relating to sexuality and religion (although that is likely to change in the next few years). Firms also

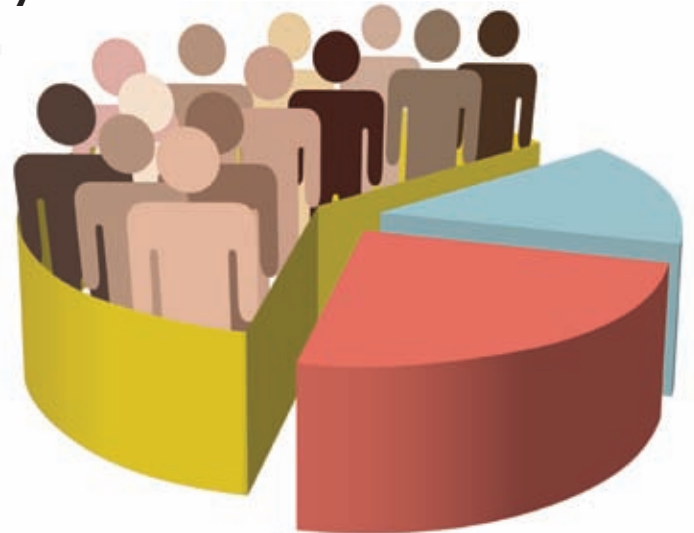
“Pointless bureaucracy created with the best of intentions yet fatally flawed”

cannot compel their employees to complete the questionnaires.

Last year, the average response rate was about 42 per cent across all firms. With less than half of the individuals working in firms responding to the survey, the benefit of the exercise when compared to its cost has to be called into question. There must be a better way of encouraging firms to ensure respect for diversity. To me, the exercise is just pointless bureaucracy created with the best of intentions yet fatally flawed in both concept and design.

The exercise is an uncomfortable compromise which the LSB has promised to keep under review. The LSB has already indicated that its eventual aim is for all diversity data to be published at a firm level. Issues relating to protection of individual privacy and the inadvertent identification of individuals as a result of the exercise led the LSB to suspend those plans pending further review.

Critics say that the whole exercise smacks of social engineering while supporters say that the only way to achieve a positive change in attitude is to force firms to consider their diversity profiles regularly and be publically shamed into taking action to combat discrimination whether it is direct or indirect. The impact of publication this year may help to clarify the position and inform the debate.



Best measure

According to the SRA, many large firms have been carrying out diversity monitoring exercises for some years and support the new regime. In those larger firms though it is relatively easy for individuals to have confidence that their answers will be anonymous. The smaller the potential response pool however, the more likely it is that an individual can be identified from the firm statistics. I think it is fair to say that individuals are still concerned about the intrusion into their privacy.

It will be interesting to see how this year's "prefer not to say" statistics – to be published as a snapshot in February 2014 – will compare with those from last year. This aspect of the exercise is the best measure of whether the profession as a whole trusts regulators and firms with personal information.

The SRA has published guidance for firms conducting the data collection exercise on its website including a sample questionnaire and details of what needs to be published and reported to the SRA.



Susanna Heley is a solicitor at RadcliffesLeBrasseur (www.rlb-law.com)