



28TH NOVEMBER 2019

100 YEARS OF WOMEN IN LAW

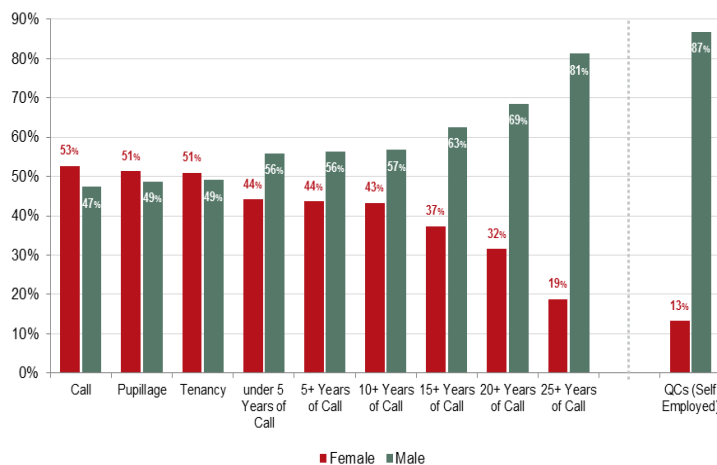
PROFESSOR JO DELAHUNTY QC

The Bar in 2020 – Women and the Bar: A Sticky Floor and the Glass Ceiling and Widening the Gender Debate: Where is the Bar in terms of Ethnicity, Sexuality, Disability, and Social Mobility?

Introduction

In October 2017 I delivered a lecture on the position of women at the Bar, looking at our profession’s ability to attract, retain and elevate female entrants as their skills warranted. As I then made plain: I had approached the lecture fully anticipating I would ultimately be celebrating the achievements of women at the Bar. I was misguided. I concluded that able women had been failed by their profession.

The Bar leaked talent from an entry base line of equality. While the ratio of women to men at both pupillage and tenancy was 51% to 49%, (women slightly in the ascendancy) by 5 years call women comprised 45% of the self-employed Bar and by 15 years+ call this had dived to 29 %. Women are more likely to leave the profession if they had experienced discrimination or harassment, if they were BAME, or if they have primary caring responsibilities for children. The loss of senior junior women barristers reduced the pool from which silk applicants are drawn. Men made up 87% of all self-employed QCs.¹



Gender composition of the Bar by length of Call (Source: Bar Standards Board data, 1 December 2016)

Since the ranks of senior judiciary are largely drawn from the QC coterie, that silk pool, drained of female talent, had a knock-on effect in terms of representation of women in the judiciary.

Whilst women accounted for around 35% of lower ranking judicial posts (such as District Judges, Deputy District Judges), at County Court level women accounted for 25% of the judicial population, declining to 20% at High Court and Court of Appeal level, a situation culminating in two Supreme Court women Judges and no female Heads of Division.

¹ Please look back at that lecture for the full statistical analysis and source guides cited at length within it and its appendix : link here <https://www.gresham.ac.uk/lectures-and-events/womens-lawyers-equals-at-the-bar>



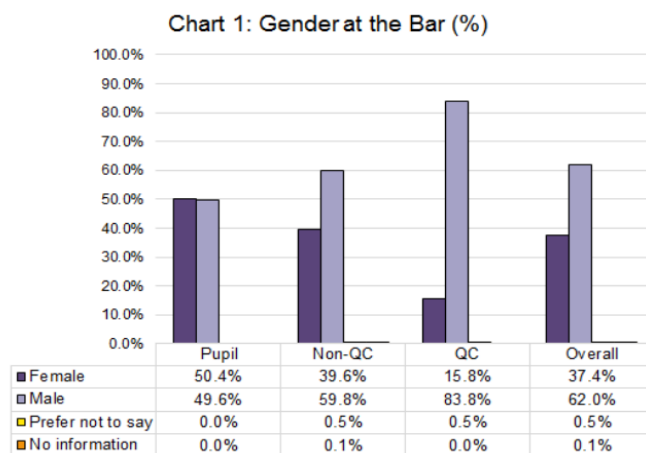
The Bar clearly haemorrhaged female talent. That was not a controversial statement. It reflected the reality of life at the Bar: a gender imbalance well known to the BSB, the Bar Council, the Queens Counsel Appointments and the Judicial Appointments Commission.

When, in 2017, I and others took a public platform to speak out and decry that state of affairs, it felt, for the first time, that we had found an audience who were prepared to listen to what had been talked about in professional circles for several years. Public and press interest in discrimination in the workplace had been fuelled by the “me too” movement. The time, I believed, was ripe for positive change.

So, what have we achieved 2 years on?

Look to the latest statistics made available as a result of research gathered by the Bar Standards Board: “Diversity at the Bar 2018: A summary of the latest available diversity data for the Bar” (published February 2019).^{2 3}

And let us discuss this...



As the Bar Council has starkly warned: at this rate women will never take silk in equal numbers to men.

Applicants to the Bar, let’s talk numbers.

Gender

The percentage of female pupils has decreased by 1.3pp but there is still a greater proportion of female pupils in comparison to male pupils (51.7% vs. 48.3%).

As of December 2018, women constituted 37.4 per cent of the Bar compared to an estimate of 50.3 per cent of the UK working age (16-64) population in England and Wales (as of Q3 2018).

The reasons for this disparity are pretty basic. They were articulated with candour by Jane Croft in her article – “Why female barristers are leaving the profession” (Financial Times, 3rd May 2019)⁴: “The Western Circuit Women’s Forum, which represents barristers in the south and south-west of England, found in a recent study that two-thirds of those who left the profession over a six-year period were women. Almost all the men who left became judges or retired after long careers. By contrast, the vast majority of women dropped out mid-career and many cited the difficulty of balancing work and family life. ‘Bar council has highlighted ‘more women who drop out mid-career, the smaller the pool of future judges or QCs.’

² https://www.barstandardsboard.org.uk/media/1975681/diversity_at_the_bar_2018.pdf

³ I would like to thank Frankie Sharma, Legal Researcher at 4 PB for his enthusiasm and collaborative efforts in gathering the vast source material for this lecture. In the end I have included only a 1/5 of the material I have. If I have omitted resources, people or projects in collating this document it is only because there is a limit to what can be in a handout. I will be following up the issues raised in this lecture in my Final talk of my 2019/20 series given its importance to me and, I believe, to the future of my profession.

⁴ <https://www.ft.com/content/97358690-6a9e-11e9-80c7-60ee53e6681d>



She quoted a Twitter thread by Joanna Hardy, a barrister at Red Lion Chambers, whose tweet went viral after she suggested ways to retain more women including abolishing 9.30am trials *“which helps with childcare and the care of elderly relatives,”* and scrapping warned lists.

Social mobility

Despite a relatively low response rate (47.0%) to this question, the data suggest that a disproportionate number of barristers attended a UK independent secondary school between the ages of 11-18. Even if all of the barristers who chose not to respond to this question had gone to state schools, the proportion of barristers who went to independent schools is higher than in the wider population; with 15.5 per cent (including non-respondents) having primarily attended an independent school between 11-18, compared to approximately 7 per cent of school children in England at any age, and 10.0 per cent of UK domiciled young full-time first degree entrants in the UK in 2016/17. Of those that provided information on school attended, around 33 per cent attended an independent school in the UK⁵.

Ethnicity

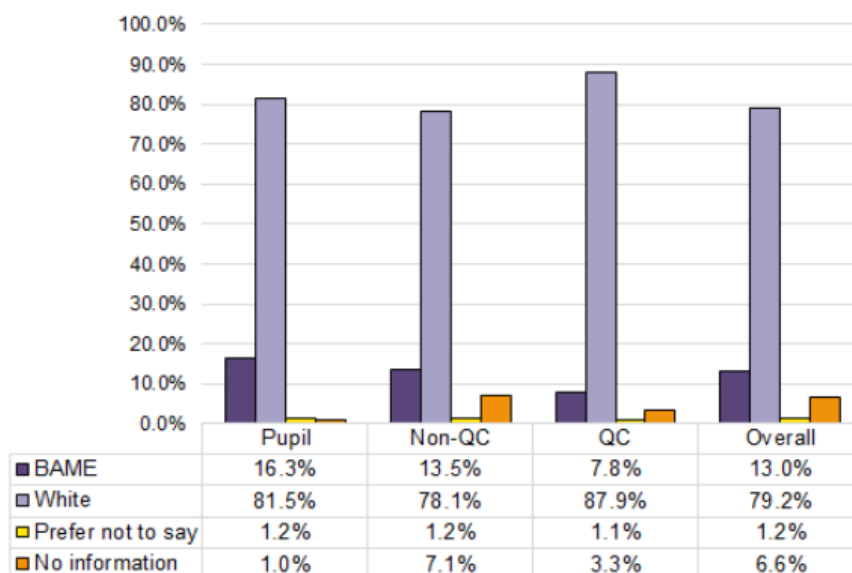
The proportion of pupils from BAME backgrounds has increased very slightly (by 0.2pp) compared to December 2017 giving 16.3 per cent of pupils from BAME background (N.B. this is the same percentage as seen in December 2016).

The percentage of Black, Asian and Minority Ethnic (BAME) barristers at the Bar has increased 0.3pp since December 2017 to 13 per cent, compared to an estimate of 15.5 per cent of the working age population in England and Wales.

The percentage of QCs from BAME backgrounds has increased 0.6pp year on year (to 7.8%). There is still a disparity between the overall percentage of BAME barristers across the profession (13%), and the percentage of BAME QCs (7.8%). Although the gap has narrowed by 0.3pp in comparison to December 2017 the same trend was seen in December 2017 compared to December 2016.

We cannot, and should not, ignore the reality check that these stats provide: there is a real issue about recruitment and progression of BAME practitioners at the Bar.

Chart 3: Ethnicity at the Bar (%)



Gender and Sexuality

⁵ For further detail, see <https://www.barstandardsboard.org.uk/uploads/assets/db991bde-ddbc-4869-81838f74a1c1cd69/diversityatthebar2018.pdf> on ‘Socio-Economic Background.’

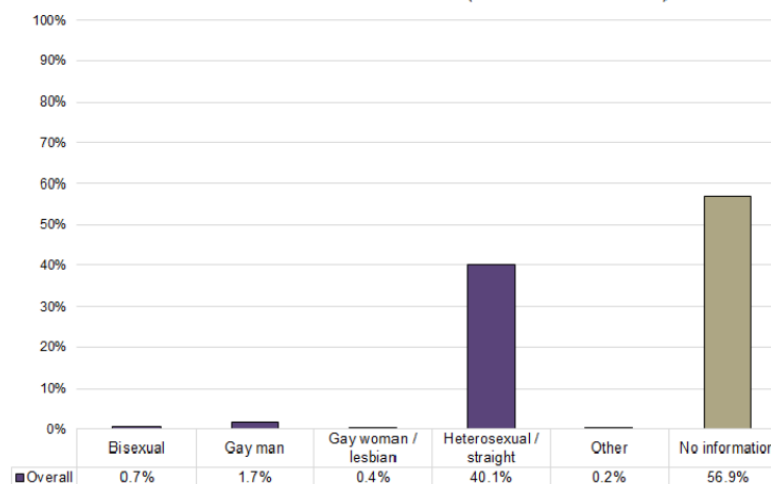


Excluding those that have not provided information (only 43% provided at least some information) 7.9 per cent of pupils, 6.6 per cent of non-QCs, and 4.3 per cent of QCs provided their sexual orientation as Bisexual; Gay man or Gay woman/ Lesbian. If the data from those who did not provide information is included, 2.7% of the Bar as a whole identifies as LGBTQ which is in fact higher than that of the general population which under the ONS 2017 statistics saw 2% of the population identify as LGB.

Table 9: Sexual Orientation of the Bar (numbers)

| | Pupils | Non-QC | QC | Total |
|-------------------------------|--------|--------|-------|--------|
| Bisexual | 2 | 104 | 6 | 112 |
| Gay man | 3 | 275 | 14 | 292 |
| Gay woman/ Lesbian | 6 | 56 | 5 | 67 |
| Heterosexual | 129 | 6,141 | 557 | 6,827 |
| Other | - | 26 | 3 | 29 |
| Prefer not to say | - | - | - | - |
| No information | 277 | 8,234 | 1,177 | 9,688 |
| Total | 417 | 14,836 | 1,762 | 17,015 |

Chart 7: Sexual orientation of the Bar (% of total for the Bar)



Nonetheless, it must be kept in mind that these statistics do not necessarily reflect those who are ‘out’ at the Bar to their colleagues, instructing solicitors, peers etc. Being LGBTQ is a protected characteristic which is not always visible, and the experience of being LGBTQ at the Bar still requires some thinking about, as I will come on to shortly.

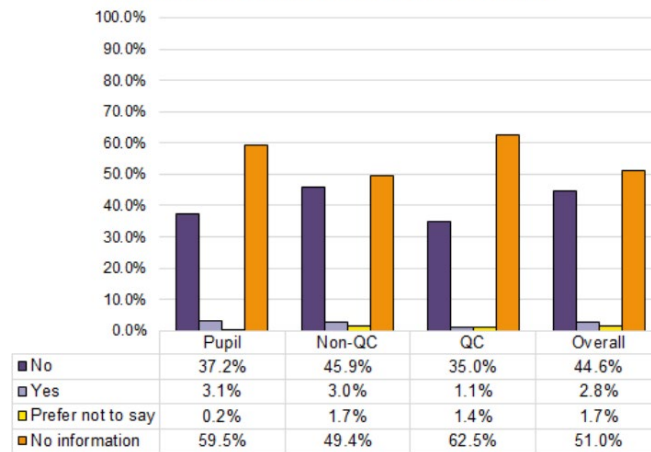
Disability

There is an under-representation of disabled practitioners at the Bar. 2.8 per cent of the Bar had declared a disability as of December 2018, with 3.1 per cent of pupils, three per cent of non-QC barristers and 1.1 per cent of QCs declaring a disability.

When excluding those that had not provided information, 5.9 per cent of non-QC barristers, 7.7 per cent of pupils, 2.9 per cent of QCs, and 5.7 per cent of the overall Bar had a declared disability: in comparison, it is estimated that around 12.4 per cent of the employed working age population (those aged 16-64) has a declared disability as of July-September 2018. This is substantially lower than the percentage of disabled people in the employed working age UK population therefore.



Chart 4: Disability declared at the Bar (%)



What of the Judiciary?

Gender

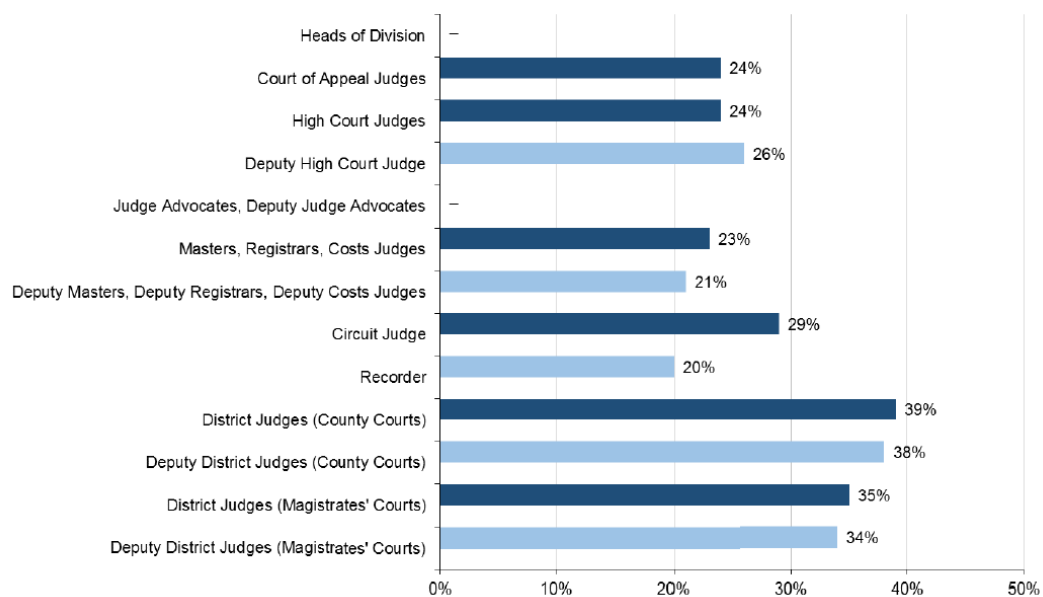
We need to look not just at the numbers of female and BAME judges but at their distribution across the ranks of the judiciary.⁶

Is the trend still for women and BAME judges to cluster at the most junior ranks of the judiciary? In one word? Yes.

46% of tribunal judges were female. 29% of court judges were female overall but that figure conceals the bottom-heavy number of female junior judge.

If this were a pyramid: men astride the apex.

Figure 1: Female representation among court judges, by appointment, 1 April 2018



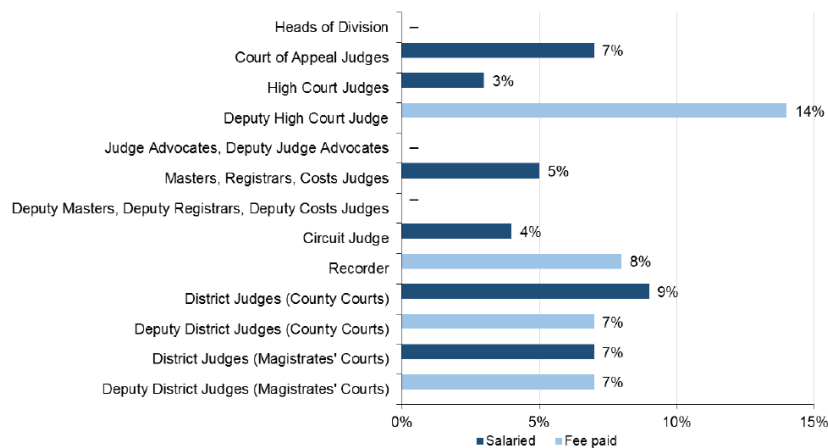
Ethnicity

⁶ <https://www.judiciary.uk/wp-content/uploads/2018/07/judicial-diversity-statistics-2018-1.pdf>



11% of tribunal judges and 7 % of court judges were BAME as at 1 April 2018.

Figure 5: BAME representation among court judges, by appointment, 1 April 2018



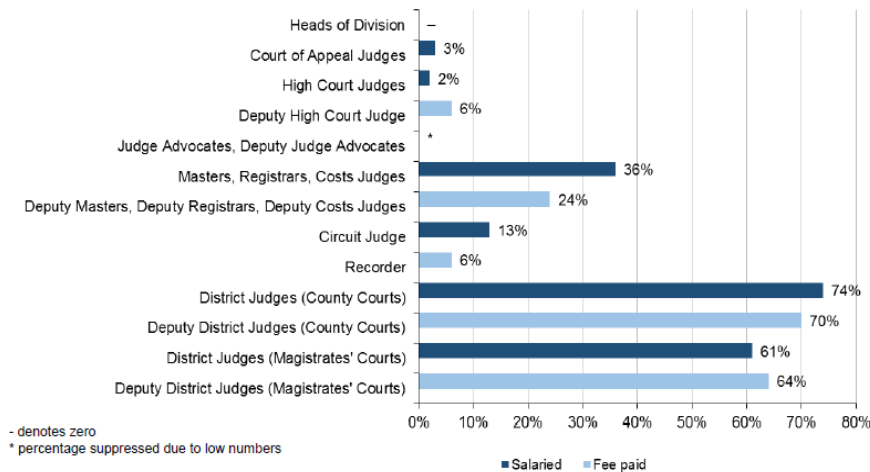
Social Mobility

Representation of those with a non-barrister background varied by appointment in both courts and tribunals, with higher proportions of judges in lower courts from a non-barrister background.

2/3 of tribunal judges and 1/3 judges were from non-barrister backgrounds.

Non-barrister representation has *fallen* by 3 pps since 2014 for court judges, and by 1 pp since 2015 for tribunal judges.

Figure 9: The percentage of court judges whose profession is non-barrister, by appointment, 1 April 2018



Interestingly, there were considerable regional variation in gender and ethnicity representation – the percentage of female court judges was highest in S.E. (39%) and lowest in S.W. (21%). London and Midlands had the highest representation of BAME court judges (9% and 8% respectively) with the lowest in Wales at 1%.

As Dr Miranda Bawn has put it, “Diversity within the judiciary is fundamental to a truly democratic and legitimate legal system. It plays a quintessential part in enabling the enforcement of key acts, preventing discrimination and infringements of the rights of the nation’s citizens. Only where there is diversity within a body that arbitrate in matters of considerable import will UK society find that its blend of cultures, genders and religions are reasonably and respectfully protected and promoted by the law.”⁷

⁷ <https://www.womenbarristers.com/diversity-at-the-bar-by-dr-miranda-brawn/>



The importance of diversity at the Bar was emphasised recently by Lady Hale in her 2019 interview with ‘Chambers Student’⁸: “*The number one reason is that we have a diverse population [...] The legal profession and courts are there to serve the whole population, so it ought to be the case that the whole population can recognise that these are their courts – that it's not just a small elite who are dictating their futures or indeed representing them in court [...] “Another reason is that the law is supposed to be all about equality and fairness – those are foundational values of the law. Therefore, it is quite a good idea if the legal profession and the judiciary are visible embodiments of equality and fairness.”*

So why is the Bar and Judiciary still predominantly so white, middle class, straight and male? Being female at the Bar

The problem with retention at the Bar

Think back to Helena Kennedy’s words in ‘*Eve was framed: Women and British Justice*’.⁹ In the revised edition published in 2005, Kennedy concluded that the issues that stifle diversity at the Bar are to be found in the war of attrition fought and won by the apocalyptic horsemen wearing the colours of ‘income’, ‘practice bias’, ‘status’ and ‘parenthood’.

- **Practice bias:** *Women are sought to act for men in rape and other sexual assaults, because of the involuntary endorsement they give to the male defendant. A recurring moan of pain is uttered in the women’s robing room at the Old Bailey by female barristers who are force-fed a diet of sexual offence cases to the exclusions of all else. The men either make themselves scarce or say they can’t back it if children are involved. In a skewed effort to flaunt their professionalism women not only find themselves conducting these cases but sometimes do them with as much machismo as any man*¹⁰
- **Status:** *‘...for those determined to go into legal practice, the majority are steered towards public service law, by which I mean fields largely funded out of legal aid.... Women invariable do the ill-rewarded work in all walks of life and what follows is a lowering of the esteem of that professional activity*¹¹
- **Income:** *‘...when governments justify taking the scythe to legal aid they summon up for the public the notion of the fat cat lawyer, bloated male barristers dining out on public funds, when in fact those who will suffer will largely be committed young women who work tirelessly for little rewards, and their clients*¹²
- **Parenthood:** *No one can job-share a murder trial or ask for a three-day week if they are a trial lawyer but if chambers were amenable it should be possible for women and men to adjust or reduce their caseload to allow space between cases for a well-adjusted family life. The problem remains that chambers often maintain a culture in which saying no to a case is sacrilege. There is a particular machismo at the Criminal Bar which means success is measured by being constantly in court without a day to catch breath. Losing women in significant number sat this stage also dilutes the pool from which judges will be drawn five or ten years down the road.*¹³

Looking forwards to 2019: what’s changed in 15 years?

Attitudes and Attrition factors

The Association of Women Barristers 2019 report ‘In the Age of ‘Us Too?’ Moving towards a zero-tolerance attitude to harassment and bullying at the Bar’ suggests the following areas are in need of improvement:

During Pupillage: “Participants thought that harassment and bullying were of particular concern during pupillage due to the existence of obvious power imbalances. Pupils were at risk of being bullied by more senior members of chambers (both male and female). There was also a fear that reporting incidents would be career-ending.”¹⁴

⁸ <https://www.chambersstudent.co.uk/where-to-start/newsletter/the-big-interview-baroness-hale>

⁹ Helena Kennedy, *Eve was Framed*, revised edition 2005

¹⁰ *Ibid.* p. 34

¹¹ *Ibid.* p.2.

¹² *Ibid.* p.2.

¹³ *Ibid.* p.47

¹⁴ Association for Women Barristers, *In the Age of ‘Us Too?’* [2019], p. 9

https://www.city.ac.uk/__data/assets/pdf_file/0006/492594/AWB-Anti-Bullying-Round-Table-Report-Oct-2019.pdf



Parenthood impacting on pupillage: Female pupils who get pregnant or become a parent during pupillage report this being viewed as problematic and looked upon with disapproval in some chambers and by some clerks. This negativity may have a disproportionate impact on non-white candidates and pupils as ‘it was also noted that many black and minority ethnic (BAME) women often have children much earlier in life than white middle-class women do. Hence some BAME pupils may already be mothers (or are more likely to give birth) during pupillage.’¹⁵

Pay: “There is currently little transparency around individual barristers’ incomes. There was a concern over pay-gaps that exist between male and female counsel – again particularly in specialist areas of the Bar. The lack of transparency around fees worries many women at the bar – as this can have far reaching consequences (for example, on the ability to apply for silk). Inequality of pay also leads to other imbalances of power between male and female counsel. This kind of environment also permits harassment and bullying to thrive.”¹⁶

Culture: “...the existence of a so-called ‘gentlemanly’ culture at the bar, one where it is considered to be inappropriate to report or ‘call-out’ bad behaviour by another barrister. Participants thought that this culture extended to the judiciary and there was also a perception that members of the bar at all levels would be slow to report or challenge inappropriate behaviour by other barristers.”¹⁷

In Chris Henley QC’s Criminal Bar Association Monday Message, *‘The problem with being a woman at the criminal bar’*¹⁸ delivered Feb 2019, he highlighted several incidents in which male judges made disparaging comments to women barristers in court based on emails such as these:

“You should really think about whether the Bar is right for you.” (Male Judge dealing with an appeal listed in the morning, who wanted to sit on until 5.00pm, to the mother of young children who raised childcare issues). “I don’t think I have ever been shouted at like I was by that Judge...completely unacceptable...he acted like a toddler. I have decided to leave the Bar for the time being, a big part of my decision to go is the life I am leading as a very junior criminal barrister.” (Young female barrister who e-mailed me setting a series of demoralising experiences. This one related to covering a case for a more senior colleague).

“I am so sick of our time being treated as totally worthless. To x Crown Court for a confiscation hearing in list with others at 10.30. Message from Judge: he wants 2 hours ‘reading time’ so will sit at 12.30. Comes in to start one hearing. I stand up and say ours is agreed. He barks ‘2.00pm’. No apology to anyone in court for the delay. The Judge came in after lunch at 2.35pm. No apology or reference to late start.” (Female junior 10 yrs. + call)

“It starts with flu over last weekend when I felt awful. Monday I had a ground rules hearing involving a 7 year old complainant. So I went. In no other job would I have worked. The hearing got done effectively. Therefore me not calling in sick (which I should have) saved a huge cost of court time, and money in rearranging a hearing at which an intermediary and both trial counsel attended. I continued battling on. Tuesday I had a jury out and didn’t feel I could leave the case (it hadn’t sat on Monday due to judicial commitments) so I went. Thursday came and I was feeling worse than ever. There was a mention in that same sex case from the Monday and also a defence 3 handed sentence for a female youth of good character who’d been at court on an aggravated burglary indictment the facts of which had included a stabbing. So I went. I didn’t feel I could not go. That was listed at 2pm. It got called on at 3:50pm. Yes I did say 3 handed. The long and short of this is that yesterday I finally went out of hours to the GP. She immediately called me an ambulance to hospital looking me in the eye telling me I’d left it far too long and was now quite acutely ill, with a severe chest infection which had caused my usually mild asthma to flare up so I could not breathe. I’m fine, the NHS treated me well and I’m back home with strict instructions to rest. I’ll listen and for once put myself first but it took a hospital trip to make me!! So I’ll not work next week. I’ll lose money. No one will pay me sick pay. And all those hearings that I did when frankly I shouldn’t have been working have been covered and not rearranged thus saving the MOJ money. I wonder does anyone in the MOJ realise (or care!) that this isn’t rare or unusual but just an everyday thing the criminal bar does to keep the system running and because they are so committed.”

¹⁵ *Ibid.* p.9

¹⁶ *Ibid.* p.9.

¹⁷ *Ibid.* p.10.

¹⁸ <https://www.criminalbar.com/resources/news/cba-monday-message-11-02-19>



Henley went on to conclude:

“It is little wonder that so many women (and men) are turning away from the criminal Bar; the environment is increasingly hostile. The hours are punishing and unpredictable, often late into and sometimes through the night, the personal sacrifices are huge, fees are derisory, not remotely stacking up for the necessary childcare or breaks, and the treatment from all directions too often is very unpleasant. Is there another profession whose pay has fallen like ours, and who have to tolerate such awful and deteriorating working conditions? [...]

Talented women are leaving criminal practice. The pattern is the same everywhere. There is a crisis. A quick glance at any criminal chambers’ website confirms it. Even the most successful junior women increasingly have had enough. They can get easier, better paid jobs elsewhere, where they will be supported, be treated with respect and where the conditions are flexible and compatible with family life. Most men want this too. It is patently not being taken sufficiently seriously.

“Ambitious female practitioners are often ‘guided’ towards sex offence work; surely the most grueling, and no longer paid properly. How many women appear regularly in heavy fraud, terrorism and murder trials, or are part of the TC team (no criticism of the incredible dedication and quality of those who are). I observed in a paper I wrote for Angela last year ‘I have recently been in an 11 handed fraud in Birmingham – 18 counsel, only one woman, an HCA, a 9 handed fraud at Southwark – 15 counsel, 1 woman, a 3 handed murder in Cardiff – 8 counsel, no women, and a 5 handed fraud at Southwark – 12 counsel, no women.’ In part this might be the inevitable consequence of attrition rates for women at 7 to 12 years call, but it’s not just that.”¹⁹

“Many of you are suffering, physically, mentally and financially. Behind the scenes at a senior level there are conversations about e-mail protocols, sitting hour’s protocols, about a determination to have zero tolerance for sexist and bullying behaviour.”

Chris rightly called out the war to be waged about the discriminatory effect of income, work bias, status and parenthood. I entirely agree with the words within his rallying call to arms:

“This stuff is not complicated, so let’s get on with it. [...] There are also many in senior positions who have never changed a nappy, had years of interrupted sleep, or the daily admin of kids, and who practised at a time when the work was plenty and the fees were wow. They all have a choice, to continue to manage an orderly decline and withering of publicly funded profession or to fight for it. Imagination, courage and a little humility will save us.”²⁰

The Bar Council’ 2019 chairman Richard Atkins QC (a criminal specialist) claimed recently that the Bar’s 24-hour work culture was having a detrimental impact upon barristers’ family lives. Speaking in an interview with The Times he said that the general expectation that barristers should be “on parade 24 hours a day, seven days a week” was “not good for wellbeing nor for diversity at the bar.” He continued, “Technology is very good but it does suck us into a 24/7 365 days a year culture. The Bar works at odd hours and I can’t hold it against people that they may want to email at three or four in the morning – if that’s the way they work at rather too late an hour [...] I would like to see a protocol along the lines of – if the emails come in after, say, seven o’clock at night it is deemed that it hasn’t landed until nine am the next morning. So you’re under no obligation to wait up until midnight. It doesn’t stop you sending the email and you may want to reply and it may be that in the commercial world they have to. So one size may not fit all [...]”²¹

Indeed, the adverse effect of working practices and pay on women’s wellbeing at the Bar is a key contributor to such disparity in retention rates.²² Women’s caring responsibilities are disproportionately high compared to male colleagues. At the independent bar there is little flexibility with late service of evidence and skeleton arguments requiring urgent responses, often after hours and following long days in court leaving little time for family life. Whether we practice in Family Law or Criminal Law, immigration or Housing – all sectors of the publicly funded bar – cuts to Legal Aid have resulted in a loss of income to all. Days of court are not remunerated meaning the time off for caring responsibilities for elderly parents, sick partners, children etc. results in further loss of income. Retention at the Bar becomes an issue when compared to the perks of being in employed practice with more regular and flexible working hours, holiday and sick pay plus pension. Women leave the Bar. Lynne Townley, chairwoman of the Association of Women Barristers, has been said that attitude at the Bar “has got to change...until ways can be found to retain women, you will find this relentless imbalance at higher levels in the

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ <https://www.legalcheek.com/2019/01/dont-feel-obliged-to-respond-to-emails-after-7pm-bar-chief-tells-barristers/>

²² <https://gcnchambers.co.uk/100-years-in-law-women-in-silk/>



profession.” Because, as we know, this brain drain reduces the pool of experienced women who ought to be applying for Silk.

But the attrition factors that leads to loss of senior women does not explain why those who do stay the course and take silk have less visibility at the higher levels of practice than men. That has, I suggest, to be down to institutionalised industry bias.

Beatriz Veyrat illustrated the gender divide at the commercial bar by listing the top ten busiest male and female barristers at the Commercial Court by number of cases in 2019 where men easily trump women.²³

Lady Hale gave the opening keynote address at last weekend’s Bar Conference and highlighted how the number of women appearing in the Supreme Court in 2009-2010 made up 21% of appearances before the court. That hasn’t changed in the last few years with 23% of appearances being women in 2019 (so far), and the figure even falling during this time to 20% in 2014-2015.

Mikolaj Barczentewiz, a public law lecturer at the University of Surrey, designed an algorithm that analyzed all the cases heard in the Supreme Court (SC) and generated a data base of all barristers who had appeared before it. He has very generously shared his report with the public, the only request being that it is made plain that it is a work in progress. What he has produced offers a valuable insight into the visibility of women in the highest court of our land: only 8 of the 48 barristers who have most frequently addressed Britain’s highest court since its inception ten years ago were women. Only two of the top ten were women. Out of the 509 female advocates who appeared before the UKSC: 417 had their first case in the SC without silk (including 29 silks) and 92 had had their first SC case as silk.²⁴

This underscores the importance of being in the SC as a career enhancer. But while women might be being seen in the SC, they aren’t being heard, because the speaking parts (taken by the silks appearing on the front row) are overwhelmingly male. Women are the juniors: not the leaders.

Karon Monaghan QC, a friend and colleague, is a discrimination specialist at Matrix Chambers. Karon has said it like it is²⁵ in an article published in The Times on 24 October 2019: “*The near absence of women silks will be no surprise to anyone who appears in the Supreme Court.*” Karon recently represented Claire Gilham, a district judge, in her successful challenge to the Ministry of Justice over her right to be classed as a whistle-blower. Karon said that solicitors and clients too often chose men to represent them because they thought they would have more gravitas. The same article reminded us of an exchange on Twitter by Suzanne McKie QC who posted “*last month a male QC advised a client of my firm that she (a victim of harassment by a powerful man) needed to be represented by a man in court’ because judges listen more to men.*”

As Karon says “*Men therefore appear in greater numbers,*” she said. “*Those men then get a reputation for being good in the Supreme Court, as having the ear of the court and as silks who can be relied upon to perform well, so continuing the cycle.*”

Let me make plain that this is no sour grapes from Karon as she is one of the women who is most regularly instructed to appear at the highest court in our land. When women like Karon say that “*the persistent under representation of women is likely to do with straightforward prejudice and stereotyping, and it is self-perpetuating*”, she is telling it as it is. I endorse without hesitation what she says.

Amanda Pinto, QC, Chair of the Bar Council who assumed her role this weekend has described the low number of women barristers appearing at the Supreme Court as “disappointing”. Pinto added that the Council had “*championed issues of equality and diversity in the profession for many years and we currently have several initiatives aimed at ensuring everyone’s career progresses as best it can, regardless of gender, race or background. We hope (my emphasis) to see many more women briefed to appear in the Supreme Court in the future.*”

²³ Court statistics paint a stark picture of male dominance, Lawyer (2019) July/August Pages 22-23, 30.9.19,

²⁴ Mikolaj Barczentewicz, ‘Litigation in the UK Supreme Court: collecting and exploring the data’ [19.11.2019]

²⁵<https://www.thetimes.co.uk/article/qc-attacks-gender-bias-in-top-court-jn3j6bsxh>

I would agree, save I'd say we need more than hope: we need action to effect change. It's not going to happen on its own.

If we look at the fast stream route to the High Court through Deputy High Court appointments: let's consider what the recent 9(4) competition brought about in terms of change? Of the recent 24 section 9(4) Deputy Appointees announced in November 2019, only 4 are women (16%).²⁶ Why are more women not applying to/ being appointed to these positions?

Lady Hale said to the Bar Conference this weekend that *"Since (Lord Sumption's) prediction in 2015 the percentage of women judges in England and Wales has increased from 22.6% to 32% (I'm leaving out tribunals), this is an increase on average of 1.34% a year over seven years. So if this rate were to be maintained we would need fewer than 14 more years to get parity in the judiciary as a whole."*^{27 28}

14 years is still too long to wait to achieve parity and it's not just numbers but their distribution that matters. Although tribunals were taken out of the equation by Lady Hale in her 14 year time-line, positions such as that of Deputy District Judge and District Judges were not: and women make up a disproportionate proportion of the judiciary at its lower levels: as we have seen in the charts above.

That matters, because those who make the most significant decisions that affect the way we govern our relationships in society should reflect the society they serve. As Helena Kennedy puts it: *"The judiciary needs to reflect the community it serves in order to ensure public confidence in the work of the courts."*²⁹ We need women to be visible at the highest levels of achievement in law: as silks, as judges in the High Court, as Heads of Divisions, in the Court of Appeal, as appearing silks in the televised cases coming from the Supreme Court and in the Supreme Court itself. Just consider how much of an impact it made around the world as Brenda Hale, President of the United Kingdom Supreme Court, gave the judgment on the Government's decision to prorogue Parliament? Images of her composed and assured delivery of the court's unanimous judgment upon one of the most controversial issues to be determined by that court in recent years were beamed around the world. Even her brooch attracted its own fan base. The spider emoji has become the symbol for female empowerment and support across countless social media platforms. That illustrates the power of visibility: show us a strong, confident, brilliant woman doing her job superbly and by so doing you can inspire others to aim high. That sends a powerful message to the young who watch.

So, what can be or is being done to improve the slow pace of change. Let's start at the top: tackling lack of parity of judicial appointments:

Quotas

If it would take years to address the imbalance, do we need to impose quotas?

A recent Thompson Reuter's debate saw this issue debated recently. The motion was *"Quotas are the answer to tackling gender inequality."* Arguments for the motion made the point that *"quotas are about ripping open the doors and letting people in,"* and are a *"brilliant way of creating and anchoring institutional change."* As Catherine Mayer put it during the debate: *"If warm words and targets without teeth were enough, we'd be a hell of a lot closer to parity."*

On the other side of the debate, Justin Webb of the Today Programme arguing against the motion, suggested: *"If you lose sight of the progress that has been made, and if you replace the constant pushing for progress with a heavy-handed system that creates more trouble than it is worth"* and *"run[s] the risk of going backward."* Quotas for Webb suggested to minority groups including women that they are anything other than *"fully autonomous and able members of society."*³⁰

The argument against quotas has been similarly put as such by the Right Hon. Lord Burnett of Maldon:

²⁶ <https://www.judiciary.uk/announcements/section-94-deputy-high-court-judges-3/>

²⁷ My thanks to Catherine Baksi for generously sharing her note of the Hale talk with me

²⁸ <https://www.theguardian.com/law/2019/nov/23/supreme-court-presidents-predicts-gender-parity-in-judiciary-by-2033>

²⁹ *Ibid.* p.66

³⁰ <https://blogs.thomsonreuters.com/legal-uk/2018/09/21/tackling-gender-inequality-are-quotas-the-answer/>



“My scepticism about targets extends to principled opposition to quotas. They are not compatible with appointment on merit nor, ultimately, in sustaining public confidence in the judiciary. They would undermine the overall standing of the judiciary and fatally undermine the authority of judges who were known or thought to be “quota judges”. I suspect that there is barely a person in the country who would support the suggestion that a surgeon should be appointed by quota, rather than on his or her ability in the operating theatre. It is difficult to imagine anyone being comfortable being operated on by a “quota surgeon.” Judges at every level make important decisions that fundamentally affect the parties in the proceedings before them. Those parties are entitled to assume that the judges they appear before were the best available for appointment judged by reference to criteria which are objective and internationally recognised.”³¹

He advocates instead to “increase the available pool from which appointments are made”³², and emphasises in the same speech the importance of access to the legal professions and social mobility as a way of doing this.³³

However, given the rate of change of creating equal opportunity from the grass roots upwards, is this method just too lily livered? Leslie Thomas QC supports diversity quotas, rejecting arguments based on equal opportunity: *“Equal opportunity is a very loaded concept and makes the assumption that everybody is starting from an equal position. However, it's well known that the BAME community are not starting from an equal position. Therefore if you have a system abiding by the principles of equal opportunity you're actually perpetuating a process whereby people of colour are being disadvantaged and discriminated against.”³⁴*

Perhaps the answer as proposed by Baroness Hale is not necessarily have quotas but a steer on recruitment?

“I think it's very important, both for the public and the women or minorities themselves that they are known to have been appointed on merit, and not just because they are a woman or belong to a particular minority group. If we had quotas other than the equal merit tie-breaker, people would be able to say a person was only appointed because of the quota. That's why I'm against it, although I do understand there is a level of frustration about the rate of progress [...] I know a lot of people who are very bothered that it might be thought they'd been appointed or promoted just because they are women – some may even be reluctant to apply because of that.”

Instead, Hale suggests ‘affirmative action’ should be used to encourage recruitment: *“going out and actively encouraging good women and minorities to put themselves forward, mentoring them, and devising a selection of tools that support their potential.”* She also proposes *“greater movement and promotion within the different ranks of the judiciary. Again, it's about devising suitable tools to assess who has the potential to move up through the system.”³⁵*

We have seen historically how this has worked to encourage diversity in judicial recruitment.

Baroness Butler-Sloss talked in her recent interview for the First 100 Years project about receiving a phone call from the Lord Chancellor who informed her he wanted to appoint her as a High Court Judge whilst she was working as a Registrar at Somerset House.³⁶ Similarly, Lady Justice Black recalls, in a recent interview with Counsel Magazine, that:

“Five years after taking silk she received a phone call. ‘Would I consider becoming a High Court judge? I said I would consider. I thought – wrongly, of course – that it was a practical joke of the kind sometimes played on my Circuit! However, fortunately, I followed it up a bit further, and ultimately said yes.’ Those were the days of the so-called ‘tap on the shoulder’. In a system where one had to apply, would she have done so? ‘I wouldn’t have put myself forward without the approach. But that was then. The system has changed – for the better. On any view, however, encouragement to apply needs to be an important part of the system: managing people’s understanding of themselves, especially people who don’t rate themselves as highly as they should.’ She speaks with the authority and experience gained from her membership of the Judicial Appointments Commission. She herself has encouraged some people to apply for judicial posts, but characteristically won’t accept my invitation to agree that she is a ‘bit of a mentor’ to members of the Bar.”³⁷

³¹ “A Changing Judiciary in a Modern Age”, Treasurer’s Lecture 2019 by the Right Hon. Lord Burnett of Maldon, February 18 2019, [para. 34]

³² *Ibid.* [para. 35]

³³ *Ibid.* [para. 42]

³⁴ <https://www.chambersstudent.co.uk/where-to-start/newsletter/the-big-interview-leslie-thomas-qc>

³⁵ <https://www.chambersstudent.co.uk/where-to-start/newsletter/the-big-interview-baroness-hale>

³⁶ <https://first100years.org.uk/baroness-butlersloss-biography/>

³⁷ <https://www.counselmagazine.co.uk/articles/wise-counsel-lady-black>



We celebrate these women, and rightly so, but the irony to me is that it is largely through patronage by men they are in those roles. There are arguments to be made for/against quotas but what is unarguable is the crucial role that encouragement and mentorship from the senior judiciary has to play in creating change.

The judiciary has sought to respond to the problem. The Judicial Diversity Committee was established in 2013 to assist the Lord Chief Justice and Senior President of the Tribunals to encourage judicial diversity. It is intended to improve judicial diversity not just in the long-term but now— it monitors and evaluates progress in order to promote gender, ethnic and socio-economic diversity in the judiciary. It has focused on judicial appointments, on mentoring, and on career progression within the judiciary. In 2014 it established a judicial role models scheme. 90 judges were appointed to support judicial outreach events and to act as mentors for those who were considering applying for judicial office. They, and others, have taken part in outreach events, including specific pre-application seminars, across the country since its establishment. These events have provided a forum for lawyers to discuss their aspirations with judges from a range of backgrounds and experience. The events have separately targeted female lawyers, ethnic minority lawyers, lawyers in the Government Legal Department and the Crown Prosecution Service.

In addition, the Judicial Work Shadowing Scheme gives legal practitioners who are considering a career in judicial office an insight into the work of a judge. Shadowing can cover any aspect of a judge's work, both in and out of court. This was enhanced in 2018 by the Pre-Application Judicial Education Programme, established as an initiative of the Judicial Diversity Forum. That is made up of the Judiciary, the Ministry of Justice, the Judicial Appointments Commission, Bar Council, Law Society, and the Chartered Institute of Legal Executives. For under-represented groups within the judiciary it offers the ability to engage in a judge-led discussion session, which is intended to help break down preconceptions about judicial office.

Important as these measures are, they can only be judged by delivering a change in the composition of the judiciary: no longer overwhelmingly male, straight, able-bodied and privileged. When I see BAME, LGBTQ, disabled and female judges being sworn in at the High Court, then I'll know that the tide is turning as, by being seen, and by moving up, they create the space and ambition for others to follow

What of lack of advancement in practice?

These are some of my suggestions. I don't think they are radical. Just obvious

Be Ambitious

Take every opportunity to advance your skill set. Be hungry to improve for how else will you have the framework to build upon for more senior roles? There is an incredible advancement programme for juniors and seniors via the Keble Project³⁸. The aim of this course is to encourage and develop the highest standards of advocacy amongst practitioners in London and the South East. It is 'the most demanding and intensive of any advocacy course in the UK'. To qualify for the course, you must join the Circuit (any member of any circuit can do so: it's not restricted to the S.E) and be a practising member of the Bar of over three years' Call. The course is massively subsidised and the cost to each participating Circuit member is £1,200 / £2,000+ VAT (Crime / Civil respectively). Each Inn offers 5 scholarships and the CBA also offers 5. The main criteria is a practice in publicly funded work in whole or substantial part. What staggers me is that, as Sarah Clarke QC who has been committed to this training programme for year has told me, '*despite extensive advertising every year we have never managed to fill more than about 15 scholarships (of the 25 available) which is insane?*' I could not agree more. APPLY. The details are in the link below³⁹

Be Mentored

Mentors bridge the gap (or try to) between stages of a career that are otherwise a cavernous void to the junior member. Mentors can pass on advice and contacts but the real value they have, I believe, is in making senior roles more accessible and relatable to the young; and if they are relatable, they can be emulated. No one is suggesting

³⁸ <http://southeastcircuit.org.uk/events/the-2018-advanced-advocacy-course>

³⁹ Link to some info about the scholarships: <https://www.middletemple.org.uk/education-and-training/scholarships-and-prizes/keble>



the junior mentee should try to become a younger carbon copy of the senior mentor: that would be waste of the individuality upon which the Bar thrives. But: it makes aspiration more real and career dreams more ambitious. In speaking to HHJ Khatun Supnara this weekend, she told me how she felt that by being a visible and vocal woman of colour in a position of respect and power she could expect to see others follow in her wake: but she has not. At least in the numbers that she hoped for. Why is that? We need BAME women to be ambitious.

The Association for Women Barristers (AWB) ran a student mentoring scheme this year⁴⁰ which offered students the ability to be appointed a mentor to meet with on a regular basis. The aim was and is to increase diversity and inclusion by supporting aspiring female barristers⁴¹. Mentoring schemes are also run by Women in Criminal Law and will emerge from the Women in Family Law initiative that is a project being set up by Hannah Markham QC, newly elected Vice Chair of the FLBA (Family Law barristers Association). Women in Criminal Law⁴² was set up to connect and promote professional women across the criminal justice sector.

Mentoring isn't just for the beleaguered public law legal aid sector. We need more women in commercial work. I was deeply encouraged by the initiative set up by some commercial sets to reach out to applicants. One Essex Court, Brick Court, Essex Court and Fountain Court chambers (power houses in the Commercial sector) collaborated to create a series of events at a number of universities directed at gender diversity at the commercial Bar. The first event took place on 12 November 2019 under the headline "A career as a commercial barrister: a great choice for women" takes place in Oxford. It was introduced by Dame Sara Cockerill DBE, one of the few women High Court judges to sit in the Commercial Court. Women from all four sets gave presentations about their working lives and work/life balance, and students had the opportunity to network with barristers. The event was open to men and women, law and non-law students. One Essex Court has in addition set up a mentoring programme⁴³.

The message from our specialist associations is 'support and inspire, mentor and socialize, empower and encourage.'

The Western Circuit Women's Forum, under the headship of the incredible Kate Brunner QQ, leads the way in many areas⁴⁴. It aims:

- To improve the lot of women barristers on the Western Circuit.
- To encourage and help more Western Circuit women to stay at the Bar.
- To encourage and help more Western Circuit women to become QC's or judges.

It runs social networking and training events, has commissioned research projects and coordinates lobbying on issues that affect women barristers. It also liaises with organisations such as the Bar Council and CBA about policy and working practices, and with the QC Secretariat and Judicial Appointments Commission to ensure we can provide help with career progression. And it runs a Circuit-based mentoring scheme for young women barristers. We all need a Kate Brunner in our circuits 😊

Being a mentor is, I believe, a moral and professional obligation if we really mean to make changes at the Bar

Be role models

The Law Society '*Women in Leadership Law Report*' has some signposts to point and direct the way ahead⁴⁵. I don't see why they are not as relevant to the Bar as a law firm.

Leading from the top and by example

⁴⁰ <https://www.womenbarristers.com/>

⁴¹ <https://www.womenbarristers.com/mentoring/>

⁴² <https://www.womenincriminallaw.com/>

⁴³ <https://www.oeclaw.co.uk/pupillage/women-at-the-bar>

⁴⁴ <https://westerncircuit.co.uk/womens-forum/>

⁴⁵ Women in Leadership in Law Report: Findings from the women's roundtables "Influencing for impact: the need for gender equality in the legal profession," Law Society, March 2019



It is crucial for leaders to be aware of their bias to prevent it from influencing business decisions and colleagues alike.

Humility and acknowledgment of bias

Ensure individuals and leaders/ managers are completely conscious of their bias and the unconscious bias that persist within the organisation. This can help underpin a culture of awareness that is the foundation for change.

Raising awareness as a starting point

Organisations should implement unconscious bias training for everybody within the organisation, supported by the right policies that address inappropriate workplace attitudes/ behaviour and the right senior leadership commitment that creates inclusive workplace cultures.

Recruitment and selection processes

Law firms and in-house legal teams should be committed to making decisions purely on competencies, quality and attributes on the individuals involved.

Support during work

Supporting women in the workplace is important to prevent bias.

Men should not be excluded from this role

As Lady Hale said at the Bar Conference last weekend, *“Not all women are feminists but many men are and women would never have got anywhere unless some men had realised that if the law treated them in the way it treated women they wouldn’t ‘tolerate it’”*.

We have male champions for change in the likes of Eduardo Reyes, Features Editor of the Law Society Gazette, in Kieran Priender, Senior Legal Advisor to the International Bar Association, to name just two but there is room for so many more and there are ways to help men do this: See for example the Law Society’s *‘Male Champions for Change: Toolkit’*.⁴⁶ This document acknowledges the importance of *“proactive participation, promotion of gender balance and efforts to understand how gender inequality limits the ability of individuals and businesses to reach their full potential”* should not be underestimated. The Toolkit suggests:

“As champions of change, men can work towards the positive transformation of social norms and can take action to hold other men accountable and encourage them to join in [...]

The advocacy of men in gender-diversity can help to build conviction that what is good for women will be equally beneficial to men as it will result in more inclusive, healthy and supportive workplaces. This will ultimately result in the evolution of businesses, corporate cultures and performance models which are more efficient, sustainable and in line with the expectations of today’s society (and clients).

Recognising that the majority of leaders in the legal profession currently are, and have historically been, men, we also believe that male business leaders have a significant role to play in achieving gender balance.”

The Toolkit offers insight and guidance on what individuals can do to accelerate the rate of progress within the legal profession as a whole. It warrants adoption by our profession.

Attrition Issues

Bullying and Abuse

The International Bar Association’s May 2019 report *‘us too? Bullying and Sexual Harassment in the Legal Profession’*⁴⁷ conducted the largest ever survey on bullying and sexual harassment in legal profession including data from 6,980 respondents from 135 countries. The statistics indicated bullying was rife in workplace (one in two female respondents and one in three male respondents) and sexual harassment common. The IBA report calls ‘time’ on ‘endemic’ bullying and sexual harassment in the legal profession. I spoke at its launch in the UK and have followed its procession around the world. The cries of outrage and demands for change have traversed nations.

⁴⁶ <https://www.lawsociety.org.uk/Support-services/Practice-management/Diversity-inclusion/documents/male-champions-for-change-toolkit/>

⁴⁷ Kieran Pender, ‘Us Too? Bullying and Sexual Harassment in the Legal Profession’ (2019, The International Bar Association) <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>



Things are changing: The Bar Council has partnered with Spot.com to support members of profession who are victims of, or witnesses to, discrimination, harassment or bullying – either by other members of profession, solicitors, judges or others. I spoke of this in my last lecture. It is a real step forward and I commend the Bar Council, the Specialist Associations and the Inns for their drive and determination to make it happen. Why is it so radical? Because it gives power to the victim or witness to control what happens with their abusive experience in a way that they need not fear will impact on their career:

“Spot helps barristers talk through and record contemporaneously inappropriate moments at work (including at court). Barristers can then choose to print the report and send it to their chambers, their employer (if they are an employed barrister), the BSB or the Judicial Conduct Investigations Office (JCIO), and/or submit a report to the Bar Council or to simply save the report for their own reference/later use.

Spot is a web-based application and uses an ‘AI bot’ to ask questions about what happened. It is hoped that it will prompt barristers to record meaningful and pertinent information about their experience. No human (not even the Spot team or the Bar Council) will see what a barrister discusses with Spot unless they decide to submit a report (but even then it can be anonymous). The Bar Council cannot investigate a report/incident – only the BSB can do this, and only if a barrister manually submits their report to the BSB. The same applies regarding a formal complaint to chambers or the JCIO.”⁴⁸

Why is this needed? Because of behaviours like this revealed in an article by Neil Post on 19.11.19⁴⁹:

In October 2019 the Bar disciplinary tribunal described Richard Ian Miles’s as “misogynistic”. Called to the Bar in 1997, Mr Miles was suspended for 10 months after making gross comments on a private group called ‘London floaters do as you likely’.⁵⁰

Among the messages he sent were:

- *“As an 18-year-old I loved to stick my head between a girl’s boobs, shake it about, and go ‘blblblbrbrblblbr’. They were always impressed.”*
- *“As an adult, I’d now go the whole way and fully chunder down her cleavage if I got the opportunity...”*
- *“If we can’t at least find some other saggy front bottom to abuse can we at least speculate what the evil prolapsed whore might charge for ‘extras’? She’s clearly got A-Levels (maybe not recognised by any exam board) and she’d only charge an extra 54p for that...but spit roasted three ways by some 1920’s Bolsheviks? I reckon she’d pay. Anyone feeling a bit Trotsky? We’d have her crying out in origami...oh, doesn’t really matter so long as she’s crying...”*
- *“A couple of thoughts for the next Feildes Weir bash: 1) could we rent a stunt dwarf and have a competition for the most imaginative catapult? 2) a wicker-man competition for 9-fingered witch burning? Obviously we only get to do that once, so it would be mainly based on stylistic merit. Winner gets to incinerate her in at the end of the evening. We could all wear Maggie Thatcher Spitting Image style masks and sing ‘The Landlords Daughter’ as she goes up. Lana Perry gets the Brit Ekland role....”*

Mr Miles unsuccessfully sought to defend himself against all charges. Look for no guilty pleas, remorse for or insight into his appalling conduct for there was none.

The five-member panel found unanimously that the comments – which were all directed at one woman – were “grossly offensive and disparaging, including matters of a sexual and/or violent nature”. It continued: “For example, there were references to her being a prostitute and a witch, references to sexual and physical violence and, on one post, there was effectively a threat to kill her.” The tribunal found the posts to be targeted and misogynistic. It said his conduct was of a “morally culpable or disgraceful kind that brought the profession into disrepute”.

Damn straight it was. I fail to see how a sanction of 10 months suspension was adequate. Men who conduct themselves in ways such as this have no place at the Bar.

⁴⁸ Ibid. p.11

⁴⁹ <https://www.legalfutures.co.uk/latest-news/barrister-posted-misogynistic-comments-on-facebook>

⁵⁰ The full judgment is in this link <https://www.tbta.org.uk/wp-content/uploads/hearings/4624/Approved-Report-of-Finding-and-Sanction-Miles.pdf>



We need to keep the momentum up on calling out this type of despicable conduct. It's timely that the AWB had second round table meeting just last night on bullying and harassment issues— this time broadening out to CILEX and local government. The reach is getting wider. And so is the debate.

I endorse its conclusions:

“We are developing the narrative on social mobility and inclusion - the problem is bigger than just gender and race. Other barriers exist including class, lifestyle, and other life choices which also create barriers to inclusion. Unconscious bias training was identified as a way forward. Training should be mandatory not discretionary. If it is discretionary those who really need to do it, simply don't. We need to address issues of bias and power imbalances from the early education stage onwards. Specialist training should be compulsory for bar students. Such training also needs to be repeated and ongoing.” “Better networking and communication between regulatory bodies is needed. Similar problems exist across different professions or branches of professions and good practice should be shared.”

“Bodies and associations representing under-represented groups need to join forces and work together, this is where the future lies. Intersectionality is being identified as a real issue which needs to be tackled if any real progress is to be made at Bar in relation to people who belong to more than one under-represented group, e.g. BAME women.”

The message is clear: we are stronger together

Ways of working and why they compel women to walk away from the Bar:

Culture and caring responsibilities

The Western Circuit Women's Forum (WCWF), has, yet again, taken the lead for many of us by going beyond restating what the factors are that lead to the loss of women at 10-15 years plus. We know that. The WCWF has sought to identify ways of meeting and beating the problem. This month they published 'Back to the Bar: Best Practice Guide Retention and Progression after Parental Leave'. The premise of this guide is that *“if barristers are properly supported by their Chambers before, during and after parental leave, fewer will feel compelled to leave the profession. With the right support, we are confident that more women and those with caring responsibilities will remain at the Bar and go on to become successful senior barristers, QC's and judges”*. It builds on its 2017 research and Good Practice Guidance and Policies available through the Bar Standards Board - 2019 Supporting Information BSB Handbook Equality Rules and Bar Council Parental Leave Guidance ⁵¹(updated 2018).

The WCWF sets out 'Recommendations for Best Practice Policies':

- The right to return after a generous period of parental leave –suggested period 2 to 3 years.
- An extension to the minimum flat rate rent-free period beyond 6 months – we recommend 12 months.
- An option to take all or part of the flat rate rent-free period after returning from parental leave.
- An agreement to limit a returning parent's geographical area of work if requested.
- A requirement for diarised agenda-based meetings to prepare for leave and return.
- Mentoring and Wellbeing policies and programmes in addition to parental leave and flexible working policies.

It then gives practical advice on:

- How to plan for leave (step by step)
- How to plan to return from leave (step by step)
- The review: first year after return

I am not going to repeat in the body of this lecture the practical steps it sets out because every word in the 12 page document matters and you can click on the link below to read it for yourself.⁵² It is, quite simply, a superb piece of work. The vital role that the Clerks have to play is high-lighted. The importance of parent friendly chambers culture is identified. The value of maintaining links and 'reach out' contact from chambers is made explicit. It should be read by every Head of Chambers, Senior Clerk and Chambers Management team in my view. And the default position should be to adopt it.

⁵¹ http://www.barcouncilethics.co.uk/wp-content/uploads/2018/02/Bar-Council_Parental-Leave-Guide-28revised-including-Shared-Parental-Leave29_February-2018.pdf

⁵² <https://westerncircuit.co.uk/wp-content/uploads/2019/11/Back-to-the-Bar-Retention-and-Progression-After-Parental-Leave.pdf>



Diversity is not just about Gender

Whilst the focus of this lecture has been on the diversity of the Bar and judiciary in terms of gender balance there is a long way to go in a number of other areas if diversity matters in 2019.

Whilst I can talk, from experience, about the importance of social mobility and gender equality issues, I am a straight, white woman. I cannot begin to know what it is like to be judged on the name I have or the colour of my skin. Nor can I understand what it is like to fear that one's choice of sexual partners might affect one's reputation and career options. Unconscious bias against and Discrimination through disability, sexuality and race are areas that the Bar must challenge.

The charts and statistics I set out at the start of this lecture cannot be ignored and it would do my BAME, LGBTQ and disabled colleagues a dis-service if I did so.

Just as I expect strong men to support strong women to achieve gender equality, as a strong woman it's my duty to support equality of opportunity for my BAME, disabled and non-straight colleagues. It is clear we need more voices to champion the cause of equality for disabled, LGBTQ and BAME people at the Bar and in the judiciary. I do not purport to adopt this role, but I do like to applaud those who have made it their own to speak out and up.

Being LGBTQ at the Bar

In 2017, the report of Marc Mason and Dr Stephen Vaughan at UCL, entitled '*Sexuality at the Bar: An Empirical Exploration into the Experiences of LGBT+ Barristers in England & Wales*' found that of the 126 survey respondents (98 male and 28 female), just over half of the survey respondents had experienced some form of discrimination at work or in their professional studies on account of their sexuality. One third had experienced some form of bullying. 26.5% said they had experienced sexuality-linked discrimination 'sometimes', 'often' or 'frequently' and 25.6% experienced such discrimination 'rarely' (47.9% said 'never'). The report found that this suggests homophobia is stronger at the Bar than in the general population because research from Stonewall shows, overall, 19% of LGBT+ employees have experienced verbal bullying because of their sexuality in the last five years.⁵³ It makes rather depressing reading.

The authors, speaking in Counsel Magazine in January 2018 about the study noted:

*"When we explored homophobia, bullying and harassment in the interviews we were really struck by three matters. The first was how many barristers played down or made light of their own homophobic experiences. The second was that, despite being fearless advocates in the pursuit of their client's interests, many barristers had failed to step forward and defend their own rights and to speak up in the face of homophobia. The third matter was the levelling of criticism at the Inns (for not doing enough to signal their support for LGBTQ+ members of the Bar) compared with our interviewees' views on the BSB or the Bar Council. This criticism was particularly notable at both the most senior (QCs) and most junior levels (pupils). What was less clear was why this criticism was primarily directed at the Inns. One possibility might be that our respondents expected more of the Inns than they did of their regulator and representative body."*⁵⁴

Indeed, whilst problems were found within some Chambers (one barrister respondent reported: *"Every time somebody got drunk at a [work] party or a dinner I got some bloke coming up to me asking why I was a lesbian and hadn't I ever considered having sex with men — really quite inappropriate comments"*), criticism was focused in particular at the Inns of Court.

One student revealed:

"One of my fellow students was at an Inns' qualifying session and was talking to a bencher who sort of jokingly or flamboyantly said, 'I don't trust fags like you'. This BPTC student didn't really know how to respond to that. It was a bencher, what are you going to do basically?"

Raggi Kotak in an interview with Lawyer Monthly spoke about her early years as a barrister as such:

⁵³ https://westminsterresearch.westminster.ac.uk/download/2d666d9fb5a6dba5a7ba41a9f96b4d9997e1efcc6bc559df8ddde94ffc16b56d/211166/sexuality_at_the_bar_sept2017.pdf

⁵⁴ <https://www.counselmagazine.co.uk/articles/being-lgbt-the-bar>



“[...] I found it a minefield of micro-aggressions. The norm was to be ‘straight’, and as such, the expectation was for female barristers to talk about their husband or boyfriend, to wear skirts and look like one of the ‘girls’ – or to laugh along at a certain type of joke, which was not very funny for me [...] To be the target of micro-aggressions is very damaging: it is like being stung again and again, and each one hurts like hell. The added difficulty for those of us in law, particularly at the junior end, is that such bigotry is often tied up with power and the culture, which expects us to ‘man up’.”⁵⁵

In terms of how this affects mobility within the profession, a 2011 study supported by the Judicial Appointments Commission (JAC) entitled ‘*Barriers to Application for Judicial Appointment Research: Lesbian, Gay, Bisexual and Transgender Experiences*’ found there were very high levels of interest in becoming a judge within the LGBT legal community however 70% of LGBT lawyers perceived there to be prejudice within the selection process and 50% of LGBT lawyers did not apply for a judicial office because they did not think they would be appointed.⁵⁶

So, what can be or is being done?

A few examples ...

The LGBTQ+ Bar Association (<https://lgbtbar.org/about/about-us/>) is a really positive forward thinking group made up of lawyers, judges, other legal professionals, law students, activists, and affiliated lesbian, gay, bisexual, and transgender legal organisations. It exists to ‘promote justice in and through the legal profession for the LGBTQ+ community in all its diversity’

BLAGG (Barristers Lesbian and Gay Group) [blagg.org.uk]: LGBTQ network for barristers which carries out policy work, organises social events, organises conferences etc.

FREEBAR [freebar.co.uk]: a collaboration by individuals at the Bar, created in response to increased awareness that we are behind other professions on issues of LGBTQ diversity and visibility. It is a forum aiming to create a visibly inclusive culture and to recognise and celebrate LGBTQ role models and allies. It launched in 2016 and has historically addressed the annual conference of the Institute of Barristers Clerks, and hosted a ‘Best Practice’ panel event that was attended by chambers in order to raise awareness for LGBTQ equality and diversity issues specific to the Bar. They have published resources for Chambers including the Free Bar Best Practice Note, a document which provides guidance on inclusive recruitment, inclusive colleagues, and inclusive buildings (such as gender neutral toilet facilities) [<https://freebar.co.uk/wp-content/uploads/2019/01/Freebar-best-practice-note-1-1.pdf>]

Inns of Courts taking the lead: Middle Temple has been proactive in supporting the LGBTQ+ legal community. Sam King QC (a Bencher of MT) and others have been vocal and positive about the role of the LGBTQ+ legal family. Simon Rowbotham recently spoke about the needs for the Inns of Court to lead by example at the opening of the Middle Temple LGBTQ Forum. Referring to the findings of Mason and Vaughan’s 2017 report, he remarked:

“It is a huge source of sadness to me and – I will admit – anger, that any member of this Inn, particularly a student finding their way through an already complicated if not daunting system, might come away from any of our events feeling ashamed or attacked for who they are.”

He goes on to suggest on the topic why the Forum is important:

“Because there is absolutely no excuse why, now, today, any student should exist under the misimpression that to be LGBTQ in anyway disqualifies them from succeeding in this profession, whether they are the youngest member of the bar or the most senior justice of the Supreme Court. We would be lying if we were to tell them that they will not face any discrimination or hate, or that there are no colleagues who remain ignorant and on the wrong side of history. But the dinosaurs are facing extinction and their fossils will soon be confined to the dustbin of bigoted history. We cannot magic away the prejudices that many of our members may still face in everyday life, especially those students who will return to countries less liberal than our

⁵⁵ <https://www.lawyer-monthly.com/2019/06/my-life-as-an-lgbtqi-lawyer/>

⁵⁶ https://5bf0cd3a-5473-4313-b467-45d59f70140a.filesusr.com/ugd/5aa06e_23d0497d1adb494a952f2676735875f2.pdf



own. But we can be damn sure that their interaction with this Inn is one that is not simply a neutral one but one that is affirmative: success at the Bar in 2019 comes from being who you are, not what anyone else thinks you ought to be.”

The Forum has a number of events planned throughout 2020, including social events and Pride marches. The message of the Forum will be “*you are not alone and the time to be an LGBTQ+ member of the Middle Temple family, whether practitioner, student or staff, has never been better.*”

Being BAME at the Bar

In an interview with Chamber’s Student, Leslie Thomas QC remarked that the statistics regarding BAME individuals at the Bar “*are not good – not good at all.*” He concluded, “*At the current rate, for the BAME population at the Bar to reflect the general population would take 100 years, so I think diversity needs a helping hand.*”⁵⁷

Speaking of his experiences as a black male barrister he said:

“As a person with my colour skin doing the job I do, whether I want to or not, colour becomes an issue most days.” Thomas draws on examples of discrimination he faced early on: “When you go court, especially as a young barrister, you will be everybody BUT the barrister – especially doing something like crime. The court staff will tell you: ‘That’s not the row for you, that’s the row for the briefs.’ When you reply, ‘I am the brief’, they might say something like ‘Oh, are you the solicitor? Are you the defendant? Are you the defendant’s brother?’ And so on. There is an assumption that you are everybody else BUT the barrister. That’s not because people are nasty, horrible or overtly discriminatory, that’s just the unconscious bias everyone is affected by.”

A part-time BPTC student, Brigitta Balogh, who is a Hungarian-born Roma, contacted me to tell me about her experience in a BPTC scholarship interview at the Inns of Court where she was asked “*there are not many Gypsies in the UK, why don’t you go back to Hungary?*” In a recent statement that was read out at the Association of Women Barrister’s roundtable, she recalled how:

The outcome of the interview was beyond humiliating. They acknowledged that the question was raised but did not grant me scholarship. I cried myself to sleep three nights in a row and my eyes get watery every time I am reminded that despite all my achievements, I am not enough for the Bar [...]

When I was told to go back to Hungary, I was no longer the well-travelled, well-read law graduate who should be viewed as a pioneering first, but as an unwanted and unwelcomed Gypsy.

As the statistics above make clear, the rate for BAME population at the Bar has a knock-on effect on judicial diversity. Baroness Hale has remarked: “It’s not surprising that [the pace of promotion for judges] is slower: it is [only] more recently that members of ethnic minorities have joined the legal profession in larger numbers [...] The way we can try and improve diversity in the higher echelons is being more open to transfers from other [courts]. And there have been appointments from the upper tier [tribunals] to the high court. So that is beginning to happen [though] it’s still quite slow.”

As Brigitta said to me, quite rightly “*as a student it’s not my job, neither my responsibility to fight against discrimination, harassment, bullying and racism*”. Candidates like Brigitta have enough on their plate simply trying to keep their dream of joining the Bar alive. They have to suffer the financial cost and loss of trying to get a pupillage without the promise of a practise to pay debt off. They are trying to find a way into our profession. It’s down to those of us in it to challenge barriers to entry and to identify and call out discriminatory practices, conscious and unconscious bias to make the Bar a place that is inclusive not exclusive.

So, what can be or is being done?

A few examples ... I defer to my BAME colleagues to tell me and others what’s helpful:

- **BME Legal**: a recently introduced intensive support programme calling all future barristers of African-Caribbean and low socio-economic backgrounds in need of support with the pupillage process. This provides one-to-one mentoring and tailored interactive workshops, with sessions to be held on Tuesday evenings from December 2019 to June 2020.

⁵⁷ <https://www.chambersstudent.co.uk/where-to-start/newsletter/the-big-interview-leslie-thomas-qc>



- Urban Lawyers: a charity which aims to inspire, provide guidance, advice and to share the experiences and knowledge from industry experts and leaders. It organises an annual career conference: “Designing your Future” which provides a forum for students to network with legal professionals and highlight the challenges and opportunities that exist for those seeking entry or advancement in the profession.

Concluding Remarks: the winds of change? Final words: Diversity matters. Visibility matters. Voices matter.

We need champions for change at the Bar to be visible, vocal and honest about obstacles placed in their path to seniority.

We need more senior men and women to step up to the mark to become activists for change and to call it out when positive action doesn't follow fine words.

We have very senior role models out there: Hale, Dobbs, and Kennedy to name a few who have led the way. We have the next generation of leaders for change in Shona Jolly QC, Kirsty Brimlow QC, Karon Monaghan QC, and Zoe Richmond QC. But we need new faces.

We have talented professionals who are ‘out’, proud and outspoken on LGBTQ issues: Brie Stevens-Hoare QC, Phillip Marshall QC, Sam King QC, Andrew Powell and Stephen Lue.

HHJ Supnara has led the way for women of colour, and fought battles on their behalf, for the entirety of her professional career. We have BAME role models in the likes of Leslie Thomas QC, Judy Khan QC, Amal Clooney (and Andrew and Stephen again). We need more. The First 100 Years awards showed the way last weekend by celebrating Inspirational Women of the future: we have a young vibrant role model in their Barrister of the Year: Rehanna Popal.

We have the likes of Kieran Piender and Zimram Samual as champions for change.

It's superb that we have Amanda Pinto QC as our Chair of the Bar Council. We had Rachel Langdale QC heading up the Bar Council Conference this weekend. I look forward to seeing more women as Chairs of our specialist professional bodies: that will be the role Hannah Markham QC succeeds to for the Family Bar Law Association having won the election in 2019 to become our Vice Chair.

My Belief:

The guiding principles of our law are justice, fairness and equality. If we believe in them at the Bar and in the Judiciary, we should agitate and act to achieve change to ensure that fairness and equality are visibly embodied within our ranks.

Being silent isn't an option. Letting others take the strain of the campaign for equality and diversity isn't good enough. Every senior member of the Bar and Judiciary has a responsibility to lead the way.

Don't say you agree. Show you agree.

Deeds not just words.

Now.

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