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WOMEN LAWYERS: EQUALS AT THE BAR?

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Question: The times they are a-changing - or are they? Do female lawyers need to be Superwomen to survive? Is motherhood welcomed, tolerated or rejected at the Bar? What makes for a successful advocate? Is gender relevant? What about career progression? Are women fairly represented on the Bench and in its most senior courts? Is there practice or appointment discrimination and if so what is being done about it?

The reaction on social media to this lecture has been illuminating: within seconds of the tweet out of this lecture I received these comments:

Twitter: *'inequality is far more about class, uni, school than gender'*

LinkedIn: *'what about black and ethnic minorities' lawyers: don't see many at the top'*

Gender, race, class and education all play a part in career opportunities and career progression. I can only speak from my perspective, it would be arrogant and insensitive to speak of the barriers to advancement on the grounds of race or disability when I am an outsider on those issues. This lecture shines the spotlight on gender issues at the Bar and draws on my experience in Family Law.

I deliver this lecture coming from a background as a child of a single parent from a white working class home. I was the first person in my family to stay in education after the age of 16. I went to a comprehensive state school. My careers advisor suggested I was bright enough to apply to work in a bank but not front of house as I had an 'attitude'. She didn't suggest I go to university.

I went to Oxford University to read law: one of only two girls from my school to ever do so. We were their first. St Anne's College, Oxford lived up to its reputation of giving opportunities to those from state schools that other colleges might deny.

But for my mother's own initiative in looking up the CV's of those who were successful in the solicitor's office she worked in, identifying the common factor of Oxbridge (and male), researching the colleges and driving me down to Oxford, tipping me out at St Anne's to go and ask for an interview, I would never have contemplated Oxford as a place for me. But for the porter ringing up the Principal and asking if she had time to see a young girl who had driven 50 miles to see her. But for the fact that that Principal said yes and opened my eyes to my potential and a place to fulfil it, I would not have come back and asked my school to enquire about the application exam and enter me for it. I slipped in through an interview process in conjunction with passing the internal Oxford examination system for 4th term entry students (i.e.: pre-A level results, later abolished as it gave an unfair advantage to public school students who received specialist tutoring for the Oxbridge exam). Oxford opened up a world of knowledge and opportunity that, given my class and background, might otherwise have remained closed to me.

After graduating, and a year at Bar School, I was called to the Bar.

A hundred years ago I wouldn't have had that option.



'In point of intelligence and education and competency', the Court of Appeal acknowledged that Miss Bebb was *'probably, far better than'* many male candidates but, because she was a woman, in 1913 she could not be admitted to the Law Society (***Bebb v The Law Society* [1914] 1 Ch 286**).

The Sex Disqualification (Removal) Act received Royal Assent, and became law, on 23 December 1919.

The Sex Disqualification (Removal) Act 1919 removed all legal barriers to women, including married women, working as lawyers. It meant that in England and Wales women wishing to become solicitors could apply to the Law Society and women wishing to become barristers could apply to one of the four Inns of Court (Lincoln's Inn, Middle Temple, Inner Temple or Gray's Inn) without fear of rejection based solely on the ground of their sex¹.

Where are we now? A Snapshot

'Barrister' is a gender-neutral word, but the expectations of women's 'proper' appearance and how they should dress for court were anything but balanced until 1995. I was called in 1986. For nearly 10 years I was compelled to wear a dress or skirt in court and was forbidden to wear a trouser suit. Had I or others sought to do so, we ran the risk of being denied the chance to do our job. Had we attended court in a trouser suit and begun to address the court, your appearance might be short-lived:

- Judge "*I can't hear you, Miss...*"
- The female barrister speaks louder, there is nothing quiet about her voice, and the Judge repeats the phrase....
- It's not that he can't hear her, he won't hear her because of 'inappropriate' court attire.

It took a sustained campaign from the Association of Women Lawyers for that outmoded and frankly ridiculous position to change: it was not until the Bar Council received permission from The Lord Chief Justice in May 1995 that women were 'permitted' to wear trousers as court wear.

Alison Russell QC (as she then was) was appointed as a judge of the High Court of Justice on 13 January 2014, assigned to the Family Division. She became the first judge to be formally addressed as "Ms Justice": it made the news. I'd have preferred it if the fact that she was not an Oxbridge product, but rather that her alma mater was South Bank Polytechnic, had made it into print with such prominence.

Baroness Brenda Hale: the first female President of the most senior court in the land: the Supreme Court (until 2017 she was the only woman at this level). Baroness Hale used her profile to make a point, saying: *'While I of course look forward to working alongside all my colleagues, it is a particular pleasure for me to be taking up the post at the same time as we welcome only the second ever woman to sit on the UK's top appeal court.'*

Lady Justice Black joined her in July 2017. They will sit together for the first time in their respective roles on 4th October. It is perhaps unfortunate that the official court listing identified her therein as "Lord Hale".

I came to the Bar as a left wing feminist lawyer radicalised by the Thatcher years. I wanted to make a difference to the society I was part of. I wanted to repay the debt I thought I owed to it as a child of the comprehensive system. Was I exceptional in that aspiration? No.

Accessibility and The Bar

Schooling: Female barristers are significantly more likely to have attended state schools than male (65% compared with 51% of men) and this is the key variable correlated with type of secondary schooling.²

¹ For those of you who haven't heard of it I urge you to seek out and follow The First 100 Years project supported by the Law Society and the Bar Council, charting the history of women in law since 1919. To find out more about the project please [click here](#).

The project's legacy will be the creation for the first time of positive role models for women in law, a deep understanding of the past combined with a celebration of today, a cross-sector platform for intelligent debate and change and a valuable archive accessible to everyone from law students to High Court Judges. Our aim is to ensure a strong and equal future for all women in the legal profession'

² Biennial survey 2013, p.22



Motivation - Why come to the Bar?

Generally: The Bar as a career: - women, across all areas of practice, are more likely to say that flexible working/availability of part-time working was an important reason to them (6% compared with 1% of men)³.

For me it was that I knew I was, quite simply, unemployable. I wanted to control my work load, what I did, when I did it, how I did it. I did not want a 9-5 job and had never easily accepted instruction on what to do. I had never known a barrister. The Bar was an alien (and intimidating world) for my family. My mum was terrified that I would have to count every penny for my adult life, just as she had done. I had no real idea what the challenges were in the profession I aspired to join as a young woman with no private income. But: I knew I was bright, I thrived on competition, I was a deadline junkie, I was an independent worker, I wanted to make a difference to my world, I had never felt inferior to a man and had the confidence, borne largely of ignorance, that I was suited to this career. I simply didn't contemplate not succeeding.

Knowing nothing of the right way to do things, but believing that 'Stage 1' was getting a pupillage (because without that under my belt I'd have to be sensible and get a 'proper job' as my mum wanted me to do), whilst still in my second year at St Anne's College, Oxford I wrote off to every chambers that offered a pupillage with funding.

I say "Stage 1": that showed my lack of knowledge of the career path I wanted to tread. In fact, Stage 1 was getting my law degree, Stage 2 was getting into Bar School, and Stage 3 was passing the Bar Finals. Pupillage would actually be Stage 4, at least 2 years hence. But, probably because I knew no better, I went to my interviews to London with confidence, told them what I wanted and why, and that without their money I could not come to the Bar. Before I had begun my final year, I had been offered a pupillage for 12 months with financial support.

Admittedly it was in a planning set but it was a foot in the door and I would be paid whilst I learnt my craft. It was 1983 and Thatcher had just won a landslide victory over Michael Foot (three new members of Parliament that year were Tony Blair for Sedgefield, Gordon Brown for Dunfermline and Jeremy Corbyn for Islington North). 1984. Turbulent times. The IRA bombed a hotel in Brighton hosting the Conservatives conference. The Battle of Orgreave took place, the Miners' strike started and continued bitterly into 1985. 1985. I was at Bar School. We had the Brixton riots started by the shooting of Cherry Groce. I was called to the Bar in 1986, the time of the Wapping dispute. I wanted to practice in employment law and civil liberties. I wanted to act for the individual in conflict with the state. Passionately.

That was my motivation: how does it compare to aspiring barristers three decades later?

Motivation within Different Areas of Practice

Within the main areas of practice there are gender differences in motivation:

Crime: men working at the criminal Bar are more likely to indicate that the work offered a '*challenge*' (29% compared with 19% of female barristers): women working at the criminal Bar were more inclined to indicate that '*making a difference to society*' was one of the most important reasons to them in choosing their area of practice (53% compared with 43% of men).

In family practice, men were more likely to indicate that the '*availability of opportunities/work*' was an important reason for them choosing their area of practice (58% compared with 41% of women).

Among barristers working in commercial and chancery practice, men are more likely to mention the earning potential of the work (35% compared with 20% of women).

³ 2013 Bar Council Biennial survey



These statistics, important though they are, fail to grapple with the central issue of concern that I see as a barrier to entering my profession. The cost and risk. Now one doesn't get a grant to help to go to university. You have to pay via a loan. You begin your working life as an adult with debt.

Students simply can't afford to run the financial risk of entering a self-employed, financially precarious, profession when they have racked up so much university student debt over the past 3-4 years, would have yet to invest in a year's education at Bar School, followed by the hunt for a pupillage, thence a tenancy before they are 'established' enough to even think of building up a paying practice, and a paying practice takes time to develop and fees are notoriously late in payment. So, it could be 8-10 years from the start of university until the first meaningful fees are paid. I started university in 1982 and didn't receive any regular income until the early 1990s.

That financial barrier means that the pool of people entering our profession will be less representative of the society they will represent in court, and given the judges are predominantly drawn from the ranks of the Bar, this financial barrier to our profession will widen the social gulf between the judiciary and the society it seeks to serve.

Admission Rates to The Bar

Improvements since my time:

- *Fair selection procedures* for pupils and tenants (increased number of women entering the profession to equal that of men)⁴
- *Equality Code* – vast majority of chambers have an equality policy in place and there is increased awareness⁵ (although see below the disparity in compliance)
- Clear movement towards gender equality at Call to the Bar (approx. 50-50 balance)⁶

The First Steps: How Female Friendly?

Chambers compliance with equality policies

The Equality Rules of the BSB Handbook came into force on 1 September 2012. The Rules apply to self-employed barristers in multi-tenant chambers and include requirements to:

- Produce an equality policy and action plan
- Appoint an equality and diversity officer and a diversity data officer
- Ensure chambers' selection panels are trained in fair recruitment
- Conduct diversity monitoring and analyse the data and
- Produce anti-harassment, flexible working, parental leave and reasonable adjustments policies

The Bar Standards Board 2013/14 Report indicated that compliance with the equality rules varied depending on the area under consideration. For example, the compliance rates for the "appointment of officers" requirements were very high (100%). However, in relation to the more complex rules, such as the requirements to produce a reasonable adjustments and flexible working policy, compliance rates were much lower. The rule with the lowest compliance rate was the action plan rule with which only 50% of chambers were compliant.⁷

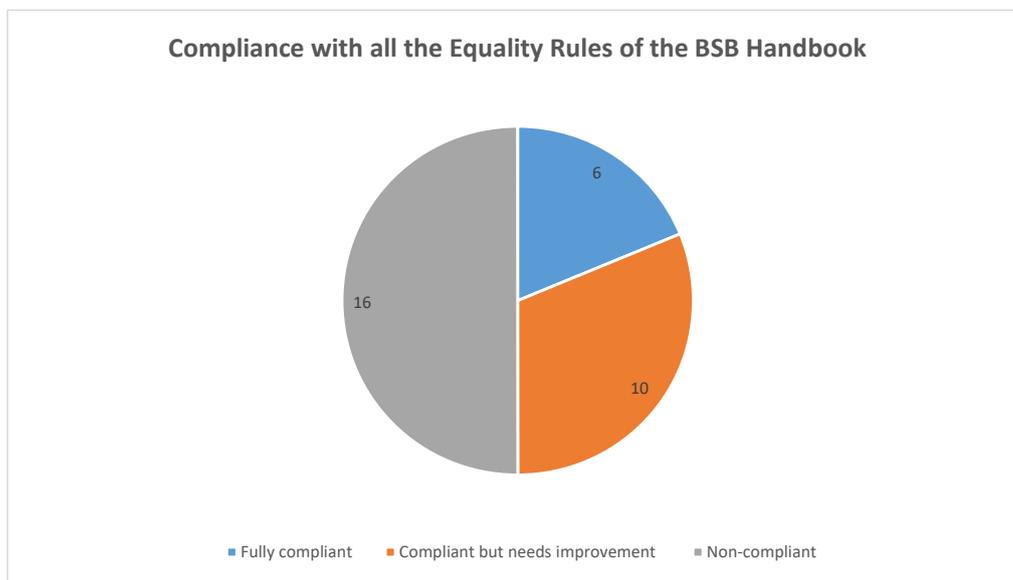
⁴ Bar Standards Board, Women at the Bar, pp30-31

⁵ Bar Standards Board, Women at the Bar, pp32-35

⁶ Bar Council, Momentum measures: creating a diverse profession, Summary of Findings, 2015

http://www.barcouncil.org.uk/media/378213/bar_council_momentum_measures_creating_a_diverse_profession_summary_report_july_2015.pdf p1

⁷ Bar Standards Board, Report on the 2013/14 Supervision Exercise on the Equality Rules of the BSB Handbook, <https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/monitoring-implementation-of-the-equality-rules> p.9



The follow up report of 2016 found that:

There is little evidence of widespread non-compliance with the requirement to have policies in place, and policies are generally rated positively. However, awareness of some policies is low, and the findings suggest that in many cases the implementation of the policies falls short of what might be expected. The findings also suggest that in some areas the existence of formal policies does not fully address the structural or attitudinal barriers faced by women barristers.⁸

Bar Council Guidance

The Bar Council has guidance on:

- career breaks⁹
- fair recruitment¹⁰
- family career breaks¹¹
- flexible working¹²
- parental leave¹³
- sexual harassment: information for Chambers¹⁴
- subconscious bias¹⁵

Hence, there are guidelines and that represent good intent and good practice but a barristers' chambers is not an employer: it is a building that hosts a number of self-employed individuals who cluster together for their individual and collective good: each set has its own character and guards its management privacy. The visibility of its working practices outside of its inner workings is low.

Issues of Concern in Practice?

Harassment – 2 in 5 female barristers surveyed by BSB in 2016 suffered harassment: a percentage indicating no visible change over the past 15 years. Allegations were not reported because of concern over impact on career, cultural attitude of chambers to harassment.¹⁶

⁸ Women at the Bar, p.57

⁹ http://www.barcouncil.org.uk/media/427426/career_breaks_advice_pack_march_2016.pdf

¹⁰ <http://www.barcouncil.org.uk/for-the-bar/professional-practice-and-ethics/equality-anddiversity-guidance/fair-recruitment-guide/>

¹¹ http://www.barcouncil.org.uk/media/404121/bar_council_tips_advice_and_resources_family_career_breaks_for_parents_and_careers_2016.pdf

¹² http://www.barcouncil.org.uk/media/485513/bar_council_flexible_working_guide_july_2016.pdf

¹³ http://www.barcouncil.org.uk/media/323036/bar_council_ed_guides_parental_leave_policies_2015.pdf

¹⁴ http://www.barcouncil.org.uk/media/409759/dealing_with_sexual_harassment_in_chambers_december_2015.pdf

¹⁵ http://www.barcouncil.org.uk/media/260986/subconscious_or_unconscious_bias_guidance_reviewed_2016.pdf



Locker room Banter - A Bar Council report from 2014 identified continuing “inappropriate banter” and recognised the need to change generational/social attitudes but acknowledged that is happening slowly¹⁷.

Bullying - Female barristers are significantly more likely than their male colleagues to report having experienced bullying, harassment or discrimination, both overall and within each practice area. Across all respondents, 22 per cent of women report personal experiences compared with nine per cent for men. Around a quarter of female barristers in the criminal, civil and international/EU/other practice areas report personal experiences of bullying, harassment or discrimination¹⁸.

Like many women entering my profession in the late 1980's, I suffered sexual harassment and didn't make a formal complaint: booked into a double hotel room when working out of London with my pupil supervisor without my knowledge or consent (I didn't enter), groping, propositions. Locker room banter in chambers and with clients as often as in the robing room: when chair space was limited in one conference a client offered me his knee to me to sit on and the only reaction was laughter within the room, including from my pupil supervisor. I'd like to think things have changed. But some attitudes take time and for older members of the Bar society has moved on quicker than their expectations of women have: shortly after being made a Bencher in 2011, I entered The Princes Room in Middle Temple and, dressed as I was dressed in a white shirt and black skirt, was asked by a rather elderly gentlemen when he might expect his tea. I had been mistaken for a member of staff.

Progression - Barriers to Advancement?

Monitoring of work allocation in chambers is low and/or lack of transparency about how this is done¹⁹ Bar Standard Board (BSB) Equality Rules²⁰ give detailed guidance on monitoring work allocation in particular to pupils, junior tenants and those returning from parental leave considering any patterns of earnings, quantity of work and sources of work. Chambers need to:

- Record whether work was marked for a particular barrister/pupil or allocated, who allocated to, and who allocated it.
- Identify disparities – are men earning more than women of same call, are specific cases being allocated to men/women

Nonetheless, The Women at the Bar Report cites internal discrimination from clerks or in the allocation of work more generally and unwillingness to report discrimination.²¹

Locker room chat: Most courts, such as Snaresbrook and Blackfriars, have communal robing rooms, but Southwark, the Old Bailey and Inner London (in Elephant and Castle) separate the sexes. Robing rooms are used most by criminal practitioners, who are in court more than civil law barristers, and who are required to wear formal court dress and to ‘robe up’. At Southwark, women advocates had two small rooms at opposite ends of a corridor, while the men had a much bigger central space, so if a male silk was defending alongside a female junior barrister, she might miss out on the discussions with the prosecution. Robing rooms offer a refuge from the public and clients and are often a place where a case is discussed frankly and freely and negotiations take place. Senior Circuit Judge HHJ Taylor at Southwark Crown Court intervened to remove the gender barrier: what was once the men-only premium space beside the courtroom is now unisex.

HHJ Taylor was interviewed by the Evening Standard in August 2017, when the intervention came to light²² and explained that she had three reasons for her decision,

¹⁶ Bar Standards Board, Women at the Bar, pp36-40

¹⁷ Bar Council, Snapshot: The Experience of Self-Employed Women at the Bar, 2014

[http://www.barcouncil.org.uk/media/379529/snapshot - the experience of self employed women at the bar.pdf](http://www.barcouncil.org.uk/media/379529/snapshot_-_the_experience_of_self-employed_women_at_the_bar.pdf), p.7

¹⁸ Interestingly Gender differences are much stronger at the self-employed Bar, where 21 per cent of women report personal experiences compared with seven per cent of men; at the employed bar the corresponding figures are 24 per cent and 21 per cent respectively.¹⁸

¹⁹ Bar Standards Board, Women at the Bar, pp12 - 15

²⁰ <https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-and-diversity-rules-of-the-bsb-handbook/>

²¹ Bar Standards Board, Women at the Bar, pp41



Firstly, the male robing room had better facilities including tables and chairs for working. It was unfair to the female barristers to be in cramped rooms. Secondly, there are now far more female barristers involved in fraud cases. Not being in the same robing room meant that they were sometimes excluded from conversations prior to Court which took place between the male barristers. Some said that as a result agreements were made before they were consulted. Thirdly, [it] reinforces that gender should play no part in the role or status of a barrister.

HHJ Taylor added that female colleagues had contacted her applauding the change, and no man had yet complained.

Flexible working – policies are in place in chambers for it to happen but some female barristers reported surprisingly that flexible/ part time working has a negative impact on work allocation and/or career progression. 2013 biennial survey [in response to flexible working]

“The only variables that show some significant correlation are gender and caring responsibilities, especially childcare. When considering whether or not the Bar is a family friendly profession in which to work women are more likely to ‘strongly disagree’ with the statement than men (25% compared with 14% of men). A similar difference is also apparent when considering whether it is ‘not’ difficult working part-time as a barrister.”²³

The Bar Council recently spoke out against HMCTS pilot plans to lengthen court room sittings by identifying that they would disproportionately impact upon parent barristers (especially women).²⁴ Lawyers across the profession joined the Bar Council, Law Society and Criminal Bar Association to oppose the plans, which involved "flexible sittings", starting at 8am at some courts and ending at 8pm at others.

The plans to extend court opening hours had been put forward by HMCTS to increase the rate at which cases are dealt with. But Acland-Hood announced on 21.9.17

"The strong views expressed reinforce the need for us to proceed on a clear evidence base."It's for that reason that ... we have agreed to delay the start of these pilots until we are satisfied that we have a robust, independent evaluation system in place; and until we have taken more time to engage and discuss the pilots, picking up on comments made on how they could be improved."

Andrew Langdon, QC, chairman of the Bar Council, welcomed the announcement.

"Whilst plans for flexible courts have not been dropped, it is encouraging to see HMCTS not only take on board the Bar Council's concerns about the plans, which include the impact they will have on barristers with child and other care responsibilities, but they also commit to ensuring robust evaluation measures are in place before proceeding with the pilot.

Why this reaction from the Bar when ‘flexibility’ was one of the reason cited by aspiring barrister entering the profession? Perhaps because, in reality, being self-employed means that saying ‘no’ to a brief is a luxury few can afford and those who have to say no, because they have to look after their child, will do so only because they have no option. Not everyone has a nanny or partner to take over child care outside of the working day.

The Barristers Working Lives survey found Part-time working is not prevalent, at only 13 per cent overall. *One in five female barristers works part-time, rising to 46 per cent of those with main responsibility for childcare.*²⁵

Maternity/parental leave - many female barristers report that taking maternity leave has a negative impact on work allocation, career progression and/or income.²⁶ Nearly half (48%) of all cases, respondents reported that

²² <https://www.standard.co.uk/lifestyle/london-life/secrets-of-the-locker-room-why-women-lawyers-fought-for-the-right-to-use-male-only-robing-areas-in-a3617206.html>

²³ Biennial survey, p.88

²⁴ The Bar Council, Plans to extend court room sittings a blow for women at the Bar, 28 March 2017 <http://www.barcouncil.org.uk/media-centre/news-and-press-releases/2017/march/plans-to-extend-court-room-sittings-a-blow-for-women-at-the-bar/>

²⁵ Biennial survey, p.14



they were treated less favourably because of their gender, in 12 per cent of cases it was linked to pregnancy/maternity...”²⁷

Baroness Hale was, unsurprisingly, already ahead of the curve on this in 2013 –

‘I was once foolish enough to say that the Bar was one of the most family unfriendly professions in the world. I was properly taken to task by a successful woman silk, who complained that I would put able young women off coming to the Bar by such accusations. Of course, it is possible to “have it all” if you have the sort of practice which pays so much for individual cases that you can afford to pick and choose between them, to live close to your work, to employ a nanny and other help in the house, to send the children away to boarding school and so on. It also helps to have a supportive partner. But that is not the life which I experienced at the common-law Bar in the 1970s and I do not believe that it is the life that many young women experience at the Bar these days. If it was there would not be such a steady rate of attrition. If the Bar were really serious about helping young women to stay in independent practice, it would have done more to support the project to set up a Bar nursery.’²⁸

Lady Justice Heather Hallett, a senior judge in the Court of Appeal, echoed the point about child care responsibilities impacting on women’s practice options in the talk she gave to The Middle Temple Women’s Forum in 2013

Both judges were on point. On 16 April 2013 The Bar Council, which represents barristers in England and Wales, launched the ‘Bar Nursery at Smithfield House’, a central London childcare facility in partnership with Smithfield House Children’s Nursery. It was intended to offer flexible childcare facilities near the Inns of Court, with special rates for all members of the Bar, as well as chambers staff and Bar Council employees with longer opening hours designed to help those whose practice involves extensive travel to appear in courts all over the country.

The initiative was welcomed by Maura McGowan QC, (then) Chairman of the Bar:

“The Bar Council is committed to supporting parents and ensuring that the profession retains its best people. Owing to the nature of work at the Bar, many parents find it exceptionally difficult to juggle childcare responsibilities with their ever-changing work schedule, particularly those barristers who regularly appear in court, which can mean travelling to different towns every day.

It is important that members of the profession are not discouraged from starting a family because of their work, which could have a detrimental effect particularly on the number of women choosing a career at the Bar, and could see talented practitioners leaving the self-employed Bar for a more stable working life in employed practice, or even another profession.”

With that in mind it was disappointing to learn from Smithfield on 2.10.17 that the partnership has now ceased

Retention at The Bar

Large numbers of women are leaving the profession.

The Bar Council Report of 2015 found that women have a lower propensity to move from Call to Practice and higher attrition rate once in practice²⁹. They reported that:

It remains the case that there is a significant reduction in numbers of women practising in the Bar between the Middle and Senior Junior bands (8 – 21 years Call). Furthermore, there is a similarly steep reduction between the Senior Junior and senior bands (from 40% to 23% in 2013, again more or less the same as

²⁶ Women at the Bar, pp23-29

²⁷ Biennial survey, p.49

²⁸ Lady Hale, Equality in Judiciary, p.12 <https://www.supremecourt.uk/docs/speech-130221.pdf>

²⁹ Bar Council, Momentum measures: creating a diverse profession, Summary of Findings, 2015 http://www.barcouncil.org.uk/media/378213/bar_council_momentum_measures_creating_a_diverse_profession_summary_report_july_2015.pdf, p1



reported in 2011). This gender profile results from a combination of increasing numbers of women entering the profession over the last 20 or more years, and high numbers of women who are leaving, perhaps to take career breaks, with few returning to the Bar once their career break is finished.³⁰

Women are more likely to leave the profession if they experienced discrimination or harassment, if they are BAME, or if they have primary caring responsibilities for children.³¹

The Barristers Working Lives Report found that *Female barristers are more likely to be single or divorced than their male counterparts, particularly those aged 45 and over (38% compared with 21% of men). Women with children are far more likely to take the main responsibility for childcare (57%, compared with 4% of male barristers), although there has been some progress since 2011 towards equal sharing of childcare.*³²

This is highly relevant to retention of women at the Bar as the Bar Council Report 2014 found the main reasons for women leaving were income (current and future), impact of criminal legal aid cuts, child caring responsibilities (mainly those aged 35-44), and an increase in expected pro bono work.³³

With more female barristers working in the publicly funded Bar (just 26% of women are not reliant at all on public funding compared with 42% of men) female barristers are being affected more by the reduction in public funding than men.³⁴

Note: the survey that informed these statistics was undertaken before the impact of legal aid cuts was truly felt by the public and legal aid practitioners: the gulf may have widened in the two years since the survey was undertaken.

Findings of the Women at the Bar Report 2016 were that in order to improve the retention of women at the Bar there is the need to:

- address and change elements of the culture of the Bar and legal profession
- improve compliance with and awareness of the Equality Rules, and
- provide more support, in particular around childcare responsibilities and flexible working.³⁵

Some Statistics

(Please see appendix : the figures below are an amalgamated summary and the detail from which they derive is in the appendix)

- 50:50 (male: female) split of those studying the BPTC and the grades achieved 2012 - 2014
- 50:50 (male: female) split of those Called to the Bar 2010/11 – 2014/15
- 50:50 (male: female) split of those attaining pupillage 2009/10-2013/14

The start of the gender divide:

- Self-employed barristers 2010-2014 - 32% female
- Employed barristers 2010 – 2014 – 46% female
- 5 years of Call 2010 – 2014 - 45% female
- **15+ years of Call 2015 - 29% female**

Silk

- Queen's Counsel awards 2016/17 – 27% female³⁶

³⁰ Biennial survey, p20

³¹ Women at the Bar, p5

³² Biennial survey 2013, p14

³³ Bar Council, Change of Status Report, January 2013 – December 2014,

http://www.barcouncil.org.uk/media/344668/barristers_changing_status_summary_report_jan_2013_to_dec_2014.pdf

³⁴ Biennial survey p82

³⁵ Women at the Bar, P5



The judiciary in 2015-16:

- Deputy District Judges (Mag)- 30% female (31)
- District Judge (Mag) - 33% female (44)
- Deputy District Judge (County) 36% female (231)
- District Judges (County) 35% female (430)
- Recorders - 19% female (203)
- Circuit Judges - 25% female (160)
- Deputy Masters, Deputy Registrars, Deputy Costs Judges and Deputy District Judge (PRFD) - 35% female (19)
- Masters, Registrars, Costs Judges and District Judges (Principal Registry of the Family Division) - 27% female (10)
- Judge Advocates, Deputy Judge Advocates - 10% female (1)
- High Court Judges- 20% female (22)
- Lords Justices of Appeal 20% female (8)
- Supreme court -1
- Heads of Division – 0

2017: at least we now have Baroness Hale and Lady Justice Black in the Supreme Court and Baroness Hale makes history as its first female President.

What is the story behind the numbers?

Progression at the Bar?

While the ratio of women to men at both pupillage and tenancy was 51% to 49%, men made up 87% of self-employed QCs.

The BSB Equality and Diversity Committee (2016) highlighted the rate of access and progression of women in the profession as a concern, with statistics indicating that currently only 13 per cent of Queen's Counsel (QC) are female (considerably lower than the proportion of women across the profession as a whole).

Additionally, statistics from recent QC appointments indicate that even though women applicants are more likely to be successful in the competition, the number of female applicants remain proportionately low. A 2016 report by The Bar Council highlighted that if current trends continue, the proportion of women QCs is unlikely to ever mirror the number of women entering the profession.³⁷

Helena Kennedy QC, Baroness of The Shaws wrote in 1992:

“Many of the problems women and others have faced in the legal profession are similar to those encountered in any occupation. The law is not the only profession in which people get jobs through having the right social connections, or knowing the right people. Nor is it the only activity in which style, appearance, demeanour and self-confidence play a large part in success. However, as well as the traditional legal and cultural handicaps, there are also structural problems within the profession itself. Women have to overcome the handicaps created by the already established tracks which divide the profession into elite and non-elite areas, and find themselves, as I did, more readily functioning in areas that are undeservedly less prestigious, such as family law, child-care and low-level crime”.³⁸

“As in other professions, there is a glass ceiling for women, which means that getting to the top floor involves a detour out through the window and up the drainpipe, rather than a direct route along the charted corridors of power”.³⁹

Too few female barristers applying for silk: why?

³⁷ Women at the Bar, P2

³⁸ Kennedy, H, Women and British Justice (1992) pp44-45

³⁹ Ibid, p58



This could cross refer back to the issues of financial security and child caring obligations (and now elder care) that are highlighted in the retention statistics as an issue of concern. It could reflect a lack of confidence. It could reflect a lack of encouragement. It could reflect the fact that woman take longer career breaks to have and rear children, or to undertake care tasks for family members, and that makes their work less visible to judges and with longer gaps between significant cases.

The BSB is aware of the silk gender imbalance and has sought to understand why

‘Women may face systemic disadvantage in silk applications because of their secondary school, university and area of practice.

Using multiple regression statistical analysis, the following are the key variables linked to Silk status.

First, whether or not this group of barristers studied at Oxbridge: 57 per cent of barristers who attended Oxbridge are QCs and a third (32%) have not applied compared with equivalent figures for other universities of 24 per cent and 64 per cent respectively.

Second: degree class is also a key factor correlated with both propensity to apply for Silk and success when applying... More than two thirds (70%) of senior practitioners based in chambers holding a first-class degree are QCs and only a fifth (22%) have not applied for Silk. This compares to 40 per cent of the 2:1 group being QCs and 23 per cent of those with 2:2s and below. These differences apply for all areas of practice at the ‘senior’ self-employed bar.

Third: Type of secondary schooling is also correlated with QC status. Four in ten (43%) of those who went to fee paying secondary schools are QCs and 44 per cent did not apply compared with 28 per cent of state school alumni being QCs and 63 per cent having not applied.

Looking at the compounding effects of these variables, three quarters (78%) of ‘senior practitioners’ in chambers, who went to fee paying secondary schools, Oxbridge and achieved first class degrees, are QCs (n=32).⁴⁰

This was in 2013 and the issue has not righted itself in the last 4 years

The body that oversees QC appointments commissioned research into why this might be. The research was undertaken by ‘The Work Foundation’ and the report by Zofia Bajorek, Ala’a Shehabi and Jenna Kerns, was published in September 2017 ⁴¹ Entitled ***‘Balancing the scales: A study into the under-application by women for appointment as Queen’s Counsel.’***

We learn from the foreword to the report that

‘Recent surveys by the Bar Standards Board (BSB) (2016) have explored the experience of women barristers in relation to the Equality Standards that were introduced to address gender inequality in the profession. Although surveys have found that there had been some improvements within the profession, institutional barriers were still widely experienced by women. The BSB Equality and Diversity Committee (2016) highlighted the rate of access and progression of women in the profession as a concern, with statistics indicating that currently only 13 per cent of Queen’s Counsel (QC) are female (considerably lower than the proportion of women across the profession as a whole). Additionally, statistics from recent QC appointments indicate that even though women applicants are more likely to be successful in the competition, the number of female applicants remain proportionately low. A report by ‘The Bar Council highlighted that if current trends continue, the proportion of women QCs is unlikely to ever mirror the number of women entering the profession.

The purpose of this study was to gain an in-depth understanding as to why this under-application of women exists, and what recommendations could be made as a response to mitigate it.

⁴⁰ Biennial survey, p.34

⁴¹ http://www.theworkfoundation.com/wp-content/uploads/2017/09/421_Balancing-the-scales.pdf



The study was focussed on two main questions:

1. Why are a far lower proportion of eligible women than eligible men applying for appointment as QC?
2. What options are open to the QCA and the professional bodies in response to this?

Russell Willman, chief executive of QC Appointments (QCA), was interviewed by Dan Bindman of *Legal Futures* on 25th September 2017⁴². He volunteered that the point of the research was to see if there were “unnecessary or improper” barriers preventing women potential women candidates for QC from applying that could be removed – looking at the likely pool of barristers between 15 and 25 years’ post-qualification. Parity with this pool would require nearer 30% of QCs being women, instead of fewer than 15% at present.

He highlighted an important issue arising from the statistics and application feedback: it appears that women were less likely to “take a punt” and apply unless they were “convinced they are appointable”. This was reflected in the fact that women who did apply had a higher success rate than their male equivalents. Mr Bindman records his hypothesis as to why this might be “*Women tend to be more risk averse than men, and unlike promotions in most fields becoming QC is a risk... You can get appointed to QC and somewhat to your horror the solicitors who were happy to instruct you as a junior don’t think you’re good value as a QC and won’t instruct you.*”

The Work Foundation survey supported this view identifying that one factor inhibiting women from applying included an aversion to taking risks with established careers.

The disparity in applications between men and women is a serious issue as the vast majority of the judiciary are drawn from the ranks of self-employed silks and so the composition of those who make the most important decisions for the members of the public is becoming more and more unbalanced and unrepresentative of the society it must serve.

The commissioning of a report into the situation is to be commended and the report is now available for discussion and reflection. A consultation paper will go out to the profession once the implications of the report have been digested.

In the meantime; read the report **Balancing the scales: A study into the under-application by women for appointment as Queen’s Counsel**, The Work Foundation’ and the report by Zofia Bajorek, Ala’a Shehabi and Jenna Kerns September 2017

http://www.theworkfoundation.com/wpcontent/uploads/2017/09/421_Balancing-the-scales.pdf

This recent research and its findings reflect previous efforts to redress the gender imbalance at upper levels of the profession which has an impact on applications to the judiciary.

The Bar Council Snapshot report in 2014 found:

Women who have successfully gone on to apply for Silk or Judicial appointment talked about the importance of receiving encouragement from their chambers, colleagues and clerks and that this gave them the confidence to apply. Some felt they were actively encouraged not to apply/take Silk and advised by their clerks that if they did their work would dry up. Others said they felt men in chambers were given much greater encouragement and support. Those that did apply found the process time consuming but far less daunting than they expected and welcomed improved transparency over the application process. They did however share their concerns over the requirements for referees, a particular issue for those with less court work, who have recently taken a career break, or who work flexibly. Some participants shared some negative experiences of the attitude of some male judges, specifically around allegations of women judges being appointed because of gender not merit. There was also some reference to judges’ training (residential course) not being very family friendly nor the requirement to relocate for some judicial roles, particularly when they had school age children.⁴³⁴⁴

⁴² <http://www.legalfutures.co.uk/latest-news/women-lawyers-risk-averse-applying-qc>

⁴³ Bar Council, Snapshot: The Experience of Self-Employed Women at the Bar, 2014

http://www.barcouncil.org.uk/media/379529/snapshot_-_the_experience_of_self-employed_women_at_the_bar.pdf, p8

⁴⁴ interestingly the same Bar Council biennial survey found that More women work at the employed Bar which does not have the same Silk-led career path that exists at the self-employed Bar⁴⁴



It appears that little has changed in 3 years and the question the Bar has to answer is for how much longer can this situation be tolerated.

The authors of the 'Balancing the scales' report made a number of positive suggestions amongst which I see no good reason not to embrace, and swiftly. They are:

Amplify female QC role models

The QCA, alongside other stakeholders, should amplify a pool of women QC role models from a range of backgrounds and develop a targeted outreach and marketing programme to drive an increase in applications from women.

Develop existing mentoring schemes

The QCA, providing assistance to the, relevant stakeholders, should promote, develop and help to evaluate existing mentoring schemes and networking opportunities for women.

The QCA to develop application tools and resources on its website

The QCA should allocate resources to improve the visibility and transparency of the application process on its website, with the aim to promote the QCA's drive to encourage a higher number of applications from women.

Systems change

The QCA to work with other stakeholders to increase the pool of women junior barristers in the pipeline to reach the senior levels to qualify for QC status.

The Bar Council are acutely aware of the problem as Sam Mercer, Head of Policy, Equality and Diversity told me. The Bar Council commissioned research into the issue and interviewed women barristers in London, Bristol, Manchester and Leeds over July, October and November 2014.

I recommend reading the report in full, called '***Snapshot, : The Experience of Self-Employed Women At The Bar***', but these are the key recommendations arising from it, and I quote (p 7)

Recommendations are based on what women participating in the research themselves suggested during the focus groups and in their responses to the questionnaire.

“The Bar needs to:

1. Encourage and facilitate mentoring of junior women by senior women - particularly around building a practice and establishing working relationships with clerks/practice managers. These mentoring relationships should focus on building junior women's confidence in themselves and their ability to control their practice and relationships with others in chambers.
2. Facilitate access to business advice/coaching on developing a sustainable practice better able to withstand and support career breaks and more flexible working associated with having a family.
3. Establish more senior and more visible female role models.
4. Promote women's marketing networks for barristers, particularly on the circuits and specifically focussed on developing relationships with professional clients.
5. Create support networks
 - (i) of working parents at the Bar as a source of advice and guidance around return to work, childcare, flexible working etc.; and
 - (ii) of women at the Bar for other women in the profession.
6. Extend the Bar Nursery to the circuits and explore what other direct and flexible childcare provision can be developed to support working parents at the Bar.
7. Encourage a better gender balance on key decision-making committees within chambers to ensure chambers empower women members in decision-making and do not develop policies that disadvantage women.”



The report concludes that ‘The Bar Council will now explore ways in which to put these recommendations into practice for women’.⁴⁵

And this is how they propose to do so: *Summary of Activity/Programmes*

<p>ACCESS</p>	<p>To widen access, particularly to those from under-represented groups and those from a lower socioeconomic background</p>	<ol style="list-style-type: none"> 1. Bar Placement Week (London, Leeds, Manchester, Liverpool, Bristol and Birmingham) work experience shadowing barristers/advocacy training for Year 12 & 13 (social mobility) 2. E-mentoring for Year 12 & 13; first year undergraduates (social mobility) 3. Pupillage Supervisor Network (promoting best practice in recruitment) 4. Mini Pupillage Hub (improving transparency in mini pupillage opportunities) 5. Careers advice events (and literature) via Career Days for school children and Law Fairs for undergraduates (targeting students from non-traditional backgrounds) 6. Pupillage Fair (Seminars e.g. career clinics for older candidates; candidates with disabilities etc.) 7. Sponsorship of Bar Mock Trials (Public Legal Education) working with 2000 state school students per annum. 8. Working with undergraduate law students *NEW for 2017
<p>RETENTION</p>	<p>To improve retention, particularly of women and those with a disability (including specifically mental health)</p>	<ol style="list-style-type: none"> 1. Research (on experience of under-represented groups at the Bar e.g. Snapshot; Momentum Measures; Change of Status Survey) 2. E&D Training and advisory services for individuals and chambers 3. Mentoring & Coaching* NEW for 2017 4. Wellbeing at the Bar programme 5. Events (e.g. Family Career Breaks)
<p>PROGRESSION</p>	<p>To support progression, of under-represented groups and particularly of women and ethnic minorities</p>	<ol style="list-style-type: none"> 1. Silk and Judicial mentoring scheme 2. Developing pre-selection judicial training for under-represented groups (and other positive action measures) *New for 2017 3. Information events on judicial careers, encouraging participation in Treasury Panels etc. targeting under-represented groups.

⁴⁵ http://www.barcouncil.org.uk/media/379529/snapshot_-_the_experience_of_self-employed_women_at_the_bar.pdf



Judicial Appointments

The lack of diversity in our senior judiciary is not acceptable. There are very few women in our senior judiciary and even fewer BAME (Black, Asian and minority ethnic) people and we, the public, lose out by the absence of that talent. Increased diversity in the judiciary will positively shape the development of the law, and that it is important that justice is not only done by, but can be seen to be done by, a judiciary which is more reflective of society today.

The Judicial Appointments Commission, the senior judiciary, and the legal professions have all expressed their commitment to a diverse judiciary, but despite this commitment, little has changed. While women, and to a lesser degree BAME people, are becoming District Judges and Tribunal Judges in higher numbers, in the more senior judiciary change has been slow to non-existent.

Quite simply, the pace of change is too slow in achieving a diverse judiciary. Change is not going to happen organically.

There are lots of reasons for low numbers of women in the ranks of senior judiciary: a start list:

- women not moving above Recorder level,
- the application process deters them,
- the fear of losing work and income
- the prevailing judicial culture is off putting (the lodgings, the circuits, the social strata the majority of the older (white male) members of the bench come from)
- equal merit provision lacks teeth,
- unconscious bias, subjective notion of “merit”, affinity bias,
- lack of accountability for appointments⁴⁶

We see a profession that has a glass ceiling between the ranks of lower and senior judiciary with a “prestige theory” that women are more likely to become judges in lower courts⁴⁷

Lady Hale [in relation to female judges in the Supreme Court] said this in 2015:

“It really bothers me that there are women, who know or ought to know that they are as good as the men around them, but who won’t apply for fear of being thought to be appointed just because they are a woman. We early women believed that we were as good as the men and would certainly not be put off in this way. I may well have been appointed because the powers that be realised the need for a woman. I am completely unembarrassed about that, because they were right, and I hope that I have justified their confidence in me. I don’t think that all the talk about the best women being deterred is a plot to put them off, but I am sure that they should not be deterred by talk such as this. We owe it to our sex, but also to the future of the law and the legal system, to step up to the plate.

...There will inevitably be six vacancies on the Supreme Court between September 2016 and December 2018. If we do not manage to achieve a (much) more diverse Court in the process of filling them we ought to be ashamed of ourselves.”⁴⁸

As I have said, Lady Black has now joined her. There is room for more

It is not simply Baroness Hale who has said this situation is not acceptable. It is not just an issue for women to talk about publicly.

⁴⁶ JUSTICE report

⁴⁸ Conference to mark the tenth anniversary of the Judicial Appointments Commission, University of Birmingham: Appointments to the Supreme Court Lady Hale, Deputy President of the UK Supreme Court 6 November 2015 <https://www.supremecourt.uk/docs/speech-151106.pdf>, pp15-16



The retiring President of the Supreme Court, Lord Neuberger, pointing out that a combination of recruitment from the Bar and a lack of strategy has resulted in a judiciary that is *'male, white, educated at public school, and from the upper middle and middle classes'*.

We need change and we need it now.

There is 'bed blocking' in the judiciary which means that shift up cannot happen until spaces develop. The retiring age for judges before 1995 was 75, it is now 70. Judges that are already 'in the system', as we have explored above, are overwhelmingly male, white and upper and middle class from Oxbridge.

The JAC 2017 Recorder competition made changes aimed at attracting a broader range of candidates

- s 9(4) Deputy High Court Judge appointments for a fixed 4-year term with applicants expected to apply for a full time High Court position: for practitioners without any previous judicial experience-aimed to broaden the field by looking for comparative experience
- s 9(1) 4-year term fast track process for Deputy High Court judges to full High court judge
- Direct entry to High Court judiciary (academics, in-house counsel, solicitors)
- Potential – when assessing merit also look at potential (training available)

In early 2018, the Judicial Appointments Commission expects to be asked to run a selection exercise to attract exceptionally high quality lawyers and legal academics from non-traditional backgrounds to sit in the High Court. We should welcome the Judicial Diversity Committee's 2017 High Court Support Programme⁴⁹– now extended to candidates without litigation experience – which provides mentoring and support to strengthen the applications of women, BAME and candidates from less advantaged backgrounds to the bench.

It offers

- **Work shadowing (Oct 2017-Jan 2018):** The opportunity to shadow a High Court judge for up to two days to give candidates an insight into the judge's work (in and out of court), ask questions about the role and decide whether a High Court appointment is really for them.
- **Workshop (Saturday 25 November 2017):** A one day workshop will offer guidance on how to prepare for the selection exercise. It will also provide tips and advice on presenting evidence against the Judicial Appointments Commission's qualities and abilities to suit the different stages of the selection process.
- The programme is intended to help candidates make a stronger application to the Deputy High Court Judge selection exercise; but once they have completed the programme, they will have to compete on merit with the other applicants for High Court appointment.

An unspoken issue is that vacancies exist but are taking longer to fill, or remain unfilled, because suitably qualified applicants have declined to apply in recent years. Quite frankly, senior barristers are no longer as attracted to the bench as a career path and some of those who have been appointed appear to wish they hadn't been.

The latest Judicial Attitudes Survey⁵⁰, conducted in the summer of 2016, found that 42% of all judges would leave if they had a viable alternative option, compared with 23% in the previous survey in 2014. More than a third (36%) of salaried judges said they may consider leaving the judiciary early over the next five years. This included 47% of high court judges, 41% of court of appeal judges and 40% of crown court judges.

Most judges felt valued by their colleagues on the bench but fewer than half (43%) felt appreciated by the public and virtually none felt esteemed by the media (3%) or by the government (2%). The survey was completed before the Daily Mail's notorious "Enemies of the People" headline after the high court's Brexit judgment last November.

⁴⁹ <https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/diversi>

⁵⁰ <https://www.judiciary.gov.uk/wp-content/uploads/2017/02/jas-2016-eng>



What we expect of judges and what their role entails is the subject of my second lecture in this series on 30th November **‘What do judges do in the Family Court?’**⁵¹

Read more at <https://www.gresham.ac.uk/lectures-and-events/what-do-judges-do-in-the-family-court/#kTDJ07E19AFV45JS.99>

Why does this matter?

I am, without apology, going to repeat and adopt the words of Baroness Hale delivered on 11th August 2017 in Belfast

Judges, Power and Accountability Constitutional Implications of Judicial Selection Constitutional Law Summer School⁵²

‘Constitutionally, what should be the characteristics of the judiciary in a democratic state? I suggest that the judiciary we want to achieve would possess four main virtues: it would be independent; it would be incorruptible; it would be of high quality; and it would be diverse.

Why should we want all this? There are several reasons. The first is democratic legitimacy. People should be able to feel that the courts of their country are ‘their’ courts, there to serve the whole community, rather than the interests of a narrow and privileged elite. They should not feel that one small section of society is dictating to the rest. These days, we cannot take the respect of the public for granted; it must be and be seen to be earned. Second is fairness and equality. The legal system has long embodied the values of fairness and of equality before the law. ‘The law is the true embodiment of everything that is excellent’, as the Lord Chancellor sang in *Iolanthe*, ‘and I, my Lords, embody the law’. The judges themselves should embody those values of fairness and equality to which the legal system aspires. Third is the effective exploitation of talent, coupled with effective opportunities for talented people to realise their potential. There are many able people in the law who for one reason or another do not see themselves as judges or who have not traditionally been seen by the system as judges but whose talents should be recognised and put to good use. 5 Finally, and perhaps more controversially, there is the quality of decision-making. I used to be rather sceptical about the idea that women brought something different to the business of judging. We are all lawyers and judges first; we have all sworn the judicial oath; and in most cases, ‘a wise old woman will reach the same decision as her wise old man’.³ But in fact we all bring something different to the business of judging. We bring our experiences of life, our values, our philosophies of judging, our inarticulate major premises, our unconscious biases. As the great Beverley McLachlin, the long-serving Chief Justice of Canada, has put it, ‘we lead women’s lives; we have no choice’. Judging should be informed as much by the experience of leading a woman’s life as it is by the experience of leading a man’s; as much by the experience of leading a black person’s life as it is by the experience of leading a white person’s life; as much by the experience of living a catholic life as it is by the experience of leading a protestant life; and so on. There is also a developing body of research which indicates that diverse collective bodies make better decisions than homogenous ones.

There are also clouds on the horizon. It is feared that the traditional high-flyers will be deterred from seeking judicial appointment because of the recent changes to the judicial pension scheme, stagnating judicial salaries and an ever-increasing workload. At the same time, it is feared that the enormous cost of qualifying, especially for the Bar, coupled with the diminution in public funded legal work will put off many able young people, especially perhaps from less advantaged backgrounds, from pursuing a legal career, so that there will be fewer high flyers in future’

⁵¹ Follow me through a virtual week as a Roving Judge. Learn what goes on behind the scenes: how the family court room works and who is needed to make it work. A judge’s approach to a case can fundamentally affect the way the parties perceive the trial as fair. What makes for a good judge? What training do they have? Do they properly reflect society’s makeup? Is diversity left at the red baize door and kept outside the corridors of power?

⁵² full speech <https://www.supremecourt.uk/docs/speech-170811.pdf>



Baroness Hale's words must not be allowed to fall on deaf ears. She is a passionate advocate for change. She is our loudest voice and she speaks on the behalf of many of us, myself included. We are not alone.

I would commend the work of JUSTICE to you. JUSTICE⁵³ is an all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom. Their vision is of fair, accessible and efficient legal processes, in which the individual's rights are protected, and which reflect the country's international reputation for upholding and promoting the rule of law. Justice set up a working party to report on judicial diversity (or rather the reasons for the lack of it).

Chaired by leading public law silk, Nathalie Lieven QC, the Judicial Diversity Working Party brought together leading legal authorities from academia, the civil service, the retired senior judiciary and the legal professions while also drawing from similar experiences of other sectors⁵⁴.

The Working Party considered appointments to the Circuit Bench, High Court and Court of Appeal in England & Wales, and to the UK Supreme Court. It focussed on gender and ethnic diversity, recognising their relationship to social mobility, though mindful of maximising inclusion for people with other protected characteristics such as LGBT people, and people with disabilities.

The Working Party report, *Increasing Judicial Diversity* was launched on 25 April 2017⁵⁵. It gave practical recommendations, exploring the structural barriers faced by women, people from visible ethnic minorities and those from less advantaged socio-economic backgrounds in reaching the bench. It also explained why diversity is a vital constitutional issue, calls for systemic changes to increase accountability and improve recruitment processes, and proposes more inclusive routes to the senior bench.

Recommendations include:

- Reframe “merit” to include the ability to contribute to a diverse judiciary
- Time limits of office as Recorder/Deputy High Court judge to avoid ‘bed blocking’
- Create a permanent senior selection committee
- Introduce targets which are transparent, monitored and reported to Justice Select Committee (does not go as far as quotas)
- Introduce appointable pools of talent
- Have external review of selection processes
- Create entry level judicial career path
- Training to allow career progression
- Flexible working

On 1 June, the Judicial Appointments Commission released its annual official statistics for 1.4.16 to 31.3.17.⁵⁶ These statistics provide some breakdown of the diversity of those who apply and are recommended for judicial appointment.⁵⁷

JUSTICE reviewed the statistics and discussed their implications in its illuminating report <https://justice.org.uk/diversity-justice-responds-latest-judicial-appointments-commission-statistics/>
They said:

“This year, for only the second time, the JAC ran a section 9(4) Deputy High Court Judge competition, open to those without prior judicial experience. It is particularly encouraging, as the JAC's 2017 Statistics

⁵³ <https://justice.org.uk/about-us/>

⁵⁴ The members of the Working Party were: Sir John Goldring, Sir Paul Jenkins, George Lubega, Professor Rosemary Hunter, Diane Burleigh OBE, Sa'ad Hossain QC, Karamjit Singh, Kate Cheetham, Ruchi Parekh, Stephen Frost, Geoffrey Robertson QC, Tim Smith, Andrea Coomber (Director of JUSTICE)

⁵⁵ **Increasing Judicial Diversity** <https://2bquk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2017/04/JUSTICE-Increasing-judicial-diversity-report-2017-web.pdf>

⁵⁶ <https://justice.org.uk/diversity-justice-responds-latest-judicial-appointments-commission-statistics/>

⁵⁷ The next annual statistics bulletin, for the financial year 2017–18, is due to be published on 7 June 2018. This will include additional information about social mobility.



Bulletin notes (p13), that the eligible pool for the section 9(4) competition is 43% women and 13% BAME people – close to the general population. Our Report suggested that selectors should be tapping into a far wider pool of talent than just the Bar. JUSTICE therefore particularly welcomes the appointment of a full-time academic and Government lawyer in the section 9(4) competition.

JUSTICE was also pleased to see, in recent months, announcements of women and BAME people being appointed to some high-profile judicial positions, such as Resident Judge in Southwark Crown Court⁵⁸ Senior District Judge and Deputy Senior District Judge.

We also commend the JAC for its apparent success in appointing *salaried* judges to sit as Deputy High Court Judges in the section 9(1) competition; 50% of those appointed fell within this category. Chapter 5 of our Report speaks to the creation of a genuine “upward” career path – including recruiting senior judges from the more diverse Tribunals system.

So, positive steps: but, JUSTICE the goes on to identify key points of concern from the 2016/7. They are right to do so.

JUSTICE analysed the statistics that were available of which they said reported thus:

- “Among legal exercises overall, women represented 42% (741) of applicants, but only 35% (49) of recommendations for appointment, 7 percentage points lower than at the application stage.” (Bulletin, p10)
- “In legal exercises, although 20% (347) applicants were BAME, just 6% (9) of recommended candidates for legal exercises were BAME, 14 percentage points lower than at the application stage.” (Bulletin, p10)
- “Solicitors represented 43% (746) of applicants to legal exercises, but just 10% (14) of recommended candidates, 33 percentage points lower than at the application stage.” (Bulletin, p10) This disparity worsens for senior exercises. In the Deputy High Court Judge (section 9(4)) round, for example, barrister-applicants were five times more likely to be recommended than solicitor-applicants.
- Women were less than a third of appointees in the Circuit judge competition. Just 5% of those recommended were BAME.
- Women comprised only 35% of recommendations for both section 9(1) and section 9(4) Deputy High Court Judges – the key feeder into the High Court bench.
- Only one woman was appointed in the highly constitutionally significant positions of Court of Appeal judge, Chancellor of the High Court and Master of the Rolls. No one applied, or was appointed, from a BAME background.

As JUSTICE Director Andrea Coomber rightly concludes

“There is not much to celebrate in these figures. Women, BAME people and solicitors continue to be appointed in far fewer numbers than white, male barristers, and no mention is made of the social mobility data now collected by the Judicial Appointments Commission,”

Ms Coomber was referring to the fact that the JAC has stated publicly that it has been collecting data on the educational background of applicants since October 2015 in order to monitor social mobility. However, neither those 18 months of data, nor any analysis, can be found in this year’s Official Statistics. Some insight can be gleaned from JUSTICE’s own internal analysis of the 21 people recently appointed as section 9(4) Deputy High Court Judges, of whom nearly 80% had an Oxbridge degree and 19/21 (90%) were Queen’s Counsel.

⁵⁸ note: That’s HHJ Deborah Taylor, appointed Presiding Judge of the Southwark who immediately acted to remove the gender divided robing room



The Value of Role Models and Networking

The Temple Women Forum

It is no accident that a women's forum was established in 2012 by Middle Temple. Master Dawn Oliver was the first female Treasurer of Middle Temple and Catherine Quinn the first female Under Treasurer appointed to any Inn. They were alert to concerns of women at the Bar: the difficulties experienced through outdated attitudes to women in some chambers and clerks' rooms, the challenges of combining practice with caring responsibilities, and of career expectations limited by (sometimes self-imposed) expectations of what could be aimed for and achieved by women at the Bar. In Master Oliver's own words, *'the intention was to provide support for women practitioners through meetings at which keynote speakers would report on their own ways of dealing with challenges of practice, and specialised panels – not only of women practitioners – would discuss their experiences and give advice'*. What was begun by Middle Temple has been embraced by its sister Inns. It is now The Temple Women's Forum and has continued to evolve by looking at the serious issue of retention of women at the Bar and their under-representation in the middle to upper reaches of the Bar, in Silk and the Judiciary. The Forum has performed an important role in giving a voice to women at all levels of the profession. The Rt. Hon Lady Justice Heather Hallett has spoken for The Forum about the difficulties in the early part of her career, the lack of female role models at the time as well as the both positive and rewarding impact that senior female barristers can have by mentoring those more junior to themselves. The Forum has hosted an event aptly called 'Backroom to Boardroom' intended to cut across professional sectors and to encourage female participation in the boardroom. Subsequent evenings have brought together speaker and panel members such as The Rt. Hon Lord Sumption, Master Paul Coleridge, Lady Justice Black and the Head of Investment Office, Courts.

The Rt. Hon Baroness Hale has also spoken at The Women's Forum and talked passionately about the seemingly fluid transition of male practitioners to the Supreme Court in comparison to herself being the only female Justice of the Supreme Court for over 10 years despite several appointments made during that time. Other Forum events have addressed diverse topics such as career paths outside the Bar, work/life balance, silk applications and a 'Survivor's Guide to Staying at the Bar'. 'A Helping Hand: An Experts' Guide to Developing Careers' where the audience heard from a panel of leading experts on accountancy, application coaching, career management and development. The Forum holds annual cross-profession networking garden parties which saw the forum welcoming self-employed and employed barristers, solicitors, judges and legal academics.

The Association of Women Barristers is a powerful voice for change and challenge
<https://www.womenbarristers.com>

The Association of Women Barristers (AWB) was founded in 1991 to monitor and represent the interests of women at the English Bar. Its home page sets out why it came into being and what its aspirations are for its members

'(since 1991) 'The landscape of the Bar has changed significantly. However, in many more significant ways little has really changed for women at the Bar although misleading statistics indicate that there have been minor, cosmetic, advances which lull the unwary into a false sense of security: men and women are now obtaining pupillages in almost 50:50 parity – women slightly ahead in most years; success in obtaining tenancies is almost as good for women. However, the retention rate after 5 years, or, worse, after 10, is an entirely different story. It is still a huge obstacle to success for women in general at the Bar whom the AWB seeks particularly to represent, monitor conditions for and support generally (disregarding the relatively small number of star performers who are honourable exceptions and blaze their own trails entirely on their own). The identifiable problems we try to keep under review include: return to Chambers after maternity leave or other career break which remains a significant hurdle to clear for many; the concentration of women barristers in crime and family law which means they are disproportionately vulnerable to public funding cuts; statistics on judicial appointments which show a steadily rising percentage of women's participation but which is largely confined to the lower judiciary; the representation of women in the annual silks list from which the higher judiciary come, which has (it is true) increased since silk appointments were resumed, nevertheless mask the fact that there is still only one woman in the Supreme Court (our former President, Baroness Hale of Richmond) and that there is still only a small select group of women Lords Justice in the Court of Appeal.'



The AWB exists to offer mentoring, to share experiences of women who have stayed at the Bar ‘*through thick and thin*’, to provide guidance, support, information, workshops, companionship on social occasions, and to keep a watching brief over events that affect women at the self-employed and employed Bars. It has just announced that Heather Hallett L.J will be its new President. She will be a passionate and powerful voice for the society and its members

Role Models

Bertha Cave who, when her application to Gray’s Inn was refused, sought (unsuccessfully) to appeal that decision; and **Gwyneth Bebb**, whose application to be admitted to the Law Society ended up in the Court of Appeal. ‘In point of intelligence and education and competency’, the Court of Appeal acknowledged that Miss Bebb was ‘probably, far better than’ many male candidates but, because she was a woman, in 1913 she could not be admitted to the Law Society (*Bebb v The Law Society* [1914] 1 Ch 286).

Dame Rose Heilbron DBE QC (19 August 1914 – 8 December 2005) was an outstanding English barrister of the post-war period in the United Kingdom. Her career included many "firsts" for a woman - she became one of the first two women to gain a first class honours degree in law from Liverpool University, in 1935. She was awarded the Lord Justice Holker scholarship at Gray's Inn in 1936, and she became one of only two women to hold a master of laws degree in 1937 she was the first woman to win a scholarship to Gray's Inn, one of the first two women to be appointed King's Counsel in England, the first woman to lead in a murder case, the first woman Recorder, the first woman judge to sit at the Old Bailey, and the first woman Treasurer of Gray's Inn. She was also the second woman to be appointed a High Court judge, after Elizabeth Lane. In 1975, the Home Secretary, Roy Jenkins, appointed Heilbron to chair a committee to consider reform of rape laws. The committee's subsequent report recommended that the identity of rape complainants should be kept secret, and that the defence should be limited in its ability to cross-examine the complainant about their sexual history in an effort to attack their character. She retired from judicial office in 1988.

Lady Justice Hallett DBE: The RT Hon Dame Heather Hallett, Vice President of the Criminal Division of the Court of Appeal, Dame Hallett was called to the Bar in 1972 and became a QC in 1989. She became a Bencher of Inner Temple in 1993 and was Treasurer at Inner Temple in 2011. In 1998 she became the first woman Chair of the Bar Council and in 2005 she was appointed a Lady Justice of the Court of Appeal. She was appointed Vice President of the Court of Appeal (Criminal Division) in 2013. Over the years, Lady Justice Hallett has called for greater representation of women within the judiciary and has spoken of the discrimination she encountered in robing rooms in her early career. She is now President of the Association of Women Barristers and has been a strong supporter of the Temple Women’s Forum

Helena Ann Kennedy QC, Baroness Kennedy of The Shaws, called 1972, silk 1991: barrister, broadcaster, and Labour member of the House of Lords. She is a Bencher of Gray's Inn and a Member of the House of Lords, speaking on issues of human rights and civil liberties and the implications of Brexit. Baroness Kennedy is a former chair of the Human Genetics Commission, which advises Her Majesty's Government on ethical, social, and legal issues arising from developments in genetic science. Lady Kennedy was elected principal of Mansfield College, Oxford in July 2010 (in which office she has served since September 2011. President of the Board the Governors of the School of Oriental and African Studies (SOAS)^[4] President, Women of the Year Lunch (2010–2015)^[2] Chair, JUSTICE Helena Kennedy practises predominantly in the criminal law, undertaking leading work of all kinds. She also undertakes judicial review, public inquiries and sex discrimination work. She has acted in many of the prominent cases of the last decade including the Brighton Bombing Trial, Guildford Four Appeal, the bombing of the Israeli Embassy, the abduction of Baby Abbie Humphries and a number of key domestic violence cases. She is Vice-President of the Haldane Society, Vice-President of the Association of Women Barristers and a Patron of Liberty. She chaired the Commission of Inquiry into Violence in Penal Institutions for Young People for the Howard League. The Commission's report *banged Up, Beaten Up, Cutting Up* was published in 1995. She chaired the Commission of Inquiry into the health, environmental and safety aspects of the Atomic Weapons Establishment at Aldermaston for Reading Borough Council, the findings published in the report *Secrecy Versus Safety* 1994. In 2004/5, she was Chair of the Inquiry into Sudden Infant Death for the Royal Colleges of Pathologists and of Paediatrics, producing a protocol for the investigation of such deaths. She is an Honorary Fellow of the Institute of Advanced Legal Studies and a Fellow of the City and Guilds of London



Institute. She is a member of the Foreign Policy Centre's Advisory Council and was the UK member of the International Bar Association's Task Force on Terrorism.

HHJ Anuja Ravindra Dhir QC: In an interview with The Guardian Damien Gayle records Dhir as recounting how, when she said she wanted to study at university, her teacher told her to “aim a little lower” and “try hairdressing instead”. Dhir ignored her teacher’s hairdressing remarks and went on to study English and Scots law at Dundee University. She was called to the bar in 1989, took silk in 2010 and in 2012 became a circuit judge at Woolwich Crown Court. She now sits on the Old Bailey benches, and is both the youngest (age 49) and the first non-white person to do so.

Baroness Brenda Hale On appointment to the Lords, she created a coat of arms bearing the motto *Omnia Feminae Aequissimae*, meaning “*women are equal to everything*”.

Born in Yorkshire in 1945, she went to a state school, Richmond high school for girls, and then to Girton College, Cambridge, where she read law and graduated top of her class. Hale’s career began in academia when she joined the University of Manchester law faculty as a junior lecturer. While teaching – and working in a pub – she studied for the bar exams, winning the top results for her year in the bar finals. She was also the first woman and youngest person to be appointed to the Law Commission. In 1989, she was appointed Queen’s Counsel and in 1994 she became a high court judge, the first to have made her career as an academic and public servant rather than as a practicing barrister. In 1999, she became the second woman to be appointed to the court of appeal; Dame Elizabeth Butler-Sloss was the first. Hale also became the first female law lord. In June 2013, she was appointed deputy president of the Supreme Court. Lady Hale is a longstanding champion of diversity in the judiciary. Hale has criticized the inbuilt bias in choosing judges, and the dependence on “soundings” from judges, as producing a judiciary that is “*not only mainly male, overwhelmingly white, but also largely the product of a limited range of educational institutions and social backgrounds*”. She has previously said the court should be ashamed if it does not improve its record on the issue. She will take up her role as President of the Supreme Court on 2 October 2017 when she will be sworn in as president.

She said:

“It is a great honour and a challenge to be appointed to succeed Lord Neuberger. I look forward to building upon his pioneering achievements, including developing closer links with each part of the United Kingdom, for example by sitting outside London, and improving the ways in which we communicate our work to the public.

“Recent high-profile cases mean that more people than ever before have heard of the Supreme Court, and we hope that this will help to create a broader understanding of how the judiciary serves society.”

There are many other women in the law to celebrate **The First 100 Years**⁵⁹ is a video history project documenting the journey of women in the legal profession, from 1919 to present day supported by the Law Society and the Bar Council. It charts the journey of women in law since 1919 to celebrate, inform and inspire future generation of women in the profession. In 2019, the project will mark the centenary of the Sex Disqualification (Removal) Act 1919 which paved the way for women to become lawyers for the first time. Work is now under way to create a digital museum made up of 100 video stories which will be donated to the British Library in 2019.

Closing Remarks

I started off writing this lecture with the goal of celebrating the significance of women at the Bar. I have found the process of writing it depressing.

I have thrived on the challenge of the Bar and am passionate about the work I do. I joined the Bar to undertake legal aid work and to act for clients who represent the most vulnerable and needy in our society. I never intended to practice in Family Law. I considered it to be a subject that was pushed towards women, pigeon

⁵⁹ <https://first100years.org.uk/>



holing them, and as a result I studiously avoided taking any options in it at university or Bar School. I sought a civil pupillage and was desperate to practice in employment law. I joined Took's Court with an intention of developing a civil practice. I and my colleagues set up free advice centres for strikers' seafarers, we went to marches as Independent Observers, and we campaigned and allied politics with our way of practicing. It was a radical set for divided and divisive political and social times. So how is it that some 30 years later I sit as a family judge and practice as a silk at the Family Division?

Two reasons: financial necessity and finding my vocation. As a young barrister, I could not afford the luxury of choice over what work I did. I had to adapt or leave the Bar and I simply wasn't prepared to walk away from a profession and people that inspired. I couldn't stay at the Bar waiting for an income from a civil practice to grow: so (before legal aid cuts) I started to do domestic violence injunctions. The women I acted for were rarely at court alone, a child would normally be entangled in their arms or clinging to their legs. The more injunctions I did the more I wondered about the lives the children led. And so I began my exploration of child protection work. It gripped me. Public law child protection cases became my choice of work. Civil was left behind without reservation. I had found my niche. My practice is wide ranging and covers suspicious baby deaths, exploring emerging science and medicine to uncover benign causes of injury mimicking physical abuse, sexual abuse, radicalism, factitious induced illness, the rights of the learning disabled and those with mental illness to be a parent, the right of a child to grow up free of abuse. It is a demanding, draining but absorbing world and one I would never have contemplated making a career in.

The set I now practice from is a specialist family set. I have a male head of chambers and a male senior clerk. That's standard. We have 12 male silks and I am one of 4 women silks. We have 27 male juniors and 32 female. Family is the only practice area where women outnumber men, with 61 per cent of family barristers being female.⁶⁰

Chambers has sent 5 silks (1 woman) to the Family Division and one thence to the Court of Appeal (male). We are an overwhelmingly white set. That was not the case in my two previous chambers (Took's Court: HoC Michael Mansfield QC 1987-2002: Garden Court Chambers: HoC Owen Davies QC 2002-2010) which were avowedly and proudly progressive common law sets. When I go to court I am as often leading men as women and am against women silks just as much as men.

The Family Division has a male President (Sir James Munby), and of the 17 High Court Family Division Judges, 5 are women. The Family Division has produced 7 court of appeal judges of which 2 are women (Dame Julia Makur is Senior Presiding Judge) and the third, Lady Black, has now been elevated to the Supreme Court.

Of course, being a woman isn't a guarantee of being a good judge; they are as excellent, good, indifferent or poor as their male brethren. I do not temper my manner dependent on what gender the judge is but I may have to do so because of the particular personality traits: there are some judges who you simply do not want to have your case in front of.

The world of family law I operate in is, perhaps, the most welcoming to women. Other disciplines have reputations for diversity that are not as promising: high finance, international commercial / chancery work being one such field (allegedly). I would welcome statistics in terms of entry to the profession, progression within it and retention rates broken down by disciplines (and maybe even chambers) to give greater transparency. Without it we are dependent on anecdote for information: not a reliable way to judge and offer suggestions for improvement.

I strongly believe that it is the responsibility of those who have climbed the social and professional ladder not knock away the rungs but to lean down to offer a hand for others to hold as they try and climb up.

We should start this process for young women and BAME students while their mind is still open to future possibilities they may not have contemplated. We should visit state schools and talk about career options. We should foster close links with academies. Courts could offer 'open days' (some do). The judicial marshalling scheme is not as known about as much as it could be and it could evolve to include young barristers. We should offer 'mini pupillages' and fund them. We should link up with university law departments and go and speak

⁶⁰ Biennial survey 2013, p10



about the work we do and why. When we attract the brightest and most able pupils into our profession we should understand that mentoring for career progression and silk begins on day 1. When women disappear from the radar because of child care responsibilities we should acknowledge it is happening, recognise it as the loss of intellect and potential it is and think of creative ways to attract parents back. Judges could offer mentoring opportunities.

Being a mentor is a responsibility as well as a privilege. It is important to see positive role models of women at the Bar and at the bench. Some to aspire to, some to emulate (others to learn from and not to repeat their mistakes).

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Professor Jo Delahunty QC

4 Paper Buildings

NEXT LECTURE

30th November Barnard's Inn 6 pm 'What do judges do in the Family Court?'

Follow me through a virtual week as a Roving Judge. Learn what goes on behind the scenes: how the family court room works and who is needed to make it work.

A judge's approach to a case can fundamentally affect the way the parties perceive the trial as fair. What makes for a good judge? What training do they have? Do they properly reflect society's makeup? Is diversity left at the red baize door and kept outside the corridors of power?

Read more at <https://www.gresham.ac.uk/lectures-and-events/what-do-judges-do-in-the-family-court#kTDJ07EI9AFV45JS.99>

<https://www.gresham.ac.uk/professors-and-speakers/professor-jo-delahunty-qc/>

Jo Delahunty has been appointed Gresham Professor of Law since the summer of 2016. Her second series of lectures for the 2017/18 Academic Year is called Transparency in the Family Justice System.

See Professor Delahunty's previous lecture series' 2016/17 When Worlds Collide: The Family and the Law

All of Professor Delahunty's past Gresham lectures can be accessed [here](#).