Women at the Bar in 2020: A Sticky Floor and Glass Ceiling?

Widening the Debate: Where is the Bar in terms of Ethnicity, Sexuality, Disability and Social Mobility?

Professor Jo Delahunty QC
THE BAR
• pupillage and tenancy was 51%
• 5 years call women comprised 45% of the self-employed Bar
• 5 years + call this had dived to 29 %.
• Silk : 13%.

THE JUDICIARY
• 35% lower ranking judicial posts (such as District Judges, Deputy District Judges),
• 25% at County Court level ,
• 20% at High Court and Court of Appeal ,
• no female Heads of Division.
• 2 of 12 Supreme Court Judges
A short trip back to 2017 …
What have we achieved 2 years on?

Chart 1: Gender at the Bar (%)

<table>
<thead>
<tr>
<th></th>
<th>Pupil</th>
<th>Non-QC</th>
<th>QC</th>
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<tbody>
<tr>
<td>Female</td>
<td>50.4%</td>
<td>39.6%</td>
<td>15.8%</td>
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<tr>
<td>Male</td>
<td>49.6%</td>
<td>59.8%</td>
<td>83.8%</td>
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<td>Prefer not to say</td>
<td>0.0%</td>
<td>0.5%</td>
<td>0.5%</td>
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<tr>
<td>No information</td>
<td>0.0%</td>
<td>0.1%</td>
<td>0.0%</td>
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My bags are packed.
The Western Circuit Women’s Forum

- 2/3 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 many cited the difficulty of balancing work and family life.
• Of those that provided information on school attended, around 33% attended an independent school in the UK.

• compared to approximately 7% of school children in England at any age, and 10.0% of UK domiciled young full-time first degree entrants in the UK in 2016/17.
Applicants to the Bar: Ethnicity

- The proportion of pupils from BAME backgrounds: **16.3%**
- BAME barristers at the Bar **13%**, 
- BAME QCs **7.8%**.

Same trend in Dec 2017 compared to Dec 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.
Applicants to the Bar: Gender and Sexual Orientation

- only 43% provided at least some information

- 7.9% of pupils, 6.6% of non-QCs, and 4.3% 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 LGB 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.

- % don’t necessarily reflect those who are ‘out’ at the Bar
Applicants to the Bar: Disability

• There is an underrepresentation of disabled practitioners at the Bar.

• **2.8%** of the Bar had declared a disability as of December 2018.

• When excluding those that had not provided information, **5.9% of the Bar had a declared disability**:

• in comparison, estimated that around **12.4% of the employed working age population (those aged 16-64)**
The judiciary: look not just at the numbers but the distribution

- 46% of tribunal judges were female
- 29% of court judges were female
- 11% of tribunal judges were BAME
- 7% of court judges were BAME
- 2/3 of tribunal judges were from non-barrister backgrounds
- 1/3 of court judges were from non-barrister backgrounds
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
Attitudes and Attrition Factors

The Association for Women barrister’s 2019 report ‘In the Age of ‘Us Too’?’

- Harassment and bullying;
- Parenthood
- Pay
- Culture
“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 am so sick of our time being treated as totally worthless. To xxxx 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)
“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?

‘I have recently been in an 11 handed fraud in Birmingham – 18 counsel, only one woman,
9 handed fraud at Southwark – 15 counsel, 1 woman,
3 handed murder in Cardiff – 8 counsel, no women,
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.”
“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?

There is a crisis.

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.

“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.”
HOWEVER: whilst these attrition factors explain why we haemorrhage senior juniors: they don’t explain why those that stay and take silk have less visibility at the higher levels of practice than men.

Mikolaj Barczentewicz’s statistics:
Only 8 of the 48 barristers who have most frequently addressed Britain’s highest court since its inception 10 years ago were women.
Only 2 of the top 10 were women.
“The near absence of women silks will be no surprise to anyone who appears in the Supreme Court […] “Men therefore appear in greater numbers […] 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.” (Karon Monagan QC)
Hale at the Bar Conference: “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.”

It’s not just numbers but their distribution that matters. Although tribunals were taken out of the equation, 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.

**Why does that matter?**
Because those who make the most significant decisions that affect the way we govern our relationships in society should reflect the society they serve...

Visibility matters
Being female at the Bar: what’s being done to improve the slow pace of change?

Quotas

- Judicial parity by quotas? Arguments both for and against the use of them.

**FOR**

- A way of ripping doors open and letting people in.
- Creates and anchors institutional change.
- Not everyone comes from an equal starting position – there is not currently equal opportunity and it will not happen any time soon therefore there is the need for a catalyst.

**AGAINST**

- Heavy-handed?
- Suggests to minorities they are not fully autonomous and able members of society?
- Risks judges being labelled as ‘quota judges.’
- Undermines public confidence in the judiciary being appointed on merits.
- Judges should be the best available for appointment by reference to criteria which are objective and internationally recognised?
Leslie Thomas QC

“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.”
Being female at the Bar: what’s being done to improve the slow pace of change?

Baroness Hale:

“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.”
I didn’t retire, I resigned, says ex-Lady Justice Gloster

Dame Elizabeth Gloster has had an extraordinary legal career since she was called to the bar in 1971. She established a stellar commercial and chancery practice and took silk in 1989, aged 39, becoming the fortieth woman QC. In 2004, the third time she was offered a post, she took up an appointment as a High Court judge, becoming the first woman to be appointed judge in the commercial court and then the first woman to lead it.
Being female at the Bar: what’s being done to improve the slow pace of change?

- The Judicial Diversity Committee
- Judicial Work Shadowing Scheme
- Pre-Application Judicial Education Programme

Baroness Butler-Sloss

Lady Justice Black
Being female at the Bar: what of lack of advancement in practice?

- **Be ambitious:** apply for scholarships! Keble: APPLY!!

- **Be mentored:** mentoring is a moral and professional obligation if we really mean to make changes at the Bar!

- **Be role models:** lead from the top by example; ensure an acknowledgment of bias; raise awareness; affect recruitment and selection processes; support women in the workplace etc.

- **Men should not be excluded from this debate:**

  Law Society’s ‘Male Champions for Change: Toolkit’
Being female at the Bar: what of lack of advancement in practice?

Attrition issues

Be prepared to report bullying and abuse:

- International Bar Association’s May 2019 report ‘Us too? Bullying and Sexual Harassment in the Legal Profession’ conducted the largest ever survey on bullying and sexual harassment in legal profession including data from 6,980 respondents from 135 counties.

- The statistics indicated bullying was rife in workplace (one in two female respondents and one in three male respondents) and sexual harassment common...

- 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.

- The Bar Council: SPO www.spot.com
Being female at the Bar: what of lack of advancement in practice?

Why is this needed?

Richard Ian Miles, in October 2019 was suspended by the 5 member Bar disciplinary tribunal panel for merely 10 months after making gross “misogynistic” comments on a private group called ‘London floaters do as you likely’ targeted to one woman. Comments included:

“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 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…. ”
Western Circuit Women’s Forum’s best practice policy for Chambers to adopt: ‘Back to the Bar: Best Practice Guide Retention and Progression After Parental Leave’.

• 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
BUT DIVERSITY IS NOT JUST ABOUT GENDER!
In 2017, Marc Mason and Dr Stephen Vaughan at UCL, ‘Sexuality at the Bar: An Empirical Exploration into the Experiences of LGBT+ Barristers in England & Wales’

- 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.

- 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.
Being LGBT at the Bar

- Discrimination at Inns of Courts?
- Discrimination in Chambers?
- Raggi Kotak: “a minefield of micro-aggressions.”
- Effect on mobility within the profession?

What can be or is being done?

- BLAGG
- FREEBAR

Middle Temple’s LGBTQ+ Forum
Simon Rowbotham’s work: lead by example.
In an interview with Chamber’s Student,

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.”

“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.”
What can be or is being done?

• **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.

• **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.
Social mobility Advocates : I Am The Bar

The times they are a changing....

Because they MUST
I am the Bar: they are it’s future

James Keels

1. Tell us about your background and why you decided to become a barrister.

As a result of some bad luck, from the age of 13 until I want to voluntarily, I was brought up in a kind of poverty. For a week or so we had been effectively saved in the council flat we had to move to. Furniture was provided by the Church and our gas and electricity was paid for by another family. In the last two days before my father’s return he had pressure there would be no money to pay the electricity and heating. I clearly remember standing in the cold. At that time I was aware of poverty, feeling my life was not of value. However, I still had high educational ideals and went on to study A-levels. I still never forget the story of my first exams, which terminated in an offer to study Law at Kings. Unfortunately, my father, whose health deteriorated suddenly when we were doing my A-levels, died during that year at university. It was a difficult time for me as it was so cold and hard to support my mother. However, we survived and graduated by the time of the first half of the summer term, which was the only time I had the chance to do my A-levels. I realized that I had a real talent and decided to do the Bar Exams in 1968, 1999, which is the only time I have the chance to do the Bar.

I have been very fortunate that I have enjoyed a very successful career at the Central Bar. I have always tried to fight for the poor, the weak and the vulnerable. I hope I have given some sort of service to others.

2. Did you face any obstacles during your journey to becoming a barrister and how did you overcome them?

Yes. Many of them persisted since becoming a barrister.

I often felt that many financial problems I had faced were difficult to overcome. It is difficult to start and seem to be a problem in my background in the professional world. I have always been involved in the Central Bar, but I have never been involved in the Professional Bar. A barrister's life is usually very glamorous and glamorous.
The Winds of Change?

DIVERSITY MATTERS    VISIBILITY MATTERS    VOICES MATTER

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.
Through our work, we allow aspiring barristers and solicitors to discover the legal profession in a way they may not otherwise be able to. We are passionate about improving social mobility and diversity in a field that has historically been limited to a few.
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 just say you agree. Show you agree

Deeds not just words

Now