

## SUMMARY OF RECENT RESEARCH ON WOMEN BARRISTERS

### INTRODUCTION

1. This note summarises the following research relating to gender equality and the experiences of women barristers at the Bar of England and Wales:

#### The Bar Standards Board

- [“Women at the Bar”](#) (2016)
- [“Women at the Bar: Research exploring solutions to promote gender equality”](#) (May 2018)
- [“Bullying, Discrimination and Harassment at the Bar”](#) (October 2020; carried out by YouGov for the BSB)
- [“Income at the Bar – by Gender and Ethnicity”](#) (November 2020)
- [“Diversity at the Bar”](#) (February 2021)
- [“Trends in retention and demographics at the Bar: 1990-2020”](#) (July 2021)

#### The Bar Council

- [“Momentum Measures: Creating a diverse profession”](#) (June 2015)
- [“Snapshot: The Experience of Self-Employed Women at the Bar”](#) (June 2015)
- [Gender Pay Gap Table](#) (November 2020)
- ["Bar Council Response to the Criminal Legal Aid Review Call for Evidence"](#) (May 2021)
- [“Barrister earnings data by sex & practice area - 20 year trends report”](#) (September 2021)

#### The Work Foundation

- [“Balancing the scales – A study into the under-application by women for appointment as Queen’s Counsel”](#) (September 2017)

#### The Western Circuit Women’s Forum

- [“Back to the Bar: a survey of obstacles, aids and recommendations for parents returning to the Bar”](#) (2017)
- [“Back to the Bar Update: The Impact of Covid-19. Consider the Carers”](#) (May 2020)

#### Hanretty & Vaughan

- [“Patronising Lawyers? Homophily and Same-Sex Litigation Teams before the UK Supreme Court”](#) [2017] Public Law 426

#### Farore Law

- [“The slow progression of women in the professional spheres”](#) (May 2019)

#### The Lawyer magazine

- [“The long read: How gendered instructions at the employment Bar are scuppering female barristers’ ambitions for silk”](#) (Veyrat, Mehta & Griffiths, July 2019)

#### The Association of Women Barristers and City Law School

- [“In the Age of “Us Too?”: Moving Towards a Zero-Tolerance Attitude to Harassment and Bullying at the Bar: A Report”](#) (Lynne Townley and HHJ Kaly Kaul QC, 30 September 2019)

The Chancery Bar Association

- [“Voices of Women at the Chancery Bar”](#) (2020)

HHJ Emma Nott

- “Gender at the Bar and fair access to work” (four-part series of articles published in *Counsel* magazine: [20 March 2018](#), [23 April 2018](#), [24 November 2019](#), [4 January 2021](#))

Mikolaj Barczentewicz

- [“Gender and seniority of counsel before the UK’s highest court”](#) (March 2021)

2. The summaries below aim to provide an overview of the principal findings and conclusions of the above papers/articles. In many cases, they also provide a very brief summary of the stated objectives and/or methodology of the research. These summaries are selective in nature and although they draw upon official summaries (where these exist), they sometimes provide greater or less detail than those summaries, paraphrase the language used and have not been approved by the authors. Hyperlinks are provided so that readers can access the full background and complete set of findings/conclusions should they wish to obtain more detail.
3. This note does not purport to summarise the entirety of the research relevant to gender equality and the experiences of women barristers at the Bar of England and Wales.

## THE BAR STANDARDS BOARD

### [“Women at the Bar”](#) (2016)

4. **Objectives:**
  - To investigate women’s perceptions and experiences of the Equality Rules in the BSB’s Handbook; and
  - To better understand the perceived structural and cultural barriers to progression and retention of women at the Bar.
5. **Methodology and Limitations:**
  - The research used an online survey comprising multiple choice and open text responses. The link was sent to all female barristers with an active practising certificate (both employed and self-employed) and was available between 12 January 2016 and 9 February 2016.
  - The survey was undertaken by 1,333 of 5,667 female barristers with an active practising certificate (23.5% of the practising female Bar).
  - Limitations included the fact that the sample was self-selecting. As a result, the extent to which the findings were fully representative of the whole female Bar could not accurately be determined and findings should be viewed with an element of caution. Nonetheless, the response rate was high and the profile of respondents representative of the overall population on most key indicators.

6. **Findings:** These included -
- Work allocation: Awareness of work allocation monitoring appeared low. When respondents had queried work allocation, many had been satisfied with the response; others had not been, with lack of transparency the most common issue.
  - Flexible working: Awareness of flexible working policies appeared substantially better than for work allocation. Experiences of flexible working were mixed. For many it worked well, but others raised issues that had led to a negative impact on their practice or had prevented flexible working in the first place.
  - Recruitment: This was generally seen as fair, with a large majority of Chambers having implemented fair recruitment training.
  - Equality policies: The vast majority of Chambers had equality policies and awareness of them was high (except in relation to harassment). Equality and harassment policies were rated highly by those aware of them.
  - Maternity/parental leave: Awareness of policies was high with little evidence of widespread non-compliance of the requirement to have a policy. Policies were generally rated positively. However, many felt taking leave had had a negative impact on their practice. Responses highlighted negative attitudes as hindering a successful return to practice.
  - Harassment: Two in every five respondents had suffered harassment at the Bar with only one in five reporting it. Concern about the impact on their career was the most common reason for not reporting, with prevailing attitudes towards harassment and/or reporting harassment another common reason. Half of those participants who reported it were not satisfied with the response.
  - Discrimination: More than two in every five respondents stated they had experienced this, with only one in five reporting it. Concern about the potential impact on their career and prevailing attitudes within the legal profession were common reasons given for not reporting. The majority of those who reported it were not satisfied with the response.
  - Retention:
    - i. Some findings suggested the Equality Rules were having an impact in some areas and for some respondents. However, most respondents did not consider they had had a significant impact on supporting their careers.
    - ii. A large majority of respondents had contemplated leaving the Bar. To improve retention, the report highlighted 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; provide more support, particularly in relation to childcare and flexible working.

7. **Conclusions:**
- There was little evidence of widespread non-compliance with the requirement to have policies in place, and policies were generally rated positively.
  - However, awareness of some policies was low, in many cases implementation fell short of what might be expected and in some areas the existence of policies did not fully address structural/attitudinal barriers faced by women barristers.
  - There were some encouraging findings and examples of good practice. The findings suggested the introduction of the Equality Rules had led to some

improvements and other improvements may have been driven by changing attitudes. There was evidence of good practice in a number of areas.

- There remained definite areas of concern that suggested female barristers still faced disproportionate barriers compared to their male counterparts. These included: elements of the culture of the Bar and legal profession, work allocation, attitudes towards discrimination and harassment, difficulties when returning from maternity/parental leave and making use of flexible working.

**“Women at the Bar: Research exploring solutions to promote gender equality” (May 2018)**

8. **Objective:** To explore and develop potential solutions to certain issues identified by the BSB’s 2016 research, namely (i) unfair treatment; and (ii) discrimination, harassment and reporting of unfair treatment.
9. The research sought to answer the following questions:
  - How could issues around unfair treatment of women at the Bar be addressed, either by the BSB or by other stakeholders?
  - What approaches could be taken to increase the level of reporting of unfair treatment, either by the BSB or by other stakeholders?
  - What other strategies could be adopted to improve retention of women at the Bar?
10. **Methodology:**
  - **Research design:** This was qualitative research, with the research aims explored through five workshops designed to enable focussed discussion of practical solutions.
  - **Sample:** The BSB invited a range of stakeholders to take part in one of three workshops. Potential participants were identified on the basis of their involvement/interest in the issue of retention of women at the Bar. The workshops were attended by 30 individuals, including barristers, clerks, chambers’ directors, practice managers, client care managers, specialist bar associations and BPTC providers. The fourth and fifth workshops were each attended by 12 participants from the IBC and the LPMA. Unlike the original “Women at the Bar” survey, over one-third of participants were male.
  - **Conduct of workshops:** The first three workshops were run by an external facilitator, with participants divided into smaller groups, each led by a BSB moderator to discuss the themes. The groups reported their top three recommended solutions to the full group for further discussion. The latter workshops were moderated by BSB staff without an external facilitator.
  - **Limitations:**
    - i. The research involved discussions with a relatively small sample of barristers and other stakeholders. The participants could not be treated as a representative sample.
    - ii. Although an external facilitator oversaw the first three workshops, they were organised and moderated by BSB staff. Although participants were assured of confidentiality, the BSB’s role as regulator might have influenced the discussions directly or indirectly.
11. **Findings:** The report recorded participants’ examples of good practice and proposed solutions in relation to several themes. The principal recommended solutions were:

### Work allocation

- Improving transparency of the work allocation process and data collected.
- Expanding monitoring (e.g. monitoring fee income, covering “marked work”, recording reasons for case allocations).
- Improving communication between clerks and barristers (e.g. policies for regular feedback to individual barristers, IBC training for clerks).

### Flexible working

- Monitoring: recording the number of flexible working requests, details of the requestor and the decision/response; reviewing the process.
- Improving the “visibility” of barristers working flexibly.
- Improving communication between barristers and clerks.
- Addressing cultural and language issues (e.g. addressing value-laden terms and overcoming perceptions around flexible working).

### Parental leave

- A formal “return to work” framework (e.g. discussion with clerks, exit/returner interviews, setting a framework for people returning from parental leave in a staged manner).
- Addressing rent and fees (e.g. removal of fixed monthly rent; encouraging chambers to decrease the percentage contribution on return from parental leave; introducing zero percent contribution on fees after return from parental leave for a limited period; moving away from “fixed fees/rent”).
- Addressing cultural issues (e.g. breaking down stereotypes around the main earner/carer, moving to an inclusive rather than individualistic culture, recasting “maternity leave” as “parental leave”, encouraging men to take parental leave).
- Improving the availability or visibility of flexible childcare (e.g. the creation of a subsidised childcare service for the Bar; the Bar Council to collate and promote a list of flexible childcare services).

### Discrimination and harassment

- Improving awareness/transparency of policies (e.g. requiring policies to be published on websites or provided to staff/tenants before arrival; kite marks for chambers).
- Requiring/encouraging exit interviews (to facilitate complaints, improve awareness of more low-level issues and reasons why individuals leave/move chambers and how this could be addressed).
- Mentoring programmes (e.g. mentors external to chambers; senior women running a possible “ethical hotline”; mentoring of junior members).
- Addressing “external” harassment and discrimination (e.g. clerks taking a calling out/zero tolerance approach to discrimination from solicitors; supporting clerks in challenging discrimination/harassment; addressing recruitment and training issues for judges).

### Reporting

- Clear, written reporting frameworks (e.g. clear policies and guidance on reporting unfair treatment, processes to be followed and courses of action);

- Improving transparency (e.g. requiring recording and reporting of the number of complaints received and outcomes, to be discussed by chambers management; annual reports).
- Setting up external or informal routes for complaints (e.g. helpline for initial, informal and confidential advice/discussion; enabling reporting without escalation to full complaint; follow-up meetings).
- Providing multiple reporting routes (e.g. ensuring complaints can be made through several routes or to a wider range of people).

Other cross-cutting strategies

- The EDO should be a key role.
- Raising awareness of policies, guidance and best practice.
- Addressing culture and developing a “zero-tolerance” approach (engaging leaders; spreading discussion; using training; framing issues so as not to alienate male barristers and clerks; linking to the “Wellbeing at the Bar” agenda rather than framing discussions as a gender issue).

12. *Summary of Research Themes:* The recommendations were grouped into five cross-cutting themes:

- **Expanding monitoring** (to help identify where issues exist, ensure responses are driven by accurate information and ensure Chambers are prompted to respond to issues identified).
- **Improving transparency** (to help improve awareness of issues and policies and ensure discussions are seen as being “driven by the data” rather than individual complaints).
- **Introducing or improving policies** (including changes to parental leave policies, developing mentoring programmes, developing frameworks to improve communication between barristers and clerks, introducing an external “helpline” and creating an Equality and Diversity “kite mark”).
- **Expanding Equality and Diversity training** (particularly for clerks and senior management).
- **Cultural change** (a “zero-tolerance” approach to discrimination and harassment, ensuring there is clear and visible support for improvement and change from senior leadership and making a clear business case for equality).

**“Bullying, Discrimination and Harassment at the Bar” (October 2020)**

13. This study was carried out by YouGov but commissioned by the BSB. The BSB’s Research Summary can be found [here](#).

14. *Objective:* To contribute towards a wider evidence base and inform strategies to address bullying, discrimination and harassment at the Bar. The focus of the study was gender, ethnicity, disability and sexual orientation - protected characteristics that had been identified by previous research as experiencing disproportionately high levels of bullying, discrimination and harassment.

15. The research questions were:
- How have experiences of discrimination, harassment and bullying at the Bar impacted lives and careers of those affected?
  - What actions, if any, have barristers taken in response to these experiences? What are the barriers and enablers to taking action?
  - What support is available at the Bar around issues of discrimination, harassment and bullying?
  - To what extent have the Equality Rules impacted on these experiences?
  - How can issues around discrimination and harassment at the Bar be addressed by the BSB or other stakeholders?
16. **Methodology:**
- As the study was exploratory and the topic highly sensitive and personal, in-depth one-on-one interviews were deemed most appropriate. These were conducted over the telephone by dedicated qualitative experts at YouGov.
  - 30 interviews were conducted with barristers who self-reported experiencing/observing workplace bullying, discrimination and/or harassment within the last ten years. This was supplemented by five interviews with non-barristers.
  - The sample was identified by the BSB from their contact database. Invites were sent to three waves of randomised contacts who matched the profile of desired participants. Information was obtained from interested participants and YouGov selected and invited a mix of barristers and non-barristers to take part.
17. **Key Findings:**
- Composition and culture at the Bar: Participants felt that bullying, discrimination and harassment were tolerated to a certain extent due to the adversarial, male-dominated culture of the Bar. The Bar had a unique composition – most barristers were self-employed and relied on clerks for their caseload, often with little official management structure or HR structure uniting the two. Some participants felt this allowed harassment and discrimination to “slip through the net”. Pupils were particularly vulnerable.
  - Experiences of bullying, discrimination and harassment: Participants described a wide range of these experiences, including unfair treatment based on protected characteristics, sexual harassment, long-term bullying, unreasonable work demands and unfair work allocation. The range in frequency and seriousness of experiences meant the picture of bullying, discrimination and harassment was complex; it could be hard to identify, define and record.
  - Impact of bullying, discrimination and harassment: This had short and long-term consequences, including diminished self-esteem, anxiety, mental health complications, negative impact on physical health and negative socio-economic consequences.
  - Barriers to addressing bullying, discrimination and harassment: These included the fear of a negative impact on the victim’s reputation, earning potential and career progression. A lack of anonymous and supportive pathways to reporting led barristers to worry that their concerns may not be treated professionally, kept anonymous or fully acted on. Other barriers

included the unique structure of the Bar, with limited line management structures or HR teams and procedures.

- Enablers to addressing bullying, discrimination and harassment: Many participants felt that a supportive, anonymous, clearer and more accessible process of reporting, either within their organisation or via a neutral third party, would help, in order to provide a “middle ground” between formal reporting and taking no action. A need for a fundamental shift in the culture at the Bar to encourage openness and discourage discriminatory behaviour was also highlighted.
- Awareness and implementation of the Equality Rules: These were welcomed and felt to be necessary, but the implementation and awareness of the Equality Rules was seen as inconsistent, with huge variation in how well policies and rules were understood/implemented within Chambers - all did “something”, but participants felt it was often only perfunctory. There was a view that barristers often felt reluctant to volunteer to take on E&D roles as there was little incentive and formal support to do so.
- Unmet support needs; role of the BSB and other key stakeholders: Awareness of the role of the BSB, as distinct from the Bar Council/other stakeholders, needed to be raised. The BSB’s regulatory requirements, including a duty on barristers to report harassment as serious misconduct, were in some cases seen as too formal and could be a barrier to reporting. Not all felt comfortable approaching the regulator. However, others felt the duty was an enabler to reporting and showed the regulator took these issues seriously.

#### “Income at the Bar - by Gender and Ethnicity” (November 2020)

18. **Objective**: To look at the impact of gender and ethnicity on income levels of barristers.
19. **Methodology**: The report analysed income data collected by the BSB as part of the Authorisation to Practise process.
20. **Limitations**: The income declarations were based on the 2018 calendar/financial year. As such, the income data was several years out of date. Furthermore, given the impact of the pandemic on barristers’ work and income, the figures given were likely to give a misleading picture of current levels. The figures provided to the BSB represented gross income and did not take into account Chambers fees and contributions.
21. **Findings and Conclusions**: In relation to gender, these included:
  - Female barristers and BAME barristers were likely to earn less than White and male barristers respectively. This held true even when looking at employed barristers, self-employed barristers, QCs, barristers inside and outside London and barristers with similar seniority by year of Call.
  - Female BAME barristers were the lowest earning group, whereas White male barristers were the highest earning group.
  - Even when barristers were grouped by main area of practice and seniority by year of Call, female and BAME barristers still earned less on average than

equivalent male and White barristers who were working in the same areas of practice and had the same seniority.

- The reasons for these disparities may be many. Some possible explanations had been highlighted by BSB research: e.g. the BSB 2016 research (perceptions of favouritism; a drop off in work when attempting to work flexibly, care for children, return from maternity leave; perceptions that female barristers were more likely to be expected to specialise in lower earning, often publicly funded, areas of law). All of these factors may well contribute to female barristers being more likely to have lower earnings than male barristers.
- Other research had highlighted that female barristers were more likely to work part time than male barristers, with the result that although there was little variation in working hours between men and women who worked full time, or between men and women who worked part-time, the higher proportion of women working part-time resulted in their mean hours worked being slightly lower than the equivalent figure for men (47 hours vs 50 hours per week).

### [“Diversity at the Bar”](#) (February 2021)

22. **Objective:** To provide a summary of the latest available diversity data for the Bar (covering pupils and practising barristers, both QCs and non-QCs) to assist the BSB in meeting its statutory duties under the Equality Act 2010 and to provide an evidence base from which relevant and targeted policy could be developed.

23. **Methodology:**

- The BSB used data held by the Bar Council Records Department via the online “Authorisation to Practise” system (MyBar) and Pupillage Registration Forms.
- The diversity monitoring information was extracted from the BSB’s database on 1 December 2020 and represented a snapshot of the profession on that date.
- The response rate increased (from previous years) across all collected data in 2020, except for a very small decrease for gender.

24. **Findings:** In relation to gender, these included:

- The overall percentage of women at the practising Bar increased by 0.2 percentage points (“pp”) from December 2019 to December 2020 to 38.2%. This compared to an estimate of 50.2% of the UK working age population being female as of Q3 2020.
- The overall proportion of women at the Bar had increased every year since the first publication of the Diversity at the Bar Report in 2015. In absolute terms, the number of female barristers had increased by 790 since 2015 and the number of male barristers had increased by 129. The discrepancy was likely to be due largely to greater numbers of male barristers retiring.
- When excluding non-responses, the proportion of female pupils had fallen since 2019 by around 4 percentage points, but as it was an exceptional year regarding pupillage numbers, this may have been an anomaly. When including non-responses, the proportion of female and male pupils as of December 2020 was the same. This was the first year since 2015 where the percentage of female pupils had not been greater than that of male pupils.
- The proportion of non-QCs who were female had increased year on year. As of December 2020, 40.7% of non-QCs were female, compared to 40.2% in December 2019.

- The proportion of QCs who were female increased from 16.2% in 2019 to 16.8% in 2020, which was a larger percentage point increase than that seen from 2018 to 2019. The number of female QCs increased by 17 from 2019 to 2020 compared to an increase of 20 from 2018 to 2019, and so the greater percentage point increase seen from 2019 to 2020 was largely due to relatively fewer males gaining QCs status year on year.
- It was still noteworthy that the overall proportion of female QCs was low (16.8%) in comparison to the percentage of female barristers at the Bar (38.2%). However, the difference between the two had slightly narrowed in comparison to the difference seen in 2019. Since December 2015 there had been a net addition of 131 male QCs compared to 103 female QCs. 44% of the net addition of QCs since 2015 have been female, compared to 56% who have been male. If such trends continued, the proportion of female QCs would continue to grow closer to the proportion of female non-QCs.
- The proportion of women at the Bar had increased by 2.3 pp overall since the 2015 Diversity at the Bar Report.

### [“Trends in retention and demographics at the Bar: 1990-2020” \(July 2021\)](#)

#### 25. *Objectives:*

- To track cohorts through their career at the Bar, and to track patterns in those leaving the Bar each year, with the aim of commenting on meaningful patterns of retention and identifying key moments where certain groups are likely to leave practice.
- To better understand how recruitment into the Bar and the profile of the practising Bar has changed over time, in order to help understand how patterns in retention and recruitment at the Bar have influenced the current profile of practising barristers.

#### 26. *Methodology / approach:*

- The research looked at trends seen in the retention of practising barristers (employed and self-employed) in England and Wales covering the 30-year period from 1990/91 to 2019/20.
- The research had a focus on age, ethnicity and gender – analysis of other protected characteristics, or of barristers by practice areas, was not possible.
- Further detail can be found at §37-44 of the main report.

#### 27. *Findings:* In relation to gender, these included:

- **Profile of pupils:** The proportion of pupils who were female increased from around 40% in the early 1990s to around 50% in 1999/00 and then remained at around that level through to 2019/20.
- **Profile of the practising Bar:** The number of practising barristers each year had grown substantially from 1990/91 to 2019/20, and the proportion of practising barristers who were female and the proportion from a minority ethnic background had almost doubled. From 1990/91 to 2019/20 the proportion of practising barristers who were female increased from around 21.6% to around 38.1%. The proportion of practising barristers from minority ethnic backgrounds had gone from 7.8% to 14.8% but there were some notable differences between groups within this broader category.

- **Overall retention:** Retention at the Bar appeared to have improved substantially on several measures over time. The number of those leaving practice and having time away from practice had not shown an increase alongside the aging of the Bar, and the proportion of a cohort leaving in the early stages of a career also appeared to have decreased substantially, particularly when comparing with those that started practising in the 1990s. This was true across gender and ethnicity. The progression of pupils also appeared to have improved over time. The proportion of pupils who did not go on to practise for at least three years was around twice as high for those who started pupillage during the 1990s compared to those that started pupillage from 2000/01 onwards.
- **Retention by gender:** A consistent trend of female barristers leaving practice indefinitely after the early stages of their career in greater proportions than male barristers was found. Although the size of the relative difference had decreased over time, this difference between male and female barristers still existed. The average age of both male and female barristers leaving practice had increased markedly over time. In the first half of the 1990s, the average age of female barristers that left practice indefinitely was around 37 and the figure was 48 for male barristers. For the 2014/15-2019/20 period the comparative figures were 48 for female barristers and 57 for male barristers.

28. More detailed findings on retention by gender included the following:

- The proportion of those not practising during year 3 or year 5 appeared to have decreased over time for both male and female barristers. The same could be said for the proportion of a cohort leaving the Bar indefinitely before year 5, and before year 10, particularly for more recent cohorts.
- From year 10 relative to the first practising year, a more notable difference by gender could be seen, with female barristers being slightly more likely to have left the Bar indefinitely than male barristers, although the difference between female and male barristers on this measure may have lessened slightly for more recent cohorts.
- At year 15, this gap between female and male barristers in terms of the proportion not practising during the year, and the proportion that left practice indefinitely before the year, widened slightly. Although once again, the difference between female and male barristers on this measure may have lessened slightly for more recent cohorts, particularly for those starting practice from the latter half of the 1990s onwards. Similar trends were seen at years 20 and 25.
- Overall, years 5-15, and to a lesser extent 15-19, saw a larger proportion of female barristers leaving practice indefinitely than that seen for male barristers. The difference had lessened over time for more recent cohorts.
- When disaggregating further by age range, it generally appeared to be the case that female barristers in younger age ranges were more likely than male barristers in the same age range to not be practising during a given year, and

to have left practice indefinitely before a given year, although this was another trend which may have slightly decreased over time for more recent cohorts.

29. The BSB's Research Summary can be found [here](#).

## THE BAR COUNCIL

### ["Momentum Measures: Creating a diverse profession" \(June 2015\)](#)

30. **Objective:** This report was commissioned by the Bar Council's Equality, Diversity and Social Mobility Committee in 2014. The Committee was interested in understanding when the profession might reflect the population profile of England and Wales, in line with the Committee's aspiration to deliver "a profession representative of all, for all".
31. The report looked at data sets over a historical period to establish when – at the rate of change established – they might expect to secure parity between different groups. As historical data was only available on gender and ethnicity, they focussed only on those areas.
32. **Key findings (on gender):**
- There had been a clear movement towards gender equality at Call with an approximate 50:50 balance being achieved in 2000 and maintained since.
  - There was no evidence that women were under-represented in the attainment of pupillage.
  - However, notwithstanding the increasing gender balance in Called working age barristers, current trends suggested that with the present model of practice at the Bar a 50:50 gender balance among all practising barristers was unlikely ever to be achieved.
  - This was for two reasons: women had a lower propensity to move from Call to practice and a higher attrition rate once in practice. The attrition was such that it would require a very long period of substantial imbalance in favour of women at Call to achieve a balance of women in practice. Modelling suggested that given current attrition rates approximately a 60:40 split in favour of women being called to the Bar would be required to establish gender equality in practice.
  - The modelling showed that in respect of practising barristers of more than 15 years Call, and of QCs, on current trends the practising Bar would not achieve gender balance in the foreseeable future.

### ["Snapshot: The Experience of Self-Employed Women at the Bar" \(June 2015\)](#)

33. **Objectives:**
- To supplement statistics concerning women at the Bar, and findings from recent Momentum Measures research, by providing an insight into the experiences of women at the Bar, with the hope it would support evidence-based policy making and initiatives to support gender diversity.
  - To identify the challenges faced by women at the Bar and to share ideas and solutions to barriers and challenges identified.
34. **Methodology:**

- A mixture of qualitative and quantitative research methods, including the use of focus groups and questionnaires.
  - Data was collected between July and November 2014. 73 women participated in focus groups and 12 completed questionnaires.
  - Women participants were of mixed ages, from different ethnic groups with different religious beliefs and non-beliefs and at different levels of seniority.
35. **Limitations:** These included: the limited scale of the study; the potential for interviewees to say what they “thought” the Bar Council wanted to hear; that some may have volunteered because they had a particular view to express; that it was limited to those women able to make time to participate.
36. **Findings:** These included:

Training:

- Women of all ages were positive about their experience of the Bar Course and regarded their treatment as fair. Views on pupillage were generally positive. Most negative experiences identified by participants had happened in the past and were brought up by more senior practitioners.
- There were isolated incidents of inappropriate behaviour, but the prevailing view was that this was being addressed as the older generation made way for the next and social attitudes changed. Participants felt the E&D provisions in the BSB Handbook supported cultural change and improved recruitment practice.
- Challenges during pupillage were identified as the same for men and women. However, participants acknowledged women tended to lack confidence and the benefits of a supportive pupil supervisor might be more marked.
- Participants had a mixed experience of senior women as role models. Gender “solidarity” was seen as extremely important by all.

Junior practice:

- *Practice area:* A significant number of participants (but not all) felt they had been pushed into traditional “women’s practice areas” of family and sex crime, with implications for flexibility, income and individual wellbeing.
- *Family life:* Most women barristers who were parents were primary carers. Balancing family life and a career was seen as hugely problematic. Success was put down to practice area, luck and the availability of a partner as the primary carer or other support. Some practice areas were seen as more flexible than others or with greater capacity to generate a higher income. Younger members said they could not see how it was possible to have a career and family.
- *Individual chambers’ culture and policies:* These had a huge impact on women’s experiences of bringing up children, where supportive chambers made it possible and unsupportive chambers effectively forced women out of the profession or to different chambers. A number of incidents of poor treatment of working mothers were identified.
- *Marketing and networking:* Women expressed frustration with networking designed around traditional male activities/interests and other non-inclusive practices (in design and timing of events), though all participants acknowledged childcare made networking in any form difficult.

- *Power structures:* Participants talked about being disadvantaged by power structures (low numbers of senior women affecting composition of management committees and those with influence). It could be intimidating to challenge chambers' decisions on policy, practice and rent arrangements.
- *BSB Equality Rules:* Generally, participants felt these had supported fairer treatment, but there was still often a gap between policy and practice.
- *Clerks:* Participants reinforced the vital importance of the relationship between barristers and clerks. Where it worked, clerks were an immense source of support; where it didn't, many felt their position was untenable. There were mixed experiences of male and female clerks/practice managers. Many felt senior male barristers effectively endorsed misogynistic attitudes in the clerks' room / enabled them to flourish.

#### Silk/judicial appointments:

- Women talked about the importance of receiving encouragement from their chambers, colleagues and clerks, giving them the confidence to apply. Some felt they were actively encouraged not to apply / take silk.
- Those that applied found the process time-consuming but far less daunting than expected and welcomed improved transparency. There were concerns over the requirements for referees.
- Some shared negative experiences of the attitudes of some male judges concerning the appointment of female judges. Some felt judges' training/relocation requirements were not very family-friendly.

#### 37. **Conclusions:**

- Findings suggested women today had a very different and more positive experience in training and early years of practice. The Equality Rules and changing societal attitudes were seen to have supported huge improvements.
- Significant challenges remained, particularly around balancing careers and family, and avoiding being pushed into certain types of work. The dominant cause for attrition appeared to be that practice was incompatible with having a family.
- Different practice areas and chambers' cultures had a huge impact on women's working environment and experience of the profession. In Chambers, the lack of senior women appeared to act as a hindrance to implementation of fairer policies and practices and to disempower women in the profession.
- The main barriers for women lay in publicly funded practice. Many felt that the inconvenience of long hours and the lack of flexibility were no longer compensated by income levels. These challenges were seen as insurmountable for many women.
- Economic factors may lie behind the under-representation of women taking silk. Many women in public practice appeared to have been discouraged from applying for silk for fear of the impact on their practice/income.
- Under-representation of women in judicial appointments was likely to be linked to the lower numbers of senior women in the profession. However, there were still misconceptions about the application process and more flexibility within judicial appointments might encourage more applications.
- Emerging themes: women's lack of confidence in challenging clerks and colleagues in practice development and applying for senior, silk and judicial roles; the importance of female role models; the problem of networking.

38. **Recommendations** (limited to interventions that the Bar Council could deliver):
- Encourage and facilitate mentoring of junior women by more senior women.
  - Facilitate access to business advice/coaching on developing a sustainable practice.
  - Establish and profile more senior female role models.
  - Promote women's marketing networks for barristers.
  - Create support networks for barristers.
  - Extend the Bar Nursery offering.
  - Encourage a better gender balance on key decision-making committees within Chambers.

### Gender Pay Gap Table (November 2020)

39. In November 2020, the Bar Council published a "Table of Earnings by Gender" using Bar Mutual data which showed "*shocking discrepancies in pay between women and men barristers*".
40. The table showed how the gross fee income of self-employed barristers in 2019 was split by gender in all practice areas. It also presented the proportion of work men and women billed in each practice area. The Bar Council observed:

*"This doesn't reflect seniority or working patterns so can't be interpreted as showing that women and men in comparable situations are necessarily being paid differently. Despite over half of new barristers being women, there are many more senior men, and these figures demonstrate that we are a long way off equality at the Bar. We will be tracking this data over time as it will indicate whether we are moving towards equal access to work for women at the Bar."*

41. In an [article](#) written by HHJ Emma Nott for *Counsel* magazine, reference was also made to unpublished extrapolations of Bar Council data showing the average difference in 2019 earnings between men and women in different practice areas. The data showed:
- Defamation was the only practice area in which there was parity, with women conducting 28% of the work and receiving 28% of the income.
  - There was only one practice area in which women earned on average more than men: in "family (children)" (6% more than their male counterparts).
42. The Bar Council recently published a further analysis of earnings data (see below).

### "Bar Council Response to the Criminal Legal Aid Review Call for Evidence" (May 2021)

43. In May 2021, the Bar Council responded to the CLAR Call for Evidence. In its Interim Response (included at p.18), the Bar Council set out its preliminary views and assessment of a dataset collated under a data sharing agreement between the Bar Council, the Ministry of Justice and the Crown Prosecution Service. That analysis of the data led to the following five headline conclusions:
- Retention of experienced barristers was a significant problem.
  - The full practice criminal Bar had an ageing population that was not being replaced.

- Remuneration for junior barristers was insufficient and unsustainable, and fees and profit flatline the more experienced a junior barrister becomes.
- Barristers' fees and profits had failed to keep pace with inflation.
- Profits and fees between groups of barristers were not equitable, and women from ethnic minority backgrounds earned the least of all.

44. In relation to inequitable profits, the Bar Council found (among other things):

- Women barristers in 2019/20 worked on an average of 63 cases per year for an average pre-tax profit of £47,500 (or £754 per case); men an average of 72 cases per year for an average pre-tax profit of £65,000 (or £903 per case).
- Becoming a QC implied a considerable uplift to profits, but the fee income differential between men and women persisted. The pure effect of a male barrister becoming a QC was a £57,400 increase to profits relative to a White male non-QC, whilst the effect of a woman becoming a QC was smaller - a £32,900 increase to profits relative to a White male non-QC.
- Sex disparity in earnings was sustained within each ethnic grouping: Asian women earned on average 53% of what Asian men earned; Black women earned on average 79% of what Black men earned; White women earned on average 71% of what White men earned; women of Mixed/Multiple Ethnicity earned on average 70% of what men of Mixed/Multiple Ethnicity earned; and women from Other Ethnicities earned on average 42% of what Other Ethnicities men earned.
- These figures partly reflected the fact that different sexes and ethnicities of barristers tended to have different levels of experience and possibly different working patterns. Furthermore, sex was differentially represented within ethnic groups. Additional analysis was undertaken to separate out these effects and isolate the pure effect of sex and race on profits other things being equal.
- The starting point used was a junior white male barrister at 13-17 years of practice. By changing the sex to female, the researchers observed a lowering of pre-tax profit of £12,600. This was the pure effect that being a white woman had on a barrister's profit, keeping all other factors constant.
- This reduction in pre-tax profit according to sex could not be accounted for by differing work volumes.
- By altering both race and sex, the researchers observed a lower pre-tax profit of £18,700 for a Black woman relative to a White man, and a lower pre-tax profit of £15,200 for a woman of Mixed/Multiple Ethnicity. Asian women had a £16,400 lower pre-tax profit compared to a White man (although this figure was imprecise due to limited data).
- Criminal barristers worked under the same fee schemes, so these stark variations in fee income and profit supported an observation that there were systemic issues with equitable briefing practices and access to work in the legal sector. Possible factors included client briefing practices and panel selection, distribution of work within sets and distribution of better-remunerated work.

45. In its final Response, the Bar Council referred to a recent informal survey of 26 junior barristers from black and minority ethnic backgrounds, noting:

*"Women in particular expressed concern that the low rates of pay made returning to crime after a period of maternity leave less likely; women hoped to diversify their practices with a view to moving into better paid, and often less demanding areas of law,*

*upon their return. Those who have found work on inquiries or secondments have been paid significantly higher rates than in general crime; none of these barristers will return to full time criminal work, because of the low rates of pay.” (§32)*

**“Barrister earnings data by sex & practice area - 20 year trends report” (September 2021)**

46. The Bar Council recently published a further analysis of earnings data which showed the differences in average earnings by practice area and the trends for barristers’ earnings over the last 20 years. [Appendix 1](#) presented the detailed data showing men and women’s earnings for each practice area.

47. **Findings:**

- **Men’s income was increasing faster than women’s income in most practice areas and the gap between men’s and women’s earnings was widening.**
  - i. There had been an increase in average gross fee income for both women and men at the Bar, and that gap between men and women’s average income had increased over the last 20 years.
  - ii. There had been an increase in earnings in Commercial and Financial Services practice areas, with the gap between the income of male and female barristers increasing over the last 20 years – in 2000, female barristers earned on average 49% less than men, and in 2020 that difference increased to 57%.
  - iii. The same was true in other practice areas: e.g. employment.
  - iv. The reverse was true in practice areas where women dominated. There were more women than men in Family (children) – 59% of the barristers were women. With real-terms income increasing overall, women still earned more than men, but the gap in 2020 was 4%, down from 21% in 2000.
  - v. In Family (Other), although there were more women than men, female barristers earned 43% less than men in 2020, compared to 19% less in 2000 (sic). Again, incomes had increased, but men’s income had increased more quickly than women’s income.
- **Overall, there had been an increase in barristers’ income, but there had been a real-terms decrease in income for criminal barristers.**
  - i. Adjusted for inflation, male criminal barristers had experienced a 33% decrease in earnings since their peak in 2006.
  - ii. The gap remained between male and female criminal barristers but had decreased over the period (women earned 38% less in 2020 and 51% less in 2000).
- **There were more women working at the Bar.**
  - i. There had been an increase in the number of female barristers across all practice areas (8,382 in 2000 to 12,504 in 2020).
  - ii. The number of male barristers declaring work in all practice areas had decreased from 26,833 in 2000 to 25,809 in 2020 (these figures included barristers practising in more than one area and were therefore more than the total number of barristers).
  - iii. Many practice areas had seen an increase in the proportion of women: e.g. in Criminal practice, 24% of the barristers were women in 2000 and

this increased to 34% in 2020. Increases also in Employment, Competition and Planning.

- iv. There were less significant increases in the proportion of women in some practice areas including Admiralty.

48. **Conclusion:**

*“These figures demonstrate that, although we are making progress in representation of women at the Bar, we have a long way to go to achieve equality. It’s worrying that the gap between men and women is getting wider. Women have accounted for half of all new pupils for more than 20 years, so we have to ask difficult questions about why so many women leave the Bar and why men continue to out-earn women.”*

49. **Caveats:** The report noted that there were some important caveats regarding the data which needed to be understood:

- The data showed the gross fee income for self-employed barristers in each practice area for that year. For every year before 2020 the actual income had been adjusted for inflation.
- Some barristers worked in more than one practice area, and they would be represented in each practice area they earned fees in.
- The data showed the proportion of work men and women billed in each practice area, and therefore how work was distributed and remunerated. This didn’t reflect seniority or working patterns and so couldn’t be interpreted as showing that women and men in comparable situations were necessarily being paid differently.
- Despite over half of new barristers being women, there were many more senior men, and this was reflected in average earnings.

## THE WORK FOUNDATION

### [“Balancing the scales – A study into the under-application by women for appointment as Queen’s Counsel” \(September 2017\)](#)

50. **Objectives:** To gain an in-depth understanding as to why under-application of women existed and what recommendations could be made as a response to mitigate it. The study was focussed on two main questions:

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

51. **Methodology:**

- 34 participants (5 female QCs, 4 male QCs, 22 women junior barristers and 3 male junior barristers) were interviewed.
- A roundtable was conducted with a range of stakeholders to explore the validity and feasibility of the recommendations for the QCA.

52. **Findings:** These included:

- Views on QC status: Views differed depending on what stage of the process participants were in. There were mixed views on whether it helped work-life balance and financial status.

- The Application Process: Barriers identified included (i) the requirement to have 12 cases of substance; (ii) the two-year boundary; (iii) obtaining judicial references; (iv) an un-representative selection panel; (v) the lengthy application process; (vi) the financial cost (the application fee, consultancy costs, childcare arrangements); and (vii) a lack of transparency.
- Wider barriers:
  - i. **The role of Chambers**: Participants discussed the role Chambers could play in providing support and flexibility to women considering a career break or return from maternity leave.
  - ii. **The role of clerks**: Participants reported that clerks were an influencing factor, both in terms of work allocation and provision of support, often providing the “nudge” to encourage more women to apply.
  - iii. **The nature of the profession**: The lack of any performance management structures or feedback; reports of women experiencing difficulties with networking; the effect of practice area on the type and level of cases worked on and the remuneration received; a perception of cases that women “should” and “shouldn’t” be undertaking.
  - iv. **Confidence**: An underlying theme that women were more self-critical and underestimated their performance capabilities.
  - v. **Career breaks and maternity leave**: Female participants often spoke about having to make a choice between their career and caring responsibilities. For some, their chambers were supportive and had helpful policies/practices; other chambers were not as progressive and women faced barriers when returning to work. There was a perception in the profession (and arguably in society) that women were the main childcare providers.
  - vi. **Discrimination**: Some participants considered they had been subject to discrimination/harassment and there was inequality of opportunity.

53. **Discussion**: Although women who applied for QC status now had an increased likelihood of achieving it, the gender disparity was likely to continue for the foreseeable future. Although there was recognition that the most recent changes in the application system had been effective, there were calls for further changes to make the system fairer still. However, it was also clear that system-wide changes needed to be considered with stakeholders to help reduce the level of attrition that occurred before individuals reached the application stage.

54. **Recommendations**:

- Review the eligibility and selection process.
- Develop an equality and diversity strategy.
- Amplify female QC role models.
- Develop existing mentoring schemes.
- The QCA to develop application tools and resources on its website.
- Systems change (QCA to work with stakeholders to increase the pool of women juniors in the pipeline to reach the senior levels to qualify for QC status).

**THE WESTERN CIRCUIT WOMEN’S FORUM**

[“Back to the Bar: a survey of obstacles, aids and recommendations for parents returning to the Bar” \(2017\)](#)

55. **Objectives:** The Western Circuit Women’s Forum (“WCWF”) commissioned a survey to find out:
- What makes it possible or impossible for parents to return to the Bar after parental leave;
  - Why members of the self-employed Bar (in particular women) are leaving;
  - What more can be done by the WCWF, Chambers and the Bar to encourage and support barristers who want to return to work after a period of leave?
56. **Methodology:**
- The WCWF identified barristers on the Western Circuit who had left practice or had taken extended breaks of 6 weeks or more in the previous 6 years. They identified, where they could, which individuals had “retired” in the traditional sense or become judges, and that cohort did not take any further part in the survey. A link to an anonymous survey was emailed to the remaining group, save for four for whom they could not obtain contact details. A few recipients forwarded it to others from the Western Circuit.
  - 70 people responded to the survey, of whom 64 were female.
57. **Findings:**
- Almost two-thirds of those who left the Bar on the Western Circuit over a six-year period were women. Almost all of the men who left became judges or retired. The vast majority of the women who left apparently left mid-career.
  - Most of the women who left cited the difficulty of balancing work and family commitments as a factor in their decision.
  - A significant proportion of women who left the Bar could be retained with changes to working patterns and culture.
  - Many women on the Western Circuit had taken parental leave and successfully returned to work, but 60% found it difficult to return to work.
  - Male barristers on the Western Circuit rarely took parental leave for any significant period: no male barristers reported taking parental leave for a period of 6 weeks or longer.
  - Many female barristers who stayed at the Bar attributed their ability to remain in work to significant shared care with partners or family members. Those who were sole or primary carers were disproportionately disadvantaged.
  - Inflexibility in working patterns necessitated expensive flexible or full-time childcare. Inflexibility in working patterns was seen as primarily due to traditional clerking practices and court listing procedures.
  - Many working mothers sought part-time work, shorter trials or not to stay away from home which was seen to limit career development opportunities.
  - There was wide variation in Chambers’ attitudes to parental leave and support offered. Some Chambers persisted with rent arrangements and fee structures which disadvantaged those who took longer breaks.
  - Clerks had a significant role to play in supporting working parents.
58. The report summarised qualitative responses to questions by reference to five themes: difficulties balancing work and family life; lack of flexibility and predictability; financial challenges; attitudes in the profession; and effect on wellbeing. In relation to each theme, it set out the suggestions that had been given about what might help.

59. **Recommendations:**

- Highlight examples of good practice in supporting women returning to work after having children, including clerks who show understanding and willingness to accommodate specific needs.
- Develop “back-to-work” programmes for women returning to the Bar, setting out best practice for Chambers to stay in touch with tenants who take leave, and structure their return to work building on existing Bar Council guidance.
- Ensure flexible rent provision is available to those taking longer breaks from practice across all Chambers both during and after parental leave.
- Raise awareness amongst regulatory bodies, the wider profession and the judiciary of the challenges faced by women at the Bar, and increase recognition of the systemic factors which disadvantage those who choose to continue working after having children.
- Arrange training for clerks to increase understanding and appreciation of difficulties facing working parents.
- Improve access to networking opportunities for female barristers of all ages, with consideration of timing of events to fit around childcare commitments.
- Continue to develop and refine mentoring programmes linking younger female barristers and those with more experience.

60. Following the completion of this research, the WCWF produced a step-by-step practical guide to help Chambers support barristers who take parental leave: “[Best Practice Guide for Retention and Progression after Parental Leave](#)”.

**“Back to the Bar Update: The Impact of Covid-19. Consider the Carers” (May 2020)**

61. In this paper, the WCWF sought to highlight the risks arising from Covid-10 working practices and to recommend practical steps to minimise them. In particular, they made a single recommendation to the judiciary, HMCTS, Specialist Bar Associations and Chambers “to help ensure that one of the long-term implications of COVID-19 is not a loss of diversity at the Bar”, namely:

*“CONSIDER THE CARERS:*

*When issuing any guidance/directions, whether national or local, consider:*

- *How will this affect a practitioner with caring responsibilities?*
- *Can reasonable adjustments be made to minimise the impact?”*

62. The report summarised the WCWF’s experience of the impact of COVID-10 restrictions, noting in particular the effect on childcare, income and the impact of remote hearings.

63. The following recommendation was made to the judiciary and HMCTS:

*“When issuing guidance on new court processes, or ways of working, whether nationally or locally, take into account the practical difficulties faced by primary carers and people shielding the vulnerable and consider the impact of the guidance on their income.”*

A number of suggestions were made as to how that recommendation could be implemented in different contexts (e.g. guidance which requires judges to invite advocates/other parties to notify the court whether they have any childcare or other

caring issues relevant to the hearing and using such information to decide whether any reasonable adjustments are required to ensure a fair hearing).

64. A similar recommendation was made to Chambers, together with suggestions.

## HANRETTY AND VAUGHAN

### [“Patronising Lawyers? Homophily and Same-Sex Litigation Teams before the UK Supreme Court”](#) [2017] Public Law 426

65. *Objective:* Chris Hanretty and Steven Vaughan sought to understand the degree to which the formation of barrister teams before the UK Supreme Court was characterised by gender homophily and which factors exaggerated or attenuated this characteristic.
66. *Methodology:* Hanretty and Vaughan collected data on the gender of all barristers who appeared before the Supreme Court between October 2009 and July 2015 and used this data to work out whether the number of same-sex teams of barristers was greater or smaller than the number which would be predicted if team formation were gender neutral. With the aid of logistic regression models, they were able to progressively introduce other factors which might explain the relative preponderance of same-sex legal teams without needing to invoke gender homophily.
67. *Discussion & Conclusion:* This section, together with the findings that precede it, is extensive but includes the following observations:
- There was evidence of considerable gender homophily in the formation of teams appearing before the Supreme Court. Same-sex barristers were over-represented compared to the number the authors would expect if barristers paired up randomly: where the senior barrister was male, the odds of the junior barrister also being male were 2.5 times higher.
  - This gender homophily remained when allowing for the possibility that lawyers pair up randomly within their chambers or within their area of law.
  - The gender breakdown of chambers had greater bite when chambers were small.
  - As such, the formation of teams of barristers in the Supreme Court was governed by practices and preferences which made same-sex legal teams more likely than they would be if team formation simply involved a gender-blind draw from a pool of lawyers. Barristers appearing before the Supreme Court appeared, for whatever reason, to work with other barristers of the same sex.
  - Four possible routes could be suggested to explain how teams were formed: junior barristers choosing senior barristers, seniors choosing juniors, clerks choosing barristers and instructing solicitors/clients choosing barristers.
  - In practice, teams were likely to form as a result of a combination of these four routes. Remedies for homophily depend on which route operates. The more homophily operates through the actions of clerks, the easier it may be to remedy. The more homophily operates through the (disaggregated) decisions of juniors who seek to curry favour with senior barristers and QCs, the harder the remedy. Other cases represent intermediate points.
  - The authors were unable to show whether homophily came about as a result of conscious and/or unconscious decisions.

- The research had implications for how the presence of women at the upper reaches of the Bar could be improved. The authors invited the supposition that the findings generalised from the Supreme Court to other levels of the judicial hierarchy. There was a certain Catch-22 logic to the findings. Women did better as juniors when other women were in senior positions, but women only reached senior positions after first being juniors. If half of senior barristers were women, then gender homophily would not be so objectionable. However, given Bar Council research suggesting that gender parity was unlikely to ever be achieved (and parity at the top end was unlikely in the foreseeable future), further progress towards gender equality at the Bar relied, essentially, on exceptional women breaking through.
- This impacted upon judicial diversity in two ways. The first was whether (or to what extent) litigation team diversity could be a complement or a substitute for (a lack of) judicial diversity (i.e. whether difference in the administration of justice could be a composite of who the judge is (or judges are) and who appears before the judge(s)). The second was the extent to which diversity among litigators appearing before the SC impacted on those entering the judiciary from the Bar. If, as Lord Sumption had suggested, the judiciary was an option “at the end of a successful career at the Bar”, diversity was needed at the top end of the Bar.

## FARORE LAW

### [“Statistics and Analyses regarding the slow progression of women in the professional spheres” \(May 2019\)](#)

68. In this report, Suzanne McKie QC and Ruth Whittaker analysed the progression of women in law and other professions (accountancy and medicine) in the UK.
69. The report summarised the research relating to retention and progression of women barristers (including unpublished data from the BSB). In relation to the recommendations made in the BSB’s “*Women at the Bar: Research exploring solutions to promote gender equality*”, it stated:

*“It would be wise to make many of these compulsory as well as providing loans to maternity leavers, strengthening the power of the BSB by use of wholly independent committee members and a significant re-evaluation of the court timetabling and judicial demands that make work-life balance extremely difficult. The cultural issue does not just apply to the issues of discrimination or harassment, but requires a shift from the macho culture that can pervade chambers and which can mean a demand for high fees being generated, presenteeism and result in favouritism and an intolerance for the personal setbacks that can beset some of even the best practitioners at any time in his or her lives.” (p.34)*

70. The authors noted that the data demonstrated a consistently higher percentage of female partners (in law firms) compared to female QCs over the years. The slower rate of improvement in female representation at QC level was clear from the data and suggested that women’s progression was better for solicitors than for barristers.

## THE ASSOCIATION OF WOMEN BARRISTERS

["In the Age of "Us Too?": Moving Towards a Zero-Tolerance Attitude to Harassment and Bullying at the Bar: A Report on the Association of Women Barristers' Roundtable on Harassment and Bullying with Recommendations"](#) (30 Sep 2019) (Lynne Townley and HHJ Kaly Kaul QC)

71. **Objective:** This paper was produced by the Association of Women Barristers with City Law School to reflect the findings of a round-table discussion that was convened on 30 November 2018. The round-table had two aims:

- To obtain further information about the sort of behaviour that was occurring at the Bar.
- To consider and suggest solutions to the problem.

72. **Methodology/Approach:**

- The 11 participants in the roundtable discussion were invited with a view to ensuring that all levels within the profession had a voice in the room. The roundtable was open to all those members of the AWB or the Bar who wished to attend to observe (and, if they wished, to contribute via a Q and A session).
- During the discussion, it became apparent that clerks had a very important role to play. Consequently, the AWB consulted with leading representatives of barristers' clerks and chambers' chief executives.

73. **Key findings:**

- **Pupillage:** Harassment and bullying were of particular concern due to the existence of obvious power imbalances; there was a fear that reporting would be career-ending; female pupils could face greater difficulties if pregnant and/or giving birth during pupillage and/or breast-feeding; there was a potentially discriminatory impact on BAME women who often have children earlier in life than white middle-class women.
- **Obtaining work:** Women were more likely to deal with inappropriate behaviour from some instructing solicitors; women could be "over-looked" in relation to leading briefs; little transparency around barristers' incomes and concerns about gender pay-gaps; inequality of pay leading to imbalances of power; the importance of good clerking; inconsistent provision and policies in relation to flexible working and managing maternity leave and return to work.
- **At court:** Inappropriate comments and other behaviour in robing rooms and bar messes, with tacit acceptance amongst certain sections of the profession; a lack of awareness about bullying and its effects; non-existence or poor facilities for women and non-binary people at court centres.
- **In chambers and socially:** A culture of fear around challenging, calling-out or reporting harassment and bullying; the existence of a so-called "gentlemanly" culture where it was inappropriate to report or "call-out" bad behaviour; the prevalence of "old-fashioned" views about how women were expected to behave and the possibility of negative gender-stereotyping.
- **Reporting harassment and bullying – a barrister's obligations:** Barristers did not feel able to discuss harassment/bullying with other barristers because of the fear this might trigger self-reporting obligations and the person in whom they confided would also be obliged to report the matter. Participants thought that some kind of waiver should be available so issues that could amount to reportable serious misconduct could be discussed without the fear of a report being made. It was appreciated that any "waiver" would be a matter for the

Regulator. The AWB welcomed the introduction of Spot.com and considered that it would play a crucial part in changing the culture and bullying.

74. **Key indicators for change and recommendations:**

- **Changing the dialogue:** Male “champions” and mentors to help change the culture; established networks and groups advocating for the interests of women, BAME and other under-represented groups to work together and share good practice; specialist anti-harassment/bullying panels to be set up on all circuits.
- **Codes and policies:** Chambers to implement and keep under review anti-harassment/bullying policies; Chambers to adopt better and more flexible maternity leave and related policies; Chambers to enable more flexible clerking regimes to be developed (taking into account part-time working, term-time working etc)
- **Training:** To be introduced for judges, barristers and clerks on (i) awareness about bullying/harassment and what constitutes this sort of behaviour; (ii) unconscious bias; (iii) equality and diversity.
- **Long-term support for those who experience/report harassment/bullying:** Introduction of an agreed “flow-chart” detailing the process and a dedicated counselling “hotline”.
- **Better facilities for women and non-binary people at court centres:** HMCTS to ensure that there are appropriate facilities in place for the use of women who are breast-feeding/extracting breast milk and for non-binary people throughout the court estate.

## THE LAWYER

### [“The long read: How gendered instructions at the employment Bar are scuppering female barristers’ ambitions for silk” \(Veyrat, Mehta & Griffiths, July 2019\)](#)

75. **Objective:** Following a meeting convened by Dame Ingrid Simpler QC and HHJ Jennifer Eady QC to discuss the very low number of women applying for QC status, *The Lawyer* conducted an analysis of the gender gap at the employment Bar to consider the following issues:

- What sort of work are female barristers getting – and not getting?
- Who is instructing them?
- Which chambers has the best record in female representation at the employment Bar and which has the poorest?
- Which law firms opt primarily for male counsel?
- Given the low number of female applicants for silk, is there a gender crisis at the employment Bar?

76. **Methodology:** The researchers drew on *The Lawyer’s* Litigation Tracker data relating primarily to the EAT and employment-related cases at the Court of Appeal between 2015 and the end of Q1 2019. Whilst this did not include a full list of employment-related injunctions, for example, or advice outside the courtroom, the data set was large enough to gauge patterns. They used two lenses: (i) looking at the chambers most active in those courts; and (ii) examining the most active firms and their gender patterns of instructions.

77. **Findings/observations/conclusions:** These included:

- The EAT was male-dominated:
  - i. There were 577 barristers active in the time period – 74 male QCs and 329 male juniors compared to 15 female QCs (2.5% of total barristers active in the EAT) and 159 female juniors (27.5% of total barristers active in the EAT). 57% of the counsel being instructed for EAT work were the 329 male juniors.
  - ii. Of the top 20 chambers (measured by number of cases), 13 on the EAT did not have a female silk active in it.
  - iii. When looking at the 10 busiest female juniors by cases in the EAT, they were mostly being instructed on behalf of claiming parties (usually individuals) rather than corporate respondents.
- Gender patterns varied dramatically from set to set: It was clear from the evidence that female employment barristers were more likely to find themselves in the EAT (and in the CA) if they had tenancy at Cloisters.
- Claimant firms opted for male silks: 27 silks were instructed by the top 10 most active law firms in the EAT over 2015-2019 – of that total, just four were women. The data painted a mixed picture of claimant-focused firms but it was evident that they tended to plump for male silks at the EAT.
- City employment practices largely used male counsel: At firms traditionally more focused on corporates and respondents in employment disputes there was an even greater preponderance of male counsel.
- Court of Appeal: Men dominated instructions and female juniors largely acted for claimants. 244 barristers were involved in 136 cases – of those 244, 56 were women (23%). Of those women, 10 were silks and 46 juniors. Among the 188 men, 67 were QCs and 121 were juniors. With three times as many male juniors active on employment-related cases at the CA, one could begin to see why concerns had been raised about the rate at which female barristers amass the requisite experience.
- QC-junior gender split: The 20 most active male silks on employment cases in the CA worked on 82 cases. More often than not, the 20 silks acted for corporate and government/regulatory entities. The 20 silks led juniors in 49 out of 82 cases. Of the 49 cases in which a junior or juniors were paired with a silk, 38 involved at least one male junior. Four out of 39 times that male junior was paired with one or more female junior. Mixed teams aside, overall female juniors were still less likely to be selected as junior counsel for silks. Of the 82 cases, female juniors were only instructed 15 times. There were patterns of cross-gender pairings in certain sets: of all the sets active in the CA on employment cases, 11KBW looked to be the most inclusive.

HHJ EMMA NOTT

**“Gender at the Bar and fair access to work” (four-part series of articles published in *Counsel* magazine 2018-2021): [20 March 2018](#), [23 April 2018](#), [24 November 2019](#), [4 January 2021](#)**

78. HHJ Emma Nott wrote four articles for *Counsel* magazine in which she examined the evidence relating to gender at the Bar and fair access to work. This included:

- BSB and Bar Council research on women barristers and income disparities.
- The research study by Hanretty and Vaughan on homophily in the Supreme Court (*supra*) and evidence obtained from the Legal Aid Agency and the CPS

showing every payment to every fee-earner (see [23 April 2018](#)), which collectively provided “*empirical evidence that reflected a deep gender pay imbalance within the criminal Bar at least*”.

- 2019 research by *The Lawyer* which revealed that the most active litigation firms instructed a total of 810 barristers, of whom only 19% were women.
- 2019 research by *The Lawyer* about appearances in the EAT and employment cases in the Court of Appeal (see below).
- 2020 research by *The Lawyer* investigating the instruction patterns of the top 50 disputes firms by revenue over the period July 2019-2020 ([4 January 2021](#)).
- Updated 2019/20 figures from the CPS and LAA ([4 January 2021](#)).
- Evidence relating to gender on the panels of counsel instructed by the Welsh Government and the GLD/AGO ([4 January 2021](#)).

79. **CPS cases:** Her final article considered the work that had been carried out by the CPS to ensure gender equality when instructing advocates externally. She noted that in 2020, a steering group chaired by CPS CEO Rebecca Lawrence, with representatives from the CBA and the Bar Council, undertook a review of CPS data which revealed:

- Between 2019-20 female junior advocates accounted for 35% of all advocates paid by the CPS but received 26% of the total fees paid in value.
- 21% of the QCs paid by the CPS in 2019-20 were female, receiving 17% of the total QCs fees paid. 18% of QCs practising in criminal law in 2019-20 were female.
- Although the proportion of female advocates on the Panel was broadly equivalent to those practising at the criminal Bar, there was greater disparity at the more senior (junior) levels.
- At entry level the ratio was 50:50. Thereafter, female advocates fell away quite quickly. Advocates were expected to progress to level 2 work after about 12 months; the ratio of women to men at level 2 dropped to 40:60. At level 3 (more senior crown court work including junior instructions in two-counsel cases) the ratio was 30:70 in favour of men; at level 4 it was 25:75.
- Success rates for Advocate Panel applications of all types were comparable.
- At every level, the proportion of fees paid to female advocates was lower than the proportion of female advocates notionally available to accept instructions.
- Analysis of level 3 and 4 payment data showed female advocates were proportionately less likely to feature in multi-defendant cases, high value frauds or as leading juniors.

80. The article summarised the action taken by the CPS in response to the data.

81. **The civil Bar:** HHJ Emma Nott also set out her discussions with the Attorney General’s Office, the Government Legal Department and the Counsel General to the Welsh Government and the evidence she obtained. That evidence and her observations/conclusions are detailed but include the following:

- Only 25% of barristers appointed to Welsh government counsel panels were female.
- For the London Panels, the position for the A Panel was significantly worse than it was in 2014, the position for the B Panel had improved and the position for the C Panel had not changed
- The Welsh government provided data which showed that although women were poorly represented on all panels, those on the A and B Panels received

per capita more instructions than the men, while the male QCs were allocated more work proportionately than the female silks.

- The GLD provided data about the number of men and women who had invoiced them over 24 month periods and the number of “instructions” in relation to which they invoiced. It was striking that on the C Panel, where female barristers comprised 48% of barristers on the Panel, 72% of GLD’s “instructions” went to male barristers. Most C Panel members were under 10 years’ call, typically appointed in their mid to late twenties. It seemed unlikely that the significant disparity in work allocation at this most junior level should all be attributable to lifestyle decisions or maternity leave. At the more senior level, not only had the A Panel increased by seven men to every woman since 2014, the 30% of A panellists who were female received only 22% of the “instructions”.
- The data provided in relation to the 29 female QCs and 92 male QCs instructed between 1 July 2018 and 30 June 2020 showed that female QCs were significantly more likely to be instructed at the lowest hourly rate of £180 per hour than their male counterparts (79% as against 68%). (See further detail in the [4 January 2021 article](#)).

82. HHJ Emma Nott concluded that the figures spoke for themselves:

*“Across all types of publicly funded work, there were significant gender disparities both in access to work and in remuneration. If the current situation maintains, over the course of their careers the young male barristers of the Bar school class of 2020 will have better access to quality work, will claim more of the available pot and will have a greater likelihood of taking silk than their female counterparts, whatever the jurisdiction, excepting those litigating under the Children Act. It is difficult to see how the profession will ever achieve equal numbers of men and women in silk, or on the High Court bench, if these disparities are not addressed.”*

83. She further observed:

- While some government departments – notably the CPS – had taken note and were consequently taking active steps to advance equality of opportunity between male and female barristers, other departments appeared to be less vigilant and less proactive. Monitoring and transparency were key.
- As a result of her correspondence with the GLD around this article, it was now fully alive to the problem. Simon Harker of GLD Knowledge and Innovation said: *“GLD [Heads of Group] have found this report and the correspondence around its production extremely useful in highlighting issues around gender and fair access to government civil work. They take equality of opportunity extremely seriously. They say that, as a result of this report, they will be giving the issue of fair access greater prominence in the selection of counsel.”*
- For the self-employed Bar, the role of individual sets was crucial.
- Help was on hand from the Bar Council (e.g. through a Work Distribution by Sex Monitoring Toolkit 2020).

84. Her final paragraph highlighted the complexity of the issues:

*“Are the disparities in the allocation of publicly funded work described in this article simply an unfortunate hangover from history? Can they be explained as a result of “lifestyle choices”? To what extent does unconscious bias – expectation of what a*

*proper brief should look like – affect client choice? How do government lawyers and managers apply their diversity training to their allocation of work externally, and how is that monitored? How does the traditional chambers model, historically so dependent on patronage, work in a modern meritocracy? What role might the structure and composition of the clerks’ room have to play? The answers to these questions are likely to be multi-faceted, complex and may require independent evaluation. Perhaps it is now time for the Solicitors’ Regulatory Authority and the Equality and Human Rights Commission to investigate.”*

## THE CHANCERY BAR ASSOCIATION

### “Voices of Women at the Chancery Bar” (2020)

85. **Objective:** The report was commissioned by the Chair of the Chancery Bar Association to “*identify challenges faced by women practitioners, to understand barriers and, most importantly, to create opportunities to address them in an action-orientated and collaborative way*”. It was authored by Marcia Shekerdemian QC, who was inspired by a programme carried out by the Law Society ([“Women in Leadership in Law”](#)).
86. **Methodology:**
- Four round tables were held between March and June 2019, each attended by 10-12 women and two facilitators.
  - 10 women who were unable to attend shared their thoughts separately.
  - Chatham House rules applied; identity of participants was kept confidential.
87. The report presented in detail the voices of participants by reference to several themes (p.20-74).
88. **Conclusions:** These were divided into three categories and are summarised below:

#### Common features of working life at the Chancery Bar

- The pressurised, long-hours culture; the isolated nature of much work; a lack of support.
- Issues with maternity leave, childcare and flexible and part-time working (although these were less of a concern than expected).

#### Problems

- Sheer unfairness in the treatment of women when compared to their male contemporaries.
- The macho (and arguably inherently misogynistic) culture.
- Sexual harassment and bullying.
- A pattern of inequality in which new male juniors were offered the choicest opportunities to the exclusion of female juniors; the extra boost to male barristers by their seniors’ patronage and clerks fostering relationships with favourite solicitors; and from the high-profile leaders who picked (male) juniors in whom they saw their younger selves reflected.
- By ten years’ call, women were doing lower quality, lower profile and less well-paid cases than their male peers, which in turn meant they were less well-positioned to be chosen for the good cases at the next level; women felt unable to shed more junior work and their practices were at risk of stagnating.
- Fifteen years in, male colleagues taken on at the same time were applying for silk, but the women’s practices felt way off where they needed to be to apply.

- Women disproportionately took on the “unpaid” work of Chambers.

Consequences:

- Sapping of confidence.
- Detrimental effect on finances, resulting from women:
  - Being disproportionately asked to spend more time on “unpaid work”.
  - Spending more time and energy on childcare than their male colleagues.
  - Being pigeonholed into “clever” but less well-paid areas of practice.
  - Not enjoying the same career trajectory as their male counterparts when starting out.
  - Being overlooked for work by solicitors, clerks or leaders.
  - Having work diverted away from them.
  - The cyclical effect of doing lower quality and lower paid work, leading to more work of a similar quality, and difficulties breaking that cycle.
- Women leaving the Bar or considering leaving.
- Detrimental effect on wellbeing and mental health.

89. ***Recommendations:***

- Raise awareness of the duty to monitor fair allocation of work and the right to have access to those records.
- Clerks should actively curate the practices of individual members and anticipate and curtail opportunities for conscious/unconscious bias of solicitors/silks to creep in.
- Put in place active monitoring of work allocation and ask the clerks to take the initiative on raising discrepancies.
- Arrange regular anti-unconscious bias training for clerks and members.
- Consider whether positive action is, in any particular circumstances, appropriate (e.g. where a women returns from maternity leave).
- Adopt good parental policies in line with Bar Council recommendations. Obtain women’s views on practice management on return to practice.
- Ask women whether something can or can’t be done rather than make assumptions.
- Actively consider marketing methods and how they disadvantage women. Minimise the number of alcohol-based marketing activities and put in place a transparent system of marketing.
- Recognise and address that the culture of the Bar has a negative impact on women’s confidence which is not their “fault”.
- Positively investigate the issues that women might face in your Chambers.
- Consider both formal mentoring processes and formal reverse mentoring.
- Consider bespoke mentoring/advice to encourage women to apply for silk.
- Put in place different wellbeing initiatives.

**MIKOLAJ BARCZENTEWICZ**

**“Gender and seniority of counsel before the UK’s highest court” (March 2021)**

90. In this article, Mikolaj Barczentewicz presented and analysed the results of an empirical study into the gender and seniority of counsel who appeared in the House of Lords and Supreme Court between 1970 and 2020.

91. **Methodology:** Mikolaj Barczentewicz used a new and unique dataset on litigation before the House of Lords and the Supreme Court, including 5,041 lawyers and 2,714 judgments. Further detail can be found under “Dataset” and “Technical appendix”.
92. **Findings/Observations:** These were extensive but included the following:
- From no or almost no appearances by women in the 1970s and the 1980s, we moved to 21% in 2017, 23% in 2018, 24% in 2019 and 25% in 2020. However, these percentages were not even equal to the percentage of women among all self-employed practising barristers, which was 35.8% in 2019.
  - Women as “seniors” (where they were listed first): Even though women were now appearing as a leader at a higher proportion than in the 1980s, it was unclear whether there had been any progress in this respect since the late 2000s.
  - Women as “juniors”: The percentages of appearances by junior female counsel every year since 2018 were relatively close to the percentages of all self-employed non-QC women barristers. There was an even more optimistic picture in relation to appearances by women under five and under ten years’ call. However, the probability estimates of female non-QCs appearing were still noticeably lower than for male non-QCs.
  - Area of law: Three figures are included which illustrate the proportion of appearances by women counsel from 1991 to 2020 divided into six areas of law. (In a [blog](#) written for the UK Constitutional Law Association, Barczentewicz explained that in relation to juniors, family law, tax law and criminal law now had the highest rates of appearances by women, with family law close to, or even above, 50% over the last decade).
  - Homophily: That the proportion of women seniors was not rising whereas the proportion of women juniors was, may suggest that the tendency for “homophily” in litigation before the SC had been falling. Almost all case teams were same sex in the 1970s, but this ratio had fallen quite drastically (0.55 in 2019, 0.48 in 2020).
  - Treasury Devils: Appointing a woman to follow James Eadie QC would likely contribute noticeably to improving the prevalence of female advocates in the SC. By itself, such a change would be noticeable but not very significant. However, given that female senior counsel lead case teams including women juniors at a higher rate than male senior counsel and given how many SC cases Treasury Devils have, having a female Treasury Devil could have a more significant “trickle-down” effect on the ratio of women juniors in the SC.
93. Under “Discussion and conclusions”, Barczentewicz asked, “are women underrepresented among counsel who appear before the Supreme Court?”, observing:
- In one sense they were: there was still not the level of gender parity which characterised current UK society. However, the percentages of appearances by junior female counsel since 2019 were getting close to the percentage of all self-employed non-QC women barristers and there was an even more optimistic picture for women under five and under ten years’ call.
  - In that sense, it could be that the SC bar was moving faster towards gender parity than the self-employed Bar in general. This was even more striking given that almost no women could be seen in the highest court as late as the 1970s and early 1980s.
  - The findings did not mean it was false to claim that women counsel, especially junior women counsel, were not being given the same kind of advantageous

assignments as their male colleagues. However, at least one extremely prestigious kind of work seemed to be rather open to women. And given the ratio of women SC first-timers among barristers under five and ten years' call over the last decade, it may be reasonable to expect that the junior part of the SC bar will be moving towards gender parity at a relatively quick pace.

- There were reasons to believe the ratio of women among senior counsel would improve appreciably and soon: (i) there were never as many women juniors in the SC as today; (ii) there were never as many women first-timers under five and ten years of call; and (iii) never did male leading counsel have as women-inclusive teams as today.
- Those were not reasons for complacency but did suggest some of the measures taken by the profession were working. It did look like that at the very least the population of potential future female senior counsel was now larger than ever.

**September 2021**