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Diversity in the Legal Profession in England and Wales

A Qualitative Study of Barriers and Individual Choices

Funded by
The Legal Services Board

Research Team

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Background to the research

Legal Services Board's Research Objectives for this Project were:

‘To enhance market knowledge and understanding of the drivers behind the diversity of legal services professionals in England and Wales and to identify potential policy options to increase future diversity.’

Diversification of solicitors' profession

- Women: the percentage of female solicitors has grown tenfold since 1984. By 2008-9 60% of all new admissions to the Roll were women. 52% of those called to the Bar in 2008-9 were women.
- BME practitioners: Between 1996 and 2008 the percentage of BME practising certificate holders rose by 243.7%. In 2008-9 BME lawyers made up 24% of admissions to the Roll (13% of the total) and 16% of those called to the Bar.
- In 2008, 64% of law graduates were female and 33% self defined as BME.
- There has been a real increase in female and BME representation in the profession. But there is some evidence that women and BME solicitors are concentrated in less prestigious and lucrative specialisms; women are less likely than men to achieve partnership and they leave profession at higher rates.

Diversification of solicitors' profession

- Class/ socio-economic group still has a significant role to play too.
- The 2009 Fair Access to the Professions study found that since the '*first wave of social mobility experienced by the post war generation, the professions have become more .. socially exclusive*'.
- Lawyers born 1970 typically grew up in families with income 64% above average.

Our approach

- The Macpherson Report focused on the **experience** of under-represented groups and the culture of the police force, rather than attempting to discern the ‘objective’ conditions.
- Our research was therefore designed to explore the reasons for career decisions, bearing in mind Macpherson’s point about the salience of experience and perception.
- Our starting point was that the experience of the individual lawyer is framed by both their social category, individual biography and larger patterns of social life and in particular the culture of the profession.

Method

- Biographical depth interviews with respondents.
 - Mostly face to face, although some were conducted over the telephone.
 - Some biographical interviews took place in small groups, others were one-to-one interviews, according to the preference of the participants.
 - We had a common set of questions/prompts for the interviews. Interviews were taped (with permission and transcribed and analysed using thematic coding).
- Respondents were self-selecting.
- We used a range of sampling techniques to allow for a sample stratified along the axes of: experience, subject-specialism, company/ firm type, geographical location, BME status, age, children etc.

Our respondents' locations

- We interviewed 77 lawyers, would-be lawyers or former lawyers of which:
 - 64 were female and 13 male.
 - 44 were BME and 33 were white.
 - 55 were solicitors or trainees, 11 were barristers, 9 were in other occupations.
 - The lawyers were drawn from private practice/the self employed Bar, and in house/the employed Bar.
 - We interviewed people from all levels of the profession, from law graduates to equity partners.
 - In terms of the solicitors' branch, 9 were trainees, 33 were non-partner level solicitors, 12 were partners (6 salaried and 6 equity).
- We also interviewed 5 diversity officers and/or stakeholders.

Structure

- We shall consider:
 - Our respondents' views on the culture of the profession.
 - Their responses and strategies to the profession's culture.
 - Organisational responses and diversity initiatives – the introduction of formal processes to ensure equity, for example.
 - Proposals for change to build on positive initiatives and support diversity in the profession.

THE CULTURE OF THE LEGAL PROFESSION

Culture and professions

- The Macpherson Report highlighted the significance of cultural processes in the experience of minority groups in the police force- arguing for a need to focus on 'processes, attitudes and behaviour' and that these could 'amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people'.
- In our research we sought to uncover the culture of the legal profession, as explained by our respondents. As expected, they had very different experiences, however, there were also many commonalities.

Legacy of white, male elitist origins

‘Our respondents indicated:

- *‘it’s still very much dominated at the top end by white, middle aged men. And as they die out they will be replaced by younger traditional white middle class men. Partly law encourages a certain sort of person and so its very male cultural norms persist.’* white equity partner medium sized High Street firm
- *‘it’s a male, white, middle class profession and so if you want to do well you have to deal with that .. I think that it is so much like that they don’t even realise.’*
- *‘the thing is, the traditional male partner with a wife at home still forms the majority.’* white salaried partner

Gender stereotypes- specialisms

- *‘P.I. is now a woman’s thing but if you look at corporate division, it’s predominantly men.’*
- *‘very few [male solicitors] do family care work, the caring, nurturing work and it’s still mainly blokes who do the business, commercial side...it’s seen as natural.’*
- *‘women are expected to do things that men wouldn’t be.’*

Gender stereotypes - questioning of authority

- *'[male] solicitors really patronised me'*
- *'being a young woman ... You're not taken as seriously'*
- *'We have a male salaried partner– a nice guy but new to partnership ... and throws his weight about and really upset one of the women in the cost team and I tried to speak to him about it ... and he couldn't take it from me. I knew from lack of eye contact, body language,'* white equity partner medium sized High Street firm

Gender stereotypes-commitment

The effects of marriage for men:

'I can remember in the early days clearly being the best performer at my level and being told so, but not getting the biggest pay rise... [instead] a real establishment white guy got (it).. they said 'because he has a wife and two children' BME equity partner

And the effects for women:

'I was told it was not appropriate to be married.. I was questioned about the circumstances.. like where and when. This was a few years ago at a set in London'

Pregnancy:

'I was asked if I was fully committed. Women get defined as being mothers in a way that men don't seem to get defined as being fathers' white salaried partner

Prejudice against different ways of working

- *‘[A] lot of older males in the profession dislike part-time female workers ...I know that until I go back full time, I will not rise to the next level.’*
- *‘I’m not an out and out person who believes that you should be able to have exactly the same rights because sometimes it just doesn’t work that way ... but it’s not that it’s been thought through like that. For them it’s just a bar because that’s the way it is ...’* white salaried partner

Social events

- ‘We have our golf days, jolly boys’ outings ... then dinner at night when the women go, but you turn up as if you’re a trophy on someone’s arm, rather than actually taking part.’ white equity partner High Street firm
- *‘[I]t is difficult fitting into the image men have of women... in a commercial firm here all of their trainees are young women and the partners thought it would be a good idea if they had a revue show and got these girls to dress up and do a dance routine. I saw one of the girls in November (2009) She was disgusted by the idea. .. (but if you refused) you would be in trouble, marginalised’* BME solicitor Northern corporate firm

Stereotypes based on race

- *‘I’d go into the major courts in the area [N.E.] and be the only ethnic minority face and ... my first experience of going into a family court in [*] the court staff said to me ‘are you the interpreter?’ ‘No’ ‘Are you the client?’ ‘No’ ‘Are you the solicitor?’ ‘No’; and then I said ‘I’m counsel’ and they were completely taken aback. This was 2004/5. I’m still very conscious of the fact that as an Asian woman I’m in a minority’* BME barrister
- *‘One of my colleagues was sitting in an office with a glass front on it and he was sitting with two other members of the department and as I walked down towards the office, he could see me coming, and I knocked on the door and went in and as I walked in he joked that he thought I was one of the cleaners because all the cleaners were black and they didn’t have any other black lawyers in the firm.’* African Caribbean female solicitor

Stereotypes based on class

- *‘I’ve seen ... the ease with which you see somebody who’s been born into that set up [operating] compared with somebody who hasn’t had that exposure,....it’s about social mobility and that’s really where the work has to be done.’*
female Asian Barrister
- *‘The Head of Chambers said: “I want him, he comes hunting and shooting with us and...my clients like him, my Greek shipping clients like him because he has everything that they are looking for, he’s been to a certain public school and then to Oxbridge and he presents the right image.” These were the criteria. He hadn’t actually, at that point, passed his Bar exam. So it was not the quality of his work that was important, it was the fact that he fitted’* white barrister

Personal networks

- *‘[legal practice] involves knowing the law and technical skills, but it’s also about building personal relationships’* white equity partner
- *‘a lot of work gets referred across departments ... so if you’ve got time to invest in building up relationships within the firm then you’re likely to move on’* white associate solicitor
- *‘so much about personal relationships’ places people who ‘are the wrong gender, wrong colour’ at a great disadvantage’* female BME solicitor
- *‘there was an atmosphere that if your face fitted then you’d be all right, if it didn’t, then you wouldn’t’.* white high street solicitor
- *‘it’s harder for people in black minority ethnic groups to actually have a network of people within the law, because it’s just... there’s definitely less people in it.’* female Asian barrister

External networking

- *‘nobody seems to see through that ‘huff and puff’ and the bluster of ‘look at me, I’m doing this, having lunch with so and so.’ Nobody stops to then follow that back up and say, ‘well what did you achieve?’.* white salaried partner
- *‘the old boys’ network was alive and well in the sense of being instructed by a certain network which they were part of (as a result) people junior to me were getting work and I was actually helping them with it but I wouldn’t get the actual work directly and I think that’s because I wasn’t perceived to be the kind of barrister they wanted because I wasn’t part of that network .. it’s not uncommon, especially where you’re dealing with local firms for there to be family links, people married to partners, children at particular firms .. I’d trained in London, and so I was surprised by how lacking in diversity the [* Northern city] Bar was.’* female Asian barrister

Exclusionary nature of some networking events

- *‘I came here very self assured and I still am but do I think I can be the best at what I do? No ... because I don’t think I’ll ever be able to build the relationships that people who are not Muslims will be able to build ... there’s going to be a point where I’m expected to bring in lots more work, and engage socially and I’m not going to be able to do that ... so I can see myself going in-house.’* male Asian employment solicitor
- *‘... a lot of it does involve socialising, going out, and ... I think, partners at the firm that I work at appreciate people who do a lot of marketing a lot more than people that don’t, regardless of whatever their reasons are for not doing it. I think there is that kind of perceived pressure.’* British Indian solicitor

Unofficial mentoring/ patronage

- *‘you have to develop a special relationship with an equity partner who is going to trumpet your cause’* white equity partner High Street firm
- *‘you needed the patronage [of senior barristers] to get on’* white barrister
- *‘a partner (J) had two protégés... men who did commercial litigation; the really big work came from J and he always gave it to the two men.’*

Self promotion

- *‘It’s the male-female mindset. Men and women approach problems sometimes differently, communicate differently ... women will try and please people more than men do, which certainly doesn’t help in pay or promotion negotiations, because we wait to be asked. ‘If we’re doing well, we think, they’ll come and tell us and offer us a promotion’. Will they bugger! I learned that to my cost’* white equity partner High Street
- *‘it’s all about visibility ... I tended to turn up, be really focused and leave, as opposed to floating round the office, chatting to people. But the person who is around chatting is visible, they are essentially networking within their own firm .. that’s important because then people know who you are and they’ll refer work....’* white employment associate solicitor

Patronage and self promotion

'I didn't get the sort of work I should have. I said in my appraisal, I want to be involved in the corporate side ... I want more opportunities, but it just never happened. I wasn't the only person not getting good work in the department ... there was a gay male and another female solicitor who was also not perceived as someone who should be passed good work.' white corporate lawyer

'I get files to finish off [and] usually it's been billed before it passes to me so I don't get any recognition for the costs I've spent finishing this job' white High Street associate

Impact on targets of poor work

- discriminatory allocations are ‘*absolutely critical because they determine whether you meet your targets and how much stress you’re under*’ associate solicitor
- ‘*the profession’s obsession is with targets, chargeable hours ... it’s all about money, this is the only measure of success*’ white salaried partner

Other handicaps: less institutional support

'... women are expected to do things that men wouldn't, so whereas male trainees or male junior solicitors ... nobody would dream of not giving them secretarial support. The female solicitors, it's expected that you can type.' white associate

Such factors can lead to a *'... vicious circle, and mean people get demoralised and end up leaving after say the two years ... I'd say there's quite a few people who are Black or Minority Ethnic or even like women in certain departments who will probably just leave because of the culture, because of the way they've been treated by certain individuals'* BME corporate solicitor

Opaque / discretionary promotion criteria

‘[T]here will only be an appetite within the business to make up so many people. You don’t just hand it out’ white salaried partner

‘ [N]othing else is really rated, so if you’re not a fee-earning partner in this place and you’ve got alternative career structures, nobody actually wants to do them and equally, if we all did non-fee earning career structures, this place would die, because ... it’s designed to enable a banker to close a deal by Monday morning and to start on Friday night.’ white salaried partner

‘[S]ome of the women partners who had kids, they’d say, ‘oh, had a kid like a week ago, and I’m straight back into the office’; and you think, ‘that’s not normal.’ So maybe, I guess, women adapt by just becoming more...[able to] fit into the kind of male environment, male dominated environment.’ BME trainee solicitor

Some respondents' experiences of diversity initiatives

- Development of flexible working policies and practices
 - *'We are looking at individualised working, we try not to use the word flexible working because it has negative connotations within legal services. We are not saying you must work this way or that way we are saying you tell us what do you think would work bearing in mind the impact on your team on your work on the client and we will work with you to come to an agreement on that.'*
 - *'Where there is a flexible working policy, it remains at the discretion of a partner: people have made flexible working requests, but it sometimes depends who you're making the request to... the more traditional (older) lawyers ...don't see how it could possibly work.'*
 - *'One of the things I think is helping, because we've had the flexible working programme because of the economic climate, and we have had people working four days or taking sabbaticals, it has opened the eyes of certain partners in certain departments who previously said, you can't do this job unless you working here five days a week.'*

RESPONDENTS' RESPONSES, INITIATIVES AND COPING STRATEGIES

Entry strategies

- Target employers who would look favourably on their characteristics and background (ethnic firms, radical chambers, etc) .
- Reorientate career aspiration towards sole or small scale practice (being your own boss).

‘What do I do? Do I continue on this road, trying to get into the city, which is where everybody tells me that I need to be as a lawyer, or do I need to rethink? And I sat down and thought, well, what do I want to do, and I always felt that I would like to own my own firm and I decided to take the offer, accept the offer from [] because it was a smaller firm, and I felt that I could learn more in a smaller firm because I needed to open my firm and I needed to know from grassroots level up to the partner, how to run a practice.’*

Entry strategies

- Gain employment in a paralegal role and work your way up (gaining a foot in the door)
 - *‘I just decided to settle for anything. So that’s why I did the legal assistant, and then moved my way up. But my main goal right now still is to do corporate commercial.... So, I’m hoping that with my time at that firm at least I’ll be able to contribute something so I can move up.’*
- Embracing the discourse of employability and building an attractive CV from an early stage.
 - *‘I think I’ve always done things to enhance my CV; so things like, I studied abroad, and I think that just sometimes just helps my CV to stand out off the page; and just done things like travelling, and being a prefect, being a house captain, and different things like that. And also I studied Japanese at A-level, so I just think it’s just the different extra things that have helped. Also just general work experience, I think, has helped.’*

Career management strategies

Assimilation strategies – the need for compromise

- Rescheduling of private ambitions and responsibilities around work

'I had my daughter when I was 34 because you're doing a career ... And I was job-jumping all the time, earning more money and gaining experience, and I suddenly thought, whoa, you know, I'm just about to be 34 and I thought, better have a baby fast.'

- Reframing one's identity

'I was different and I was aware that I had to be better and a bit less challenging than I would naturally be.'

'I'd bet my bottom dollar if that poor girl or man had come from Hackney Downs for instance and had gone to a state school, by the time she gets to these city firms she would have lost her identity and accent.'

'All women pretty much have to adapt the way they do things to the way things are.. they have to become different people in order to function in the work place, organise their lives differently.'

Career management strategies

Playing the system - turning difference to an advantage.

- Being strategic and promoting oneself:
 - *'I therefore specifically planned... I suppose, I'd be working with the powerful partners: I found out who was powerful, I found out who the biggest clients of the firm were, I found out where the power base in the firm was, and I applied myself in that direction very... very carefully. And therefore I know that that resulted in me, when I finished my training, being offered a job with the most powerful members of the partnership, and I don't think people are very clever like that, on the whole; and that resulted in me getting a job in a good area and progressing quickly in my early years as a newly-qualified solicitor'*
 - *'I am pretty much on every committee I can be'*

Development of reciprocal 'sponsorship' alliances:

- *'[W]e both sort of acknowledged that we were hopeless at blowing our own trumpets so therefore we would blow each other's. So I wrote a lot of the promotional stuff for her, and she does the same for me.'*

Career management strategies

- Using difference to stand out – clients' comments about their identity as reported by respondents:
 - *'I want the lady who does employment law, you have a lady who does employment law.'*
 - *'I want to show the other side that I've got a big black lawyer'*
 - *'[T]he reason why we wanted the black owned firm is because we thought that would be our USP, that would be our unique selling point because we will be different from the other city firms..... So when we opened, we could allow our difference to make a difference and actually make us be noticed for that difference'*

Career management strategies

- Reforming professional institutions from within:
 - *‘Well, the main thing for me was being the first in chambers to have a child and being the one who had to push for the maternity leave provisions of the Bar Council to be incorporated within chambers’ constitution. That was very difficult and particularly, also, the way it was received the first time when I had my first child ...’*
 - *‘So we set up a network, our own specific one called the (*), which is still going. It was set up in 1992, 93; and we just invited people from various professions, so it was not meant to be you’re coming to sell your goods, but just simply to network and bind together, because we could see the men were doing this on the golf club, they were doing this on all sorts of functions, whereas the women weren’t.’*

Career management strategies

Disengagement and withdrawal:

- Moving to a more congenial role, specialism or location
 - *‘I chose employment law because you can do that without having to do all the networking, socialising and client entertaining to the extent you have to in other specialisms.’*
 - *‘We now have a role of Legal Director, which is a possibility, and it certainly suits mums and those working part time who aren’t wanting the responsibility of a partnership, and having to put in all the hours that partnership requires, so it’s one of those roles.’*
 - *‘There’s going to be a point where I’m expected to bring in lots more work and engage, and I’m not going to be able to do that ... so I can see myself going in-house.’*

ORGANISATIONAL RESPONSES AND INITIATIVES

Organisational responses and initiatives

Targeted recruitment schemes to attract people who would not normally consider a career in law

- *‘We target 40 universities, half of these are your traditional Russell group and the other half are other universities. We are actually very conscious that the best talent is not always to be found at the best universities... Our current trainee population went to 56 different universities.’*
- *‘So our effort and work is going into our widening access piece. We run a programme and we work with an education partnership which introduces us to inner city schools which are often high with ethnic minority pupils who are high performing and we can influence those children to aspire higher. So we have taken 200 students through that programme in the last two years.’*

However, less attention has been given to organisations’ selection *techniques* and whether these have class/gender/culture biases.

Organisational responses and initiatives

Internal support networks

- *‘We are trying to encourage the development of networks for women within the firm. So for instance we are about to launch a senior associate network in London and we have a women’s network in Brussels. We have a lot of informal networking going on in London. So almost every practice group started having focused meetings for women associates with women partners to encourage people to talk about things they may be concerned about, to share information and best practice.’*
- *‘I don’t necessarily think that making more of a distinction between women and men would help in sort of encouraging diversity.’*

Formal mentoring arrangements

- Note mirroring effects
- *‘people who are more familiar to those people who are already in power get more support’*

Organisational responses and initiatives

Development of flexible working policies and practices

- *‘We are looking at individualised working, we try not to use the word flexible working because it has negative connotations within legal services... We are saying you tell us what do you think would work bearing in mind the impact on your team, on your work, on the client and we will work with you to come to an agreement on that.’*
- *‘Where there is a flexible working policy, it remains at the discretion of a partner: people have made flexible working requests, but it sometimes depends who you’re making the request to... the more traditional (older) lawyers don’t see how it could possibly work.’*
- *‘One of the things I think is helping [is] the economic climate, we have had people working four days or taking sabbaticals, it has opened the eyes of certain partners.’*

CONCLUSIONS

Proposals for addressing the challenges identified

- Further development of outreach activity;
- Reform of the qualification pathway and financial support for those from less wealthy socio-economic backgrounds;
- Collection, disclosure and monitoring of diversity data;
- Formal mentoring, role models and networks;
- Flexible working and structural reforms of work patterns;
- Diversity training at all levels.