



Voices of Women

at the CHANCERY BAR

Experiences recorded during 2019



CHANCERY BAR ASSOCIATION

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Foreword

The Voices of Women at the Chancery Bar Report is an important and thought-provoking contribution to the Chancery Bar Association's continuing and determined commitment to ensure a more diverse, supportive and fairer Bar. It is particularly timely bearing in mind the recent Bar Council analysis of Bar Mutual data for the year ending 2019, from across the profession as a whole, which was published in November and showed that there are still, in 2020, *"shocking discrepancies in [earnings] between male and female barristers"*. There was a similar picture shown in the BSB's research report, also published in November, on Income at the Bar by Gender and Ethnicity.

The Chancery Bar Report (commissioned by Eason Rajah QC as then Chair of the Chancery Bar Association) sought 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 produced after a series of Round Table meetings, in which female Chancery practitioners were invited to volunteer to take part and share their experiences. In total, some 45 volunteers took part.

In response to the experiences highlighted in the Report, the Chancery Bar Association has formulated a plan of action (set out below) including guidance to Chambers which we intend to implement without delay.

We also hope that the Report will help inform the work and contribute to the success of other campaigns specific to our own profession, such as the Bar Council's [innovative "Talk to Spot" initiative](#) by which a barrister can make an anonymous contemporaneous record of their experiences easily, without the need to decide whether to make a formal report at all and our own joint initiative with the Property Bar Association to provide a confidential telephone support line for members to discuss sexual harassment issues.

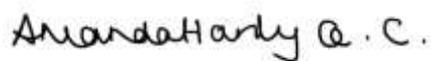
The Report is also part of our recent programme of action which include both the Wellbeing and CSR Sub-Committee's Step into Law and More Programme, a partnership with the national charity, Achievement for All, under which 90 chancery barristers are remotely mentoring 90 children age 11 upwards in the Kingsford Community School in Newham over two years and the Equality and Diversity Sub-Committee's work as part of the Bar Council Working Group on Race and on a cross SBA sub-committee on Black inclusion.

Although, in places, the Report makes for uncomfortable and shocking reading, we are heartened that it shows that, despite the difficulties it highlights, overall the participants who volunteered to take part value

and love their careers. We consider it is only by examining and debating these complex issues that we can identify the right responses and form an action plan for improvement. Further, by acknowledging and addressing the issues we are far more likely to attract and retain a genuinely diverse and inclusive profession. No kind of prejudice or discrimination can be tolerated at the Bar and we are determined to eradicate it.

We would particularly like to thank Marcia Shekerdemia QC and her team for the enormous amount of work, time and passion they put into the project and, of course, the women who shared their stories spanning several decades and all levels of seniority of the Chancery Bar.

We intend to honour their contributions with the actions set out below.



Amanda Hardy QC
Chair of the Chancery Bar Association



Eason Rajah QC
Former Chair



Andrew Twigger QC
Vice Chair of the Chancery Bar Association

December 2020

Action Plan

Item	Objective	Timetable	[By Whom]	
1	Publication of the report on the website.	Widening the dissemination and availability of the report and its findings to the membership and decision makers within the ChBA.	February 2021	Francesca Compton (FC)
2	Zoom Q&A Panel session with leading E&D figures throughout the Bar [This would obviously be online, but the format should be by theme, rather than a more familiar seminar format].	Introducing the report to the membership; discussion of the main themes and identifying routes to implement real change.	February/ March 2021	E&D with support from FC
3	Drawing up the <i>Routes for Real Change</i> , codifying a response following the panel session.	To produce a document to send to HoCs and EDOs to promote focussed discussions.	End March 2021	E&D
4	Zoom Round Tables with Chambers' decision-makers, implementing <i>Routes for Real Change</i> and the original report. The aim will be to incorporate any amendments required and have reached consensus to the <i>Routes</i> document by the end of the Round Tables.	Guide real change for the equality of all at the Chancery Bar.	April/May 2021	Main Committee (led by E&D)
5	Publication of Chambers' participation in the Round Tables and drawing up further approved ChBA policies.	To recognise Chambers' participation and to provide template policies for adoption.	June/July 2021	Main Committee (led by Wellbeing and CSR and E&D)

Introduction

These are both true stories.

A generation ago, I was straight out of Cambridge, with my solid 2.1¹ and looking for pupillage. I had never failed at anything and as far as I was concerned the world was my oyster and it did not occur to me that I would not shine, let alone that it would be difficult to land a top drawer commercial pupillage.

Like most of my Oxbridge cohort, I applied to and was interviewed by all the magic-circle sets. To my astonishment, the rejections came flooding in. At one interview with a well-known magic-circle set of Chambers, I found myself in the pupillage interview waiting room with two (white, English, public school male) contemporaries, both with identical Oxbridge 2.1s. They were both friends of mine and we arranged to meet in the pub after our interviews.

The boys were interviewed before me. In each case, a woman came out and took them straight into the interview room. One by one they were interviewed and left. I was alone in the waiting room. A few minutes later, the same woman came out and gave me a piece of paper, telling me that she would be back in 10 minutes. The piece of paper contained a legal problem. I examined it for my permitted 10 minutes, was taken into the interview and, after the pleasantries, was asked questions about the problem.

After the interview, I went to the pub to meet the boys. I asked them if they had been given a problem for discussion. They hadn't. A few days later, the inevitable rejection letter plopped through my letter box. The boys both got pupillage offers. One with a scholarship.

At the time, I didn't give what had happened (which was, on any view, appalling) much thought. I just pressed on.

I did land a pupillage of course, in a (now defunct) first division (if not premier league) commercial set. There were three pupils; me, a Pakistani woman (X) and a white English man (Y). From day one, it was obvious to me that Y was being singled out for different and special treatment – trips to the Court of Appeal with Chambers' star players, exciting bits of research on high profile cases. You get the picture.

¹ In those days, a 2.1 was amply good enough to land a stellar pupillage.

X and I on the other hand were largely ignored – in my case, much of my working day involved editing footnotes for a book being written by a member of Chambers. A little after our pupillages had started, Chambers took on a new junior tenant, Z, an Indian man on the completion of his pupillage.

It became obvious to me that X and I stood no chance of learning anything, let alone getting taken on. So only three months into what should have been a 12-month pupillage, with some trepidation, I approached my pupil master² (as they were then known) and suggested to him that I might be wasting my time in Chambers. With breath taking candour, he immediately agreed with me.

What he went on to say should have shocked me to the core, but probably as a sign of the times, it did not. *“We are the first commercial set to take on a member of the ethnic minorities. The consensus here is that the next tenant we take on should be in the more conventional mould”*. So both X and I were disqualified: sex, ethnicity and strange foreign surnames. All *“unconventional”* boxes were ticked, in bold type.

Over 30 years later, it is unthinkable that this could have happened, let alone that anyone could actually have even said the words that my pupil master said to me. Even more shocking is the fact that I felt no outrage. I was simply accepting of the reality. I don’t think that I was even grateful for his honesty. That did not register.

Of course I left, and I embarked on another 18 months of pupillage in two different sets.

Looking back, it might be that what my pupil master had said to me had rather more impact than I had thought. After all, what I have given above is a verbatim account of my conversation. Likewise, my very clear memory of my interview at that magic-circle set.

Fast forward 32 years, of course, I can’t pretend that my career at the Bar has not been a successful one, or that I have been unhappy in my job. Whether by accident or by design does not much matter, given how much the Bar has changed over this time.

² Who is now dead.

What I can say is that I have been fortunate; I owe an enormous amount to an inspirational (last) pupil master,³ hugely supportive (and in retrospect, enlightened) heads of Chambers⁴ and colleagues – barristers and clerks alike, female and male. Not to mention my clients, both lay and professional, none of whom were remotely bothered by the fact that I was female (with a funny surname to boot⁵). The Bar has been good both for me and to me, despite the challenges I have faced – (relatively) young widowhood and being the lone parent of two (now adult) children, one of whom was born with profound disabilities.

I know that I am not alone, both in my personal circumstances and in my good fortune, but very many other women have not been so fortunate. And in any event, surely it should not be a matter of good fortune for women to be successful – and content - at the Bar?

Of course, it goes without saying that we have come a huge way. It is now a little over 100 years since Helena Normanton ate her first dinner in Middle Temple Hall and 2019 was the centenary year for women in law, rightly widely commemorated and celebrated.⁶

And of course, we have no shortage of trail blazers, ground breakers and role models across the Bar. Not to mention several excellent training and research initiatives, across the Bar Council and the BSB. Indeed, the Bar Council has been brilliant at grasping the gender nettle.

But it goes without saying that we as practitioners have quite some way to go. Equality is still a hot potato. The moment we stop talking about it is the moment we achieve it.⁷

³ The wonderful, late Jane Giret QC, who mentored me for most of my career, before mentoring was even a “*thing*”.

⁴ A special mention goes to Michael Beckman QC, who persuaded me not to leave the bar and instead to spend a year working at home after the birth of my son, Leo, who has profound difficulties and also to Edward Cohen, who was so good at recognising and addressing the challenges of parenthood and, in particular, lone parenthood.

⁵ On which note, please don’t get me started on the Chancery Master who many moons ago told me, in Court, as I introduced myself and my opponent, that I would “*have to change [my] name if I wanted to practice at the English Bar, the Court of Appeal don’t like names like that*”.

⁶ <https://first100years.org.uk/>

⁷ There is of course endless talk. But I have become very cynical and am far from convinced that the talk is much more than box-ticking. I have over 1,100 connections on LinkedIn. For the main part, the only time I post is to share an article about diversity issues (generally concerning disability or women). My post may get 700 views, but rarely more than 20 “likes”. I rest my case. On the face of it, whilst lawyers are all too ready to express the fact that they are honoured and humbled to have been promoted or to have achieved directory rankings, there is no obvious level of interest in the diversity problems that can (and we know do) infect our workplace. Another example of this can be found in what seems to be a wholesale lack of interest in the *Women in Law* pledge, addressed further below.

Many of the female chancery and commercial barristers I have spoken to, both as part of this project and within the wider social and professional arena have countless, legitimate, grievances about their treatment and the reaction to that treatment that have no place in the 21st century.

We still need a cultural shift. Dialogue, commitment and tangible action are needed to achieve full gender equality. The big questions are broadly these:

- Do we at the Bar practice what we preach?
- Or do we just talk the talk, without walking the walk?

And having identified the problems, how, practically, can we address them? Are women at the Chancery Bar content at work? And if they're not, why is that? What do women at the Chancery Bar want? How can things be changed or improved?

That's what we wanted to find out.

What did we set out to do and why?

In 2018, Christina Blacklaws (then President of the Law Society of England and Wales) set up a research programme “*Women in Leadership in Law*”. Its objective was to identify challenges faced by women practitioners, to understand barriers and create opportunities to address them, “*in an action orientated and collaborative way*”⁸ and to feed the data collected into a global quantitative survey.

As part of this process, over 100 round tables took place across England and Wales, each one attended by around 10-15 women. Their primary objective was to discuss how barriers to achieving leadership could be overcome by addressing the following: unconscious bias, gender pay gap, flexible working, best practices (e.g. mentoring, reverse mentoring, role modelling and involving more men in the equality debate). Christina’s report was published on 8 March 2019 and can be found at <https://www.lawsociety.org.uk/support-services/research-trends/gender-equality-in-the-legal-profession/>.

At Christina’s invitation (I was then chair of the Chancery Bar Association’s Equality & Diversity sub-committee⁹) I attended one of these round tables. From memory, there were eight of us attending, plus two facilitators, including Christina herself. Despite the early start (8am) the discussions were enthusiastic, impassioned and candid. No one held back and heads were raised above parapets.

I realised as I left that in all my time at the Bar, I had not experienced a similar forum – open and intimate discussion and a sharing of real experiences in a safe environment.

I therefore decided, with the support of my sub-committee, that the Chancery Bar Association should similarly embark on a series of round tables in which, operating under “*Chatham House*” rules, small groups of women could share their experiences and discuss the particular challenges that they had faced in the course of their careers.

My objective was to distil the product of those discussions into a report, both as a reality check and as a tool for change.

⁸ <https://www.lawsociety.org.uk/campaigns/women-in-leadership-in-law/>.

⁹ 2017-2019.

Only by taking a cold hard look at the reality of members’ experiences can we assess whether we are doing more than ticking boxes or talking the talk and whether and what can be done differently, or better.

What did we do?

Tina Kyriakides (Radcliffe Chambers, call 1984), Nicola Rushton QC¹⁰ (Hailsham Chambers, call 1993), Elizabeth Houghton (Wilberforce Chambers, call 2014) all volunteered to assist. I am greatly indebted to them for their hard work, both in putting together and facilitating at the round tables and as contributors to this report.

We held four round tables between March and June 2019, each one attended by 10-12 women and two facilitators. I attended all four round tables, both as a facilitator and as an observer. The second round table was also attended by Amanda Hardy QC in her (then) capacity as chair of the ChBA Wellbeing Sub-Committee. Amanda is of course now Chair of the ChBA.

Date	Number Attending (not including facilitators)	Venue	Facilitated by
February 2019	10	Wilberforce Chambers	Marcia and Nicola
March 2019	9	„	Tina and Elizabeth
May 2019	11	„	Marcia and Nicola
June 2019	12	„	Tina and Elizabeth

The round tables were publicised by a bespoke flyer circulated to all Association members by Francesca Compton (Appendix A). Each session was over-subscribed (and with a waiting list) within 24 hours of the flyer going out.

We had a number of expressions of interests from members in Leeds and Manchester and it had been our intention to hold the 5th and 6th round tables in Leeds and Manchester in July 2019. However, as it transpired,

¹⁰ Now Chair of the Chancery Bar Association Equality & Diversity Sub-Committee.

there were insufficient numbers in each venue to warrant the sessions going ahead. The opinions of those who did sign up were canvassed, with a view to combining the two sessions via video-link but (rightly) the consensus was that this would not work. The small take-up in Manchester and Leeds can almost certainly be explained by the statistics (see next section).

In advance of each round table, the participants were each provided with a handout (Appendix B), explaining the structure of the session, its objectives and logistics and a list of areas for discussion. In order to preserve their identities, participants were all bcc'd at this stage.

Each session was scheduled to last 90 minutes but in fact extended to two hours (and would have gone on even longer had a guillotine not been imposed). In each case, one of the facilitators would introduce the discussion and explain various ground rules. In essence, that Chatham House rules would apply, and that the identity of participants would be kept confidential, our objective being to provide a safe environment for all those taking part.

Each session was recorded. Participants were told this in advance and, on the day, were told that the transcripts would be anonymised and that the recordings themselves would then be destroyed (which is what then happened).

We then went around the table with each participant identifying themselves by name and year of call. We deliberately did not call for any other information. What participants chose to volunteer was up to them.

After each session, as promised, the recordings were typed up and anonymised, in the first instance by the facilitators and thereafter by the participants.

Other sources

Quite apart from the round tables, I was contacted directly by around 10 other women, who were unable to attend any of the sessions. They shared their particular thoughts and experiences with me, by email, by telephone and over coffee and I have taken their observation into account and referred to them into account in preparing this report.

Retention and leavers

This particular “R” word has for some time been a real hot potato across the legal profession. It would not be going too far to say that it is a universally acknowledged truth that at around mid-seniority, women leave our profession (and indeed the solicitors’ profession) in significantly higher numbers than their male counterparts.

When putting together the round tables, we sought to reach out to women who had left. This was inevitably going to be a difficult process, given GDPR and the problems inherent in accessing contact details of former members of the Association. Hence the reaching out was done via the mailshot publicising the events (“*If anyone knows...*”) and on a word of mouth basis.

In the event, no former members or leavers got in touch and we were unable to address head on the experiences of those who left and why they had left.

But is this a lacuna in our research? In our view it isn’t. Far from it. The problem of retention can best be addressed by looking at – and addressing and even resolving - the day to day issues, challenges and concerns faced and experienced by our participants, all of whom have remained in practice (despite, in a number of instances, having been pushed to the brink of leaving).

Some Statistics

As at 24 July 2019:

- The ChBA had 1356 members in total.
- Of these members, 322 were female (so 24%)¹¹.
- The ChBA, as of 5 October 2020, had 320 silks, of whom 45 were female (so 14%).
- Of these members, 1125 practised in London Chambers.
- Of those London members, 262 were female (so 23%).

¹¹ The most recent data collected by the Bar Standards Board accounts for 38% of all barristers being women.

- Of the total membership, 107 members practiced out of Leeds, Newcastle and Manchester. Of these 107, 29 were female (so 27%).

Hence, the 45 women who attended our round tables (including facilitators) comprise around 14% of our total female membership and 17% of our total female London membership. The relatively low number of female members practicing out of Leeds and Manchester explains the low take-up for the proposed Leeds and Manchester round tables.

Appendix C is an anonymised analysis of the calls of all those attending. It will be noted that only one participant was under 5 years' call. The highest concentration was in the 11-15 year call bracket (12 women, comprising just over 25% of the participants¹²). Nine (including Nicola and myself) were in silk.

Almost all those attending practiced from established chancery and chancery/commercial sets.

¹² A study carried out by the ChBA Equality & Diversity sub-committee in July 2017 comparing the percentage retention of female/male ChBA members found that the highest differential in attrition was for those around 15 years call: 28.6% of women in this cohort left the Association, as compared to just 9.3% of men.

What happened at the Round Tables?

Each session started with the same questions: *have you ever considered leaving the Bar and why? What made you stay?*

In each case, those questions were the trigger for wide-ranging discussion. What we were unable to do – and indeed ended up not wanting to do – was to work through the questions in the handout methodically or formulaically. In each case it quickly became obvious that our members welcomed the opportunity to speak freely and openly. In fact, we had not previously appreciated that they had never had the forum in which to do so.

Hence, we did not rein our participants in. If they wanted to vent, or unload, it was important that they should be able to do so. We quickly recognised the value of a safe environment.

What could not be ignored – and what probably cannot be replicated in this report – is just how much anger and frustration was both felt and readily and vociferously expressed.

But it wasn't all bad. There were good, positive experiences shared as well; it is fair to say that for many, the Bar provides a positive and supportive working environment.

A word about parenthood. A little after the flyers went out, I was contacted by email by one woman, a senior practitioner with school age children, who did not attend the round tables. She considered that her career had been destroyed after she had had her children as a result of (what seemed to be) truly horrifyingly (and on any view misogynistic) clerking and Chambers' management. Her advice for younger women was that they should "*find another profession*".

Her experiences were appalling. But as it turned out from our discussions, they were (happily) not representative of the experiences of our participants.

Indeed, one particularly interesting feature of all four round tables was how very little parenthood featured, other than in the course of our discussions about silk and (unsurprisingly) flexible working.

After the flyers went out, a number of women RSVP'd rather apologetically, stating that they had no children and/or had not taken a career break, but would it still be OK for them to come? I assured them, of course that the round tables were open to all women.

We deliberately did not ask the participants whether they were parents. If they volunteered that information, it was up to them. Indeed, one woman later emailed me *"It is encouraging that so many non-parents are involved in the process."*

And when it came to it, across all our discussions, contrary to our expectations, parenthood featured far less frequently than we had anticipated, whether as a *"problem"* or otherwise. Possibly, this is because we are not employees. Possibly, because parenthood is easier to *"manage"* and problem-solve, with tried and tested internal procedures in place and clear guidance from the Bar Council.

Possibly also because the things which really animated - and *angered* - our participants were things they had no control over; things that had been done to them, the skewed perceptions, the arrogant or simply misplaced assumptions. Or maybe these were things they believed that they had no control over.

In which case, what engendered that belief?

Feedback after the Round Tables.

This was unanimously – and overwhelmingly – positive. We were blown away. The common feature of all the feedback was gratitude for the fact that the participants had been given a safe platform from which they could speak honestly, openly and share experiences - without fear of recrimination or repercussion.

This is what our participants wanted and needed, rather than inspirational *"one size fits all"* talks about glass ceilings from judges and others who had (for most of us) achieved dizzying and unattainable heights, or indeed heights that many did not want to achieve.

Indeed, as one participant said:

“I think we also need to find ways of being a bit supportive to people who realistically don’t see themselves as ultimately making it to the Supreme Court but who would like a decent life in practice at the bar and don’t necessarily have quite the degree of driving ambition that we tend to regard as a sort of masculine characteristic...”

But how could we present our findings?

What did emerge from over some eight hours of conversation, were recurrent “*themes*” featuring:

- shared experiences, bad and good;
- shared concerns;
- shared ideas;
- shared possible strategies for change and improvement.

When we started out, before our first round table, I had rather envisaged a neat report, punctuated by pie-charts, graphs, percentages and other statistics (rather like the Law Society’s project). This proved to be impossible given how the discussions evolved in each case and the voices that needed to be heard.

Hence, we have tried to distil these themes into the next few sections of this report - through the voices of the women who participated.

The extracts below are taken largely verbatim from the transcripts, but where necessary and appropriate (for example in order to preserve anonymity and to maintain clarity) the quoted passages have been partly edited.

Common Themes

Whilst each round table very much had its own “*vibe*”, we think that it is fair to say that there were no (or no significant or material) divergences of opinion or experience. It is fair to say that many (and possibly the majority of our participants) said that they enjoyed their work. A small minority of us (myself included) acknowledged that the Bar had been good to us. But not surprisingly, overwhelmingly, our discussions tended to focus on our less than positive experiences.

Everyone’s story was of course unique, but nonetheless somehow representative of and consistent with others’ experiences.

These were the more common themes, in many ways overlapping and feeding into each other:

- Working Culture/Pressure.
- Loneliness/isolation/support structures.
- Wellbeing and mental health.
- Fair allocation of work – bias and discrimination.
- Fairness and transparency in marketing/male orientated marketing.
- Clerking issues.
- Sexual and other harassment and bullying.
- Career development, mentoring and applying for silk.
- Flexible working and maternity leave.
- What is the effect of any one or more of these issues, in particular on our confidence? Does the Bar undermine women’s confidence and devalue us?

Working Culture and Working Environment

The stress of the job and the pervading macho working environment was a constant theme throughout all sessions, with no dissent.

Add into the mix (i) complaints about the lack of any meaningful support structure; (ii) preconceptions about what a barrister should “be” like; (iii) the expectation of 24/7 commitment; (iv) very real concerns about allocation of work and clerking; and (v) the confidence issue, we get the perfect storm.

Voices

“...it’s about saying well I want to live my life this way and my job will work for me this way, rather than the feeling that it’s an overwhelming job that you have to give your whole life and weekends and everything to.... I couldn’t see any role models at my age doing it any differently. The work came and there was a lot of pressure to take it. The clerks would say ‘well you don’t have to take it, but it will go out of Chambers’, so there was pressure to take it which was hard to deal with at 23/24 years old.”

“I mean I think that the theme throughout my entire career has been feeling that the stress levels of the job, which are dealing with the aggression of people, I don’t like that massively...”

“I’ve discovered, I’m not defined by my job I can live without it and I think a lot of the men certainly in my Chambers, they are so defined by it seemingly they just can’t think of doing anything else, they’re in Chambers more hours than there are in the day and they’re so obsessed with winning the next case and making the money and I just think they’re driven in a completely different way. Their motivations are so different and I love my job, I get a lot of satisfaction out of it, [but] I totally agree with you, I hate the aggression. It’s so unnecessary and it just seems to get worse the more senior you are... at my level of seniority this was the time I was actually thinking maybe you know, maybe there’s another career out there.”

“...this is a client facing profession, you are dealing with clients who expect you to be as good as the next person, and to be as on call as the next person, and that next person might well be a man, is

likely to be a man, and in a sense it's business driven isn't it? In that if your clients are a bunch of aggressive businessmen who want you to be in court representing them and advocating for them as much and as aggressively as they want against a man who will be as aggressive and is on call as their opponent, or opponent would be then you've got to be that in order to serve their need."

"I always think there's a lot you know, there's so much about the bar which is about macho language, you know written directories and the blokes all described as having rapier cross examinations, where they're [women] being described as diligent with their paperwork."

"...a lot of it stems from the fact that you know a lot of the normal working hours, the normal working patterns, the normal ways of behaviour as perceived by people here...[are] so entrenched and they're entrenched because that's the way it's always been..."

"But really there's a macho culture out there that is making, without making generalisations but making a generalisation, things challenging for us I think because of that expectation that you will have a team, you'll be part of that team that's available over the weekend when you actually don't need to be."

"...this profession becomes so much harder for women because even though I think I'm doing my job better by being organised and read all the papers in advance and getting my skeleton to my solicitors and clients in plenty of time, actually I get penalised for it by virtue of the behaviour of my counterpart who totally flouts the rules, totally doesn't get his skeleton in on time, totally pulls something out at the last minute and completely gets away with it because the Judge is going to say: what's the problem Miss XX you had all of yesterday to read it and we're here now and I've got the email, I've got the cases, shall we just deal with it."

"I mean in a way the kind of sort of idiot opponent who kind of is a bit bullish in court we can all deal with them, it's actually the silent ones, it's the ones that carp behind your back, that don't get you in as a junior, that you could never pin your finger on it, or catch them out because they're too clever to be caught out but it's that inspires that whole the silence thing the whole I mean you know you're in it but it doesn't come out from you and you can't battle it, that's irritating because it's there and you

know it's there, you can see it in how you're dropping behind your male contemporaries, you can feel it when you walk in the clerks room."

Examples

One very senior woman had to fight a lot of battles. She had been in Chambers for many years and had an established practice and good reputation; but she still felt she was still battling again and again in a men's world with rules made by men which suited men and which have nothing to do with how women think or feel or what they need to be their best at work.

One woman said that she had constantly thought of leaving the bar for [many] years. She said that the reality was that it was extremely stressful. Further, she said that in her first five years she found that all the people that were taken on were men, that their practices seemed to fly, that they got all the good work, whereas she did not. She said that now she goes through phases and sometimes just feels exhausted. The perception (at least, but more likely the reality) that men's careers seemed to take off faster and/or progress in a much steeper trajectory was one that was shared by the majority of participants.

One woman said that when she was at her first set, she considered leaving the Bar. She believed that she would have no career at the Bar whilst she was there and, in her eyes, there were no successful women in her Chambers. She had been to Oxbridge and believed that she was as good as any man. She was taken on at the same time as a male pupil. However, five years into that tenancy, she compared her practice to that of her colleague's and it became obvious that work was being fed to him because he was a man and that that fitted into the clerks' ideas of how the Bar worked. For this person, what she saw was like a soul-destroying experience for her.

The same woman also had experienced bullying and aggressive behaviour from older male opponents, although she thinks that they might have behaved in a similar way towards to a more junior male barrister.

One participant said that women in her Chambers said that they needed pro-active practice management, particularly, from their clerks. They considered that they needed much more structured support and real communication, in circumstances where they felt they could be honest with their clerk/practice manager and felt that their career was going somewhere, that their practice manager was on board with that and

understood their requirements and their personality. However, the perception was that there were a lot of the men in Chambers swanning around (and it was getting worse) as if they were the biggest thing since sliced bread and that the culture was not helped by the fact that Chambers published everyone's earnings.¹³

One person said that she had emailed a senior woman from her Chambers who had left Chambers a while ago to find out her perspective; she said that women were just not happy at the Bar. She said that it was still male orientated, male dominated and for men, they somehow needed the Bar for their self-esteem and were defined by their jobs, whereas women were not. She found that as time went on it became harder and more painful and that she got weary of it. Her sense of equality had been slowly eroded and the edges had been taken off in a really negative way through her experiences in the workplace.

¹³ The perception (of clerks and male colleagues) that the more you earn the better you are was widely reported in all the sessions.

Loneliness, Isolation, Support Structures

“But what’s wrong with our business model is that unlike any other profession we have got no internal support structure, none at all.”

#bekind has real resonance here. For us all. Solitude is a necessary feature, or consequence, of our unique business model. We don’t (in any real sense) work in teams. For the main part there is little of the water-cooler camaraderie that is a feature of “normal” office life. We don’t (generally) have the in-house counsellors that so many city firms have, or any other form of inbuilt support structure.¹⁴ Nor do we tend to look after each other, beyond the simple level of individual relationships and particular friendship groups.

If we throw into the mix the very nature of our jobs – tough, demanding, competitive, unnecessary and unhealthy levels of perfectionism and yes, an element of machismo (or perhaps more accurately our perceived need to suppress female traits) we get the perfect storm.

But it does not have to be like this – for women or for men. The conclusion that we came to was that there are many different and as effective (if not more effective) ways of doing this job. By comparing notes more, by sharing experiences, by sharing ideas. By asking “*how are you?*” and actually caring about the answer. By not seeing anxiety and expressed vulnerability as some bizarre and inexcusable weakness.

Is that so hard to achieve?

Voices

“I thought about leaving the bar because, and from my experience [as an employee elsewhere], I’ve actually found that the biggest change moving to, shall we call it, the independent bar, being self-employed is actually very lonely and I miss having a team of people around. Even though the Chambers [I’m in] is very bubbly and very friendly, it’s quite different when you’re working entirely on

¹⁴ I am the parent of a severely disabled (now adult) son, Leo and have been a sole parent for over 11 years. A couple of years ago I joined a group known as the City Disability Network, for City workers who were parents of disabled children. The group was set up by a female junior associate at Freshfields. The members principally comprised city solicitors, big 4 accountants and bankers. I was amazed and impressed by the fact that a number of these organisations had bespoke services within HR to provide support to those employees who were carers.

your own matters, even if you're led, or even if you're in a very good solicitors' team, and I think that that kind of structure of working. I can see it has an impact on the way that I interact; I find that I've become slightly more withdrawn within myself when I'm with family and friends just because of the nature of the work, but at the same time I find the work interesting so I don't really plan to leave at the moment. But it does cross my mind every now and then that maybe I could do as interesting law that we do but without the court work, which I love, in a kind of slightly different environment."

"I've never seriously thought about leaving the bar. Motherhood that wasn't an issue for me because I had a fantastic supportive family and still do, so that all sorted itself out very easily. Thinking about the reasons why other women in my Chambers have left, I think it was mainly two cases, it was the lack of teamwork, being on their own, they couldn't bear the isolation and being responsible for a case on their own. That was their main reasons, I think that probably is a slightly female thing, one doesn't like to admit it."

"It's also quite lonely I don't know if anyone else finds that? I find it quite lonely, and again, I actually have found it more lonely as I've got more senior because you know I've got juniors who look to me for the answer, I've got clients who look to me for the answer..."

"But what's wrong with our business model is that unlike any other profession we have got no internal support structure, none at all."

"But then you come back to our business model and our solitude [...] One of the issues I have in [Chambers] is that everyone's perfectly nice but we are also broken up, everyone's so bloody successful and ... we're all beavering away in our garrets making you know hundreds of thousands of pounds a year, apart from me. You've got no-one to talk to [...] It might be a female trait, I personally have that need, I miss not being able to walk down the corridor, someone giving me a hug. You know it's a vicious circle because [it's] the product of our business model the fact that we don't look after each other because we think it's a sign of weakness if we need help and we're surrounded by testosterone."

Wellbeing and mental health

We are (none of us, male or female) invincible. We do a stressful, lonely job that can and often does take its toll on a physical and mental health. This was openly acknowledged and greedily discussed between our participants.

I can say that in over 30 years' practice and having accumulated many good male friends at the Bar, I have never heard any male barrister admit to feeling dangerously stressed or expressing or disclosing concerns or difficulties with their mental wellbeing.

"I do think the responsibility side cripples some people, we've certainly had people in Chambers who have been really able but just haven't been able to sleep at night because their fretting about this and that and just thought: well what kind of life is this, this job is never out of my head. And if you get yourself stuck in that mode it can be really hard to cope with, so we've lost a couple of talented women so that I would say just getting into a spiral decline and finding that responsibility overwhelming, and then you throw something else on top and that can just be the end of it."

The good news is that the word is out there, that wellbeing is a "thing", that there are resources available to help – although we do think that individual Chambers should be doing more to make their members aware of the existence of these resources.¹⁵

At least one set of Chambers had made a 24-hour counselling service available – which should be encouraged. Equally, where Chambers have a corporate private health insurance, they should endeavour to choose a policy that covers mental health services – both psychiatry and counselling/psychotherapy.

There are good resources out there and awareness of them should be trumpeted. One participant referred to the Lawcare scheme (<https://www.lawcare.org.uk/>).

¹⁵ For example, Radcliffe Chambers has a social responsibility committee with a view (amongst other things) to looking after staff and members' wellbeing. Landmark run a weekly yoga class (now online) and, pre-Covid, organised weekly fruit baskets and monthly massages. In addition, their employee assistance scheme policy enables all staff and members (and certain family members) to access wellbeing advice and assistance including face to face counselling at no cost on an entirely confidential basis.

“...the trouble is, I think it’s so hard sometimes to identify that you need help, because I personally had something happen last XX in my family and I wasn’t sleeping and I rang LawCare actually and spoke, online and again it’s just sharing it and just talking to somebody, that makes perfect sense but it’s only because my I knew about it, but it took me some time to realise that actually I needed somebody to help me and it’s really, really difficult because you don’t see it yourself.”

Likewise, the Bar Council have persuaded BMIF to fund a counselling service:

<https://www.middletemple.org.uk/news/wellbeing-assistance-programme>

<https://www.lincolnsinn.org.uk/news/wellbeing-support-for-the-self-employed-bar/>

<https://www.innertemple.org.uk/membership-services-support/wellbeing/>

<https://www.wellbeingatthebar.org.uk/support-for-barristers/>

<https://healthassuredeap.co.uk/>

Fair Allocation of Work

This was a massive area of concern. Whether taken in isolation or considered in the context of other concerns, the anger of our participants was palpable. There was, worryingly, a widespread ignorance of the fact that Chambers are under a duty to record work opportunities and allocation.¹⁶ We found that where Chambers had policies in place, there was, on occasion, a marked lack of transparency. This was a clear instance of the talk being talked but the walk not being walked.

We were also concerned by the clear evidence that assumptions, stereotyping and both unconscious and conscious bias and indeed (perhaps most obviously) affinity bias¹⁷ too often tainted the way in which work was allocated within Chambers – irrespective of Chambers’ formal policies. Needless to say, these assumptions and this bias also featured in the way solicitors chose who to instruct and for what sort of work.

As one participant put it: *“I’m constantly concerned that I will not get opportunities because I’m being put in a box just by virtue of the fact that I happen to be a woman and I don’t think that I should be being judged on that at all, I think I should be judged on what I can do and what I can’t do.”*

To characterise the Chancery Bar as being infected by machismo would, in our view, be overstating things. However, it is fair to say that underpinning all our discussions about fair allocation of work, were the recurrent themes of false perceptions, false assumptions and unconscious bias and yes, something of a boys’ club.

Voices

“[Work] can come in in your name and it can end up with somebody else down the corridor.”

“...having built on experience and a big problem a lot of people face is the clerks because the difficulty is when you’re very junior, I mean I see this at client events that clerks have a very particular view about what a practising barrister is or a silk comes in and so and so is marvellous and unless you get

¹⁶ BSB Handbook rule C110.f.

¹⁷ Affinity bias, also known as similarity bias, is the tendency people have to connect with others who share similar interests, experiences and backgrounds.

the chances you don't get the experience and so what can easily happen is that people just get put forward again and again and then people more cautious of putting themselves forward with the clerks they're not getting the opportunity and unless you get the experience you don't build it up. Experience is everything and one of the really big things I think women face is getting ...the fair access, being put forward, getting the chances because when you get the chances you get the opportunity to get experience and you make it from that and if you don't get it you have it hard."

"They are looking for somebody who's basically going to be there 24/7"

"I think we need somebody prominent at each Chambers that sets the tone, whether it's from the clerks' room or the head of Chambers or just a senior female silk, you need someone who's there, speaking out for women and that, I think, makes it so much easier - the knock-on effect is enormous."

"That's a real sense of discontent for me I think in the sense that work isn't being allocated fairly. Our Chambers has had real work fair issues that's why we've lost so many members, especially [at the] junior end. We asked our entire junior end (because they felt they weren't getting enough work), but my observation was that it was, it tended to be the female members who just had nothing to do, whereas maybe the male members had good cases they could build on, and they went elsewhere based on that [work], whereas the female members had to work a lot harder to build a case to move Chambers. We don't have many silks so it was a combination of a sense that of not knowing how the clerks allocate work and then a sense that we have fewer leading people, always choosing the same person, and once they've chosen them once they become known as a good junior and then they're constantly chosen again."

"...the answer filters back to the male dominated clerks room, unconscious bias, the fact that men like to work with men, there it is, whether they're aware of it or not, and then you have this idea about, I guess this is part of unconscious bias, you know you need someone who is going to be aggressive, whose not going to go 'oh well my freezing order that sounds a bit risky' you know, someone aggressive so a bloke's aggressive, and it's okay for a bloke to be aggressive -, [when] we're aggressive, then we're difficult."

On "men's" work vs "women's" work:

“The cases that went to the men were the muscular cases you know the fraudsters, the worldwide freezers...”

“Yes exactly, the big commercial type fraud cases never went to the women.”

“We get the kind of clever but less well paid [stuff] ... company law, insolvency...”

“I mean you shouldn’t have to tailor your practice away from what really interests you and what you really want to do because of the way women barristers are perceived. I completely agree with that, equally I don’t think that we should be looking for solutions that really only serve a small part of our constituency.”

“I think with solicitors there have been cases that, although they may not consciously think of this, they’re not putting a lot of them to the women. And again in [Chambers] all the big cases went to the men, they didn’t go to the women and I think there is a perception that women, for whatever reason, are just not capable, or they haven’t got the time to commit to the big cases.”

On jobs for the boys, and men working with men:

“You look at the law reports for those big, big money cases involving Russians and things like that when you’re talking about money, it’s all men, male Counsel.”

“... you know when you’re getting up the ladder, magic circle law firms, by the time you get to the sort of heavy commercial litigation, the team is going to be 90% male and I think men automatically gravitate towards other men, I think men feel more comfortable working with men and I think feeding all the way down clerks have, you’ve got a male dominated clerks room and again that unconscious preference is going to filter through and I think the one thing this is where we need, in my view the only answer is awareness, is to stop clerks making assumptions and that’s quite a big ask.”

“Solicitors are happy to have a clever woman being the junior but they’ll never accept a female silk leading the team. I then looked at how many silks there were at [various Chambers] and its

astonishing how few female silks they have at those Chambers...I actively started developing my practice [area] because there are far more female [practice area] silks...it seems like a possible way to develop my practice."

"...based on my experience there are not that many women who are partners in law firms in my specialty, but those who are, frankly are shit scared of getting it wrong, and so it's safer to instruct one of the men who's been instructed for years and years and years by the other partners, than to stick their neck out and instruct a woman who no-one in the firm has ever instructed before. So you know, and I don't blame them for doing that at all, because the problem is they just made it themselves, they're holding on by their fingernails trying to be a woman in their version of their men's world and you know the last thing they want to do is call it out..."

On being led:

"...first of all, it's silks, like if you look at [Chambers] with all the big cases it was always, apart from one exception, it was the guys that worked with the silks, the other barristers didn't get that much of a look in... There is a perception that women ... are just not capable, or they haven't got the time to commit to the big cases."

"...the problem is, you're not getting the experience and so if you want to go for silk it's not just a question of what your own practice is like, you need QCs to give you the references so... it wasn't fairly being allocated to give everybody the opportunity, but a lot of that also is because of the solicitors are very male orientated, it's the men's club."

On the need for positive, vocal support for women:

"...we're talking about support but actually really something more positive than that, we need sponsorship. For example, when you're starting out you need the support of senior people in Chambers to put you forward when you're just the junior tenant and you need someone to have confidence in you, the clerks and senior people. If that support is not fairly distributed and certain people favoured, as has always been in a case in my Chambers, some people's practices are accelerated and other people's aren't."

On good practice:

“We are really rigorous in Chambers, in fact, we are a bit paranoid about it [...], anyway so we measure opportunities that have been discussed. We also, every quarter, go through them, look at each junior, how much they’ve been led and each silk who they’ve been leading so we pick up if they’re always going for you know Jo Blogs and sometimes there’s a reason if they’re connected cases and you can’t see that or whatever, but if there seems to be sort of preferential relationships between silks and juniors you can see that and question it.”

“We’ve now made it known in Chambers that nobody can recommend anybody else for a case whether it was silk or junior or the other way round, you have to go through the clerks and it’s been taken on board to such an extent that our lovely junior tenant, male, came to me last week because he was worried that he had been put up for something just because he was a male and that a female member of Chambers hadn’t got a look in.”

“...what we do in our Chambers is every six months we have a practice development meeting with our senior clerk and our practice manager, and we sit down and we look at earnings, and projections, and we also look at the fair allocation report... It shows every case that comes into Chambers where I’ve been directly requested, whether that opportunity was converted, so whether I’m available or not available or what’s happened to the case, tracks it through and it says every case that’s just come into Chambers without a name attached to it and what happens to it, so it would tell me which ones I was put forward for, and why, and [I can ask] who the case has ultimately gone to and why... what you need is to have something in place so that people don’t need to request it, anybody having to request that kind of information or any information from Chambers feels awful about it, but if it’s just provided to everyone as a matter of course and it’s the setting the tone, as this is our Chambers process, this is how it works, we have this transparency end of story, it just kind of goes away.”¹⁸

“We don’t let everyone see [the data on work allocation] but we spent a long time in the E&D committee debating it and the reason was that there are so many issues of confidentiality ... so we

¹⁸ This system is used in my Chambers, Wilberforce. We know what names have been put forward and there is no secrecy about who actually gets the job.

made a positive decision that one member of the E&D committee sees it, they then produce the data which is anonymised and the whole E&D committee can see it.”

“...it’s just enough to make you feel confident that someone’s jotted down a sentence about the case, but actually I did have a practice meeting maybe a year ago where I got this report, and my senior clerk said... they looked at it all beforehand... we’re a bit concerned there are a few less opportunities that went to you... and I hadn’t been concerned but they actually bothered to look at it and raised it, and the reason turned out to be that I’d had got married so I’d taken a big chunk of time off so that less cases had naturally come to me, or something quite normal, but the fact that they’d actually turned their mind to it... without me prompting or without really noticing kind of anything [was good].”

“We have work allocation reports which go to the Chambers management committee every quarter and once a year the E&D officers, of which I’m one, we go through them and we call the clerk up and if there’s anything which concerns us we will ask him about that.”

“In our set we have transparency so that means that you can see how the system works and gives you a platform on which to discuss it, but the fact you’re frightened to raise it is extremely concerning.¹⁹”

“...one of the things that I said is that we need transparency in two aspects, we do have a system of recording when work is allocated but we need to get that first phone call, because it’s the first phone call that determines who is put forward and it’s non-recorded so you don’t have any evidence of who was put forward for that, so maybe it started out with “I’d like so and so”, or “why don’t you try so and so” instead, or [if] it was an open choice...”

On bad procedures, no procedures and ineffective procedures:

“Q. Do you not have work allocation reports which you get to see?

...A. No, literally no structure whatsoever.”

¹⁹ This was a concern expressed across the board, across all topics. The parapet, raising one’s head above it and the fear of being labelled a nuisance. **We need to ask ourselves why do our female members feel this way?**

“I’ve been told by my senior clerk that we’re not allowed to know that sort of thing.”

“I have a more general concern that I don’t think is limited to my Chambers at all, but that some of these fancy looking clever processes are only able to mask some problems that are under the surface... If you have somebody senior preferably at the clerking end or the staff end who is setting a tone that these are issues that are to be overcome generally, to make Chambers a better place for everybody, that helps hugely and what worries me is that we’re getting to a stage where women, women with children, women who are just a bit worried about their career are being seen as troublemakers or difficult and that the clerks are secretly rolling their eyes at you if you raise any of these issues.”

“But the number of times that you hear somebody senior in Chambers saying things like, but we got an equality and diversity committee and they meet once a month, you think well sure, but can we look at the substance of this rather than the fact that there is a process and we can tick the box... I would be keener on the idea of senior people not being sniffy about these things and not making light of them, I find the lack of respect towards these committee things, it makes me a bit uncomfortable sometimes.”

“There was also an issue, at the time, with what kind of work was being allocated to whom. There were issues about what I was being told I was going to be doing, which I might not necessarily have had any choice in, and what work was going to others.”

On allocation of work, clerking (see further below) and the impact of parenthood:

“So in my case it was 6 weeks [for the first child] and 8 weeks [for the second] ...the 6 weeks was possible because I lived [close to work] ...and I had a nanny from 6 weeks onwards who looked after our child and I went home, did the needful periodically and came back to Chambers but it was borne simply of the fact that I didn’t trust my clerk at the time to look after me. In fact I knew that any opportunity he had, he was moving things away from me... it was principally [an] advisory [practice] ... as you say, work allocation was interesting, I never saw the cases I only got, it was pre-determined for me that I would be doing this sort of work and I didn’t know anything about it until much, much later. I had to make the decision financially because I’m the principal earner, my husband does work, but I’m the principal earner so I only took 6 weeks and then 8 weeks as maternity leave. Then I was

back and that way the clients didn't know any different [i.e. experience a hiatus in service]. I mean they knew that I was on maternity leave, my clerk, I had to keep out of the loop, because it was useless having him as part of the loop."

"That's why I felt I had to come back in 16 weeks because I did, I just didn't feel, if I left it any longer, I didn't feel like I was going to come back to anything."

On allocation of work and money:

"...there's very much a culture in my Chambers that the amount you earn is a marker of how successful you are and how good you are as a barrister, and therefore if you're not earning you're just simply not good enough to be in Chambers; of the people that have left Chambers the attitude has always been "oh well they weren't bringing in enough work so they had to leave and thank goodness they've left because they didn't have the marketing power to be a member of our Chambers", so the culture is so much the other way and it's difficult, I feel like it would be impossible to convince the people who say run the management committee or Chambers as a whole to have a completely different attitude and to look at why certain people aren't getting work. There are sympathetic members of Chambers but I think they're in the minority."

Examples

One person spent a period of about 4 years attending interviews for alternative jobs, because the calibre of work being given to her was far below her call. Unlike the men in her set, she did not get the bigger and better work from her clerks, so that when she got to 10 years call, she was still doing work of a low quality and could not promote herself as having done any good cases.

There was one case where the allocation of work was influenced by the (then) head of Chambers, who was described as never having had the "remotest interest in fairness or equality" and was a "bully". The culture was such that the head clerk took his cue from the head of Chambers.

When having a baby or where a woman has young children, there appears to be a presumption that women will not be available for work. This does not seem to be the case for men. One participant considered that

unless she told her clerk that he was to tell her about every inquiry regarding work after her baby had been born and that she would be available, come what may, work would not be allocated to her.

One senior woman in a set of Chambers left, because she did not get the sort of work and money that she wanted (for 10 years, she and another person were the only women in Chambers). She decided to go and work overseas.

Many of the women believed that their male colleagues were earning more than them. One woman referred to two junior silks of whom she was aware, both very confident and ambitious, where the male silk was earning £200,000 more on average each year. Another referred to her clerks asking her more regularly than her male colleagues to take a hit on her fees. Another reiterated this, referring to an incident when one of her clerks - without her consent - wrote off £20,000 of her fees, guaranteeing to her that she would, as a consequence, get more work from the solicitors' firm (she herself had introduced the firm to Chambers). When further work did come in for her from that firm, however, the clerk decided to take the email instruction to a male colleague, and it was only because she intercepted the clerk that she managed to retain the work for herself. As a result, she realised that the clerks were writing off her fees so that she was taking the hit for the rest of Chambers.

One woman said that they had been monitoring allocation of work in Chambers and that this showed a client bias against women and that it was a very strong client bias in all practice areas and at all levels of call.

Another woman said that when her name was offered as part of a list of names with male colleagues, she had never succeeded in then being instructed in the case and that she believed that unconscious bias operated when lists like this were put forward. Another person agreed with this, saying that with a list of names, it was inevitable that at a certain level you were going to see a disparity between the male CV and the female CV. She said that she had been put forward for commercial cases, but had not got them, because her male colleagues had got form on their CVs, being involved in cases involving Russians and billions of pounds. In all her 30 years of practice, she has never been able to get any of the big-ticket litigation.

One woman said that the new rules on fair allocation of work were having a counter-productive effect on women, because they require the clerks to put forward anyone who wants the work. So, in this case, where the person in question had children and, therefore, could only fit in her work with her family life, so that her

acceptance of work came with conditions attached, this meant that she could not compete with men who always had the “vacancy light” on. She also said that there were also assumptions that certain types of work were for men (who might not be qualified for it) whereas types were “for women” - who actually were qualified for the work allocated to men.

And so, men continue to forge ahead:

“...we have [transparency] of earnings in my Chambers and actually it’s quite striking... you can see people who’ve been taken on at the same level, men and women, and then the trend is almost always the men suddenly [get ahead] ... and that’s pre-children... there seems to be this perfect storm of possibly some sexism in the clerks’ room, amongst the solicitors, amongst the Judges, put all those factors together plus the practical ones which we’ve been talking about and it makes it really hard for us.”

A word about fair allocation and positive action

One woman who was unable to attend the session she had been booked for subsequently telephoned me to discuss the issue of work allocation. She took the view that where a barrister has been on parental leave, she/he should be actively promoted on an individual basis when a new unallocated piece of work came in. Hence, rather than three names, there should be one name. I found it hard to disagree – especially when considering also the impact of career breaks on CVs and Directory presence.

What she told me echoed what one of our participants had said:

“I think ...that what you say about the rules being made by men is really interesting ...a talk recently [referenced] some Bar Council figures ... and the study was done I think in 2018, it might have been slightly earlier, but it concluded that, the way things were going there would never ever be parity, it would be impossible, it just wasn’t going to happen, and I can’t see in principle why that should be so. We are as clever as the men and you know and you’ve fought battles and I’ve fought my own doubtless as everyone around the table has, and so I wonder whether there is a true case for some form of positive action in order to kick start things, I don’t really want that because I would say I want to be accepted on equal terms but then when I think about that sentence the equal terms that exist

are equal terms that have been developed by men over centuries and organically have sort of evolved and fit what men want, it seems. I don't think it's conscious, I just think they've evolved."

Clerking Issues

Male dominated clerks' rooms were perceived as a real problem, notwithstanding the general well-meaning attitude of the majority of clerks. A common theme was the need for clear leadership, someone to set the right parameters.

"It comes from the top, if there's leadership from the head of Chambers the clerks will follow it, but if as in my Chambers, my head of Chambers has never had the remotest interest in fairness or equality (he thinks it's all highly amusing) and he's a bully and you know the clerks absorb that. My clerks are good, but the head clerk in particular just takes his cue from the head of Chambers."

"I think we need somebody prominent at each Chambers who sets the tone, whether it's from the clerks' room or the head of Chambers or just a senior female silk, you need someone who's there, speaking out for women and that, I think, makes it so much easier - the knock-on effect is enormous."

When the discussion turned to female clerks, it was clear that there were not many of them around and the clear consensus was that there should be far more of them. Interestingly, one person said that she had a "vile" experience with a female clerk who was very much subsumed within the boys' club culture and that, in fact, it was worse because she favoured male barristers much more than the male clerks did.

But in the clerks' room, old habits, old preconceptions and uninformed assumptions die hard.

Voices

"...but [my clerks are] honestly genuinely like flabbergasted at why you would even think to want to change the way the men have been doing it for the last hundred years in Chambers when it's been so successful and everyone's made so much money..."

"...this is why I say that clerks need educating wholesale, because only one of my clerks will pick up the phone and say: "I've got this, are you able to deal with it?" Because I've spelt it out to them that, that is what you must do; do not make assumptions about my availability, because they'd often come

and say “oh you don’t work Fridays do you?”, “Yes, I do”. Other female members of Chambers may not work Fridays, but don’t assume that none of us work on Fridays.”

“...there are women in my Chambers who try to work primarily at home, and we do a lot of paper based work and a lot of telephone conferences, etc. so in principle it should work really well. But the impression, rightly or wrongly, of the female members of Chambers who do that, is that the clerks don’t really back that. In their minds, they’re not around and they feel that they’re less sellable.”

“...someone in the clerks room that I know of... was in a rage and said, well women always come with conditions, you women you all come with conditions... unfortunately in my area [of practice]... the men don’t really do childcare..., or if they do its very much light touch, and they don’t come with as many conditions, but the problem is they see it as conditions, as a hassle.”

“I’m sick to death of my clerks ringing me up when I’m working at home... “sorry to disturb you”, they would not be, if they rang Mr A or Mr B they wouldn’t be saying “sorry to disturb you”, they’d just say “I’ve got so and so on the phone for you”.”

A broad consensus was that women needed pro-active practice management, particularly, from their clerks. We need much more structured support and real communication, so that we feel comfortable being honest with our clerks and secure in the knowledge that our clerks have our backs. We need to have reasons to trust our clerks. The rather toxic assumptions – for example, that once we have a child we will be less available for work, or ill-suited for a particular type of work (such as offshore work and long trials) – need to be dislodged.

“...what worries me is that we’re getting to a stage where women, women with children, women who are just a bit worried about their career, are being seen as troublemakers or difficult and that the clerks are secretly rolling their eyes at you if you raise any of these issues.”

When some women took maternity leave, they did not feel that they could take very long. The main reason given was that if they took an extended period, they did not have the confidence that when they came back, they would still have a practice. One person said that she did not trust her clerk and that she knew that, given the opportunity, he would move work away from her. When one person came back after having children,

she had long periods without work and her finances were chaotic. All of this made her think that the reason that she did not get work was because she was not good enough.

We encountered a real diffidence amongst many of our participants about pushing for better work (unlike their male cohort) and making themselves visible to their clerks.

Somehow, they felt unwelcome in the clerks' room, or worse, that their clerks would obviously rather be dealing with a man. Moreover, men were also more likely to go out drinking with their clerks and to take them out to "blokey" things such as football matches with a view to getting work.

"I have to psych myself up to go in there and I make myself go in there twice a day because I've basically been told that if I don't, then I miss not going to be on people's radar. My senior clerk made a comment to me the other day about how "I appreciate it's important for the senior juniors to see me as well because", he was like "because well you know if [X] has a cigarette with, I'll mention someone else's name and he mentioned a junior colleague of Chambers if he has a fag with him, like who do you reckon is going to get like a junior brief", and I'm thinking: right, so I need to start drinking more and I need start smoking."

"...when I had my first child, I was six years call so pretty junior really, and I took six weeks off: (a) because I love work and that's what I wanted to do; but, (b) because I thought it's just going to drift if I take loads of time off. I'm really junior... I felt that I had to do it, there was no other way, that's just what I had to do. With the younger one, a little bit more time off, but really not that much more, and then with the recent silk application experience, being much more senior, actually I had a much franker conversation with the clerks, I just think because I was more senior, I was more confident as a person. I just said at the whole start of that process to my senior clerk, I said I need to know that you are on my side... I got to that place where I could have that conversation. But as a very junior, much more junior, barrister having my children I just felt compelled, I thought that's what I had to do."

"I think for me it's been the clerking rooms, getting the clerks on side has been my struggle, actually and getting taken seriously, I actually found that once I am on my feet and I get the opportunity to meet the client and do the case I'm then fine, because then I actually don't find the clients the problem."

“I think merely developing targets and relationships is something that your work is going to [benefit from], and you know your ability and saying no to things. I carried on doing crappy work, and never ever said no to it, and so I ended up doing stuff that was really too junior for me because I wasn’t confident enough to say I should really be getting the bigger [work], and I wasn’t pushing the clerks to give me the bigger and better work, which I realise that the sharper elbowed men in my set were doing. And so I sort of just sat in the basement not kicking and making a fuss and doing crappy work that was never really going to help my financial situation and then it got to sort of 10 years call when you really are, it’s a bit embarrassing to be doing that crappy work anymore but I hadn’t really got any experience, where I could say look I’ve done this fantastic case.”

Fairness and transparency in marketing and the problem of male-oriented marketing

This was another major concern for our participants. We are constantly being urged to market, market, market. Of course, we have to market. There is less work around for everyone. And even less in 2020.

Marketing broadly falls into two categories: (1) talks, seminars, writing and (2) socialising.

The problems we encountered focused on “*social marketing*”, in particular evening and alcohol-based marketing. The world has not changed enough to make it OK for a woman to drink 6 pints with a male solicitor or end up propping up the bar at 11pm. There are also silent assumptions at play – that we won’t want to go out in the evening, or won’t be able to because of our family commitments, or we are party poopers, or we will act as an inhibiting force.

But as often as not, whilst the assumptions are made (some of which may be entirely accurate), for the main part, no real effort is made to find alternatives that might work.

“... I’m thinking, right, so I need to start drinking and smoking [to get the junior brief].”

There was also a discussion about drinks marketing events after work in the evenings, which again favoured men, because men were prepared (and could) go drinking with solicitors. Many women were not able to do this because of family commitments or were disadvantaged, because they did not drink as much as the men. The result was that by drinking with solicitors, men were given good cases.

We also found that when clerks marketed after work, it was invariably male members of the clerking team who were involved, having drinks with male solicitors and clients.

Voices

“...we have something like a circular on a Friday which will tell you what marketing events are happening, but there are certainly initiatives that the clerks undertake with individual firms of

solicitors where the invitee list is entirely cooked up in the clerks room without any transparency and without anyone knowing in advance who is going to go.”

“But then there is still the lingering drinks and things that just don’t allow us, because we have to go home and have responsibilities to do that, even with a free pass”

On the demon drink:

“It’s a cultural-wide thing isn’t it; I don’t know if you look at gender it starts from just the way that girls are told to present into the world and dress etc.”

“But that sort of permeates everything, I mean marketing, let’s take marketing, [a bloke] going out for a drink with a bloke, you finish your case you go to the pub and have ten pints and pat each other on the back and it’s all great. You go out to the pub with your instructing solicitors as a woman, especially as a young woman, you know there will be things that may get out of hand, the wrong impression may be made, or you might not have wanted to go at all for that very reason and that comes back to the macho side of the business, you know there were things that we either can’t do or just don’t want to do.”

“And it’s true, it does affect your development, your practice. I know particularly in my Chambers you know they go out all night with the [clients] and everything, they get really blind drunk, and they are getting cases from the [clients] because they’ve got that close relationship. I never go, I don’t drink that much and frankly I just don’t want to do it.”

“If you did you wouldn’t get work anyway.”

“I know men make a pass you see, they get too drunk, the reality, it’s happened so I’m not doing it.”

“Or they have this idea, about oh well you know it’s alright [for them to] to get pissed, but you can’t get pissed [you would be] some dreadful old lush.”

But to “compensate”:

Women end up having to do “every single conference or presentation or talk”.

Why? Possibly because “we are perceived as being a soft touch”.

“it was known that juniors in the team male and female, but particularly female, would need to be available for all the client things. Because you needed fun, young people there to go out drinking so that drinks would be fun events and you were kind of just in this space. I have friends now who are at law firms and they’re senior associates and its still, you know we will need X number of women to turn up to the drinks, not so that people can hit on them or anything like that, but so that it’s kind of like a ‘fun sociable drinks’ rather than just some lads getting together. I have a real problem with this kind of drinking marketing. I hate it, not because I think someone’s going to be inappropriate towards me, just because I hate drinking marketing; you know it’s less fun than normal marketing. I said to my clerk earlier last year that I wasn’t going to do it anymore because if I was going to have my weekly alcohol units, I want to spend them with my friends! And that’s mostly been taken on board. I said I will only do seminars or talks or whatever you want and that’s fine. The flip side of that has also been now this kind of perception I think in Chambers that when you do marketing events you need to appear equal and diverse, and so I’m being asked to do every single conference or presentation or talk, and the amount of marketing I’ve already had to do this year I’ve done is disproportionate to male barristers. I cracked it the other day because I realised that a male barrister who is the same year call as me hadn’t done any of the six conferences I had spoken at, and I think I get asked because I always say yes, but I also get asked because I know, and Chambers knows, that we need the panels to look 50/50 when no Chambers are 50/50. This puts a disproportionate burden on all the women to do more marketing and marketing takes up billable time”.

But how do the men feel? Or is it a youth thing?

“I think certainly it’s not a women’s thing as well, most of the junior men I know also hate the drinking marketing, but again it’s the same idea that you need the younger fun people otherwise it won’t be young and fun and then no-one will instruct us.”

Some great ideas and initiatives were discussed:

“We’re bringing marketing more into a Fair Access Committee, as well, to make sure that there’s fair access to seminars and talks too because we realise that it’s a bit daft monitoring work and not monitoring the marketing as well. I think that’s good practice.”

“I wonder whether we should be pushing or thinking of pushing for the extension of the fair allocation of work to be extended to a fair allocation of marketing share or whatever you call it.”

“I get an email every week that goes around that has everything that’s being done.”²⁰

But do we think drinking marketing actually works?

“I don’t think so no, it certainly doesn’t at the junior end, you feel like your marketing for Chambers rather than individually.”

“I think actually the problem is we do too much marketing and it can be a bit of a scattergun approach. There are so many practice areas that at junior level you have to market in lots of different practice areas, so it actually is quite a burden. I think most people are trying to get out of doing marketing because it’s so time consuming, or doing less marketing, and there’s so many drinks events, you know just drinking marketing that there’s a lot of fatigue as well”

Examples

One participant who had been in practice [for many years] felt that as regards transparency in marketing, everything was stacked against women. She referred to her earlier years of having been systematically excluded from the Chambers’ social marketing events, for example, having lunch with solicitors. Her experience was far from an isolated one.

²⁰ As I told participants at one of the round tables, my own Chambers, Wilberforce, has a weekly newsletter that goes round internally every Friday setting out what is going the following week. It contains a section listing all the known marketing events and who (whether clerks or barristers) is attending, be it a simple cup of coffee between a barrister and a solicitor or a more formal structured event. I consider this to be an example of good practice and one which is easy to replicate.

Another said that there was no proper transparency about marketing initiatives in her Chambers. She said that there were certain initiatives which the clerks undertook with solicitors, but that it was the clerks who decided who was to go. She also said that male barristers had complained when there had been women only events in Chambers, including a [particular women's event]. As a result, the women in Chambers were reluctant to arrange women's only events, because of the reaction it would cause with the men in Chambers – even though there were many, regular male orientated events.

Indeed, we had numerous discussions about Chambers' marketing events with solicitors, which were not women friendly, for example: golf days, football matches, clay pigeon shooting, and so forth. Another common complaint was evening drinks, which go on late into the night and where many women cannot stay, because they have other responsibilities and need to get home.

Quite apart from this, we all agreed that the drinking culture is perfectly acceptable for men, but not so for women.

Jobs for the girls?

As foreshadowed in the previous section, the consensus was that women end up taking on a disproportionate role (burden) when it comes to non-drinking marketing – talks, writing, seminars. There tends not to be a great rush when this sort of activity is put up for grabs. Yet when we are approached, we tend not to say no. In fact, we find it hard to say no.

The applies to hugely time-consuming – yet educative and touchy-feely jobs – pupillage committees and recruitment.

We are targeted for these jobs rather more regularly than men. Why is that?

“We are perceived as being a soft touch because I mean I personally find it impossible to say no to anything.”

“But the reality is that it’s a disproportionate burden, particularly, I mean in our Chambers, we haven’t got very many junior female members and they get this huge burden on them but yes, the soft touch.”

“When I say no to things... [I do not] want to do interviews or particular marketing things, when I think I’ve done more than my fair share... [I’ve tried] nominating people who I think should be asked next, and those people can still say no but ...I think some people [are] a soft touch, then you find others that are very difficult and busy so they don’t get asked even though if you did routinely ask them then eventually they might start to do one or two things, but they just never get asked.”

Yet when we’re not around, too often we drop off the radar, both externally and internally. A good example of the latter was provided by one email participant: she sat on a particular committee managing a particular project, which she had devised. She then went on maternity leave, at which point her hands-on involvement became rather more limited. She found that minutes of subsequent meetings, reporting on the development of the project, did not mention her continuing (albeit limited) involvement at all. She has to make direct contact to the others involved, to make it clear that she retained ownership of the project and to propose the appropriate amendments to the minutes.

A word about Directories

OK. We don't like them. We know it's all "hoey" (see below). But there is no getting away from the fact that clients, lay and professional, often rely on them, in particular as their first point of reference when presented with a barrister who is unknown to them.

The problem: the perception is that you are only as good as your last few cases or last few instructions, over the immediately preceding 12-month period. What if you don't have any? What if you have been on a career break, working part-time (or at least not 24/7)? What if you have been on parental leave?

Potentially, if not actually, the entire process from submission to entry in the finished product operates against women, with their male cohort being disproportionately promoted. Especially if the submission rules are taken at face value.²¹

This is one area, in particular, where positive, informed and savvy marketing input can make a huge difference. Promotion in directories should not be left to the individual.

"...the other thing we've also got is transparency, or at least I'm pushing for transparency, for who gets promoted in the Directories, we all know its hoey, but, if it's going to be there, it is important that people's names are being put forward in a transparent way. So those are the two systems of fairness through transparency that we have / are instituting, one for work allocation and one for promotion."

²¹ Which frankly, they should not be. By way of example, every year for the last 3 years I have been asked to act as a directory referee for a particular firm of solicitors, despite the fact that they have not sent me a case for some 6 years, or more.

Sexual and Other Harassment

A generation ago, when I was hauling myself round the soul destroying third-six pupillage market, it was made very clear to me that if I went for a drink with my (lone) interviewer, the pupillage would be mine. I didn't go for the drink and the pupillage wasn't mine. I thought nothing of this at the time.

A few months after this, when I had managed to land a third six (apparently on merit...), working late one evening, I found myself – literally – being chased round the central table in the clerks' room by an amorous (and I stress, perfectly sober) former member of Chambers who had dropped in to see the senior clerk. Pure 1970s sitcom stuff. All that was missing was the Benny Hill theme tune. I managed to swat him off pretty easily and went home. Again, I didn't give what had happened much thought.

At least both incidents did make good anecdotes for the Middle Temple Bar: Oh, how we laughed...

A generation later, I wondered how much had changed?

By happenstance, our round tables were held at the height of the #metoo movement. What we found was that whilst experiences of sexual harassment and sexual bullying were not what would characterise as rife across all those attending our four round tables (and certainly not as commonplace as reported by the Criminal Bar), the incidents reported by our participants (for the main part focusing on their particular experiences within the last 7-8 years) were both deeply troubling and not uncommon. In fact, far from it. At one round table, 50% of participants had experienced sexual harassment.

Even stepping away from our participants' direct experiences, from the conversations generally it was clear that the imbalance in sexual power, and a particular, vulnerability, was keenly felt by the majority of our participants.

Voices

"It's a cultural-wide thing isn't it. I don't know if you look at gender it starts from just the way that girls are told to present into the world and dress etc."

"I was at a dining event and I was offered a pupillage for a blow job, obviously I didn't take up this offer".

"...sexual harassment is something that affects women differently in the Bar and I've heard it sort of raised as a thing internally but it's that element, it's not just about sexual harassment within Chambers, which obviously is something that can be regulated to some extent, but there's actually that dynamic in selling yourself as a commodity and being put into a room that you can end up in working environments where your client instructing solicitor there is a sort of unhealthy dynamic there and that's been something that I think, I know its affected, I know two people at the Bar who that sort of issue has affected their decision to leave."

"The power dynamic...affects women disproportionately."

"I've had problems with harassment of other kinds, bullying.... I am absolutely privately convinced, though, that the people concerned would never have had the nerve to do that to a bloke."

"I sat at a dinner when I was really junior next to a silk in another [similar] set of Chambers whose seven month pregnant wife was at the other end of the table and who was in a big [area of] law set as well, and he kept consistently rubbing his hand up and down my leg until I told him he just must stop this and then I got up and...went to the bathroom and came back and thought I'm going to say something else, then he kept saying to me he was going to lead me. I said to him that he'd acted entirely inappropriately and I'd report him, and my husband was at the dinner and so I told my husband who wanted to kill him, but I went in the next morning and I told my senior clerk, I said if he ever rings, and he ever asks for me as a junior I'm never working for him, and please can you always be vigilant about him and can you keep that in mind if he asks anyone else in Chambers."

"And actually I think now it doesn't happen probably because I'm more of a battle axe, but the other thing is, I'm much more cautious about the situations I will get myself in and I kind of learnt that the hard way, and it's really bad in a way to think I'm not going to go for a drink because probably nine times out of ten it's just a drink, and I always go, no, no."

“I think that has an effect on your career, potentially. I mean I really love [the] work, I do not like networking, but particularly since the thing that happened five years ago. I don’t want to be in a position where... I just can’t be in those situations.”

“But I also think it’s very difficult when you’re in the midst of a problem like [that] to think that you have any options, so I had a difficulty with a clerk over XX years who was inappropriate towards me from the moment I started in Chambers, and it took me about four years to realise that anything was wrong because I didn’t know that the relationship with the clerk was meant to be anything other than that because it was when I started, and it was only when it came to a head. I could then no longer speak to him and because he was my main clerk my earnings started to suffer, but I felt I couldn’t do anything about it. When I did something about it, my Chambers was incredibly supportive and it got sorted and he’s not there anymore, but whilst I was in the midst of it, I didn’t feel like I had any option because I was junior, I didn’t have any reputation in the market, the thought that I could move Chambers was just impossible and so it’s very difficult when you’re in the midst of a situation to think that you haven’t any options at all, and that’s in a [good set of] Chambers with strong women. And a [Head of Chambers] who supported me very strongly the moment I said something, but he’d been inappropriate to all sorts of different people and we had never spoken to one another about it, or really recognised that what he was doing was wrong, and so that’s the difficulty when you’re in the middle of it.”

“The clerk who you’re also feeling oh goodness me this person is supposed to be working on my behalf, providing me with work or at least, I had it with a client actually as well it kind of slipped insidiously form: right let’s go and celebrate that we won this case with a bottle of champagne, okay that’s fine, right would you like to come and stay with me at the Ritz.”

“I spoke to my Chancery Bar Association mentor and they were all very helpful. What the problem was, was me not realising that there was a problem for a very long time and I think that it is a problem, not just from clerks, from other senior barristers which I know I haven’t experienced anything from a barrister but I know that there are [senior practitioners] who are known to put their hands on bottoms at drinks and they don’t seem to get, I mean they still get all these appointments and nobody seems to think any less of them as a barrister for being a bastard you know.”

“...you know you [don’t realise] the inappropriateness, I mean that is one of the features why abusers get away with it, the victims don’t appreciate it, and then the abusers, they do get promoted, [but] they are the ones who do [it].”

“...it was by a retired Judge, who was very inappropriate with me and invited me out for lunch and then was extremely inappropriate and started calling me constantly and at 8 am in the morning, stalking me in the library and turning up and inviting me to lunches, and inviting me to drinking with him alone at a point in time where there was a huge power imbalance. So the way I had to treat this person, and the way he was spoken to in a small group situation was still very deferential, so it was extremely difficult for me to say no to lunch invitations and things like that. I got a male friend to always sit with me in the library and then when I got invited to lunch we would either both go together or both refuse and use my friend as a buffer, and luckily it was only short term and I could deal with it that way, and my revenge ever since has just been telling everyone about it and who the person is at every opportunity I get. I discovered actually after the fact that this person was notorious.”

Examples

One participant said that she was a junior in a very large case to multiple counsel, none of whom had chosen her, but the partner in the case wanted to keep her in. As a result, the others believed that the partner was really attracted to her, which she said undermined her sense of value and gave a peculiar dynamic in the team, and this in turn left her fearful as to where it might all lead.

One junior woman also left her Chambers. Her experience had been that at business development events, partners would invite her out, ostensibly for coffee, but she soon learned that they would not have any work for her and that their motives had little to do with business.

One woman spoke of having been bullied as a result of a power imbalance. Although she did not attribute the bullying directly to her gender, she said that she was convinced that if she had been a man, the person in question would never have spoken to her in the way that he did.

Another woman said that she had also had an experience of bullying, at literally being screamed at, when she had contradicted the line that a group of senior people wanted to promote Chambers as doing a

particular type of work. She also said that she did not think that they would have reacted in the same way if she had been a man.

One woman said that her problem was with male solicitors, particularly, senior partners. She said that she did a lot of networking, but the older men did not take her seriously. They said to her that they thought she was brilliant, that they wanted to give her a piece of work and that they should discuss it over lunch. When she had lunch with them, it then became obvious that they did not want to talk about work, but other things. She said that it was not just her and that a lot of her friends, many of whom are solicitors, were having the same problems, to the extent that they were discussing wearing wedding bands because this might be the only way to stop people thinking that marketing events were dating events. She said that it was very frustrating, that when it happened time and time again, it really put her off.

Bullying by Judges and Others

Sadly, there were a number of complaints in this regard, at all levels, albeit not to the extent that it can fairly be said that bullying is commonplace or that the majority of our participants have had direct experience of it. Nonetheless, what we heard was serious and concerning. Not just because bullying happens, but because in some instances, we can't see it for what it is. We don't like to complain and perceive the formal complaints procedure to be too cumbersome (which they are, quite frankly).

Voices and Experiences

On Judges:

"Going to the Mayors and City Court and getting shouted out at three years call."

"It was horrendous, it was 4 days of relentless sneering, interrupting, eye rolling, sniggering."

"...we left the court room again reeling absolutely reeling, the clients were saying: "he's a misogynist, he's a misogynist"."

"Can we ask what actually amounts to bullying when you're junior as well, because if you go before a Master when you first start in practice some of the Masters were awful and they would just shout at you and say: "well sorry, did section 19 of whatever Act pass before you on your way to court this morning?", because you think you're fine and they're sarcastic with you and you come away thinking: "Gosh, I'm a terrible barrister. I can't believe I missed that point", when actually, in this particular example, it was a real curveball that I don't think anyone would have thought of. But that's not really the point, if the Master knows you're junior then they shouldn't be shouting at you in that way especially when you have a solicitor behind you, because then your solicitor's thinks: "I've hired a complete idiot. I'm not going to instruct her in the future", but it didn't even occur to me that, that might amount to bullying and I'm still not even sure that it did?"

"If anything, what I take heart from is that he sort of shouts at everybody, so he's not picking on you, so I never come away thinking gosh that was personal. I just come away thinking he's a very bad-tempered individual."

"Well I've actually always won in front of him and I'd come away feeling as though I've lost, [even though] he'd made an order in my favour because he's just been so horrible to me, to both parties."

On wondering whether we have been bullied:

"[I] haven't really discussed judicial bullying in the right [...] I didn't mention him because I wouldn't even necessarily count that as bullying it's just a very unpleasant experience. But I think it is bullying, when you have a full day in court in front of him, can you now just bully both sides, it makes both sides feel completely inadequate."

"I had a terrible experience also last year, the same kind of thing: eye rolling, really belittling and it took me a few days to figure out why. It was supposed to be a 3-hour hearing, and then it got extended for a few days, and it was just horrific, and I thought: you know I've got pretty thick skin and it absolutely floored me and it was awful. It wasn't happening to my opponent and it was just really weird. It took me probably a month or so to think: actually, that was bullying and I thought about what I should do about it ever since and I haven't done anything. I also get junior members of Chambers coming and telling me when they have really awful experiences."

"It's also having some reassurance as to whether or not what's happened is actually bullying or not. For example, I was in front of a Judge and he was in a barristerial mode he wasn't in Judge mode so constantly he interrupted, he argued against me, didn't let me really put my submissions, and when I sought permission to appeal he said well you didn't say that..."

"That is bullying when [a Judge is] not letting you put your case properly."

"I wonder whether it's also a communication thing, because things that happen to you, you don't necessarily recognise as something that shouldn't happen but if somebody had said to me that something like that was happening to them I'd be disgusted and I'd be talking to them about what

we could together do about it, so I think that that kind of communication about things that just don't sit quite right is useful."

On complaining about judges:

"It was really bad, and I don't really know what to say to people, if the judge is notorious there's something to be done about it to the extent that it can be done. For others there's no kind of way of calling the experience and kind of getting that collective knowledge without making quite a formal complaint and you understand why some people hesitate, because people have a duty to respond you can't just have this gossip, ruining a Judge's reputation, when it's not justified, that's why all that needs to be in place but it's quite difficult as well, there's no real middle ground."

"and I looked at the judicial complaints procedure and I thought well that's not going to help me either because you don't get any of the stuff on the transcript, you don't get the eye rolling or any of the other stuff."

"I think there's a lot of work to do about finding some middle ground for where you can tell people, separately from making a formal complaint, and something slightly more than this."

"One takeaway that I have had [is that] we've got quite a lot of power and as soon as we realise and convince ourselves that there is actually nothing shameful or frightening or potentially damaging about complaining then we're already quite a lot of the way down. It really is a thing. It's like when I made that complaint about this Judge, I felt all of those things: was I being wet? But then having actually articulated it, you realise well, no, you're right this was wrong, its having that that confidence, and it is a question of confidence, I think, because our instinct as women is immediately to question our own judgment about these things, is this me being weak, a bit pathetic, a bit moany, a bit hormonal, and once you've got the confidence, once you give yourself the confidence to actually accept that it's not about you, it's about them, and that no-one is going to judge you for complaining. I think that's another key thing, in this particular climate nobody's going to judge you, as soon as I made my complaint and used the word misogyny which is what my client said, you could see the hackles and alarm bells. So I think it's about recognising that there are now cards that we do actually hold."

One woman commented how the attitude of judges appeared to be more aggressive towards older women barristers. She said that that they had become more aggressive towards her as she got older. She thought that this was because they felt more threatened. She said that as you get older, you become less appealing to them and that many juniors in her Chambers had seen female QCs treated really badly in court and that they got a harder time in court than male silks.

This particular observation was echoed by others – including me. A few years ago I was subjected to the whole gamut of eye-rolling, sniggering, interruption and belittling, which frankly left me reeling and winded, not to mention unable properly to put my case. My male opponent (same sort of vintage as me) and the judge (same sort of vintage again, maybe a few years older) plainly enjoyed what seemed to me and my team to be a uniquely male rapport, which made matters worse. Mine was undoubtedly the more difficult case, but my opponent was given a lot more rope than I was when it came to the trickier aspects of his case. As a junior, I had never experienced anything remotely like this. I came away thinking that at 50-something, I was probably perceived as being fair game in a way that a younger women might not be. But what was particularly concerning to me was the sense that I was being held to a different, higher, standard.

What about our colleagues and our opponents?

One woman spoke of the aggressive behaviour of some male opponents, who she was sure would not have treated a man in the same way. She talked of having had doors slammed in her face. Another person spoke of complaining to a senior member of Chambers about certain bullying behaviour towards her only to be told that it was merely the rough and tumble of litigation. She said that she should have complained but did not. She expressed the view that there was a lot there to stop you, although she conceded that there were barriers in our minds as much as anything else.

Career Development, Mentoring and Applying for Silk

The need for active, strategic practice planning, development, management – and monitoring of career progression was a common theme amongst our participants. This particular issue was thrown into sharp relief given that the experience, or perception, of far too many of our participants was that their upwards career trajectory was rather less steep (from the off) than that of their male cohort, irrespective of parenthood. This issue obviously also feeds into the issue of fair allocation of work – and again begs the question of whether fair allocation actually means positive promotion of women.

Voices

“Looking back over the past virtually [many] years, I think where I’ve missed out is anybody to encourage me and not so much that people deliberately didn’t give me opportunities but there was very little sitting down saying where do you want to go, what’s our strategy going to be, how are we going to help you get there, and I didn’t push for it at times where, possibly, I could, because I was thinking well you know at least I’ve got a good relationship with the clerks, they are supportive. I have examples of where they were resisting discrimination by solicitors on my behalf, and I don’t want to imperil what’s actually working reasonably well by saying: “...well hang on a second why aren’t we planning how I get to this point, and this point, and this point”, and I think it is partly giving people the confidence always to feel that they should be getting that sort of planning, they should be getting that sort of support. If it’s not happening, that they’re entitled to ask for it, and there’s a lot of leaving the initiative with us, I think, always to be the person who says we need to do this, we need to do that, instead of taking the steps automatically. I’ve now been still slightly frustrated in Chambers, which is a very tiny thing, we’re supposed to have a practice meeting at least every six months isn’t it?”

“Those of you who got taken on at the same time roughly the same time as a bloke, how do you compare trajectories? ...Forget what happens if you’ve had children... I was taken on the same time as X [male barrister], from day one, I’m doing events, doing [XX] law which doesn’t involve Russians, worldwide freezers, and loads of money, and that’s what X was doing... so even by the time I had a child, already we’ve gone in a very different direction.”

“We have [transparency] of earnings in my Chambers and actually it’s quite striking... you can see people who’ve been taken on at the same level, men and women, and then the trend is almost always the men suddenly [get ahead] ... and that’s pre-children... there seems to be this perfect storm of possibly some sexism in the clerks’ room, amongst the solicitors, amongst the Judges, put all those factors together plus the practical ones which we’ve been talking about and it makes it really hard for us.”

Following that, the next comment from another participant was:

“I think that one of the terrible things about that is that it affects confidence, my confidence...”

And in another discussion:

“I think it’s very important at the beginning as well, because... it’s the internal market i.e. the surplus of juniors... it’s very key from the word go. If you become second stream early on in my Chambers and I suspect the same goes for elsewhere, I think that is super hard to shift and then you get into a problem with your own confidence, plus the internal market is looking at you thinking well that person’s not likely to be successful, if I’ve never used them before, I’m not going to take a chance on them because they’re probably rubbish, and that comes out of almost nothing. And then I think it can have an impact on people’s decisions on whether they have children, when they have children, do they stay around at all, and I worry that there are areas of the commercial and commercial chancery Bar where that’s happening right at the beginning, quite often for gender reasons, and I think that’s a huge issue.”

But career progression is not simply about pro-active practice management by our clerks, the benefit of mentoring (formal and informal) and peer support also featured significantly in our discussions. Many of our participants attributed, if not necessarily their success, their survival to the guidance and support of mentors. Perhaps unsurprisingly, no mention was made of mentoring by men.²²

“I don’t think it’s just certain periods where you need the support because actually although a lot of my experience chimes in with other things it was happening at different times where [because of] a

²² I should add that as a mentor, I have never mentored or been asked to mentor a man.

lack of support, I ended up deciding that trying to leave the bar and actually going to interviews for things to get away from it for a period of about four years went on to about [year], about [mid seniority] years call, I mean it was because I'd had quite a lot of support when I immediately qualified which helped me manage things but I didn't really understand how to build a career, and the two mentors I had who really looked after me when I just started out and I shared a room and that was really helpful left. It left a sort of hole without any guidance I just didn't put in place the things you need to do to protect you career post-10 years call because I didn't understand what you needed to do."

"I've just been doing bits and bobs and it was post having children, it was post coming back from maternity leave so it wasn't connected with that, but it was to do with a lack of confidence and suddenly seeing an empty diary and that tyranny of having long periods where I had no work, and what would happen is that big people would come on a Friday evening with a piece of work for Monday morning after I'd sat around twiddling my thumbs for child care, so I was never seeing my children, the finances were completely chaotic and all over the place and it really dented my confidence because it made me think, you know the reason I'm not getting work is because I'm not good enough and there was a sort of spiralling of that, and the thing that helped turn it around was a bit of good fortune and a bit of good mentors coming in and having suddenly some support again and having some people that I could talk to about it, and that could say no you do have, you're doing the right things and you have the ability to do this and that started to turn it around. But I think it's not just you need support in the early years, I think you need it throughout and I take some of the responsibility on myself because I don't think I was seeking this stuff out but I don't think I had the foresight to see where it was going to take me and where the crises were going to come."

Applying for Silk

Here, again, we have another perfect storm, or the convergence of a number of issues faced by us – “clever” women’s work that keeps us out of Court, the perception that we aren’t quite right for big-ticket litigation, falling behind our male peers from the get-go, and, in particular, the impact of parenthood. You name it, it works against us.

Then we have to add into the mix the (objectively viewed) skewed application system which on any view favours those with heavy court-oriented practices and does not make any concessions for candidates who have not had any focused career management and mentoring²³.

Voices

On our practices, the application process and the “wretched form”

“I do think there’s a fundamental problem with a lot of people anyway that, at the Chancery Bar, that it’s so advocacy and court work related, if you don’t do a great deal of court work, it doesn’t matter how significant and high profile your advisory stuff is you might as well just chuck the form straight in the bin, and I know that’s partly a political issue going back to when they revived the silk system after they’d abolished it and decided to make it very much purely an advocacy thing, but it’s discouraging if you’ve got a largely paperwork practice and you always feel that you’re being compared with all these people who’ve got silk and it becomes a bit demoralising as you see no realistic prospect especially the big cases you do are the ones where you’re being led so I think there are very sort of vicious circle elements there, that make it particularly hard.”

“A lot of what I do is [practice area - not court based] and very much of that gets settled at mediation, and so one doesn’t end up getting to court, so you’re never going to get in front of 12 Judges.”

“I think it’s about confidence and I owe a huge amount to another female barrister who I did a case with and who more than anybody said to me you should apply, and if she hadn’t done that I probably would have said: “well I’ll put it off for another year”, but she nagged me in the nicest possible way to do it and I think that what women generally need is somebody to actually nudge you over the line to actually make the application.”

“...not only finding my self-belief, but also obviously it takes a while to prepare that wretched form, to build up the stamina but more importantly to build up the cases and everything that you need, and I would agree entirely with you about the whole confidence thing and they do say that women tend

²³ Landmark are developing a future silks’ taskforce with the aim of encouraging and promoting female members to take silk over the short to medium term

to be a bit later because they're less willing to sort of give it a go when they are perhaps not ready, so they wait a long time until perhaps they're more than ready."

"I would say in relation to that though I think we need to get the message across to the appointments panel that, that's the case. I think the message is there. I think it's encouraging women to put themselves forward even though they might not fall within those exact criteria, because I applied, because I went to Inner Temple evening and I was horrified to hear that they had done a survey and they said to men how much of a chance percentage wise do you think that you would have before you applied of getting it and they said 80% and women said 10% - that really floored me."

On Parenthood and Silk

"I think also as a woman, if you have children, you suffer from the problem ... you start at a place you have to take time off, you have to balance your work against your commitments to the children, and frankly if you're a single mum and something happens to your child at school, you drop everything, you run home and so your male colleagues can work all hours that they like whereas you can't do that. You can only work so many hours during the day. So when you're getting to silk, your practice naturally falls behind that of a man. So when you've got people saying you've got to have these exceptional cases, and you've got to have so many, a lot of women are behind the curve [compared to] the men, when it gets to that point."

"And it does make you nervous because you think... as you're the lead advocate on every case, you can't do what you can sort of do as a junior which is go home at 6 and pick up at 8. You know that it's going to be more pressure and more work during trials and applications. I think there's definitely a deterrent, putting it off until my children are at school, just because I know I can't juggle the professional and personal commitments, unless you've got an amazing stay at home husband who's prepared to take on the role that many wives do, it's impossible."

"I'm a planner and so I'm not applying for silk now but funny enough a few men have said: you should be thinking about applying for silk soon and I think, you can tell you're the man and that your wife's the one who does the childcare because they (which is a compliment), they don't think that I should be different but I know it's unrealistic. I've watched colleagues take silk, it's not even the number of cases necessarily but the focus has to be on that form, and taking on those cases and not saying:

“actually I’ve got enough on my plate I don’t need another case at this stage”. So, I very much see that I will be applying later than a lot of the men in Chambers will expect me to apply and I do find it galling. I mean I don’t see the decisions of when you have children and when you take silk as being things you can just decide independently from each other, [unlike] the luxury of the men who have four children and take silk.”

“I am that person right now, you know I’m [X] years call and the fact it’s gone up to 12 referees has made me just think: right, that’s on the pile, that’s something that might happen in five years’ time, if that hadn’t happened I would probably be applying in the next couple of years.”

Flexible Working and Maternity Leave

“...if suddenly something happened to the children, if we ended up in hospital, the flexibility of the Bar would help, whereas it would have been much more difficult if you were employed to really deal with that. I had a brilliant nanny, so it depends where you want to spend your money, what’s your priority. It’s realising how you can be supported but at the same time realising that there’s going to be a period in your life, if you want children, that you really cannot be the total superwoman and you cannot have it all. And, I’m sorry, but the world is the way it is with men, that they will say well it’s my career, and they’ll just go and do it, and you are left with having to do most of the childcare.”

The consensus across all four round tables was that our business model – coupled with the fact that Chancery/commercial work is not routinely court-heavy and tends not to involve a lot of travelling - readily adapts to flexible working. Hence, the view was that this, at least, was a positive feature of a career at the Chancery Bar.

However, our job does not easily lend itself to “*part-time*” work in the sense that the expression is usually understood.

“I think in theory it’s a good profession... you can, within a day, take time to go to school events and things, but you can’t actually be part time, so nearly everyone I know who is employed in any other field can do four days a week. I told them I do four days a week, I don’t, but the assumption is [that] I don’t work on Fridays, unless things change and I generally work at home. I probably only have one in four Fridays off, but the envy I have of my friends who know that if that Friday is their day off, they are really truly off and therefore not needing to also cover five days a week childcare.”

And again, the struggle with misplaced and untested assumptions reared its ugly head – that working flexibly actually really means not working at all, or not working enough, or not working like a man or, indeed, that no man would ever want to work that way.

“...I get very fed up, this relates to what some other people have been saying, that it’s always us who have to argue for parental leave, flexible working etc. etc. and its assumed that no man can ever want to do flexible working, which actually we know is not true because they do, you do come across a rare

man who is actually quite interested in the children who would quite like to spend a bit of time [with them].”

Add into the mix, the unease, the sense that our clerks possibly don't buy into the idea of flexible working and the sense that visibility is all.

Voices

“There are women in my Chambers who try to work primarily at home, and we do a lot of paper based work and a lot of telephone conferences etc., so in principle it should work really well, but the impression, rightly or wrongly, of the female members of Chambers who do that, is that the clerks don't really back that. In their minds, they're not around and they feel that they're less sellable.”

“This is why I say that clerks need educating wholesale, because only one of my clerks will pick up the phone and say: “I've got this, are you able to deal with it?” Because I've spelt it out to them that, that is what you must do, do not make assumptions about my availability, because they'd often come and say: “oh, you don't work Fridays do you?” Yes, I do, other female members of Chambers may not work Fridays, but don't assume that none of us work on Fridays.”

“...and I have fought so many battles in my world I can't tell you, the most recent of which was only about two months ago when I was trying to persuade my clerks that it would be okay for me to take a sabbatical and that just because I was taking a sabbatical that didn't mean they had to stop giving me work and I find it just exhausting that I've been in Chambers for over [many] years, I've proved my successes at every point, and yet I'm still battling time and again in a men's world with men in relation to rules made by men which suit men, which have absolutely nothing to do with how women think and feel, or what they need to be their best at work.”

“I'm also a bit concerned that there's quite a bit of tension, possibly created tension, with everything we say about flexible working where a lot of emphasis is laid on being able to say “I'm not going to do X thing or Y thing because I need to work more flexibly, I need to be able to take time to do this, that and the other”, and at the same time we're saying well we must have equal opportunities for

these sorts of things, I think that requires a very careful examination of what goes on by way of marketing, how exactly you reconcile that with people who are engaged in flexible working.”

Maternity leave

On reminding the powers that be that parental leave and flexible working are not the same thing.

“There was a discussion of why should we have a parental [leave] policy at all, shouldn’t it all come under overarching fair and flexible working policy? You just think: no, get this to work first, because its barely working, you just need to improve it, which is never going to happen, so it’s like kicking the can down the road.”

On communication with clerks and taking control.

“I had two trials in my diary, maybe this is the wrong thing to do as a mother, but I certainly timed my maternity leave because I had this trial, I knew it was going to be a great case and I knew that it would make life easier for me after that first maternity leave if I could show actually I’m back in the game, I’ve got cases I can put on my website profile, one of them might be reported, you know I just couldn’t bear not to do them and so I spent the last month of my maternity leave prepping: great, quiet, sort of peaceful, nobody else was bothering me, but I think it comes back to confidence... saying to the clerks this is how it’s going to work, this is when I’m going to be back, have my practice ready for me when I come back.”

“When I had my first child, I was six years call so pretty junior really, and I took six weeks off... (a) because I love work and that’s what I wanted to do; but, (b) because I thought it’s just going to drift if I take loads of time off. I’m really junior... I felt that I had to do it, there was no other way, that’s just what I had to do. With the younger one, a little bit more time off, but really not that much more and then with the recent silk application experience, being much more senior, actually I had a much franker conversation with the clerks, I just think because I was more senior, I was more confident as a person. I just said at the whole start of that process to my senior clerk, I said I need to know that you are on my side... I got to that place where I could have that conversation. But as a very junior,

much more junior, barrister having my children I just felt compelled, I thought that's what I had to do."

On keeping your cases.

"There's something very specific I think also about maternity leave that should be enshrined quite formally, which is getting cases back, because I took five or six months with each of mine, but my cases tend to span three or four years... and I had one case [where] they had to draft in another barrister to do it whilst [I was] on leave, and one case where it was very much, oh we might stay with him because he's done it for the last five months and I thought well I've done it two years before that, and getting it back was quite difficult. Eventually they said to me we've decided not to hold it against you, that you've had a child."

"I actually functioned as a maternity substitute on a case and this female barrister went on maternity leave, and she said I think I'll go for six months but I'll let you know when I get back, and the senior barrister on the case was very good, but everyone had that chat at least amongst ourselves. I don't know if it's because I'm female as well, so I would want someone else to give me that same opportunity, but I was very clear for myself as well if she comes back and the whole team can't go forward with one more barrister, then I'm having to drop out. But I think it should work with everyone that there is a clear understanding you come in and then you might drop out."

The “C” Word: Confidence.

Is the lack of it a “thing”? Or better put, does the Bar devalue women and diminish our confidence? And if it does, why?

When I spoke at a careers in law event for my old (all female) school last year, I identified confidence (or lack of it) as an issue for women and as something that held us back in our careers, at all stages. I was roundly ticked off by the moderator: I was there to talk about what women could do and how far we had come and how to get there, rather than looking at what was “*wrong with us*”.

There is of course nothing “*wrong with us*”. But confidence – lack of it, and the over-confidence of men - was an overwhelming and recurrent theme of the round tables.

Lack of confidence cannot possibly be a uniquely female trait. But it is an irrefutable fact that confidence was a major, and shared, concern for our participants. As one participant said:

“You’ve got to be really careful when you say confidence it’s a word that’s been kicking around quite a lot at this meeting. I mean we are all confident women, we can stand up in court and articulate and we sound like we know what we are doing, so at that level we are all confident that’s not the kind of confidence we are talking about, [but] we’re talking about the voice inside which is ‘shit he’s going to ask that question you don’t know the answer to’, ‘someone’s going to find me out soon’, and ‘it must be all my fault’..”

The questions for us are:

- Why is lack of confidence an issue for women at the Bar?
- Does the Bar devalue women, making them feel less confident?

And – of course – what can we do about it?

Plainly, it is not a standalone problem - it straddles and is impacted by all sorts of other issues (which we address separately), including fair allocation of work, clerking, marketing and career development.

Voices

"I thought about leaving the bar at about, I think it was, two or three years in. I had a crisis in confidence with hindsight I can explain it as a lack of support, but at the time I just thought 'blimey I'm not good enough, this is not for me'."

"I think it all just got too much for me as a [young woman] to deal with, because you're very isolated in this job, you work at all times of the day, you have to learn the skills but nobody taught me the skills, there was no support and I didn't know, I just didn't know how to handle it."

"To be able to put your head above the parapet, reveal your vulnerability without being judged for it, because it's the without being judged aspect that is most worrying."

"I said 'yes' to everything, and then it was a younger male with that confidence, and he would just "oh well, just a five-minute chat with the solicitor", and he would be like "what firm is it? No, I'm not really interested in doing work for them, so no". I was just like "oh", it was why they just gave him better and better work."

"I mean there is a valid point that the stereotypical man in this job, who is still the public schoolboy Oxbridge, [probably does not worry about these things], but people from sort of non-traditional backgrounds [or] whatever, lots of people from all walks of life lack confidence and do worry, I absolutely agree that it's more common with women that perfectionism is more a female trait [...], but I think there are lots of people out there who get incredibly angsty in their first few years in practice and beyond, and maybe part of what we need to think about is support for junior people in general."

"So, I try and tell every pupil that passes through my room how bad it can be at the beginning so that they can expect that. I have since discovered that for a lot of people there is a point after you get taken on, you think 'oh my god this is it for the rest of my life' [...]. So, I do try to say it, but I've seen it with the pupils that all come through my shared room, the boys will be much more willing to say 'I'm really nervous about this', so I agree that the lack of confidence is shared, but they feel more able

to say it, because they don't think they'll be judged for it. And I did say it at the time in my Chambers, I did actually say to my senior clerk and the result was, actually he oddly of all the circumstances he in fact was sort of supporting but in a way that kind of "I acknowledge that you have no confidence, and you're sort of feeling a bit rubbish", so it was oddly put back on me, and I don't think if I had been a boy expressing that issue about confidence, I would have had the same reaction."

On the impact of parenthood:

"For me it's only happened once and it was about three weeks ago. I have just returned to work after my x child, I say just actually I've been back six months to a year, and it was, in retrospect it was a crisis of confidence that arose... I can see in hindsight that it was just a quiet April but at the time I went down this rabbit hole of - probably I'm not getting any work because I'm only working two days a week, and probably this doesn't work."

"My confidence was at its absolute lowest when I came back from maternity leave, and you've got this empty diary, and that's an almost unique situation, but you're there, you're in a new situation with a child and all the rest of it, you've got massive financial outgoings, frankly it nearly broke me, you know you're in a situation where you're actually breaking even and you've got this empty diary, or you walk to the pigeon hole and there's nothing in it, and where's the support, you know there is no [support]. It's a specific period, I think, in somebody's life, who does choose to have children, when you just need additional support, which I certainly didn't have in my Chambers, but I think it's a question, and the most sort of support that I got was really from external from other members of the Bar really, but I think that's a point where your confidence, well for me anyway, was at a complete low."

"I made a decision before I went on maternity leave that, that was the time I was going to take because I didn't, I don't have the confidence that my practice is good enough to maintain itself any longer than someone might take a long holiday for you know say that is why I took such a short period of time."

On assessment of risk and the different attitudes of men and women:

“I do my best to give them good advice you know I really think you will want to settle, and yet some of my male colleagues are in court all the time in that XXX you know trial after trial after trial. Why is that? Because they’re much more likely to say: yes, you’re going to win, and people like to hear that, and then they earn big money out of doing the trials. And then that goes into our open book system, and everybody thinks: gosh, so and so is so much better a barrister than XXX because you know, and it becomes sort of self-fulfilling in a way.”

“Men don’t have that kind of crisis of confidence.”

On cases which are losers:

“It spirals out of control; ‘oh well, are they going to find me out?’, ‘I’m [no] good’. That’s what I tell myself in my head, actually, whoever really in our field gets across that much baloney none of us can really work out the reality of it.”

Examples

One participant actually left the Bar because of lack of confidence. Her lack of confidence related both to the work itself that she was being given, but also in saying how she wanted to live her life. She was overwhelmed with the work, which she could not cope with. She wanted a life/work balance, which the job did not appear to offer. She was surrounded by people, who seemed to work all the time. She felt isolated and without support, did not feel that she could talk to anyone in Chambers about the situation, had not been taught the skills to deal with it and as a result of feeling so low and fed up she left.

When some women took maternity leave, they did not feel that they could take very long. The main reason given was that if they took an extended period, they did not have the confidence that when they came back, they would still have a practice. One person said that she did not trust her clerk and that she knew that, given the opportunity, he would move work away from her. When one person came back after having children, she had long periods without work. Her finances were chaotic, and all of this made her think that the reason that she did not get work was because she was not good enough.

Lack of confidence was also expressed with regard to fees charged and also about turning down work. One participant said that she was offered a case a few days before the hearing and that she agreed to take a large hit on her fees. However, her junior, a male, had the confidence to say no, that he would not reduce his fee. She contrasted his confidence with being able to say no, with her instinct to be nice.

Another participant said that she did not have the confidence to turn down work, whereas a male colleague, if he did not want to work with a particular solicitor or accept the work, would say no. She said that this resulted in his getting the better work.

One participant had been at a set where her confidence had seriously been undermined. The head of Chambers ran the set. The result was careers progressed for the small number of people who were “in” with him, but for those who were not, their careers did not progress. This person already did not have much confidence because of her degree results, the fact that she had not gone to the right university and no one else in her family was a lawyer. The above behaviour, therefore, undermined yet further her confidence. She now juggles with work and children and this has not improved her confidence.

Another participant said that she hated going to court when she knew that her case was rubbish. She found it to be an emotionally painful experience, felt stupid and squirmed, whereas male colleagues did not have this reaction. They just saw it as a day in court when they were fighting a losing case and they did not see it as a trauma. Others identified the problem as being a lack of self-confidence, that the reason for feeling this way was because it had to be your fault in not being clever enough to work out the answer or that somehow it is all your fault and you are the idiot.

So what are our conclusions - and our ideas and strategies for change?

What emerged from the voices of those attending our round tables broadly encompassed three categories:

- Common **Features** of women's working life at the Chancery Bar;
- Common **Problems** experienced by women working at the Chancery Bar;
- Common **Consequences** flowing from these features and problems.

The **Features** are things that we may or may not be able to change – and may or may not want to change. The question that those features give rise to is how they can and should be accommodated.

The **Problems** are the things that need to be addressed by Chambers and more widely at the Bar. What the round tables have drawn out is how common and persistent these problems are and how many women experience them. It is galling to be told that systemic problems do not exist and that we have been imagining things. But that is often the response. Let's be clear about it. The problems are not in our heads.

This report should give both men and women at the Chancery Bar pause for serious thought – these are problems which are endemic, institutional and widespread. They need to be addressed. Sometimes examples of good practice have indicated the way forward, but these seem to be rare.

And the **Consequences** for women's success and confidence in their careers at the Chancery Bar, even for their health, are serious. The combined impact is as unfair as it is wasteful.

Features

Most prominent among the Features were:

- The pressurised, long-hours culture; the isolated nature of much of our work; a lack of support, certainly in any formalised way.
- Maternity leave, pausing and then restarting a practice; hours tailored to childcare, flexible and part-time working.

There is a big discussion to be had about whether the pressurised, last-minute, long hours culture is good for anyone's mental and physical health, but it is endemic. However, most of the women in our round tables saw this as all part of the career they had signed up for, even if it was sometimes frustrating or annoying. That does not make it OK.

Similarly, where the women attending our round tables had children, the challenges of childcare and work-life balance were ones which they had, for the most part, agreed to and accepted. Most importantly, they seemed to feel these issues were generally within their control to solve. We think this may be why parenthood featured much less as a focus of concern than we had expected.

Additionally, it must be remembered that women practising in the Chancery field tend to have the financial resources to address questions of childcare, and the paper-based nature of much Chancery work lends itself more easily to flexible working. This is not to say that there weren't challenges and frustrations, or that women did not feel that their progress had been held back, but they seemed to feel like those problems could be addressed, or acceptable compromises made. The participants noted that the challenges of childcare and work-life balance affected female members of their Chambers disproportionately to men.

Problems

Where the anger, passion and frustration of our participants came through strongest was with Problems which were, for the most part, outside our control, even elusive. The following came through most prominently:

- Sheer unfairness in the treatment of women throughout their careers, when compared to their male contemporaries.
- The macho (and arguably inherently misogynistic) culture.
- Sexual harassment and bullying.

The lack of fairness is repetitive and cumulative. Across each round table, our participants saw parallels or identical features between their own experiences and the accounts of others in the room, building a pattern and an accumulated sense of outrage.

We see that there is a pattern of inequality in which new male juniors get offered the choicest opportunities to the exclusion of female juniors; the extra boost to male barristers by their seniors' patronage and clerks fostering relationship with favourite solicitors; and from the high-profile leaders who pick (male) juniors in whom they see their younger selves reflected.

Presented with a list of unknown counsel, solicitors repeatedly pick Matthew rather than Jessica. By ten years call, women can see they are doing lower quality, lower profile and less well-paid cases than their male peers. In turn this means they are less well-positioned to be chosen for the good cases at the next level. They feel unable to shed more junior work and their practices are at risk of stagnating. In some cases, the discrimination is more active, and they see good cases which they were promised by solicitors being diverted to their male colleagues by clerks. Fifteen years in, and male colleagues taken on at the same time are applying for silk, but the women's practices feel way off where they need to be to apply. They aren't doing the heavyweight advocacy required for a silk application; instead they are valued by their solicitors for their conscientiousness and the attention to detail of their paperwork.

Sexual harassment and bullying persist. Certain types of "drinking marketing" can be a minefield, in particular for younger women when it turns out there could be a sexual agenda. Quite apart from the poor optics of any woman seen to be propping up the bar at a work do.

Women also disproportionately take on the "unpaid" work of Chambers – sitting on committees, being pupil supervisors, taking on informal mentoring, and fulfilling requests for external marketing panels where it is important for Chambers to appear "diverse". In most Chambers, where there are significantly fewer women than men, those women are required to devote more of their time to unpaid work which benefits Chambers.

It's all part of the landscape, and women have to build extra resilience and forgo additional time. Complaining is unattractive – the potential for negative rebound is obvious.

Consequences

All these, compounded, negative experiences have a drip-drip effect on women, with the following principal consequences that came up repeatedly during the round tables:

- Sapping of confidence;
- Detrimental effect on finances;
- Leaving the Bar, or considering leaving; and
- Detrimental effect on wellbeing and mental health.

Diminished confidence was a major feature of our discussions. But seen in the context of women’s negative experiences, this pervasive sapping of confidence is not surprising, especially in a profession where performance is all. This is absolutely not a problem that exists only in our heads.

Our conclusion is that lack of confidence is not a “*problem*” which women at the Chancery Bar have and which they need to address; it is an inevitable consequence of what they see and experience and what is done to them.

The environment for women at the Bar must change.

It was frankly remarkable how many outwardly confident and successful women in our groups said they had doubted – and seriously doubted - their own abilities. But this is absolutely not surprising when those women saw their male peers picking up better opportunities and being groomed for success, in a working environment which inherently favours men, from male-dominated clerks’ rooms, to predominantly male lay clients (and law firm partners), to male oriented marketing. And underpinning all of this are countless misplaced assumptions about women, which are the product not merely of unconscious bias, but on too many occasions, conscious bias or sheer thoughtlessness.

The secrecy which shrouds fee negotiation in most Chambers does not help; but transparency about billings only gives higher earners a weapon to use against lower earners if unfair causes of inequality are not addressed.

The detrimental effect on finances resulted from the combined effect of:

- Women (the soft touch) being disproportionately asked to (and spending) more time on “*unpaid work*” for Chambers, and therefore having less time for billable work.
- Women spending more time and energy on childcare than their male colleagues.

- Being pigeonholed in ‘clever’ but less well-paid areas of practice.
- Not enjoying the same career trajectory as their male contemporaries when starting out.
- Being overlooked for work by solicitors, clerks or leaders.
- Work being diverted away from women (even when it had come into Chambers for them).
- The cyclical effect of doing lower quality and lower paid work, leading to more work of a similar quality, and difficulties in breaking that cycle.

More than half of our participants said they had considered leaving the Bar. Again, it is not surprising that this is the end result. Given their experiences, our women ended up doubting themselves. Again, this included very outwardly successful women. In some cases, they said they were just tired of fighting for equal treatment. Far too often, though, our participants said that there had come a point when they had suffered a catastrophic drop in confidence and so had looked at quitting. And, of course, we only saw the survivors. As I have said, although we tried to reach out to women who had left the Chancery Bar, we were unable to make contact.

Finally, some participants shared how their experiences had taken a toll in terms of their mental health and their wellbeing. The Bar is a lonely profession in any event, with little institutional support, although this is improving a bit. But negative experiences of the types related in our round tables, and the consequential loss of confidence, make for poor mental health. These experiences are also not easy to share with others in Chambers. So many of our participants said how much of a relief it was to be able to talk about these experiences with other women in the same branch of the profession, something they had not felt able to do before.

Recommendations

Our findings lead into some recommendations, some for Chambers and others more generally:

- Raise awareness of the duty to monitor fair allocation of work and the right to have access to those records.
- Clerks should be active in curating the practices of individual members of Chambers, and anticipating and curtailing opportunities for the conscious or unconscious bias of solicitors or silks to creep in.

- Put in place active monitoring of work allocation and ask the clerks to take the initiative on raising discrepancies. Don't rely on junior female tenants to do so.
- Arrange regular anti-unconscious bias training for clerks and members.
- Consider whether positive action is, in any particular circumstance, appropriate. An obvious instance is where a female barrister's earnings and career trajectory fall steeply behind that of her male contemporary. Even more obvious, is the woman who returns to work after maternity leave. Why should her name alone not be put forward for a case?
- Good parental leave policies, which are in line with Bar Council recommendations, will help Chambers avoid losing good female tenants. And when women return to practice, discuss with them how they wish to manage this rather than making assumptions – every woman is different and will want to do this in different ways, but they are almost always very keen to return and rebuild.
- Rather than assuming that something can or can't be done (including as regards our fees), what clerks should be doing is actually asking women.
- Actively consider your marketing methods and how they are disadvantaging women in Chambers. Challenge the more informal practices. Publicise forthcoming marketing events and encourage members to let Chambers and the clerks know about less formal individual arrangements, such as coffees and lunches.
- Minimise the number of alcohol-based marketing activities and in any event put in place a wholly transparent system of marketing, with a weekly marketing diary for all to see.
- Recognise that the culture of the Bar has a negative impact on women's confidence which is not their "*fault*". Clerks and mentors need to address this head on, and where necessary reinforce the message that we do have the ability and capacity.
- Positively investigate the issues that women might face in your Chambers, rather than assuming they are not there, gather a group of your female members together and give them the space to talk about what does not work and what does. Include a range of seniorities. Chatham House rules. Listen and see what comes out.
- Consider not only formal mentoring processes but also formal reverse mentoring. For example, a senior woman mentoring a younger man. Or just women (of whatever seniority) mentoring men (of whatever seniority).
- Consider bespoke mentoring and advice to encourage women to apply for silk.

- Put in place different wellbeing initiatives, whether at desk massages or access to a counsellor, etc. Be guided by the Radcliffe and Landmark examples. Encourage peer mental health training.

To us at the end of the process it is all the more important that we get this report out into the wider Bar community, to have these voices heard, to share what we found and, crucially, to make us all think long and hard about how things can be improved.

I am firmly of the view that Chambers need to *care* more and have the crucial conversations internally that I hope this report will trigger.

A good starting point might be to consider signing up to the Women in Law Pledge (<https://www.barcouncil.org.uk/support-for-barristers/equality-diversity-and-inclusion/women-in-law-pledge.html>)²⁴. The only Chambers to have signed up to it are Landmark, 3 VB, Matrix, 20 Essex Street and Black Antelope. This seems to me to be an absolutely shameful state of affairs and I confess to feeling real guilt at not pushing it within my own Chambers.

More widely, it would be fair to say that overwhelmingly, our participants found our round tables cathartic and energising. There was real enthusiasm for regular events such as ours, both formal and informal, where women at the Chancery Bar could meet and exchange views and ideas. Gathering experiences across so many different women working at the Chancery Bar has allowed us to put the pieces together, where a female member of Chambers working in her own silo might not.

We, as facilitators, felt privileged to have provided the forum and the conduit for what was plainly a welcome but long overdue sharing of experiences, frustrations, anger and ideas and were moved by the energy in each room.

²⁴ “By signing up for the pledge you or your Chambers/organisation is committing to: Supporting the progression of women into senior roles in the profession by focusing on retention and practice development opportunities; Setting clear plans and targets around gender equality and diversity for your Chambers/organisation; and Tracking progress towards achieving your goals.”

Finally, the thank yous. Again - to Nicola Rushton QC, Tina Kyriakides and Elizabeth Houghton – for their assistance in putting together our round tables, for their help with this report, for their wisdom and insights and their sheer hard work. To Nienke Van Den Berg and Francesca Compton for their editing (with an appropriately and constructively critical eye) and scrutiny.

But most of all, Nicola, Tina, Elizabeth and I thank all our participants - for their honesty, their enthusiasm and their passion, and yes, for their positivity.

My takeaway is that despite the very real, serious, problems and concerns that were articulated, our participants attended and spoke out, from their hearts, because they care. Overall, we value and love our careers and want to make it better for ourselves, for all women at the Bar, now and in the future.

January 2021

Marcia Shekerdemian QC

Wilberforce Chambers

Lincoln's Inn

©

Chancery

Bar

Association

Appendix A

eBulletin

CHANCERY BAR ASSOCIATION



Women at the Chancery Bar: Round Table Discussions

- an invitation to participate

Retention of women is a real issue facing all branches of the legal profession. Your E & D Sub-Committee has undertaken its own research. This has confirmed that the Chancery Bar too has likewise been affected by the loss of female practitioners at all levels of call. We are determined to address this head-on, to find out why women leave, what issues and particular challenges and difficulties they face in their work place, what can be done to redress the problem and how we, as an Association, can find solutions.

To this end, we will be holding a series of four round-table discussions over the course of this term and next term, operating under “Chatham House Rules” and attended in each case by up to 10 female participants and two female facilitators (being E & D Committee members). Former female members of the association are particularly welcome. The identity of participants will be kept anonymous and any information provided by them will likewise be anonymised.

The discussions will be recorded (for administrative ease) and the results will be collated into a report containing, amongst other things, recommendations/key areas of action to be fed back to the main committee. Information and findings may also be shared with the Law Society, whose Chair (Christina Blacklaws) is undertaking a year-long national programme of similar round table research under the banner “Women in Leadership in Law”.

This term’s round tables will be:

1. **11 February 2019**, Wilberforce Chambers at 1pm (led by Marcia Shekerdemian QC and Nicola Rushton QC)
2. **11 March 2019**, Wilberforce Chambers at 5pm (led by Tina Kyriakides and Elizabeth Houghton).

Each session will be 1½ hours long. A sandwich lunch (11 February) or drinks and nibbles (11 March) will be provided. Participants will be provided with materials/tools in advance, but broadly, the discussions will focus on at least the following areas:

- Unconscious bias
- Career breaks/maternity leave
- Support with return to practice and financial/cashflow implications
- Clerking/practice management
- Mentoring and internal support structures
- Allocation of work

Participation will be on a first-come, first-served basis.

If you would like to attend, [please RSVP directly to Marcia Shekerdeman QC](#), stating which session you would like to attend and whether you have any special dietary or access requirements.

If you have any queries (before or after deciding to attend), please feel free to speak to Marcia confidentially or email her.

Finally, whilst every (GDPR compliant!) effort will be made to contact former female members of the Association, **if you know any such former members who you think might be interested in attending, please do pass this on.**

Appendix B

PRO FORMA INFORMATION FOR PARTICIPANTS

Women at the Chancery Bar

Round Table discussion, Wilberforce Chambers XXX 2019 at XX pm/am

Thank you for agreeing to attend this round table discussion – the second of four. The session will be hosted by [Marcia and Nicola] or [Tina and Elizabeth].

What is a Round Table?

A meeting focused on consensus-building, to explore specific issues and identify creative solutions in a safe and non-judgmental environment, where all participants have equal standing and can speak freely.

Why are we here?

To explore and identify and address particular issues and challenges experienced by women of all levels of seniority at the Chancery Bar.

- what holds us back?
- why do we leave?
- what can be done?
- What, from our experience, makes or would make a difference?

Structure

There is no leader in this Round Table. The function of the facilitators is to ensure equal participation, to maintain focus and to ensure that a record of the process is taken in the manner agreed. This may (subject to discussion) be by recording, note taking, or both.

- Welcome from your facilitators (5 mins)
- Participant introduction (5 mins)
- Group Discussion on questions (40 mins)
- Group Discussion on priorities/action/solutions (30 mins)
- Summary of key points/agreed actions (10 mins)

Ground Rules

The Chatham House rule will apply – participants are free to use the information received but neither the identity of the speaker nor that of any other participant may be revealed relating to the information shared. All content will be anonymised,

- No mobile phones
- Open and frank discussion in a polite manner
- Listen to others - no interruption of speeches
- Group discussion (no 1 on 1 conversations)
- Respect for the schedule and speaking time
- Consensus oriented meeting (no domination)
- Active participation of everyone
- Voluntary participation

Others Attending

Marcia Shekerdeman QC , chair E & D Sub-Committee (observer) [if not facilitating]

[XX (other observer)]

Questions

A. Have you faced challenges in any of the following areas?

If so:

- what solutions have you identified or used to address them?
 - what solutions can be used to address them? what did you find unhelpful?
 - how much were you aware of the problem at the time?
1. - did you feel able to say anything? Recruitment
 2. Work allocation
 3. Solicitor/client attitude.
 4. Opportunities for professional development
 5. Opportunities for flexible working
 6. Marketing
 7. Clerking
 8. Fees
 9. Chambers management/committee roles,
 10. "Women's" roles.
 11. Bias, unconscious and conscious bias, including in the areas listed above²⁵
 12. Career breaks (inc. return to practice – maintaining and rebuilding your practice, allocation of work, financial and cashflow implications)
 13. Sexual harassment and bullying.

B. Have you ever considered leaving the Bar and why? What would make you stay?

²⁵ Note: All human beings are biased. Bias is not just individual, it works at an organisational level and includes a collective unconscious way of doing things and patterns of behaviour becoming normal. It is the foundation of stereotypes, prejudice and discrimination

C. Do you consider that there is adequate support available in your Chambers for female practitioners? How could things be improved? Do you have experience of things which worked?

D. What other challenges do women at the Bar face?

What Happens Next?

The evidence and information collated in this session (and our three subsequent sessions) will be distilled into a report containing recommendations and suggestions based principally (but not exclusively) on any consensus reached in the course of the discussion.

This report be provided to the main Committee of the Chancery Bar Association, to Law Society and to the Bar Council.

Appendix C

ANONYMISED CALL GROUP ANALYSIS

Call group	Number of participants
5 years call (2019-2015)	1
6-10 years call (2014-2010)	8
11- 15 years call (2009-2005)	12
16- 20 years call (2004-2000)	7
21-25 years call (1999-1995)	5
26-30 years call (1994-1990)	6
31 years plus call (1989 onwards)	6
TOTAL PARTICIPANTS (of which, 9 were silk)	45