



The Bar Council

Laura Farris MP

Sent via email

24 May 2022

Dear Ms Farris,

I am grateful for the opportunity to address the matters you raised with me when I gave evidence before the Justice Select Committee on 27 April and wanted to set out in some detail the range of work that the Bar Council has undertaken in recent years. I have copied this letter to Sir Bob Neill MP and the Committee. Should you have further questions, or wish to discuss any matters set out here, I would be pleased to meet.

Income disparities at the Bar – latest evidence

The Bar Council is committed to equality, diversity, and inclusion (EDI) and creating a Bar 'of, and for, all.' A huge amount of work goes into data collection and analysis, policy, and programme development, and working with our stakeholders across the Bar to address inequality and promote inclusion.

In relation to Sex equality, since 1990, we have gradually seen the proportion of women at the Bar almost double – from 21.6 per cent in 1990 to 38.1 per cent in 2020.¹ Male/Female representation on intake (pupillage) has been roughly 50:50 since 2000.² However, it is by no means a given that improvements seen in access to the Bar translate into women's retention and progression. Nor that demographic change automatically results in cultural change and income equality.

It has been irrefutably established that there are substantial differences between men's and women's experiences of working life at the Bar in England and Wales. Reports from the Bar Council, the Bar Standards Board, and stakeholders have identified obstacles to women developing sustainable and rewarding careers which can be linked to:

- work allocation
- client briefing practices

¹ Bar Standards Board (July 2021) "Trends in Retention and Demographics at the Bar, 1990-2000"
<https://www.barstandardsboard.org.uk/uploads/assets/12aaca1f-4d21-4f5a-b213641c63dae406/Trends-in-demographics-and-retention-at-the-Bar-1990-2020-Full-version.pdf>

² Bar Council (2015) "Snapshot: The experience of self-employed women at the Bar"
<https://www.barcouncil.org.uk/resource/snapshot-the-experience-of-self-employed-women-at-the-bar.html>

- difficulties returning to practice after maternity leave
- retention
- bullying, harassment, and discrimination
- barriers in progressing to silk
- male dominated power structures
- sexist, prejudicial, or outdated marketing practices and non-inclusive networking.³

The above are often inter-related.

Bar Council Policy

The challenge for us (as the representative body) has been in identifying ways that we can support career progression and development in a majority self-employed profession, and within the chambers model. The only real metrics we can use are income differences between men and women at similar career stages and areas of practice (if all else is equal), retention rates and progression in the form of attainment of QC status or accession to the judiciary.

A key policy priority for us has been improving monitoring and data collection around differences in income, with the understanding that this provides a regular, comparable, and replicable source of data for all those within the profession seeking to reduce disparities. By comparing income differences, we have been able to identify where there are obstacles to women accessing the best-paying work.

We have developed this policy work with the expectation that this will support and encourage Bar stakeholders to take evidence-based action at a practice and chambers level to tackle the structural disadvantages experienced by women at the Bar. We have decided to publish data (even when it paints a challenging picture of life at the Bar for women and others) to provide an evidence-base for changes in briefing that are needed.

Data Analysis

In 2020 and 2021, the Bar Council published analyses of Bar Mutual data showing comparative representation and income share by sex and practice area. The 2021 data showed longitudinal data from 2020-2022. Both reports demonstrated that women earned less than men in all except one area of practice [that area being Family – children]. The 2021 report also found that, “there has been an increase in average gross fee income for both women and men at the Bar,

³ Bar Council (2015) “Snapshot: The experience of self-employed women at the Bar” <https://www.barcouncil.org.uk/resource/snapshot-the-experience-of-self-employed-women-at-the-bar.html>; Bar Standards Board (July 2016) “Women at the Bar” <https://www.barstandardsboard.org.uk/uploads/assets/14d46f77-a7cb-4880-8230f7a763649d2c/womenatthebar-fullreport-final120716.pdf>; Western Circuit Women’s Forum (2018) “Back to the Bar” <https://westerncircuit.co.uk/wp-content/uploads/2018/11/WCWF-Back-to-the-Bar-Final-version.pdf>; Chancery Bar Association (2020) “Voices of Women at the Chancery Bar” <https://www.chba.org.uk/for-members/library/consultation-responses/voices-of-women-at-chancery-bar>; HHJ Emma Nott (2017-2021) *Counsel Magazine* series on Gender and Fair Access to Work <https://www.counselmagazine.co.uk/biography/hhj-emma-nott>

and that the gap between men and women's average income has increased over the last 20 years."⁴

Further, in detailed examination undertaken as part of the Independent Review of Criminal Legal Aid, we looked at the fee incomes of self-employed publicly funded criminal barristers. We found that women earned on average at least 27 per cent less than male colleagues, even when all else was equal [we controlled for seniority, region, year of call]. This held true for QCs as well as for juniors. Women barristers do tend to work fewer cases on average than men each year. However, the difference in work volume only accounts for 10.5 per cent of the difference in income. Ethnicity compounded the effect of sex, and we found that Black and Asian women earned the least of all.

We noted as part of this report that, "Criminal barristers all work under the same fee schemes, so these stark variations in fee income and profit support an observation that there are systemic issues with equitable briefing practices and access to work in the legal sector. Factors include client briefing practices and panel selection, the distribution of work within sets, and distribution of better-remunerated work."

We have successfully worked with some publicly funded clients of the Bar, in particular the CPS, to identify patterns and disparities in briefing practices and interventions to improve outcomes⁵. The CPS has been very supportive in this regard, but it is clear that more work could be done by other publicly funded clients of the Bar to gather the data and better understand their role in creating better outcomes for women and other groups.⁶

The Bar Standards Board shares our policy interest in income monitoring and has published two detailed pieces of analysis on income by sex, which similarly found, "Female barristers and barristers from an ethnic minority background are likely to earn less than male and White barristers, respectively." This holds true even when looking at employed barristers, self-employed barristers, QCs, barristers based both inside and outside London, and barristers with similar seniority by year of Call. These findings have corroborated and informed our own work.⁷

Programme of Work

⁴ Bar Council (November 2020) "Gender Pay Gap Table" <https://www.barcouncil.org.uk/uploads/assets/5cf7853a-5878-45f2-9420075b6f3a58a8/Bar-Council-Gender-Pay-Gap-Table-November-2020.pdf> ; Bar Council (September 2021) "Barrister earnings data by sex and practice area report 2021" <https://www.barcouncil.org.uk/resource/earnings-data-by-sex-2021.html>

⁵ Bar Council Guest Blog, Rebecca Lawrence, CEO CPS <https://www.barcouncil.org.uk/resource/guest-blog-working-together-to-improve-diversity-inclusion-and-progression-for-those-who-prosecute-for-the-cps.html>

⁶ For example, the Bar Council has requested information from the Cabinet Office on the allocation of Inquiry work, as inquiries have been identified as an important source of work for barristers needing more predictable working hours, including those sustaining their practice while looking after young children. We have been told repeatedly that this data is not collected. This is information only the Government can collect, and if made available to us, it would support our endeavours to improve equality.

⁷ Bar Standards Board (November 2020) "Income at the Bar – by gender and ethnicity" <https://www.barstandardsboard.org.uk/uploads/assets/1ee64764-cd34-4817-80174ca6304f1ac0/Income-at-the-Bar-by-Gender-and-Ethnicity-Final.pdf> ; Bar Standards Board (February 2022) "Income at the Bar by gender and ethnicity" <https://www.barstandardsboard.org.uk/uploads/assets/af6c9471-1328-4f4d-8f1baf5adb349d64/Income-at-the-Bar-by-Gender-and-Ethnicity-2022.pdf>

The Bar Council has undertaken and published this evidence as part of well established, long-term policy workstream (Modernising the Bar) aimed at improving working conditions for women and under-represented groups at the Bar. As the representative body we cannot compel barristers or chambers to do anything, but we have gained significant support for this work.

To date, the Bar Council has put in place the following interventions to tackle income disparities:

- Practical support for chambers to enable them to conduct their own internal income monitoring (we have created practical guides to support them in doing so⁸)
- Training for chambers and their staff on ensuring fair distribution of work and monitoring income
- Support for barristers who have experienced bullying, harassment, or discrimination (including helplines and anonymous reporting platforms)
- Working directly with clients of the Bar to tackle unequal briefing practices (including, e.g., the CPS and Magic Circle law firms)
- Information for new barristers on navigating life at the Bar and building a thriving practice.

Later this year we will publish new guidance and support for barristers on:

- Sustaining practice after maternity and parental leave
- Models of flexible working suitable for the self-employed Bar
- Securing effective practice management.

This is an area of work we are extremely proud of and committed to. We are convinced that this work has the capacity to bring about real change and improvements for women and other under-represented groups at the Bar. I am particularly keen to see what lessons can be learned from the monitoring process and on how the Bar Council might further encourage the spread of best practice across the Bar

We would welcome an opportunity to discuss this with you further, please do not hesitate to contact us to set up a meeting. We would also be happy to put you in touch with the networks of barristers who are helping us to take this work forward.

Yours sincerely,



Mark Fenhalls QC
Chair of The Bar Council

⁸ Bar Council (December 2020) "Monitoring Work Distribution Toolkit; Part 1- Sex"
<https://www.barcouncilethics.co.uk/documents/monitoring-work-distribution-toolkit-part-1-sex/>