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# DIVERSITY IN THE LEGAL PROFESSION IN ENGLAND AND WALES: A QUALITATIVE STUDY OF BARRIERS AND INDIVIDUAL CHOICES

Funded by the Legal Services Board

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Liz Duff, Daniel Muzio, Hilary Sommerlad, Jennifer Tomlinson, Lisa Webley.

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## TABLE OF ABBREVIATIONS

ABS	Alternative Business Structures
AML	Association of Muslim Lawyers
AWS	Association of Women Solicitors
BLD	Black Lawyers' Directory
BPTC	Bar Professional Training Course
BVC	Bar Vocational Course
BME	Black or Other Minority Ethnic
BSN	Black Solicitors Network
CPD	Continuing Professional Development
LSB	Legal Services Board
LSC	Legal Services Commission
LGBT	Lesbian Gay Bisexual Transgendered
LPC	Legal Practice Course
MOJ	Ministry of Justice
MPF	Managing Partners' Forum
PI	Personal Injury
SRA	Solicitors' Regulation Authority
YLAL	Young Legal Aid Lawyers

## PARTICIPANT IDENTIFIER KEY

F/M	Denotes Female/Male
BME/W	Denotes BME/White
B/IHB	Denotes Barrister/Employed Barrister
TS/S/IHS	Denotes Trainee Solicitor/Solicitor/In-House Solicitor
SP/EP	Denotes Salaried Partner/Equity Partner
Ac/Lex	Denotes Academic/Legal Executive
LG/LPC/Para	Denotes Law Graduate/LPC Graduate/Paralegal

## SUMMARY OF KEY FINDINGS

In recent years the legal profession in England and Wales has become increasingly diverse. The percentage of female solicitors has grown tenfold since 1984: Law Society annual statistics reveal that in 2008-9 women made up 46% of solicitors on the Roll and 60% of admissions to the Roll, while the Bar Council reports that 34% of barristers in 2009 and 52% of those called to the Bar in 2008-9 were women. There has been a similar sharp increase in the proportion of Black and Minority Ethnic (BME) lawyers; for instance the numbers of BME solicitors with a practising certificate rose by 243.7 % between 1996 and 2006, and in 2008-9 BME individuals made up 13% of solicitors on the Roll, 24% of admissions to the Roll and 16% of barristers.

When this process of diversification of the profession's supply side began, it was assumed that female and BME lawyers would progress according to their individual merit. However other statistics demonstrate that the profession is segmented and stratified on gendered, raced and classed lines, suggesting that the opportunities available to young lawyers are not equally distributed. An extensive body of academic and policy based literature underlines the statistical picture of persistent structural inequalities within the profession across a range of indicators, from pay to status; in addition there is some evidence to suggest that women and BME lawyers leave the profession in disproportionately high numbers. Research also indicates that white graduates from higher socio-economic groups are over-represented in large City firms and at the Bar, while BME women from lower socio-economic groups are concentrated in small High Street practices.

However, despite this strong evidence of inequalities in terms, conditions and rewards associated with gender, race and ethnicity and, especially, the interaction between these different forms of identity, there is less consensus about their causes. Different career trajectories may have been the result of individual choices, such as a desire to undertake legal aid work, or personal circumstances, or the availability of opportunities in an individual's first choice field, or a combination of these factors. Insight into the ways in which these factors drive career paths, thereby fleshing out the picture of labour market segmentation revealed by the statistics, requires in depth exploration. The Legal Services Board (LSB) therefore commissioned the present qualitative study of female and BME professionals, at a variety of career stages including pre-entry, in a range of specialisms and sectors, and in several locations, to investigate the reasons for these practitioners' career patterns.

### The Study

While our respondents' accounts of their experiences points to regional, organisational and sectoral variations in the profession's practices and processes, they also indicated that there are significant commonalities. Overall they suggest that, despite important advances towards greater openness and diversity, the profession is nevertheless perceived as inherently masculine in character in the sense of its working patterns and general culture, and, further, characterised by (possibly unwitting) biases against non-white professionals and those drawn from lower socio-economic groups.

In order to explore the reasons for our respondents' career choices, and the extent to which they were the product of the profession's culture, structure and institutions, we interviewed seventy-seven lawyers, would-be lawyers and former lawyers along with five diversity managers and an additional non-lawyer and non-diversity manager stakeholder. Our interviews were either conducted face to face (individual or small group interviews) or via telephone. The majority of respondents were drawn from the North of England and from London.

The main themes revealed by our data analysis, include:

- the fragmentation of the profession and consequent nuanced nature of respondents' experiences;
- the legacy of the profession's white, male elitist origins and the significance of cultural stereotypes;
- the importance for career success of personal relations/ bonding and socialising;
- the long hours' culture and emphasis on commitment (rarely defined);
- the lack of transparency of some key procedures and practices in some organisations.

### Formal and Informal Processes, Barriers and Incentives

The data suggests that as a result of the preference of employers for the graduates of 'old' universities, sections of society are filtered out of the profession. In addition, a number of female and BME respondents gave accounts of job interviews in which the interviewer, instead of focusing on their technical ability, had asked inappropriate questions based on assumptions about their ethnicity, gender and background.

Despite the adoption by many employers of formal bureaucratic processes, the experiences of women and BME lawyers suggest that these are often by-passed. As a result, a frequent complaint was that work was allocated unfairly, thereby fostering the careers of some at the expense of others. Similarly, several solicitor respondents had found their firms' procedures and criteria for promotion to be opaque.

Women lawyers spoke of the difficulties flowing from working patterns based on male models of working, which therefore entailed very long hours. They also complained that flexible working patterns are either not permitted, or damage future promotion prospects.

### The Culture of the Profession

Our data suggested that the major obstacle to diversity is the profession's informal culture and in particular the key significance of personal relationships. This is exemplified by the informal mentoring which was reported as characterising most respondents' workplaces, and the fact that in practice this meant that powerful senior figures (generally white men) tended to foster the careers of young white men. The importance of networking outside the firm was also viewed as problematic by many respondents since, again, it generally involved engaging in predominantly male activities which were also numerically dominated by white men.

Relatedly, the data suggested that racial stereotyping remains pervasive, especially in the North of England. Similarly, while there was widespread agreement that women were now more likely to be able to work part-time, and also progress to partnership, the resilience of a culture of 'presenteeism' and of sexist practices were seen as major problems. One of the persistent themes was the difficulty experienced by members of minoritised groups in being recognised at all, as either candidates for promotion, or even, on occasions, authentic members of the profession. The accounts of our respondents reflect a widespread view that those with power to allocate rewards and status therefore did not need deliberately to discriminate, since the possibility that, for example, women with children, Black solicitors or Asian women could achieve significant status on the basis of merit frequently did not appear to occur to them. Linked to this was the perception that career progression depended on self promotion to powerful figures and networks within the organisation, and that this tended to be easier for white males.

However, our respondents generally accepted that changes had taken place and were continuing so to do. This was partly reflected in the adoption of formal processes designed to encourage diversity which would have been unthinkable fifteen years ago, and also in the increase in the numbers of pioneering women and BME lawyers in a few key posts.

### Diversity Initiatives: Good Practice, Strengths and Limitations

It is clear that some organisations have given considerable thought as to how to attract and retain well qualified, diverse professionals. The resulting initiatives are, of course, to be welcomed: the establishment of diversity officers and/or partners; greater emphasis on pre-University outreach; diversity work placement and law student mentoring schemes; formal in-house mentoring of new professionals and the establishment of diversity networks in conjunction with the institution of clear and transparent promotion processes are all important, positive developments. However, it should be remembered that, firstly, such initiatives are largely confined to large corporate law firms, and, secondly, they are in general only designed to reach a small number of individuals. They are neither intended, nor likely, to produce significant change to the culture of the profession. The failure of such schemes to address professional culture is a major weakness given that many commentators and the evidence of this report indicate that this is the major cause of the barriers BME and female lawyers face in their careers. In fact respondents reported that these developments and the diversity discourse in general appeared to provoke overt hostility from some sections of the profession, and some of our respondents were also negative or cynical about them, describing them as tokenistic and/or patronising, ineffective and primarily about generating good PR for the firms.

Respondent solicitors in large firms (and frequently in smaller firms too) also generally considered that there was little willingness to reflect on and change the dominant culture of the legal workplace, in terms, for instance, of current constructions of commitment (open ended availability) and merit. The data suggested that both of these key concepts are subject to cultural biases. Finally, women barristers commented on the difficulties posed by their self-employed status which meant that few diversity initiatives were of benefit to them.



## Career Strategies and Choices

Encountering formal and informal barriers, and perceptions of difference and 'otherness', represented key formative experiences for many of our respondents. They told us that they feel they have had to work harder and give greater signs of their commitment than their white counterparts and, generally, continually to reassert their value. They reported being viewed through the prism of negative cultural stereotypes, and some have had to deal with the challenges posed as a result of being the 'pioneers' in an environment that they have, at times, experienced as unaccommodating and sometimes even hostile.

Our research also documents the resourcefulness and inventiveness of our respondents and provides evidence of the numerous strategies they have deployed to overcome barriers, improve their circumstances and turn their difference to their competitive advantage. These strategies are articulated on a continuum that range from assimilation to withdrawal through attempts to 'play the game' or reform the system from within. Different strategies often interact and coexist with each other in a fluid assemblage, as individuals experiment with different responses according to their career progression stage and changing circumstances.

## Conclusions and Proposals for Addressing the Challenges Identified

Following a review of academic, policy and professional press literatures and in light of our empirical findings, we have the following proposals for improving diversity within the legal labour market. These are aimed at both employer organisations and regulators. Given the interplay between the various problems identified by our respondents, we would urge that these proposals be considered as part of a co-ordinated package and, where possible, underpinned by regulation.

- supporting outreach programmes;
- undertaking an equality impact assessment prior to introducing any reform of the qualification process;
- offering bursaries for the Legal Practice Course (LPC) and Bar Professional Training Course (BPTC) stages and for trainees and pupil barristers;
- requiring the disclosure, and monitoring, of diversity data within firms and across specialisms;
- encouraging the development of formal support networks and mentoring schemes and supporting role models;
- encouraging flexible working for both women and men, and ensuring work allocation and promotion procedures are transparent;
- providing diversity training.

### Outreach Programmes

Legal profession pre-employment outreach initiatives are explicitly designed to overcome many of the challenges faced by aspiring lawyers from 'non-traditional' backgrounds. There are a number of excellent schemes already in place and these should be encouraged, as should new initiatives.

### Reform of Qualification Pathway and Training Contract and Financial Support

Several respondents spoke of the importance of 'opening up' the profession to talented individuals from less wealthy socio-economic backgrounds; this would also entail encouraging the profession to examine their current equation of merit with a 2:1 from an 'old' university. Other respondents commented on the barrier posed by the current training contract and pupillage systems; evidently the cost of training adversely affects aspiring lawyers from lower socio-economic and some BME groups as well as mature students who must self-fund through university and training. Some advocated a new system with quotas and bursaries co-ordinated by the Law Society and Bar Council. The Legal Service Commission's (LSC) Training Contract Grants Scheme has offered a model for this sort of scheme and should be revived. Another suggestion was for the development of alternative systems of competence based training and qualification, echoing some of the principles behind the Solicitor Regulation Authority (SRA) recent work based learning pilot and the development of the LPC 3.

### Disclosing and Monitoring Diversity Data

An extensive range of studies underline the importance of having reliable data and statistics on diversity at the workplace level. However, both the legal profession press and academic studies indicate that monitoring equality and diversity within organisations tends to be variable and too often lacking in substance. One solution would be to place an obligation on frontline regulators to publish aggregated diversity data for each branch of the legal profession for which they are responsible. This could be incorporated into the annual statistical reports already produced by both the Law Society and Bar Council. If these reports were to be supplemented by the diversity figures for individual practices/ chambers, or for generic types of organisation

and/or large organisations, such information would help frontline regulators and other stakeholders to identify 'problem' areas, while also providing potential recruits and clients with access to diversity information. Such an initiative would be congruent with the diversity transparency policy followed in other areas of the English and Welsh legal labour market (for instance the Crown Prosecution Service).

Our respondents also noted the importance of monitoring and linked this to the increasing popularity of league tables on good employment practice and diversity management. Several also spoke of the benefits resulting from the public sector procurement process, in view of this sector's commitment to diversity. The Law Society seeks to support demand side pressure on the profession for diversity through its Diversity and Inclusion Charter. This initiative includes a model diversity questionnaire that purchasers of legal services can use to collect diversity information from any law firms tendering to provide legal services. It should be noted however that some commentators with expertise in diversity view this initiative, and the business case for diversity model in general, as ineffective and unlikely to produce the sort of cultural change required.

### **Formal Mentoring, Role Models and Networks**

The significance of informal mentoring for reproducing gendered and raced segmentation and segregation featured strongly in our respondents' accounts. We recommend therefore that firms and chambers should adopt formal mentoring schemes in order to counter these informal mechanisms which tend to privilege some groups at the expense of others. Such schemes should be supported by regulation or formal procedures including mechanisms to monitor their efficacy. Several respondents, particularly those in the North where there are few senior barristers and partners in large commercial law firms who are BME and/or female, favoured such schemes and also spoke of the importance of visible, senior role models for BME groups and women.

### **Flexible Working/Structural Reforms**

More willingness to experiment with flexible working patterns was a recommendation made by many respondents, particularly white and BME females. Our data suggests that firms appear to have been willing to adopt flexible working strategies when work was scarce during the recession as a way of avoiding redundancies; maintaining these arrangements once the recession is over would be beneficial. These arrangements might include career breaks, sabbaticals, longer periods of unpaid leave over summer months and four day weeks. Many (generally female) respondents had been required to work overtime on a regular basis. As a result a popular recommendation was a reduction in working hours/targets and some referred to the need to enforce the working-time directive. Several cautioned that such moves to encourage firms to promote positively alternative working patterns should also include recommendations that such working patterns should not be equated with lesser commitment and, hence, removal from the career track.

### **Diversity Training**

Our final proposal for consideration related to raising the diversity agenda more broadly, through education and training. This should take place at several career points including the LLB and LPC and BPTC stages (in order to raise the awareness of both those who will have to struggle with the profession's barriers and of future leaders of the profession) and for qualified lawyers (as CPD). Thought could also be given to the regulators' requiring it of current senior partners/ line managers.

### **Conclusion**

In summary, our respondents' accounts vividly exemplified the cultural practices which indirectly discriminate against the non normative professional and constrain individual choices. The existence of this evidence is fundamental to bringing about cultural change. An extensive quantitative study into discrimination in the legal profession has just been completed for the Law Society of Upper Canada, with the objective of improving its diversity. We would recommend that in order to strengthen the evidence to the English and Welsh profession, the present study should be supplemented by a quantitative survey of barriers and individual choices in the legal profession.

# 1. BACKGROUND TO THE STUDY

## 1.1 Context

In recent years the legal profession in England and Wales has become increasingly diverse.<sup>1</sup> The percentage of female solicitors has grown tenfold since 1984<sup>2</sup> and Law Society annual statistics reveal that in 2008-9 women made up 46% of solicitors on the Roll,<sup>3</sup> 60% of admissions to the Roll,<sup>4</sup> while the Bar Council report that at the end of 2009 34% of employed and self-employed barristers, and 52% of those called to the Bar in 2008-9 were women.<sup>5</sup> There has also been a similar sharp increase in the proportion of Black and Minority Ethnic (BME) lawyers;<sup>6</sup> for instance the numbers of BME solicitors with a practising certificate rose by 243.7 % between 1996 and 2006, and in 2008-9 BME individuals made up 13% of solicitors on the Roll,<sup>7</sup> 24% of admissions to the Roll<sup>8</sup> and 16% of barristers.<sup>9</sup>

When this process of diversification of the profession's supply side began, it was assumed that female and BME lawyers would progress according to their individual merit.<sup>10</sup> However other statistics reveal a profession which is segmented and stratified on gendered, raced and classed lines, suggesting that the opportunities available to young lawyers are not equally distributed and confounding this 'trickle up' theory. An extensive body of academic and policy based literature underlines the statistical picture of persistent structural inequalities within the profession across a range of indicators, including differentials in the pay and status of female and BME lawyers.<sup>11</sup> Thus the steady increases in the numbers of women and BME solicitors and barristers have not translated into proportionate representation at the senior levels of either branch of the profession.<sup>12</sup> In addition there is some evidence to suggest that women and BME lawyers leave the profession in disproportionately high numbers.<sup>13</sup> Research also indicates that white graduates from higher socio-economic groups are over-represented in large City firms, while BME women from lower socio-

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<sup>1</sup> We recognise of course that there are many dimensions of diversity including age, sexuality and disability; however, the relative paucity of statistical information on these together with the limited scope of this study has obliged us to restrict our focus to gender, ethnicity and, to a lesser extent, class.

<sup>2</sup> Law Society, 1987 at page 6; Law Society, 2009 at page 9.

<sup>3</sup> Law Society, 2009 at page 9.

<sup>4</sup> Law Society, 2009 at page 46.

<sup>5</sup> As at the end of 2009 there were 12,241 self-employed barristers in England and Wales and 3,029 members of the employed Bar. The figures for call to the Bar are for 2008-2009. 11% of QCs are women. For 2009 statistics see: <http://www.barcouncil.org.uk/about/statistics/>.

<sup>6</sup> We recognise that this blanket term for non-white lawyers is problematic and masks significant variations between different ethnic groups, as our research revealed. The ethnic breakdown (where known) for BME solicitors with practising certificates as of 31st July 2009 was: African-Caribbean 775; Asian 6,859; Chinese 1,251; African 1,247; 'other ethnic origin' 2,066; White European 89,718; the remainder of unknown ethnicity (Law Society, 2009 at page 10).

<sup>7</sup> The figure is 11.4% of all solicitors on the Roll regardless of whether ethnicity is known. Law Society, 2009 at page 10 for details.

<sup>8</sup> See Law Society, 2009 page 51 for details.

<sup>9</sup> The General Council of the Bar annual statistics as at the end of 2009. Ethnicity is known for 87% of barristers. The figure of 16% may be contrasted with those of 6% in 1995 and 15% in 2005, see General Council of the Bar, 2010 at page 5.

<sup>10</sup> Thornton has argued that merit, far from being objective, is, in practice, a rhetorical device shaped by power. See Thornton, 2007, 1985.

<sup>11</sup> The academic literature discussed in the next section includes Sommerlad and Sanderson, 1998; Nicolson, 2005; the policy literature includes Law Society, 2009a. The same patterns of labour market differentiation have been documented in other jurisdictions: see, for example, Schultz and Shaw, 2003; Thornton, 1996; Hunter, 2003; Sterling and Reichman, 2002; Sterling, 2010; Wilkins, 2004; 2000, 1992; Brockman, 2001; Boigeol, 2003; 2007; Charlesworth and Campbell, 2010.

<sup>12</sup> Men solicitors achieve partnership at twice the rate of women (Law Society, 2009) and joint Black Solicitors Network (BSN) and Law Society research found that an average of 3% partners and 8% trainees at the largest 100 firms in UK are BME (Hoare, 2006).

<sup>13</sup> This is certainly not a new phenomenon and has been recognised in the US literature for some time. Nelson and Trubek note that US studies in the late 1980s suggest that, although a larger proportion of women law students and those drawn from lower socio-economic and minority groups are entering the legal profession when compared to previous decades, they are also the associates who are most likely to leave large law firms (Nelson and Trubek, 1992). Further references to US literature on this area may be found in Nelson and Trubek's chapter; see also Schultz and Shaw, 2003.

economic groups are concentrated in small High Street practices.<sup>14</sup> Further, in 2007-8 62% of pupil barristers were drawn from the top two socio-economic groups.<sup>15</sup>

However, despite this strong evidence from both academic research and official statistics of inequalities of terms, conditions and rewards associated with gender, race and ethnicity and, especially, the interaction between these different forms of identity,<sup>16</sup> there is less consensus about the causes of these inequalities. It is clearly possible that different career trajectories may have been the result of individual choices, such as a desire to undertake legal aid work, or personal circumstances, or the availability of opportunities in an individual's first choice field, or a combination of these factors. Insight into the ways in which these factors drive career paths, thereby fleshing out the statistical picture of labour market segmentation revealed by the statistics, requires in depth exploration. The Legal Services Board (LSB) therefore commissioned the present qualitative study of female and BME professionals, at a variety of career stages including pre-entry, in a range of specialisms and sectors, and in several locations, to investigate the reasons for these practitioners' career patterns, and the extent to which they were the product of individual choice or the culture, structure and institutions of the solicitors' profession and the Bar, or a mixture of the two.

Several factors make the research particularly timely. Changes to legal aid introduced as a result of the Carter Review<sup>17</sup> have affected the profitability of a sector which contains particularly high numbers of female and BME practitioners. It is predicted that the recession will reduce enthusiasm for diversity and equality initiatives. It also appears possible that the (imminent) introduction of Alternative Business Structures (ABS) may accentuate the ongoing fragmentation of the solicitors' profession and its division of labour<sup>18</sup>, which has seen the concentration of female and BME legal practitioners in less prestigious sectors and firms. Further, there is concern that ABS may impact particularly negatively on these sectors, thereby potentially reducing still further both the social representativeness of the profession and, hence, its capacity to serve a diverse clientele. On the other hand, if informed by more detailed knowledge of the experiences of female and BME lawyers, it is possible that, rather than compound the current pattern of raced, gendered and classed career paths, the introduction of ABS could provide the profession with the opportunity to develop working arrangements and encourage cultural change which would support these practitioners. This report of our findings could assist with the design of policy solutions capable of improving the profession's diversity record and modernising legal services.

The academic literature documenting legal labour market differentiation is extensive and includes numerous studies in other jurisdictions that reveal patterns and issues similar to those pertaining in England and Wales. At the LSB's request, our review of this literature is brief. We have however made reference to major studies in footnotes, and we also draw upon these in the main body of the report. The academic literature review is followed by a brief survey of current debates and initiatives reported in the legal profession press.

## 1.2 Overview of the Academic Literature

The problems experienced by women in the legal profession both in the UK and other jurisdictions have been examined repeatedly in academic studies,<sup>19</sup> while those encountered by other minoritised groups, such as lawyers from BME and lower socio-economic groups, have received less attention. The issues facing those who may be doubly disadvantaged – for instance as a result of gender intersected with another identity such as class, race, sexual orientation or disability – have received still less critical examination in research conducted in England and Wales.<sup>20</sup> This project therefore aimed both to contribute to our knowledge of

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<sup>14</sup> See Duff, 2000; Boon, 2005; Sommerlad and Sanderson, 1998.

<sup>15</sup> The General Council of the Bar, 2010 at page 5; and see The Panel on Fair Access to the Professions, 2009 which found that lawyers born in 1970 typically grew up in families with income 64% above average, and commented that the professions have become more socially exclusive.

<sup>16</sup> Law Society, 2004; 2009b; 2010. Little research has been conducted into differentials resulting from sexual orientation, but see Chittenden, 2006. The interactions between different forms of identity is generally described as intersectionality, originally developed in the U.S. by Critical Race scholar, Kimberle Crenshaw; see, for example, Crenshaw, 1989.

<sup>17</sup> Lord Carter's Review of Legal Aid Procurement, 2006.

<sup>18</sup> Bolton and Muzio, 2008.

<sup>19</sup> For example: Hagan and Kay, 1995; Gorman and Kay, 2010; Epstein, 1981; Sommerlad and Sanderson, 1998; Webley and Duff 2007; Thornton, 1996; Hunter and McKelvie, 1998; Leiper 2006; Brockman, 2001; Pierce, 2002. For discussion of gender re-segregation in law firms see Kay 1997; Abel, 1985.

<sup>20</sup> But see Shiner, 2000; Sommerlad, 2008; Vignaendra, 2001. For discussion of the US experience of double discrimination, see Sturm, 1997; Dowd, 2000; Clanton, 2001; Gorman, 2006. Some have suggested other groups suffer as a result of the focus on gender imbalance, see Menkel-Meadow, 1986.

women legal professionals and those drawn from BME and lower socio-economic groups, and also to examine how intersections of social categories affected people's career trajectories.

There are three main theoretical approaches used to explain labour market differentials: those which emphasise individual choices and strategies (Human Capital theory); those which stress structural barriers and those which see culture as the primary determinant. While the following outline treats these approaches as distinct, in practice it is useful to draw on elements from all three: to understand fully the career experiences of 'non-normative' professionals, it is necessary to recognise that while these experiences are both patterned by the structure and culture of an occupation and the specific organisational site in which the individual is based, this does not mean that the individual does not then make choices, even if these choices are heavily constrained.<sup>21</sup>

Human capital and rational preference theory tend to view labour markets as rational and therefore gender and race neutral, so that equal investment by any given individuals will lead to equality of opportunity and promotion.<sup>22</sup> In this view, careers are not determined by structural and cultural forces but are the product of an individual's responses and strategies.<sup>23</sup> Therefore, the evidence of significant differences in the career patterns of, and rewards enjoyed by women and BME lawyers must be attributed to such factors as the failure by individuals from these social groups to invest sufficiently in their education and future legal career, or to their choices of particular specialisms or firms.<sup>24</sup> A particularly strong advocate of this approach is Catherine Hakim who has argued that it is women's lesser commitment to the demands of professional life that results in their lower status.<sup>25</sup>

By contrast, much of the feminist academic literature on the professions tends to emphasise the significance of structural barriers in producing labour market distortions. In this perspective, family structures and continued sex-differentiation in parenting roles<sup>26</sup> are not viewed so much as diminishing women's commitment (as Hakim argues) but rather as interacting with organizational structures and processes to make possible a way of working (such as very long hours) based on the ideal of the 'unencumbered' worker.<sup>27</sup> This theoretical approach therefore argues that bureaucratic structures and processes are not neutral but indirectly discriminatory<sup>28</sup> because they inevitably favour the dominant occupational group. Much has been written on the challenges that female legal professionals face as a result of both this masculine model of working and wider social arrangements. Holmes categorised these challenges as '*overwork; hierarchy, bureaucracy and specialisation; moral conflict, and the difficulty of combining work with childrearing.*'<sup>29</sup> However perhaps more insidious than these practical challenges, are the stereotypes which

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<sup>21</sup> The notion of 'choice' is a vexed one and, as the above discussion in the main text suggests, forms the arena for the conflict between Human Capital and other theoretical models (see Sommerlad and Sanderson, 1998, for detailed discussion). Hull and Nelson encapsulate the issues: 'when women lawyers 'choose' to leave the rigours of large firm practice for legal jobs that allow a better balance of work and family obligations, they are making an adaptive choice that allows them to continue in their legal careers. It is a choice constrained by broader structural realities. But it is still a choice' 1998 at page 702.

<sup>22</sup> Becker, 1991; for a critique, see McGlynn, 2003.

<sup>23</sup> See Evetts, 2000 for a very clear outline of the three theoretical positions.

<sup>24</sup> The recent remarks by Jonathan Sumption QC to the Justice Committee suggest that there are those in the profession who do consider that the reasons for its structural inequalities can be attributed to the lesser quality of women and BME lawyers: '*Clearly, the diversity of appointments is extremely sensitive to the profile of the higher reaches of the legal professions. My own impression – I can't say that it is more than an impression but it is based on a fair amount of experience – is that the quality of BME candidates entering the legal profession now has continuously increased over a number of years, just as the quality and number of women entering the legal profession continuously increased over a substantial period a generation ago.*' Judicial Appointments Commission (2010), Uncorrected Transcript of Oral Evidence to Justice Committee, Tuesday 7 September <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmjust/uc449-i/uc44901.htm>

<sup>25</sup> See, for example, Hakim, 1996; 2000.

<sup>26</sup> See, for example, English, 2003; Hull and Nelson, 1998; Mossman, 1995; Smart and Neale, 1999; Dowd, 2000; Epstein, 1995; Gerson, 1994. For a discussion of the difficulties associated with social categories such as men and women and the notion of family and work see Collier, 1998.

<sup>27</sup> Acker, 1990.

<sup>28</sup> See McGlynn, 2000; Costello, 1997 at page 917 'They [women] do not believe or want to believe that they are almost certain to encounter gender bias at some stage in their careers that will have the potential to adversely affect their advancement. Because of their complacency, they are unprepared when reality strikes, and often react by changing jobs or careers, or simply dropping out of the work force- in too many cases, depriving the legal profession of their skills and talents.'

<sup>29</sup> Holmes, 1990; Duff and Webley, 2004; Webley and Duff, 2007. Collier, 2004, found many male solicitors also concerned by these features of legal work.

tend to result from the dominance of the profession by white, middle class men.<sup>30</sup> For instance McGlynn found that motherhood appears to be taken as automatic evidence of reduced commitment in a way that fatherhood does not,<sup>31</sup> with the result that women of child-bearing age are perceived as making a similar commitment to men only if they 'choose' not to have children and clearly demonstrate that they have made that choice.

There are similarities between this perspective and the third explanatory approach which argues that as a result of diversity initiatives and equality legislation, indirect rather than direct sex or race (or class) discrimination is now the greater problem.<sup>32</sup> Particularly influential is the work of French theorist Pierre Bourdieu, whose focus is on the ways in which cultural practices work to produce and naturalise the characteristics of a 'field'.<sup>33</sup> Applied to the legal profession, this means that we might locate the barriers to change in people's 'common sense' understandings of, for instance, 'appropriate' gender roles and ways of conducting business in the profession. Scholars working in this tradition suggest that merit is not objective but rooted in a system of values which are permeated by assumptions about gender, class and race, and that, as a result, good qualifications are unlikely to outweigh the value which is placed on traditional markers of status (such as attending Oxbridge) or on the mere fact of being a white male.<sup>34</sup>

Schein's work on organisational cultures exemplifies this approach. He speaks of organisational cultures as: *'A pattern of shared basic assumptions that was learned by a group as it solved its problems of external adaptation and internal integration, that has worked well enough to be considered valid and, therefore, to be taught to new members as the correct way to perceive, think and feel.'*<sup>35</sup> He further argues that organisational cultures can be analysed by examining different levels from surface level through to a core level, described as: artefacts; espoused values and underlying assumptions. Artefacts are at the surface level and are the tangible aspects of an organisational culture. They are phenomena that are seen and heard, visible structures, processes and policies. Clothing, language, manners of address, structural layout of buildings, ceremonies, rituals and formal written documents, such as policies and mission statements are all examples of artefacts. Artefacts show how committed an organisation is likely to be to equal opportunities, formally, through job titles, formal policies, codes of practice, observable rituals, its published mission statement and values. Values are conscious and articulated rules and behavioural norms, 'the articulated, publicly announced principles and values that guide a group's actions towards stockholders, employees, customers, and other stakeholders'.<sup>36</sup> Values underpin artefacts and are subject to a process of 'social validation' or contestation in the group, where individuals reinforce or resist each others' values at a conscious level. Underlying assumptions are basic beliefs about human nature and the 'reality' of the world in which we live and work, gender roles and gendered jobs being a prime example.<sup>37</sup> Such basic assumptions are often tacit or unconscious and so ingrained they tend to be difficult to identify, contest or change. Values become basic assumptions when they are so taken for granted that alternatives are rarely perceived as conceivable. They thus become the implicit, unwritten rules for getting along in the organisation, 'the ropes' that a newcomer must learn in order to fit in, or, to adopt Bourdieu's terminology, the characteristics of the 'field', or its 'habitus'.

By articulating these three dimensions of organisational cultures, Schein alerts us to their complexity and the different layers that must be understood if cultural change is to occur. In this view, changing surface level phenomena (artefacts) such as policies on diversity or working time patterns, will be of little use if values and assumptions are not examined, effectively challenged and altered to support the new changes in policy or new ways of working. Thus, using Schein's theory and analysis of organisational cultures, we can say that if diversity initiatives are to be successful within organisations, then transformation must take place not just at a policy level (a surface level artefact). It must also occur in the values that the organisation articulates and

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<sup>30</sup> For a discussion see Rhode, 2000; Collier, 1998, 2001, and the discussion in Canadian Bar Association, 1993; and, further, Thornton, 1996.

<sup>31</sup> The question of commitment is extensively explored in Sommerlad, 1998 and also Sommerlad and Sanderson, 1998. As Collier argues, paid employment is a far stronger influence than fatherhood in male core identity (Collier, 2001). See too Smart and Neale, 1999.

<sup>32</sup> See Collier, 2002 for a discussion of reconceptualising gender, and in particular our understanding of the masculine. See too Dowd, 2000.

<sup>33</sup> Bourdieu and Wacquant, 1992. Work which has drawn on Bourdieu's theoretical framework include Hagan and Kay, 1995; Kay and Hagan, 1998; Sommerlad and Sanderson, 1998; Sommerlad, 2008.

<sup>34</sup> Francis and Sommerlad, 2009; Thornton, 2007, 1985.

<sup>35</sup> Schein, 2004 at page 117.

<sup>36</sup> Schein, 2004 at page 13.

<sup>37</sup> See Kanter, 1977; Acker, 1990.

most importantly in the underlying assumptions held by those working in the organisation, particularly its decision-makers and leaders.<sup>38</sup>

This last insight provides a useful corrective to the recent enthusiasm for the Business Case for Diversity. A derivative of Human Capital theory, this is based in the argument that market-based solutions provide a business case to employers for employing a diverse workforce. This is ostensibly seductive, as it elides profit maximisation and commercial considerations with better female and BME representation in the legal profession, which in turn may improve the position of women and BME lawyers.<sup>39</sup> However, it does not in and of itself challenge the current model of legal practice but instead refines the commercial 'profit-as-king' model. Were the business case to be demonstrated to be uneconomic, then so would this rationale for adopting equal opportunities and diversity policies.<sup>40</sup> Nevertheless, this approach has been influential in the profession, especially in the commercial sector, and has informed much of the recent debate in the professional press, which we now summarise.

### 1.3 Overview of the Professional Literature and Diversity Initiatives

In this overview of the legal press and current diversity initiatives, we begin with a brief outline of the professional context, noting in particular its increasingly fragmented condition. This fragmentation precludes generalisations about the extent to which diversity initiatives are being pursued, and in the following sections we therefore focus almost exclusively on the corporate sector of the solicitors' profession, since it is here that the pressure to diversify (often emanating from clients)<sup>41</sup> has been strongest, and where we know that the overwhelming majority of initiatives designed to enhance diversity have been implemented. However, although both corporate law firms and the commercial Bar dominate both branches of the profession and are major employers, several of our respondents were engaged in legal aid work, and we therefore conclude this section by summarising the measures that have been undertaken by this sector.

#### 1.3.1 Context

Reports in the UK legal press such as: '*Partner status still eludes women, ethnic minorities*',<sup>42</sup> '*Ethnic minorities make up only 3 per cent of UK 100 partners*'<sup>43</sup> and '*Gender balance in UK partnerships 35 years away*'<sup>44</sup> suggest that there is now recognition of the need for firms to take urgent action to enhance their diversity, and consequently, that 'more regulation is needed'. However, the profession today (especially the solicitors' branch) is highly fragmented and this is reflected in the variable progress on diversity. Thus, while diversity initiatives are in place in some sectors and some organisations, it is unclear whether there is either any consensus within the profession about diversity, or about what should be done to increase it. It is similarly unclear how effective existing initiatives designed to enhance diversity have been, and where they have been ineffective, why this is the case.<sup>45</sup> Our report touches on several of these issues, and also provides a framework for further research into the issue.

It is important to recognise that there are already a wide range of diversity drivers operating within the legal profession. In addition to state and frontline regulators and pressure groups such as the Black Solicitors' Network (BSN) and the Black Lawyers' Directory (BLD), there are two main categories of additional stakeholders: third-party research organisations, and clients. Research organisations tend to fall into two main groups: firstly, those which conduct research into diversity issues as part of a wider commercial offering - essentially, the legal profession is just one business sector to which such bodies provide services. Here, two examples would be the (no longer trading) Global Graduates<sup>46</sup> and The Satsuma Consultancy, the company behind the BSN's BME diversity survey publications. Secondly, there is the legal professional press. This frequently collects diversity data for either special diversity reports<sup>47</sup> or as part of its general market intelligence reports. For example, *The Lawyer* includes gender breakdown data relating to the total number of

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<sup>38</sup> Sumption's recent remarks appear to exemplify such assumptions (see footnote 24).

<sup>39</sup> However, see Menkel-Meadow, 1996, who considers that such gains have not been made on this basis in the US.

<sup>40</sup> McGlynn, 2000. See Braithwaite, 2008, for a comprehensive critique of this approach and how it has been adopted by the large corporate firms.

<sup>41</sup> For a discussion of the pressure from clients and generally of the efficacy of diversity strategies in this sector, see Braithwaite, 2010.

<sup>42</sup> Byrne, 2005.

<sup>43</sup> Hoare, 2006a, 2006b.

<sup>44</sup> Johnson, 2008.

<sup>45</sup> But some insight is provided by Braithwaite's study, 2008.

<sup>46</sup> Begum, 2005.

<sup>47</sup> See Sutton, 2005; Griffiths, 2007a, 2007b; Griffiths, 2008; Parker, 2008a, 2008b.

male and female partners (equity and non-equity) for many of the UK's largest law firms on the 'Directory' part of its website.

The second main category of stakeholders relevant to the diversity debate is the legal profession's own clients. Internationally, and most notably in the US, client organisations such as the Minority Corporate Counsel Association have, for several years, actively used their collective buying power to encourage their supplier law firms to take diversity issues seriously. Here in the UK, in recent years, both private<sup>48</sup> and public sector clients<sup>49</sup> have also announced plans to request diversity data from potential legal advisers as part of the lawyer appointment process. This has prompted the Law Society to develop two, related initiatives in an attempt to exploit the potential of client pressure to enhance law firm diversity. The first initiative is a Diversity and Inclusion Charter, which has been developed for law firms. The Charter includes a statement of commitment to the Monitoring and Reporting Protocol by which legal service providers may monitor the diversity of their workforce.<sup>50</sup> The second initiative is the Procurement Protocol, which the Law Society hopes that purchasers of legal services will sign up to. The protocol includes use of data captured by a model diversity questionnaire as a means for clients to consider diversity information from any law firms tendering to provide legal services. While this programme has been set back by internal delays,<sup>51</sup> the Diversity and Inclusion Charter has garnered around 165 signatories – albeit mainly from large law firms.

### 1.3.2 Diversity and the Legal Profession?

As discussed above, the legal press supplements industry-wide diversity data, collected and published by front-line regulators, but its primary focus is on diversity ratios at specific elite law practices. For example, legal publications have provided information on female partnership at elite law firms,<sup>52</sup> including the percentage of females who are promoted to partnership each year.<sup>53</sup> However, it tends to be difficult to interpret the significance, in terms of progress on diversity and equality, of some of the results of the (pre-recession) legal profession press research. This is partly because the research does not always disaggregate equity from salaried partners,<sup>54</sup> but also because it reports both such wide variations between firms and also fluctuating figures, suggesting that it may be unreliable. For instance, in its May 2007 report, *Legal Business* research showed that female partner promotions varied from zero per cent at Slaughter and May, Clyde & Co and Addleshaw Goddard, to 67% at Beachcroft.<sup>55</sup> Yet, in the following year, *Legal Business* reported that the very same firms had a female partner promotion record of 75% (Slaughter and May), 22% (Clyde & Co), 67% (Addleshaw Goddard). More recent press coverage has indicated a similar slightly upward trend in female partner promotion in such firms, provoking the comment in 2008 that female partners were defying 'glass ceiling in record numbers'.<sup>56</sup> By contrast, in 2009 it was reported that: '*Female associates see partner-level promotions increase – marginally*'.<sup>57</sup>

The legal press has also provided information on firms' ethnic minority makeup, measured over time.<sup>58</sup> However the failure to treat ethnicity as a diverse category reduces the value of this information.<sup>59</sup> Some elite firms have a higher percentage of BME trainees than the percentage of BME solicitors on the Roll, which appears to suggest genuine progress towards ethnic diversity (in 2008 30% or more trainee solicitors were classified as belonging to an ethnic minority at both Clifford Chance and Allen & Overy,<sup>60</sup> compared to 24% of admissions to the Roll in 2008-9).<sup>61</sup> However, both of these law practices are some of the country's largest recruiters of trainee lawyers so the overrepresentation of BME trainee solicitors at such law firms must be

<sup>48</sup> See Middleton, 2006; Berris, 2007; Goswami, 2007; Velaigam, 2007.

<sup>49</sup> Goswami, 2008.

<sup>50</sup> For details see: <http://www.lawsociety.org.uk/productsandservices/inclusioncharter/monitoringprotocol.page>.

<sup>51</sup> Williams, 2007a, 2007b.

<sup>52</sup> Griffiths, 2007a, 2007b.

<sup>53</sup> Johnson, 2007.

<sup>54</sup> For example, in 2007, *The Lawyer* reported that just 14.6% of the 'magic circle' law firms' partners were female, a figure which broadly aligned with similar *Legal Business* research in the same year. The *Legal Business* survey of 100 law firms did differentiate between equity partners (15% female of surveyed firms' partnership) and non-equity partners (32 % female).

<sup>55</sup> Johnson, 2007.

<sup>56</sup> Chellel, 2008.

<sup>57</sup> McLeod-Roberts and Byrne, 2009.

<sup>58</sup> Taylor, 2007b; Hoare, 2008.

<sup>59</sup> The legal press / private research data are not easy to compare because BME diversity data is incomplete, and broken down into five different sub-categories (Asian, black, mixed race, east Asian, white).

<sup>60</sup> Hoare, 2008.

<sup>61</sup> See Law Society, 2009 at page 51 for details.



masking under representation at smaller law practices. Further, we know that this figure encompasses international law graduates<sup>62</sup> who may be from higher socio-economic and dominant ethnic groups in their country of origin and thus not subject to the barriers faced by British BME lawyers, many of whom are drawn from lower socio-economic groups.<sup>63</sup>

### 1.3.3 Diversity Initiatives in Large Corporate Law Firms

Many of the large corporate firms are already engaged in a number of firm led diversity programmes. Broadly, these initiatives can be categorised in four different ways: pre-employment outreach; in-firm mentoring and support; diversity-enhancing organisational change; and industry-wide awareness raising and best-practice recognition.

#### 1.3.3.1 Pre-employment outreach

Pre-employment outreach schemes aim, firstly, to encourage individuals from lower socio economic groups to enter the legal profession and then to support those who do have this aspiration. Research has revealed that even when disadvantaged individuals *do* opt to study law, they may make choices which subsequently impact deleteriously on their career options, and that they are also likely to face a number of barriers including some resulting from attitudes held by the profession. For instance, the likelihood that such students are unlikely to have had the benefit of either a high quality state or private sector education<sup>64</sup> may mean that they have done the 'wrong' A level subjects, obtained poor grades (the profession generally disregards the social conditions under which these examinations have been taken), and attended the 'wrong' university (previous studies indicate that there is a strong correlation between social class, university attended, success in entering the profession at all, and success in entering particular sectors).<sup>65</sup>

Disadvantaged students also tend to have less information about access to the legal profession and fewer networks on which they can draw for advice and help (for instance through contacts) with entry. So not only do many students 'not know' how to become a lawyer, they also 'don't know what they don't know.'<sup>66</sup> The legal profession has developed a number of pre-employment outreach initiatives designed to overcome many of these challenges, and has also sponsored other initiatives such as the Legal Launch Pad (LLP)<sup>67</sup>, and Pathways to Law<sup>68</sup>, which have been reported in the press<sup>69</sup> as well as in BSN and BLD publications. Inevitably, however, such initiatives can only reach a small number of students and they do not address the profession's elitist attitudes.

#### 1.3.3.2 In-firm mentoring and support

An additional diversity challenge is the problem of attrition: again both statistical surveys and an extensive literature demonstrate that women and BME lawyers tend to leave their firms or chambers in far higher numbers than their white, male counterparts.<sup>70</sup> The fact that this pattern is found in other, similar jurisdictions is generally interpreted as constituting strong evidence of the persistently 'hostile' nature of male/white

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<sup>62</sup> There is anecdotal evidence that their international commercial focus leads City law firms actively to recruit from an international pool of talent.

<sup>63</sup> Shiner, 1999, 2000; Vignaendra, 2001.

<sup>64</sup> See for example. the Law Society's cohort studies: Shiner, 1994, 1999, 2000; Duff, 2000. See too Nicolson, 2005; the essays in Thomas, 2000; Sommerlad, 2008.

<sup>65</sup> For example, Shiner, 1999; 2000.

<sup>66</sup> See Francis and Sommerlad's discussion of these barriers (2009) and legal education initiatives designed to address them <http://www.ukcle.ac.uk/research/projects/francis.html>.

<sup>67</sup> The BLD is supported by several leading corporate forms. Its Legal Launch Pad (LLP) programme is part of its Legal Gateway Scheme, which is targeted at ethnic minority and disadvantaged 14-17 year olds. The LLP, sponsored by DLA Piper, is aimed at 2nd year ethnic minority undergraduates and offers a range of skills sessions, gives guidance on the application and recruitment process and enables participants to meet with lawyers; see [www.onlineBLD.com](http://www.onlineBLD.com).

<sup>68</sup> Like the LLP, Pathways to Law is supported by leading law firms. Launched in September 2007 by the College of Law, with the support of the Law Society and the Sutton Trust, the scheme is designed to provide opportunities to A level students who wish to follow a career in law, who are from under-represented groups and who attend state schools in England. It comprises a series of lectures, seminars and advice and guidance sessions held by the five partner universities – Leeds, LSE, Manchester, Southampton and Warwick – as well as at regional centres of the College of Law, and also law firm placements. <http://www.pathwaystolaw.org/>

<sup>69</sup> The Lawyer, 2007; Ganz, 2008a, 2008b.

<sup>70</sup> Duff and Webley, 2004; Skordaki, 1996.

dominated workplaces.<sup>71</sup> To address this problem several leading law firms have in recent years created their own in-firm mentoring or support schemes.<sup>72</sup>

There has been no research into lawyers' perceptions of such initiatives, but in 2009, *The Lawyer* reported that one reader had posted on the online forum the following response to such an initiative by an elite firm<sup>73</sup>: '*Far from assisting women, [firm's name's] actions further stigmatise women in the profession - highlighting their 'special needs'; reinforcing a subliminal message of inadequacy*', while another had added: '*Hard to tell from the details if this is really targeted at women. But if it is, it is really condescending and patronising.*'<sup>74</sup>

#### 1.3.3.3 Diversity-enhancing organisational change

The professional press surveys suggest that the most effective way for a law firm to retain its associates is by re-engineering its career paths. In a 2007 subscriber survey, jointly carried out by *The Lawyer* and YouGov, while 60% of associates said they wanted higher salaries, 82% wanted flexible working. Alternative career paths were also favoured by 53% of respondents, with 42% wanting lower chargeable hours' billings targets.<sup>75</sup> In the same year, a more granular survey - a joint venture between *Legal Business* and recruitment consultants Hughes-Castell- also showed the importance of work-life balance in retaining staff. When asked '*If you were to move from your current firm, what would be your primary reason for doing so?*' work-life balance was cited as one of the most important reasons for moving.<sup>76</sup> However, there was a clear gender divide in the responses, between all respondents, at all levels of seniority in terms of the importance assigned to it in relation to other issues (around 10–15% more female respondents consistently rated work-life balance more highly than men). Nevertheless, both sexes generally rated it as one of the single most important issues, alongside 'career progression opportunities.' Interestingly, however, when asked what other factors might make survey participants consider moving from their current firm, there also appeared to be a gender divide in terms of the preferred form of work-life balance. While men and women alike wanted to work fewer hours in similar percentages, around a third more women than men actually wanted to work flexibly.

In addition to these professional press surveys of elite law firms' reactions to lawyers' career preferences, a separate 2007 survey of top 50 UK law firms discovered that, of the 38 results published, 25 firms offered alternative career paths, while all-but-one offered flexible working.<sup>77</sup> Further, especially since the start of the recession, part-time working appears to have found widespread favour with law firm management, as firms opt to reduce their lawyers' working hours as a viable alternative to redundancy.<sup>78</sup> However these surveys do not address whether lawyers who opt for alternative working patterns are penalised (which might provide one explanation for males' lesser interest in them); for instance, both academic research and the statistical surveys indicate that part-timers are not treated equally to their full-time colleagues, and, most importantly, that they tend to be dislodged from the partnership track.<sup>79</sup>

#### 1.3.3.4 Industry-wide awareness raising and best practice recognition

One of the most high-profile ways in which a legal practice can demonstrate its commitment to diversity is to enter itself for a diversity award, which gives the successful firm external endorsement of its diversity credentials. Such awards are increasingly common, and fall into three broad categories: those which are awarded by external bodies (that is, the legal profession is just one sector they cover), those which are trade press-led, and those which are profession-led.

Organisations external to the profession which give awards include Stonewall, the Lesbian Gay Bisexual and Transgender (LGBT) group; whose events include its annual Top 100 Employers Index, which recognises

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<sup>71</sup> See for instance Potter and Hill, 2009, for a discussion of this phenomenon generally.

<sup>72</sup> Freshfields, which pairs female associates with female partners (Begum, 2006b) Herbert Smith and Pinsent Masons (the latter firm provides a structure to represent female, gay, ethnic minority, religious and part-time workers (Griffiths and Moshinsky, 2006); Clifford Chance, which has created both lesbian, gay, bisexual and transgender (LGBT) (Taylor, 2007a); And women's networks in recent years (Taylor, 2008); In October 2009, Lovells began to offer a mentoring a pilot scheme for its women lawyers (Dowell, 2009).

<sup>73</sup> The scheme specifically targeted women lawyers; McLeod-Roberts, 2009a.

<sup>74</sup> The initiative included 'soft-skills' training; McLeod-Roberts, 2009b.

<sup>75</sup> Hoare, 2007.

<sup>76</sup> Doggett, 2007.

<sup>77</sup> Williams, 2007b.

<sup>78</sup> Chellel, 2008.

<sup>79</sup> See, for example, Epstein et al., 1999; Thornton and Bagust 2007.

LGBT friendly employers.<sup>80</sup> There are also external organisations which rate law firms in terms of gender equality such as the Working Families charity<sup>81</sup> and the jobs-recruitment website [www.wheretowork.com](http://www.wheretowork.com), which has produced a 'top 50' list of employers 'where women want to work'.<sup>82</sup> Another external stakeholder, the Managing Partners Forum (MPF), a cross-sectoral members' association for senior managers at professional service firms, ran its own diversity awards scheme between 2003–5.<sup>83</sup>

Within the legal profession press diversity promotion is a recent phenomenon: the first *Legal Business* award specifically to recognise firms' efforts in relation to diversity took place in 2007.<sup>84</sup> 2007 also saw the launch of the Law Society's 'excellence awards' which, since its initiation, has included a specific category in relation to equality and diversity.<sup>85</sup> This recent trend toward diversity recognition awards is also evident in other, less formal, lawyers' associations. For example, The Association of Muslim Lawyers (AML) now holds its own event to celebrate the activities of members of the Muslim legal community, as does the Association of Women Solicitors (AWS).

It is noteworthy that such events and schemes are restricted to the large firms at present. Also, doubt has been cast on their value in promoting diversity, and it is clear that they are exploited for PR purposes by firms and are driven by the 'Business Case for Diversity' approach rather than a concern for equity or social justice.<sup>86</sup> Nevertheless, such awards do appear to have merit in that they raise the diversity issue and since, in order to win, the firm must offer convincing evidence of change to a specialist judging panel.

### 1.3.4 Diversity Initiatives in Legal Aid Firms

The Legal Services Commission (LSC)<sup>87</sup> is committed to equality and diversity in the provision of legal aid services. This commitment has included the following goals: 'setting a level playing field so that everyone has the opportunity to realise their potential; creating a culture of respect; supporting an inclusive environment; valuing our differences and understanding that we are stronger because of them'.<sup>88</sup> One way in which it has sought to realise these goals is through research. For instance, in 2006 it commissioned an augmented equality impact assessment of the then proposed reforms to the criminal defence legal aid scheme.<sup>89</sup> An important finding of this study was the extent to which the stratification of the profession has resulted in a significant over-representation of BME lawyers in the London criminal defence market.

The LSC has also made the operation of equality and diversity policies within firms a requirement of obtaining a legal aid franchise. Thus in 2007 they issued Equality and Diversity Policy Guidance, to assist firms to meet their contractual equality and diversity requirements under the Unified Contract and General Criminal Contracts from 2007. This was in addition to the requirements under the Specialist Quality Mark scheme that obligate legal aid providers to have an equality policy in place in their organisations. The stated aim is to encourage legal aid suppliers to promote good practice in meeting the needs of their diverse client base, by means of a diversity and equality policy that must be kept under review through ongoing monitoring and evaluation of its implementation and impact. Further, suppliers are required to have a diversity and equality training plan and communications plan.

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<sup>80</sup> In 2008 Pinsent Masons became the first law firm to appear on its the index Parker, 2008a. Since then, three other elite law firms - Simmons & Simmons, Herbert Smith and Eversheds - have appeared on it: McLeod-Roberts, 2010b. Other law firms have been working with Stonewall for a number of years to address the issue of LGBT-equality Binham, 2006; Frost, 2007.

<sup>81</sup> In 2009 the Working Families charity listed Addleshaw Goddard LLP and Wragge & Co LLP as amongst the top 20 UK employers.

<sup>82</sup> In its 2009 edition, the top 50 list described Allen & Overy LLP, Clifford Chance LLP and Eversheds LLP as 'progressive' employers.

<sup>83</sup> In 2003, the MPF awarded law firm DLA a 'runner up' position for its diversity initiative, in 2004, was classified Kirkland & Ellis as a 'runner up', and shortlisted Eversheds. Email correspondence with founder and executive director, Richard Chaplin – on file with R. Parnham.

<sup>84</sup> In 2007 a separate award category was created for firm-specific 'corporate social responsibility' activities (which includes diversity). The first The Lawyer magazine HR award also took place in 2007 – when the award for 'most effective diversity programme' was won by Clifford Chance.

<sup>85</sup> In 2007, the law firm award-winners in this section were Allen & Overy, followed by Eversheds in 2008 and Simmons & Simmons in 2009.

<sup>86</sup> See Braithwaite, 2008, 2010.

<sup>87</sup> The Legal Services Commission (LSC) is the non-departmental public body sponsored by the Ministry of Justice (MoJ) which administers legal aid. Providers can only deliver publicly funded legal advice and services if they have a franchise from the LSC.

<sup>88</sup> Legal Services Commission Equality and Diversity Policy Guidance, 2007.

<sup>89</sup> MDA Research on Ethnic Diversity Amongst Suppliers of Legal Aid Services, 2006.

In 2008 the LSC introduced its Single Equality Scheme to pull together its various equality and diversity initiatives including those on: race; gender; disability; age; sexual orientation; religion and belief and the use of the Welsh language in Wales.<sup>90</sup> The LSC also established a twelve person strong Client Diversity Group to examine how the LSC and its supplier based delivers legal services to clients, as part of this strategy. The first annual report on the operation of the Single Equality Scheme was published in 2009. This provided an assessment of the LSC's progress on diversity, and, using the findings of the Report of the Panel on Fair Access to the Professions, included a comparison with the work of the Bar Council, the Law Society and ILEX.<sup>91</sup>

The LSC has also been proactive in trying to attract a diverse group of entrants into the legal aid profession, via its LSC Training Contracts Grant Scheme, which provided funding to firms and to trainees (in relation to LPC fees) who commit to training and working in legal aid.<sup>92</sup> From its inception in 2002, approximately 750 trainees (and their firms) have been assisted through this Scheme, to a value of £18 million. Unfortunately, due to budget cuts, the Scheme is not funding any new legal aid trainees this coming year.<sup>93</sup>

## 1.4 The Structure of the Report

In Section 2 we describe our research methods, sketch out the main characteristics of our sample, and describe how we analysed our data.

This is followed by the sections in which we report on the data. The key themes which emerged from the responses have shaped our organisation of these data sections; they are:

- the fragmentation of the profession and consequent nuanced nature of respondents' experiences;
- the long hours' culture and emphasis on commitment (rarely defined);
- the lack of transparency of some key procedures and practices.
- the legacy of the profession's white, male elitist origins and the significance of cultural stereotypes;
- the importance for career success of personal relations/ bonding and socialising.

We therefore begin our discussion of the data (Section 3) by describing our respondents' position in the profession and their accounts of what had shaped their careers. This illustration of the profession's segmented and segregated character through our sample's own experiences reveals the ways in which these experiences varied according to such variables as the gender and ethnicity of the respondent and their geographical location. We then, in Section 4, draw on our respondents' experiences and perceptions to discuss the profession's structures, its cultural practices and the ways in which these affect the operation of nominally transparent and equitable procedures. In Section 5, we draw on our research with diversity officers to discuss the profession's response to the diversity challenge, firstly on an institutional level (for instance Law Society policy) and then at the firm and chambers' level. Finally, in Section 6, we report on what respondents had to say about their options and the strategies they had adopted to deal with the difficulties they encountered in the profession. Section 7 concludes the report and sets out some proposals to address the challenges identified.

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<sup>90</sup> Legal Services Commission *Single Equality Scheme 2008-2011 Respecting Diversity, Valuing Difference*, 2008.

<sup>91</sup> Legal Services Commission *Single Equality Scheme Annual Report*, 2009.

<sup>92</sup> For details and an evaluation see Bacquet, S., Boon, A., Webley, L. and Whyte A, 2009.

<sup>93</sup> See [http://www.legalservices.gov.uk/public/training\\_contract\\_grants.asp](http://www.legalservices.gov.uk/public/training_contract_grants.asp) for details.

## 2. RESEARCH METHOD

### 2.1 Introduction and Aims

The research examines the processes which produce differential opportunities and career patterns in the solicitors' profession and at the Bar. It is a qualitative study, which is designed to capture the meanings that actors attach to their choices, and the experiences that inform them, rather than provide a statistical description of the consequences of career choices.<sup>94</sup> As Silverman argues, in depth qualitative studies have the potential to generate '*rich sources of data which provide access to how people account for both their troubles and their good fortune*'.<sup>95</sup> Of course, such accounts are necessarily retrospective and contain elements of rationalisation and self-justification, and must be interpreted in that light.<sup>96</sup> However, as we have established in the literature review, the present study is supported by an extensive range of surveys, including statistical evidence that documents how the profession's rewards, opportunities and status are distributed unequally between men and women, and between members of different socio-economic and ethnic groups. We have therefore drawn on both this work and previous empirical studies conducted by the authors, such as those of Duff and Webley, and Sommerlad and Sanderson,<sup>97</sup> which shed light on the reasons for women leaving the solicitors' profession or choosing secondary career paths.

Moreover, the validity of our respondents' accounts of their experiences in the profession is to be sought precisely in terms of their status as perceptual rather than factual phenomena, and it is these experiences and perceptions which form the principal objective of the research investigation. The Macpherson Report identified racist incidents as '*any incident which is perceived to be racist by the victim or by any other person*'.<sup>98</sup> and whilst this definition has continued to be contentious in policy terms, the emphasis on experience and the perception of experience remains a powerful corrective to the equally problematic view that discrimination can only occur where there is intention.

The research questions we explored with our sample were:

- Do career patterns and opportunities for women and BME lawyers differ from those of white men and if so, how and why?
- How did women and BME lawyers experience and perceive the profession? To what extent and in what ways did their opportunities appear to result from bureaucratic structures and formal processes and to what extent from informal, cultural practices?
- What strategies do individual practitioners adopt? What are the main drivers affecting their career and life choices?

These questions were investigated with individual practitioners, employers and diversity managers as follows:

1) Individual strategies and tactics:

- Whether individual women and BME lawyers perceive structural and cultural barriers to their entry and progression within the profession, and if so, to what extent? What critical incidents and events have shaped their perception of equal opportunities at work?
- What adaptive strategies do individuals adopt where they perceive such barriers?
- Do practitioners draw on any collective resources (pressure groups, support networks) for support?
- How do different forms of diversity interact to affect people's careers and lived experiences?

2) Organisational and Institutional responses:

- What are the policy responses of employing organisations, institutions and individuals to the diversity gap, and do those who deploy diversity policies monitor these for effectiveness?

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<sup>94</sup> For a discussion of the literature explaining the underpinnings of qualitative and quantitative empirical legal studies and the differing traditions see Webley, 2010. See further Kirk and Miller, 1986.

<sup>95</sup> Silverman, 1993 at page 4.

<sup>96</sup> Dingwall, 1997; Silverman, 1993; Cicourel, 1964.

<sup>97</sup> Duff and Webley, 2004; Sommerlad and Sanderson, 1998.

<sup>98</sup> MacPherson, 1999.

The research team used a biographical interview method, described in greater detail below.<sup>99</sup> A coding frame based on the team's previous research in the field was developed as the basis for analysis of the interview transcripts.<sup>100</sup>

## 2.2 Method: Biographical Interviews

The biographical approach, which involved asking respondents to provide accounts of the origin of their interest in law, and their subsequent career path, allowed the research team to explore career processes and key transition points while also eliciting the context to respondents' decisions and actions.<sup>101</sup> The team also used the group interview approach found in Duff and Webley's Law Society funded work on the reasons for women solicitors leaving the profession or moving from private practice to in-house roles.<sup>102</sup> In that study the groups provided a supportive environment within which women felt secure in revealing their career experiences and their choices, and this provided a sound rationale for replicating this approach, supplemented by individual face to face or telephone interviews.

The small-group interviews were scheduled to last for up to an hour and a half and were conducted with the aid of a topic guide that made use of open questions to examine participants' career motivations, career paths and career drivers.<sup>103</sup> Individual interviews lasted anywhere from half an hour to an hour and a half and were loosely structured with the aid of an interview schedule adapted from the small group topic guides. In all but two instances they were recorded (all with participant consent) and the tapes were transcribed. We have used quotes from the interview transcripts in the report and have redacted personal and identifying information from them so as to preserve the anonymity of our research participants. The respondents were also asked to answer or complete (some did these orally others in writing) a short series of questions that provided background information on their professional status, educational and family background, ethnicity and other demographic data.<sup>104</sup>

## 2.3 Selection of Interviewees

The team originally aimed to conduct approximately 45 biographical interviews – around 25 from the London and South East area and 20 from the North East area - through eight small-groups of 3-5 interviewees or a combination of small group and individual interviews, with participants sufficiently varied to capture a spectrum of view-points and experiences.<sup>105</sup> The sample was designed to include solicitors, barristers, legal executives of various ethnicities and ages, ranging in levels of experience, and practising in a variety of subject specialisms, types of organisation, and geographical location.

A range of sampling techniques produced a highly satisfactory response rate and enabled us to assemble a sample which was larger than originally intended<sup>106</sup>, and stratified along the axes of experience, subject-specialism, company and firm type, geographical location, BME status, age, children, and so on, as discussed above. We interviewed 77 people who were current, former or aspirational (law students, law graduates, LPC graduates) solicitors or barristers as well as a very small group of other legal professionals, which included those who work as a paralegal or legal executive.

## 2.4 The Legal Professional Sample

### 2.4.1 Gender, Age and Ethnicity

The table below provides a breakdown of the sample in terms of gender and ethnicity. The term BME encompasses a very diverse range of non-white ethnicities; those represented by our respondents included: African; African-Caribbean; Asian; Caucasian; Chinese; Hispanic; Jewish and mixed race/dual heritage. Most of our respondents were born in Britain, some in other EU countries, and a small number were born outside the EU (as indicated where relevant next to their quotes).

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<sup>99</sup> The research design meets the ethical standards of the research team's academic institutions.

<sup>100</sup> Glaser and Strauss, 1967.

<sup>101</sup> See Spradley, 1979 for details. See further Rustin and Chamberlayne, 2002.

<sup>102</sup> See Duff and Webley, 2004; Webley and Duff, 2007.

<sup>103</sup> A copy of the small group interview topic guide can be found in Appendix 1.

<sup>104</sup> A copy of the questions may be found in Appendix 2.

<sup>105</sup> See Webley, 2010 for a wider discussion.

<sup>106</sup> The high response and the project's time limits meant that it unfortunately proved impossible to interview some people.

**Table 1: Breakdown by Gender and BME Status**

	White	BME	Total
Women	33	31	64
Men	0	13	13
Total	33	44	77

The age of our respondents ranged from 23 to 67 years old. The majority of the Northern respondents were in their 30s and 40s, the majority of the Southern respondents were in their 20s and 30s.

#### **2.4.2 Professional Qualification**

In keeping with the higher ratio of solicitors to barristers in the profession (145,381 solicitors on the Roll at 31<sup>st</sup> July 2009 and 15,182 barristers in 2008, ratio of c. 9:1), our sample was heavily weighted in favour of practising solicitors. However we also interviewed a small number of law graduates who aspired to be solicitors and barristers, as well as a small number of legal executives, legal academics (who had previously practised) and a small group of women and BME barristers. The table below sets out respondents' professional training route (that is solicitor, barrister or other legal professional route) rather than their current role.

**Table 2: Breakdown by Legal Professional Qualification Status**

	Solicitor (incl. Trainee)	Barrister (or Pupil)	Other	Total
Women	47	10	7	64
Men	10	1	2	13
Total	55	11	9	77

In terms of the respondents' current employment status, 9 were trainees, 33 were (non-partner level) solicitors either in private practice or in-house and 12 were partners split evenly between salaried and equity partnership (one of whom had retired). Of the partners, 2 were female BME partners (1 salaried and 1 equity), 9 were white female partners (5 salaried and 4 equity) and 1 was a BME male partner (equity). We interviewed 11 barristers (3 of whom in the employed sector), and there were 12 who we have coded 'other' (including those who work as a law academic, a legal executive, a paralegal or in a law related field or who are a law student, a law graduate or an LPC graduate).

#### **2.4.3 Caring Responsibilities**

The salience of the 'long hours' culture' in legal career paths made it important to know whether our respondents had any caring responsibilities. Fewer of the Southern respondents had children than did the Northern respondents, although this may be a function of their younger profile, as the majority of the Southern interviewees were in their 20s or very early 30s. The interviewee within our sample who had the most caring responsibilities was a salaried partner who had four children and an elderly parent to care for, who was working a reduced- hours' pattern.

**Table 3: Breakdown by Caring Responsibilities**

	People with caring responsibilities (Children)	People with caring responsibilities (Other)
Women	23	2
Men	2	-
Total	25	2

#### 2.4.4 Socio-economic and Educational Status

We used a proxy for class: namely the respondents' parental occupation, the history of both their family's and their own participation in higher education and their self-definition. Indicative findings suggest that of the 77 interviewees only 18 were from working class backgrounds (5 white women; 10 BME women; 3 BME men). Given the significance of university attendance for socio-economic status, and evidence that a disproportionate number of British born BME students attend 'new' universities, we show below the correlation between ethnicity and university attended. Not all participants disclosed their university background.

**Table 4: Breakdown of University Type by BME Status**

	New University	Old University	Oxbridge	Total
White Female	2	20	7	29 (N 33)
BME Female	8	11	3	22 (N 31)
BME Male	2	4	2	8 (N 13)
Total	12	35	12	59

The majority of interviewees attended pre-1992 'old' Universities, and had read law as their first degree, although some had read law with another subject. Only a small minority stated that they had read another subject before undertaking the GDL/CPE to convert to law.

#### 2.4.5 Specialisms and Work Locations

In addition to a range of levels of experience, the respondents were also working in a variety of subject specialisms including commercial litigation; commercial property; corporate; criminal; education; employment; housing; human rights; family; immigration; medical negligence; niche areas of work including aeronautical law; public law; personal injury; residential property; and welfare law. They worked in a wide range of firm and company types including private practice (both large City firms and small legal aid practices), and as in-house lawyers. The barristers were drawn from both the self-employed and employed Bar. Most were based in the South East or the North East although we did also interview a small number of people from other parts of England including Manchester and the Midlands. One respondent was based abroad.

### 2.5 Diversity Officer and Stakeholder Sample

In addition to our sample of legal professionals, we also interviewed five diversity managers. All but one were female, and based in large corporate law firms. Our interviews focused on their experience of diversity policies and good practice in this field, and future plans and projects. A further small sample comprised individuals who could be described as stakeholders, some of whom were also in practice but were serving or had served on Law Society, Bar Council, or lawyer interest or professional and/or diversity groups. Only one of our stakeholders was not and never had been a lawyer, the remainder were all current or former legal professionals. Finally, we also put questions about diversity initiatives to those members of our legal professional sample who also had a diversity role or special knowledge of diversity initiatives.

### 2.6 Data Analysis

The research team developed a thematic coding system. Some of the basic codes derived from the process of reviewing the literature, and from the a priori framework provided by the research questions (for example codes concerned with career choice). Preliminary analysis of a range of initial interviews generated a further



set of general themes and specific codes which were shared, defined and refined by the team. This provided the framework for the final analysis process. The process was iterative as is the case with established grounded theory method.<sup>107</sup>

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<sup>107</sup> Glaser and Strauss, 1967.

## 3. CAREER PATTERNS AND OPPORTUNITIES FOR WOMEN AND BME LAWYERS

### 3.1 Introduction

The aim of this section is to give a context for Sections 4 and 5 by outlining our respondents' reflections on their career paths and providing an overview of the factors that they believe have helped or hindered them in their career progress. We begin by reporting the extent to which the sample reflected the segmented character of the profession. We then discuss the views of respondents who felt they had been successful on the factors behind that success. We conclude the section by reporting respondents' perceptions of factors specifically related to gender, race and culture, including the prevalence of stereotypes.

### 3.2 Segmentation

The statistics clearly establish that both the Bar and the solicitors' branch are characterised by segmentation and segregation. It was therefore unsurprising to find that the white female lawyers tended either to work in areas which are gendered female, such as residential property, personal injury, family or education law or on the 'softer side' of more atypically 'male' specialisms. For instance a salaried partner said: *'I've ended up ...working for the university, so that might be seen as a soft female thing if you look at the whole spectrum of property work'* (a2FWSP). One barrister commented:

'You tend to find more women in family law. Criminal defence you tend to find women end up being pushed into sex offences. ... I was specifically asked for in relation to rape cases and domestic violence cases because the defendants wanted to be seen having a female barrister because, of course, that meant they liked women and they wouldn't possibly beat a woman or rape a woman...' (c3FWB/Ac).

Such specialisms are generally less well paid, and therefore both less prestigious and less likely to lead to promotion; confinement to this type of work was one of the reasons given by one of the academics for leaving practice.

On the other hand, others had positively chosen legal aid work either because they were committed to it and / or because they saw it as less likely to suffer from work practices which they considered to be problematic or discriminatory. Thus an African Caribbean female who had experienced explicit racism in a commercial firm stated:

'I have to say that ... I do see myself staying in legal aid for two reasons. One because I do enjoy doing the social justice work but two, I would fear going back to commercial work to a firm and being treated as I was before.' (d2FBMES).

Some female respondents stressed the differential treatment (sometimes bullying) which had led to them doing typically 'female' work; for instance, one woman said: *'I was pushed into property, I didn't want to do it'* (a18FWEP). Several also spoke of specialisms which remained largely male preserves such as shipping, and *'contracts and IT work – I couldn't imagine a woman doing these'* (a18FWEP). Another noted that development at the Bar was difficult due to the way in which work was allocated:

'In criminal defence they wouldn't trust you with nice juicy stuff. The only time I ever got to do dead exciting murder or drugs cases was when I was being led by a more experienced male barrister. So, I think it's harder to crack the so-called serious stuff in crime. In immigration there's no problem.' (c3FWB/Ac).

Others, however, had become successful in areas traditionally ascribed to men and described themselves as having been quite strategic during their training in order to ensure that they got the type of work they wanted in prestigious sectors.

The route of some BME female solicitors into practice had been more circuitous than their white counterparts, several had had previous bad experiences and a few were not entirely content in their current position.

## Vignette 1

'When I began, I didn't want to be a lawyer, it was more ... an area that my parents wanted me to go into, which is because they thought it was a quite safe profession, and respectable. And at the time, during my university, my mother was ill, so I didn't get good grades for obvious reasons...

And so then I worked as a secretary and a receptionist ...for a year to see whether I could carry out the function of what a lawyer would do, so that's how I entered the profession. ...And I only knew about the position because somebody told someone else that they were looking for a receptionist, and so I applied, and because no one else knew that they were looking for the role, I got the job.

Okay, I worked at the sole practitioners for a year, and during that time I applied for my legal practice course, because she said that she would help me with the funding... So in that year I applied for my legal practice course, and it was on the basis that she was going to offer me a training contract when I came back... after I'd completed it. So then the following year I completed my legal practice course and then I went back to work for her. But she wasn't willing to pay The Law Society minimum. ... Her salary was £6,000 and ... that was rejected by the Law Society for being too low, so she wanted to increase it to £8,000 but we pay for our own professional skills course, which I didn't agree with, so then she terminated my employment with her.

So then, someone had told me that they had been applying for paralegal work in London, because I'm originally from [other city]. So I applied to two City firms ... for paralegal work, and I was accepted in both. One of them, they had over-recruited, so they couldn't take me on, but they gave me compensation for them not being able to give me the employment. The other was a three months rolling contract, and I worked there for three years. So during that time, I worked there for three years in the large City firm, within a paralegal, litigation disclosure team. It helped me work out which areas that I wanted to go into, and then when I was ready to move, or I'd been there long enough, and the project was coming to an end, I found it difficult finding alternative roles using recruitment agencies.

But the recruitment agent that I found really useful was actually with the Law Society ... certain organisations do advertise with... the Law Society, I think with the aim to try to recruit people that are from the traditional background. And so I applied for a role within a company in-house legal department, and went through the interview process, got the job. I worked as a legal assistant in that department for a year, and because they were impressed with me, they agreed to register as a training establishment. And from that, I qualified.

... And because of the three years I had done at the City firm, they... the partner was really nice. He gave me... at the time you could get a [training contract]... discount, and it was for a year. So I only had to complete a year's training. ... So I qualified in 2003, then there was reorganisation, changes and personal issues which... you know, I'm not going to go into, and so I left that company. After that it was a problem finding work because I found if you're not in employment, it's harder to find work. ... recruitment agents tend not to put me forward for jobs, or are very dismissive ...'

e1FBMES

Like the white female lawyers, some of the BME lawyers were more likely to be located in 'female' specialisms such as family law and legal aid, although this was more typical of the respondents from the North of England rather than the South. Indeed there was strong representation in the sample from BME lawyers in the commercial sector in London. Nevertheless, the experience of these lawyers exemplifies the profession's stratified character. One male BME lawyer noted:

'We celebrate how the law is improving because of the number of new minority lawyers coming in, but then you break it down so a lot of them are doing legal aid and in High Street firms. The skills that we need for that are no different from the skills that you need for commercial work because basically it's a general understanding of the law, the ability to relate to clients and a calm and organised brain. ... But commercial law, it's a much more challenging thing because they don't see other people that look like they do who are doing it.' (d7MBMEEP)

A few expressed dissatisfaction about this pattern, and several also suggested a coincidence between their ethnicity and their client base; for instance a female Asian barrister said: '*we tender for a lot of local authority work, local authorities are in favour of diversity and equal opps, so I get given it ...*' (a4FBMES). She went on to say that she was given a lot of 'public sector work', but not work involving 'nice white clients'. However, while not wishing to reinforce the current tendencies towards ethnic segmentation in terms of practice areas and clientele, she also pointed to the need for more BME practitioners in areas such as West Yorkshire with large multi cultural communities. Others had made a positive choice to move into such an area where they felt they had an advantage for cultural, ethnic or language reasons and were happy about the career path that they had chosen:

'I got into an area where being a Malaysian Chinese, it became an asset, because ... being a Malaysian Chinese, we have different races in Malaysia, so doing employment law, it was something that fitted me and it became something that I could grasp quite quickly, there's a lot of common sense, it's about treating people right and there are laws that go with it.' (e11FBMES)

In fact, despite the personal experience of labour market segmentation, most of the practising lawyers appeared content with their specialisms; for instance the woman who had been 'pushed' into property said that she was *'quite happy now'* (a18FWEP). Broad contentment was also expressed by respondents with their locations; for example, a woman who had opted for the shelter of an in-house position in the public sector was extremely positive about her choice: *'... that flexibility, the independence, and the very high amount of responsibility that I've been given, as well, is very attractive.'* (e7FBMEIHS). The majority of the barristers also expressed satisfaction with their current firm, organisation or chambers.

Reflecting the general, relative contentment with their firms, several respondents emphasised the importance of finding the right working environment; for instance two female barristers from the North of England and one from the South spoke of their experience of hostile cultures in their previous chambers, and the Northern equity partners similarly described their firms as different; for instance: *'I think in a standard firm I wouldn't have got anywhere'* (a19FWEP). Other respondents (particularly those from London) were more likely to attribute difficulties in the working environment to factors other than race discrimination, but some did note that they had had to move firms or chambers in order to find one in which they felt comfortable.

Most solicitors stated that they had originally aspired to be a partner, and one white female associate in a High Street practice in the North East was about to leave because the promotion criteria and procedures were unclear in her firm and she had been promised partnership elsewhere. It was noticeable, however, that a sizeable proportion of the women said they no longer had partnership ambitions. This was frequently the result of having, or planning to have, children: *'now I've had my child I'm probably slightly less ambitious in that I don't really want to become a partner now but an associate – your priorities shift'* (a11FBMES), and concerns were expressed about the time commitment they would need to make in order to reach equity partnership or the sacrifices they would have to make in order to be taken seriously as partner material:

'I'm probably not prepared to do all the things that are required to get a partnership within the property department in a City firm. ... I mean, I worked very, very hard; I worked incredibly long hours - sorry, that probably goes without saying. But on top of that you were expected to do all of... the extra-curricular stuff - I suppose, the marketing, the spending hours out with the clients and getting the work in. ... I do remember one of my colleagues who embraced that side completely, and to her credit, after a number of years of working very, very hard at that sort of aspect, as well as the work side, she got her partnership. But ... I thought I gave enough of my life to the firm as it was ...' (e6FWIHS).

Other women highlighted the role of alternative career paths for those 'not wanting to be a partner'. Several female senior associates in the North spoke of the creation of the role of legal director (sometimes referred to as Of Counsel), which was a position above senior associate but without partnership prospects. There is a perception that this role is more suitable for women with children since the hours expected are fewer than those required of a salaried or equity partner (as we discuss in Section 4, this can be seen as representing a non-career track, and hence a form of reduced professional status). Several women approaching partnership level spoke of this role as an option and that women were thinking of it as an alternative to trying to reach partner, which had become more difficult in recent years:

'I think as soon as you do get into a law firm, the end of the line in terms of career is partnership, so that's something I've always aspired to doing. We now have a role of Legal Director, which is a possibility, and it certainly suits mums and those working part time who aren't wanting the responsibility of a partnership, and having to put in all the hours that partnership requires, so it's one of those roles. I'm not quite there yet. I keep, I think because early on I... had decided that ... I want to be a partner, I think I'm going to have a decent shot at it. But I'm just sort of, thinking about that other role.' (d1FWS)

Several of the BME practitioners from the North East had made a positive choice to return there because of their familial and community links. Two of them had also made positive choices to leave their large, prestigious corporate firms in a large Northern town for small High Street practices in a smaller regional centre. White women often claimed to have been motivated by similar factors: *'you were just an employee there to generate fees for the partners ... if you were there at 8 in the morning and still there at 8 in the evening you seemed to be one of the favourites'* (a8FWS); *'I left for lifestyle reasons, family ... the hours were too long, the commuting and they didn't like part-time, whereas with a firm like this there's not as much pressure'* (a11FBMES). Similarly there was some evidence from Southern respondents that career choices had been influenced by the desire to be closer to their families, particularly elderly parents:

'Certainly there was also an element that pushed me geographically to where I was; I wanted to be close to my parents who are older than most parents, and so I wanted to be within, you know, an hour of them in case... for their old age, so that was an external... I decided to go to [\* city] because it was close to where my parents lived.' (e15FWSP)

### 3.3 Factors Contributing to 'Success'

The most common positive explanations put forward by respondents for attaining positions that they were happy with were having good qualifications, being better and working harder than colleagues (this was a recurring theme, especially in the BME sample), determination, informal mentoring and good luck. For instance, a male BME recently qualified employment lawyer with a large, regional corporate law firm, thought that he had obtained a training contract and then been kept on at the firm as a result of having excellent credentials and working harder than others. Another male solicitor said: *'I've always felt that I've had to prove myself ... more than most people have had to'* (a6MBMES). Several respondents said that their family, or their spouse/ partner, had provided invaluable financial or moral support. Three of the women partners had a supportive husband or partner who shared domestic labour (the other woman equity partner was single and childless).

Many respondents who were happy where they were, also spoke of having been lucky; for instance one white equity partner attributed her promotion in part to the fact that fewer men were practising in her firm's specialisms: *'I think if there had been a male solicitor with half a brain cell, two arms and legs, he would have taken him into partnership in preference to me'* (a19FWEP). A large number of the Southern respondents said that they owed their career to one or two key legal professionals who had staked their reputation on them, or who had gone to extraordinary lengths to help them in their career:

'I only got tenancy because of a female Member of Chambers ... but pupillage was an absolute nightmare, and she went to extraordinary lengths ... she'd seen me in interview before I joined Chambers and she knew... who I was and she went beyond, you know, beyond anything I could ever have dreamt of to secure my future in the profession. I don't know what I'd have done without her, I really don't... I guess, but she's the one I would never, ever forget. I owe my career to her... , she put ...every ounce of her reputation behind me in order for me to have a future, and that must have been a risk for her as well in some ways, you know. She was amazing.' (b11FWB).

Most of the solicitor respondents from the South of England, highlighted the role of a mentor in their sixth form years as important; for instance a barrister said:

'... when I was actually at school and in the sixth form, I did a mini pupillage and there was a barrister there who really encouraged me to pursue the Bar, and really helped to develop me, and supported me not just then but when I was applying for other things.' (e8FBMEIHB).

Once in the profession, mentoring and generally building good personal relationships was identified by the majority of the private practice sample as important for career progression. Many therefore attributed their success to having an informal mentor / patron, or alternatively their lack of success to their failure to be mentored, and the common practice of white men being mentored. Relatedly, socialising, both within the firm and also externally, was identified as of vital importance for career development. Some male BME practitioners had found that playing sport was an excellent way of developing personal relationships; the following comments by two male solicitors are illustrative:

'[S]ports and that type of activity, like drinking, help ... it's that tribe mentality' (a6MBMES);

'[playing football has] always been the one occasion where I truly feel like I'm part of the group and all the strong relationships that I have within the firm have stemmed from that'.

His subsequent remarks indicate the degree to which he generally feels like an outsider:

'anything to do with football I'm invited to and there's a whole hearted sort of open armed acceptance' (a5MBMES).

As these comments suggest, most women and BME practitioners considered that the significance of personal relations, expressed most clearly in the strong emphasis on socialising, placed them at a disadvantage. Thus the male employment lawyer (based in Yorkshire) just cited said that he was kept away from some (white) clients and thought that both this and his inability to participate in alcohol driven socialising events would limit his promotion prospects. We explore these themes in more depth in Section 4.

### 3.4 Gender, Race and Culture

Interestingly there may be a geographical component to both the views on race and gender differentiation and the work-place. The respondents based in the North of England were more likely to indicate that they considered that their career path had been (deleteriously) affected by external perceptions linked to their

ethnicity, whereas the respondents based in the South were more likely to consider that gender stereotypes had had a negative impact on their career success. One respondent indicated that she thought that while explicit sexism and racism were no longer tolerated in larger cities, this was not necessarily the case everywhere; similarly, another respondent drew an unfavourable comparison between her experience of interviews in Leeds and Manchester: in the former she had been asked inappropriate questions, whereas in Manchester the interviewers had focused on her technical skills. Other respondents similarly argued that cultural stereotypes about both women and BME practitioners represented blocks to career progression. Thus the overwhelming majority of Northern based BME respondents thought that racism, at some level, continued to be an issue. One respondent felt there was an unofficial 'quota' of BME solicitors so that only a few would be taken, in order 'to tick the box' (a11FBMES), and several had encountered explicit racism. In contrast, many of the Southern based respondents were quick to dismiss suggestions of racism within the profession, particularly one of our male BME respondents, who commented:

'...the people who are older than us, like at least five years. I think they have worked long enough to realise it's not where you come from or whatever you speak, but you do your work and that is what you are here for. I have not had any partner look at me as if I am not meant to be there, to be fair they have always spoken to me as any other trainee, and so do all our associates...' (b12MBMETS)

This view may, however, be because the London BME sample contained more middle class and foreign born lawyers.

There was less consensus amongst respondents about the extent and degree to which sexism continued to pervade the profession, but nevertheless most women thought that in order to succeed they had to be better than their male colleagues, some had experienced sexual harassment and most felt that working practices such as long hours and competitiveness had inhibited their success. Respondents from the South (including BME males) were more likely to view the profession as sexist rather than racist, whereas the position was reversed in relation to the respondents based in the North.

Five of the sample had not gained entry to the profession; four were BME and the other was a white woman with a young family. Most were pessimistic about their chances of success, largely because of a lack of funding for the LPC (obliging them to work in another field for the time being), and a lack of contacts in and knowledge of the profession. One, a mature Asian woman who had done the LPC and who, despite having considerable, and relevant work experience, had subsequently failed to obtain a training contract, attributed her failure almost entirely to racism: '*when your application goes in with your name on it, it will be at the bottom of the pile ..*' (a13FBME LPC). She acknowledged that her 2:2 from a new university represented a further barrier and criticised the profession's failure to recognise her other skills (these included speaking 4 languages) and her substantial and relevant work experience. Obtaining a 2.2 in one's law degree was highlighted as a problem by a number of respondents including one who was a qualified solicitor but who had since become unemployed and who was struggling to find work even though she had a broad range of pre and post-qualification legal experience:

'I think the choice that I made to go into the legal profession, knowing that I had a 2:2 has most affected my career, because if at the time I knew... I mean, even today, I did my degree 15 years ago. Even today, I have recruitment agents saying to me, you've got a 2:2. If I'd known it would be that difficult to overcome that... I would've tried to explore different areas.' (e1FBMES).

The rationality of this barrier was challenged by an Asian woman salaried partner in a large commercial firm in the North who herself had a 2:2 from a new university; she recounted how, as the firm's diversity officer, she had pointed out the implications of the firm's requirement for a 2:1 from old university policy for its diversity.

A significant number of respondents suggested that some responsibility for the lack of diversity, including a failure to enter some of the high status specialisms, lay with 'outsiders' themselves, as a result, for instance, of a lack of aspiration or knowledge and low levels of confidence:

'I don't think we're making the most of the opportunities that do come our way, so I think it's a combined thing ... and that makes me resent it less; for example, we had 2000 training contract applications last year and I'm fairly certain that not more than ten of those will be from minorities' (a5MBMES).

Another BME respondent agreed that lack of confidence was a cause:

'I went to a former poly where you got a large spread of ethnic minorities and they just don't have the confidence to go for the big jobs even if they get a 2:1', he went on, however, to point out that this was ultimately connected to class issues and the profession's elitism: 'the problem is that it's not a prestigious university, yet it's really good ...' (a6MBMES).

The analysis of another respondent was similar, but less sympathetic:

'I think they let themselves down sometimes ... by not going to the right institution or the way they present themselves ... sometimes you know people just don't portray themselves in a very positive or professional light' (a11FBMES).

Another indicated:

'I think the biggest factor in individual success is the individual, that you make the most of the opportunities. I was very lucky, I went to Cambridge, I went to a very good university where there were lots of opportunities. And I see people who don't take them, but I was very determined to make the most of those opportunities. And I think it's all very well having mentors, because they're important or having good careers advice, that's very important. But I would say energy and drive combination is probably the most important thing.' (e10MBMES)

Finally, many respondents thought that diversity was now far higher on the profession's agenda and several women had found that there was an increasing openness to flexible working which, they said, had helped them. An Asian male Equity partner in a Magic Circle Firm (d12MBMELG) was especially optimistic. Following graduation in the mid '80s, he had gone into banking as a result of encountering racism from the Bar. He attributed his current success firstly to his banking experience, and secondly to his subsequent perception that his firm was not in fact prejudiced, but meritocratic, which had led him to apply for a training contract there, and thirdly to his commercial sense and hard work in the firm.

Whilst few respondents were as optimistic as this last respondent, people did tend to argue that the situation would continue to improve as the supply side continued to diversify and as the older generation retired; for instance, a female BME barrister said:

'[T]here are people in my current chambers who are very committed to the importance of equality, being inclusive ... but you've still got the older generation who do still have a lot of influence and are probably still reinforcing the old stereotypes, like old boy networking and so on'.

However, whilst other respondents tended to agree that overt discrimination was decreasing, they qualified their optimism by noting that for *'white male partners ... diversity was not going to be at the top of their list of priorities ... I mean, why is it even going to be an issue ... chances are you're working in a successful firm ... it's always worked in this way, doing well ... there's no need to change'* (a5MBMES).

As we have already suggested, the evidence of respondents highlighted significant variations between firms and regions. Leeds and Yorkshire generally were described as particularly resistant to diversity and change. Two respondents from the South noted the positive role that the Attorney General had made in bringing diversity to the forefront of the legal professional debate:

'I think we're quite lucky right now actually to have a female from a minority as our Attorney General, which has been a huge positive shift, I think, and she's done a lot for diversity. I know she's spoken to a lot of private practice firms, in sort of, helping them increase their diversity, especially at the, sort of, more senior levels.' (e7FBMEIHS).

Nevertheless, despite these nuances in experience, there were significant commonalities in our respondents' accounts, and we explore these in depth in the following section.

## 4. THE CHARACTER OF THE LEGAL PROFESSION

### 4.1 Introduction

This section draws on our respondents' descriptions of their experience of forms of governance, recruitment and promotion processes and informal cultural practices in order to delineate the character of the profession. The profession's bureaucratic structures are enacted and implemented by human actors and will generally reflect its culture or system of shared meanings.<sup>108</sup> Where bureaucratic structures, formal processes and practices are in keeping with the profession's culture they will be effective and efficient at achieving their ends. However, as Schein has argued,<sup>109</sup> where they are 'out of synch' with it – for instance because they include innovative rules and practices designed to diversify what remains a largely homogenous culture – the practices may be implemented in such a way as to confound the objective for which they were designed.

It is therefore difficult to separate out discussion of the profession's structures and formal processes from the culture which generally determines how these are enacted. However, both for the sake of clarity, and because the modernisation and formalisation of the legal workplace is an increasing reality, especially in large solicitors' firms, we begin by discussing the formal structures; then, in Sub-section 4.3, we draw on our respondents' perceptions of informal processes and practices to describe its culture. There is inevitably some overlap between the two sub-sections.

### 4.2 Bureaucratic Structures, Formal Processes and Practices

#### 4.2.1 Introduction

Transparent formal processes are a pre-requisite for equity within an organisation. However there is a great deal of variability in the extent to which firms in the legal labour market are governed by such processes. Unsurprisingly, the large corporate firms are now complex bureaucratic structures; at the other end of the spectrum are small High Street firms, the governance of which tends to be fluid and personalist.<sup>110</sup> However, any firm that has had a contract to do legal aid will also have sophisticated management structures which include diversity and equality provisions. And the Law Society Lexcel practice management standard encourages good practice in management and human resources.<sup>111</sup> Lexcel accreditation is open to firms of all types and sizes as well as in-house legal departments.

Nevertheless many respondents, including solicitors in large corporate firms, suggested that in practice the procedures and processes of governance remain generally informal and opaque despite a significant growth in the size, complexity and diversity of law firms. Traditionally, the structure of most solicitors firms was very flat, comprising, associates and partners (and other non-solicitor fee earners)<sup>112</sup>. Recent years have seen the elongation and formalisation of professional hierarchies, as firms seek to expand capacity and in particular to increase the proportion of salaried to profit sharing staff (equity partners). As a result the last 20 years has produced a significant increase in law firm leverage ratios and the adoption of increasingly pyramidal and hierarchical business models which contemplate a plethora of different roles and positions including assistant solicitors, junior partners, of counsel, legal directors and paralegals.<sup>113</sup> For instance, the top ten English firms expanded their leverage ratios from an average of 3.9 salaried lawyers to equity in 1993 to a 2008 ratio of 6.9: 1.<sup>114</sup> This tendency is not restricted to large law firms, although it is more evident in that sector. Salaried solicitors generate a large surplus under normal conditions as their revenues exceed their labour costs, which can bolster profitability and partner earning levels. These financial incentives to raise leverage have been amplified by recent high profile reports in the media that rank profit per equity partner; the rankings are becoming one of the legal profession's key benchmarks for success<sup>115</sup> and are contributing to broader processes of restructuring within the profession. In particular, the focus on leverage has radically changed the professional division of labour, with promotion to partnership times lengthening and partnership criteria

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<sup>108</sup> By culture we mean the integrated pattern of shared belief systems, values, goals, and practices that characterizes an institution, organization or group.

<sup>109</sup> Schein, 2004. See our outline of his discussion of organisational culture in the academic literature review.

<sup>110</sup> See Franklin and Lee, 2007.

<sup>111</sup> See <http://www.lawsociety.org.uk/productsandservices/lexcel.page>.

<sup>112</sup> Abel, 1988.

<sup>113</sup> See Muzio and Ackroyd, 2005; Faulconbridge and Muzio, 2008.

<sup>114</sup> Faulconbridge and Muzio, 2009.

<sup>115</sup> Faulconbridge and Muzio, 2009.



becoming increasingly tied to financial contribution, commercial acumen and practice development.<sup>116</sup> Equally importantly, the concept of partnership itself has undergone some significant adjustment through the introduction of salaried partners who contribute to leverage, and the increasing recourse to de-equitisation as a tool to maintain profitability.

The increase in women lawyers has been instrumental in allowing these reconfigurations to take place because they have not only broadened the recruitment pool of firms,<sup>117</sup> but also their child rearing function makes them potentially disposable,<sup>118</sup> and legitimises allocating them to less prestigious positions.<sup>119</sup> It is unsurprising therefore that the majority of partners remain male whilst those women who are partners are disproportionately more likely to be salaried partners, a position described by one of our female equity partners as '*window dressing*'. Further, even while there are now more female equity partners, power and status is not distributed equally amongst the equity partnership but tends to be concentrated in the hands of those drawn from the high earning specialisms such as corporate law which are not only dominated by men, but have been described as '*testosterone driven*' (a16FBMESP). This is the context in which apparently neutral recruitment, promotion and work/resource allocation processes, are situated. As a result, a growing body of literature<sup>120</sup> suggests that in practice bureaucratic structures may indirectly disadvantage non-traditional groups and mask the reproduction of dominant work practices and cultures.

#### 4.2.2 Recruitment Processes

The process of recruitment is probably the area where there has been most systematisation. In large firms this is now increasingly based on psychometric tests devised by consultant psychologists and many firms now use graduate recruiters. As a result it is claimed that such firms now recruit wholly on merit rather than, for instance, connections to the firm<sup>121</sup>. However, it has been argued that personal contacts remain important and also the actual process continues to favour certain types of applicants. For instance, respondents claimed that both the recruitment companies and large firms tend to filter out certain people and filter in 'familiar faces', using proxies such as schools and universities attended.<sup>122</sup>

'Firms in the City will do the milk round at these various institutions. They wouldn't necessarily go to what was a former polytechnic and is now a City university or whatever they want to call themselves. So, if I am Clifford Chance and I have to do the milk round why am I going to go to hundreds of institutions when I can go for the top ten and get the clone that I want' (c4FBMEEP)

Others similarly saw this strategy as a 'cloning' process; for instance: '*Cambridge and Oxford don't represent the UK*'. (b2FBMES).

In addition to the preference for elite universities, large firms and chambers also tend to look at school attended, and to require As and Bs at A level, often in specific subjects. Some firms and chambers even demand As and Bs at GCSE level, this last requirement effectively acting as a proxy for a public school education.<sup>123</sup> The cumulative socio-economic implications of these recruitment practices were noted by several respondents; for instance one said:

'You're unlikely to get into a High Street practice just by virtue of the fact that you haven't got a 2.1. You can't even submit an application to (large firms) because their fire wall will reject you.' (c4FBMEEP)

Another pointed to the social capital which flowed from going to the right school, which clearly increased the advantage built into having the right credentials:

'This is a school which is... you know, it's very expensive, you have to be of a certain class background to be able to send your children there. In the summer times, you know, you're going to the houses of MPs and whatever else... they can pull strings for you and open doors for you.....when you went to an exceptional school that... you are destined for great things and it makes doors... it's easier for doors to be opened for you because you're now

<sup>116</sup> Muzio and Ackroyd, 2005; Hanlon, 1997.

<sup>117</sup> Hagan and Kay, 1995 have described how the increase in women solicitors made possible the rise in leverage in Canada (1995). See too Sommerlad and Sanderson, 1998, and for an illustration of the increases see Duff and Webley, 2004 and Siems, 2004.

<sup>118</sup> It is therefore possible to see women lawyers as forming a 'transient' work force or 'reserve army of labour' (Sommerlad, 1994).

<sup>119</sup> Sandefur, 2007.

<sup>120</sup> Sommerlad and Sanderson, 1998; Sommerlad, 2002; Bolton and Muzio, 2007, 2008.

<sup>121</sup> But see Francis and Sommerlad, 2009; Thornton, 2007.

<sup>122</sup> Even the LSC Training Contract Grants Scheme appeared to favour old universities when firms recruiting trainees (Bacquet, Boon, Webley and Whyte, 2009. The TCGS has been extended and amended since the research was conducted). The importance of attendance at public schools and top UK universities for recruitment to leading law firms has been commented on in several recent reports (See, for example, The Cabinet Office, 2009; Langlands, 2005.

<sup>123</sup> See Francis and Sommerlad, 2009.

sitting in front of someone in the City who may have gone to the same school as you... or gone to the same school as your father so as a result, the fact that you got a Third, we can ignore that' (c4FBMEEP)

Support for this view was provided by respondents who had found that their comprehensive school education had represented an entry barrier, and by others who recognised that their attendance at a grammar or public school had been the key to their success in gaining a training contract or pupillage.

The comments of another respondent reflects the fact that university degrees are the culmination of a much longer educational filtering process whereby candidates from certain ethnic and social backgrounds tend to be concentrated in poorer schools, as a result of the unequal distribution of opportunities within society, leading to progressive disadvantage.<sup>124</sup>

'So if you're turning up aged 19 applying to a Magic Circle law firm, and haven't got two As and a B, you're going to be struggling. And the reason you haven't got two As and a B, if you track back, is because you didn't do very well at GCSEs, because you didn't do well at school, and you didn't do well at school because of all the reasons that I've cited. So I think the problem of entering the profession aged 21 and over, starts aged 5, 6, 7, 8 at primary school.' (e10MBMES)

Another respondent, a mature law graduate, complained that this reliance on academic credentials was also likely to disadvantage mature students who often will have to work during their studies, and may also have had caring responsibilities, arguing that it *'may not do adequate justice to the relevant experience and skills, often matured in areas connected to legal practice, that 'non-traditional' candidates may possess.'* (a13FBMELPC)

In addition to the requirement for a 2:1 by many sectors of the legal profession, candidates are also expected to be able to give evidence of participation in a wide range of extracurricular activities. The rationale for this is that these demonstrate important traits such as dedication, initiative and resilience. However they also suggest that the applicant has the social contacts and cultural dispositions which are seen as essential for a career in the legal profession; we shall discuss this in our section on stereotypes based on class (Sub-section 4.3.2.3). Of course, these criteria, far from being neutral, have different implications for different groups and individuals: again they favour students drawn from public schools and universities which offer environments (such as small group or one to one tuition, an active societies' scene, developed contacts with the profession and vacation placement schemes) that are more conducive to developing such skills and dispositions.

Thus the accounts of many respondents pointed to the significance in recruitment processes of what Bourdieu has termed cultural capital. As a result, despite the surface concern with qualifications as indicators of competence, in practice, according to Kumra and Vinnicombe, because legal knowledge is assumed, firms and chambers are generally looking for other attributes. The degree from Oxbridge is a proxy for such attributes. A concrete example of the 'right' background trumping evidence of talent or skill was provided by a female barrister who said that in her first week as a pupil in London she had been asked who her father was: *'I just sort of looked at them as if to say, why would you know who my father is!? They expected to have heard of my school!'* (d13FB). The following account by a BME male equity partner of how he gained entry to the profession similarly illuminates how formal bureaucratic processes and the emphasis on technical merit can be displaced:

'I came back to [\*] .and a friend of mine worked at [\*] and I said, I could do with a job in a law firm, and he said 'find yourself a suit and come down to the \* (name of pub) ... on a Friday night'. So I went at five o'clock with my friend and by the time the pub closed I had an interview for Monday morning.' (d7MBMEEP)

In addition to the barriers to entry discussed above, some respondents spoke of the difficulties resulting from the need to self fund the LPC or the Bar Vocational Course (BVC), and others of the double discrimination which resulted from the practice of large City firms paying for their trainees whilst legal aid and smaller firms (traditionally feminised and BME high quotient) generally will not. For instance, in one focus group an African Caribbean mature law student said: *'I don't think that I have any prospects or intentions now of entering the profession'* (d12MBMENE). This comment generated a discussion about diversity and funding, and a barrister said: *'that is an important point about entrance to the profession. I mean who is going to do it when it means taking on £20,000 worth of debt? For the money you get paid, it just isn't worth it.'*; an African Caribbean solicitor agreed:

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<sup>124</sup> Of course ensuring the competence of applicants is of paramount importance, however the profession's reluctance to place the lower academic attainments of students from poorer socio economic backgrounds in the context of their material disadvantage is likely to mean that future potential is overlooked (Sommerlad, 2008), especially given the relative youth of UK graduates in comparison with their European colleagues.

'I think finance is a real, real issue. Because I think a lot of Black and Asian solicitors get pigeonholed into legal aid. For me as a fairly well paid legal aid lawyer, but I still cannot afford to pay my student loans, my mortgage and my LPC, my parents had to help. If I hadn't got my family to help I would have needed to look at going into another profession.' (d12MBMENE)

While few people spoke of experiencing explicit discrimination in the recruitment process, some respondents reported having been asked inappropriate questions during interviews. The first two quotes relate to practitioner experiences some years ago, the third one to experiences within the past couple of years.

'I encountered overt discrimination as I applied for articles....I can give you an example of a letter that was sent to me by one leading law firm, which I still have, which said, we are prejudiced against female article clerks due to some unfortunate experiences in the past and therefore we will not be calling you for interview.' (c8FWEP)

'I was told in no uncertain terms that the only suitable work for a woman at the Bar was either criminal, preferably doing... defending on rape case, or family; and as I had no interest in either I went into the civil service.' (c6FWEP)

'I had a white friend who went for an interview in [North East] and she had recently become widowed and she was asked about children because of her age and references were made to her wedding ring. And it is something that you associate with a bygone era. She was recently bereaved and was forced to say well children aren't going to happen.' (d11FBMETS)

Further, several of our Asian female respondents had been asked if there would be a problem with working late and attending after work functions:

'I was interviewed at a firm and it is touted as a massively left wing firm and I really wanted the job and I put my application in and I had done shadowing work and put in loads of work and I really thought I would get the job. Anyway the first interview was alright and the second interview, given that I had spent a lot of time with these people, I was asked by somebody who had my CV and who knew that I had left Yorkshire and worked elsewhere and come back and he was asking me about the hours and he genuinely said to me will your mum have a problem with you working late and being out late? ... I don't think for a minute he would have asked that if I had been a white English woman.' (d11FBMETS)

Some had also found recruitment consultants engaging in direct discrimination, whether on their own initiative or at the request of employers; the following account by a British Asian solicitor suggests discrimination based on both race and class:

'I went to a recruitment agent and she said I was too common to be put forward ... for a stand-alone role, which was on a specific case and it was for six months ... everything that I've done before. And she said, oh you have to appreciate the way you speak is very common, and these are very educated people, and so you may not fit in.' (e1FBMES)

This behaviour has been noted in the literature previously.<sup>125</sup>

#### **4.2.3 Vocational Training, Pupillages and Training Contracts**

The cost of tuition fees and living expenses was a recurring theme, and clearly had affected the career choices of at least some of our respondents; for instance:

'I didn't feel like I could afford to become a barrister; I didn't feel I had the financial security to pursue that career path, which, at the time, everyone said you've got to have a lot of money to be able to...' (e15FWSP)

Money was also an issue for those seeking a training contract in High Street firms which rarely provide funding for the LPC. In the words of one of our respondents:

'[S]maller firms are more likely to give you a training contract knowing that you've already got your LPC, and they're not having to fund, they're not having to invest any more, and you start earning money for them as soon as they employ you'. (e9FBMES).

These financial difficulties were exacerbated by the need to dress up one's CV to demonstrate dedication and maximize employability through unpaid experiences and costly extra-curricular activities. Thus, a female solicitor reported how she '*...was continually asked, why don't you have more work experience on your CV. And the expectation is often that you should have done unpaid work experience*' (e4FWTS). Similar pressures were described by aspiring barristers:

'... because lots and lots of people are now coming out with a 2:1 degree and it's, like, so what, you've got a 2:1 degree. So, I think they have to show commitment through, for us, working in law centres, doing voluntary work, showing, sort of, commitment to the cause, if you like' (c3FWB/Ac)

Of course pupillages are funded and large firms sponsor LPC courses for the highest qualified students (who want to undertake corporate work), but this obviously neglects a sizeable proportion of law students. Our

<sup>125</sup> Webley and Duff, 2007.

sample reveals how, historically, cost, or the perception of cost, has impacted upon individual career choices and remains an entry barrier today for many, especially into certain sections of the profession. We spoke to several respondents working in City firms in London who had only trained with them because they would pay their fees for the LPC, as illustrated by the next quotation from the a respondent who is the eldest child in her family and explains her decision to move to London in these terms:

'It was important to me just to qualify and be financially stable as soon as possible after that so that I could support my family and provide security as well to them. But I guess my career choice in the end led me to move further away from my family... I think I applied to nearly every firm in the Midlands, and I just didn't get anywhere.'  
(b4FBMETS)

This is of course particularly problematic for those students who do not want to practise corporate law but lack the resources to self fund the LPC.

Other respondents attributed some of the difficulties they were experiencing in gaining entry to the profession to the growing imbalance between the large numbers of potential recruits being produced by the university system and the number of available places in the profession. For instance, one respondent, commenting on the Bar, stated:

'There aren't enough places nowadays...the statistics, I think, were that 50% of people who went to Bar school got pupillage, and of that 50% only 50% of those, so 25%, I guess, would have got tenancy.'  
(c3FWB/Ac)

The same respondent informed us how in some locations this over-supply leads to a 'tournament of lawyers'<sup>126</sup> as employers exploit competitive dynamics between lawyers within up-or-out systems. *'In London a lot of the chambers take on eight pupils and will possibly only have one tenancy place. So, they tell you at the beginning that you're all in competition for this one place.'* (C3FWB/Ac)

Similar dynamics were evident within the solicitors' branch, where several of our respondents had experienced the increasing tendency to recruit paralegals rather than trainee solicitors (paralegals, while being fee earners, are a much more cost effective form of labour than trainees and are also more suitable for the increasingly procedural and bureaucratic business models developed by law firms:

'Most law firms, they're mainly made up of paralegals, because it's a lot cheaper to pay the paralegals, as opposed to solicitors. And although paralegals don't have the qualifications to be a solicitor, some of them, like myself, because it's so difficult to get that training contract, they just settle to get the legal experience as a paralegal.'  
(c5FBMEPara)

In this context, 'settling' for a stint as a paralegal before moving up to a training contract was increasingly presented by some as a new unofficial step in the professional career ladder:

'[T]he use of paralegals within firms is becoming huge.... And you know, paralegals are a great way to get into a firm, but the wages are substantially less than for a trainee, and some paralegals will stay paralegals three, four, five years before they can get a training contract, because they are cheap labour. And that is quite worrying.'  
(e16FWTS)

This growing tendency to replace qualified professionals with less qualified (and cheaper) forms of labour was viewed with anxiety by our respondents. Indeed, the experiences of our sample and the broader literature point to the development of an increasingly sizeable 'legal periphery' of paralegals and other unqualified fee-earning roles<sup>127</sup> which exists outside the official professional career structure and constitutes a reserve labour force, employed on lesser terms and conditions which may disproportionately comprise diverse aspiring lawyers.

#### 4.2.4 Working Practices, Targets and Commitment

A defining characteristic of solicitors' firms is the extremely high level of commitment they demand<sup>128</sup>, and this was a common theme in respondents' accounts which we discuss further in section 4.3. Commitment is rarely defined in concrete terms but is used as a marker for retention and promotion. It is assessed via proxies such as the ability to raise the profile of the firm and/or engage in business development. Long working hours remain one of the key measure of commitment, especially in (although not limited to) corporate firms and big cities: *'you had to work long hours, have no other commitments and be prepared to drop everything at the last minute and if you didn't you wouldn't hit the next level'* (a8FWS). One of our respondents provided evidence for this as follows:

<sup>126</sup> The term for the intensely competitive, adversarial struggle for partnership discussed in Sub-section 4.2 coined by Galanter and Palay, 1991.

<sup>127</sup> Atkinson, 1984; Muzio and Ackroyd, 2005; Sommerlad, 2010.

<sup>128</sup> For a discussion of commitment see Sommerlad, 1998; Sommerlad and Sanderson, 1998.

'In my team, two of my associates have been up for two nights now, and all day, trying to get a deal closed. And you can't say to the client: 'actually, I'm going home to sleep'. This is a cross border deal, lots of time zones' (a15MBMEEP)

Many female respondents expressed the concern that what was being valued were *'the hours you put in as opposed to the quality of your work; 'hardworking' meant being at the office by 8am'* (a3FWAc). This woman went on to point out that long hours not only did not necessarily equate to good work but were rather dissipated in 'chatting'. Several respondents complained of a lack of transparency in establishing fee targets and argued that open, formal processes were essential; for instance: *'I was doing well so the senior partner announced, in a completely off the cuff fashion, that he was doubling my target'* (a19FWEP). Others argued that targets needed to be work-type specific to ensure that they could be met when undertaking certain types of (agreed) work such as acting for claimants rather than defendants in employment law cases.

As a concomitant, a request for flexible working arrangements may be viewed as a solicitor's lack of commitment<sup>129</sup> and professionalism.<sup>130</sup> This is in keeping with Thornton and Bagust's critique of flexible working, in which they have argued that *'far from being a panacea, flexible work is being invoked to confine women to subordinate roles and to restrict access to partnerships. Not only is there a residual suspicion of the feminine in positions of authority and resistance to the idea of bodily absence from the workplace, but also the contemporary market discourse has erased a commitment to social justice and equality.'*<sup>131</sup> The following narratives are illustrative:

'Flexible working to some people, if the words are uttered, it's become feminised and flexible working means you're not dedicated to the office and you want to work part time because all you're interested in is looking after your kids.' (c4FBMEEP)

'You stop and you think to yourself, well, hold on a second and you look up and every other industry's allowed people to work flexibly but the lawyers think 'no, you have to be in the office from nine until 10 o'clock at night because that shows dedication'. Actually, this is such a crass way of working.' (c4FBMEEP)

Further, others indicated that often flexible working simply corresponded to a limited re-arrangement of the working day, others that reduced hours contracts were agreed but that little changed in terms of their targets and workload:

'I have a colleague, for example, a female colleague who was contracted to do 30 hours and another male colleague who was contracted full-time and they still had the same billing target! And she was obviously getting paid 10% less than he was.' (d9FBMES)

'I think the main barriers to women are the lack of flexible working. There's still a bad attitude to it - you're less important, less valid, less effective if you work part-time ... also what they say by flexible working is, you do your 5 days, if you can squeeze them into 3 days fine, but you've still got your target to meet - that's not flexible working.' (a19FWEP)

Further illustrations of the lack of formal processes included accounts of salary reductions to represent on-paper reductions in working hours, while billing targets remained very similar to those originally set under previous full hours, full pay, non-flexible contracts. Some explained how these on-paper reductions in hours were then undermined by the insistence that the lawyer keep in contact with work and/or work from home at the times when she was not being paid to work. In addition, it was suggested that some flexible hours and/or part-time contracts may take the woman off the partner track and yet still demand similar time commitment to those who remain partnership candidates.<sup>132</sup>

Another respondent indicated that there is little clear chain of command or clearly communicated work allocation structure:

'[C]ommunication generally is poor I think at law firms, you know, I don't have a business plan, nobody sits me down and says, 'These are your ten clients, this is why you're doing this work, this is why you're not doing this work,' it's just a lot more fluid than that, somebody kind of drops on the end of your desk and you do it.'

This opacity was described by others as a general feature of their organisation; the following comments are illustrative: *'Everything in our firm from work allocation to even the process for qualifying is ... not transparent'* (a4FBMES), and: *'Nobody quite knows who the equity partners are, which I always find remarkable... we're*

<sup>129</sup> Acker, 1990; Liff and Cameron, 1997; Smithson and Stokeo, 2004.

<sup>130</sup> Webley and Duff, 2007. Flexible working has been heavily and convincingly critiqued by Thornton and Bagust (2007) who argue that it confirms female lawyers as 'other', thereby ensuring that they cannot be conceived of as equal to men.

<sup>131</sup> Thornton and Bagust, 2007 at page 774.

<sup>132</sup> Some women solicitors suggested that even when they consider that their treatment had constituted actionable discrimination, they would rarely consider taking legal action against a law firm since it would be 'career suicide'.

*not very transparent*' (a4FBMES). Another told of appraisal systems where targets changed to suit, which meant that it was never clear if a particular employee had met the requirements for promotion or pay raises:

'There's no feedback. And the appraisal process is quite lip service, but it's manipulated to the point where retrospective appraisal forms will be given out for you to sign, to show that you haven't met the targets that were never previously set for you, and that kind of thing... And if you actually use the appraising process yourself to show that you have demonstrated that you've met this, that and the other, they never look back at the previous form, so you go in having prepared for the appraisal saying, you set me these targets, these are my figures as against those. They then might say, well, we're not interested in looking back, this is a forward looking review.' (d4FWSP)

Several respondents in a BME focus group expressed a lack of confidence in the profession's formal bureaucratic systems. They spoke of not being able to put themselves forward amongst a crowd of Oxbridge graduates and questioned the 'meritocracy' of the system:

'You start off and your confidence is a lot lower than the next person... Well not personal confidence but... confidence in the system. You worry that people will not see you for what you can do. And you maybe don't have something to push yourself forward and make you stand out against other applicants, where as the Oxbridge crowd...' (d8FBMES)

'The profession is so much about marketing and bringing in clients really, it is really about connections. So you could be a terrible lawyer and still bring in clients and do well.' (d9FBMES)

In short, there was concern that work allocation systems were insufficiently rigorous and transparent, that commitment was judged simply in terms of hours spent in the office and that even billing targets were very blunt instruments if not considered alongside work quality. Flexible working arrangements had worked for some respondents (particularly those in the public sector or in-house) but other respondents feared they would lead to being devalued by their firms.<sup>133</sup> Barristers noted that flexible working was possible, but that some chambers were resistant to it, and that, in any event, self-employed barristers would find it difficult to build and maintain a practice unless they were prepared to take the cases that were offered to them. Employed barristers in the public sector explained that the same flexible working arrangements were open to them as to other employees, and one indicated that her move in-house was in part motivated by the opportunities that afforded for flexible working.

#### **4.2.5 Promotion Processes**

Many respondents, both women and men, spoke of the importance for career trajectories of self-promotion. There is a large body of literature suggesting that this feature of professional organisations tends to disadvantage women; for instance Kumra and Vinnicombe<sup>134</sup> argue that women frequently lack confidence in promoting themselves, in part because they are operating in an environment where masculine values dominate.<sup>135</sup> Their argument is leant support by other literature which suggests that conformity to the male model of working<sup>136</sup> is key to a worker having a sense of entitlement within an organisation and that it also tends to underpin the promotions' process.<sup>137</sup> As we have noted above, this model of working interprets commitment as availability to work extensively as and when required.<sup>138</sup> Evidently this has significant implications for women's career progression. Many women solicitors spoke of making a decision not to work long hours while their children were young, and of how this had stalled their career progression in terms of either achieving partnership or moving from salaried to equity partner.<sup>139</sup> Some noted that even a brief career break or period working part-time could serve to de-professionalise the solicitor, and, further, that the tight age band within which people tended to be seen as eligible for partnership meant that on their return to full time work they could be considered too old for promotion (we discuss all these issues in more detail in the following sub section).

A key criterion for promotion is the ability not just to manage and maintain client relationships effectively but to bring in new clients. Respondents often stated that masculine networking practices made this more difficult for women and minority ethnic groups than for white men. Getting clients is often connected to male dominated arenas such as golf clubs. However some respondents in London reported that their firms were now actively encouraging social events that were viewed as more feminised (theatre trips, chocolate making

<sup>133</sup> See Thornton and Bagust, 2007.

<sup>134</sup> Kumra and Vinnicombe, 2008.

<sup>135</sup> Liff and Ward, 2000.

<sup>136</sup> Lewis, 1997.

<sup>137</sup> Lewis, 2001.

<sup>138</sup> The male model of working is based on a worker unencumbered by outside commitments (Acker, 1990).

<sup>139</sup> See further Webley and Duff, 2007.

workshops) both as a response to these concerns, but also because an increasing number of senior clients are female. Nevertheless, our respondents' accounts suggest that it is not uncommon for networking activities take place in locations that are inappropriate:

'I think that women find networking difficult because there's a lot of time particularly, in areas like property and construction, where you walk into a room and it's quite intimidating because it is pretty much full of men. I mean, that still happens occasionally to me... I work in property and I recently went to a networking event which was at the RAC Club in London which still has rooms that women aren't even allowed in.' (d6FWS)

The lack of transparency discussed above recurred in discussions of firms' criteria for and processes of promotion; for instance one woman gave the following description of her eventual promotion to salaried partner:

'The most challenging bit was getting put forward in the first place - that was an enormous frustration. You would discover after the event when people have been made up to partner that you hadn't and that there had been a process at some unknown time in the year that you hadn't been a part of. So there's no set structure, and there's no criteria that you can measure yourself against to know that you are approaching being able to have a discussion about being put forward. So when I challenged the big boss why I hadn't been put forward, it was a sort of, we didn't want you to be disappointed. You know, it's hard not to be disappointed not to be put forward. So that was the sort of rather opaque part of the system and once you were on the secret list it wasn't nearly as opaque, because they were sent a form to fill in and some criteria that you needed to demonstrate, and that was relatively straightforward. But it was the getting on the list.' (d4FWSP)

The accounts of other respondents suggest that this opacity is related to the way in which formal, bureaucratic structures tend to be less significant for promotion than having a 'patron' / mentor who will sponsor you (this is discussed in detail in the sub-section below). Thus, even where firms had open formal criteria and processes, particular partners' preferences may operate against non-normative employees.

Solicitors in one NE firm said that the criteria for promotion '*were constantly updated... so you never know*' (a9FWS). An associate who was leaving the firm explained that her decision had been prompted by promotion issues:

'I asked, 'what is the promotion process because I don't have a clue?' and at that point they produced a document saying, 'this is the document you would follow on our intranet... but it's not been there for a couple of years.'

(a8FWS)

Her colleague then confirmed this, stating that she had also looked for it and not found it:

'[T]here is no transparent career structure '... (another colleague) has been here 11 years and been an associate for quite some time and she is not aware of what she needs to do to get to the next step to become a partner' (a9FWS)

Evidently this lack of clarity makes it relatively easy to discriminate.

By contrast, some of the solicitors in the South had found that the processes in their firms were transparent but that the expectations were so high (in terms of 24 hour commitment to the firm) they felt that promotion was not worth pursuing. The gendered nature of these barriers to promotion was illustrated by the account of a male associate in a City firm who had an exceptionally positive experience. He claimed that everyone knew what was required to fulfil the next stage of career advancement to progress in the firm, and described how he had been able to choose a mentor to help him develop his career (a partner), with whom he met regularly to discuss his next steps.

#### **4.2.6 Summary**

This sub-section has highlighted how nominally neutral bureaucratic processes in law firms (and to a lesser extent in chambers) can exclude aspiring lawyers drawn from certain social groups from entry, and produce differential opportunities for women and BME lawyers, as a result of male models of working which rarely tolerate flexible working patterns, and lack of transparency in work allocation, targets and volume of work. We will now discuss the professional culture which generates these practices.

### **4.3 The Culture of the Profession**

#### **4.3.1 Introduction**

As we documented in Section 1.2, there is an extensive literature which suggests that the culture of the legal profession in England and Wales and similar jurisdictions continues to be marked by its white, male, middle

class history.<sup>140</sup> This literature argues that, as we have suggested above, beneath its formal, facially meritocratic bureaucratic surface there exists a shadow structure of informal practices which sustain and reproduce that culture.<sup>141</sup> However, as we have also emphasised above, the fragmented nature of the solicitors' profession, the distinct character of the Bar, and the variations between regions and small towns/ large urban centres means that the reader should bear in mind that the legal labour market today is highly differentiated.<sup>142</sup> It is therefore remarkable that there was, nevertheless, so much uniformity in the features identified by the overwhelming majority of respondents as characteristic of this culture. As will be evident from the following discussion, these features are inter-linked and self reinforcing.

The key role which the data suggests is played by these practices in producing a differentiated labour market means that this sub-section is the longest part of our report.

### 4.3.2 The Legacy of the Profession's White, Male Elitist Origins and the Significance of Cultural Stereotypes

Several respondents articulated a sense of the persistence of the profession's white, masculine character. The following quotations are illustrative: a white equity partner in a medium sized High Street firm said:

[I]t's still very much dominated at the top end by white, middle aged men. And as they die out they will be replaced by younger traditional white middle class men. Partly law encourages conservative, with a small 'c' people - there's a large chunk of it that's very traditional and that encourages a certain sort of person and so its very male cultural norms persist.' (a19F W EP NE)

Another white woman said: *'it's a male, white, middle class profession and so if you want to do well you have to deal with that.'* Her subsequent comments highlight the deeply embedded nature of the profession's gender norms: *'I think that it is so much like that they don't even realise.'* (e17FWIHS). A white salaried partner said: *'the thing is, the traditional male partner with a wife at home still forms the majority.'* (a2FWSP)

As these speakers imply, various traits flow from the profession's masculine legacy. These not only include the professional ideal of a worker freed from domestic responsibilities (as discussed above), but also one who has the support of a partner. Stereotypical understandings of what constitutes 'natural' male behaviour and skills, and the attributes of other social groups, and what is commonly termed the 'old boys' network' may also be seen as key features of this masculine legacy. We examine these below.

#### 4.3.2.1 Stereotypes based on gender

As our discussion in Section 3 illustrated, most respondents had direct experience of the profession's gender segregation and segmentation - thus a BME trainee commented: *'there are a few departments where there's no women partners, and I don't think there's any women senior associates.'* (b10MBMETS). And, as we know from statistical reports of the profession<sup>143</sup>, there is a clear link between this segmentation and the status (and financial rewards) of specialisms: *'P.I. is now a woman's thing but if you look at corporate division, it's predominantly men'* (a14FBMELEx). Several commented on the mutually reinforcing assumptions that males are naturally suited to the prestigious, highly visible specialisms and partnership, and women to 'caring' specialisms; for instance: *'very few (male solicitors) do family care work, the caring, nurturing work and it's still mainly blokes who do the business, commercial side...it's seen as natural.'* (a18FWEP); another said: *'women are expected to do things that men wouldn't be.'* (e17FWIHS).

Clearly, such stereotypical assumptions mean that women's claim to professional status is vulnerable, as exemplified by the recollection of a white associate of her experience on moving to a new town: *'other (male)*

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<sup>140</sup> For instance, see: Sommerlad and Sanderson, 1998; Bolton and Muzio, 2008, 2007; Duff and Webley, 2004; MacMillan et al., 2005. In the US: Rhode, 2000; Menkel-Meadow, 1986; Mossman, 1995; Wilkins, 2004, 1997; Pierce, 2002; Reichman and Sterling, 2004; Gorman, 2006; Canada: Hagan and Kay, 1995; Brockman, 2001; Leiper, 2006. Australia: Hunter, 2003; Thornton, 1996; France, Boigeol, 2003, 2005. For a survey see the papers in Schultz and Shaw, 2003.

<sup>141</sup> This is illustrative of Schein's discussion of culture (2004). Acker speaks of the 'masculine substructure of organisations', 1992; and Maier of 'corporate masculinity', 1999.

<sup>142</sup> For instance, the evidence from our respondents suggested that racial stereotyping and explicit racism is a far greater issue in the North than it is in London. On the other hand, the indication that the London profession is now relatively open needs to be treated with caution given the size of our sample, the preponderance of large firms and 'radical' legal aid firms, and the relatively more privileged background of our Southern BME sample.

<sup>143</sup> For a Canadian example in this regard, see Kay, 2010.



*solicitors really patronised me'* (a8FWS), and by the comment that *'being a young woman ... you are not taken as seriously'* (a3FWAcNE). As a result, the questioning of female authority<sup>144</sup> was a recurring theme:

'We have a male salaried partner; tremendously arrogant, driven, ambitious, hard working – a nice guy but new to partnership ... and he throws his weight about and really upset one of the women in the cost team and I tried to speak to him about it ... and he couldn't take it from me. I knew from the lack of eye contact, body language, and the fact that he didn't do what I'd suggested.' (a19FWEP)

A President of a local law society described encountering similarly undermining behaviour from her deputy: *'he comes to meetings now I'm president which he never used to and is constantly challenging my authority ... it's fairly subtle – so if I come up with an idea, he'll say something like 'I don't really think so – that's not (\* name of town).' I like him personally – he can't help being an alpha male.'*

The perceived disjuncture between women and a professional career could also result in expressions of doubt about women's commitment. We have discussed this above in connection with the long hours' culture. However, some women reported queries being raised about their commitment simply as a result of getting married. Marriage is viewed as increasing men's commitment:<sup>145</sup> *'a man almost didn't get made a partner ... until he got married'*, and the following account by a black male equity partner reveals both this favouring of married men on the basis of the 'breadwinner' justification, and also the privileging of whiteness:

'I can remember in the early days clearly being the best performer at my level in the firm and being told so, but not getting the biggest pay rise... [instead] a really nice, but a real establishment white guy got the biggest pay rise. And I said why, and they said 'because he has a wife and two children.' (d7MBMEEP)

By contrast, for women marriage may still mean that they will not even be employed: *'I've gone to interviews and been asked 'are you married?''* Similarly, a female barrister recounted how she *'was told that it was not appropriate for (her) to be married, and I had just got married before I'd started my pupillage. I was questioned about the circumstances of my marriage, like where did I get married and when. This was a few years ago at a set in London.'* (d13FWB)

Unsurprisingly, respondents told of doubts about women's commitment being expressed even more frequently when they became pregnant: *'I was then asked if I was fully committed'*. As a salaried partner said: *'women get defined as being mothers in a way that men don't seem to get defined as being fathers'* (a2FWSP). Women who, having had children, then request and/or succeed in moving to part time work may be regarded as even less professional. A salaried partner said: *'a lot of older males in the profession dislike part-time female workers ...I know that until I go back full time, I will not rise to the next level.'* Her subsequent claim that this dislike is grounded in visceral prejudice rather than logic, once again highlights the unconscious normalisation of male working practices:

'I'm not an out and out person who believes that you should be able to have exactly the same rights because sometimes it just doesn't work that way ... but it's not that it's been thought through like that. For them it's just a bar because that's the way it is ...' (e15FWSP)

We examine the significance of commitment and the related extrusion from the workplace of any mention of children in more detail in the following sections.

Respondents' accounts highlighted other practices which tended to de-professionalise women; many focused on social events which (as discussed in the previous section) continue to be held masculine forums in which women could be positioned as objects; for instance: *'We have our golf days, a jolly boys' outing ... then there's a dinner at night ... the women go then. But you turn up as if you're a trophy on someone's arm, rather than actually taking part.'*(a18FWEP). Another woman claimed that *'sexism is still rife – there's a certain mentality where you have to be a flirty, attractive woman'* (d11FBMETS). The following account represents a more extreme example of the sexualisation of the legal workplace, and again illustrates the impact this has on women's claim to authority and professionalism:

'[I]t is difficult fitting into the image that men have of women... No one will say explicitly, but in a commercial firm here, I think all of their trainees are young women and the partners thought it would be a good idea if they had a revue show and got these girls to dress up and do a dance routine. I saw one of the girls in November (2009) and she was in rehearsals! She was disgusted by the idea.' (d11FBMETS)

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<sup>144</sup> The refusal to accept that women are 'authoritative knowers' is a pervasive theme of Thornton's work on the Australian legal profession.

<sup>145</sup> There is evidence that this phenomenon is widespread in high status professions, and studies of the legal profession in other jurisdictions have made the same finding; see, for example, Seron and Munger, 1996. It is linked in turn to male/female pay differentials, men's higher salaries being justified by their breadwinner role.

This respondent's statement that her friend was nevertheless going to participate in the revue, provoked a discussion about the limited scope for junior solicitors to contest such practices: '[if you refused] *you would be in trouble, marginalised*'. (d10FBMES); the comments of another suggest that financial pressures and the closed culture of the profession combine to produce collusion: '*yes, and you are in so much debt when you are on your training contract you would just get on and do it. The financial pressure means you can't complain to anyone – if you did you'd be perceived as a trouble maker and you'd be finished.*' (d8FBMES)

Other female respondents also recounted instances of sexual harassment '*There was this club and when I went, the first comment was 'oh our luck's changed tonight, there's a blonde solicitor'. I didn't go again*' (a10FWS). A woman barrister spoke of

'a lot of sexism, very casual sexism, at the Bar. 'I think there still is. When you went on things like advocacy weekends at \* from your Inn, the older barristers would hit on you. And that was perfectly acceptable. And I think they, kind of, assumed you would go along with that because you needed their patronage in order to get on. And you found that ... you were expected to be nice ... to some of the male barristers in order to be accepted.' (c3FWB/Ac)

This nexus between male seniority and the sexualisation of the workplace is also illustrated by the reflections of a female equity partner:

'I was told by the staff that they confidently expected the next solicitor to be a young female and lo and behold it was me; and one of the reasons I left ... was that his behaviour went from being very avuncular to pushing at the boundaries of sexual harassment ... his current partner had been a trainee solicitor at the firm ... the thing is you have to learn how to handle these things because you cannot ignore the male female dynamic ... which can go against women because, generally speaking, she is the younger one, less senior, and it can be dangerous for her career.' (a19FWEP)

A few respondents reported experiencing gross sexual harassment; however, in the following account, the female trainee draws a distinction between London and the North (she considered London to be more forward thinking): '*for the most part you wouldn't be having a conversation like that ... even at a chambers party you would not be getting people who are pissed up saying 'oh I'd shag her', which is the experience I have had here [in the North].*' (d11FBMETS)

#### 4.3.2.2 Stereotypes based on race

Just as gender stereotypes act to de-stabilise women lawyers' professional status and thereby reinforce the 'natural' masculinity of the work environment, some of the accounts by BME practitioners suggest that they too may be viewed as 'unnatural' professionals. Support for this view is offered by the isolated position many occupy: '*we operate in tribunals and I can't think of an occasion where I have seen another ethnic minority representative and I've been going for almost two and half years...*' (a5MBMES) As a result, a common experience was that of not being recognised as lawyers:

'I'd go into [\* large city in N.E.] and the major courts in the area and be the only ethnic minority face and ... my first experience of going into a family court in [\*] ... the court staff said to me 'are you the interpreter?' 'No' 'Are you the client?' 'No' 'Are you the solicitor?' 'No'; and then I said 'I'm counsel' and they were completely taken aback. This was 2004/5. I'm still very conscious of the fact that as an Asian woman I'm in a minority.' (a7FBMEB).

Other respondents had also experienced racial stereotyping and the devaluation of the individual on which it is based. The doubt expressed in interviews about Asian women practitioners' license to do out of hours' work had also been encountered by one woman from her colleagues:

'I have been asked before, by colleagues, 'won't your parents mind you being out late?' I said I am a thirty year old woman and they stopped telling me what to do a long time ago. It's older colleagues and there is not malicious intent. It's completely ridiculous, it is stereotyping that you should be at home with other responsibilities.' (d9FBMES)

Other respondents (especially outside London) had experienced explicit racism: '*I have come across people who have been openly racist. And not subtle.*' The following examples of how these experiences assault the practitioner's professional identity are illustrative:

'[Y]ou can get certain people that are ... not aware or have very pre-conceived ideas of how a person from an ethnic minority should behave. And I think that's had a detrimental effect, because they're making assumptions based on who they think you should behave as, rather than who you are. The kind of negative feedback I had was that I had aspirations that were above what I should be aiming for. And I should be realistic ... I should become a legal secretary rather than a lawyer, because they felt that because I had managed to learn to touch type and everything else, and had a lot of skills they'd not acquired because they're always used to having secretarial support, so they were very much, 'you sit there and not speak'. If you don't speak, it's okay, but once you speak there's a problem.' (e1FBMES)

'One of my colleagues was sitting in an office with a glass front on it and he was sitting with two other members of the department and as I walked down towards the office, he could see me coming, and I knocked on the door and went in and as I walked in he joked that he thought I was one of the cleaners because all the cleaners were black and they didn't have any other black lawyers in the firm.' (d10FBMES)

One of the aggravating aspects of this last incident was that the perpetrator was the woman's supervisor:

'[W]hen I went to him the next day and said I was upset by what he'd said, because he was my supervisor at the time, he said that if I mentioned it to any of the partners he would say that the comment had never been made and that the other colleagues in the room would back him up.' (d10FBMES)

One solicitor experienced being mistaken for the only other Asian woman working in the same firm:

'I think the legal profession is well known for not (promoting) - there's less ethnic minorities, less women, at the height of the legal profession, so one way or another, whether I want to believe it not, I think it [ethnic origin] does play a role. This one partner, not long ago, said to me, 'Oh, congratulations on doing this'. And I was thinking, 'well, what's he talking about?' He actually got me confused with another Asian lady and I was just, kind of thinking 'we may be Asian but it doesn't mean we're all, kind of alike'. He'd got me completely confused because I was Asian and I just, kind of, thought, 'what the hell is all that about?' (d2FBMES)

Her conclusion: '*so, yes, I do think, if I'm completely honest, that (there is racism)*' was based not just on this personal experience but her awareness that '*ethnic minorities tend to be in the smaller law firms, you don't really see them in the big commercial law firms.*' (d2FBMES). In-house work is, as is well known, another 'shelter':

'[A]s a black woman ...I worked exclusively in-house ...I found it's always been a bit of a struggle getting jobs ...people seem to find it difficult to believe that if you're non white, you can actually go in and do a good job as a lawyer' (b9FBMEIHS)

Another solicitor said '*of course there is inherent racism*' and told the following story about a client, also a black solicitor, who had been '*told by a City practice he could not work in their Trusts and Estates department even though he had worked... abroad because he was black, he was very muscular because he played rugby and, would you believe, they said to him, your neck was too thick.*' (c4FBMEEP)

An Asian woman equity partner summed up these experiences as '*an unwillingness (by white people) to accept that you could be good enough to do the job*' (a16FBMESP). The result, of course, can be that (like women practitioners) non white lawyers are given fewer opportunities than their white male colleagues, but must, as a black male equity partner said, perform better in order to progress: '*I had to be, that old cliché, better than my contemporary who was white*' (d7MBMEEP). We examine this further in the sections below.

#### 4.3.2.3 Stereotypes based on class

As we have discussed in both Section 3 and Section 4.2, the persistently middle class character of the profession means that people from lower socio-economic groups face multiple barriers;<sup>146</sup> these include lack of contacts, and preferences for a narrow group of high status universities.<sup>147</sup> The following account highlights the way in which the resulting disadvantage often intersects class with race:

'I was speaking to a colleague ... and he's reviewed quite a lot of application forms and the first thing he does is to see what university they attended and quite often with the ethnic minority group they don't tend to be redbrick but a metropolitan university'. (a5MBMES)

This respondent stated that he had pointed out that there were often good reasons for this pattern, which are not always connected to lower grade A levels:

'[I]t's not their fault, a lot of it is because they've not had the backing. I know tons of people (who) are immensely clever but you know ... unless you've done something absolutely spectacular, extracurricular activities ... you're not going to get a look in' (a5MBMES)

However he concluded by arguing that if the applicant was a white graduate of a new university they would stand more chance of being selected than if they were black, observing that the only two qualified BME solicitors in his firm (himself and a woman) had both attended top universities (Cambridge and LSE respectively).

<sup>146</sup> Nicolson, 2005; Duff, 2000; Shiner, 1999, 2000; The Cabinet Office, 2009.

<sup>147</sup> The Cabinet Office, 2009; Langlands, 2005; Francis and Sommerlad, 2009; the same process has been documented in the US; see for instance Gorman and Kay 2010 and also the 'After the JD' studies.

Even when someone from a lower socio-economic group gains entry, they face the less tangible barriers generated by the profession's generally highly elitist culture. The following remarks by a female Asian Barrister highlight some of these:

'I've seen ... people who've had the best education, the privileged education ... I myself went to a private school ... and they've gone on to the best universities and for them, it's a very familiar cultural environment to operate in ... [for instance] socialising is very important and the ease with which you see somebody who's been born into that set up [operating] compared with somebody who hasn't had that exposure, that experience, is immense ... I see it with junior people, pupils, trainees and their way of conducting themselves is very different to someone who ... is finding all this slightly strange and slightly alien ...it's about social mobility and that's really where the work has to be done.' (a7FBMEB)

The class based assumptions which continue to pervade parts of this elite world were also illustrated by the experience of a white lower middle class woman barrister at a London chambers where she was the first pupil to be taken on who had not been to Oxbridge: '*I felt socially out of my depth.* However, as we discussed above, financial pressures meant that she felt she had little choice but to stay in an environment which she found both unattractive and undermining:

'You ask why I took it and I had just come out of university with student loans. I'd supported myself through uni and just taken out an enormous professional studies loan and here I was offered a pupillage in top flight chambers. Why wouldn't I take it? And for all that I criticise them for the way they treated women and people who are not white, I had a very good training.' (d13FWB)

She proceeded to tell the following story about the decision making process behind which of the pupils was selected for a tenancy which challenges the profession's claim to be a meritocracy:

'The Head of Chambers said: "I want him, he comes hunting and shooting with us and...my clients like him, my Greek shipping clients like him because he has everything that they are looking for, he's been to a certain public school and then to Oxbridge and he presents the right image." These were the criteria. He hadn't actually, at that point, passed his Bar exam. So it was not the quality of his work that was important, it was the fact that he fitted.' (d13FB)

### **4.3.3 The Importance for Career Success of Personal Relations/ Bonding and Socialising**

The assumptions discussed above about people drawn from particular social categories<sup>148</sup> produces a pressure, which many respondents attested to, to give convincing proof of conforming to the traditional (i.e. white male) career model, to downplay disfavoured traits,<sup>149</sup> and to exceed expectations. This pressure is accentuated by two features common to the Bar and solicitors' partnerships. Firstly, their close knit and therefore generally homogenous character<sup>150</sup>, which is reinforced by the fact that they have their own internal career ladders (as one barrister pointed out, most people apply for a tenancy within the chambers in which they did their pupillage). The second feature is the need for practitioners to self manage their careers,<sup>151</sup> thus many respondents stressed the need to create their own opportunities and engage in self promotion. We will take these features in turn.

#### **4.3.3.1 Kinship culture of firms/ personal relations**

An equity partner described the job of solicitor in the following way: '*it involves knowing the law and technical skills, but it's also about building personal relationships*' (a18FWEP). Relationships are important in two main ways: in order to form bonds within the firm (and most importantly with a mentor or patron), and to develop links with clients.

#### *Relationships within the firm or chambers*

An obvious example of the importance of personal relations is their continuing value for gaining entry to the profession in the first place, as a female barrister explained in connection with gaining a tenancy:

'Knowing somebody helps ... there's a certain amount of nepotism. Generally, I think, probably impressing people during your pupillage in one way or another, either making contacts and networking, which I was absolutely

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<sup>148</sup> As has been argued in a recent study of traditionally male only work, the reality of people's skills is not important; instead it is what employers believe about their skills and attributes which determine people's career opportunities: Caraway, 2007.

<sup>149</sup> Yoshino, 2006, describes this as 'covering' in order to fit into the mainstream. In their discussion of the pressure on African American lawyers to fit into the dominant white culture of US law firms, Carbado and Gulati, 2003 speak of the 'homogeneity incentive'.

<sup>150</sup> Burrage, 1996; Galanter and Roberts, 2008.

<sup>151</sup> Vinnicombe and Kumra, 2004 have identified this as a feature common to professional service labour markets, and as one which disadvantages women.

hopeless at, or, you know, doing particularly well in a particular area and impressing people within your chambers.’ (c3FWB/Ac)

A white solicitor reflected on the importance of building internal relationships: *‘if people know who you are and then they’ll refer work because a lot of work gets referred across departments ... so if you’ve got time to invest in building up relationships within the firm then you’re likely to move on’* (a3FWAc). The following description by a trainee of the culture at his large London firm focuses on the tendencies for exclusionary cliques to form, and the impact this has on ‘outsiders’:

‘[T]wo secondees from India ... educated in India... they’d probably say (their experience) was awful because of the way people treat them, i.e. being looked down upon because they’re from India, or because of their accent, even though they’re incredibly smart ... some people won’t make an effort at all to get to know them, to speak to them, and so they can get sidelined. So some of the trainee lawyers have been, kind of excluded from certain cliques, and certain groupings of people. I doubt they’ll stay around that long’ (b10MBMETS)

A discussion between some international trainees tended to vindicate his view: *‘here you are starting as a trainee, you just met your peers, you can give an international perspective, and they look at you as if you are this oddity. I mean, they are not rude, but it’s like...’* (b12MBMETS)

Another solicitor identified the ‘old boys’ network’ facet of internal networking:

‘I think it can be an issue for all sorts of personalities, unless you’re relatively clubbable you’re going to find it difficult whether you’re male or female ....Clubbable: it’s the sort of person who will go to the bar afterwards on a Friday evening with them and that sort of thing, and generally enjoy sort of fairly relaxed social chit chat with the other people ... Women find that difficult because they’ve got other responsibilities, so they can’t join in with that sort of thing, so particularly if you’ve got... it’s not so bad for us because we’re almost totally female now, but if you’ve got a larger firm where you’ve got say a tradition of going out for a drink together on a Friday, and you’ve got some members there who’ve got family responsibilities, or who don’t want to do that, they’re nearly always going to be female, and they’re going to be left out of that bit. And that’s going to affect it, I think, it has to affect their visibility.’ (c6FWEP)

Many BME practitioners thought that the fact that legal practice is *‘so much about personal relationships’* places people who *‘are the wrong gender, wrong colour’ at a great disadvantage* (d9FBMES). Another said: *‘there was an atmosphere within the department that if your face fitted then you would be all right, and if it didn’t, then you wouldn’t’*. (e17FWIHS). Another said: *‘it’s harder for people in black minority ethnic groups to actually have a network of people within the law, because it’s just... there’s definitely less people in it.’* (e13FBMETS).

The central role played by drinking in the social life of firms and barristers’ chambers was identified as a further difficulty for many lawyers. Muslim lawyers frequently spoke of the difficulties it created: *‘I feel I am tested a lot more than my white counterparts simply because I don’t drink – there’s... a lot of pressure to go out drinking’* (a4FBMES). This woman proceeded to explain that the social life of her (Northern corporate) firm revolved around this sort of activity and then talking about *‘the night before and how drunk people got and you know I can’t really get involved in that so you just start to think ‘maybe I am different because I don’t know how to relate to this’*.

#### *External relationships/ business development*

Several respondents expressed doubt about the real value of external networking activities:

‘It’s always slightly disappointing that nobody seems to see through that, that the huff and the puff and the bluster of look at me, I’m having a marvellous game of golf, doing this, having lunch with so and so. Nobody stops to then follow that back up and say, well what did you achieve? It’s all about sort of presence and profile and sort of an office concept like that.’ (d4FWSP)

Nevertheless this sort of activity is viewed as critical for career development: *‘if you haven’t got time to commit to that then your career’s not going to progress’* (a3FWAc). Like internal networking, it depends on being able to build personal relationships. For barristers it is not only the relationships with the clerk of the chambers and senior barristers which are vital, but also those with solicitors. An Asian female barrister had found one of her chambers very difficult because: *‘the old boys’ network was alive and well in the sense of being instructed by a certain network which they were part of’* (a7FBMEB). As a result,

‘people junior to me were getting work and I was actually helping them with it and advising them but I wouldn’t get the actual work directly and I think that’s because I wasn’t perceived to be the kind of barrister they wanted because I wasn’t part of that network.’ (a7FBMEB)

She went on to describe an extremely closed world:

'[I]t's not uncommon, especially where you're dealing with local firms for there to be family links, people married to partners, children at particular firms .. I'd trained in London, and so I was surprised by how lacking in diversity the [\* Northern city] Bar was.' (a7FBMEB)

Again, like the internal firm networking, business development often entails events which tend to be highly exclusionary: golf days were offered as the typical example:

'[T]he men play golf and they all go out on golf days and they are spending the whole day out of the office, then get drunk at dinner afterwards and then spend several days talking about it and it's very unusual to have a female at these events .. the only reason I know what it's like first hand is that my husband is a solicitor and I would join him at the dinner afterwards – there would be one female for every 25 men.' (a8FWS)

Some women described even greater gender imbalances:

'I was invited to an event last year at York Races, it was a sportsman's lunch. So I went; I'm into rugby ... There were 3 women and 600 men ... some of the speeches were a bit risqué, they were apologising ... made for a male audience, definitely.' (a18FWEP)

Many of the BME practitioners also experienced social events as highly exclusionary, sometimes because they were the only non-white person in the room, but also because: *'it's a profession which drinks the whole time ... and I am reluctant to go to an event which is alcohol dominated'*. This Asian employment lawyer said that this meant: *'that certain relationships, both internally within the firm and externally with clients, haven't developed or have deteriorated.'* As a result he thought that his career at the firm would only progress up to a certain point:

'I came here very self assured and I still am ... and I still enjoy it ... but do I think I can be the best at what I do? No ... because I don't think I'll ever be able to build the relationships that people who are not Muslims will be able to build ... there's going to be a point where I'm expected to bring in lots more work, and engage socially and I'm not going to be able to do that ... so I can see myself going in-house.' (a5MBMES)

His pessimism was supported by the reflections of a British Indian solicitor:

'... a lot of it does involve socialising, going out, and ... I think, partners at the firm that I work at appreciate people that do a lot of marketing a lot more than people that don't, regardless of whatever their reasons are for not doing it. I think there is that kind of perceived pressure.' (e9FBMES).

#### *Unofficial mentoring/ patronage*

In addition to the significance of fitting into the firm and departmental or chambers' culture, of even greater significance is obtaining a patron; for instance: *'you needed the patronage [of senior barristers] to get on'* (c3FWB/Ac), and *'I still benefit now from connections I made [during pupillage]'*. (d13FWB) A salaried partner in a large corporate firm similarly described how the decision to keep her on after she had finished her training contract was the result of an intervention by a woman partner who acted as her unofficial mentor. As an equity partner in a High Street law firm said: *'you have to develop a special relationship with an equity partner who is going to trumpet your cause'* (a19FWEP). Further:

'[W]hen I was in private practice and did my articles there were a couple of partners there that gave me work or took me on particular meetings or supported me. And later in my career, again, working for particular partners, there have been a couple of individuals that have helped in giving me interesting work and included me in on things and stretched me ... But I didn't have that rapport with everybody; it was a bit hit and miss really. I had a first couple of seats that were quite negative in a way.' (b5FWS)

These last comments highlight the significance of having high level support, and the concomitant vulnerability of junior solicitors; as one said: *'bullying is rife in law... the thing is with equity partners is that there is simply no redress. What are you going to do? Go and find another job in a really competitive field again? Most people just stick it out, and they know that.'*

However, just as some of the above responses pointed to the tendency of people to exclude people who are unlike them, so too there is an extensive literature documenting the tendency for mentoring to be a 'cloning' process,<sup>152</sup> and homo-social reproduction is seen as particularly characteristic of partnerships.<sup>153</sup> As the following quotations suggest: *'whether you get on is a question of whether you get on with people and whether your face fits'* (a1FWAc); *'there was an atmosphere within the department that if your face fitted then you would be all right, and if it didn't, then you wouldn't.'* (e17FWIHS)

<sup>152</sup> Kanter, 1997. Recruitment as a cloning process featured in the remarks of one respondent cited in Sub-section 4.2.2 in connection with large firms preferences for recruits from old universities.

<sup>153</sup> Thornton, 1996.

#### 4.3.3.2 Self management of career: self promotion and access to work

One of the features of a legal professional career is that it must be 'self managed'; an Asian male equity partner in a magic circle firm summed it up thus:

'[I]n a professional services firm, where initiative, self drive and motivation are really important factors, I think you make of it what you choose to make of it. That's the sort of thing I encourage people who I'm responsible for to do ... which is, don't wait until someone says to you "this is your path, that's what you should do" because these are highly intelligent, highly motivated people so the issue is not about motivation - it's about finding a path that suits them ... it's a meritocracy and you make your own way.' (a15MBMEEP)

However, the level playing field this comment implicitly evokes is belied by the intensely competitive nature of the profession's internal labour markets (described by one partner as 'cut throat'); in consequence, few other respondents considered 'merit' and motivation alone as sufficient attributes for success (although a vocal minority of BME practitioners based in London did consider 'merit' and motivation to be the keys to success). Access to good work and important clients was regarded as essential, and then the ability to promote oneself; thus another equity partner said that in order to 'make your own way' you must '*be good at promoting yourself both inside and outside the firm.*' (a19FWEP)

Arguably, self promotion is even more essential for the female and BME lawyer, since the cultural assumptions about their attributes and skills discussed above means that they are less likely to fit the 'prevailing success model within the firm';<sup>154</sup> conversely, as is indicated by the subsequent remarks of the respondent just cited, your face was more likely to fit if you were male: '*it's now a department with five male partners and all the assistants are female*' (e17FWIHS). However, as we have discussed in Sub-section 4.2, self promotion is 'both intuitively and normatively more acceptable for men than women'.<sup>155</sup> The following comments by two white female equity partners support this analysis '*it's not what women 'ought to do'; it's not expected, and anything out of the ordinary is challenging.*' (a19FWEP) Another said:

'It's just the male-female mindset. Men and women approach problems sometimes differently, communicate differently ... women will try and please people more than men do, which doesn't help them. It certainly doesn't help in pay negotiations or promotion negotiations, because we wait to be asked. 'If we're doing well, they'll come and tell us and offer us a promotion'. Will they bugger! I learned that to my cost ... so I would stand up there and say "I've done this, by your criteria, I've met your criteria, what are you going to do about it?" But most women don't.' (a18FWEP)

Practicalities may also impede a woman lawyer's ability both to network and promote herself, as an employment lawyer explained:

'it's all about visibility ... I tended to turn up, do my work, be really focused and leave, as opposed to floating round the office, chatting to people. But the person who is around chatting is visible, they are essentially networking within their own firm ... and that's important because then people know who you are and they'll refer work because a lot of legal work gets referred across departments ...you've got to invest in those personal relationships within the firm.' (a3FWAc)

In order to be able to undertake self promotion at all, the practitioner must have access to good quality work. The allocation of work to trainees and junior solicitors is generally at the discretion of departmental partners, and handing out good work is one of the key ways in which a partner can assist his mentee, as a woman academic recalled: '*a partner (J) had two protégés, two men who did commercial litigation; the really big work came from J and he always gave it to the two men.*' (a1FWAc)

The stereotypical views of masculinity and femininity, and ethnicity discussed above, and the tendency for people to mentor those who resemble themselves, may make it less likely both that women and BME lawyers will be mentored at all, and/ or included in high level work. Our data generally suggested that this is often the case (although it should be noted that some new trainees and young, newly qualified solicitors based in London were positive about the mentoring that they were experiencing). A white woman spoke of how her work opportunities had been restricted by a partner who said '*he didn't think that women should get the international work because they liked to stay at home ... close to their families ... at the time I didn't even have kids and had just come back from Hong Kong!*' (a1FWAc).<sup>156</sup> Another explained differences in attitudes towards women and part time working in terms of partners' own domestic arrangements:

<sup>154</sup> Kumra and Vinnicombe, 2008, S70. the model is generally a white male; Thornton talks in terms of 'benchmark men'.

<sup>155</sup> Kumra and Vinnicombe, S71; they cite a wide range of studies which suggest that men are culturally conditioned to take credit for their achievements and compete, and that women are not; for instance: Bakan, 1966.

<sup>156</sup> This denial of opportunities on the assumption that they would not want to travel or had domestic ties is again common McCracken, 2000.

'[S]ome of the equity partners, earning huge amounts of money, with little wifey at home, running the home ... were less empathetic with the working mothers ... In my department I was the only female who had kids.' (a3FWAc).

As a result, women spoke of being obliged to work in particular specialisms: '*anything property- low grade - was given to women*' (a1FWAc). Another academic explained her dissatisfaction as an employment lawyer in a large corporate firm in terms of work allocation:

'I didn't get the sort of work I should have. I said in my appraisal, I want to be involved in the corporate side ... I want more opportunities, but it just never happened. I wasn't the only person not getting good work in the department ... there was a gay male and another female solicitor who was also not perceived as someone who should be passed good work.' (a3FWAc)

An equity partner said of a friend in another firm '*the partner in charge of the department ... is creaming off the best work, giving her the crap*' (a19FWEP). Other respondents spoke of always having to work on other people's files; in the case of one respondent, this was despite the fact that she had three years' PQE: '*I get files to finish off ... but then what usually happens is that it's been billed before it passes to me so then I don't get any recognition for the costs I've spent finishing this job*' (a9FWS). Conversely, the '*the really profitable work went ... to the men*' (a3FWAc); and a male BME lawyer described his experience when training in the corporate seat as '*just doing tax forms and the like*' (a6MBMES), while '*the other guy in the department was white, a pretty good guy but he just got all the good work ... all the good completions.*' (a6MBMES)

These discriminatory allocations are '*absolutely critical because they determine whether you meet your targets and how much stress you're under*' (a3FWAc), and, as one white equity partner said, '*the profession's obsession is with targets, chargeable hours ... it's all about money, this is the only measure of success*' (a19FWEP). Restricting a practitioner to less prestigious work means that she is unable to earn significant fees, and also denies her the chance to develop good clients. Evidently, giving her colleagues opportunities means they will shine by comparison.

The allocation of support staff (again something which can be determined by a mentor) is also critical to meeting targets; the significance of a secretary was articulated by a female equity partner: '*my secretary is very, very committed and will work through her lunch or come in early if I ask her; she's always here after half seven; we work as a team*' (a18FWEP). Conversely, several respondents linked a bad experience in a firm with having been assigned a poor secretary, and/ or to the secretary's unwillingness to work for the respondent: '*the men get the better secretaries. all the other solicitors ... seem to have a dedicated secretary and sort of mine gets to the bottom of the pile - I've been 3 years without a secretary*' (a9FWS). Another interviewee said: '*... women are expected to do things that men wouldn't, so whereas male trainees or male junior solicitors ... nobody would dream of not giving them secretarial support. The female solicitors, it's expected that you can type.*' (e17FWIHS).

There were also accounts of women not receiving required organisational support functions. One salaried partner recounted how one firm had intensified the pressure on her during her pregnancy by leaving her without a secretary for six months as they knew she was due to take maternity leave. This greatly disrupted her working patterns and her ability to carry out her work effectively; she also found it to be incredibly stressful:

'You can't achieve anything without support, it's a complete nightmare. And there was a period when my secretary had left, and they didn't replace her when I was going on maternity leave. And you just completely, it's like sawing your arm off. You can't get anything done, and you feel like you're in freefall with nothing to catch you, because you don't know if anything's been filed properly, whether things were sent out at the right time... [It was] probably six months I should think... It was a very long time. Yes, I'd forgotten about that really. I must put that in a box called don't go there.' (d4FWSP)

Other women noted that they had not been given access to the same levels of support staff as their male counterparts, and one reported that as the firm knew that she had once been a legal secretary, she had been advised that she should be willing to do her own typing. Some had experience of support staff being extremely hierarchical and refusing to prioritise the work of more junior and/or female staff: '*one secretary here refuses to do my work, but she will work for Andy who's less qualified than me*' (a9FWS). Inevitably the lack of secretarial support makes it very difficult for the practitioner to meet their targets and hence '*bring in fees*' (a9FWS), and also leads to stress and low morale.

As one respondent said, the above factors can lead to a:

'... vicious circle, and mean people get demoralised and end up leaving after say the two years ... I'd say there's quite a few people who are say from Black or Minority Ethnic or even like women in certain departments who will



probably just leave because of the culture, because of the way they've been treated by certain individuals, and that kind of causes ... them to reassess their positions' (b10MBMETS).

As a result, as a salaried partner said, by the time it gets to the partnership stage, the pool of eligible women and BME lawyers tends to be quite small.

#### 4.3.3.3 Criteria for Partnership

While, as we have discussed in Section 4.2, the formal criteria for promotion are not always transparent and / or may in any event be by-passed, it is evident that the informal criteria will include the value of a lawyer's client base and their level of fees; as the preceding discussion indicates, white men are more likely to meet these criteria. Further, as the literature in relation to promotion in professional service firms suggests, both the process and many of the other criteria are inherently subjective. By the time people are at a stage where they can be put up for partnership, their technical ability is probably uncontentious. Therefore, while the profession emphasises merit, in practice, it appears that other factors such as a solicitor's personal attributes, and, as discussed previously, having a powerful mentor within the firm, are likely to be decisive. The importance of 'fitting the mould' and being a good networker recurred. However there are also strong business reasons for opaque promotion criteria, as the reflections of an equity partner reveal:

'How do you choose? It's partly instinctive, and it's business acumen – you identify people who are very good at what they do that you don't want being poached by another firm. You look at ... the targets is a big thing – are they meeting or exceeding their targets? Do they basically have any social skills? Are they able to get on with people or would they upset any people they came near? Do they have any business sense about them or ideas about progressing the business? One of the salaried partners hasn't met her target, but she does non-contentious work and everyone else does contentious work, and I felt there had to be a balance in the firm, and she was the best candidate in the non-contentious side. I still feel that was the right decision, but I couldn't say one of the criteria was 'you must meet your target', because that wasn't a criterion for her. If I'd made that a criterion then made an exception, it would have been 'why?' and I didn't want to go round saying 'I want someone in non-con'. So I struggled with the criteria, I thought 'well, I'm not sure I can set them down and measure people against them.' (a19FWEP)

The '*incredibly competitive*' (a2FWSP) nature of the promotion process, discussed in Sub-section 4.2.1 featured in several respondents' remarks; for instance this (white female) salaried partner went on to say that: '*there will only be an appetite within the business to make up so many people. You don't just hand it out*'.<sup>157</sup>

Those who had made it to partnership all stressed the significance of formal or informal support in this competition; one woman said that after she had finally been made an equity partner, she said to the partner in her department that she '*felt let down because he hadn't pushed for and promoted me as the senior partner had done with \* [name of a man].*' (a18FWEP).

#### 4.3.4 The Long Hours' Culture and Emphasis on Commitment

Law firms have been described as 'greedy institutions',<sup>158</sup> and the willingness to work long hours, and the equation of this with commitment, discussed in Section 4.2, was viewed by most as the primary criterion for partnership. '*I found that the firm really demanded 100% plus*'. A female senior partner explained it in terms of clients' needs:

'[Y]ou know, nothing else is really rated, so if you're not a fee-earning partner in this place and you've got alternative career structures, we've got them already, but nobody actually wants to do them and equally, if we all did non-fee earning career structures, this place would die, because you know, as I said to you, it's designed to enable a banker to close a deal by Monday morning and to start on Friday night.' (c7FWSP)

However a recurring complaint was the way in which this model of working tended to set the standard for evaluating practitioners' contribution generally, even in specialisms that did not involve global transactions or the need for fast turnarounds over night; and that the workforce was developed by men and that culture persists. The resulting difficulties for women (and an increasing number of men) of combining a legal career and children,<sup>159</sup> a common topic, is encapsulated by the comments of a female salaried partner: '*we lose lawyers as they have children ... but there's a change because so many of our lawyers are female and not having children ... we have a lot more female partners who do not have children.*' (a2FWSP)

This last comment tends to endorse the argument made by a former senior member of the AWS that the male model meant that '*generally women have to adapt the way they'd like to do things to the way things are ... so they have to become different people in order to function in the workplace, organise their lives differently*'

<sup>157</sup> The competition for partnerships has been termed a 'tournament' Galanter and Palay, 1991.

<sup>158</sup> Epstein et al., 1995, 1999; Sommerlad, 1998.

<sup>159</sup> Collier 2001, 2004.

(a17FWAc). An example of this need to emulate the male success model is the exclusion of children from workplace discourse:

'[T]here are a few partners who have had kids, when a partner would ask them a personal question, how are you doing, etc, they would deliberately never bring that issue up, for instance, they'd never talk about it; it would always be about work and how they were looking forward to the next deal or whatever... it's not really normal, you wouldn't really think that's a normal kind of response... .' (b10MBMETS)

Other respondents claimed that if reference was made to children, their impact was minimised:

'[S]ome of the women partners who had kids, they'd say, oh, had a kid like a week ago, and I'm straight back into the office, and those working deals; and you think, that's not normal. So maybe, I guess, women adapt by just becoming more...[able to] fit into the kind of male environment, male dominated environment.' (b10MBMETS)

These traits are generally associated with women working in the high pressure commercial firms; however a trainee in a legal aid firm, well known for its radical credentials, recounted the penalties which are exacted for deviations from the full time plus model:

#### Vignette 2

'[E]ven at a firm like ours, where there's far more women than there are men, a couple of years ago a friend of mine who had a toddler at nursery wanted to go part time, just to have one day off a week ... she was a paralegal. ... and they said, no, you can't. And in the end she decided that she would give in her resignation ... And when she said she'd give in her resignation, they said, okay, you can go part time, and then they allowed her one day off a week. A few months later, when she was going for her training contract [at the firm], the head of the department said to me when we were in the pub, 'oh, well, it worked against her that she went part time, she came into this firm full time, she should have stayed full time; the fact she's gone part time really worked against her; she'll never get her training contract now'. And it was ... a woman who was saying that, and it's just such an unsympathetic attitude, and I was astounded that we're supposedly a human rights law firm, that new laws were coming in to allow women to, you know, have flexible hours, and there are still these kind of archaic attitudes, and that this woman was showing off with this attitude... she was not at all ashamed of announcing that it would work against this girl that had actually gone part time. So, I think that's still a huge obstacle, and this, I dread to think what it was like in, you know, firms that were more structured towards you know, have more men and therefore it's even harder to kind of say, actually, I'd like to go part time because I'm having children.'

e4FWTS

#### 4.4 Summary

The Macpherson Report argued twelve years ago that institutional racism 'can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.' He thereby highlighted the significance of cultural processes in the experience of BME groups, and there is a homology with women's experience of sexism. Consequently, when exploring the nature of the career 'choices' made by minoritised groups, we should accept the salience of perception and experience, bearing in mind Macpherson's additional point that it is the nature of experience, not 'objective' conditions, which determine whether an incident is racist. Where the cumulative impact of deliberate and 'unwitting' exclusionary practices is the statistically evidenced segmentation of the profession, so that its higher reaches are overwhelmingly dominated by white males, then the phenomenon identified by labour market theorists as social closure<sup>160</sup> can be seen to be taking place.

Our data suggested that the culture of the profession is the biggest obstacle to diversity. Our respondents generally accepted that changes had taken place and were continuing so to do. This was partly reflected in the bureaucratisation of many firms which sometimes included the adoption of formal processes designed to encourage diversity which would have been unthinkable fifteen years ago. A further change was the increase in pioneering women and BME lawyers in a few key posts. Nevertheless, their responses suggested that formal processes are frequently subverted and that racial stereotyping remains pervasive, especially in the

<sup>160</sup> Larson, 1977; Sommerlad and Sanderson, 1998; Muzio and Ackroyd, 2005.

North of England. Similarly, while there was widespread agreement that women were now more likely to be able to work part-time, and also progress to partnership, the resilience of the male career model and of sexist practices were also seen as major problems. One of the persistent themes of the data reported above is the difficulty experienced by members of minoritised groups in being recognised at all, either as candidates for promotion, or even on occasions, genuine members of the profession. The accounts of our respondents reflect a widespread view that those with power to allocate rewards and status therefore did not need deliberately to discriminate, since the possibility that, for example, women with children, black solicitors or Asian women could achieve significant status on the basis of merit frequently did not appear to occur to them.

## 5. ORGANISATIONAL AND INSTITUTIONAL RESPONSES TO THE INCREASING DIVERSITY OF THE PROFESSION

### 5.1 Background

This section builds on our review of the professional literature and initiatives (Section 1.3) which primarily focused on large corporate law firms by drawing on our interviews with respondents who were in a position to give an account of either organisational or institutional responses to diversity issues. These included senior partners and diversity managers, as well as respondents who held positions in external bodies such as the BSN and AWS. We reflect on what this data suggests about the policy responses to the diversity gap on the part of employing organisations, institutions and individuals, and whether those who deploy diversity policies monitor them for effectiveness. The literature indicates that larger organisations in both the public and private sectors increasingly create internal networks and specialist interest groups that promote equality and/or diversity: often these are women's and BME networks/groups.<sup>161</sup> As our overview revealed, such organisational network groups are also being established in large law firms,<sup>162</sup> often where there is an in-house diversity specialist in post. In light of these developments, interviews with respondents who played a role in these types of organisational interest groups were sought and are presented here.

### 5.2 Variability across the Profession: Fragmented Experience

As indicated previously, the literature and statistical surveys demonstrate that women and BME lawyers are not evenly distributed within the legal labour market, but are rather segregated into female dominated areas such as personal injury and family law whilst BME legal professionals are under-represented in corporate firms and are more likely to work in legal aid. As we have discussed in the preceding section, the culture of an organisation tends to be shaped by its dominant members. Traditionally white male organisations have tended to be resistant to change.<sup>163</sup> One diversity manager said *'the legal profession is behind other professional services, the public sector and the investment banking industry, but is now catching up'* (c11FDM), a view shared by a number of other diversity managers and some other respondents, one BME lawyer holding the view that in terms of diversity, the legal profession was *'10 to 15 years behind other professions'* (d4FWSP). Resistance to change was reflected in some respondents' comments; for instance:

'Where there is a flexible working policy, it remains at the discretion of a partner: people have made flexible working requests, but it sometimes depends who you're making the request to... the more traditional (older) lawyers ...don't see how it could possibly work.' (a16FBMESP)

The public sector was typically perceived as more likely to offer flexibility and work-life balance policies<sup>164</sup> and certainly our responses from practitioners who had experience of working in-house in the public sector indicated that they were able to achieve a better work-life balance:

'The [Public sector legal organisation] has a very pro-family approach. ...It is built into the terms, they say we are pro family and they go out of their way to ensure... It isn't just rhetoric. So when I first said I wanted to reduce my hours, there was no question that there'd be a problem with that. And I started off on a nine day fortnight, just having that one day. Then I went down to four days a week, but working full time when I was in. And then I changed it yet again to going back to being in five days, but shorter hours every day. And every time I asked for it they accommodated.' (e6FWIHS)

This degree of flexibility and accommodation is rarely found in other sectors of the legal labour market. Nevertheless, as we have observed throughout this report, the profession today is highly fragmented and certain sectors do now have diversity policies. Both the extent to which these are in place and are efficacious appears to be dependent on size of organisation, location, sector and specialism. With this caveat in mind, the next section explores some of the diversity initiatives found within the firms in our sample.

### 5.3 Evidence of Positive Initiatives within the Profession

In this section we focus on recruitment and internal representation within organisations, through mentoring schemes and through the introduction of flexible working policies, and also indicate where these policies and initiatives sometimes fall short of expectations. This section concludes with a discussion of issues that require further attention in order for the legal labour market to make genuine progress on diversity.

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<sup>161</sup> Berris, 2007; Gardiner and Tomlinson, 2009.

<sup>162</sup> Griffiths and Moshinsky, 2006; Taylor, 2008.

<sup>163</sup> Acker, 1990, 1992.

<sup>164</sup> Kersley et al., 2006.

### 5.3.1 Diversity Initiatives in Recruitment and Internal Representation

There were instances of innovation and progress in working practices, for example, in terms of the graduate recruitment process. Historically, and as we discussed in Section 4, recruitment or the 'milk round' has been limited to elite and redbrick universities and the law student populations of these institutions are relatively homogenous in terms of both ethnicity and socio economic background.<sup>165</sup> One equity partner from a large firm in the North East was aware of the discriminatory effect of such recruitment practices and indicated that the firm was taking steps to change its strategy. Interviews with diversity managers also revealed new recruitment initiatives in this area:

'As part of our diversity agenda, we are making sure we're not focusing on isolated universities and are opening out to ex polytechnics... because, to be honest, to be a good lawyer, it's not just about being very technical and having the best academic results.' (a16FBMESP)

'We target 40 universities, half of these are your traditional Russell group and the other half are other universities. We are actually very conscious that the best talent is not always to be found at the best universities. And some people who are very capable and have the talent and skills we need are not to be found at those universities. They are going to different universities for many different reasons. So we realised it is important to visit and target those universities as we are going to find talent there. Our current trainee population went to 56 different universities.' (c10FDM)

'We have done some work with local universities as we have recognized these are universities which have traditionally not been serviced by firms like ours. So we do a specific work experience week for those universities and that has resulted in four training contracts given to students who would all say they would never have thought to apply to a firm like ours.' (c10FDM)

Some City practices actively sought out links with post-1992 universities or with groups that work with students from BME and/or lower socio-economic groups to develop diversity placement schemes or the opportunity for people on those schemes to be interviewed for training contract places. Some large firms recognised that certain ethnic groups and, relating to social mobility, students from lower socio-economic groups who may not have family members who have been to university, need help much earlier. As a consequence some firms have developed, often in conjunction with associations such as the BSN, the Black Lawyers directory or the Sutton Trust, a range of early access schemes targeted at GCSE and A level students:

'At the younger end they come in for an open day. This year we hosted a debate for three or four schools. To come in and spend the day finding out how to enter the legal profession and what that involves, meeting training solicitors and so on. They had a debate, just to get them in the kind of issues that go in the profession.' (c10FDM)

'We work on a points system and that's the way that it is going to stay... So our effort and work is going into our widening access piece. We run a programme and we work with an education partnership which introduces us to inner city schools which are often high with ethnic minority pupils who are high performing and we can influence those children to aspire higher. So we have taken 200 students through that programme in the last two year and 49% have got to Russell Group Universities.' (d15FDM)

Often key to such changes is the appointment of an in-house diversity specialist or visible, senior diversity champion.<sup>166</sup> Such people have often been thought of as 'change agents'<sup>167</sup> and the following quotes illustrate the importance of key personnel in spearheading culture change:

'[\*] is actually the diversity partner at [\*] firm and he believes passionately in just trying to get in as many people as possible who are different, who are good. I think you need somebody like that. He was quite surprised, he went to a meeting ... with... somebody from [campaigning LGBT organisation] and [\*] was keen to get ideas. ... But the chap from [LGBT organisation] said to him 'you know, I set up these meetings, but you're about the first very senior partner that's ever turned up to one.' ... So if you've got diversity partners which, I think, most of the firms now tend to have somebody who is in charge of that sort of thing, if they're not leading from the top how do you expect attitudes to change?' (e6FWIHS)

'Well, first of all I decided that I had to engage the partnership in it as an issue so I set up a diversity forum and I wasn't going to ask people to be involved in it unless they really wanted to. They had to be champions, you know, they had to really believe in it. So we formed essentially what was an international diversity forum of partners around the world who were interested in aspects of diversity, and we brought them all together and then we started to say, okay, what are we here for, what do we mean by this, what does the business need?' (c8FWEP)

Each of the five diversity managers interviewed stated that their organisation now collected data on gender and ethnicity, some on all six strands and one organisation was in the process of asking employees questions

<sup>165</sup> One study describes the UK HE system in terms of a racial divide (Mirza, 2009), because of the overwhelming concentration of BME students in the 'new' university sector.

<sup>166</sup> Shen et al., 2009.

<sup>167</sup> Kirton et al., 2007.

on social mobility, including whether they were the first generation to attend university. While the level of detail varied, most organisations stated that they broke down their diversity data by seniority or grade. The importance of this was captured by one diversity manager who spoke candidly about ethnicity:

'We knew that we didn't really have the right number of ethnic minority solicitors in our (\*Northern city) office. It is hidden by the fact that we actually have, and this is not good, a lot of ethnic minority people as paralegals or as secretaries. So as you walk round the office, because we are all open plan, you get a feel that we are OK but when you drill down into the statistics it's obvious we are not OK.' (d15FDM)

As a response to firm level diversity data, many firms in the legal profession have created interest groups and networks established in firms to represent and support women and minority groups. Increasingly activities centred upon developing networks, discussing key concerns and sharing best practice:

'We are trying to encourage the development of networks for women within the firm, some of these will be formal. So for instance we are about to launch a senior associate network in London and we have a women's network in Brussels. We have a lot of informal networking going on in London. So almost every practice group started having focused meetings for women associates with women partners to encourage people to talk about things they may be concerned about, to share information and best practice, whether that is being a working mother or coping [with] stress or whatever and that is generating a lot of useful input and feedback. We are hoping to move to a point where we have a more formal women's network in London.' (c11FDM)

The next vignette provides an account from one diversity manager about a firm's training programmes designed for junior and mid-career lawyers with particular focus on the perceived needs of women.

### Vignette 3

'We have put together a number of programmes ... , which go from junior associates up to mid ranking associates, at 4-5 years level, to senior associates, at 6-7 years then right up to partnerships. We are looking at different areas, where we know women need a different focus from men. Women tend not to promote themselves as effectively as men, they tend to worry more about what they can't do rather than celebrating what they can do, they tend to get the heads down and work very hard and then a few years down the line to go 'uh actually no one knows who I am and I don't seem to have exposure to the rest of the firm.' So our most junior programme looks at that profile raising and confidence building. The senior associate programme is looking at career planning, being a role model to those below you, networking, profile-raising. The women partner coaching programme, which is a one to one coaching programme, is looking at supporting them developing their business but also in their crucial role for women further down the firm. Because in the past women, to succeed, really had to behave like men and they therefore end up being successful in their own right but actually not being very satisfied themselves but also not providing any kind of a suitable role model for those who are further down the firm and then you have a double whammy of women not being able to see many role models at all but the ones they can see are not ones they aspire to.'

c11FDM

One diversity manager in a large firm explained that such focused development on particular groups needed to be tempered by a willingness to be inclusive in policy formation:

'In terms of initiatives, we have network groups set up, and the network groups sort of address issues that are pertinent to these groups. So in terms of the female network group, there's various things that they're looking at. Obviously one is the career progression... There's focus on flexibility and part-time work, which... to be honest, this is not just well, primarily females... but obviously it needs to be available to everybody, so we're about to introduce a family group so it's more inclusive for our males.' (d3FDM)

It is important to take into account the fact that different women and different BME lawyers may have different needs from diversity initiatives. Several of our BME lawyer respondents stated that they thought they were at a disadvantage compared to white male and female lawyers due to the operation of mirroring effects in the recruitment and selection procedures of employing organisations.

'I think the challenge for the professional women is not getting in, it is how they develop in it and how you make use of their talents. But the problem of race is how to get in, in the first place. Once you're in it, you can get the returns and work hard and over time you'll probably do okay, but the challenge is how you get in it because of course people tend to recruit people who in some way resemble themselves.' (d7MBMEEP)

Consequently, diversity initiatives need to be sophisticated and tailored sensitively to the needs of their intended beneficiaries, while also taking into account the possibility of increased discrimination or cynicism in respect of their efforts as discussed below.

### 5.3.2 Resistance to Diversity Initiatives?

Two diversity managers and some lawyer respondents raised the issue of resistance to women's groups and BME groups or scepticism about diversity initiatives when perceived as tick box exercises.<sup>168</sup> For example, one diversity manager noted that women or BME lawyers might shun initiatives and networks if they felt that their participation could make them appear as victims or involved in divisive enterprises that are just for the benefit of certain employees who are perceived as having 'problems' fitting in.<sup>169</sup> As one respondent said: '*I don't necessarily think that making more of a distinction between women and men would help in sort of encouraging diversity.*' (c9FWS) However, another diversity manager demonstrated the impact that the next generation of lawyers were having on their progressive City firm by challenging the views held by some of the partnership. She recounted how a well regarded male associate's announcement that he would be taking his two weeks' paternity leave entitlement had clearly surprised some of the partners. She considered that his actions had caused them to question their traditional views of young male associates. It appears therefore that the actions of a few individuals may have an impact, whether or not these are within the context of structured diversity initiatives.

Our respondents found that BME lawyers were less inclined take-up of diversity initiatives than were women; for example, one diversity manager made the following comments about her firm's BME network:

'On the BME side, I have to be honest, there hasn't been a huge drive here, and it's been actually slightly disappointing because the anecdotal feedback has been they actually they just want to be... a lawyer or an employee.' (d3FDM)

While progress is certainly being made, there is still a tendency to articulate diversity issues such as differential male / female promotion rates, or BME lawyers' struggle to enter leading commercial firms, as the result of 'choices' made by women and BME groups: that is, as the result of supply side factors rather than exclusionary white masculine organisational cultures<sup>170</sup>. Supply side explanations for lack of diversity may well represent part of the problem, but they also allow firms and chambers to avoid responsibility for those issues that are within their control. One diversity manager said:

'[I]t's definitely pre-university, and we're only as good as the admissions, and so if they're not very diverse, which we know they're not, then it impacts a lot on the market we're potentially picking up.' (d3FDM)

However, university figures across the spectrum of higher educational institutions reveal significant diversification of the student population.

Some respondents were fairly cynical about their organisation's genuine commitment to diversity policies. For example, some thought that diversity promotion was instrumental and more about public relations than a commitment to culture change:

'What I find really unfortunate is if somebody recruits somebody who, say, is a Muslim woman who wears a hijab, the next minute she's splashed all over their next publication – it just makes me cringe.' (a16FBMESP)

Likewise one black equity partner noted that some organisations tended to take a tick box exercise approach to diversity accreditations and sometimes to use minority lawyers as tokens:

'The firm I worked for were going for this [diversity] accreditation... Because the profile of who was working in this department wasn't quite what we would want it to look like in terms of diversity, at the time I had a bad sports injury and I was on crutches and one of the partners said to me, Legal Aid Board will be [in] the building at three o'clock on the ground floor, when I give you a ring, come down and walk across the floor with your crutches, making sure they see you; that will cover our diversity; you are black and have a disability.' (d7MBMEEP)

Academics have likened this type of approach to equality and diversity initiatives to a hollow shell lacking in any substance but with surface appeal.<sup>171</sup> One deeper examination of the approach reveals an implementation gap between the public relations value of articulated policy and the desired effect of changing

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<sup>168</sup> Ahmed has termed this 'tick box performativity', which she describes as 'doing the document rather than doing the doing'. She argues that we have a new politics of documentation, which takes diversity and equality as measures of institutional performance and that writing documents that express a commitment to promoting race equality is now a central part of equality work, and concludes that such documents can work to conceal forms of racism (Ahmed, 2007; see too 2004).

<sup>169</sup> See also Liff and Cameron, 1997; Smithson and Stokeo, 2005.

<sup>170</sup> See the discussion of human capital theory in 3.2 for more details of the literature on this area.

<sup>171</sup> Hoque and Noon, 2004.

cultures at the workplace level.<sup>172</sup> Unfortunately such approaches to equality and diversity not only concretise existing inequality but give cover to discriminatory attitudes and position, constructing those who seek to challenge them as extremists who are never satisfied with the organisation's efforts 'to help them'. This promotes cynicism towards, and discrimination against, those whom the policies are ostensibly designed to protect.<sup>173</sup>

### 5.3.3 The Introduction of Formal Mentoring Systems

We have discussed in Section 4 the prevalence of informal mentoring within the profession, and the vital role the mentor or patron will play in advancing their protégé's career. The significance of mentoring is now widely recognised. Formal mentoring programmes, in particular for minority groups and women have therefore received a great deal of attention in recent years in both academic and trade literatures.<sup>174</sup> Their value for lawyers has also been discussed<sup>175</sup> and senior lawyers and barristers in this sample also spoke of the importance of implementing formal mentoring systems:

'Mentoring has now come into place within the Bar and professional associations. There are now courses you can go on. So, there was none of that but it's moved on a lot.' (c1FWB)

'It's a two-tier thing: we provide a support network for junior females wanting to enter the profession, coming up, and also provide a networking opportunity for women that have more than five years worth of experience. And I found it very motivating, so I'm trying to encourage women here to at least get involved, or let's get together every few months and have a chat and see if we can't put junior girls together and more senior ones, to open their minds a little bit about where they could end up.' (e14FWIHS)

One female senior partner indicated that formal mentoring has now been introduced in a number of law firms and that this had proved helpful. Indeed, the importance of formal mentoring programmes was an issue raised by a number of early career women and BME respondents:

'I think the idea of having a mentoring system would be a really good thing. You know so someone is there to help you and maybe make it so that the mentor is a role model, so that they are the same ethnicity or religion.' (d9FBMES)

Further, respondents indicated that law firms were now consulting associates about firm policy:

'Some have involved their associates much more in the management structures of their firms than previously. I mean, you know, in the past the idea of asking an associate what they thought was utterly complete anathema, but now firms are beginning to involve them in councils and so on and so forth.' (c8FWSP)

The experience of formal mentoring by many of our BME respondents in the North was that those most likely to receive both effective formal and informal mentoring were young white men. A black equity partner used this state of affairs to argue for more formal mentoring systems, since he thought that these might go some way to reduce the disadvantage women and minorities suffer as a result of the informal mentoring which white males typically receive: '*people who are more familiar to those people who are already in power get more support*' (d7MBMEEP). By contrast, several BME respondents from the South considered that they had benefited from mentoring themselves and were involved in mentoring BME law students or junior colleagues now that they had more seniority.

### 5.3.4 Flexible Hours and Part-time Working

Across the UK economy one in four workers are employed part-time and with the introduction in 2003 (extended in 2007) of the right to request flexible working for working parents, more employees are seeking flexible working patterns than ever before. However, access to flexible working patterns vary across sector, industry and in relation to the size of the organisation. For example, access to flexible working is more common in the public sector, in large organisations and where there is a high proportion of women in the workforce.<sup>176</sup>

The terms flexible working and part-time working are often elided; flexible working may mean a full-time position with some flexibility around start and end times or work location (in the office, at home, elsewhere) or fixed hours working, rather than true part-time working. We have used the terms as respondents have used them in their interviews with us. For many of them, flexible working meant having a little more control over their full-time working lives, whilst for others it meant part-time working arrangements. In this sample, there was evidence of part-time arrangements by senior women within law firms usually after a return from maternity leave. Many respondents stated that by moving to part-time hours, a lawyer was effectively

<sup>172</sup> Creegan et al., 2003. See earlier discussion of Schein (2004) in Section 1.2.

<sup>173</sup> Ahmed, 2007.

<sup>174</sup> McCarthy, 2004; Begum, 2006; Dowell, 2009; Singh et al., 2006; Vinnicombe et al., 2004.

<sup>175</sup> See Kay, 1997.

<sup>176</sup> Kersley et al., 2006.



stepping off the career path and she would need to return to full-time hours to demonstrate commitment to the firm and to be in a position to seek promotion. A chair of a women's network explained the situation in her firm with the following statement:

'There is this flexibility... And I don't feel that here you would be treated any differently if you did say, actually [I want flexible hours]. I've got one of my colleagues, for example, who's a couple years older than me, who's got two young children. At the moment, she works three days a week, two days from home, and she has a slightly less client facing role. So she does, kind of, background work behind other people and also she helps us with precedents and research and things like that. So it's not as high pressure. But she's still really ambitious and when her kids are older she's going to want to come back full time and carry on progressing.' (d6FWS)

Many respondents stated that suspicion of flexible working and reluctance to tolerate reduced hours had been somewhat alleviated by the recent recession in which many firms had used flexible working strategies to reduce labour costs and avoid redundancies. A number of respondents had said they had taken advantage of the opportunity of working a four day week or taking one month off unpaid as a means of achieving a better work-life balance even if only in the short term:

'One of the things I think is helping, because we've had the flexible working programme because of the economic climate, and we have had people working four days or taking sabbaticals, it has opened the eyes of certain partners in certain departments who previously said, you can't do this job unless you working here five days a week.' (d6FWS)

'I think flexibility has been coming slowly all the way through in terms of working patterns. This recession is one of the best things for it, because the people who wouldn't normally have flexible working are currently involved with flexible working.' (d3FDM)

However, while flexible working appears to be more typical in some organisations, the evidence from our respondents suggests that it results in the problems revealed by other research<sup>177</sup> such as inappropriate workload re-allocation, difficulties in keeping to reduced hours and no longer being on the career ladder, as outlined in Section 4. Indeed, one diversity manager stated that her firm chose not to use the term flexible working given its perceived negative consequences for team workloads and the careers of those working flexibly:

'We are looking at individualised working, we try not to use the word flexible working because it has negative connotations within legal services. We are not saying you must work this way or that way we are saying you tell us what do you think would work bearing in mind the impact on your team on your work on the client and we will work with you to come to an agreement on that.' (c11FDM)

A further challenge to making flexible working effective within the legal profession, as indicated above and in the following quotation, is the perception that the client simply will not tolerate it:

'And the main barriers that I saw within practice, bearing in mind I was working in the City, is the expectations of clients and the sort of transactions that you were doing. It requires a lot of ... acceptance of different ways of working from everybody. So it's not just the firm that you're working with, it's your clients as well.' (e6FWIHS)

This position however is undermined by the fact that other respondents were able to give instances of successful flexible working, including job –share arrangements.

There were also a small number of innovations whereby groups of legal professionals had set up their own flexible firms, as a response to the inflexibility found in the legal labour market:

'I've made my mind up that I don't particularly want to be a partner in a law firm, although I could see myself back in private practice in a little while, but it would have to be on flexible terms, and I think that's where law firms and the legal profession fall down... They seem to want you at your desk from dawn till dusk: working from home is slacking; you're not actually working. ... And I know there are law firms because I've seen examples of law firms that work completely electronically and remotely, and they just get together once every few weeks for coffee to see each other, and it works very well.' (e14FWIHS)

'There's a chambers in London that was set up by women, for women and what they do is they say – it's part of their policy that they say, come back whenever you want to do whatever work you want and by taking that pressure off its tenants, they find that people get back much quicker, doing more than they otherwise would have, because they are able to just sort of totally do what they want. Actually, that works better for the team than something more prescriptive where you're told almost as though you're employed, well, you've got to be back within a certain period of time, or, you know, you can't come back two days' a week because you're not going to pick up good work and things like that which I think does happen to women...' (b11FWB)

Tracking whether the number of these types of flexible organisations increase, whether they grow in size and how successful they are in the legal labour market, would be likely to produce highly valuable data and shape future research in the area of flexible working and diversity.

<sup>177</sup> See for instance Durbin and Tomlinson, 2010; Webley and Duff, 2007.

## 5.4 Summary

As this section makes clear, diversity initiatives are being implemented by a number of large organisations; however their efficacy and also their take up is variable. Also, while a small number of firms are changing recruitment strategies, others attribute the lack of diversity within the legal labour market to supply side factors and the choices that women and minority groups make. As a result the disadvantage women and BME practitioners continue to suffer tends to be explained in terms of either their own choices or deficiencies.

## 6. RESPONDENTS' OPTIONS AND STRATEGIES

### 6.1 Background

The previous sections have presented our respondents' perceptions and experiences of the formal and informal processes which have affected their career choices and working lives. This section focuses on how these factors are perceived, mediated and how respondents have responded to these factors when formulating their career strategies. This is particularly important because institutional and cultural barriers lead individuals to take counter balancing steps, which translate into different rates of participation and success within specific occupational contexts.

The life-stories of our respondents illustrate how specific labour market outcomes, such as the lower progression rates and income differentials experienced by female and BME lawyers, are not necessarily the neutral and natural result of individual choices (such as the choice to prioritise private over working lives or to invest less in one's education and human capital) and preferences (preference for specific markets or sectors which offer lesser career prospects)<sup>178</sup> but also reflect differences in opportunities, options and resources. Choices are rarely free or unfettered but are rooted in material circumstances, personal and cultural histories and other structural inheritances,<sup>179</sup> which constrain their career choices. As we will indicate in this section, individual professionals make sense of and respond to their circumstances through individual strategies. These have significant effects not only on the career trajectories and working lives of the individuals in question, but also on the structure, operation and configuration of the whole professional field.

It appeared that some of our respondents had not had any preconceptions of what a career in the legal profession would be like for them. However, several others stated that they had held a number of assumptions which included a view of the profession or sections of it as elitist and unattainable. Indeed the profession is often perceived as an alien if not hostile world. In the words of one of our respondents:

'[I]t was middle aged men, who all smoked cigars, who wore pin stripe suits with bizarre costumes, who always spoke with plums in their mouths, who all had gone to Oxbridge and got firsts, had gone to public school and wouldn't come near a girl from the north east of England, from a working class background who went to a secondary modern. (c2FWB)'

This is a world populated by John Deeds (c2FWB) or Rumpole of the Baileys (c3FWB/Ac) where women are admitted only if *'their Dad's a jury judge ... , or they're sleeping with a judge'* (c2FWB).

These assumptions, reproduced in the media and inadequately challenged through formal mechanisms by the profession or school career services, operate as a 'not for the likes of me syndrome'<sup>180</sup> and act as a powerful discursive closure mechanism which leads many candidates to self-select out of a professional career. In this context, as indicated by one of our respondents, a very pertinent question for the professions would be: *'how many of those people who would've applied ... may have not applied because they've decided, I'm a girl, I've got the wrong accent, I went to the wrong sort of school, I can't make it'* (c2FWB)? However, those respondents who were successful in gaining access to the Bar, often as a result of a fortunate and fortuitous encounter with a helpful mentor or adviser, said that they had found a rather different world from that which they had envisaged.<sup>181</sup>

On the other hand, perceptions of the profession as an alien and hostile environment had corresponded to reality for at least some of our respondents, and in particular for those who had entered in the 1970s, and had, as previously discussed, experienced direct discrimination. Few younger respondents gave such examples of overt discrimination, but some in our sample did recount a range of barriers which they had encountered in seeking access to the profession. These tended to cluster around financial issues, the supply and operation of training contracts/pupillages and the role of educational credentials as discussed in Section 4. We shall now set out some of the strategies that our respondents employed in the face of the barriers that they reported.

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<sup>178</sup> Hakim, 1996, 2000.

<sup>179</sup> The concept of choice and the extent to which women lawyers are able to exercise it freely is explored in depth in Sommerlad and Sanderson, 1998. See too Thornton, 1996; Nelson and Trubek, 1992; Archer, 2003.

<sup>180</sup> This was also emphasised as a key issue in the recent report on Fair Access to the Professions 2008.

<sup>181</sup> This supports the need for formal mentoring and other professional outreach schemes (such as the Bar's citizenship by mock trial scheme or speakers for school programmes) in breaking down cultural barriers to entry.

## 6.2 Entry Strategies

Some of our respondents developed some specific strategic responses designed to deal with entry barriers, but most of our sample revealed less evidence of strategic thinking at the beginning of their career. This is not surprising, as for many candidates the application process represents the first encounter with a relatively alien world and few of our respondents had previously had the opportunity to develop personal strategies to further their careers. Our respondents' accounts indicated that as they became more conscious of their position and possible future professional careers, they had developed a much more sophisticated array of strategic plans and responses to improve their situation and manage their careers.

An early career strategy was to identify and target specific employer organisations which would look favourably on young lawyers' personal attributes, skills and characteristics and which would, in some way, match their career aspirations and broader world view. For instance some of our respondents targeted radical chambers whilst others, echoing insights from the literature,<sup>182</sup> commented on how BME professionals tend to seek employers who shared a similar ethnic background.

This is a context where people can turn necessity into virtue, as in many cases initial disappointment acted as a catalyst for strategic change, leading, in some cases, to the radical rethinking of priorities, strategies and targets; for example '*I did apply for a lot of City firms and I got rejection after rejection after rejection*' (c4FBMEEP). This respondent, for instance, re-orientated her aspirations away from large scale City practice towards starting her own firm and consequently sought employment in smaller practices where she could pick up the necessary managerial knowledge:

'What do I do? Do I continue on this road, trying to get into the City, which is where everybody tells me that I need to be as a lawyer, or do I need to rethink. And I sat down and thought, well, what do I want to do, and I always felt that I would like to own my own firm and I decided to take the offer, accept the offer from [\*] because it was a smaller firm, and I felt that I could learn more in a smaller firm because I needed to open my firm and I needed to know from grassroots level up to the partner, how to run a practice.' (C4FBMEEP)

Interestingly, whilst one would expect unsuccessful applicants to seek feedback in order to strengthen future performance in the selection process, very few of our respondents sought or were successful in obtaining worthwhile advice.

Another feature of our respondents' experiences was the need to take a more circuitous entry route into the profession than that taken by more middle class and/ or white men.<sup>183</sup> Thus several, especially those who were either BME and/ or drawn from a lower socio-economic background and/ or had attended a new university, reported a lengthy entry process involving taking on paralegal work in the hope of gaining a training contract through hard work and exemplary performance; the following account of a BME female paralegal was not atypical:

'I just decided to settle for anything. So that's why I did the legal assistant, and then moved my way up. But my main goal right now still is to do corporate commercial.... So, I'm hoping that with my time at that firm at least I'll be able to contribute something so I can move up.' (c5FBMEPara)

In some circumstances this strategy paid off (especially in situations in which the respondent was able to make herself indispensable), but this route does not seem to offer any certainty of progression since firms increasingly tend to treat paralegals as an independent and permanent position in their division of labour:

'The question that an employer would ask an individual in an interview is – 'what are your career objectives?' I was told by recruitment agencies that if that question ever comes up, always say that you want to get into a law firm, rather than you want to become a solicitor, because it's a turn-off for them. For some reason when she said that, I felt as though if you say that you want to become a solicitor, an employer sees that as your main objective and they feel as though you're not coming for the job as a paralegal, but you're coming to see whether you can become a solicitor within their firm.' (c5FBMEPara)

Indeed, there were suggestions from respondents that employers are often unaware of their paralegals' qualifications or aspirations. Thus, in many instances, working as a paralegal may be a distinct career path rather than being a stepping stone to a legal professional career, as the paralegal is used as a distinct component in the legal profession's business model as we discussed in Section 4. In consequence, mobility between these roles may be increasingly restricted.

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<sup>182</sup> Heinz and Lauman, 1982.

<sup>183</sup> Again this aspect of non-normative professionals' career trajectories features strongly in reports on diversity in the profession in other jurisdictions. See for instance Groenendijk's (2007) account of the lengthy and circuitous route Dutch aspiring lawyers of Turkish and Moroccan origin have to undertake in order to gain entry into the Dutch profession.

Finally, some of our respondents, as indicated by the next quotation, seemed to be particularly strategic in growing, displaying and exploiting their human and social capital in order to give themselves a better chance in the recruitment process. Great emphasis was placed by some on building up a competitive CV from an early stage so as to showcase appealing skills, attributes and dispositions to future employers. Some candidates have succeeded in internalising the discourse of employability as they seek to remake or at least re-brand themselves as desirable products on the labour market:

'I think I've always done things to enhance my CV; so things like, I studied abroad, and I think that just sometimes just helps my CV to stand out off the page; and just done things like travelling, and being a prefect, being a house captain, and different things like that. And also I studied Japanese at A-level, so I just think it's just the different extra things that have helped. Also just general work experience, I think, has helped.' (e13FBMETS)

A complementary strategy deployed by other respondents focused on developing and exploiting informal contacts within a profession where '*sports and that type of activity, like drinking, help*' (a6MBMES) the 'outsider' to negotiate boundaries and be accepted as an insider. Indeed, as indicated throughout this report, this is a world where personal contacts, relationships and insights are essential for developing and maintaining a successful career. This is something which shines through the personal biographies and lived experiences of many of our respondents.

### 6.3 Career Management Strategies

The testimonies of many of our respondents indicated that they had become conscious of their difference and of the unequal opportunities that this brings throughout their careers, even if these impressions were not always easy to articulate given the informal and subtle character of the processes involved. The profession may not be made up of '*nasty, evil men trying to squash women*' (a19FWEP) but our previous sections have registered the interplay of complex and far reaching sources of disadvantage which are rooted in the institutional and cultural fabric of the legal profession. These include the structural configuration of the profession itself, which places great power and authority in the hands of key individuals and on what are often ad-hoc and informal decision making processes,<sup>184</sup> the pervasiveness of cultural stereotypes leading to the gendering and racialisation of specific, usually less prestigious and remunerative,<sup>185</sup> roles and activities, as well as the disadvantages flowing from the broader political economy and social expectations:

'[W]omen do unfortunately have to have the babies if they're going to have them and so you're out of the loop on maternity leave and it's not just the practical impact of that, it's the emotional impact of maternity leave and part time working and growing children ... and men still, on the whole, get to do just the work; they're not expected to pick up the pieces at home.' (a19FWEP)

These processes have been discussed elsewhere in this report and will not be described again here. Instead this section will provide some evidence of the respondents' direct experience of some of these issues, leading to a consideration of how such formative events may have contributed to the development of specific strategic responses. Our respondents developed a range of strategies to respond to and manage the challenges posed to them by the profession's institutions and culture of work. Responses displayed in our sample range across the full spectrum from assimilation and compromise to disengagement and withdrawal through attempts at playing the game and attempting to reform the system from within. We begin this section with the more conciliatory strategies which centre on assimilation or at least compromise with the dominant culture.<sup>186</sup>

#### 6.3.1 Assimilation Strategies

Some of our respondents stated that they had adopted behaviour and traits that allowed them to assimilate into the dominant culture.

'And if your strategy is they will have to engage with me and I'm not making any compromises on who I am or what I am, then fair deal to you, but it isn't going to work and it isn't going to work for you if you're any colour really... So if your attitude is I'm prepared to make some limited compromises but only if they're prepared to make some limited compromises to adapt to me, then you can work at it, or then you've got a chance of working it and then you need a bit a bit of luck and you need to be good at your job.' (d7MBMEEP)

Some minority professionals considered that they must compromise, negotiate and even transform themselves to fit in the profession.

At its most basic level, compromise involves the rescheduling of private ambitions and responsibilities around the demands and rhythms of their professional lives. One area where this is particularly evident is around

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<sup>184</sup> Bolton and Muzio, 2007.

<sup>185</sup> Sommerlad and Sanderson, 1998.

<sup>186</sup> Bolton and Muzio, 2007; Wacjman, 1999.

maternity and its planning, with a number of our respondents postponing pregnancy until their careers are well established which usually coincided with their mid-30s:

'I had my daughter when I was 34 because you're doing a career and you're... And I was job-jumping all the time, earning more money and gaining experience, and I suddenly thought, whoa, you know, I'm just about to be 34 and I thought, better have a baby fast!' (b9FBMEIHS)

'[M]any of our lawyers are female and not having children and a lot are having them older; I had my first child when I was 31.' (a2FWEP)

This is a strategy which carries some risk as the rhythms of a high pressured professional career may be inconsistent with a fulfilling personal life as captured by the words of this female barrister:

'I think of a lot of my friends they're in their mid-30s and [they] haven't even ended up having children because they've been so caught up in the day to day, you know... just not making personal life decisions because they're so pressured.' (b11FWB)

Of course maternity is only the beginning of a difficult balancing act between private and professional lives; one where the private is often sacrificed to the professional: *'I did not take time off to go to school sports days, you sort of felt that if a bloke took time off to go to school sports day everybody was saying what a good father he is.'* (c6FWEP)

However, compromise did not only involve adjustments to how people manage their time or plan their private lives, but at times struck at the very heart of one's being. As respondents reported, there was pressure to reframe their very identities, accents and personalities.<sup>187</sup>

'I'd bet my bottom dollar if that poor girl or man had come from Hackney Downs for instance and had gone to a state school, by the time she gets to these City firms she would have lost her identity and accent.' (c4FBMEEP)

'[O]ne of the posh students said they couldn't understand my accent, if I was speaking English here... So, I think, you were expected to modify your English and speak BBC English, but I never did.' (c3FWB/Ac)

'I was different and I was aware that I had to be better and a bit less challenging than I would naturally be.' (d7MBMEEP)

In extreme cases the attempt to fit in and assume an acceptable professional persona involved the symbolic disconnection from one's personal background and private life as indicated by those women solicitors who feel that *'as a woman ... you can't have the pictures of your kids on your desk'* (c6FWEP) or the BME professionals who distance themselves from their ethnicity.

'[W]henever I go to a firm and I see another Black face, whether it's Black or Asian or African or whatever, I tend to nod because I'm just acknowledging that person because I see them and they look like me and I'm just saying hello. Some of these people won't even make eye contact with me. It's almost as if... it's almost as if I've exposed them for being Black.' (c4FBMEEP)

### 6.3.2 Playing or Reforming the System

A number of strategies focused on developing responses that would allow respondents to overcome or even turn to their advantage some of the structural, institutional or cultural barriers within the profession. A clear example of such strategies focuses upon notions of performing and perhaps more importantly being seen as performing. Some respondents were particularly strategic in volunteering to participate on committees in their organisations or for the broader networking opportunities offered by the profession to gain valuable exposure and visibility. This is crucial since, as we have discussed in Sub-section 4.2, in the informal and personal world of the legal professions, decisions are often based on impressions and on winning personal favour with leading partners.<sup>188</sup> As a result, visibility and self-promotion (to the right people) becomes essential:

'A choice when I was a trainee to – and this is, I think was quite significant on my personal career but probably less applicable on a broader scale – I, when I was probably six months into my training contract, decided that I needed to be very clever about the way I networked within the firm in order to secure a job when I left, because at that stage, you know, jobs were few and far between. I therefore specifically planned... I suppose, I'd be working with the powerful partners: I found out who was powerful, I found out who the biggest clients of the firm were, I found out where the power base in the firm was, and I applied myself in that direction very... very carefully. And therefore I know that that resulted in me, when I finished my training, being offered a job with the most powerful members of the partnership, and I don't think people are very clever like that, on the whole; and that resulted in me getting a job in a good area and progressing quickly in my early years as a newly-qualified solicitor.' (e15FWSP)

<sup>187</sup> See Anderson-Gough et al., 1998; Grey, 1994, 1998; Sommerlad, 2008. See too Carbado and Gulati (2003) who speak of the performance non white lawyers must give to exhibit conformity to the dominant culture, which, they argue, can be described as 'acting white' and Yoshino (2006) who speaks of 'covering'.

<sup>188</sup> Hanlon, 1997.

Thus one of our female barrister respondents '*made a point of making sure that I'm on the pupillage committee, I help with the interviewing process*' (a7FBMEB), the minority solicitor who is '*pretty much on every committee I can be*' (a4FBMES) or the BME firm which raised its profile by becoming active in the Law Society:

'[W]e try and deal with things by getting inside with the Law Society and speaking to them. We joined these other organisations and societies because it raised our profile and actually people then looked at [\*] and said, well, we need to send them work because there are very few other black owned City law firms doing that type of work and so as a result we got quite a lot of work from that.' (c4FBMEEP)

However, as we have discussed above, some of our respondents thought that self-promotion was an area where women were at a disadvantage:

'[Self-promotion] it's not a language that women are comfortable with and we need to stop that because we need to realise that we're doing ourselves a disservice by being so... by not shouting from the rooftops our experiences because then we're not picked up on the radar.' (c4FBMEEP)

'[Women are] always saying they're not as good as they think they are, and it's not natural for women to expound about how good she is at something. It doesn't go with the territory.' (c8FWEP)

Yet some of our respondents as indicated in the next quote strategically developed support systems to overcome such difficulties by promoting each other's achievements:

'[W]e both sort of acknowledged that we were hopeless at blowing our own trumpets so therefore we would blow each other's. So I wrote a lot of the promotional stuff for her, and she does the same for me.' (d4FWSP)

In some instances, difference was viewed as an advantage or something that could be strategically turned into an advantage. One respondent considered that being one of only three women in the firm helped her to stand out in the eyes of clients '*I want the lady who does employment law, you have a lady who does employment law*' (c8FWEP), or the BME solicitor who thought that ethnicity could carry kudos with clients '*I want to show the other side that I've got that I've got a big black lawyer*' (d7MBMEEP) and the women partner who spoke of standing out as a woman in all male events: '*I like that ... just the fact that you're a woman ... you can play it up*' (a2FWEP). Some of our respondents were particularly active in promoting their novelty value; one female lawyer strategically takes on golf '*we have a lot of male partners who play golf but no women so I thought ... I can bring along my clients... another feather in my cap.*' (a18FWEP) or the BME solicitors who re-package and market their ethnicity as a 'Unique Selling Point' (USP):

'[T]he reason why we wanted the black owned firm is because we thought that would be our USP, that would be our unique selling point because we will be different from the other City firms because they don't have black partners, or they didn't have, you know, they couldn't say that had 100% minority partners because they couldn't do. They're lucky if they had any percentage at all in those days. So when we opened, we could allow our difference to make a difference and actually make us be noticed for that difference.' (c4FBMEEP)

Finally, other respondents articulated clear attempts to reform professional institutions from within in order to overcome potential structural barriers and to make the profession more accommodating to diversity. Examples include: drives to persuade their chambers to develop maternity support policies (as discussed above), to formalise and render more transparent partnership governance regimes; and, perhaps most commonly, to develop internal support mechanisms and alternative business networks:

'Well, the main thing for me was being the first in chambers to have a child and being the one who had to push for the maternity leave provisions of the Bar Council to be incorporated within chambers' constitution. That was very difficult and particularly, also, the way it was received the first time when I had my first child ... I must say, overall, the key supports in chambers were very much do what you want and we'll work around it but people who I was friends with were still backbiting and even in the build up around the maternity leave I knew that people were kind of speaking about it and moaning about it.' (c1FWB)

'[W]e provide a support network for junior females wanting to enter the profession, coming up, and also provide a networking opportunity for women that have more than five years worth of experience. And I found it very motivating, so I'm trying to encourage women here to at least get involved, or let's get together every few months and have a chat and see if we can't put junior girls together and more senior ones, to open their minds a little bit about where they could end up.' (e14FWIHS)

'So we set up a network, our own specific one called the (\*), which is still going. It was set up in 1992, 93; and we just invited people from various professions, so it was not meant to be you're coming to sell your goods, but just simply to network and bind together, because we could see the men were doing this on the golf club, they were doing this on all sorts of functions, whereas the women weren't.' (c6FWEP)

### 6.3.3 Disengagement and Withdrawal

A more radical set of strategic responses displayed in our sample featured the withdrawal towards more congenial roles, sectors and specialisms or, in its most extreme form, the abandonment of the profession. Thus a number of female lawyers choose or subsequently migrated to specialisms that offered the prospect of a better work-life balance:

'I chose employment law because you can do that without having to do all the networking, socialising and client entertaining to the extent you have to in other specialisms.' (a3FWAc NE)

and

'They've shifted away from crime and gone and done family law, simply because the structure and the kind of work is very last minute, the hours are very long, and they just cannot balance it with having children.' (e3FBMEB)

In parallel with this, the increasing growth and corporatisation of law firms is creating a new series of roles, functions and career tracks which may be more accommodating in terms of diversity and work/life balance. The roles of 'legal director'/'of counsel' or that of the 'professional support lawyer', a non fee-earning position which is mainly responsible for knowledge management, are, as we have discussed in the preceding sections (section 5), emblematic of such new opportunities. Both of these positions tend to be highly (but not exclusively) feminised and staffed by qualified lawyers who have left the partnership, or even the fee-earning track altogether:

'I think as soon as you do get into a law firm, the end of the line in terms of career is partnership, so that's something I've always aspired to doing. We now have a role of Legal Director, which is a possibility, and it certainly suits mums and those working part time who aren't wanting the responsibility of a partnership, and having to put in all the hours that partnership requires, so it's one of those roles. I'm not quite there yet. I keep, I think because early on I sort of, had decided that, you know, I want to be a partner, I think I'm going to have a decent shot at it. But I'm just sort of, thinking about that other role.' (d1FWS)

Strategic responses tended to require mobility, as our respondents moved (or were trying to move) in search of better conditions from large to smaller practices, from London to the provinces or as stated by this male BME solicitor, from private practice to an in-house role: *'There's going to be a point where I'm expected to bring in lots more work and engage, and I'm not going to be able to do that ... so I can see myself going in-house.'* (a5MBMES)

Finally, some respondents indicated that the compromises, demands and pressures of a career in the legal profession might be simply too much, and they were considering exit. Indeed, as indicated by the quotes below, law is viewed as a temporary career.<sup>189</sup> This does not seem a question of commitment but of the difficulties of reconciling the profession's practices and work culture with the exigencies of a personal life:

'I think women over 40 in the legal profession in a large firm, ... I'd be very interested to know the figures, but I don't think there are so many. And I've certainly noticed a lot of people who I had a great deal of regard for in my area hitting 40 and coming out, all for different reasons but it was, it's been very interesting that there's been this sort of exodus. And I don't know how far it's the kind of gender thing of people wanting to give themselves a chance, last chance to have children, or whether it's more about, you know, just thinking, well, I'm not going to get any further, I'd rather go off and do something else.' (d5FWSP)

'Well, I do see myself staying in private practice for another few years, but then and still then I think for the next five to ten years I would like to stay in the legal profession. But, I think, especially after if I get married in a few years then I do want to have a job which is, you know, like, just a nine to five job or, you know, something that's not going to impact my home life. ...if I don't think that I can have that in private practice then I will look for another job where I can have that. But, I do really enjoy the law and I do enjoy working in the legal profession and I know there are others paths as well, so. ... But, I guess in the longer term, you know, nowadays people do go on and people don't do the same thing all their life.' (b4FBMETS).

## 6.4 Summary

This section has documented the sense making and agency processes through which female and minority lawyers come to understand and respond to their experiences in the legal profession. These range from assimilation to withdrawal, through attempts to play the game or reform the system from within. Different strategies often interact and coexist with each other in a fluid assemblage, as individuals experiment with different responses according to their career progression stage and changing circumstances. These sense making and strategic response processes are essential for understanding the profession's past and its future, as they represent the mechanisms through which informal and formal barriers produce statistical outcomes and provide the drivers through which established practices, structures and cultures may be challenged.

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<sup>189</sup> Sommerlad, 2002; Webley and Duff, 2007.



## 7. CONCLUSIONS AND PROPOSALS FOR ADDRESSING THE CHALLENGES IDENTIFIED

### 7.1 Context

This has been the report of a qualitative investigation into diversity in the legal profession. We know from quantitative studies that the profession is segmented and segregated, and that there is a problem of BME and female attrition.<sup>190</sup> The aim of this investigation was to contribute to our understanding of the causes of this labour market distortion by exploring the perceptions and experiences of a range of female and BME lawyers. We sought our respondents' views on the profession's culture, its institutions, policies and formal procedures and on how these have affected and shaped their career pathways. Whilst these views demonstrated wide variations in the practices and processes of the profession along regional, organisational and sectoral axes, they also indicated significant commonalities. The picture they present overall is one of a profession that despite important advances towards greater openness and diversity is nevertheless perceived as inherently masculine in character and, further, characterised by (possibly unwitting) biases against non-white professionals and those drawn from lower socio-economic groups.

We have detailed how the formal bureaucratic structures tend, in practice, to be subverted by continued adherence to a culture which continues to be shaped by the profession's history as a male only, white, middle class occupation. Consequently its working practices remain based on the model of a unencumbered worker, able to pursue a linear career. Its resulting long hours and promotion stages were problematic for many of our female respondents. We have also reported the significance which is attached to internal and external networking, and the difficulties this practice can pose for both female and BME practitioners. We have discussed too the indications that stereotyped assumptions continue to influence the perceptions of some white lawyers, and which, because of the power differentials between equity partners and junior lawyers, can result in young white males being mentored and, conversely, BME and female professionals being overlooked.

Our respondents' accounts suggest that these aspects of the profession's culture and structure have affected their professional lives by, for instance, impeding the entry of some, channelling others into particular specialisms, and causing some to leave the profession altogether. Evidently, the failure to retain or optimise the use of expensively trained lawyers must represent a loss to the profession (a recent estimate calculated the replacement costs of an assistant solicitor at £125,000).<sup>191</sup> However, the financial cost is perhaps less important than the deleterious effect it has on the profession's capacity to serve a diverse client base, and, relatedly, to offer clients the particular skill sets and attributes that 'different' professionals can bring (such as the ability to connect with clients more effectively).<sup>192</sup> The problem of the profession's slow progress on diversity therefore requires urgent solutions. In the following sub-section we present our views on how the profession may approach tackling these issues. Because our views are informed by our data as well as by our reading of the literature, we have cited some of our respondents' views.

### 7.2 Proposals for Addressing the Challenges Identified

Following a review of trade and academic literatures and in light of our empirical findings set out in the previous sections, in this final sub-section, we make some suggestions for improving diversity within the legal labour market. These relate to six diversity based themes which focus on: the need for outreach work to raise aspirations; reform of the qualification process and greater financial support for the LPC and BPTC stage<sup>193</sup> and for trainees; the importance of monitoring and disclosing diversity data within firms and across specialisms; the development of formal mentoring schemes, role models and support networks for women and minority groups; flexible working and organizational/occupational reform; and diversity training.

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<sup>190</sup> 40% of women leave at 9 years PQE (The Lawyer 1/2/2010).

<sup>191</sup> The Lawyer 1/2/2010.

<sup>192</sup> The management literature has recognised for some time the benefits of a diverse labour force; see, for instance, CBI and TUC, 2008; Ely and Thomas, 2001; Du Billing and Alvesson, 1994.

<sup>193</sup> The vocational stage of training for the Bar was formerly known as the Bar Vocational Course to which our respondents refer. It is now known as the Bar Professional Training Course (BPTC).

### 7.2.1 Outreach Activity

As we outlined in our overview of the professional literature and initiatives (sub-section 1.3.3.1) the legal profession, and in particular corporate law firms, are already engaged in a number of pre-employment outreach initiatives which are explicitly designed to overcome many of the challenges relating to the lack of diversity. For example, the Sutton Trust / College of Law 'Pathways to Law' programme aims to redress opportunity imbalances between state and privately-educated students among legal profession elites. This scheme is backed by five universities from across England, and also seven of the UK's largest law firms. Meanwhile Lawyer 2B / BBP's state school access scheme is intended to inform state-school educated students about opportunities in the legal market. This scheme is supported by legal practices which include Addleshaw Goddard, Atkin Chambers, CMS Cameron McKenna, Freshfields Bruckhaus Deringer, Linklaters, Nabarro, Simmons & Simmons, Slaughter and May and Weil Gotshal & Manges.<sup>194</sup> In 2008, this scheme received the backing of 21 law firms.<sup>195</sup> In terms of BME-specific outreach schemes, the Black Lawyers Directory offers a variety of 'legal gateway' schemes, supported by several major commercial law firms.

Our respondents also spoke of the importance of outreach activities:

'The Bar doesn't let itself be known very well to children ... and isn't very good at setting the aspirations up from a young age, but equally the careers services in schools are terrible at helping people who want to be barristers.' (c2FWB)

'I think the first thing would be for the Legal Services Board and the Bar and solicitors to engage with career services across the country, not to leave it up to individual schools, but to engage with careers services, so that children aged under 15 can find out things without having to do it themselves. The second would be to promote more highly the systems they've got; the speakers for school. You've got these systems, you've set them up, you've recognised there's a problem, use it. The citizenship by mock trial should be advertised absolutely everywhere; every sixth form should get a flyer out.' (c2FWB)

### 7.2.2 Reform of Qualification Pathway and Training Contract and Financial Support

Respondents spoke of the importance of 'opening up' the profession to talented individuals from less wealthy socio-economic backgrounds by encouraging the profession to examine their current equation of merit with a 2:1 from an old university. As a result, several argued that the current training contract and pupillage systems, which make Law Firms and the Bar the gatekeepers of entry to the profession, represented major access barriers, which disproportionately affected minority solicitors.

Other respondents commented on the impact of the cost of training on aspiring lawyers from lower socio economic and BME groups and also mature students who must self-fund through university and training; for instance:

'I'd agree money is a big barrier, because I had the benefit of having a grant for most of my university education. And I got some money from the Local Authority when I started doing the CPE, and then I got sponsorship for my Law Society finals. So, I was really quite lucky in that I was basically funded by somebody else for almost the entire duration of my education. But I think if I had to do that now, I don't think I would do. When I've had some students sit in with me, the amount of debt that some of them have got, just to pay their way through a degree and then Law School, and then no guarantee of getting a training contract either. I just don't honestly think I would've made that decision. And it just really struck me how... and people who work hard and they're not going out living the life of Riley, but they've got a £15,000 debt easily. They're just really trying to pay it back.' (b5FWS)

'[I]f the LSB is looking to encourage more ethnic minority women into the Bar, and to retain them, then there has to be a commitment to government funding and the maintenance of publicly funded areas.' (a7FBMEB)

Some saw a solution in the development of a new system with quotas and bursaries co-ordinated by the Law Society and Bar Council; for instance:

'I don't know if it can be done, but – basically, more funding in terms of for the LPC, perhaps; training contracts, more ... vacancies, in a sense, to be opened. I don't know if that could really be done, ... and how that could be done, but for the legal profession I think it's, kind of like, getting initially in, and if there was to be, like a certain opportunity given to black minority ethnic groups, and that would definitely help.' (e13FBMETS)

'Get rid of the training contracts. Because it's a bar to some people entering into the profession because ... there has been so many studies that women, minorities, etc fare worse and ... that is a barrier because it obstructs them from calling themselves a solicitor. ... the Law Society need to be responsible for distributing them and there should be a percentage, perhaps, of training contracts which each firm, certainly the City firms, have to give to under privileged children. I think there's got to be a quota on this.' (c4FBMEEP)

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<sup>194</sup> Ganz, 2008.

<sup>195</sup> Lawyer, 2007; Ganz, 2008.

The LSC's Training Contract Grants Scheme, now suspended, went some way to help in this respect within the publicly funded environment.

Another suggestion was the development of alternative systems of competence based training and qualification. (This seems to echo some of the principles behind the SRA recent work based learning pilot which sets standards, requirements and competencies against which individual candidates can be assessed, and also the development of the LPC 3). One respondent said:

'I very much like the idea, in terms of mobility-wise, of having some form of structure that if you don't have enough money to qualify immediately out of university, to be able to incorporate it whilst you're doing it on the job.'  
(e3FBMEB)

However, this alternative has been greeted with apprehension by some as it could lead to the creation of a two-tier qualification route, with work-based learning being viewed as less prestigious. In short, the training and qualification system needs to be kept under review to limit the potential that its funding regime and structure do not adversely impact on some groups, namely BME candidates, women and those from lower socio-economic groups, more than others.

### 7.2.3 Monitoring and Disclosing Diversity Data

Much of the literature on diversity points to the importance of having reliable data and statistics at the workplace level, which monitor both the demographics of the workforce and the success of diversity initiatives.<sup>196</sup> However the legal profession press and academic studies on equality and diversity initiatives indicate that monitoring equality and diversity within organisations tends to be variable and too often lacking in substance.<sup>197</sup> A solution would be to mandate frontline regulators to publish aggregated diversity data for each legal practice they regulate. Both the Law Society and the Bar Council already publish annual statistical reports. An industry-wide, longitudinal, overview - both of gender and minority status - also already exists, and is widely reported on.<sup>198</sup> These could be supplemented by practice specific statistics, which would help frontline regulators and other stakeholders to identify 'problem' areas, while also providing potential recruits and clients access to the diversity information for which there is a clearly a market. Such an initiative would be arguably be in line with diversity transparency in other areas of the English and Welsh legal market, such as those involving the Crown Prosecution Service and the judiciary. If publication of statistics on a firm by firm basis was considered undesirable or impractical, publication could be restricted to aggregated data by practice area, generic firm type, or only for large organisations.

Our respondents also noted the importance of monitoring and linked this to the increasing popularity of league tables of good employment practice and diversity management. Private<sup>199</sup> and public sector clients<sup>200</sup> have also announced plans to request diversity data from potential legal advisers as part of the lawyer appointment process. This interest from clients has prompted the Law Society to develop two, related initiatives in an attempt to enhance law firm diversity. The first initiative is a Diversity and Inclusion Charter, which has been developed for law firms. The second initiative is the Procurement Protocol, which the Law Society hopes that purchasers of legal services will sign up to. The protocol includes a model diversity questionnaire designed to enable clients to collect and consider diversity information from any law firms tendering to provide legal services. While this programme has been set back by internal delays,<sup>201</sup> the Diversity and Inclusion Charter has garnered around 100 signatories - albeit mainly from large law firms.

Our respondents also spoke of the procurement process and securing work from the public sector, where suppliers of services are now required to demonstrate not only that they are an equal opportunities employers, but also to show what they are doing in this area through diversity based statistics:

'Procurement... So, you know, I... if I'm going to get a contract I need to be able to demonstrate that I have satisfied environmental policies and corporate culture and responsibility, I should say social responsibility and, also, equality.' (c4FBMEEP)

'Yes. I mean, I have to say, when we do tenders for work we do monitor, I know we do monitor the position of women and ethnic minorities within the firm, and we very often have to give that information, not specific information, but confirm, when we do tenders; and it does raise awareness, and does make people think.'  
(e15FWSP)

<sup>196</sup> Gardiner and Tomlinson, 2010.

<sup>197</sup> Equalities Review 2007; Hoque and Noon, 2004.

<sup>198</sup> Harris 2005, 2006a, 2006b.

<sup>199</sup> Middleton, 2006; Berris, 2007; Goswami, 2007; Velaigam, 2007.

<sup>200</sup> Goswami, 2008.

<sup>201</sup> Williams, 2007a, 2007b.

#### 7.2.4 Formal Mentoring, Role Models and Networks

We discussed at length in Section 4 the significance of informal mentoring for reproducing gendered and raced segmentation and segregation, accentuating the need for formal mentoring schemes. The importance of such schemes and of visible, senior role models for BME groups and women, were popular recommendations from our respondents, particularly by those in the North where the perception was that there are very few senior partners in large commercial law firms who are BME and/or female. In particular BME respondents in the North emphasised the lack of visible BME practitioners and many voiced strong feelings about the value of knowing that there were successful minority lawyers in the profession:

'... mentoring, having policy role models, work experience ... Each of those obviously helps, because it gives a BME young person the opportunity to experience it, experience the legal profession, see someone who is a BME succeeding in the legal profession, and I guess it gives them an opportunity to be lead by somebody that has succeeded in a legal profession. So those would be, are the things that probably help, and if we could achieve those on a national scale in an effective way, they would be more than a good start.' (e10MWS)

#### 7.2.5 Flexible Working/Structural Reforms

Opaque and/or discretionary promotional structures were identified as another significant barrier to people's careers: as one salaried partner said: *'transparency has to be helpful, I can't see how that can be unhelpful to anybody'* (d4WSP). Front line regulators might require these bureaucratic structures to be transparent and readily available to staff.

More willingness to experiment with flexible working patterns was a recommendation made by many respondents, particularly white and BME females. Our data suggests that firms appear to have been willing to adopt flexible working strategies when work was scarce during the recession as a way of avoiding redundancies; maintaining these arrangements once the recession is over would be beneficial. These arrangements might include career breaks, sabbaticals, longer periods off unpaid over summer months and four day weeks, which some of the respondents were keen to take up: *'Flexible working, particularly for retention, you struggle all that time to get there, they really should try and keep women there. Like in teaching you get school holidays off.'* (d8FBMES) Likewise, reducing hours of working would be another recommendation in terms of structural reforms. Many respondents referred to the male model of working with long hours and overtime expected on a regular basis, which is particularly difficult for women and men with caring responsibilities. Others mentioned a stricter enforcement of the working-time directive to combat such long hours' cultures within law firms. However, any moves to encourage firms to positively promote alternative working patterns should also include recommendations that these do not remove the lawyer from the career track.

#### 7.2.6 Diversity Training

Our final proposal that we believe deserves consideration relates to raising the diversity agenda more broadly, through education and training. Much academic literature shows that line managers and leaders within organisations need to understand the benefits of diversity in order to embed diversity initiatives in organisational cultures.<sup>202</sup> Diversity training is one way of demonstrating commitment to equality and diversity and understanding the potential benefits from recruiting and retaining a diverse workforce:

'I think, yes, diversity training, generally. I know we're doing some in-house, and I think the head of [organisation] right now is a diversity champion ... so that's good. I know that [public sector organisation] has a diversity group. ... And I think that is all good, and raising the profile, and I think, I mean what I said earlier on about the Attorney General, obviously being a BME woman, I think has done wonders for the profession, but we kind of need more. And the problem is, you can't just say you're a BME get a job. Do your best to encourage everyone to come in.' (e7FBMEIHS)

However, as the below respondent comments, ideally diversity training would start at the beginning of people's legal education. If built into both the LLB and LPC and BPTC it should begin the process of raising awareness of the profession's diversity problems both for female and minority lawyers and also for normative aspiring professionals:

'It would be interesting if they built in more equal opportunity training into the general training that we have with barristers, but it was just seen as another part. For example, professional conduct would be the ideal place to have it, and it is covered a little bit ... .' (e8FBMEIHB)

### 7.3 Conclusion

In summary, our respondents' accounts vividly exemplified the cultural practices which indirectly discriminate against the non normative professional and constrain individual choices. The existence of this evidence is

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<sup>202</sup> Foster and Harris, 2005; CBI 2008; Shen et al., 2009.

fundamental to bringing about cultural change. An extensive quantitative study into discrimination in the legal profession has just been completed for the Law Society of Upper Canada, with the objective of improving its diversity.<sup>203</sup> We would recommend that in order to strengthen the evidence to the English and Welsh profession, the present study could beneficially be supplemented by a quantitative survey of barriers and individual choices in the legal profession.

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<sup>203</sup> Kay, 2010.

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## APPENDIX 1: TOPIC GUIDE FOR GROUP INTERVIEWS

### Topic Guide for Focus Groups

1. What were your career aspirations when you began training to be a lawyer (training meaning when you began legal education, and then when you entered the profession)?
2. Can you identify anything or any individuals in your working environment or the profession generally which / who have been particularly positive influences in helping you realise your career aspirations?
3. Can you identify anything or any individuals in your working environment or the profession generally which / who have represented major obstacles to you realising your career aspirations?
4. What are the choices you've made which you think have most affected your career? Please describe / give examples
5. To what extent were these choices influenced by outside factors?
6. How do you see your future in the profession (or out of it)?
7. What do you see as the main barriers to women and BME lawyers achieving their potential in the profession?
8. This project is about raising the diversity of the legal profession: please give me one to three recommendations you would make to bring about change.

## APPENDIX 2: BIO-DEMOGRAPHICAL DATA COLLECTION FORM

### Biographical and Educational Details

*We are asking these so that we are able to get a sense of the demographic profile of our sample. Your answers will only be available to the research team. If you find any of them too intrusive, please do not answer them.*

#### Some information about your professional status now

Are you a fully qualified or trainee/pupil solicitor, barrister, or member of the profession?

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If you are fully qualified, in what year did you qualify? \_\_\_\_\_

What is your current employment status (type of organisation, FT or PT, career break, etc. )

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#### Some information about you

Year of birth \_\_19\_\_\_\_\_

Your living arrangements & marital or civil partnership status

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Your ethnicity\_\_\_\_\_

Your religion (if any) \_\_\_\_\_

Do you have any children or dependants? If so how many and what are their ages?

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Do you have any other care responsibilities, eg for parents?

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#### Some information about your educational background

What was your first degree subject (if you have one)? \_\_\_\_\_

At which institution \_\_\_\_\_

Have you a LLB or equivalent law degree? \_\_\_\_\_

Have you a CPE/ GDL? \_\_\_\_\_

#### Some information about your background

Were you the 1<sup>st</sup> in family / generation to go university? Yes/ No/ Don't Know

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Do do/did you have a close family member who was a member of the legal profession prior to you joining the profession? Yes/ No/ Don't Know

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What are/ were your parents' or legal guardians'(main) occupations (if known)

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Please provide any other information that you consider to be important in relation to your opportunities within the profession

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**Thank you very much for your assistance.**

## APPENDIX 3: TOPIC GUIDE FOR DIVERSITY OFFICERS AND MANAGERS AND PARTNERS

1. Basic biographical data, name, position held, gender, ethnicity might be useful as well as route into DM in legal profession
2. Does your firm keep data which reveals demographic profile of employees broken down by gender, ethnicity and seniority?
3. If so could you say what are the percentages of women and BME employees at salaried/equity partner level?
4. Please could you describe recent or current policies and diversity initiatives to attract/promote/retain women and BME professionals?
5. What is the rationale behind the development of these initiatives/policies?
6. How successful have these initiatives been? How have you assessed their success?
7. Can you explain how the firm recruits graduates? What entry requirements do you state and what skills to you seek? Are particular universities targeted?
8. Do you have any formal mentoring schemes? If so can you explain how they work (at what point is mentoring offered/who mentors)? If not does informal mentoring take place?
9. Where is promotion criteria advertised? What is the process?
10. What flexible working initiatives are used in the firm? Who tends to take these up (breakdown by gender/partner/fee earner) Does take up tend to impact on career progression?
11. In your experience how does the legal profession compare to other occupations/professions in terms of commitment to diversity practice?
12. What do you see as the main barriers to women achieving their potential in the profession
13. What are the main barriers to BME lawyers achieving their potential in the profession
14. The project is about raising diversity in the profession - please give me one to three recommendations which you think would bring about progressive change