

Voices of women at the Chancery Bar

Content warning! Earning less, bullied more and devalued at the Bar – the working life of women Chancery practitioners – and routes for real change

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Don't underestimate the impact of sharing experiences, speaking up and starting a real conversation – and using this as a tool for change.

This is my takeaway from the response to the Chancery Bar Association's (ChBA's) report, *Voices of Women at the Chancery Bar*, which I authored (as erstwhile chair of the Equality & Diversity Sub-Committee), assisted by Nicola Rushton QC (current chair), Tina Kyriakides and Elizabeth Houghton.

Voices was published in February 2021 and was the end product of four female-only roundtable discussions held in 2019 under 'Chatham House' rules, where participants were invited to share their experiences, tell their stories and voice their concerns, in a safe environment.

Having commissioned the report, the Association has seized the nettle – with a series of panel discussions, an action plan and a roadmap: *Routes for Real Change* (more about this below).

What was the genesis of this research?

I have been at the Bar for 32 years. I have attended many seminars about reaching the top as a woman in law. I have listened to inspirational talks given by inspirational women who *have* reached the top. I myself have sat on panels, talking about how to shatter glass ceilings.

But in real life, are presentations like this helpful? Are they relatable? As one participant said:

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

Amanda Pinto QC nailed it at our first panel discussion when she observed that what the profession needs are the tools to support women to have the career that they *want* to have.

Through my work in diversity and inclusion, I understand about regulation. I know that there are various commendable tools promoted (and indeed mandated) by the Bar Council and the Bar Standards Board (BSB) to support women and minority groups and to identify and eliminate discriminatory behaviours.

But is this window-dressing? Do these processes have any practical impact? Have they made things better? What needs to change? What can be done differently? That is what I wanted to find out.

Let's face it – ours can be a lonely business; that's a necessary consequence of our unique

business model. A problem cannot be halved if we think that the problem cannot be shared in the first place. Even more so, if you think that there is no one else with the same problem.

As one participant observed:

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

Having attended one of Christina Blacklaws' Women in Leadership in Law roundtables (when she was chair of the Law Society), I realised that what I should do, was ask other women about their experiences, their problems, their suggested solutions – and start a real, brave and honest conversation. Hence our roundtables.

Forty five women attended out of a (then) total of 322 female members; this was 17% of the Association's female London membership; and 24% of our total members. (We had planned to hold Leeds and Manchester roundtables, but there was insufficient take-up due to the relatively low female membership in those regions.)

One participant was under five years' call; nine were in silk; 25% were in the 11- to 15-year call bracket which is most at risk when it comes to retention (confirmed in respect of the Chancery Bar by our own research, and more recently across the Bar as a whole in the BSB's report, published in July 2021, *Trends in demographics and retention at the Bar 1990-2021*). Looking at these numbers, the experiences we collected could fairly be described as representative of our female membership and certainly could not be called unique.

As any reader of *Voices* will see – our participants did not hold back. Much of its content is shocking. Ironically, the fact that overwhelmingly, our participants loved their jobs made the exercise both saddening and strangely uplifting. If nothing else, I know from the feedback that I got after each meeting that those who attended found the process cathartic and unifying. Most of them had thought, wrongly, they were alone, that no one else felt the way they felt, that no one else had experienced what they had experienced.

The Bar has been good to me. Despite some significant challenges in my personal life, I am successful and have enjoyed my career, across two supportive sets, with some great clerking and loyal clients. Plus, as a Chancery practitioner, I am very well-paid (putting to one side, for the time being, the fact that BMIF data indicates that male barristers who specialise in my area, restructuring and insolvency, earn around 40% more than women who practise in that area). I have a career I am proud of, in a profession I am proud to be a member of. I don't distance myself from any of this – and won't assume any veneer of false modesty.

Nonetheless, I can't pretend that I haven't had some ugly experiences over the years, ranging from overt misogyny, xenophobia (my surname made me fair game, apparently) and discrimination to low-key insidious behaviours. I have mentioned some of these in *Voices*. Although I am perfectly content with my career and the scope of my practice, I am also acutely aware that the (upwards) career trajectory of my male contemporaries was significantly steeper than mine, indeed vertiginous by comparison. Much of what I had experienced barely registered with me as it was happening. Even when I looked back on my experiences, they were 'of that time', I thought. But I was wrong.

Listening to our participants, I was disturbed (and too often horrified) by the fact that so little had truly changed. Far too many of our participants – across all ranks and seniority – were experiencing discrimination. They were getting less of the decent work, they were earning less, they were getting bullied, they were the victim of assumptions and bias, conscious and unconscious. In short, very little had changed, even though our profession is now more regulated than ever.

Across each roundtable, our participants saw parallels or identical features between their experiences and those of others in the room, building a pattern and an accumulated sense of outrage. The recurring concerns across all our roundtables included:

- fairness/transparency in marketing;
- male-oriented marketing, especially 'drinking';
- fair allocation of work (a pattern of inequality where male juniors get offered the choicest opportunities and enjoy the patronage of senior male practitioners);
- macho (and arguably inherently misogynistic) working culture;
- clerking issues (such as good cases which had been promised by solicitors being diverted to male colleagues by clerks);
- sexual and other harassment, bullying;
- career development and silk (by 10 years' call, women can see that they are doing lower quality, lower profile and less well-paid cases than their male peers); and
- the impact of these issues and challenges on women's confidence, or to put it another way, *'Does the Bar undermine women's confidence and devalue us?'*

I urge any reader of this article who has not read *Voices* to do so. Our participants' voices are raw and real. I cannot do justice to their words by paraphrasing them.

What emerged from those voices were common features of their working life as women at the Chancery Bar, common problems encountered by them and the common consequences that flowed.

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As I said in the concluding section:

'This report should give both men and women at the Chancery Bar pause for serious thought – these are problems which are endemic, institutional and widespread. They need to be addressed...

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

Fighting the good fight

And what of the response? What was done (or still needs to be done) to keep up the momentum and instigate positive – and concrete – change?

As I said, the nettle has been grasped. Under Nicola Rushton QC's fantastic stewardship, the Association continues to fight the good fight. The action plan is being followed through; this has included two initial and fully booked Zoom Q & A Panel sessions; panellists included Amanda Hardy QC (Association Chair), Amanda Pinto QC (former Chair of the Bar), Nicholas Luckman (Practice Director at Wilberforce Chambers) and Lucy Barbet (Chair of the Institute of Barristers' Clerks).

In line with the action plan, there have been three further roundtables, this time with the decision-makers – in particular, heads of chambers, senior clerks.

Crucially, Nicola and her team have drawn up a meaningful strategy going forward, along with realistic and achievable recommendations: *Voices of Women at the Chancery Bar – Routes for Real Change*.

This is essential reading for practitioners and management teams alike – a practical guide which identifies the problems, and importantly, addresses *What Chambers Can Do*. As to this the suggestions are extensive, but **achievable**. They include:

- structured, data driven practice reviews;
- bias awareness training for clerks and others;
- not making assumptions about what female juniors want to specialise in or can do;
- monitor work allocation (both allocated and unallocated work), including by collecting data on fee income and instructing solicitors;
- transparency of data within chambers;
- training on effective pricing for barristers as well as clerks;
- clear policies on fee reductions;
- active sponsorship arrangements in Chambers involving all juniors;
- a 'buddy' scheme for juniors, to encourage them to support each other rather than creating an unhealthy competitive environment;
- on their return from maternity leave, consider whether that person should (for a limited period) be the only person promoted for certain pieces of work;

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- treat silks as 'clients' when allocating junior briefs (ie, silks looking for a junior must go through the clerks);
- identify sympathetic instructing firms who want to instruct a more diverse range of counsel and work with them to find ways of improving this;
- be more imaginative in devising marketing events and talk and listen to female members of chambers when doing so;
- transparency regarding all forms of marketing, by whom and with whom it is being done (for example in a weekly newsletter);
- have conversations with the directories on representation of women (or lack of it) and the avoidance of inappropriate stereotyping language.

The next stage will be publication of Chambers' participation in the roundtables and to draw up further approved ChBA policies. The objective now is to adapt *Routes for Real Change* into a best practice policy which the Association will then publish for Chambers to use.

The IBC is fully engaged in the task ahead. Lucy Barbet is coordinating roundtables with Chancery sets' senior clerks to address the issues raised – especially fairer and more transparent work allocation practices and, critically, the gender pay gap.

As for that, I cannot **not** refer to the BMIF's data; this indicates that on average, men in Chancery practice earn **almost 100% more** than women. Why? How can this be **allowed**? What is being done to stop this? Inexplicable and inexcusable. It. Must. Stop.


Outside the Bar, *Voices* has had some impact, but not as much as I would have liked. I sent *Voices* to certain organisations outside the Bar which support women in the legal profession. Sadly, I received no feedback from them.

More positively, I was contacted directly by a senior partner at a Magic Circle law firm, who was also head of the firm's Equality & Inclusion. He asked me straight: what can we solicitors do? How can we help? He told me about the protocols at his firm, with the objective of ensuring diversity and equality of opportunity when instructing counsel. This has all been fed back.

There is still a huge amount of work to be done. Many hard-hitting questions remain unanswered. But the conversation has started – and, rightly, it is getting louder. Let's keep it going. ●



Further information

 *Voices of Women at the Chancery Bar* (ChBA, February 2021) can be viewed at: bit.ly/3ofEz0b

Routes for Real Change (ChBA, August 2021) can be viewed at: bit.ly/3rRY5SV

Trends in demographics and retention at the Bar 1990-2021 (Bar Standards Board, July 2021): bit.ly/3ywZq19

The BSB Taskforce on Achieving Racial Equality at the Bar is planning a similar session for barristers of colour based on the *Voices* model.



About the author

Marcia Shekerdeman QC is a member of Wilberforce Chambers, specialising in insolvency law. She was Chair of the Chancery Bar Association's Equality and Diversity Sub-Committee, 2016-2019.