

# Women at the Bar: Research exploring solutions to promote gender equality

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# Executive Summary

## Background

The Bar Standards Board (BSB) has an important role to play in the retention and progression of women at the Bar. If the Bar is truly to represent and serve society effectively it must take positive steps to increase gender equality. The BSB Equality Objectives<sup>1</sup> 2017-2019 make a specific commitment to identify what the regulator can do to improve the retention and progression of women and what it can do in partnership with key stakeholders.

The Equality Rules in the BSB Handbook<sup>2</sup> were introduced, in part, to improve the progression and retention of women at the Bar. Those rules include requirements to ensure that barristers' chambers' selection panels are trained in fair recruitment; and that chambers monitor and review distribution of work opportunities; and produce equality, anti-harassment, flexible working, and parental leave policies.

The BSB's 2016 research on Women at the Bar<sup>3</sup> aimed to improve understanding of the implementation and effectiveness of the Equality Rules. The research findings, which were based on a survey of more than 1,300 female barristers, set out a number of examples of good practice and clear evidence of progress in some areas. These included increased reporting of unfair treatment and an improvement in women's experience of taking and returning from parental leave. However, the research also identified three key areas for improvement that hindered the retention of women in the profession, including:

- Women could face unfair treatment across a number of areas, in particular harassment, discrimination, allocation of work, approaches to flexible working, and on returning from parental leave.
- The majority of women at the Bar were reluctant to report unfair treatment, mostly due to concerns that doing so would impact on their career.
- Issues around poor implementation and non-compliance with policies and unsatisfactory levels of awareness of the equality rules.

1. Bar Standards Board (2017) – Equality and Diversity Strategy 2017-19: [https://www.barstandardsboard.org.uk/media/1819877/bsb\\_equality\\_and\\_diversity\\_strategy\\_2017\\_in\\_12pt\\_for\\_website.pdf](https://www.barstandardsboard.org.uk/media/1819877/bsb_equality_and_diversity_strategy_2017_in_12pt_for_website.pdf)

2. Bar Standards Board (2012) - Handbook Equality Rules: [https://www.barstandardsboard.org.uk/media/1562168/bsb\\_equality\\_rules\\_handbook\\_corrected.pdf](https://www.barstandardsboard.org.uk/media/1562168/bsb_equality_rules_handbook_corrected.pdf)

3. Bar Standards Board (2016) - Women at the Bar: [https://www.barstandardsboard.org.uk/media/1773934/women\\_at\\_the\\_bar\\_-\\_full\\_report\\_-\\_final\\_12\\_07\\_16.pdf](https://www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf)

In 2017, the BSB conducted further qualitative research which aimed to explore and develop potential solutions to address the first two of these issues. The research involved five workshops attended by 54 participants, including practising barristers, clerks, chambers' management representatives and other stakeholders. Workshop participants were invited to share their experiences and perceptions in relation to these issues, including to identify examples of good practice of which they were aware and to suggest potential solutions that might be taken forward by the BSB, or by others, to address some of the barriers to the retention and progression of women at the Bar. The findings from the workshops are presented in this report.

## Key recommendations

The recommendations which arise from this study can be broadly grouped into five cross-cutting themes: monitoring, transparency, policies, training and culture, as follows:

- **Expanding monitoring** – in areas including: the allocation of work, reasons for awarding work to a particular barrister, flexible working requests, and the number of workplace harassment and discrimination complaints within chambers. This could help identify where issues exist, ensuring any responses are driven by accurate information, and helping to ensure that chambers are prompted to respond to issues identified.
- **Improving transparency** - including: work allocation data, Equality and Diversity policies, and the way complaints of harassment and discrimination are dealt with. This includes key stakeholders doing more to promote and publicise good practice. This could help ensure awareness of issues and policies was improved, and ensure that discussions are seen as being 'driven by the data' rather than individual complaints.
- **Introducing or improving policies.** Suggestions included: changes to parental leave policies, developing mentoring programmes, developing frameworks to improve communication between barristers and clerks, introducing an external 'helpline' to discuss discrimination and harassment, and creating an Equality and Diversity 'kite mark' for the profession.
- **Expanding Equality and Diversity training** in particular for clerks and senior management. This would help raise awareness of potential issues around the impact of discrimination and effective approaches that can be taken to address them.
- **Cultural change.** A 'zero-tolerance' approach to unlawful discrimination and harassment, ensuring there is clear and visible support for improvement and change from senior leadership, making a clear business case for equality at the Bar.

The findings of this research have informed the development of a detailed action plan which sets out 10 actions for the BSB and other key stakeholders to help improve the experiences of women in the profession and drive improvements to retention. The actions are grouped into three areas of regulatory focus: the BSB Handbook, Guidance (produced either by the BSB or Bar Council), and Engagement and Partnership. These activities will address the cross-cutting themes identified above.

# 1 Introduction

## About the Bar Standards Board

1.1. The Bar Standards Board (BSB) regulates barristers called to the Bar in England and Wales. Its mission is to regulate the Bar so as to promote high standards of practice and safeguard clients and the public interest. The key regulatory objectives of the BSB are:

- Protecting and promoting the public interest
- Supporting the constitutional principle of the rule of law
- Improving access to justice
- Protecting and promoting the interests of consumers
- Promoting competition in the provision of services
- Encouraging an independent, strong, diverse and effective legal profession
- Public understanding of citizens' legal rights and duties
- Promoting and maintaining adherence to the five professional principles

We are a risk- and evidence-based regulator. Risk-based regulation means that we are constantly monitoring the market for barristers' services. We identify the potential risks that could prevent our regulatory objectives from being met. When we have done this, we focus our attention on the risks that we think pose the greatest threats to our regulatory objectives. We then take proportionate action to prevent those risks from occurring, or to reduce their impact. One of our regulatory objectives is to encourage an "*independent, strong, diverse and effective legal profession.*"

## Background context

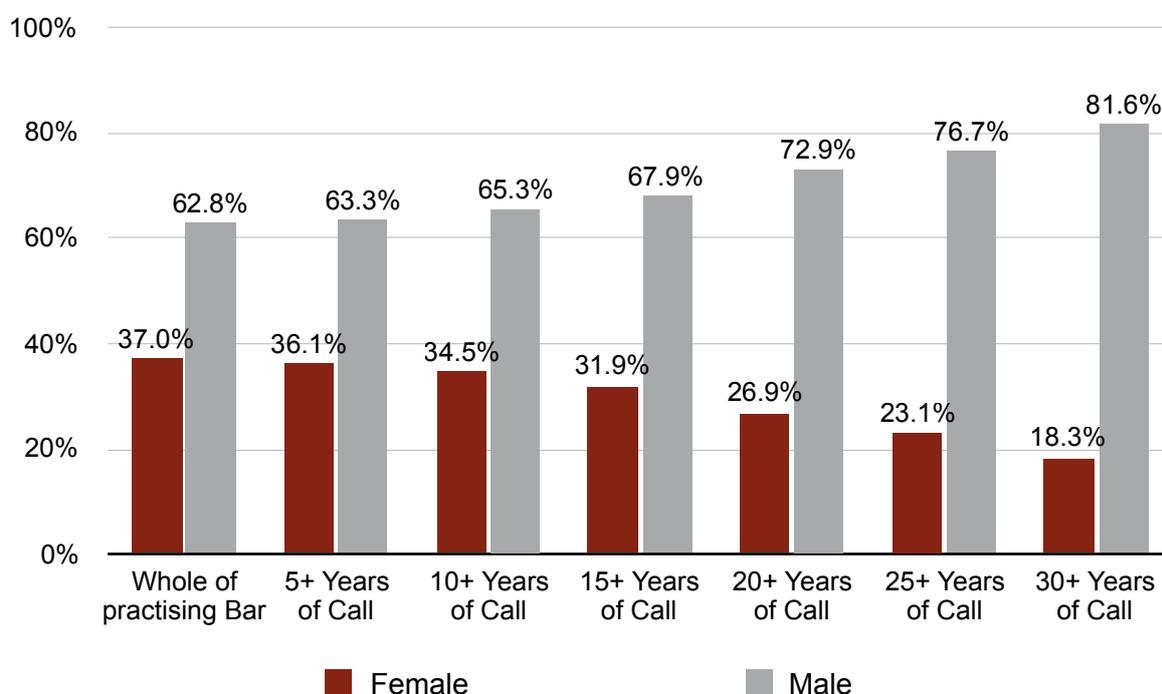
1.2. The BSB has an important role to play in the retention and progression of women at the Bar. If the Bar is truly to represent and serve society effectively it must take positive steps to increase gender equality. The BSB Equality Objectives 2017-2019<sup>4</sup> make a specific commitment to identify what can be done to improve the retention and progression of women at the Bar. The Equality Rules of the BSB Handbook<sup>5</sup> were introduced, in part, to improve the progression and retention of women at the Bar.

4. Bar Standards Board (2017) – Equality Objectives 2017-19: [https://www.barstandardsboard.org.uk/media/1819877/bsb\\_equality\\_and\\_diversity\\_strategy\\_2017\\_in\\_12pt\\_for\\_website.pdf](https://www.barstandardsboard.org.uk/media/1819877/bsb_equality_and_diversity_strategy_2017_in_12pt_for_website.pdf)

5. Bar Standards Board (2012) - Handbook Equality Rules: [https://www.barstandardsboard.org.uk/media/1562168/bsb\\_equality\\_rules\\_handbook\\_corrected.pdf](https://www.barstandardsboard.org.uk/media/1562168/bsb_equality_rules_handbook_corrected.pdf)

- 1.3. Current data show that in 2017, 34.5 per cent of the self-employed Bar were women. This has increased from 32 per cent in 2010. In 2017, 46.7 per cent of employed barristers were female, compared to 46.3 per cent in 2010.
- 1.4. The BSB is particularly concerned at the rate of progression for women in the profession – only 15 per cent of heads of chambers and 13 per cent of Queens Counsel (QCs) are women; which is considerably lower than the proportion of women across the profession as a whole. Data on the practising Bar show that women have a far higher rate of attrition than men, with the proportion of women consistently falling as seniority (by year of Call) increases (see Figure 1).

**Figure 1: The Practising Bar in 2017 by gender and year of Call**



N=16,857

Source: Bar Standards Board CRM data

- 1.5. Qualitative research for the Bar Council<sup>6</sup> highlighted a number of issues facing women in the profession, including that individual chambers' culture and policies had a huge impact on women's experience of bringing up children, and that some women felt disadvantaged by power structures within chambers. A quantitative analysis<sup>7</sup> found that, notwithstanding the current parity in the numbers of men and women called to the Bar, with the present model of practice at the Bar, a 50:50 gender balance among all practising barristers is unlikely ever to be achieved.

6. Bar Council (2015) - Snapshot - The Experience of Self-Employed Women at the Bar: [https://www.barcouncil.org.uk/media/379529/snapshot\\_-\\_the\\_experience\\_of\\_self-employed\\_women\\_at\\_the\\_bar.pdf](https://www.barcouncil.org.uk/media/379529/snapshot_-_the_experience_of_self-employed_women_at_the_bar.pdf)

7. Bar Council (2015) - Momentum Measures: [http://www.barcouncil.org.uk/media/378213/bar\\_council\\_momentum\\_measures\\_creating\\_a\\_diverse\\_profession\\_summary\\_report\\_july\\_2015.pdf](http://www.barcouncil.org.uk/media/378213/bar_council_momentum_measures_creating_a_diverse_profession_summary_report_july_2015.pdf)

- 1.6. The Equality Rules of the BSB Handbook include requirements to ensure that chambers' selection panels are trained in fair recruitment; monitor and review distribution of work opportunities; and produce equality, anti-harassment, flexible working, and parental leave policies. The BSB's 2016 research on Women at the Bar<sup>8</sup> aimed to improve our understanding of the implementation and effectiveness of the Equality Rules. The research explored issues which might be contributing towards a lack of retention of female barristers, an issue highlighted by the various research reports and statistics on the profession.
- 1.7. The 'Women at the Bar' research findings, which were based on a survey of more than 1,300 female barristers, set out a number of examples of good practice and clear evidence of progress in some areas. These included increased reporting of unfair treatment and an improvement in women's experience of taking and returning from parental leave. However, the research also identified areas for improvement, including:
- Women could face unfair treatment across a number of areas, in particular harassment, discrimination, allocation of work, approaches to flexible working, and on returning from parental leave.
  - The majority of women at the Bar were reluctant to report unfair treatment, mostly due to concerns it would impact on their career.
  - Issues around non-compliance, poor implementation of policies and unsatisfactory levels of awareness of the Equality Rules.

## Aim of the research

- 1.8. The present research study was commissioned to address objectives laid out in the BSB Equality and Diversity Strategy<sup>9</sup> and the BSB Research Strategy<sup>10</sup>.
- 1.9. The research aimed to explore and develop potential solutions to address two of the key issues identified by the 2016 Women at the Bar research, namely:
- unfair treatment (issues around policies and practice in work allocation, flexible working, and returning from parental leave)
  - discrimination and harassment and the reporting of unfair treatment (issues around culture and attitudes)
- 1.10. Relating to these aims, the research sought to answer the following questions:

8. Bar Standards Board (2016) - Women at the Bar: [https://www.barstandardsboard.org.uk/media/1773934/women\\_at\\_the\\_bar\\_-\\_full\\_report\\_-\\_final\\_12\\_07\\_16.pdf](https://www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf)

9. Bar Standards Board (2017) – Equality and Diversity Strategy 2017-19: [https://www.barstandardsboard.org.uk/media/1819877/bsb\\_equality\\_and\\_diversity\\_strategy\\_2017\\_in\\_12pt\\_for\\_website.pdf](https://www.barstandardsboard.org.uk/media/1819877/bsb_equality_and_diversity_strategy_2017_in_12pt_for_website.pdf)

10. Bar Standards Board (2017) - Research Strategy 2017-19: [https://www.barstandardsboard.org.uk/media/1852486/bsb\\_research\\_strategy\\_2017.pdf](https://www.barstandardsboard.org.uk/media/1852486/bsb_research_strategy_2017.pdf)

- How can issues around unfair treatment of women at the Bar be addressed, either by the BSB or by other stakeholders?
  - What approaches can be taken to increase the level of reporting of unfair treatment, either by the BSB or other stakeholders?
  - What other strategies can be adopted to improve the retention of women at the Bar?
- 1.11. Another issue identified by the 2016 Women at the Bar research - improved compliance with, implementation, and awareness of the Equality Rules - was out of scope for the present study. Improved compliance with the rules is considered to be a potential solution to the research themes being examined by the present study, and thus more suited to a separate research project involving a different set of participants, in particular Chambers' Equality and Diversity Officers.
- 1.12. The findings of this research have been used to inform the development of a detailed action plan which sets out 10 actions for the BSB and other key stakeholders to help improve the experiences of women in the profession and drive improvements to retention. The actions are grouped into three areas of regulatory focus: the BSB Handbook, Guidance (produced either by the BSB or the Bar Council), and Engagement and Partnership, which align with the recommendations arising from this research.

# 2 Methodology

## Research Design

2.1. The research design was qualitative and the research aims were explored through a series of five workshops. The workshops were designed to enable focussed discussion about practical solutions to the two key issues identified by previous research on the experiences of women at the Bar.

## Sample

2.2. The BSB invited a range of stakeholders to take part in one of three workshops held in October 2017. Two further workshops were subsequently held with the Institute of Barristers' Clerks (IBC) and the Legal Practice Management Association (LPMA) in November 2017.

2.3. Potential participants for the first three workshops were identified on the basis of their involvement or interest in the issue of the retention of women at the Bar. In addition, all barristers who had indicated in their response to the 2016 Women at the Bar survey that they wished to continue contributing to the BSB's work in this area were invited to take part in this study.

2.4. In total, 54 individuals participated in this research (not including BSB staff and the external facilitator). The first three workshops were attended by 30 individuals, incorporating barristers, clerks, chambers' directors, practice managers, client care managers, specialist Bar associations and BPTC providers. The fourth and fifth workshops were each attended by 12 participants from, respectively, the IBC and the LPMA. Unlike the original Women at the Bar survey (which involved only female barrister respondents), over one-third of workshop participants in the present study were male.

## Conduct of workshops

2.5. The discussions at the workshops focussed on the research aims which, in turn, linked to the themes identified in the 2016 Women at the Bar report:

- Unfair treatment (issues around policies and practice in work allocation, flexible working, and returning from parental leave).
- Discrimination and harassment and the reporting of unfair treatment (issues around culture and attitudes).

2.6. For each theme, participants were prompted to discuss the following questions:

- What is currently working well? Are there any examples of good practice?
- What are your top recommended solutions for addressing the issues found in the 2016 research?
- What are the challenges to implementing these solutions?
- Who would be responsible for driving these solutions forward?

2.7. The first three workshops were run by an external facilitator. Workshops lasted two hours, with participants divided into smaller groups, each led by a BSB moderator, to discuss the themes. These groups then reported their top three recommended solutions to the full group for further discussion led by the facilitator. Moderators used a discussion guide to help to structure the group discussions. The latter workshops were moderated by BSB staff, without an external facilitator.

## Data collection and analysis

2.8. Moderators took detailed contemporaneous notes of the workshop discussions and the key recommendations made by participants. The workshop discussions were also recorded - with the consent of participants - to enable these notes to be checked for accuracy following the workshops, as well as to obtain illustrative quotes for inclusion in the report. These data were subsequently analysed using a thematic analysis approach. This involves identifying the key themes that emerge from the data that have relevance to the research questions or topic of interest. This was undertaken in Microsoft Word by one analyst, who had not been present at the workshops. Following the completion of the analysis the recordings were deleted.

## Limitations of the design

2.9. There are some limitations that should be kept in mind when reading these findings. This was a qualitative study involving focused discussions with a relatively small sample of barristers and other stakeholders. This approach was chosen as an effective means by which to explore the range of perceptions and experiences of research participants, based on their professional experience and knowledge

2.10. Although efforts were made to expand the range of participants beyond female practising barristers, the findings are based on the views and experiences of those who participated in the research and should not be treated as a representative sample. Further, it is possible that those who were more involved in discussions or have particularly strong views around the progression and experiences of women in the profession may have been more likely to volunteer to be involved in the research.

2.11. While an external facilitator oversaw the running of the first three workshops, primarily, the workshops were organised and moderated by BSB staff. Although participants were assured at the outset of the confidentiality of discussions, it is acknowledged that the BSB's role as regulator might have influenced the discussions, either directly or indirectly. The analysis of findings is based on detailed notes of the workshop discussions, as opposed to full transcripts. While this approach was taken for practical and resource reasons, it is acknowledged that this could increase the possibility of some discussion points having been missed out of the notes and the subsequent analysis. However, this risk is small. Workshop sessions were recorded and reviewed for clarity and to identify illustrative verbatim quotes. Comparisons with the notes were undertaken as part of this process.

## Ethical issues

2.12. In undertaking the research, there were two key ethical considerations. Participation was based on valid informed consent - all participants were provided with a full explanation at the start of the workshops as to the purpose of the research and how the discussions would be captured, presented and used. Participants were advised that no individuals would be identified or identifiable in the report of findings, and were asked to treat the discussions and participants as confidential.

# 3 Findings

## Unfair treatment: work allocation, flexible working and parental leave

- 3.1. The first theme discussed by workshop participants focused on unfair treatment. The original Women at the Bar research identified a number of issues of perceived unfair treatment in work allocation, flexible working and on return from parental leave.
- 3.2. For work allocation, respondents reported issues around a lack of transparency, favouritism, and difficulties in effectively monitoring how work was allocated. The survey found low awareness in chambers of the existence and nature of flexible working policies. Many respondents who had experience of flexible working felt it had negatively impacted on their practice, with an impact on work allocation or progression as well as negative attitudes from clients or chambers.
- 3.3. Finally, the majority of respondents who had taken parental leave cited a negative impact on their practice, on work allocation and career progression related to lack of support from chambers as well as negative attitudes from chambers and clients. Many highlighted the difficulty of combining practice with caring responsibilities for children.
- 3.4. Workshop participants were asked to share their professional experiences and perceptions in relation to these issues. They were asked to identify any examples of perceived good practice (where the key policies operated by chambers and the way they were implemented was particularly effective) and to suggest potential solutions that might be taken forward by the BSB, or by others, to improve matters.
- 3.5. Quotations have been selected to be illustrative of the key themes and issues raised wherever possible. They are not attributed to any individual in order to preserve the anonymity of participants.

## Work allocation – good practice

- 3.6. Discussions focussed around key policies required from chambers as part of the Equality Rules. These rules require chambers to monitor and review the allocation of unassigned work within chambers, to have a flexible working policy, and to have a parental leave policy.
- 3.7. A number of examples were given by research participants of approaches to monitoring work allocation to ensure fairness. In particular, examples were given of approaches that went beyond merely covering 'unallocated work', as is currently required by the BSB's Equality Rules. For example, one chambers was described as keeping records of who had been offered or accepted work (including information about when solicitors have declined the offer of a particular barrister).

One chambers allocated most incoming work and kept a record of conversations with the clerk and solicitor about who had been recommended. Another chambers undertook an annual review of clerk-allocated work, and examined the proportion of work according to race, gender and other protected characteristics. These three examples were cited as good practice.

- 3.8. Transparency of fee income was also given as an example of good practice, with several chambers appearing to have adopted this approach. This was seen as helping to drive discussions around work allocation; generating questions and conversations where there were clear disparities.
- 3.9. Monthly reporting of work allocation to the chambers' equality and diversity committee was another example cited that was felt to improve the fair allocation of work. It was argued that chambers were better at ensuring fairness where there were higher levels of transparency around work allocation and monitoring data; as the data were then 'driving the conversation', as opposed to it being driven by responses to individual complaints.
- 3.10. Other approaches that were highlighted as examples of good practice by participants related to how work was allocated. In one chambers, the clerks offer every suitable barrister available to solicitors, setting out their seniority and let solicitors make a choice, as opposed to the clerk recommending individual barristers. Guidance from the Bar Council on work allocation was also mentioned as an example of good practice, although there was a concern that this could be overlooked by chambers.
- 3.11. A good level of communication between barristers and clerks was also highlighted as a way to address any issues around work allocation. One chambers offered training on 'managing your relationship with your clerk', with a focus on communication, particularly with a view to helping junior tenants. The value of regular practice management meetings for individuals, providing an opportunity to put themselves forward for work, was also mentioned, particularly when work allocation data could be discussed in this context.

### **Work allocation – proposed solutions**

- 3.12. Building on discussions about perceived good practice, a number of common themes emerged about proposed solutions to address issues around work allocation. Particularly common were those related to **improving transparency**, both of the work allocation process itself, as well as data collected around work allocation. Transparency enabled barristers to see how work was allocated and enabled them to challenge the statistics or processes if they were unhappy with the result. One suggestion was that a regular report could be produced which explained (rather than merely reported) the statistics, offering a narrative explanation of why work had been allocated in the way that it had, based on the statistics. This report could be shared and promoted within chambers.

*“The allocation of work, and transparency around that, is crucial”*

3.13. Another potential solution was for the introduction of a designated ‘Work Allocation Officer’ within chambers who would be responsible for monitoring data about the allocation of work rather than this being part of the Equality and Diversity Officer’s role. They would act impartially and help to ensure clear communication between the barrister and the clerk, explaining the reasons for the allocation of work, and allowing for an appeals process. While some participants mentioned IT limitations as a potential barrier to collecting and sharing data on work allocation, others pointed out that some programmes (such as LeX software from Bar Squared) were effective at recording and publishing work allocation statistics.

*“This is not difficult to comply with - there’s computer software now that makes it very, very easy.... work allocation, management information, it can be anonymised and shared with an individual.”*

3.14. Other suggestions around improving transparency related to **expanding what is monitored**. Several participants felt that merely monitoring unallocated work would not be sufficient, as in some chambers, most work comes in “marked” (whereby the solicitor asks for a specific barrister; although this could be in response to recommendations from clerks) and this also needed to be monitored and taken into account when developing policy. Others felt that requests for work that are turned down by chambers should also be monitored, as well as considering whether certain barristers were taking on too much work – this could help expand the information available to inform policies, as well as address over-work alongside under-work. Several clerks highlighted that chambers practice management systems could enable clerks to record the reason for the decision of the allocation of work (eg if a QC insisted on a particular junior barrister) and their own response. This could then be provided to the Head of Chambers/ senior managers within monitoring reports to show how cases have been allocated.

*“[QC’s asking for specific barristers] should be monitored, I think it’s integral to career development for junior barristers. Once you monitor it you can start reporting hard facts”*

3.15. However, a number of potential challenges to increasing transparency and expanding monitoring were raised. For example, while clerks could record why unallocated work has been allocated to one barrister and not another, there could be opposition to this as it represented ‘too much work’ for clerks. Furthermore, approaches that would work in some areas of practice might be more problematic in others – one practice area mentioned was criminal sets, where there is a preponderance of lower paid legal aid work. Another issue highlighted was the danger that work allocation data was used as a ‘blunt instrument’ as it can be difficult for the data to truly reflect the range of factors that lead to work being allocated as it is.

3.16. Several participants highlighted that there could be opposition from barristers to fully sharing work allocation data within chambers. Some participants felt it should be fully anonymised, even to chambers’ members/staff in charge of reviewing or undertaking analysis of the data. Others highlighted that detailed monitoring of work allocation can be difficult because chambers are required to anonymise

reporting of work allocation rather than include individual names. This could make it difficult to publish 'comparative' data even within chambers – and yet without being able to compare themselves to their peers, it would be hard for individuals to see if there were issues with the level of work they were allocated. However, some of these issues could be mitigated by making the data anonymous and referring to groups of barristers rather than individuals.

- 3.17. Another potential solution to this issue that was recommended in several group discussions was improving the working relationship and level of **communication between barristers and clerks**. Many felt that a number of potential issues around work allocation could be overcome with positive and proactive communication between clerks and barristers, discussing the allocation of work and individual barristers' availability. Clerks should be asking barristers what their expectations are around the level of work they receive, what issues there are that may prevent them taking work that for example involves them substantial travel, and how many days a week they would like to work. Training was one area mentioned, with the recommendation that clerks in chambers could be required to attend training provided by the Institute of Barristers' Clerks, or to ensure that at least one clerk in every set of chambers was a member of the IBC. It was felt this would help ensure clerks are aware of the issues that can arise around work allocation, be aware of good practice in allocating or monitoring work, and help promote best practice within chambers. Another suggestion was that the BSB could require chambers to have a policy for feedback on work allocation to barristers individually at regular intervals. However, any attempt to set requirements for clerks faced challenges in that the clerking profession is unregulated and thus it would be difficult for the BSB to enforce new rules.

*“Communication [between barristers and clerks] is at the heart of all of this – in understanding what people want to do, what their availability is, and so on, whether it is work allocation, flexible working, or maternity leave, it runs to the root of everything.”*



## Summary of recommended solutions: Work Allocation

**Improving transparency** of the work allocation process itself, as well as data collected. Improved transparency means that chambers/barristers are more aware where there are issues, and complaints/discussions can be ‘driven by the data’ rather than being about individual barristers.

**Expanding monitoring** – such as monitoring fee income, expanding to cover ‘marked’ work, or recording reasons cases were allocated to individual barristers. This would help to give a more nuanced picture of how work is allocated and where there are any issues.

**Improving communication between clerks and barristers** – such as policies for regular feedback to individual barristers on work allocation, or IBC training for clerks to raise awareness of best practice. Having frameworks to address a lack of communication between barristers and clerks could help address a range of issues around work allocation.

### Flexible Working – good practice

- 3.18. When discussing good practice, the examples focussed on chambers where the availability of barristers who were working flexibly was clearly highlighted, making it easier for clerks to allocate work to them. One example given was a chambers where members could work, for example, four-day weeks without any difficulty, and chambers’ management and the clerks had no issue with barristers ‘blocking out’ days when they did not wish to be available. Other examples highlighted good communication between clerks and barristers around availability, for example, where clerks checked with barristers before putting things in their diary to ensure that their workloads were manageable. In another example, one chambers had a system of consulting members and staff before introducing or changing flexible working arrangements, which was felt to contribute to ensuring effective policies were put in place.
- 3.19. Moving from a merely having a flexible working policy to supporting ‘agile’ working practice was also discussed as an approach that could address some of the issues raised. To illustrate, contrasts were drawn between a flexible working approach (where staff needed to block out the days when they were not available for work) and agile working (where staff were provided with all the necessary equipment to support home working and could create the impression that they were physically in chambers). In this example, agile working had faced less resistance within chambers when introduced, compared to flexible working, and was seen as operating more effectively. However, a potential challenge with this approach was that it was considered to be much easier for more senior staff to adopt.

3.20. Finally, hot-desking was seen as a further option to support those who worked part-time in chambers to work effectively, but experience within the workshop group suggested that it tended primarily to be female barristers who sat at hot-desks and this risked creating a ‘two-tier’ chambers: of those that had permanent full-time desks and those that did not.

### **Flexible working – proposed solutions**

3.21. Building on the discussion about perceived good practice, **introducing monitoring** of flexible working was one suggestion for improving the fairness of the way it operated. Several participants felt this would help to show where the policy was working well or working badly, and thus help to identify areas that could be improved. One specific recommendation was to monitor the number of requests made for flexible working, details of the requestor, and the decision made in response. These monitoring data would then be reviewed by the management committee within chambers.

*“Maybe chambers should be required to record how many requests [for flexible working] have been made, and how they have been dealt with.”*

3.22. **Improving systems to support better the visibility** of barristers working flexibly was the focus of several of the recommendations made in the workshops. Many participants felt that there needed to be systems in place to ensure that clerks and other colleagues are aware of when tenants who use flexible working are actually working or available for work. This was seen as one way of addressing the fact that clerks often simply don’t know if barristers have capacity when they are working flexibly or working from home, and therefore they could miss out on available work, or be nominated for work when they are not available. One recommendation was for chambers to have a system to clearly ‘block out’ days when barristers were not available so that clerks are aware when not to put them down for work. Another recommendation was introducing additional categories for availability – rather than categorising as ‘not working’ or ‘working’, there could be an ‘on notice’ category to indicate that a barrister could be available for work during times like half-term.

3.23. Closely related to this point, **improving communication between clerks and barristers** was the focus of a number of recommendations aimed at improving flexible working practice. Clerks were seen as having a key role to play, and better communication with clerks around availability, who is working flexibly or working from home, was seen as key to the policies operating effectively. One specific recommendation was setting up regular sessions between clerks and tenants to encourage contact. Other recommendations included ensuring that clerks check with barristers before putting them down for work, and encouraging clerks to discuss with each other about which barristers are available and who is at what capacity. In addition, it was also felt to be valuable to encourage barristers to be clear with clerks about their intentions and availability. A key challenge identified here was that any work done with clerks should be ‘encouraging’ rather than ‘picking on’ clerks, to help ensure they are more engaged with attempts to change how things are done within chambers.

3.24. **Addressing cultural and language issues** was also seen as a key priority. In many cases existing attitudes were felt to hinder chambers' tenants from taking advantage of flexible working, in particular that flexible working could contribute to a 'two-tier' chambers of those who make use of flexible working and those who do not. It was noted that some people within chambers might perceive flexible working as meaning that a barrister is working less hard, or that barristers who make use of flexible working are effectively 'part-time'. Suggestions to address this included addressing value-laden terms, and overcoming perceptions around flexible working always involving less work than traditional working patterns.

*“Flexible working isn't less work. It's working differently and doesn't mean they're not working hard.”*



### Summary of recommended solutions: Flexible Working

**Monitoring** – such as recording the number of flexible working requests, details of the requestor, and the decision/response. This could be reviewed by the chamber's management committee to highlight where the policy is working and where it is not.

**Improving 'visibility'** of barristers working flexibly – eg having an 'on notice' category rather than simply available/not available or blocked out days. Barristers are not often visible if working flexibly or working from home so clerks don't know they have capacity.

**Improved communication between barristers and clerks** – eg sessions between clerks and tenants to encourage contact, clerks checking with barristers before putting them down for work, encouraging barristers to be clear with clerks about their intentions and availability.

**Addressing cultural and language issues** – eg addressing value-laden terms and overcoming perceptions around flexible working (some seeing flexible working as 'part-time'). These issues are seen as contributing to a 'two-tier' chambers of those who use flexible working and those who do not.

### Parental leave – good practice

- 3.25. Many examples of good practice highlighted in the discussions focussed on approaches to the payment of rent at chambers and contributions both during parental leave and on return to practice. Examples cited included one chambers that offered members a rent ‘holiday’ after returning from parental leave, another that went “above and beyond” what is required by the BSB Equality Rules by allowing members more than six months’ rent-free, and others that moved from a fixed rent to requiring only a percentage of income or no rent at all, both during parental leave and also when returning to work. Another chambers ran a pilot around parental leave, offering 12 months’ rent-free, irrespective of the date they returned to work. This meant that those who decided to return to work before 12 months had elapsed did not lose out as compared to those who took the full year.
- 3.26. Good levels of communication between barristers and clerks, both during and on return from parental leave, was a theme emerging from discussions about good practice. In one example, barristers meeting with clerks before taking parental leave and discussing working patterns helped to ensure a fairer allocation of work and ensure a better understanding of a range of practical considerations. Another example was where a chambers had actively offered work to women/parents on parental leave, such as drafting. This was seen as valuable both in terms of ensuring a level of income, but also maintaining communication between clerks and barristers on leave. A further example was where chambers provided help to clerks in managing relationships with solicitors, and ensuring proper handover of work prior to a barrister taking leave. The value of having a good head clerk was also highlighted, with examples given where head clerks were instrumental in opening up communication in advance of returning from leave to determine barristers’ expectations around levels of work.

### Parental leave – proposed solutions

- 3.27. A key theme that emerged from discussions was that chambers could implement a formal and **structured ‘return to work’ framework** for those returning from parental leave. This was potentially valuable in setting a clear presumption as to what would be expected both from chambers and from the barrister returning to work, and could also help set a framework to enable people to return from parental leave in a staged manner. One recommendation was requiring exit and returner interviews for barristers before they started their parental leave and when they returned (with either the chambers’ Equality and Diversity Officer, head of chambers, or senior clerk). Other recommendations were: requiring a formal meeting with the clerks that would discuss issues such as work allocation; assurance that there would be zero tolerance of discrimination or harassment; and setting expectations around marketing and being put forward for work. Also recommended was the option of setting up ‘keeping in touch’ days for barristers during their parental leave, if desired. This would help ensure that support and contact for the barrister was available before they returned from leave.

*“There should be communication from your chambers to your client base saying ‘I’m delighted to inform you that X is back in practice as of a certain date.... So that the work starts to pick up.’”*

3.28. A range of recommendations aimed at **addressing chambers’ rent and fees** were discussed in all the different groups. Many participants felt it was vital to ensure that barristers taking parental leave did not have to pay chambers rent for the period they were on leave, and were not expected to pay full fixed rent contributions on their return. Moving away from the ‘fixed fees/rent’ model was the focus of several recommendations aimed at addressing the financial issues faced by many barristers on their return to practice following parental leave. One specific recommendation was to change the BSB rules on rent<sup>11</sup> so that there could be no rent charged for the full duration of a barrister’s parental leave. Another recommendation was for chambers to be encouraged or required to move to a percentage of fee income approach to contributions on return from parental leave – this would help to address the problems caused by barristers having fixed rent payments on return from leave. It was suggested that this could be highlighted as good practice by the BSB or the Bar Council if an actual change to the rules was not introduced. Some participants went further and recommended a zero per cent contribution of fee income for a certain amount of time on return from parental leave, particularly if barristers had not taken the full period allowed.

*“For those that come back [from maternity leave] earlier, they should still get the benefit of the 12 months’ rent-free, because you shouldn’t be penalised for coming back earlier.”*

3.29. However, several challenges around implementing solutions around rent and contributions were highlighted in the discussions. For some barristers, it was argued, having children is seen as a personal choice that ought not to impact on other members of chambers. On that basis, it was felt there might be resistance to arrangements which mean increasing the extent that chambers’ payments of those who were not taking parental leave are used to support those who were. Another challenge highlighted was that the Bar is a self-employed profession and, as a result, the culture can be individualistic instead of cooperative. This was seen as a potentially significant hurdle to overcome in terms of policies around chambers’ contributions. A further issue was that removing flat or fixed monthly rent and fees could be a particular problem for chambers with low resource levels, which would make it difficult or impossible for certain chambers to adopt these policies.

3.30. **Addressing cultural issues** surrounding taking and returning from parental leave was the focus of several recommendations. The attitudes held by some both within and outside of chambers were seen as a persistent problem that hindered women both taking and returning from parental leave. Some participants felt that the policies in place were less of an issue than the way that women were treated on their return from parental leave, which had a substantial impact in prompting

11. The BSB’s current Equality Rules stipulate that chambers must offer ‘a minimum of six months free of chambers’ rent’ when chambers’ rent is calculated on a fixed rate basis.

women to leave the profession. One recommendation was to encourage more male barristers to take advantage of flexible working arrangements, and parental leave, in order to help break down stereotypes around earning and caring responsibilities within families. All key stakeholders (BSB, the Bar Council, the Inns, the Specialist Bar Associations, and chambers themselves) were felt to have a role in this, and collaboration between all the various stakeholders required to reinforce the message. Another recommendation was to recast 'maternity leave' as 'parental leave', which would help to reinforce the point that it was available to both men and women<sup>12</sup>. Another recommendation was to do more to ensure that policies are written in an inclusive way so that they were not solely cast as being of relevance to women.

*“Women leave the Bar not because they don’t get a rent holiday, but because of the way they are treated when they return [from maternity leave].”*

**3.31. Improving the availability or visibility of flexible childcare** was also the focus of several recommendations, as this was seen as a challenge for many barristers. Particular reference was made to the recent closure of the nursery sponsored by the Bar Council. The benefits of having this service available were highlighted by several participants, both due to the flexibility and the discount it offered to those at the Bar. One recommendation to improve support in this area was the creation of a subsidised childcare service for the Bar, that was flexible enough to accommodate unpredictable court times and the extensive travel often required in self-employed work. Another alternative suggested was for the Bar Council to collate and promote a list of flexible childcare services available, not just in London but elsewhere in England and Wales.

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12. BSB rules and guidance have always referred to 'parental leave' rather than 'maternity leave', and the November 2017 reissue of the BSB Handbook amended the rules to expand eligibility to any carer of a child, not just the main carer.



## Summary of recommended solutions: Parental Leave

**Formal ‘return to work’ framework** – eg a discussion with the clerk (about work allocation, zero tolerance of discrimination/harassment etc), exit/returner interviews, setting a framework for people returning from parental leave in a staged manner. This was seen as helping to set a presumption about what is expected, and can ensure expectations are managed and support in place on return to work.

**Addressing rent and fees**– eg removal of fixed monthly rent, during and after parental leave; encouraging chambers to decrease the percentage contribution to chambers on return from parental leave; introducing zero percent contribution on fees after return from parental leave for a limited period. Moving away from ‘fixed fees/rent’ was seen as key for addressing financial issues arising on return to practice.

**Addressing cultural issues** – eg breaking down stereotypes around the main earner/carer, moving to an inclusive rather than individualistic culture in chambers, recasting ‘maternity leave’ as ‘parental leave’, encouraging men to take parental leave. Treatment/attitudes facing women returning from parental leave were seen as key issues that harm retention.

**Improving the availability or visibility of flexible childcare** – eg the creation of a subsidised childcare service for the Bar, the Bar Council to collate and promote a list of flexible childcare services available. The availability of childcare that could cope with the unpredictability of court hours was seen as a key challenge for barristers with children.

## Discrimination, harassment and reporting unfair treatment

- 3.32. The second theme discussed at the workshops focussed on discrimination and harassment and the reporting of unfair treatment. Previous BSB and Bar Council research had suggested that certain prevailing attitudes within parts of the legal profession were a particular issue contributing to experiences of discrimination and harassment, as well as a driver for the low levels of reporting by barristers.
- 3.33. The Women at the Bar<sup>13</sup> research found that more than two in five survey respondents had experienced discrimination during their career at the Bar. A similar proportion had experienced harassment. A large majority of respondents who had experienced discrimination or harassment did not report it. The most common reasons for not reporting were concerns about the impact on their career; fears that reporting would not achieve anything; and attitudes at the Bar towards harassment and discrimination. Among those who did report harassment, half were dissatisfied

13. Women at the Bar (BSB 2016)

with the response due to an inadequate response, a failure to take the complaint seriously, or the later impact on their career.

- 3.34. In light of these findings, workshop participants were asked to discuss instances of good practice of which they were aware from their professional experience and to suggest what could be done – by the BSB or by others – to improve matters.

### **Discrimination and harassment – good practice**

- 3.35. Taking a zero-tolerance approach to discrimination and harassment was highlighted as good practice, with clerks challenging any harassment or discrimination from outside chambers, such as from solicitors or lay clients, given as one example. Another example given was chambers not merely having relevant policies in place, but also taking steps to ensure everyone in chambers was aware of the existence of these policies, in particular routes to complain or raise issues.
- 3.36. Other examples around good practice focussed on approaches that were seen as helping to ensure a supportive culture within chambers. Examples mentioned were chambers with a culture of approachability at the senior levels, as well as chambers where mentoring schemes were in place, particularly for junior members, which could act as a first port of call for any issues experienced. Other examples included chambers where internet and email use policies had helped to have an impact, including restricting access to inappropriate websites, helping to contribute to an improved culture within these chambers. However, these policies were seen as potentially difficult to enforce due to the self-employed status of chambers' tenants.

### **Discrimination and harassment – proposed solutions**

- 3.37. **Improving awareness and transparency of policies** was the focus of a number of recommendations. Several participants highlighted that there was often relatively low awareness of the policies in place, particularly before initially joining chambers (which prevented prospective tenants considering these policies when applying). One recommendation was for rules requiring chambers' policies – covering equality and diversity, harassment, and discrimination - to be published on chambers' websites, or provided to staff, pupils and tenants before they joined. It was felt this would not only help improve awareness within chambers of the existence and content of policies, but also ensure people are aware if policies are good before they join chambers. A further benefit was that this could help promote competition between chambers and other employers to adopt 'best practice' policies. Another recommendation was for the BSB to provide a 'kite mark' for chambers who have good formal policies and exhibit good practice relating to equality and diversity.

*“A requirement for chambers to publish their policies, so hopefully that will lead to other sets seeking to ensure that they comply, that they look to the gold standard, and raise their game... at the moment there is no incentive for them to do so.”*

- 3.38. Another recommendation raised in a number of the workshops was that chambers

could be required (or encouraged by the BSB or Bar Council to highlight this as good practice) to have **exit interviews with departing staff and tenants**. It was felt this would help increase awareness of low level issues of discrimination and/or harassment that individuals might have felt were not worth raising officially, but which could still contribute to problems within chambers. This could also facilitate the raising of complaints or issues – even if some time after the fact – as individuals leaving chambers would feel less constrained in discussing problems than when they were still working there. In addition, it would help improve awareness of the reasons why individuals leave or move chambers and how this can be addressed, particularly if those issues related to discrimination or harassment. By requiring exit interviews of all staff and tenants, and not merely women, this could be promoted as an inclusive policy rather than one that was only aimed at addressing problems faced by women.

- 3.39. **Mentoring programmes** were key to a number of recommendations made by participants. They were seen as offering valuable support for barristers, particularly around discrimination and harassment issues, as they enabled them to discuss any negative experiences with others and receive advice and support. Mentors could be either inside or outside chambers, each offering different benefits. External mentors offered an element of independence and impartiality, and allowed discussions of issues experienced within chambers without having to raise the issue with colleagues until they had had a chance to discuss in a more informal setting. The Specialist Bar Associations were noted as already having mentoring schemes in place, but it was felt that provision was patchy and more could be done to ensure this support was more widely available. It was also felt mentoring within chambers was valuable, particularly for more junior barristers. Specific recommendations included setting up a panel of senior women to run an ‘ethical hotline’, which barristers could call to discuss any issues of discrimination and harassment. Another recommendation was for junior barristers to have a mentor in place who was not their pupil supervisor (thus providing a source of support when issues arose between a pupil and their supervisor) and was not someone involved in assessing tenancy applications (as this gave rise to concerns that complaints or discussion of issues could impact on whether they were considered for tenancy). Overall, mentoring schemes or hotlines were felt to provide strong support networks and a forum to discuss issues around discrimination and harassment.
- 3.40. Several recommendations focussed on **addressing ‘external’ discrimination and harassment** – such as from judges, solicitors and clients. Policies and approaches that only attempted to address discrimination and harassment occurring from within chambers were not felt to fully address the issues. Recommendations included clerks taking a zero-tolerance approach to discrimination from solicitors (for example, solicitors insisting that a male or female barrister dealt with given cases) and calling out instances when they occurred.<sup>14</sup> Another recommendation was for chambers’ management (or barristers within chambers more generally) to support clerks in managing and challenging discrimination and harassment from solicitors

14. The BSB guidance on work allocation highlights that discriminatory instructions of this sort are unlawful.

and other clients. Some participants felt more could be done to recruit and train judges so they are more aware of, and better able to deal with, issues relating to harassment and discrimination. In general, it was felt that there needed to be some way or process to deal with issues of discrimination or harassment when they do not come from individuals within chambers.

*“With external discrimination [in work allocation] it’s key to make your clerks aware about what the basic principles of equality law are so they are aware what is unlawful”*

3.41. **Addressing cultural issues** was also seen as vital to addressing the issues faced by women in the profession. In particular, issues around the attitudes facing women returning from parental leave were seen as a key issue that harms retention. As a result, several recommendations mirrored those discussed in relation to parental leave, such as breaking down stereotypes around the main earner/carer, encouraging an inclusive rather than individualistic culture within chambers, and encouraging more men to take parental leave.<sup>15</sup> Several participants felt more could be done by the Inns to address retention, as it was felt that at present they were too focussed on addressing equality at the point of entry to the profession, and did not do enough to address issues for barristers throughout their careers. Similarly, it was felt by some that the Association of Women Barristers could be more proactive, or that a new association could be founded that encouraged and enabled women in the profession to offer each other support. Another recommendation to address the overall culture in chambers was for the BSB or Bar Council to issue guidance on expected conduct with illustrative examples of what is considered to be inappropriate behaviour. It was felt this could help address ‘low level’ issues which were not sufficiently serious to warrant complaints. Other suggestions included setting up a network of ‘male champions’ within the profession who were committed to addressing issues around discrimination and harassment.

*“There’s a role for the BSB to issue scenarios, a guidance document that sets out the expectation for the standards for the profession, and what can happen if you breach this”*

3.42. Another recommendation was **strengthening BSB supervision of chambers** – either introducing more powers to intervene when chambers fall short of good or required practice, or making better use of powers they already have. Several participants felt that supervision needed ‘more teeth’ to act when chambers fell short of the expected standard. However, a potential challenge raised of taking this approach was that barristers and chambers are often very resistant to external interference in the policies they have or the way chambers are run. This could be overcome by high level leadership – both within chambers themselves (in particular, Heads of Chambers) but also externally, such as specialist Bar associations, circuits and the Inns of Court.

15. The November 2017 reissue of the BSB handbook introduced modified rules for parental leave aimed at encouraging more men to make use of the policy.



## Summary of recommended solutions: Discrimination and Harassment

**Improving awareness/transparency of policies** – eg requiring equality and diversity, harassment and discrimination policies to be published on websites or provided to staff and tenants before they join chambers; ensuring everyone is informed of the existence of policies; kite mark for chambers implementing good practice. This could ensure people are aware if policies are good before they join chambers, and help promote competition to adopt 'best practice' policies.

**Requiring or encouraging exit interviews** – to facilitate complaints (even if some time after the fact) raise awareness of more low-level issues, improve awareness of why individuals leave/move chambers and how this can be addressed - this would be required for all tenants/staff rather than just women.

**Mentoring programmes** – eg a mentor outside chambers to create an element of independence and impartiality; a panel of senior women could run an 'ethical hotline', which barristers could call to discuss any issues of discrimination and harassment; mentoring of junior members, where the mentor acts as the first point of call. This can help provide support networks and a forum to discuss issues around discrimination and harassment.

**Addressing 'external' harassment and discrimination**– eg clerks taking a calling out/zero tolerance approach to discrimination from solicitors, supporting clerks in managing and challenging discrimination/harassment from solicitors, addressing recruitment and training issues for judges. There needs to be a way to address issues when they do not come from within chambers.

### Reporting unfair treatment – good practice

- 3.43. Several examples given around good practice were focussed on how complaints were well handled in certain chambers. The importance of the role of the chambers Equality and Diversity Officer (EDO) was highlighted in one example, in particular the importance of having 'the right person' in this role to ensure that anyone who makes a complaint should feel that they are listened to and that complaints are taken seriously. Similarly, another chambers was mentioned where any grievance was looked into by a senior QC within chambers and then reported to the chambers' executive committee.
- 3.44. Another illustration of good practice related to having clear reporting and transparency around how complaints are dealt with. The example cited was a chambers which produced an annual report on equality and diversity issues, which included information on the number of complaints, the issues raised and the outcomes. This report was then considered by the relevant chambers' committee.

## Reporting unfair treatment – proposed solutions

3.45. A key theme raised in a number of workshops was that chambers should have **clear, written reporting frameworks**, and make sure everyone in chambers is aware of these policies, to help ensure reporting of discrimination and harassment. It was recommended that chambers needed to have clear guidance, in particular covering information about how to report unfair treatment. Policies should also include information on the range of courses of action available to those who had experienced unfair treatment. Another recommendation was that policies with a clear process set out (from initial complaint to final decision) would help ensure barristers feel more confident in making complaints.

3.46. Participants also recommended that policies addressing discrimination and harassment should be well promoted to ensure members of chambers are both aware of and have trust in them. While the current regulatory requirements were felt to be ‘okay’ there was a view that there was often a significant gap between requirements and actual practice.

*“The starting point has to be having clear policies in place... and educating all members, staff and pupils about the existence of these policies and ensuring they are kept aware and updated about them, so that everybody knows if there’s a problem, how they complain and what the routes of doing so are.”*

3.47. **Improving transparency** in relation to the level of complaints and the way they were dealt with was also discussed as a policy which could improve reporting. Recommendations included introducing rules requiring the recording and reporting of the number of complaints received and their outcomes, and having the level of complaints (and how they were dealt with) discussed by chambers’ management. This could include the requirement to have a regular report (at least annually) covering members’ and staff’s experiences of harassment and discrimination. This would help to ensure visibility of the process and improve confidence that complaints are listened to and dealt with rather than ‘swept under the carpet’, and help address any concerns among those who had experienced unfair treatment that if they wished to make a complaint it would be properly dealt with and acted upon. Regular monitoring and reporting could also help ensure that there is more awareness of the level of discrimination and harassment within chambers, and help prompt generic actions where the problem was more widespread.

3.48. A key recommendation relating to discrimination and harassment policies was that they should, wherever possible be structured to enable **multiple reporting routes** within chambers. This was felt to be particularly valuable for a number of reasons – it could address, for example, the issues that arise when there are instances of harassment or discrimination by line managers or senior staff, who in some cases could end up being the person to whom complaints should be directed, or result in other challenges in taking action. One recommendation was that policies should enable reporting to individuals within chambers at different seniorities or year of Call – it was felt this could make it less daunting for junior members of chambers to make complaints. This could be implemented by (for example) the BSB requiring

or recommending chambers to have a rep for each level of Call in addition to the Equality and Diversity Officer. Having multiple reporting routes could help address issues around individuals being discouraged from reporting problems involving senior staff, or such complaints not being addressed.

*“You need multiple reporting points, dependent on what the issues are, and who you have the issues with.”*

3.49. A key recommendation raised in a number of the workshops was that there should be **external or informal routes for complaints** to enable complaints to be made without involving chambers directly. Several participants argued that there should be external routes – either formal or informal – that would enable people to raise issues initially without having to be concerned about the reaction within their chambers, such as damaging working relationships with colleagues or being seen as a ‘troublemaker’. One recommendation was that a confidential helpline could be set up to provide initial advice on a matter and have an informal, confidential discussion.<sup>16</sup> This could be run by the Bar Council, or consist of a range of representatives from different backgrounds (such as barristers and clerks) and different levels of seniority. This could provide individuals with a ‘sounding board’ that would enable them to access advice and support, taking advantage of the experiences of others to assess their options, whether that meant later escalating to a formal complaint or taking other approaches to dealing with the issue. This could also include an option for a follow-up meeting for informal, face-to-face chat, or sending someone to accompany a person to meetings in chambers (something similar to the role of a union representative). Another recommendation was that an external helpline could also perform a monitoring function, such as keeping a log of the complaints received as a way of keeping track of the prevalence of these issues, which could be annually reported to raise awareness.

*“The ethics helpline is brilliant, so to have something similar, with someone at the other end with whom you could have that honest conversation, you could get that advice on how to deal with it without a formal complaint.”*

3.50. Another recommendation was introducing the option to report to the Bar Council or BSB without escalation to a full complaint – this could be either a helpline or an online reporting portal. This would enable monitoring of the level of harassment or discrimination without compelling individuals to take it further and escalate to a formal process. It was also felt in some cases the obligation to report ‘serious misconduct’ could actually discourage informal reporting, as anyone an individual confided in might have a regulatory obligation to formally report the issue. It was suggested that the BSB should clarify this obligation or provide additional guidance to address this issue.

16. The Bar Council currently runs a confidential equality and diversity helpline, but some participants may not have been aware this was available, or thought that this was not appropriate for discussions of this type.



## Summary of recommended solutions: Reporting unfair treatment

**Clear, written reporting frameworks** – eg clear policies and guidance on reporting unfair treatment; information on to whom issues should be reported; information as to what courses of action can be taken; clear process - from initial complaint to final decision – set out. This could help barristers feel more confident in making complaints, addressing the gulf between requirements and actual practice.

**Improving transparency** – eg requiring recording and reporting of the number of complaints received, and outcomes, to be discussed by chambers' management; annual reports of numbers of experiences of harassment/discrimination. This could help assure that there is more awareness of the level of discrimination/harassment within chambers, and how effectively issues are dealt with.

**Set up external or informal routes for complaints** – eg a helpline to provide initial advice on a matter and have an informal, confidential discussion; enabling reporting without escalation to a full complaint; potential for follow-up meeting for informal, face-to-face chat, or sending someone to accompany a person to meetings in chambers (something similar to the role of a union representative). This would enable people to have an independent first line of reporting, that could offer advice on whether to escalate an issue, provide confidential route to enable issues to be raised without automatically involving chambers.

**Multiple reporting routes** – eg ensuring complaints can be made via several routes or individuals; having a wider range of people to report to in chambers (such as separated by years of Call). This could help address issues around individuals being discouraged from reporting issues involving senior staff, or such complaints not being addressed.

## Other strategies to improve the retention of women at the Bar

- 3.51. Workshop participants proposed a number of cross-cutting recommendations to improve the progression and retention of women at the Bar – and equality across the board.
- 3.52. Perhaps the most regularly raised issue was the **importance of the Equality and Diversity Officer (EDO)** within chambers. Where examples of good practice were raised, the role of the EDO in introducing or implementing these approaches was regularly cited as a factor. Participants recommended that the EDO should be seen as a key role within chambers, and that they should have sufficient seniority or influence to be able to deal with issues across different groups (such as senior management and clerks) and ensure they had the confidence of people within the set. Some recommended ensuring the EDO was a senior member of chambers would be one way to help ensure this was the case. Other recommendations focussed around requiring certain training for EDOs, helping to ensure they were well versed in policy, practice and the law, and were fully aware of potential options and solutions to issues. The value of effective and dedicated EDOs to promoting this agenda and promoting good practice was seen as key to making progress – in particular this could help ensure that it was not seen as a ‘token’ role as was sometimes felt to be the case.
- 3.53. Many participants recommended that more was done to **raise awareness of policies, guidance and best practice**. Several participants felt there was already good policy and good practice available, and instead of the BSB taking a more prescriptive approach it would be more effective to take advantage of what is already out there which staff and barristers might not currently be aware of. In many cases it was felt that available guidance was not easy enough to find, and more could be done to make it visible both to and within chambers. Another key element of raising awareness was ensuring that relevant information was targeted at or filtered down to clerks, as they are often in the best position to implement best practice and take action on issues.

*“On the subject of clerks, there is excellent Bar Council guidance available, but I’m not sure that it necessarily filters down to them.”*

- 3.54. **Mandatory training for clerks and senior management** to ensure awareness of equality and diversity policies and requirements (perhaps as part of their continuing professional development requirements) was felt to be one way of raising awareness of policies, good practice and what should be done to address issues. Several participants highlighted training in unconscious bias as particularly valuable. One recommendation was that some form of equality and diversity training was undertaken on a regular basis (eg every few years, or for all new joiners to chambers). Making this a requirement of the equality and diversity policy which chambers must have would increase the minimum standard. Participants also recommended providing this training centrally, such as through the Bar Council, so as to improve the consistency of completion of the training. The benefits of training for clerks was highlighted by several participants – one

suggestion was for all clerks to be required to have training, and that at least one clerk in each chambers should be a member of the IBC, to ensure they are up-to-date with best practice, and can share and promote that within chambers. However, some challenges were raised in terms of publicising best practice and guidance. It was argued that some chambers might only comply with the minimum standard, and not take steps beyond what is required by rules. This would make it more difficult to effect change, particularly if chambers' resources are stretched. A further challenge raised was that the BSB does not regulate clerks, and therefore cannot prescribe that they undertake training.

*“It’s a nonsense that sets of chambers are not having the training budgets and making sure that the clerks, people who manage your practice, aren’t getting training in equality and diversity and all these issues we are talking about today... I would make it absolutely mandatory.”*

3.55. Initiatives that looked towards **improving the culture of the profession** in relation to equality and diversity were also felt to be areas where more progress could be made, in particular promoting and developing a zero tolerance approach to issues of unfair treatment. This was felt to require the agenda to be championed at the highest level and for senior leaders to be more visible in supporting change. There was also felt to be a clear need to spread the discussion beyond those who are already engaged with the issue of improving the retention of women at the Bar. One recommendation was to frame issues in a way that does not alienate those who do not see it as relevant for themselves, in particular, male barristers or clerks. This might mean linking to the ‘Wellbeing at the Bar’ agenda rather than explicitly framing discussions around the issues faced by female barristers. This could help ensure the value of adopting best practice and effective policies was seen as a benefit for chambers as a whole, and something that would help the whole profession.

3.56. Another recommendation was to normalise equality and diversity issues through having standing agenda items covering equality and diversity and general wellbeing for chambers’ committees. A key cultural issue to address was the attitude within the profession that ‘if you are good enough, you will succeed’, which led to fresh initiatives or existing policies around equality and diversity being seen as unnecessary interference that was not required. While these sorts of attitudes were seen as changing gradually, it was felt that more could be done in this area.

*“What can happen at a chambers is that people who are not directly affected by issues will not drive it forward – there needs to be more impetus within chambers to make sure these things are driven forward, and that needs leadership.”*

3.57. It was also felt that the business case **outlining the benefits of best practice in equality and diversity** needs to be more clearly made, in particular its value relating to recruitment and retention. A range of work has been already been done in this area, both within the Bar and within other sectors. Workshop participants felt that the introduction of mandatory equality and diversity policies had helped, and had encouraged cultural change. Best practice and good policies do exist in many

instances, but it was argued that more needs to be done to ensure the relevant people are aware of them.

*“There is a cultural shift... some chambers are looking to progress, some are just happy to drift along with the minimum requirements – this is why we have to keep reviewing the minimum requirements”*



### Summary of recommended solutions: Strategies to improve retention of women at the Bar

**EDO should be a key role** – it needs to have the confidence of people in the set; to be a senior position and to carry a degree of authority and ability to influence others. There would be value in training for the EDO, who needs to be well versed in policy, practice and the law, and know options and solutions. The value of effective and dedicated EDOs to promoting the agenda and promoting good practice was seen as key to taking this forward and ensuring it is not seen as a ‘token’ role.

**Raising awareness of policies, guidance and best practice** – a range of work has been done in this area, and best practice and good policies do exist in many instances – but more needs to be done to ensure the relevant people are aware of them. The business case outlining the benefits of best practice in equality and diversity also needs to be more clearly made.

**Addressing culture and developing a ‘zero tolerance’ approach** – engaging leaders to be more visible and able to show a positive impact on equality and diversity; to spread discussion beyond those who are already engaged; using training to address attitudes; importance of framing issues in a way that does not alienate male barristers and clerks; possibility of linking to the ‘Wellbeing at the Bar’ agenda rather than explicitly framing discussions as a gender issue.

# 4 Summary of research themes

4.1. The discussions produced a wide range of recommendations and examples of good practice that were felt to be valuable in helping to address the issues faced by women in the profession and to improve retention. Although discussions were focussed on developing solutions to address specific issues identified by previous research on the experience of women at the Bar, it is notable that most of the recommendations can be grouped into several cross-cutting themes, detailed as follows:

- **Expanding monitoring** – introducing or improving monitoring of a range of issues was felt to have considerable value, both in terms of identifying where issues exist, ensuring any responses are driven by accurate information, and helping to ensure that chambers are prompted to respond to issues identified. Some areas where this was recommended included:
  - monitoring ‘marked’ work as well as unallocated work, to ensure this is taken into account when developing policy.
  - clerks recording the reason why incoming work is allocated as it is within monitoring frameworks.
  - introducing monitoring of the number of requests made for flexible working, details of the requestor, and the decision/response.
  - introducing rules requiring the recording and reporting of number of complaints of discrimination and harassment received, and their outcomes.
  - introducing a system for recording and monitoring instances of discrimination and harassment without involving formal chambers’ complaint procedures.
- **Improving transparency** – helping to ensure awareness of issues and policies was improved, and that discussions around issues are based on accurate information, thus being seen as ‘driven by the data’ rather than individual grievances. Recommendations around transparency included:
  - improving transparency both of work allocation data within chambers but also the reasons why work is allocated as it is, and potentially of the level of fee income.
  - ensuring a high level of awareness of existing policies within chambers, such as by publishing them on chambers’ websites or ensuring policies are adequately publicised to all members and staff.

- improving the transparency of the process when complaints relating to unfair treatment are made, including information on what courses of action were available and having a clear process set out in chambers' policies.
- improving transparency in relation to the level of complaints about unfair treatment and the way they were dealt with.
- more being done by key stakeholders to promote and publicise good practice, and provide guidance relating to policies and practice.
- **Introducing or improving policies** – Suggestions included:
  - the BSB requiring chambers to have a policy for clerks to provide feedback on work allocation to barristers individually, at regular intervals.
  - setting up regular sessions between clerks and tenants to encourage contact, and ensuring that clerks check with barristers before putting them down for work.
  - moving away from 'fixed fees/rent' both during and on return from parental leave to address the financial issues faced by many barristers on their return to practice.
  - parental leave policies including a formal and structured 'return to work' framework.
  - ensuring that parental leave policies in particular (but also other policies that are relevant to improving retention) are written in an inclusive way so that they were not solely cast as of relevance to women.
  - creating an equality and diversity 'kite mark' for chambers who have good formal policies and exhibit good practice relating to equality and diversity.
  - setting up and encouraging mentoring programmes (such as are offered by some Inns and SBAs) to provide support and advice for women in the profession.
  - providing an external route for reporting, monitoring and advice relating to issues of discrimination and harassment, such as a telephone helpline run by either the Bar Council, BSB or Inns.
- **Expanding equality and diversity training** – a number of recommendations focussed around the value of training, both in terms of raising awareness of issues around equality and diversity but also in ensuring relevant individuals are not only aware of potential problems but also knowledgeable about effective approaches that can be taken to address them and relevant good practice. Suggestions included:
  - clerks in chambers to be required to attend training provided by the Institute of Barristers' Clerks, to ensure clerks are aware of the issues that can arise around work allocation.

- mandatory training for senior chambers management, to ensure awareness of equality and diversity policies and requirements (perhaps as part of CPD requirements).
  - requiring training for Equality and Diversity Officers, helping to ensure they were well versed in policy, practice and the law, and ensuring they were aware of options and solutions to issues.
  - offering training to barristers on managing relationships with the clerks room with a focus on communication, and helping junior tenants.
  - **Cultural change** - addressing elements of the culture and values that were seen as prevalent among parts of the profession was also the focus of a number of the recommendations made within the workshops. While improvements in rules, requirements and practice were clearly of value, it was felt these could be undermined by certain attitudes unless cultures were also addressed. Some recommendations for addressing cultural issues included:
    - encouraging an inclusive rather than individualistic culture within chambers.
    - recasting 'maternity leave' as 'parental leave', and encouraging more men to take parental leave.
    - promoting and developing a 'zero tolerance' approach to issues of unfair treatment and unlawful discrimination and harassment.
    - working to improve the working relationship and level of communication between barristers and clerks, encouraging positive and proactive communication between clerks and barristers.
    - engaging leaders to be more visible and able to show a positive impact on equality and diversity, and spreading the discussion beyond those who are already involved and engaged.
    - framing issues in a way that does not alienate male barristers or clerks, such as by linking it to the 'Wellbeing at the Bar' agenda rather than explicitly framing discussions as a gender issue.
    - more clearly making the business case for best practice in equality and diversity, in particular its value relating to recruitment and retention.
- 4.2. While the work undertaken by the BSB in 2016 focussed primarily on identifying the issues that were impacting on women's retention at the Bar and how effective the Equality Rules had proved at addressing them, the workshops undertaken for this research were purely focussed on developing and discussing a range of solutions to address the issues identified.

- 4.3. The findings of this research have been used to inform a detailed action plan which sets out 10 actions for the BSB and other key stakeholders to help improve the experiences of women in the profession and drive improvements to retention. The actions are grouped into three areas of regulatory focus: the BSB Handbook, Guidance (produced either by the BSB or the Bar Council), Engagement and Partnership. The actions broadly reflect the areas in which there was greatest consensus at the workshops.

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