

Report on Women's Experiences at the Planning Bar

Executive Summary

The Planning and Environment Bar Association ("PEBA") set out to investigate women's experiences at the Planning Bar. The research revealed a pattern of inequality at all levels of practice.

Key findings include:

- Only approximately 10% of silks at the Planning Bar are women
- Of the 2018-2019 intake of planning tenants, only 22% were women (despite law graduates being 60% female)
- PEBA conducted a general survey of women at the Planning Bar, eliciting 28 responses from practitioners with a wide range of experience
- No respondent cited being "satisfied" with the current situation of women at the Planning Bar
- 41% of respondents said they had experienced unfair allocation of work and/or unequal fees based on gender
- Nearly a third of all respondents had experienced clients expressing a preference for a male barrister
- Many respondents identified stark challenges when resuming work after maternity leave and managing work alongside caring responsibilities
- Several respondents faced explicit discrimination around maternity and/or pregnancy

Improving gender equality will benefit both men and women at the Planning Bar. Diversity is a matter of fairness, but it also ensures the recruitment and retention of the most talented practitioners. It is critical if the Planning Bar is to maintain the highest possible standards. Robust research has also found that gender equality improves the profitability of law firms.

Key recommendations include:

- Further research and discussion with both men and women practitioners and clerks around current problems and routes forward
- Improved transparency and implementation of accountability systems to tackle inequality in work allocation and fees
- Senior practitioners, both men and women, should take the lead in actively identifying and nurturing high-performing women
- Schemes to ensure a fairer share of junioring work, networking/marketing opportunities, and "sponsorship" (as opposed to mentoring) for junior female barristers are needed
- Training programs should be put in place for clerks on how to help practitioners plan for maternity/childcare matters, including how to refuse unlawful requests to discriminate
- PEBA should investigate whether there is a role for targets to improve diversity at the Planning Bar

Introduction

It has now been over 100 years since the passage of the Sex Disqualification (Removal) Act 1919, which enabled women to join professions from which they had previously been disqualified, including the legal profession. This Act enabled Gwyneth Bebb to finally take her Oxford degree and join the legal profession, having been the first woman to earn a first-class honours degree in law in 1911. Gwyneth Bebb's name will be familiar to readers from Bebb v Law Society [1914] 1 Ch 286, in which the Court of Appeal notoriously held women could not be solicitors because no woman had ever been a solicitor.¹

How times have changed. Yet, despite marked cultural progress, economic equality is marked only for torpid progress and reversal when times are bad. According to the World Economic Forum Global Gender Gap Report (2021), on present trends gender parity will not be achieved for another 135.6 years, significantly worse than the 2020 figure which was 99.5 years.² If this continues none of us will see equality in our lifetimes, nor will many of our children.³

In line with this unacceptably slow progress, the Bar has not changed nearly as quickly as it ought to have. Women constituted only 8.2% of those called to the Bar as late as 1970. At that time, nearly half of all sets of chambers did not have a single woman member. Hilary Heilbron QC recalled the difficulties facing women seeking pupillage then, when the common excuse for not taking on any women was that chambers did not have a female washroom.⁴ Yet even today only 38% of the practising Bar and just 17% of practising QCs are women.⁵ This is despite the fact

¹ Notwithstanding s.48 of the Solicitors Act 1843 providing “*every word importing the masculine gender only shall extend and be applied to a female as well as a male*” unless “*there be something in the subject or context repugnant to such construction.*” The “repugnant” context here was the fact that “*no woman has ever been an attorney-at-law. No woman has ever applied to be, or attempted to be, an attorney-at-law. There has been that long uniform and uninterrupted usage which is the foundation of the greater part of the common law of this country, and which we ought, beyond all doubt, to be very loth to depart from*” (the Master of the Rolls at page 294). He did note (further on at page 294) “*in point of intelligence and education and competency women...are at least equal to a great many, and, probably, far better than many of the candidates who will come up for examination*” before concluding “*but that is really not for us to consider*”.

² World Economic Forum, Global Gender Gap Report 2021”, (2021) at page 5. Available at: <https://www.weforum.org/reports/global-gender-gap-report-2021> . Last accessed 14 February 2022; “Global Gender Gap Report 2020”, (2020) at page 6. Available at: <https://www.weforum.org/reports/gender-gap-2020-report-100-years-pay-equality>. Last accessed 3 August 2020.

³ The prospect of progress is no better in the legal profession. In a study of over 6,000 lawyers from 2003 to 2011, researchers noted nearly equal levels of women and men at entry level but only 23% of the women made partner over that time frame. Reviewing the data, including full access to performance evaluations, the researchers concluded there was little progress towards closure of the gender gap at the top. Francine Blau and Jed DeVaro, “Empirical Analysis of a Sample of New Hires,” *Industrial Relations* 46 (2007) pages 511-550.

⁴ “Women at the Bar: an historical perspective” Counsel Magazine. Available at: <https://www.counselmagazine.co.uk/articles/women-the-bar-historical-perspective>. Last accessed 7 August 2020. Noting that “women coped just fine” despite the lack of facilities.

⁵ Report on Diversity at the Bar, BSB, December 2020, page 4. Available at: <https://www.barstandardsboard.org.uk/uploads/assets/88edd1b1-0edc-4635-9a3dc9497db06972/BSB-Report-on-Diversity-at-the-Bar-2020.pdf> Last accessed 27 December 2021.

that women have made up over 60% of entrants into the legal profession for the past 30 years.⁶ Notions of continual progress (at whatever pace) over the last decade are questionable: in 2008 women constituted, as usual, the majority of BPTC students but the minority of pupils,⁷ from 2015-2019 women constituted a slight majority of pupils (up to 54%), but the relative percentage of female pupils dropped in 2020.⁸ In the past 11 years the percentage of female QCs has gone up only 5.8%.⁹ It is also worth noting the social background of the Bar is not diversifying. Some 18% of the Bar attended independent schools compared to a national average of 7% (this is the lowest possible estimate: the BSB questionably framed its figure on the “even if” assumption the 44.4% of barristers who did not respond to the question went to state schools).¹⁰ At vocational level 32% of BPTC students attended independent schools.¹¹

The overall statistics are much worse at the Planning Bar. Only 6% of QCs were women until 2021,¹² a statistic that had barely budged in a decade: just three new female planning QCs were appointed between 2014 and 2021.¹³ 2021 was, however, a stupendous year for women at the Planning Bar with four new female silks being appointed.¹⁴ But 10% is still too low, and does not mean it is just a matter of time. A lack of parity at the top is reflected by a deeply troubling narrow talent pool at the bottom. Of the 2018-2019 intake of planning tenants, only 22% were women (compared with over 60% of law students).¹⁵

⁶ Law Society, “Women in Leadership in Law”. Available at:

<https://www.lawsociety.org.uk/campaigns/women-in-leadership-in-law>. Last accessed 17 July 2020.

⁷ Women made up 52% of BPTC students in 2008 but only 40% of pupils. Bar Standards Board, “Bar Barometer”, (2011) at page 7. Available at:

<https://www.barstandardsboard.org.uk/uploads/assets/2abdbf40-05bd-48ee-a0968570ebda1a03/barbarometerfinalweb.pdf>. Last accessed 31 March 2021.

⁸ In 2020 it was 50-50. 2020 was an anomalous year because the overall number of pupillages decreased significantly from 2019 (down 121 pupillages). The decrease was attributed to the pandemic. The implication is that when pupillages are more scarce they go to men who are seen as somehow less “risky”, but the BSB did not analyse the reasons for the drop in female selection. Report on Diversity at the Bar, BSB, December 2020 at page 12. Available at:

<https://www.barstandardsboard.org.uk/uploads/assets/88edd1b1-0edc-4635-9a3dc9497db06972/BSB-Report-on-Diversity-at-the-Bar-2020.pdf> Last accessed 27 December 2021.

⁹ Report on Diversity at the Bar, BSB, December 2020 at page 4. Available at:

<https://www.barstandardsboard.org.uk/uploads/assets/88edd1b1-0edc-4635-9a3dc9497db06972/BSB-Report-on-Diversity-at-the-Bar-2020.pdf> Last accessed 27 December 2021.

¹⁰ Report on Diversity at the Bar, BSB, December 2020 at page 25. Available at:

<https://www.barstandardsboard.org.uk/uploads/assets/88edd1b1-0edc-4635-9a3dc9497db06972/BSB-Report-on-Diversity-at-the-Bar-2020.pdf> Last accessed 27 December 2021.

¹¹ Report on Diversity at the Bar, BSB, December 2020 at page 25. Available at:

<https://www.barstandardsboard.org.uk/uploads/assets/88edd1b1-0edc-4635-9a3dc9497db06972/BSB-Report-on-Diversity-at-the-Bar-2020.pdf> Last accessed 27 December 2021.

¹² A ratio of 104 male QCs to ten female QCs; taken from PEBA Handbook and updated post-2019 based on review of each planning chambers’ website.

¹³ Lisa Busch, Jenny Wigley, and Megan Thomas. Data taken from PEBA Handbook and updated post-2019 based on review of each planning chambers’ website.

¹⁴ Estelle Dehon, Sarah Reid, Melissa Murphy, Carine Patry: QCA list of appointees, 2021.

¹⁵ From review of sets with substantial planning teams’ websites (No5, Kings, Cornerstone, FTB, Landmark, 39 Essex), planning tenants called in 2018-2019. Where no planning tenants were taken on in those years (Kings), the most recent planning tenant was taken into account. Results were nine men to two women. Data from 2020-2021 is not relied on due to pandemic-related reductions / postponements of pupillages that had previously been awarded and some candidates not returning.

The Planning Bar, like the Bar as a whole, is culturally traditional. While it is hard to imagine any barrister today opening like Jay Floyd (in *Roe v Wade* of all cases), with “*Mr Chief Justice, and may it please the Court. It’s an old joke, but when a man argues against two beautiful ladies like this, they are going to get the last word*”,¹⁶ out-of-date attitudes abound. The author, a barrister at the Planning Bar, has experienced a host of inappropriate behaviour ranging from comically improper, to punitively sexist, to terrifying.

She was once confronted just before opening a case by the opposing QC who made inappropriate comments about her appearance. It was designed to manipulate and destabilise, and it worked. She has been told by lay clients they wanted her work confined to “paperwork” because “*only a man can stand up to a judge like you have to*”. A senior member of the judiciary requested face and “body shots” of all the females (and none of the males) at the high table when she volunteered at a conference. She has had to leave a professional event early when a judge became inappropriate. She has been tricked into a romantic date with a senior partner of a high profile law firm. On one occasion, a QC said in passing to her that he could “*never take a woman seriously if she wasn’t wearing heels*”. Sadly, he is not the only distinguished lawyer to be so preoccupied by a woman’s fashion choices that he overlooks her talent: the US Supreme Court Justice Felix Frankfurter said, when rejecting Ruth Bader Ginsberg as a clerk – after she had been awarded joint first place in her Columbia Law School class – “*I can’t stand girls in pants. Does she wear skirts?*”¹⁷

These experiences, all gathered in a relatively short amount of time, led to the desire to investigate whether they were unique to the author. With leadership and encouragement provided by Mrs Justice Lieven before she joined the judiciary, the Planning and Environment Bar Association (“PEBA”) set out to explore whether systemic issues of inequality at the Planning Bar preclude women’s recruitment, retention, and advancement. Tangible evidence was necessary to understand the statistics and to inform recommendations to address any systemic structure of inequality specific to the Planning Bar. True parity risks being diluted by tokenism and anecdotes without an evidence-based understanding of the issues. Data is also essential when establishing, measuring, and reporting on defined terms of progress. As stated by Baroness Hale and Prof. Atkins, progress to advance diversity will only be made with awareness of the extent of discrimination and how it operates.¹⁸ This was a difficult task due to the nature of the self-employed Bar, where evidence is often only anecdotal. Fees are not widely published if at all, fee structures are opaque and/or discretionary, work allocation and junioring opportunities are unstructured, and those who would be able to provide the best evidence of difficulties have left the profession.

¹⁶ As quoted in Ryan A. Malphurs “People Did Sometimes Stick Things in my Underwear: The Function of Laughter at the U.S. Supreme Court”, 10 Communication L.R. 48 (2012) at page 48.

¹⁷ As quoted in Deborah Rhode, “Women and the Path to Leadership”, Mich St. L.R. 1439 (2012) at page 1445. Available at: <https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1060&context=lr>. Last accessed 3 August 2020.

¹⁸ Susan Atkins and Brenda Hoggett, *Women and the Law* (London: Institute of Advanced Legal Studies, 2018) at page 5. Available at: https://humanities-digital-library.org/index.php/hdl/catalog/view/atkins_hoggett/69/196-3. Last accessed 25 March 2020.

In light of those challenges, the focus of PEBA's work was a survey of women's experiences with a view to identifying practices that are adversely affecting women. PEBA has worked closely with the Bar Council to understand the equality structures that presently exist at the Bar (including reporting requirements) and to ensure this work has a wide impact.

It is important to point out that this is not a "women's issue". Tackling inequality is fundamental to the long-term sustainability of the Bar's high standards by attracting and retaining the most talented barristers from the largest possible pool. It is especially important because the majority of law students are female. Studies have demonstrated that organisations that lack a culture of equal opportunity are less able to recruit, fulfil, and motivate the most qualified individuals.¹⁹ Gender parity is also an economic issue: a large number of robust studies have shown a positive correlation between the diversity of a law firm and its profitability.²⁰ Gender-diverse teams score more highly on "intelligence" measures in a way that could not be explained by the individual intelligence of members, so a gender-diverse team is more than the sum of its parts.²¹ Obstacles to women's success also demonstrably decreases morale, commitment, and retention and increases the expenses associated with recruiting, training, and mentoring replacements.²² Addressing inequality, therefore, increases fairness, ensures the profession attracts and retains the best possible candidates, and positively impacts the bottom line.

Survey Methodology

PEBA carried out a survey of all women listed as planning practitioners in the PEBA Handbook. They were sent a link to an online survey (SurveyMonkey) to complete

¹⁹ Robin J. Ely and David A. Thomas, "Making Differences Matter: A New Paradigm for Managing Diversity", *Harv. Bus. Rev.* 74 (1996) at page 79.

²⁰ Cedric Herring, "Does Diversity Pay? Race, Gender and the Business Case for Diversity", 74 *American Sociological Rev.* 208 (2009). See also David Carter et al, "Corporate Governance, Board Diversity, and Firm Value", 58 *Financial Review* 33 (2003) at page 51. A McKinsey study of over 1,000 large corporations discovered that the most gender diverse companies were 25% more likely to earn "above average" profits. This outperformance was most strongly correlated to the number of women in senior roles within that company. Sundiatu Dixon-Fyle, Kevin Dolan, Vivian Hunt, Sara Prince "Diversity Wins: how inclusion matters" McKinsey, 19 May 2020. In the UK, a study of FTSE350 companies demonstrated that those with over a third of women in senior management had a net profit margin more than ten times larger than FTSE350 firms with no women at senior management level. Margaret McDonagh, Lorna Fitzsimons "WOMENCOUNT 2020: role, value, and number of female executives in the FTSE350" *The Pipeline* (2020). A study of professional service firms show that the more gender diverse the firm, the higher its revenue: Fisher Ellison, Wallace P. Mullin, "Diversity, Social Goods Provision, and Performance in the Firm", *Journal of Economics and Management Strategy* 23 (2014) pages 465-481. See also Andrea Weber, Christiane Zulehner, "Female Hires and the Success of Start-Up Firms", *American Economic Review* 100 (2019) pages 358-361; and Sander Hoogendoorn, Hessel Oosterbeek, Mitjam van Praag, "The Impact of Gender Diversity on the Performance of Business Teams: Evidence from a Field Experiment" *Management Science* 59 (2013), pages 1514-1528.

²¹ Anita W. Woolley, Christopher F. Chabris, Alex Pentland, Nada Hashmi, Thomas W. Malone, "Evidence for a Collective Intelligence Factor in the Performance of Human Groups", *Science*, Volume 330, (2010) at page 688.

²² Cedric Herring, "Does Diversity Pay? Race, Gender and the Business Case for Diversity", 74 *American Sociological Rev.* 208 (2009). See also David Carter et al, "Corporate Governance, Board Diversity, and Firm Value", 58 *Financial Review* 33 (2003) at page 51.

anonymously. The topics for questions had been previously discussed over the course of a series of informal social events with female members of the Planning Bar led by Mrs Justice Lieven and further refined by way of internal discussion within the subgroup²³ established within PEBA's Committee. The survey was not carried out by professionals and was only ever intended to provide a general overview of women's experiences at the Planning Bar.

Of those asked to participate, 41% (28 practitioners) responded to the survey. All were self-employed. There was a wide range of experience amongst the respondents: 32% were of 1-5 years' call; 21% of 6-10 years' call; 21% of 11-15 years' call and 25% were in practice for over 16 years.

Findings

No respondent cited being "satisfied" with the current circumstances of women at the Planning Bar. Two key issues emerged: unfair work allocation/fees, and childcare/maternity issues.

Key Issue 1: Unfair Work Allocation and Fees

In the PEBA survey 41% of respondents said they experienced gender-based unfair allocation of work and/or unequal fees. Seven respondents cited the unfair allocation of work as a "significant issue". Nine had noted unequal fees for male/females of the same year of call/experience level. Five saw no improvement in the fair allocation of work over the course of their careers. That experience reflects data published by the Bar Standards Board, which found "[f]or the highest income bands the difference [in income between male and female self-employed barristers] is particularly stark": 9.5% of self-employed female barristers earn £240k or more, compared to 26.8% of male barristers. At the more junior end, 29.5% of the self-employed female Bar had an income of £60k or less, compared to only 19% of male barristers.²⁴ Undoubtedly there are a number of contributory factors, but women have been at the Bar in sufficient numbers for long enough that simple seniority does not explain the discrepancy. Nor is the trend linear. The Bar Council's most recent data shows that the gap between men and women's average income has *increased* over the last 20 years.²⁵ The Planning Bar performs extremely poorly on this metric, although using an admittedly crude data set: on average women at the Planning Bar earn 42% less than men.²⁶

Nearly a third of respondents personally experienced clients expressing a preference for a male barrister. One respondent was told so directly by a prospective client. Others noted unspecified "concerns" being expressed by male instructing solicitors

²³ Tim Mould QC, Sarah Reid QC, Megan Thomas QC, Victoria Hutton, Rebecca Clutton, Nina Pindham.

²⁴ BSB Research Report "Income at the Bar - by Gender and Ethnicity". November 2020 paragraph 3.24.

²⁵ Bar Council "Barrister earnings data by sex and practice area report 2021". September 2021 at page 3.

²⁶ Unpublished research based on income reported to Bar Mutual. Statistical data from 2019. Due to how the data is recorded this does not reflect working patterns or seniority and is illustrative in general terms only.

about having a female barrister. One said she had heard “many” disparaging comments about female barristers. Another cited the perception that women were not “tough enough” for difficult cases. Respondents noted that certain housebuilding clients only hired male barristers. The ethos of some members of the development industry, described as being “*old fashioned about women*”, was cited by multiple respondents.

Discrimination from clients is clearly a problem, but internal practices within chambers lie at the heart of the issue. Respondents cited men of the same year of call getting more junioring opportunities and more work overall. One said men around her year of call got “*a lot more*” inquiry work (though she could not be sure this was down to gender). Another said it was “noticeable” that men were instructed in far more inquiry work. Gender was “plainly” an issue in terms of the unfair allocation of work according to one respondent.

A number of respondents cited difficulty establishing the same relationships with senior males in chambers as male colleagues. A number of examples were given of junior male colleagues establishing very close relationships with male QCs and consequentially getting all or nearly all their junioring work (and simultaneous positive exposure to important clients).

On fees, in one instance a more senior member of chambers knew a female junior in her chambers was being billed out at a lower rate than her male counterparts. Multiple respondents said they knew that women were paid less than men even though they had the same level of experience. One said she was paid “significantly” less than men at her level. Another cited being “shocked” when she discovered the discrepancy in fees between male and female barristers with equivalent experience in her chambers. The discrepancy does not only apply to those with equivalent experience: one respondent witnessed a male who was more junior than her being given a brief fee “*far higher*” than she had ever received. Notably, clients did not appreciate the discriminatory bargain: several respondents were told about the disparity between their fees and a male comparator by their instructing solicitors directly.

Clerking is clearly critical. 60% of the respondents said that the inequality they experienced originated with their clerks. One had left her previous chambers because of the unfair allocation of work between male and female practitioners. Respondents cited not being treated “favourably” by the clerks compared to male barristers and not being given equivalent exposure to marketing or junior work. One respondent said bluntly “*the clerking for planning work simply favoured junior men.*”

Key Issue 2: The Biological Fact that Women Have Children

The survey results provided to PEBA indicate that the proportion of women facing disadvantage at the Planning Bar due to pregnancy or maternity leave (or both) is shockingly high.

On the “*ease of return to work*” after maternity leave, out of 14 responses using a scale from 1 (“*very easy to keep practice going/resume it*”) to 10 (“*very difficult to keep practice going/resume it*”): three placed at 10; five at 7-9; four at 3. No one said it was very easy to keep her practice going or to resume it when returning to work.

Discrimination starts at pregnancy. One respondent said that her instructions for an inquiry were (unlawfully, it should be said) rescinded and given to a man when she became pregnant. Another barrister was told by her clerks that her instructing solicitor complained when she became pregnant. Problems continue thereafter: another respondent was told that commuting to an inquiry because of breastfeeding requirements would “*not be appropriate*”. Though it is not clear how explicit her need to be home to breastfeed was made to her leader, if it was not made explicit then this indicates she was afraid to ask directly. That is an equally worrying problem.

Childcare during court hearings was also cited as an issue. Appalling court behaviour persists. One respondent reported a magistrates’ court insisting on sitting past 7pm and refusing to allow her time simply to make a call to arrange for someone to collect her child from nursery. She ended up walking out of the hearing to do so.

Worryingly, the problems appear to be widely known. This issue was cited as a concern even amongst women who do not have children. Only two respondents were “*not concerned*”. No detail was provided to explain the reason for this, for example whether this was because they had already had their children before coming to the Bar or had decided not to have children. As seen, individual women’s experiences confirm these fears are well-founded.

Stereotypes about women and children persist. At a drinks reception - in front of clients - a male QC told one respondent “*You won’t last long. You’ll be off having children soon enough*”, entirely dismissing the prospect of her having a career. Mention was made of the need to “educate” “*older male barristers*” that taking time out to have a child is not “unfair” to the male members of chambers, nor detrimental to chambers’ long-term turnover.

There is, again, a clear problem originating from the clerk’s room. A respondent noted clerks failed to respect days that had been booked out for childcare. Another said that despite her significant level of experience she was given “lower end” work upon return from maternity leave. When she queried this with the clerks, she was told it was necessary to “establish” her practice, even though she had a thriving practice before taking maternity leave. One respondent reported that it took *a full year* after she returned from maternity leave before work started coming in again.

From the responses summarised above, it is clear there are multiple issues of inequality at the Planning Bar. The next question is whether the issues identified above are specific to the Planning Bar, or whether they reflect wider issues within the legal profession. This appears to be the case as these were exactly the same issues cited in a similar survey of female barristers at the Chancery Bar.²⁷ Analysing the existing research on inequality within the legal profession is also an essential step when identifying potential solutions.

Wider Issues Within the Legal Profession

²⁷ “Voices of Women at the Chancery Bar”, February 2021, Chancery Bar Association. Available at: <https://www.chba.org.uk/for-members/library/consultation-responses/voices-of-women-at-chancery-bar/view?searchterm=voices%20of%20women> Last accessed 31 March 2021.

An analysis of the existing research on inequality within the legal profession indicates there are six matters common to the Planning Bar and the wider legal sector: public image; inadequate access to sponsorship/mentoring relationships and networking opportunities; childcare; the judiciary; and structural issues of inequality.

The sections which follow show that women who disregard the implicit message that they don't belong at the Bar go on to face gender-based hurdles in all six matters at all stages of her career: when building a successful career, when carrying out daily work, and when trying to maintain what they have built if they have children. Each of these topics will be examined in turn to derive lessons on the nature of the issues and the most effective solutions.

Public Image

Image matters. Studies have shown that simply including more pictures of female scientists in textbooks improved female students' comprehension of scientific material. The same pattern occurred when male students were shown images of male scientists.²⁸

It is not only a matter of people doing better when they perceive they fit in. The public image of a profession has huge implications for recruitment. The problem of the public image of the Bar was perfectly exemplified by R (Miller) v The Prime Minister, Cherry and others v Advocate General for Scotland (Scotland) [2019] UKSC 41. Every single advocate for the main parties was a white male. As the most widely publicised legal case possibly for a generation, the snapshot picture presented to the public by this panel of advocates is that the Bar is not a place for women or visible minorities. The Planning Bar is no exception. Students looking at members' profiles at planning sets scroll down an almost exclusive list of white men.

Sponsorship / Mentoring

Senior members of the Bar sponsor, mentor, educate, and promote junior members. Very few professions rely so heavily on the informal relationships that develop between senior and junior members, or allow these relationships to develop in such an informal and unstructured way. The effects of having a sponsoring "leader" on a junior lawyer's practice are profound. In a study of female lawyers early in their career Barbara Allen Babcock found that having "male allies" was crucial to the success of those who subsequently went on to become leaders in their fields.²⁹ Placing such a critical matter within an entirely informal structure gives rise to a significant known risk. Professor Dhir, a leading academic on the unequal representation of groups in positions of power,³⁰ has pointed out that where work processes are

²⁸ Jessica J Good, Julie Woodzicka, Lylan Wingfield, "The Effects of Gender Stereotypic and Counter-Stereotypic Textbook Images on Science Performance", *The Journal of Social Psychology* 150 (2010) at pages 132-147.

²⁹ Barbara Allen Babcock, "Feminist Lawyers", *Stanford Law Review* 50 (1998) at page 1705.

³⁰ Mr Dhir is the Florence Rogatz Visiting Professor of Law and Senior Research Scholar in Law at Yale Law School, as well as an Associate Professor, with tenure, at Osgoode Hall Law School. He has also taught at Stanford Law School, Harvard University, the University of Oxford, Berkeley Law School, and University College London.

informal, subjective biases (particularly unconscious bias) naturally come to the fore.³¹

Research has shown that men are far more likely to have sponsors than women.³² It is well-known that sponsors have unconscious tendencies to promote those who remind them of themselves. However, fear also plays a role. Two thirds of men surveyed by the Harvard Business Review reported that they avoided the closer relationship sponsoring a woman would entail out of fear that the attention would appear “inappropriate”.³³ Any woman who had benefitted from a sponsoring relationship would easily be able to reassure these men that the attention is very welcome. As seen, it is crucial to her future career success.

Formal mentoring is also effective, though not nearly as effective as sponsorship. Women with a mentor increased their odds of reaching at least midmanager level over women without a mentor by 56%. This has to be contrasted, however, with the finding that men with a mentor were 93% more likely to be placed at midmanager level or above than men without a mentor.³⁴ There is also evidence that white men find it much easier to secure responses from potential mentors.³⁵ The most effective mentoring programs help educate men about the need to mentor women and set guidelines for appropriate behaviour.³⁶ Here too men cite a fear of the appearance of sexual harassment or sexual affairs as factors discouraging them from acting as mentors to junior women.³⁷

“Women’s groups”, though useful, are not the answer. The only available large-scale study of women’s groups found that they were not effective for career development.³⁸

³¹ Aaron Dhir speaking at Stanford Law School 3 June 2015. Available on Youtube at: <https://www.youtube.com/watch?v=3qU5bRILBzc>. Last accessed 19 July 2020.

³² Sylvia Ann Hewlett, Kerrie Peraino, Laura Sherbin, Karen Sumberg, “The Sponsor Effect: Breaking Through the Last Glass Ceiling”, Harvard Business Review Research Report 5 (2010). See also Herminia Ibarra, Nancy Carter and Christine Silva, “Why Men Still Get More Promotions”, Harv. Bus. Rev. 80 (2010).

³³ Sylvia Ann Hewlett, Kerrie Peraino, Laura Sherbin, Karen Sumberg, “The Sponsor Effect: Breaking Through the Last Glass Ceiling”, Harvard Business Review Research Report 5 (2010) at page 32.

³⁴ Nancy M. Carter, Ph.D. and Christine Silva “Mentoring: Necessary But Insufficient For Advancement” (2010) Catalyst publication. Available at: https://www.catalyst.org/wp-content/uploads/2019/01/Mentoring_Necessary_But_Insufficient_for_Advancement_Final_120610.pdf. Last accessed 7 August 2020. See also Tammy D. Allen, Mark L. Poteet, Joyce E. A. Russell, “Protégé selection by mentors: what makes the difference?”, J. Organiz. Behav. 21, (2000) pages 271-282.

³⁵ Researchers found that requests for a short meeting with a professor were more likely to lead to a positive reply when the request was from a white male (these resulted in a meeting 87% of the time compared to only 62% of the time when the request came from women or students with ethnic sounding names). Katherine L. Milkman, Modupe Akinola, Dolly Chugh, “What Happens Before? A Field Experiment Exploring How Pay and Representation Differentially Shape Bias on the Pathway into Organisations”, Journal of Applied Psychology 100, No. 6 (2015) pages 1678-1712.

³⁶ Herminia Ibarra, Nancy M. Carter, Christine Silva, “Why men still get more promotions than women”, Harv. Bus. Rev. 88 (2010) pages 80-85.

³⁷ Sylvia Ann Hewlett, Kerrie Peraino, Laura Sherbin, Karen Sumberg, “The Sponsor Effect: Breaking Through the Last Glass Ceiling”, Harvard Business Review Research Report 5 (2010) at page 35.

³⁸ Frank Dobbin, Alexandra Kalev, Erin Kelly, “Diversity Management in Corporate America”, Contexts 6 (2007) at page 25.

That said, they were useful for creating informal mentoring relationships and networks.³⁹

Exclusive Networking

In a survey by the American Bar Association, 60% of white women and 62% of minority women said they felt excluded from networking opportunities. Only 4% of white men felt the same.⁴⁰ From the PEBA research it appears that similar, and potentially worse, statistics prevail at the Planning Bar. The Bar Council's research also disclosed outdated practices, concluding that it was "*surprising to hear*" that not wanting to attend a golf day or late evening drinks would have an impact on someone's career, "*but it is clear that this still happens*".⁴¹

Harvard Business School asked over 1,000 company directors why their boards did not have more women. Male company directors said it was a "pool" problem: there weren't enough qualified female candidates. Female company directors gave a completely different answer. They said it was a problem of restricted access: the men on the board, who tapped their social networks for prospective candidates, simply did not have such women within their networks. In other words, the qualified women existed but they were effectively invisible. They were simply not given the opportunities which would have put them in front of the decision-makers.⁴² Networking matters an enormous amount⁴³ but women across the legal sector are being unfairly excluded from reaping its benefits.

Childcare Issues Across the Legal Profession

The plentiful research on this issue confirms that childcare issues are not unique to the Planning Bar. Lawyers who try to reduce their hours to take parental leave report that the schedule they try to put in place is not respected, the hours creep up, the quality of the work decreases, and the pay is not proportional.⁴⁴ This is not a problem affecting women alone. A Pew study showed that 46% of men reported dissatisfaction at not spending more time with their children.⁴⁵ Fathers who work flexible hours are more

³⁹ Cindy Schipani, Terry Dworkin, Angel Kwolek-Folland, Virginia Maurer, "Pathways for Women to Obtain Positions of Organisational Leadership", *Duke Journal of Gender Law and Policy* 16 (2009) at page 131.

⁴⁰ Nancy J. Reichman and Joyce S. Sterling, "Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers", 14 *Tex. J. Women & L.* (2004-2005) at page 65; see also Tim O'Brien, "Why Do So Few Women Reach the Top of Big Law Firms?", *New York Times* (19 March 2006); Joan C. Williams and Veta Richardson, "New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women", *Hastings Law Journal* 62 (2011) pages 16-17.

⁴¹ See October 2020 *Counsel Magazine*.

⁴² Jay Conger, David Finegold, Edward Lawler III, "Appraising Boardroom Performance", *Harv. Bus. Rev.* 76 (1998) pages 136-148.

⁴³ Boris Groysberg, Victoria W. Winston, Shirley Spence, "Leadership in Law: Amy Schulman at DLA Piper", *Harv. Bus. Rev. Case Study* 407-033 (2008) at page 12, quoting Amy's comments that she would sacrifice nights at home despite having three children to stay late "*hanging out at the bars*" and going to social events, because "*that's part of how you establish yourself as a player and as engaged.*"

⁴⁴ Deborah Rhode, "Balanced Lives for Lawyers", *Fordham L. Rev.* 70 (2002) at page 2213.

⁴⁵ Kim Parker and Wendy Wang, "Modern Parenthood: Roles of Moms and Dads Converge as They Balance Work and Family", *Pew Research Center* (2013).

satisfied with their lives, have closer relationships with their children, are less likely to leave their place of employment, and their partners are more than twice as likely to advance in their careers than the partners of men who do not work flexibly.⁴⁶ Swedish research demonstrated that a man taking paternity leave had an even greater effect on his female partner's earnings than her own leave.⁴⁷

Both male and female barristers want satisfying personal lives alongside satisfying professional lives, and, contrary to stereotypes of the workaholic high-flyer, this includes the best qualified amongst the profession. A study carried out by the University of Toronto found the lawyers who were most dissatisfied with their work-life balance were those with the best credentials.⁴⁸ Yet research confirms the consequences of having children are far harsher for women than men. In a rigorous study of US lawyers, nearly 75% of women reported questions about their commitment to their career being raised when they had children. Only 9% of white male and 15% of visible minority male colleagues reported such queries being raised when they had children.⁴⁹ A woman's perceived competence and career-orientation plummeted if the assessor was told she had a baby, whereas it rose for men.⁵⁰

Part-time working or stepping out of the profession temporarily is not presently effective because it is seen as presenting a risk to a lawyer's career. The evidence bears this up. In a long-term study of the University of Michigan's Law School graduates, taking only one year out of the workforce resulted in a 30% reduction in the likelihood of making partner and a 38% reduction in earnings.⁵¹ There is no reason why this has to be the case. Part-time work has been demonstrated to be fully compatible with a client-focussed service profession. A study of part-time working programmes in the accounting field found that programs facilitating part-time working more than paid for themselves by increasing retention rates.⁵² Legal firms could do the same.⁵³ Moreover, studies have shown that managers are not able to tell the difference between those who actually work long hours and those who only

⁴⁶ Richard J. Petts, Chris Knoester, Jane Waldfogel "Fathers' paternity leavetaking and children's perceptions of father-child relationships in the United States" *Sex Roles* 82: 1 (2019) pages 173-188.

⁴⁷ Every month that a dad took leave corresponded to a 6.7% increase in his female partner's earnings (a greater increase than the effect of the mother's own leave). Elly-Ann Johansson "The Effect of Own and Spousal Parental Leave on Earnings" Institute for Labour Market Policy Evaluation Working Paper, 2014:4. Available at: <https://www.ifau.se/globalassets/pdf/se/2010/wp10-4> Last accessed 30 December 2021.

⁴⁸ Ronit Dinovitzer and Bryant Garth, "Lawyer Satisfaction in the Process of Structuring Legal Careers", *Law & Society Review* (2006), noting at page 14 that graduates of elite law schools expressed the most dissatisfaction. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=948571. Last accessed 11 May 2020.

⁴⁹ ABA Commission on Women in the Profession, "Visible Invisibility", (2006) at page 83.

⁵⁰ Bizarrely, perceived competence rose if the assessor was told the woman with the baby was a lesbian. Letitia A. Peplau and Adam Fingerhut "The paradox of the lesbian worker" *Journal of Social Issues* 60: 4 (2004) pages 719-735.

⁵¹ Mary Noonan and Mary Corcoran, "The Mommy Track and Partnership: Temporary Delay or Dead End?" *Annals of the American Academy of Political and Social Science* 596 (2004) at pages 130 & 146.

⁵² Susan Sturm, "Second Generation Employment Discrimination: A Structural Approach", *Columbia Law Review* 101 (2001) at pages 458 and 493 referring to results seen at Deloitte and Touche.

⁵³ Nancy Levit and Douglas Linder, *The Happy Lawyer: Making a Good Life in the Law*, (New York: Oxford University Press, 2010) at page 170.

pretend to.⁵⁴ In other words, women are being unfairly punished for formally reducing their working hours to allow for predictable childcare.

Despite men's stated enthusiasm to stay home with the children, when something has to give, statistically the female's career suffers. A study at MIT found that only a third of male lawyers had partners at home who were "*equally or more committed*" to their careers (compared with two thirds of female lawyers). The same study found that 85% of men with children worked more than 50-hour weeks, compared with just a third of women with children.⁵⁵ Perhaps these men instinctively know that the penalties are greater for them than women: men who take time out for their families suffer even greater financial and professional costs than females who go part-time.⁵⁶

The tensions adumbrated above are irresolvable for many women. A study of barristers who left the profession carried out by the Western Circuit Women's Forum (surveying leavers over a six-year period) sheds useful light on women's, but not men's, inability to accommodate caring for family with work as a barrister. Of the 17 men that left the Bar over the six-year period, 12 became judges and two retired. Over the same period, 30 women left but only four became judges and three retired. This represents many female careers at the Bar cut prematurely short. The answers women provided for leaving were difficulty balancing work and family (87% of respondents), too much travelling (60%), and inflexible work arrangements / the unpredictability of income (40%).⁵⁷

The Judiciary

The judiciary is both an issue in itself and a means of resolving another issue. The results of the PEBA survey indicate that tribunals still behave with astonishing insensitivity to women's needs. It is not clear why. It may simply be that a male tribunal has never had to think about accommodating women's needs (such as the example of a tribunal refusing to allow a woman a brief adjournment to arrange childcare when a hearing ran very late). It may also reflect deeper issues within the judiciary itself. Nathanael Fast and Serena Chen of the University of California, Berkeley found over the course of four separate studies that people in a position of power become aggressive when they feel incompetent in the domain of power they are in.⁵⁸ It is the result, in other words, of a threatened ego. Whatever the reasons for judicial insensitivity and inappropriate aggressiveness, it deeply affects how counsel perceive their profession. Research demonstrates that badly behaved people in a position of power have a much worse effect than badly behaved clients or colleagues. Andrew Oswald (University of Warwick), Benjamin Artz (University of Wisconsin),

⁵⁴ Erin Reed "Why Some Men Pretend to Work 80-Hour Weeks" Harvard Business Review, 28 April 2015.

⁵⁵ Mona Harrington and Helen Hsi, "Women Lawyers and Obstacles to Leadership", MIT Workplace Center (2007) at page 17.

⁵⁶ Kenneth Dau-Schmidt, Marc Galanter, Kaushik Mukhopadhyaya, Kathleen Hull, "Men and Women of the Bar", 16 Mich. J. Gender & Law 49 (2009) pages 112-113.

⁵⁷ WCWF, "Back to the Bar: A survey of obstacles, aids and recommendations for parents returning to the Bar" (2019). Available at: <https://d17g388r7gqnd8.cloudfront.net/2019/01/WCWF-Back-to-the-Bar.pdf>. Last accessed 3 August 2020.

⁵⁸ Nathanael J. Fast and Serena Chen, "When the Boss Feels Inadequate: Power, Incompetence, and Aggression", Psychol. Sci 20 (2009) pages 1406-1413.

and Amanda Goodall (Cass Business School, University of London) found that abuses of hierarchical power lasted longest in people's memories.⁵⁹

The judiciary also presents a means to resolve another issue. Discourtesy by male barristers towards female barristers is more common than judicial misbehaviour. Several instances were cited in the PEBA responses (46% of respondents experienced inappropriate behaviour directed towards them at an inquiry that appeared to be based on gender). Wider research bears out their experiences. Studies of arguments before the US Supreme Court over 15 years concluded that men interrupted women more than they interrupted other men, irrespective of whether the men were lawyers or judges.⁶⁰ The same pattern was demonstrated in a study of female justices of the Australian High Court: they were interrupted by male advocates twice as often as male judges. The pattern of interruption *increased* when the female Chief Justice was presiding.⁶¹ Judges play a crucial role in identifying and correcting bad behaviour such as discourtesy and interruption.

Structural Inequality: Bar Council Accelerator Programme

PEBA's survey work overlapped with work carried out by the Bar Council to investigate inequality at the Bar. A listening exercise led to the conclusion that "*women's careers are being hampered by endemic and systemic bias which is present from the very start*". The issues identified by female planning practitioners are not, therefore, unique to the Planning Bar. There is a "*structure of inequality*" across the entire Bar.⁶²

The Bar Council's Accelerator Programme research found that the issues affecting women are not only about maternity and balancing caring responsibilities. Women across all practice areas described differences in their career trajectories compared to their male counterparts. One criminal junior said that by five years' call the two men who had entered chambers with her had been led in career-defining cases, while she had *never* been led during any of her five years of practise. These experiences echo those in the survey of women at the Planning Bar.

It should be noted that the findings on unfair work allocation/fees are not exclusive to the Bar.⁶³ The Law Society's research of solicitors also supports barristers' "sense" of

⁵⁹ Benjamin Artz, Amanda H. Goodall, Andrew J. Oswald, "How Common Are Bad Bosses?", *Ind. Relat.* 59 (2020) pages 3-39.

⁶⁰ Tonja Jacobi and Dylan Schweers, "Justice Interrupted: The Effect of Gender, Ideology and Seniority at Supreme Court Oral Arguments", *Virginia L. Rev.* 103 (2017) at page 1379.

⁶¹ Amelia Loughland "Female judges, interrupted: a study of interruption behaviour during oral argument in the High Court of Australia" *Melbourne University Law Review* 43 (2020) pages 822-851. Also worth noting is data from the Women Interrupted app (developed by an agency in Brazil to detect when a female voice is interrupted by a male voice), which shows that this happens on average 1.67 times a minute in the UK (in Pakistan, it is 8.28 times per minute). *Women Interrupted* (2020). Database available at: <http://www.womaninterruptedapp.com/en/> Last accessed 1 January 2022.

⁶² For more information about the Accelerator Programme see https://lnprodstorage.z35.web.core.windows.net/Counsel/2020/10_October/FfVrDC6yEb/html/index.html Or contact rkrys@barcouncil.org.uk

⁶³ Or the UK legal profession: it exists across society. The best research is from the New Zealand the Ministry for Women, which analysed the gender pay gap and attributed around 80% of the gap to "unexplained" factors (having examined age, experience, industry, role, etc). NZ Ministry for Women

a gender pay gap. Amongst solicitors who participated in the research, some 60% were aware of a gender pay gap within their firm but only 16% of those reported that steps were being taken to address it.⁶⁴ Nor are these issues exclusive to the UK legal profession. In an American study of lawyers, 44% of women of colour, 39% of white women, but only 2% of white men reported instances where they were passed over for desirable work assignments.⁶⁵

It is clear that there are wider problems within the legal profession which PEBA cannot address on its own. Nonetheless, there are likely to be common solutions to these common problems. Before coming to recommendations the lens must be widened once more to examine the impact of gender within society as a whole to consider if there are universal themes that would influence the effectiveness of plans of action.

Wider Issues Related to Gender

Research confirms that the issues of inequality found within the legal profession exist across all sectors of society. This research includes useful templates of programs to address inequality issues which can be used to frame recommendations specific to the Planning Bar, such as lessons from the mandatory gender pay audits for large employers. Research on women's experiences across their career trajectory also provides useful insights on the extent to which inequality arises from their choices or by factors outside of their control. A critical issue influencing both women's remuneration and their choices is the unconscious bias of those who make those decisions. These three topics will be examined in turn.

The Gender Pay Gap

Sectors with high ambiguity on pay showed the greatest gender pay gaps.⁶⁶ Unequal pay is not an issue unique to the legal profession. Male nurses, who comprise only 7%

"New Research Identifies Causes of Gender Pay Gap", 7 March 2017. Available at: <https://women.govt.nz/news/new-research-identifies-causes-gender-pay-gap> Last accessed 29 December 2021. Iceland also takes this seriously: any organisation with more than 250 employees must be certified by an external auditor, shifting the responsibility for enforcing equal pay from female employees to the employer.

⁶⁴ Law Society, "Women in Leadership in Law Toolkit", (2019) at page 7. Available at: <https://www.lawsociety.org.uk/campaigns/women-in-leadership-in-law/tools/women-in-leadership-in-law-toolkit>. Last accessed 3 August 2020.

⁶⁵ ABA Commission on Women in the Profession, "Visible Invisibility", (2006) at page 21–Available at: <https://www.americanbar.org/content/dam/aba/administrative/women/visibleinvisibility.pdf>. Last accessed 3 August 2020. Also worth noting is that identifying this problem requires detailed information and specialist expertise: discrimination within a stockbrokerage was only discovered when a very experienced researcher familiar with the profession was given access to all relevant data, and was able to understand it. This data included personal histories, the firm's entire trading records, its entire client list, and the accounts given to each broker. The researcher discovered that the women were underperforming compared to the men only because they were given inferior accounts and fewer sales opportunities. When the women were given equivalent accounts to the male stockbrokers, the gender pay gap disappeared. Janice Madden, "Performance-Support Bias and the Gender Pay Gap among Stockbrokers" *Gender & Society* 26 (2012) pages 488-518.

⁶⁶ Hannah R. Bowles, Linda Babcock, Lei Lai "Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes it Does Hurt to Ask" *Organisational Behaviour and Human Decision Processes* 103 (2007) pages 84-103.

of the profession, earn more than the 93% of nurses who are female.⁶⁷ In another profession in which women outnumber men, teaching, we see the same pattern: in the UK 64% of secondary school teachers are women but only 39% of headteachers are, female headteachers are paid on average 13% less than men.⁶⁸

Campaigns such as the Close the Gap and Equal Pay Day by the Fawcett Society have highlighted that on average women's pay runs out in November if men's average pay ran out on 31 December. This campaigning led to the inclusion within the Equality Act 2010 of mandatory gender pay audits for larger employers. This has had some positive effects, for example the publicity of the gender pay gap at the BBC raised the profile of the issue amongst the general public and led to changes. This is far from a complete solution, but transparency around remuneration and accountability for any discrepancies based on sex to an external scrutinising body have been shown to be effective.⁶⁹ Relying on women to negotiate better fees is not the answer (although the demonstrable gender-based negotiation discrepancy totally disappeared when the woman was negotiating on behalf of *someone else*).⁷⁰

"Women's Choices"

An oft-cited justification for the poor ratio of men to women at senior levels of all sectors is "women's choices". It is true that women make different choices than men. But, critically, the difference does not show up in studies of career-related ambition before women have substantial caretaking responsibilities.⁷¹

A Bain & Company survey of 1,000 women showed that women started their careers with more ambition than men but after just two years on the job their confidence and aspirations plummeted.⁷² A study of Harvard graduates showed that many high-achieving women started their careers with the assumption that they would share child care responsibilities equally with their partners and that their career would take equal priority, but ended up with a less egalitarian arrangement.⁷³

Simply living with a man places an unequal burden on women: an analysis of the 2016 Australian census concluded that time spent on housework is most equal for

⁶⁷ Ulrike Muench, Jody Sindelar, Susan Busch, Peter Buerhaus, "Salary Differences between Male and Female Registered Nurses in the United States" *Journal of the American Medical Association* 313 (2015) pages 1265-1267.

⁶⁸ Valentine Mulholland "Why are there disproportionately few female school leaders and why are they paid less than their male colleagues?" *Times Educational Supplement*, 8 March 2018. Available from: <https://www.tes.com/author/valentine-mulholland> Last accessed: 27 December 2021 (subscription required).

⁶⁹ Emilio Castilla, "Accounting for the Gap: A Firm Study Manipulating Organisational Accountability and Transparency in Pay Decisions", *Organisation Science* 26 (2015) pages 311-333.

⁷⁰ Emily T. Amanatullah and Michael W. Morris "Negotiating Gender Roles: Gender Differences in Assertive Negotiating Are Mediated by Women's Fear of Backlash and Attenuated When Negotiating on Behalf of Others" *Journal of Personality and Social Psychology* 98 (2010) pages 256-267.

⁷¹ A study of a Harvard MBA cohort in Robin J. Ely, Pamela Stone, Colleen Ammerman, "Rethink What You 'Know' About High-Achieving Women", *Harv. Bus. Rev.* 92 (2014) at page 102.

⁷² Orit Gadiesh and Julie Coffman, "Companies Drain Women's Ambition After Only 2 Years", *Harv. Bus. Rev.* (18 May 2015).

⁷³ Robin J. Ely, Pamela Stone, Colleen Ammerman, "Rethink What You 'Know' About High Achieving Women", *Harv. Bus. Rev.* 92 (2014) at page 105.

single men and single women, but when women live with their male partner the time they spend doing housework goes up whereas the male's decreases. This gap widened even further once the couple had children. This gap existed irrespective of employment status.⁷⁴

Cohabiting with a male partner and/or childcare do not fully explain the problem, not least because very few women have children within their first two years of work. For those that do, it is not clear why that should adversely affect their future aspirations. Those who start families early, after all, have a much longer career trajectory to look forward to. Clearly something routinely occurs during women's very first years in a workplace which causes their confidence to shatter.

The belief that women simply "choose" to cut short their career ambitions also fails to account for the way women's choices are socially constructed and structurally constrained within their chosen profession. The Bar is particularly problematic in this respect, being based on a self-employed model with no maternity pay entitlements, no tradition of part-time working or job-sharing arrangements, no standard for "back-to-work" programs, a completely informal route to sponsorship, and a strong emphasis on the ethos that you are only as good as your last case. The pressurised culture is so pervasive and so damaging that the author has heard first-hand evidence of female practitioners deciding not to tell clients they were on maternity leave, and even of women drafting court documents from the hospital bed immediately after they had just given birth. No person, whether male or female, should feel such pressure that they place work above their health and the first moments with their newly born child.

The harsher penalties dished out to women in the legal profession when they have children exist across society as a whole. The Equal Opportunities Commission reported that as recently as 2005 almost half of the 440,000 pregnant women surveyed had experienced some form of disadvantage at work due to pregnancy or maternity leave.⁷⁵ A survey by the Equality and Human Rights Commission in 2018 found that one in nine mothers were either dismissed, made compulsorily redundant, or treated so badly that they felt they had to leave their jobs.⁷⁶ Leading academics suggest anti-discrimination legislation has had some impact but has not eradicated discrimination against pregnant mothers or the parents of young children.⁷⁷ Where women are not protected by equivalent workplace legislation (barristers being self-employed), the situation remains dire.

⁷⁴ As reported in The Conversation (2017). Available at: <https://theconversation.com/census-2016-women-are-still-disadvantaged-by-the-amount-of-unpaid-housework-they-do-76008>. Last accessed 30 July 2020. Referenced by Caroline Criado Perez in her excellent book, *Invisible Women* (London: Chatto & Windus, 2019) at page 73.

⁷⁵ Equal Opportunities Commission, "Greater Expectations. Final report of the EOC's investigation into discrimination against new and expectant mothers in the workplace", (2005). Available at: <https://www.equalityhumanrights.com/en/file/10501/download?token=hq-HrXQq>. Last accessed 2 August 2020.

⁷⁶ Equality and Human Rights Commission "Pregnancy and Maternity Related Discrimination and Disadvantage: Experiences of Mothers", (2018). Available at: <https://www.equalityhumanrights.com/en/file/10511/download?token=fhYbcMUf>. Last accessed 2 August 2020.

⁷⁷ Susan Atkins, "2018 foreword", in Susan Atkins and Brenda Hoggett, *Women and the Law* (London: Institute of Advanced Legal Studies, 2018), at page xxi. Available at: https://humanities-digital-library.org/index.php/hdl/catalog/view/atkins_hoggett/69/196-3. Last accessed 3 August 2020.

Unconscious Bias

Unconscious bias plays a huge role in perpetuating inequality.⁷⁸ After a career spent researching the subject Professor Dhir has concluded that unconscious bias and closed social networks explain the dearth of women in leadership roles.⁷⁹ Unconscious bias was also cited as the main barrier to female lawyers' career progression by the majority of the 7,781 responses received by the Law Society's "Women in the Law" survey.⁸⁰ Academic research bears these conclusions out again and again.

First, unconscious bias affects how appealing people find others. In a Stanford Business School study participants received a case study about a leading venture capitalist with outstanding networking skills. Half were told that the entrepreneur was Howard Roizen, the other half were told it was Heidi Roizen. The two were rated as equally competitive but Howard was judged more likeable, genuine, and kind whereas Heidi was judged as more aggressive, self-promoting, and "power-hungry".⁸¹

Secondly, it affects how people evaluate candidates. In another Stanford Business School study, half of participants were asked to evaluate the CVs of a female applicant with more education and a male applicant with more experience; the other half were asked to evaluate CVs where the female applicant had more experience and the male applicant more education. The participants gave greater weight in their assessment to whatever credential the male applicant scored better on.⁸²

The role bias plays in assessments of a candidate's ability is demonstrated by the research on gender-blind applications. When a screen was placed between a prospective orchestra player and the judging panel, women's success rate increased by 50%.⁸³ Other studies reveal the same outcome. When reviewers for academic

⁷⁸ Especially relevant to the Bar, which is hierarchical. A computer simulation of a structure with only a few individuals at the top, holding all other parameters constant, found that a bias contributing a 1% difference in performance evaluations led to only 35% of the discriminated-against group being represented at the top. Without that 1% bias the simulation predicted an even 50% split at the top. Richard F. Martell, David M. Lane, Cynthia Emrich, "Male-Female Differences: a Computer Simulation" *American Psychologist* 51 (1996) at pages 157-158.

⁷⁹ Aaron Dhir, *Challenging Boardroom Homogeneity: Corporate Law, Governance, and Diversity*, (Cambridge: Cambridge University Press, 2015).

⁸⁰ Responses were received from 5,758 women, 554 men, 20 other, and 1,449 unknown, with 52% citing unconscious bias as the top reason; 49% cited unacceptable work/life balance in order to reach a senior level of the profession; and 46% cited traditional networks/the routes to promotion being male oriented.

⁸¹ Francis Flynn, Cameron Anderson, Sebastien Brion, "Too Tough Too Soon, Familiarity and the Backlash Effect", Stanford Business School, unpublished paper (2011), cited in Deborah Rhode, *Lawyers as Leaders* (New York: Oxford University Press, 2013) at page 260.

⁸² Michael Norton, Joseph Vandello, John Darley, "Casuistry and Social Category Bias", *Journal of Personality and Social Psychology* 87 (2000) at page 817. The participants were all men: page 820. Available at:

https://www.hbs.edu/faculty/Publication%20Files/norton%20vandello%20darley%20casuistry_115b1688-4ccd-435d-abc8-78fe39295b2b.pdf . Last accessed 7 August 2020.

⁸³ Claudia Goldin and Cecilia Rouse, "Orchestrating Impartiality: The Impact of 'Blind' Auditions on Female Musicians", *American Economic Review* 90 (2007) at page 715. See also Chia-Jung Tsay, "Sight over Sound in the Judgment of Music Performance", *Proceedings of the National Academy of Sciences USA* 110 No. 36 (2013) pages 14,580-14,585.

journals were not told author's names, women's rate of articles accepted for publication went up significantly.⁸⁴ Applications for tenure demonstrated the same pattern.⁸⁵ Because of this research, the recruitment process employed by GapJumpers deliberately omits candidates' identifying information. Its website boasts that it has increased diversity amongst its client companies by 65%.⁸⁶

Thirdly, unconscious bias affects how people evaluate performance. In a Harvard Business School study, MBA students were given two identical case studies except for the fact that in one the CEO was named Jane and in the other the CEO was named John. The participants rated Jane more negatively.⁸⁷ Studies have shown that male success is more likely to be attributed to their personal capabilities, whereas female success is more likely to be attributed to external factors.⁸⁸ Credit for a team's success is more often given to men than women.⁸⁹ A study of performance reviews amongst American law firms demonstrated that while the women were ostensibly better candidates (receiving, on average, more positive comments in their reviews), they were less than half as likely to be mentioned as "*potential partner material*".⁹⁰

Finally, unconscious bias affects how people perceive their co-worker's "commitment" to the profession. In a survey using exactly equivalent hours between men and women lawyers, over a quarter of the male respondents said the women worked less than they did.⁹¹ When men believe women are less committed to their job because of childcare responsibilities, they are much more likely to recall the times the woman left early than the times she worked late.⁹²

⁸⁴ Amber Budden, Tom Tregenza, Lonnie Aarssen, Julia Koricheva, Roosa Leimu, Christopher J. Lortie, "Double-Blind Review Favours Increased Representation of Female Authors", *Trends in Ecology & Evolution* 23 (2008) pages 4-6.

⁸⁵ A study on tenure applications for fictional professors with a single differing detail in an otherwise identical CV (that detail was whether the name was male or female). Interestingly, the fictional CV designed to present a truly outstanding candidate (one the researchers said was too good not to recommend tenure), did indeed lead to universal recommendations for tenure irrespective of gender. However, if the outstanding candidate was female the recommendation came with four times more cautionary comments, such as "I would need to see evidence she had gotten those grants and publications on her own". Rhea Steinpreis, Katie Anders, Dawn Ritzke "The impact of gender on the review of curricula vitae of job applicants and tenure candidates: a national empirical study" *Sex Roles* 41 (1999) at page 509.

⁸⁶ GapJumpers. Available at: <https://www.gapjumpers.me/>. Last accessed 3 August 2020.

⁸⁷ Credit Suisse Research Institute, "Gender Diversity and Corporate Performance", (2012) at page 28. Available at: https://wapp.hks.harvard.edu/files/wapp/files/gender_diversity.pdf. Last accessed 3 August 2020.

⁸⁸ Janet Swim and Lawrence Sanna, "He's Skilled, She's Lucky: A Meta Analysis of Observers' Attributions for Women's and Men's Successes and Failures", *Personality and Social Psychology Bulletin* 22 (1996) at page 507.

⁸⁹ Madeleine Heilman, "Description and Prescription: How Gender Stereotypes Prevent Women's Ascent up the Organisational Ladder", *Journal of Social Issues* 57 (2001) at page 666.

⁹⁰ Staff at Harvard Business Review, "Women in the Workplace: A Research Roundup", *Harvard Business Review* (September 2013) at page 86.

⁹¹ Maria Pabon Lopez, "The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing Current Trends", *Hastings Women's Law Journal* 19 (2008) at page 65.

⁹² David L. Hamilton and Jim W. Sherman, "Stereotypes", in Robert S. Wyer and Thomas K. Srull eds *Handbook of Social Cognition I-68* (New York: Psychology Press, 1994). On confirmation bias also see Paul Brest and Linda Krieger, *Problem Solving, Decision Making and Professional Judgment* (New York: Oxford University Press, 2010) at pages 277-289.

All of the above has been confirmed in incredibly interesting research relating to transgender men and women. This demonstrates the exact same pattern of discrimination even when the study subjects genuinely have only altered one variable: their gender. In all other respects, it is exactly the same person. Yet men who transition to women lose on average nearly a full third of their pay. Women who transition to men, on the other hand, saw their pay increase and reported being seen as “more competent”, “taken more seriously” and “questioned less” than before they transitioned.⁹³ The anecdotes in the research are bewildering: after a seminar given by a male (formerly female) professor of neuroscience, he overheard someone say “*Ben’s work is so much better than his sister’s*”.⁹⁴ A male lawyer was complimented on being “more skilled” compared to their “incompetent” female predecessor. It was the exact same person.⁹⁵

Encouragingly, simple exposure works to counteract unconscious (or conscious) bias. Men who had previously expressed a preference for male leaders lose their previously held negative stereotype when they have female leaders, subsequently rating them just as highly if not more highly than their previous male leaders.⁹⁶ Negative beliefs persist, therefore, because men are not exposed to female leadership on the basis of what are proven to be unjustified discriminatory beliefs.⁹⁷

It is clear that inequality issues within the Planning Bar and the wider legal profession are not exclusive to the sector. On the indisputable assumption that talent is evenly distributed across the population (in fact, objective research, where it exists, shows

⁹³ Kristen Schilt, *Just one of the guys? Transgender men and the persistence of gender inequality* (Chicago, University of Chicago Press, 2010).

⁹⁴ Ben A. Barres “Does gender matter?” *Nature* 442: 7099 (2006) pages 133-136.

⁹⁵ Note 93.

⁹⁶ In India, men who had previously said that women would not be as good as male village chiefs were found to have totally changed their attitudes after they had a female village chief following the introduction of the nationally imposed gender quota at village level, rating female village chiefs as *more* effective than male chiefs. However, they still said they “liked” the male chiefs more. Rohini Pande “Women as Leaders: Lessons from Political Quotas in India” Harvard Kennedy School Case Study No. 1996, Cambridge, MA, 18 July 2013.

⁹⁷ Kim M. Ellessor and Janet Lever, “Does Gender Bias against Female Leaders Persist? Quantitative and Qualitative Data from a Large-Scale Survey” *Human Relations* 64 (2011) pages 1555-1578. However, this does not apply generally. When looking at a study demonstrating the predilection for plaintiffs and defendants to overestimate their own odds of success, researchers found that experience was insufficient to correct this bias when no one was aware of the risk of bias (lawyers and judges were just as likely to misestimate the actual odds of success as inexperienced students). Being aware of the risk of bias only improved the participant’s prediction of what their opponent would do. Linda Babcock and George Lowenstein, “Explaining Bargaining Impasse: The Role of Self-Serving Biases” *Journal of Economic Perspectives* 11 (1997) pages 109-126.

women perform better, whether that is as a leader,⁹⁸ lawyer,⁹⁹ doctor,¹⁰⁰ “gifted” student,¹⁰¹ otherwise above-average student,¹⁰² movie star,¹⁰³ investment manager,¹⁰⁴ or estate agent¹⁰⁵) that fact should be reflected in the data. It is not, and this report has tried to explain why. In short, socially constructed gendered choices and unconscious bias in the workplace are holding women back, to the detriment of all.

Conclusions and Recommendations

It is essential to include male barristers’ and clerks’ voices in discussions on how to move forward. Men’s voices carry special force because what they say cannot be attributed to self-interest, and their inclusion confirms that inequality concerns the Planning Bar as a whole. This is more than simply a matter of fairness: it concerns the ability to attract, promote, and retain talent. The consequence of greater equality is a higher calibre of barrister across the Planning Bar. Equally, given so many of the issues cited by respondents originated in the clerks’ room, solutions have to be sought there.

⁹⁸ A meta-analysis of 99 other studies concluded that women were rated by others as significantly more effective leaders than men (male leaders rated *themselves* more highly than female leaders rated themselves). Samantha C. Paustian-Underdahl, Lisa S. Walker, David J. Woehr “Gender and perceptions of leadership effectiveness: a meta-analysis of contextual moderators” *Journal of Applied Psychology* 99 (2014) pages 1129-1145.

⁹⁹ Female lawyers make fewer ethical violations: P. Hatamyar, and K. M. Simmons “Are Women More Ethical Lawyers? An Empirical Study”, *Florida State University Law Review* 31: 4 (2004) pages 785-858.

¹⁰⁰ Female doctors’ patients are less likely to die or have to return to the hospital, Y. Tsugawa, A. B. Jena, J. F. Figueroa, E. J. Orav, D. M. Blumenthal and A. K. Jha “Comparison of Hospital Mortality and Readmission Rates for Medicare Patients Treated by Male vs Female Physicians” *JAMA Internal Medicine* 177: 2 (2017) pages 206-218. An American study showed female OB/GYN performed caesarean sections and hysterectomies significantly less often than male OB/GYNs. This was attributed to male physicians setting higher income goals for themselves. John A. Rizzo, Richard J. Zeckhauser “Pushing Incomes to Reference Points: Why do Male Doctors Earn More?” *Journal of Economic Behaviour & Organisation* 63 (2007) pages 514-536.

¹⁰¹ There are 11% more girls than boys in “gifted” programmes in US schools (but American parents are 250% more likely to Google “Is my son gifted” than “Is my daughter gifted”). Seth Stephens-Davidowitz “Google, tell me. Is my son a genius? *New York Times*, 18 January 2014. Available at: <https://www.nytimes.com/2014/01/19/opinion/sunday/google-tell-me-is-my-son-a-genius.html> Last accessed 29 December 2021.

¹⁰² In the UK in 2019 girls outnumbered boys two to one amongst the 837 pupils who received a “9” on every single one of their GCSEs. Nicola Woolcock “GCSE results 2019: top grades on the increase in reformed, harder exams” *The Times*, 23 August 2019. Available at: <https://www.thetimes.co.uk/article/top-grades-on-the-increasein-reformed-harder-exams-7ngsj2dlb> Last accessed 30 December 2021.

¹⁰³ Films with female leads earn more money at the box office at every single budget level, and every movie that earned more than £1 billion at the box office passed the “Bechdel test” (there are at least two women in the film who talk to each other about something other than a man at least once) Shift7 “Female-led films outperform at box office 2014-2017” December 2018.

¹⁰⁴ Male investors trade on average 45% more than female investors, consequently making their clients significantly less money than female investors. Brad M. Barber, Terrence Odean “Boys Will be Boys: Gender, Overconfidence, and Common Stock Investment” *Quarterly Journal of Economics* 116 (2001) pages 261-292.

¹⁰⁵ Female estate agents sell more houses. P. Seagraves, and P. Gallimore “The Gender Gap in Real Estate Sales: Negotiation Skill or Agent Selection?”, *Real Estate Economics* 41: 3 (2013) pages 600-631.

The survey results indicate there are serious issues which need to be addressed around work allocation, fees, early career opportunities, and maternity/childcare. The importance of collecting, monitoring, and acting on data cannot be overemphasised. It has proven useful in every scenario: from Ed Yong at the Atlantic, who devised a spreadsheet to track whether he was asking as many women as men for quotes for various stories, and if not, making the effort to find a qualified female instead. His quoted female sources went from 24% to 50% and remained that way. Similarly, the Financial Times gathered data on how many of their quoted sources were women, and then developed a computer program to automatically monitor pronouns and first names. When the program detects an imbalance of male/female quoted sources it sends an alert to the section editor which is then acted on.

How to achieve equality? Not by imposing a mandatory requirement that all clerks and practice managers go through “diversity” training. There is good evidence that diversity training is ineffective,¹⁰⁶ and a growing body of evidence showing it is positively harmful.¹⁰⁷ Nor will more women’s groups resolve the problem. It is clear systemic change is required. As pointed out by John Hart Ely (albeit in the context of establishing a theory of judicial review), it is not acceptable to simply remand questions of equality for a “second look” when the problem is at least partly due to self-serving stereotyping, whether conscious or not. You do not hand a case back to a rigged jury.¹⁰⁸

Accountability is key. Requiring individuals to justify their decisions assists in reducing unconscious bias.¹⁰⁹ The critical importance of putting in place structures to create transparent accountability was emphasised by several of the founding members of the 30% Club who so generously and enthusiastically volunteered their time to assist with this project.¹¹⁰ According to these conversations, to create change those in

¹⁰⁶ Frank Dobbin and Alexandra Kalev, “The Architecture of Inclusion: Evidence from Corporate Diversity Programs”, 30 *Harvard Journal of Law and Gender* 279 (2007) at pages 293-295.

¹⁰⁷ Alexandra Kalev, Frank Dobbin, Erin Kelly “Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies” *American Sociological Review* 71 (2006) pages 589-617. This is a study of more than 800 mid to large size firms over 30 years which showed instances of diversity training leading to a drop in actual diversity in the firm, attributed possibly to “moral licensing”. The latter concept was demonstrated in a Taiwanese study where people told they had been given multivitamins were found to be more likely to smoke, less likely to exercise, and more likely to choose unhealthy food than those who were told they had been given a placebo (in reality, everyone was given a placebo). Wen-Bin Chiou, Chao-Chin Yang and Chin-Sheng Wan “Ironic Effects of Dietary Supplementation: Illusory Invulnerability Created by Taking Dietary Supplements Licences Health-Risk Behaviours” *Psychological Science* 22 (2011), pages 1081-1086. People made to watch a diversity training video about negative stereotypes about the elderly then went on to evaluate older job applicants more negatively. Carol T. Kulik, Elissa L. Perry, Anne C. Bourhis “Ironic Evaluation Processes: Effects of Thought Suppression on Evaluations of Older Job Applicants” *Journal of Organisational Behaviour* 21 (2000) pages 689-711. See also Do-Yeong Kim “Voluntary Controllability of the Implicit Association Test (IAT)” *Social Psychology Quarterly* 66 (2003) pages 83-96.

¹⁰⁸ John Hart Ely, *Democracy and Distrust*, (Cambridge, Harvard University Press, 1980) at page 169.

¹⁰⁹ Emilio Castilla, “Gender, Race, and Meritocracy in Organisational Careers”, *American Journal of Sociology* 113 (2008) at pages 1479 and 1485; see also Stephen Bernard, In Paik, Shelley Correll, “Cognitive Bias and the Motherhood Penalty”, *Hastings Law Review* 59 (2008) at pages 1359 and 1381.

¹¹⁰ Tamara Box, Managing Partner, Europe and Middle East, Reed Smith; Sarah Wiggins, formerly Partner, Linklaters, now Vice-Chair, HSBC; Emma Howard-Boyd, Chair, Environment Agency.

a position of power must openly acknowledge the importance of diversity and establish a structure to promote it, targets to achieve it, and measures to track it. Accountability on progress must be to the organisation as a whole. The most effective structure would also include holding identified individuals to account for their results.

Based on the above research, PEBA has developed a series of concrete recommendations to tackle the specific issues identified in the survey, although chambers should think more broadly about all the means they employ to attract talent: how chambers' culture is advertised (the language and the images used on the website), where they market themselves in the search for talent (traditional law fairs or through initiatives at an earlier stage aimed to broaden the talent pool at the BPTC level, for example alongside the Sutton Trust), how applicants are evaluated (an unstructured conversation is the worst method of interview; a structured list of set questions for all applicants is best),¹¹¹ and what the selection criteria are (the vague notion of "fit" gives unconscious bias free rein. Evaluating candidates objectively against each other is far better).

In relation to assessing talent, chambers must always be aware of very significant gender-based differences in self-assessment. The clear correlation to gender in overconfidence research led to the Harvard Business School Professor Tomas Chamurro-Premuzic writing an article called "Why Do So Many Incompetent Men Become Leaders?" He concluded that people are very bad at distinguishing confidence from competence.¹¹² When candidates are allowed to provide information on their qualifications (as with all pupillage applications), male candidates boasted about how good they were whereas female candidates did the opposite, under-reporting how good they were.¹¹³ As a result of self-reported achievement, men were more likely to be chosen as leaders even when the objectively available information on actual past performance showed that others were better candidates.¹¹⁴

Once the right candidates are through the door, the first major issue concerns equality of work allocation and fees. There needs, above all, to be transparency and accountability. It would not be difficult to establish systems to monitor workload of all types (not only "unallocated" work) within planning teams to allow for meaningful comparisons and ensure that all work was fairly allocated. Similarly, it would not be difficult to increase transparency about fees – for example chambers could be

Gratitude expressed by way of a footnote will never be capable of adequately expressing the author's gratitude for the extraordinary generosity demonstrated by these women and for their equally extraordinarily helpful advice.

¹¹¹ Iris Bohnet, *What Works: Gender Equality by Design* (London: Belknap Press of Harvard University Press, 2016). Unstructured interviews are the least preferable method of selection according to a meta-analysis of 85 years of research of 19 different selection methods. Frank L. Schmidt, John E. Hunter, "The Validity and Utility of Selection Methods in Personnel Psychology: Practical and Theoretical Implications of 85 Years of Research Findings", *Psychological Bulletin* 124 (1998), pages 262-274.

¹¹² Tomas Chamurro-Premuzic "Why Do So Many Incompetent Men Become Leaders?" *Harvard Business Review*, August 2013.

¹¹³ Ernesto Reuben, Paola Sapienza, Luigi Zingales, "How Stereotypes Impair Women's Careers in Science", *Proceedings of the National Academy of Sciences USA* 111 (2014), pages 4403-4408.

¹¹⁴ Ernesto Reuben, Pedro Rey-Biel, Paola Sapienza, Luigi Zingales "The Emergence of Male Leadership in Competitive Environments" *Journal of Economic Behaviour & Organisation*, gender Differences in Risk Aversion and Competition 83 (2012) pages 111-117.

required to report anonymised fee averages juniors of certain years' call distinguished by sex. Whilst gender may well be only a part of why fees end up where they are, the alternative is to continue with the status quo which is clearly not working. Such an analysis would, at the very least, help identify whether there are issues that need to be addressed. Chambers must monitor such work, ensure "led" work is shared equally amongst men and women, and put a stop to unfair allocation and unjustified discrepancies in fees. This can be done in conjunction with the Bar Council's work revising practice management standards and including new metrics to measure the fair allocation of all work. Overall the fundamental need is to create transparent, objective measures based on data to establish a baseline and measure progress, for which someone is then held accountable. Practices which are demonstrably effective in one chambers can be shared with others through PEBA.

The second major issue revolves around opportunities. In order for women and other under-represented groups to achieve equality, they must have access to their fair share of junioring opportunities, "sponsorship", active early career development, and networking/marketing opportunities. While there is reliable evidence that mentoring can assist with women's career development, the single most critical factor to a woman's career development is having a sponsor. That type of support arises naturally from being led (and goes back to fair work allocation practices). The consistent responses from women are that the men are finding sponsors in senior male silks and the women are left on their own. The present system of 'chance' encounters and chains of events leading to sponsorship is not working for women. At present the system relies far too much on the whim of individuals at the top. Being led needs to become more formalised, perhaps with structures for applying for led work. At the very least it must be monitored with someone in chambers being held accountable for the results. However, formal structures and systems alone will not produce the change that is needed. A large group of men and women already in positions of leadership must actively identify and nurture high-performing women. Those women will have to do the same in turn.¹¹⁵

The third major issue is around maternity and childcare. Senior members of chambers have a role in promoting returning women amongst clients, requesting them as juniors, and sharing the workload through devilling. Clerks also have a role in ensuring a woman returning to work is brought to clients' attention. There is a need to put in place training programs for clerks on how to plan for maternity/childcare matters that may arise and how to refuse unlawful requests to discriminate against women. Women are fearful that requesting inquiries closer to home or help balancing their practice with childcare commitments would be penalised by the clerks. Men also share these concerns, particularly with the long hours away from home when at inquiry. PEBA was also encouraged by survey participants to promote paternity leave amongst its member chambers. The lack of flexibility over chambers' fees and workload after having a child and the need for a mentoring scheme for those returning to work were common responses. The requirement to have a specified number of "contacts" with chambers whilst on maternity leave was cited as ineffective. The Bar

¹¹⁵ A study of female associates in law firms found that the retention of those associates was highly correlated to the number of female supervisors at that firm. Kathleen McGinn, Katy Milkman "Looking Up and Looking Out: Career Mobility Effects of Demographic Similarity Among Professionals" *Organization Science* 24 (4) pages 1041-1060.

Council's work on delaying fees for practicing certificates whilst on maternity leave was also welcomed but swifter progress is needed.

What about targets? There is research indicating that 30% female representation in a group is the minimum figure to achieve "critical mass",¹¹⁶ and the success of the 30% Club indicates that even the most traditional of environments, the boardroom, can undergo radical change if there are targets to work to and people in positions of power promote diversity. PEBA should therefore work with the Bar Council and member chambers to investigate whether there is a role for targets such as QC appointments, average male/female led work statistics, and average male/female rates of pay to improve equality at the Bar. The Bar Council could monitor progress on a "*comply or explain*" basis. There is evidence that the Bar could benefit from going even further and imposing quotas (which might apply in relation to QC appointments). A recent study at LSE showed that, rather than promoting incompetent women, quotas weeded out the incompetent men. The overall competence of bodies subject to quotas for females increased after the quota was imposed.¹¹⁷ Quotas are, however, subject to cultural attitudes.¹¹⁸ Globally and on average, quotas have been held to work because they induce women to compete who would have otherwise held back.¹¹⁹

Whatever the role of quotas, it would not be enough simply to set targets and to evaluate. There must also be rewards and sanctions. In terms of rewards, the diversity criterion in the QC appointments process is welcome but all too often candidates will involve themselves in diversity initiatives in the run-up to applying for silk and then drop all interest when they are appointed. The reward of a higher standard across the profession by widening the recruitment pool and increasing retention rates is obvious enough. As noted above, there is also evidence that greater diversity increases profitability and overall organisational competence. Sanctions could include publicity for failure to meet targets. Clients could also play a hugely effective role in sanctioning chambers that do not promote female equality by taking their work elsewhere. Many of the largest housebuilders and developers in the country are members of the 30% Club and so their leadership is publicly committed to promoting

¹¹⁶ Susan Childs and Mona Krook, "Critical Mass Theory and Women's Political Representation", *Political Studies* 56 (2008), at pages 725-736 (a study looking at the assumptions made regarding the relationship between the percentage of female legislators and the passage of legislation beneficial to women as a group. However, the authors do not advocating reliance on "critical mass" alone: they wrote a joint paper entitled "Should Feminists Give Up on Critical Mass? A Contingent Yes", *Politics and Gender* 2 (2006) pages 522-530.

¹¹⁷ Timothy Besley, Olle Folke, Torsten Persson, Johanna Rickne, "Gender Quotas and the Crisis of the Mediocre Man: Theory and Evidence from Sweden", *American Economic Review* 107 (2017) pages 2204-2242.

¹¹⁸ In Australia people subject to a quota sabotaged each other because they perceived the process as unfair. Andreas Leibbrandt, Liang Choon Wang, Cordelia Foo "Gender Quotas, Competitions and Peer Review: Experimental Evidence on the Backlash Against Women" Working Paper, Monash University (2015).

¹¹⁹ Muriel Niederle, Carmit Segal, Lise Vesterlund "How Costly is Diversity? Affirmative Action in Light of Gender Differences in Competitiveness" *Management Science* 59 (2012), pages 1-16 and Loukas Balafoutas, Matthias Sutter "Affirmative Action Policies Promote Women and Do Not Harm Efficiency in the Laboratory" *Science* 335 (2012) pages 579-582.

equality.¹²⁰ It would be embarrassing if their hiring process did not reflect their public commitments.

Successful initiatives most often comprise task forces with diverse members who have professional credibility with their colleagues and a stake in the results.¹²¹ This is why PEBA's work on diversity initiatives is so important. Periodic surveys, focus groups, and interviews with female practitioners at the Planning Bar and those who have left can ensure that gaps between the formal structures to promote diversity and the reality in practice are identified and acted upon quickly.

In conclusion, it is clear from the research that gender inequality remains widespread and unacceptable. As the Bar Council has stated, the independent Bar as a whole must undergo significant change to achieve equality. There are concrete steps that PEBA can take to address these issues within the Planning Bar. This report is one step towards making those changes but it is clear there is much work to be done before anyone can be satisfied with the experiences of women at the Planning Bar.

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¹²⁰ John Allan, Chair, Barratt; Roger Devlin, Chair, Persimmon; Paul Lester, Chair, McCarthy & Stone; Chris Grigg, CEO, British Land; Robert Neil, CEO, Land Sec; David Thomas, CEO, Barratt; Ian Anderson, Executive Director, Iceni.

¹²¹ Deborah Rhode, *Women and Leadership* (New York: Oxford University Press, 2017) at page 30, and references cited therein at footnote 285 on page 164.

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