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SHAPING DIVERSITY AND INCLUSION POLICY WITH RESEARCH

*Julie Ashdown**

INTRODUCTION

The legal profession in England and Wales is perceived as pale, male, and stale (that is, white, male, and older), but is that actually the case? And, if it is, what could or should a representative body like the Law Society do about it? This Article considers the situation from the perspective of solicitors. It reviews the research that the Law Society has commissioned over the last twenty years and how the findings have impacted policymaking. This Article looks at the main initiatives resulting from the research and considers whether they have made a difference and what the continuing challenges are.

Through the renewal of their annual practicing certificate (PC), all solicitors are automatically members of the Law Society of England and Wales, a body which represents their interests (from negotiating with and lobbying the profession's regulators, government, and others, to offering training and advice). The Legal Services Act 2007 obliges the Law Society to encourage "an independent, strong, diverse and effective legal profession."¹ In addition, the Solicitors Regulation Authority (SRA), which is part of the Law Society Group but operates independently of the Law Society, requires law firms to run their business or carry out their "role in the business in a way that encourages equality of opportunity and respect for diversity."² The Law Society provides advice and support to help them do this. There is, therefore, both a legislative and regulatory requirement for the Law Society and law firms to promote diversity in the legal profession.

There are many reasons why a diverse profession is desirable. Making the profession more diverse and representative will lead to benefits in

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1. Legal Services Act, 2007, c. 29, § 1(f) (Eng.), available at <http://www.legislation.gov.uk/ukpga/2007/29/contents>.

2. SOLICITORS REGULATION AUTH., *SRA HANDBOOK* (2011), available at www.sra.org.uk/solicitors/handbook/handbookprinciples/content.page.

quality and access to justice. It is also in the interests of law firms to ensure that they are recruiting and retaining the best talent.³ A diverse and representative profession will lead to:

- **Quality legal services.** “[B]y reducing barriers to entry and retention, legal services will be provided by the best and brightest professionals available.”⁴
- **Administration of justice.** “[L]egal services enable the proper administration of justice and the rule of law. . . . The legal profession . . . should reflect the demographics of the population it serves.”⁵
- **Access to justice.** “[S]ome people may not choose to seek professional legal advice if they do not feel they share any social or cultural characteristics with those that work in legal services.”⁶

But what role can or should a membership body like the Law Society play?

I. DIVERSITY PROFILE

Before considering this question, it will be helpful to understand the profile of the solicitors’ profession today. Every year the Law Society’s Research Unit publishes a diversity profile⁷ of the profession and a short synopsis,⁸ highlighting the most up-to-date data available on solicitors in England and Wales.⁹ This enables us to monitor changes over time.

All solicitors in private practice or working in-house must hold a PC issued by the SRA, the professional regulatory body for solicitors. There are 158,644 solicitors on the Roll as of July 2013—this includes those who hold PCs (127,676)¹⁰ and those for whom a PC is not required, for example, university lecturers, women on maternity or child-care leave, and those

3. SOLICITORS REGULATION AUTH., SRA RISK OUTLOOK 2014/15: THE SRA’S ASSESSMENT OF KEY RISKS TO THE REGULATORY OBJECTIVES 6 (2014), *available at* <http://www.sra.org.uk/riskoutlook/>.

4. *Id.* at 31.

5. *Id.*

6. *Id.*

7. *See, e.g.*, LAW SOC’Y, TRENDS IN THE SOLICITORS’ PROFESSION: ANNUAL STATISTICS REPORT 2013 (2014) [hereinafter 2013 REPORT]. The Annual Statistics Report is available for purchase and an Executive Summary is available at <http://www.lawsociety.org.uk/policy-campaigns/research-trends/annual-statistical-reports/>.

8. *See, e.g.*, LAW SOC’Y, DIVERSITY PROFILE OF THE PROFESSION: A SHORT SYNOPSIS (2014) [hereinafter DIVERSITY PROFILE], *available at* <http://www.lawsociety.org.uk/support-services/advice/articles/diversity-in-the-profession/>.

9. The profile draws on data from two sources: (1) the Annual Statistical Report of the Law Society’s Research Unit based on data extracted from the Law Society’s REGIS database, which contains records of all solicitors at all stages of their career; and (2) data extracted from the Annual PC Holder Survey—a survey of around 1500 randomly selected individuals from private practice, commerce and industry, and government, conducted over the telephone. *Id.* at 3.

10. *Id.* at 5, 7.

working in some government legal services.¹¹ More than two-thirds of all organizations employing PC holders are private practice entities,¹² although this figure has fallen since 2003,¹³ when it was 71 percent. A growing number—around one-fifth of PC holders in 2013—work in the in-house sector (central and local government and corporates).¹⁴

A. Gender

The total number of PC holders has almost tripled since 1983, but annual rates of growth in their numbers have been trending downward since the late 1990s.¹⁵ Women account for the majority of the growth over the past thirty years and now form the majority of new admissions to the profession. In 2013, women made up 47.7 percent of PC holders and 61 percent of PC holders aged thirty-five and under.¹⁶ Over half of solicitors aged fifty or under are women.¹⁷ However, participation rates for women drop noticeably from the 36-to-40 age group and decline steadily above that age, while participation rates for men decline more modestly but remain relatively high up to the age of sixty.¹⁸ And the representation of women at partner level continues to lag behind that of men: 27.2 percent of partners are women, and 72.8 percent are men.¹⁹

Men constitute over one-half of PC holders²⁰ and, compared to the general population, they are overrepresented. The gap between male and female PC holders has been closing over time.²¹ Female student enrollments are 63.4 percent,²² compared with 36.6 percent for men,²³ so it seems likely that the proportion of women in the profession will continue to grow. Nevertheless, females are underrepresented in the solicitors' profession compared to the population in general and outnumber their male counterparts among solicitors under forty,²⁴ reflecting fewer years of Professionally Qualified Experience (PQE). The split between private and non-private practice indicates a greater tendency for women to have worked outside of private practice. Men are more likely than women to work in more lucrative areas of law such as business, commerce, and commercial property, whereas higher proportions of women worked in wills and

11. 2013 REPORT, *supra* note 7, at 2, 6.

12. *Id.* at 24; DIVERSITY PROFILE, *supra* note 8, at 5.

13. 2013 REPORT, *supra* note 7, at 19.

14. *Id.* at 11.

15. *Id.* at 9.

16. *Id.* at 6, 12; DIVERSITY PROFILE, *supra* note 8, at 5, 8.

17. LAW SOC'Y, GENDER: FACT SHEET 2 (2014) [hereinafter FACT SHEET].

18. 2013 REPORT, *supra* note 7, at 12.

19. *Id.* at 27.

20. DIVERSITY PROFILE, *supra* note 8, at 4.

21. *Id.* at 7.

22. 2013 REPORT, *supra* note 7, at 38.

23. *Id.*

24. LAW SOC'Y, EQUALITY IMPACT ASSESSMENT REFERENCE REPORT: GENDER 2 (2010) [hereinafter EQUALITY REPORT: GENDER] (unpublished report) (on file with the Law Society); see DIVERSITY PROFILE, *supra* note 8, at 8.

probate, family law, and clinical negligence.²⁵ Women are also more likely to work in local government, advice, or health services, where they make up around two-thirds of solicitors.²⁶ Male private practitioners (46 percent) are better represented at partner level than female practitioners (21 percent).²⁷ Around a quarter (24 percent) of female solicitors in private practice are sole practitioners or partners (or partner equivalents), compared to over half of men (52.1 percent).²⁸ Men (43.1 percent) are more likely than women (34.8 percent) to be trained in large practices (i.e., those with 81 or more partners).²⁹

Underrepresentation of women at the top of the profession is mirrored in the population in general. Men, at 19 percent, are more likely than women, at 12 percent, to be managers and senior officials.³⁰ Taking into account only office jobs, women are overrepresented compared to men at associate professional and technical, as well as administrative and secretarial, positions.³¹ Two of the most crucial factors hindering promotion of female solicitors to the partnership level are the persistent culture of long hours and commercial ability to win clients and generate earning fees, with the latter often taking place outside standard working hours and involving male-dominated social and cultural activities.³² This finding corresponds with conclusions on obstacles to women in executive positions in business in general, which juxtapose two concepts that are a challenge to reconcile: the “double burden” syndrome—the combination of work and domestic responsibilities—and the “anytime, anywhere” performance model.³³ Moreover, from the female perspective, criteria for becoming a partner remain inconsistent and non-transparent, dominated by male views.³⁴ For example, 43 percent of female solicitors, compared to 28 percent of male solicitors, thought recruitment in the profession favored men; also, 56 percent of men and 93 percent of women believed that the informal networks existing in the profession operated in favor of men.³⁵

Considering this pattern, the existence of a pay gap between men and women solicitors comes as little surprise. At each private practice grade men earned more on average than women—overall a difference of 30

25. LAW SOC'Y, GENDER AND EARNINGS IN PRIVATE PRACTICE: FINDINGS FROM THE 2008 SALARY SURVEY 7 (2009) [hereinafter GENDER AND EARNINGS] (unpublished report) (on file with the Law Society).

26. LAW SOC'Y, *supra* note 17, at 3.

27. 2013 REPORT, *supra* note 7, at 27.

28. FACT SHEET, *supra* note 17, at 3.

29. 2013 REPORT, *supra* note 7, at 44.

30. EQUALITY REPORT: GENDER, *supra* note 24, at 3.

31. *Id.*

32. See GENDER AND EARNINGS, *supra* note 25, at 15; see also LAW SOC'Y, OBSTACLES AND BARRIERS TO THE CAREER DEVELOPMENT OF WOMAN SOLICITORS 15 (2010) [hereinafter OBSTACLES AND BARRIERS].

33. MCKINSEY & CO., WOMEN MATTER 2010—WOMEN AT THE TOP OF CORPORATIONS: MAKING IT HAPPEN 6 (2010).

34. OBSTACLES AND BARRIERS, *supra* note 32, at 15–16.

35. Fionna Raitt et al., *Still a Glass Ceiling for Women Solicitors?*, J. LAW SOC'Y SCOT. (July 1, 2000), available at <http://www.journalonline.co.uk/Magazine/45-7/1000899.aspx#.VKyLfyfN49k>.

percent.³⁶ A similar pattern was found for in-house corporate solicitors. Men at each level of experience earned more than women. Average median earnings for in-house female solicitors were £70,000 compared with £97,000 for men—an overall difference of 27.8 percent.³⁷ The pay gap between women and men is wider in the profession than in the population in general, where it is 19.7 percent (based on hourly earnings for all employees).³⁸

In 2013, 6 percent of male solicitors and 24 percent of female solicitors worked part-time.³⁹ This represents significantly lower proportions compared to those working part-time in the population of the United Kingdom in general, where in 2009, 12.2 percent of men and 42.2 percent of women worked part-time.⁴⁰

B. Ethnicity

Black, Asian, and minority ethnic (BAME) groups made up 13.1 percent of all PC holders in 2013—an increase which mirrors the growth of ethnic minority groups in the general population of England and Wales—and 11.9 percent of all solicitors in private practice.⁴¹ However, while more than one-third of white European private practitioners were partners in 2013, the proportion for BAME groups did not exceed one-quarter,⁴² and around one-third of BAME private practitioners worked in two-to-four partner firms.⁴³ BAME PC holders were significantly overrepresented in London (except for the City), where just under one-half were employed.⁴⁴ The largest ethnic group is Asian.⁴⁵

When compared with the general population, BAME PC holders appear to be slightly overrepresented in the profession, which is most likely due to the higher relative proportions of solicitors of Asian and Chinese backgrounds than in the population as a whole.⁴⁶ PC holders of African-Caribbean and African backgrounds, as well as of other ethnic origins, were underrepresented in the profession compared with the population in England and Wales in general.⁴⁷ The proportion of PC holders belonging to a BAME group was slightly less than that found in the general population

36. FACT SHEET, *supra* note 17, at 4.

37. *Id.*

38. DEP'T FOR CULTURE, MEDIA & SPORT, SECONDARY ANALYSIS OF THE GENDER PAY GAP: CHANGES IN THE GENDER PAY GAP OVER TIME 5 (2014).

39. LAW SOC'Y, PC HOLDER SURVEY 2013: SOLICITORS' WORKING HOURS AND FLEXIBLE WORKING OPPORTUNITIES 3 (2013).

40. U.K. OFFICE FOR NAT'L STATISTICS, SOCIAL TRENDS No. 40, at 51 (2010).

41. 2013 REPORT, *supra* note 7, at 7, 14; DIVERSITY PROFILE, *supra* note 8, at 5, 9; *see also* LAW SOC'Y, DIVERSITY PROFILE OF THE PROFESSION: A SHORT SYNOPSIS 5 (2014).

42. 2013 REPORT, *supra* note 7, at 28.

43. *Id.* at 29.

44. *Id.* at 15.

45. DIVERSITY PROFILE, *supra* note 8, at 9.

46. LAW SOC'Y, EQUALITY IMPACT ASSESSMENT REFERENCE REPORT: BME 1 (2010) [hereinafter EQUALITY REPORT: BME].

47. U.K. OFFICE FOR NAT'L STATISTICS, POPULATION ESTIMATES BY ETHNIC GROUP 2002–2009, at 2 (2011).

of England and Wales. Census data for England and Wales in 2011 found that among those who provided information about their ethnicity, 14 percent described themselves as belonging to a BAME group.⁴⁸ This figure compares to 13 percent of PC holders for whom ethnicity is known.⁴⁹

Gender differences are apparent in the ethnic makeup of the profession. A higher proportion of female PC holders come from BAME groups (15.6 percent) than men (10.8 percent).⁵⁰ Almost three-quarters of African-Caribbean PC holders and almost two-thirds of the Chinese cohort are women.⁵¹ White European female solicitors are underrepresented in the profession compared to the respective group in the general population.⁵² This pattern is reversed for BAME solicitors: BAME female PC holders are overrepresented in the profession compared with the respective groups in the population as a whole, except for women solicitors of “other” ethnic background.⁵³

BAME solicitors are much more likely to work in firms of four and fewer partners. Nearly half (49.7 percent) of BAME solicitors worked in small firms (i.e., sole practitioners or two to four partners), compared to just above a quarter (27 percent) of white Europeans.⁵⁴ One-third, more or less, of African-Caribbean (30.8 percent), African (37.3 percent), and Asian (36.9 percent) PC holders worked in firms with two to four partners.⁵⁵ In contrast, 38.3 percent of Chinese PC holders, 30.9 percent of those of other origin, and 27.5 percent of white European solicitors were employed by large firms with more than 81 partners.⁵⁶ There were proportionately more sole practitioners of African-Caribbean, Asian, and African backgrounds compared to other ethnicities.⁵⁷ It might be inferred that sole practices serve as safe havens for BAME PC holders who might find it difficult to build careers in larger firms. Therefore, government support for small firms is an indirect way of assisting BAME solicitors entering the profession.

There are some differences between white European and BAME PC holders working in private practice. The latter are significantly more concentrated in criminal law (19.4 percent of BAME solicitors advised on this area of law, compared to only 10.2 percent of white Europeans) and family law (27.4 percent of BAMEs and 19.2 percent of white Europeans).⁵⁸ Also a quarter (25.9 percent) of BAME practitioners work with legally aided clients, compared to only 19.7 percent of white Europeans who do so.⁵⁹ Compared to their white European colleagues,

48. DIVERSITY PROFILE, *supra* note 8, at 9.

49. *Id.*

50. 2013 REPORT, *supra* note 7, at 14; DIVERSITY PROFILE, *supra* note 8, at 9.

51. 2013 REPORT, *supra* note 7, at 14; DIVERSITY PROFILE, *supra* note 8, at 9.

52. EQUALITY REPORT: BME, *supra* note 46, at 4.

53. *Id.*

54. 2013 REPORT, *supra* note 7, at 29.

55. *Id.*

56. *Id.*

57. EQUALITY REPORT: BME, *supra* note 46, at 5.

58. *Id.*

59. *Id.*

BAME practitioners tend to work in less lucrative areas of law and with legally aided clients.⁶⁰ Accordingly, it might be inferred that BAME practitioners have suffered disproportionately from the impact of recent cuts to government legal aid.

The pay gap between white European and BAME PC holders is 22.6 percent, compared with 6 percent in the general population.⁶¹ Although the existing BAME firms in the market provide employment opportunities for BAME solicitors, they do not offer the same remuneration and varieties of law compared to non-BAME firms.⁶²

C. Age

As of 2013, the average age of solicitors was just over forty-two years old.⁶³ The average age of a male PC holder was 44.9 years, compared to only thirty-nine years for female PC holders.⁶⁴ The average age of a female solicitor in private practice was 38.4 years, compared with 45.3 years for men.⁶⁵ Almost two-thirds of PC holders were between twenty-six and forty-five years of age, 2.7 percent were over sixty-five, and 0.6 percent were twenty-five or younger.⁶⁶

Women over fifty-one and men over sixty-one were underrepresented in the solicitors profession compared to the population in general.⁶⁷ The aging of the population, increased life expectancy, and the rise of the state pension age⁶⁸ mean that older people will form an increasing proportion of the U.K. workforce in the future. In light of this, the proportion of PC holders aged over fifty can be expected to rise in the years to come.

D. Religion

The 2013 survey indicated that 55 percent of PC holders were Christian, 33.2 percent had no religion, 1.7 percent were Hindu, 1.9 percent Muslim, 2.5 percent Jewish, 1.7 percent Sikh, and 0.2 percent Buddhist.⁶⁹ PC holders with no religion were significantly overrepresented compared with the population in general, whereas those of Christian and Muslim religions seem to be underrepresented.⁷⁰ White European PC holders were

60. *Id.*

61. *Id.* at 6.

62. *Id.*

63. 2013 REPORT, *supra* note 7, at 30.

64. *Id.* at 12; DIVERSITY PROFILE, *supra* note 8, at 5.

65. DIVERSITY PROFILE, *supra* note 8, at 5.

66. 2013 REPORT, *supra* note 7, at 30; DIVERSITY PROFILE, *supra* note 8, at 4, 7.

67. LAW SOC'Y, EQUALITY IMPACT ASSESSMENT REFERENCE REPORT: AGE 1 (2010) [hereinafter EQUALITY REPORT: AGE].

68. See Richard Evans, *Queen's Speech: State Pension Age "Could Rise to 70,"* TELEGRAPH (May 25, 2010, 4:25 PM), <http://www.telegraph.co.uk/finance/personalfinance/pensions/7764513/Queens-Speech-state-pension-age-could-rise-to-70.html>.

69. DIVERSITY PROFILE, *supra* note 8, at 10.

70. *Id.*; see also U.K. OFFICE FOR NAT'L STATISTICS, RELIGION IN ENGLAND & WALES 2011 (2012), available at <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/rpt-religion.html> (finding that 25.1 percent of

proportionately more likely to follow a religion other than Christian compared to white Europeans in the population in general.⁷¹ People of Jewish faith were considerably more likely to have a degree than people of any other religious background (44 percent).⁷² Muslims represented the lowest proportion of working age population having a degree (12 percent).⁷³ As having no degree would pose a critical obstacle to entering the legal profession, people with certain religious backgrounds would seem to be at more of an advantage than others.

E. Sexual Orientation

More than 92 percent of PC holders were heterosexual/straight, 1.8 percent were gay men, 0.5 percent were gay women, 0.2 percent were bisexual, and 4.8 percent preferred not to reveal this information.⁷⁴ These findings are broadly representative of the population in the United Kingdom: in 2012, 1.5 percent of U.K. adults described themselves as gay, lesbian, or bisexual.⁷⁵ The proportion of people not willing to disclose their sexual orientation has fallen in recent years: in 2011, 11.3 percent of solicitors were not comfortable supplying this information.⁷⁶ The choice of area of law for gay men and women follows the same pattern as for heterosexual/straight people: gay men were more likely to work in corporate and commercial law, whereas gay women were more likely to specialize in family law.⁷⁷

Those who were “out” at work were between twenty-six and forty-five years old, with fewer numbers in the older age groups; however, there was no significant association found between a solicitor’s age and his or her decision to be “out” at work.⁷⁸ Qualitative data suggests that, although younger solicitors tend to be more open about their sexual orientation, complete openness often could be established only after achieving a desired level of career progression.⁷⁹

people in England and Wales had “no religion,” compared to a survey of PC holders by the Law Society finding that 33.2 percent had “no religion”).

71. LAW SOC’Y, EQUALITY IMPACT ASSESSMENT REFERENCE REPORT: RELIGION 1 (2010) [hereinafter EQUALITY REPORT: RELIGION].

72. *Id.*

73. *Id.*

74. DIVERSITY PROFILE, *supra* note 8, at 10.

75. *Integrated Household Survey, January to December 2012*, U.K. OFFICE FOR NAT’L STATISTICS (Oct. 3 2013), <http://www.ons.gov.uk/ons/rel/integrated-household-survey/integrated-household-survey/january-to-december-2012/index.html>.

76. LAW SOC’Y, EQUALITY IMPACT ASSESSMENT REFERENCE REPORT: SEXUAL ORIENTATION 1 (2010) [hereinafter EQUALITY REPORT: SEXUAL ORIENTATION].

77. *Id.*

78. *Id.* at 4.

79. TARA CHITTENDEN, LAW SOC’Y, CAREER EXPERIENCES OF GAY AND LESBIAN SOLICITORS 37 (2006).

F. Disability

In 2013, around 11.9 percent of the working age population (16–64 years) in England and Wales, or 12 percent of those in employment, were disabled.⁸⁰ This estimate of the proportion of people with disability covers both those who have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities, and those whose disability is work-limiting. Three percent of PC holders in the 2013 survey reported having a long-term illness, health problem, or disability; of these people, 63.2 percent said they were “limited a little,” and 10.2 percent said they were “limited a lot.”⁸¹ Since some solicitors render this information sensitive, this figure should be treated as a lower limit of the proportion of solicitors with long-term illness or disability. Nonetheless, the data suggests that disabled people are underrepresented in the solicitor profession compared with the working age population of England and Wales in general.

From the perspective of disabled solicitors, one of the key obstacles deterring them from finding a job was employers’ “ignorance.”⁸² This ignorance stems from the fact that, due to insignificant numbers of disabled people in the solicitors’ profession, employers were not likely to have had direct experience of working with them. Thus, employers’ decisions were often guided by prejudices rather than objective facts about the abilities of a disabled applicant.⁸³

In the general population, the proportion of people with a limiting long-term illness increases with age, particularly over age sixty-five, and women are more likely to suffer from such illnesses than men.⁸⁴ Given that the influx of women into the profession is growing and that women, generally, tend to have a limiting long-term illness more often than men,⁸⁵ the legal profession should expect a rise in the numbers of solicitors with long-term illness or disability.

Considering that women are more likely to be disabled than men, less likely to attain a partnership level, and paid on average less than their male colleagues, it can be expected that in the years to come the pay gap between non-disabled male solicitors and disabled female solicitors will be the greatest, driving an overall pay gap between non-disabled and disabled people in the profession higher than the one in the general population.

G. Caring Responsibilities

Almost one-third (29.4 percent) of PC holders in the 2013 survey were the primary carers for a child or children under the age of 18, and 18.2

80. See DIVERSITY PROFILE, *supra* note 8, at 11.

81. *See id.*

82. DAPHNE COTTON, LAW SOC’Y, CAREER EXPERIENCES OF SOLICITORS WITH DISABILITIES 12, 37, 43–44 (2003) (on file with the Law Society).

83. *See id.*

84. LAW SOC’Y, EQUALITY IMPACT ASSESSMENT REFERENCE REPORT: DISABILITY 2 (2010) [hereinafter EQUALITY REPORT: DISABILITY].

85. *Id.*

percent gave help and support to other adults (e.g., family members, friends, neighbors, or others).⁸⁶

With the growing numbers of disabled people mentioned above, the legal profession should be prepared for an imminent increase in the number of female solicitors acting as prime caretakers for disabled members of their households. It has been calculated that the number of unpaid carers in the United Kingdom will increase from six million people today to nine million by 2037.⁸⁷ Given that women represent 58 percent of carers,⁸⁸ they, especially mothers of the disabled, will be affected the most.

H. Flexible Working

In 2013, the PC holder survey included questions relating to working hours and flexible working.⁸⁹ While there is some evidence to suggest an improvement in part-time and other forms of flexible working, the long-hours culture of the legal profession persists. Excluding equity partners, 93 percent of solicitors on full-time contracts worked longer than their contractual hours.⁹⁰ Three-quarters (74 percent) of solicitors felt that their employer expected them to work longer than their contractual hours,⁹¹ and the majority of those working in excess of their contractual hours were not compensated for their time, either financially or with time off instead.⁹² While the average full-time contractual week was thirty-seven hours,⁹³ full-time solicitors worked on average forty-eight hours per week.⁹⁴ Average part-time contractual hours for solicitors were higher than those for part-time employees in the United Kingdom generally.⁹⁵ In 2013, 81 percent of part-time solicitors worked more hours than contractually bound.⁹⁶ Women solicitors have experienced a larger increase than their male counterparts in working part-time over the last decade, with the proportion of women working part-time rising from 16 percent in 2003 to 24 percent in 2013.⁹⁷ Despite the long hours, only 16 percent of solicitors reported being dissatisfied with the number of hours they worked.⁹⁸ However, lack of flexible working was identified as a cause of concern for young women solicitors, potentially deterring them from returning to work as a solicitor,

86. DIVERSITY PROFILE, *supra* note 8, at 13.

87. CARERSUK, FACTS ABOUT CARERS 1 (2014), available at <http://www.carersuk.org/for-professionals/policy/policy-library/facts-about-carers-2014>.

88. *Id.* at 3.

89. See LAW SOC'Y, SOLICITORS' WORKING HOURS AND FLEXIBLE WORKING OPPORTUNITIES (2013).

90. *Id.* at 4.

91. *Id.* at 6.

92. *Id.*

93. *Id.* at 4.

94. *Id.*

95. *Id.* at 3.

96. *Id.*

97. *Id.* For men over this period, the increase was 2 percent. *Id.*

98. *Id.* at 5.

to private practice after maternity leave, and from applying for partnership.⁹⁹

I. Socioeconomic Background

According to the 2013 survey, 64.5 percent of PC holders went to a U.K. state school and 28.6 percent went to an independent or fee-paying school.¹⁰⁰ Over half (53.1 percent) were in the first generation of their family to go to university.¹⁰¹

Law firms rely heavily on educational attainment at A-levels when offering traineeships and filling junior positions.¹⁰² And it is known that, on average, BAME individuals perform worse at this level than white Europeans.¹⁰³ The type of university attended is one of the most important elements to factor into a person's chance to receive a job offer from top law firms. Such firms tend to hire from Oxbridge and pre-1992 universities,¹⁰⁴ as they believe such a strategy targets high quality candidates because universities with higher entry requirements usually offer more rigorous courses.¹⁰⁵ This perception leads to hiring candidates with lower grades from ancient/redbrick universities over students from new universities who achieve better grades.¹⁰⁶ Generally, those from redbrick universities, excluding Oxbridge, were twice as likely to secure contracts as those from new universities.¹⁰⁷ This has a disproportionate effect on BAME graduates because they are more likely to have graduated from the newer universities.¹⁰⁸ Applicants from BAME groups and those who had been to a new university had a relatively poor chance of securing a training contract.¹⁰⁹ In 2004, 53 percent of Magic Circle¹¹⁰ solicitors were

99. *Id.* at 12.

100. DIVERSITY PROFILE, *supra* note 8, at 12.

101. *Id.* at 12.

102. TIMBERLAKE CONSULTANTS FOR LAW SOC'Y RESEARCH UNIT, EARNINGS IN PRIVATE PRACTICE: ANALYSIS OF ETHNIC DIFFERENTIALS 17–18 (2010).

103. *Id.* at 19.

104. Most universities in England and Wales fall into one or more of a series of descriptive categories: (1) ancient universities founded before 1800, e.g., Oxford and Cambridge (“Oxbridge”); (2) redbrick universities founded in the late nineteenth and early twentieth centuries, e.g., Birmingham, Liverpool, and Manchester; and (3) new universities dating from 1992 when polytechnics and some colleges of higher education became universities, hence, pre- and post-1992.

105. ROSALINE SULLIVAN, LEGAL SERVS. BD., BARRIERS TO THE LEGAL PROFESSION 10 (2010).

106. *Id.*

107. *Id.*

108. SUMITRA VIGNAENDRA, LAW SOC'Y, SOCIAL CLASS AND ENTRY INTO THE SOLICITORS' PROFESSION No. 41, at 16 (2001).

109. ELIZABETH DUFF ET AL., LAW SOC'Y, ENTRY INTO THE LEGAL PROFESSIONS: THE LAW STUDENT COHORT STUDY, YEAR 6, at 13 (1999).

110. The “Magic Circle” is an informal term for what are generally considered the five leading law firms headquartered in the United Kingdom (i.e., Clifford Chance LLP, Linklaters LLP, Allen & Overy LLP, Freshfields Bruckhaus Deringer LLP, and Slaughter & May LLP).

graduates of Oxbridge.¹¹¹ This has declined slightly from 65 percent in 1988.¹¹²

Work experience either before or during university studies is another element for expanding contacts with law firms. An issue of ethnic and socioeconomic inequality is at play here, too. Given that the majority of firms in the legal market are owned by non-BAME partners working with non-BAME clients, and since the majority of requests for work experience come from family members of clients and colleagues, white Europeans have considerably higher chances to gain such an experience.¹¹³ Furthermore, since this work is usually unpaid, advantaged white Europeans, from this perspective, also have more chances to secure such work experience.¹¹⁴

The Legal Practice Course (LPC) itself can be a barrier for BAME students and those from less privileged backgrounds. The amount of financial investment for this course can often be perceived as insurmountable: 42 percent of individuals who did not apply for an LPC course cited its cost as one of the reasons preventing them from doing so.¹¹⁵

Overall, individuals from BAME or underprivileged backgrounds experience disadvantages in accessing the profession starting at early stages of their educational and professional upbringing.

J. Summary

What this data shows is that entry to the profession is increasingly diverse, but solicitors who are outside the traditional mold are finding it difficult to progress in larger firms. In 2012, the numbers of first-degree law graduates rose above 15,000 for the first time, with women making up almost two-thirds of graduates and outperforming men with respect to class of degree awarded.¹¹⁶ At 36.3 percent, the proportion of those accepted onto first-degree law courses from ethnic minority groups was the largest on record.¹¹⁷

But graduating is just the first step. The biggest hurdle for most graduates is securing a training contract with a law firm to get the necessary experience to enter the profession as a solicitor. In 2013, the number of training contracts registered rose back above 5000 but remained markedly below levels of the mid-2000s.¹¹⁸ This means that only one in three law graduates will get a training contract. The number of training contracts issued to men has shown less variance over time compared with those for women. Traineeships for women fell sharply during the recession and have

111. SUTTON TRUST, THE EDUCATIONAL BACKGROUNDS OF LEADING LAWYERS, JOURNALISTS, VICE CHANCELLORS, POLITICIANS, MEDICS, AND CHIEF EXECUTIVES 9 (2009).

112. *Id.*

113. LAW SOC'Y, INDIVIDUAL SOLICITORS' OMNIBUS 2009, at 7.

114. DUFF ET AL., *supra* note 109, at 13.

115. SULLIVAN, *supra* note 105, at 8.

116. 2013 REPORT, *supra* note 7, at 35–36.

117. *Id.* at 34.

118. *Id.* at 41.

yet to recover fully.¹¹⁹ Nevertheless, the number of training contracts registered for women in 2012–2013 was still around 60 percent, higher than the number for men, suggesting that, for the foreseeable future, the majority of younger solicitors will continue to be female.¹²⁰ However, the largest firms took on a disproportionately large share of male trainees.¹²¹

The overall picture is one of increasing numbers of ethnic minorities, women, and other underrepresented groups being attracted to study law and doing well at it. These groups, however, struggle first to get training contracts and then to find substantive work as a solicitor. Typically, they end up either in small firms or as sole practitioners, or move to in-house appointments where there tend to be better policies on flexible working and job opportunities. Where these groups do manage to enter private practice, they face significant challenges in reaching the partner level.

II. LAW SOCIETY RESEARCH

The annual statistical report is a major source of information for analyzing and addressing diversity in the legal profession. The report shows where the gaps are concentrated and can also assess what practitioners want from the Law Society.

As well as the annual survey, over the last twenty years the Law Society has commissioned research to understand the profession's current profile and why it persists. One of the most significant pieces of research was a six-year longitudinal study which followed a cohort of law undergraduates from 1994 to 2000.¹²² It analyzed the differences by educational and socio-demographic background to understand the factors affecting entry into the legal profession.

This research showed a discernible bias against applicants who were female, from BAME groups, and from less privileged backgrounds.¹²³ These groups of students tended not to have family contacts to help with work experience and often had to use holiday work to raise money rather than gain relevant experience.¹²⁴ Progress along the pathway of legal training did not depend solely on academic performance. Financial pressures were a real obstacle and this meant that BAME applicants and those educated at less prestigious institutions found it more difficult to secure PC places and training contracts.¹²⁵ The research highlighted the importance of the allocation of training contracts for entry purposes by showing that approximately 60 percent of trainees are retained by the law firms in which they train post-qualification.¹²⁶ A subsequent research study

119. *Id.*

120. *Id.*

121. *Id.* at 44.

122. *See generally* DUFF ET AL., *supra* note 109.

123. *See id.* at 13.

124. *See id.*

125. *See id.* at 12–13.

126. *See id.* at 19–20.

confirmed the earlier research and showed that lower social groups were disadvantaged before they entered secondary school.¹²⁷

In 2002, in-depth interviews¹²⁸ were held with law firms to explore how they offered training contracts and to contribute to the setting of standards for the supervision and training of trainee solicitors. Recommendations for action to improve the recruitment of ethnic minority trainees included: greater input by the Law Society into career education, mentoring of BAME solicitors, more support from the Law Society on curriculum vitae writing, guidance for law firms on recruiting BAME graduates, and the promotion of equal opportunity monitoring in firms.¹²⁹

A large-scale survey was undertaken in 2003 to look at gender differences in the profession.¹³⁰ This survey concluded that satisfaction rates for women were lower than for men; more women were likely to be considering leaving the profession; women were more likely to move from the private sector to in-house (corporate or government); pay was lower for women; and women were more likely to perceive barriers to progression than men.¹³¹ The research also looked at the impact of a career break and included key findings, such as:

- Almost 50 percent of women who had taken a break said that their experience for opportunities to take career breaks had been “worse” or “much worse” than they had expected;¹³²
- 32 percent returned to the same firms, and working conditions remained the same for the majority;¹³³
- 60 percent of returners reported no problems associated with the attitudes of employers and colleagues;¹³⁴
- Difficulties with work-life balance were identified by 67 percent of leavers as a deterrent and by 54 percent of returners as a problem;¹³⁵
- Work-life balance was perceived to be a cause of dissatisfaction for roughly 23 percent of all solicitors;¹³⁶
- Taking a break for most women had a positive impact on working conditions but at the cost of career progression;¹³⁷ and
- Almost 34 percent of returners reported lack of career development opportunities available to them; 45 percent

127. See VIGNAENDRA, *supra* note 108, at 9.

128. See generally HEATHER ROLFE & TRACY ANDERSON, LAW SOC'Y, A FIRM DECISION: THE RECRUITMENT OF TRAINEE SOLICITORS (2002).

129. See *id.* at 99.

130. See JO SIEMS, LAW SOC'Y, EQUALITY AND DIVERSITY: WOMEN SOLICITORS I (2004).

131. *Id.* at 9–10.

132. *Id.* at 17.

133. *Id.* at 18.

134. *Id.* at 117.

135. *Id.* at 10.

136. *Id.*

137. *Id.*

perceived that other solicitors had better career prospects with regard to pay and status.¹³⁸

- A second phase of this research¹³⁹ involved qualitative focus groups to explore the reasons why women left the profession and highlighted firms' working practices as problematic, namely, long hours, presenteeism, and lack of flexibility.¹⁴⁰

In 2006, a qualitative study of twenty-five lesbian and gay solicitors led to recommendations for the Law Society to be more proactive in supporting this group of solicitors and to work with organizations like Stonewall to promote best practices in the profession.¹⁴¹ This study also suggested that firms do more to gather data and extend policies to cover sexual orientation.¹⁴²

Salary data has been collected through various means every year since the early 2000s, but in 2008 the Law Society took a deep dive and used an econometric approach to understand the causes of gender differences, specifically.¹⁴³ This research showed that gender was only narrowly a significant determinant of earnings and that 92 percent of the gender pay gap can be attributed to differences such as PQE, areas of work, location, and grade.¹⁴⁴ Evidence taken as a whole seems to point to elements of direct discrimination (for which there are indications, but no concrete evidence) but, most of all, to barriers to achieving partnership status—and, within that, the highest echelons—that have greater adverse impacts on women than men. These appear to be tied up with firms' structures and cultures as well as differences in some women's and men's attitudes and preferences regarding progression and areas of practice.

Following the salary survey in 2010, three separate qualitative pieces of research were carried out to dig deeper into the career experience and the barriers and obstacles faced by three demographic groups: women, BAME, and LGB solicitors.¹⁴⁵ Key findings included:

- Organizational culture did not support diversity;
- Outdated perceptions of women;
- Resistance to practices such as flexible working;
- Perceptions of client expectations;
- Lack of visible senior role models, mentors, and coaches;

138. *Id.*

139. *See generally* LIZ DUFF & LISA WEBLEY, LAW SOC'Y, EQUALITY AND DIVERSITY: WOMEN SOLICITORS II (2004).

140. *See id.* at 8.

141. CHITTENDEN, *supra* note 79, at 8.

142. *Id.*

143. *See generally* GENDER AND EARNINGS, *supra* note 25.

144. *Id.* at 3, 12.

145. *See generally* LAW SOC'Y, ETHNIC DIVERSITY IN LAW FIRMS (2010); OBSTACLES AND BARRIERS, *supra* note 32; EQUALITY REPORT: SEXUAL ORIENTATION, *supra* note 76. For a brief overview of the findings of these studies, see *Career Barriers Research Studies: Findings*, LAW SOC'Y (Nov. 11, 2010), www.lawsociety.org.uk/advice/articles/diversity-survey-results/.

- Statements of openness not followed up in reality;
- Lack of information about career development;
- Tendency for BAME solicitors to go into less profitable areas of law; and
- Role of the Law Society in promoting greater diversity and educating law firms.

The reports identified actions for both law firms and for the Law Society, such as¹⁴⁶:

- Encouraging change;
- Helping law firms introduce transparent success measures;
- Promoting equal pay and remuneration;
- Encouraging more inclusive management practices; and
- Providing workshops and training for individual solicitors.

III. RESPONSE OF THE LAW SOCIETY

The research made clear that diversity in the solicitors' profession continued to be a challenge and that the Law Society needed to be more proactive in encouraging and supporting law firms to do better. In response to the research the Law Society identified the following areas to address¹⁴⁷:

- Problems in accepting diversity as a means of enhancing robustness and performance of a legal practice;
- Lack of informed diversity practices in law firms, and lack of awareness of what good practice looked like;
- Failure to provide proactive support for career development;
- Difficulty in accessing education and training and securing legal training contracts, both pre- and post-qualification;
- Career progression for some groups being directed toward less prestigious practice areas or less lucrative work;
- Individuals being ill-informed when embarking on law as a career;
- The importance of being mentored and advised at an early stage in legal training;
- Networking possibilities to assist career progression;
- Current measurements of career success within law firms;
- The remuneration policies of partnerships; and
- An apparent acceptance that discrimination is embedded within the profession.

Within the Law Society, diversity and inclusion for the profession were initially managed by one person as part of a wider portfolio, but, since 2010, the team has grown to seven people who provide advice and guidance

146. *Career Barriers Research Studies: Findings*, LAW SOC'Y (Nov. 11, 2010), www.lawsociety.org.uk/advice/articles/diversity-survey-results/.

147. *See supra* note 145.

on the full range of protected characteristics.¹⁴⁸ The focus is on providing encouragement to law firms to improve their diversity profile, but support is also given to individual solicitors from underrepresented groups to develop their skills and to network with role models. The team also works with law students and school pupils to raise awareness of opportunities in the profession. The team's key activities are described below.

A. Diversity and Inclusion Charter

The Diversity and Inclusion Charter was established in 2009 by the Law Society, BT (British Telecommunications), and the Society of Asian Lawyers.¹⁴⁹ It is a public commitment by legal practices to promote the values of diversity, equality, and inclusion throughout their business, including recruitment, retention, career progression, and training and development.¹⁵⁰ The purpose of the Charter is to help practices turn their commitment to diversity and inclusion into positive, practical action for their businesses, staff, and clients.¹⁵¹ This is achieved by helping practices to record and measure their procedures against a set of diversity and inclusion standards and by providing them with opportunities to share best practice advice and guidance with colleagues from across the profession.¹⁵² The key indicators in the standards cover all areas of a business, including legislation and regulation, and show the level to which a firm is communicating diversity and inclusion practices, engaging stakeholders, and the positive outcomes that have been achieved as a result. Signatories complete an annual self-assessment of their progress, the results of which are collated and published in the Law Society Diversity and Inclusion Charter Annual Review.¹⁵³ This also provides a tool for the Law Society to measure progress and identify good practices, which can be shared more widely.

The Charter is accompanied by a set of protocols designed to help signatories fulfill the Charter's commitments in certain areas of their business. The reporting and monitoring protocol helps them collect and record the diversity statistics of their workforce, a task that is now a regulatory requirement.¹⁵⁴ The flexible working protocol helps with the implementation of flexible working practices so that signatories can attract

148. Under English law, these are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. See Equality Act, 2010, c. 15, § 4 (Eng.).

149. See *Diversity and Inclusion Charter*, LAW SOC'Y, <https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/diversity-inclusion-charter/> (last visited Mar. 25, 2015).

150. See *id.*

151. See *id.*

152. See *id.*

153. For previous annual reports, see *Diversity Charter Annual Report*, LAW SOC'Y, <http://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion-charter/diversity-charter-annual-report/> (last visited Mar. 25, 2015).

154. See *Collecting, Reporting and Publishing Diversity Data*, LAW SOC'Y, <http://www.lawsociety.org.uk/support-services/advice/practice-notes/sra-equality-monitoring/> (last visited Mar. 25, 2015).

and retain a wider pool of talent. All protocols come with checklists and toolkits. To date, over 450 practices have signed on to the Charter, representing more than one-third of all solicitors in private practice.¹⁵⁵ Signing on to the Charter is completely free and it is open to all, whether a sole practitioner or high street firm, an in-house legal team or a global legal practice. According to Sakil Suleman, a diversity partner at Reed Smith LLP: “In a short space of time, the Law Society’s Diversity and Inclusion Charter has become an invaluable tool for firms to measure their performance and share best practice, helping the industry as a whole to make progress in the diversity field.”¹⁵⁶

B. Procurement Protocol

The procurement protocol is a tool of the Diversity and Inclusion Charter but is aimed at purchasers of legal services.¹⁵⁷ The initiative was originally conceived by the Society of Asian Lawyers and BT who recognized the opportunity for purchasers of legal services to drive continuous improvement on diversity and inclusion in the profession through the procurement process. The Law Society was approached to lead the project and saw the benefit of bringing together purchasers and providers through a joint commitment which would also provide a platform for ongoing dialogue and collaborative action.

By signing up to the protocol, in-house legal departments promise to consider a potential supplier’s diversity and inclusion practices as part of the normal tendering process.¹⁵⁸ They also show their colleagues, clients, and competitors that they are committed to taking practical steps against discrimination in the legal profession. A model questionnaire covers everything from the supplier firm’s own diversity statistics to the steps they are taking to recruit, develop, and support minority and underrepresented groups, and the policies they have in place to promote and maintain good diversity practices, including flexible working. There is also a supplier scorecard, which helps to evaluate the questionnaire response, best practice guidance, checklists, and case study examples.¹⁵⁹ According to Dan Fitz, the group general counsel and company secretary for BT Group plc: “The intellectual argument for diversity is winning but we will only enjoy its

155. See *Charter Signatories*, LAW SOC’Y, <https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion-charter/charter-signatories/> (last visited Mar. 25, 2015) (listing signatories).

156. LAW SOC’Y, DIVERSITY AND INCLUSION CHARTER: ANNUAL REVIEW 2013, at 2 (2014) [hereinafter CHARTER], available at <http://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion-charter/diversity-charter-annual-report/>.

157. See *Procurement Protocol*, LAW SOC’Y, <http://www.lawsociety.org.uk/support-services/practice-management/procurement-protocol/> (last visited Mar. 25, 2015).

158. *Statement of Commitment to the Procurement Protocol*, LAW SOC’Y, <http://www.lawsociety.org.uk/support-services/practice-management/procurement-protocol/statement-of-commitment-to-procurement-protocol/> (last visited Mar. 25, 2015).

159. *Procurement Protocol: Frequently Asked Questions*, LAW SOC’Y, <http://www.lawsociety.org.uk/support-services/practice-management/procurement-protocol/procurement-protocol-frequently-asked-questions/> (last visited Mar. 25, 2015).

benefits to legal services if we put theory into practice. The Charter and procurement protocol will ensure that diversity, and its benefits, are a key factor in the procurement of external legal services.”¹⁶⁰

C. Diversity Access Scheme

Introduced in 2004, the Law Society Diversity Access Scheme (DAS) aims to improve social mobility in the legal profession by supporting promising entrants who face exceptional social, educational, financial, or personal obstacles to qualification.¹⁶¹ The scheme is funded through a mix of corporate sponsorship, the Law Society Educational Trust, and the Law Society Charity. It offers successful applicants financial assistance with LPC fees, access to relevant high quality work experience, a professional mentor, and networking opportunities. Previous alumni include those who have “experienced time in local authority care, resisted coercion into arranged marriage,¹⁶² grown up in homes where domestic violence was a daily occurrence, fled to the UK as an asylum seeker after their parents were killed in Zimbabwe, and battled for access to university and work experience with severe physical disabilities.” Whatever their obstacles, all have shown tenacity, courage and commitment to furthering their career. The scheme has helped over 140 students to date. On average, between 2010 and 2013, approximately 25 percent of all DAS awardees secured a training contract. Five of the 2013–2014 cohort have secured training contracts, representing a 33 percent success rate for 2013 so far.

As one 2014 awardee stated:

The Law Society Diversity Access Scheme means much more to me than just funding. It is allowing me to access a career in law which due to my social and personal background, I never considered to be attainable. I . . . have experienced and overcome many hardships in my life. My family have never encouraged my academic capabilities and due to financial restrictions, furthering my studies seemed an impossibility. The scheme has allowed me to push through social and financial barriers and pursue my dream of a career in the legal profession—there are no words to fully express my gratitude for the opportunity the DAS has given me.¹⁶³

D. Career Barriers Action Plan

The Law Society reviewed the findings of the three pieces of research in 2010¹⁶⁴ and produced a three-year action plan¹⁶⁵ that outlines the steps the Law Society will take in partnership with the profession to help address the

160. See *Procurement Protocol*, LAW SOC’Y, <http://www.lawsociety.org.uk/support-services/practice-management/procurement-protocol/>.

161. *Diversity Access Scheme*, LAW SOC’Y, <http://www.lawsociety.org.uk/law-careers/diversity-access-scheme/> (last visited Mar. 25, 2015).

162. *Id.*

163. LAW SOC’Y, *DIVERSITY ACCESS SCHEME: REPORT ON APPLICATIONS 2014*, at 2 (2013).

164. See *supra* note 145 and accompanying text.

165. See LAW SOC’Y, *CAREER BARRIERS ACTION PLAN 2013*, at 3–13 (2013).

barriers highlighted by the research. Respondents to the survey challenged the Law Society to take action in several key areas¹⁶⁶:

- Do more to promote inclusive practices in the sector;
- Provide mechanisms to enable people to challenge discrimination;
- Play a lead role in challenging the current culture, especially in regard to management practices and perceptions of “24/7” client expectations;
- Provide information on, support, and promote the use of positive action, mentors, and coaches;
- Encourage the collection of better diversity monitoring data to provide an impetus for change;
- Provide written guidelines on effective diversity management and contemporary people management practices; and
- Provide training and workshops in equality and diversity as well as developing professional skills.

The action plan groups activities into five objectives: (1) upskill board and committee members at the Law Society and increase their commitment to equality and diversity for members; (2) develop and communicate the case for diversity in law firms as a means of enhancing robustness, performance, and competitiveness; (3) improve the diversity of recruitment to the profession; (4) provide practical support on career development; and (5) support firms in improving the working conditions of staff as a means of attracting and retaining a more diverse workforce.

1. Upskill Board and Committee Members at the Law Society and Increase Their Commitment to Equality and Diversity for Members

The Law Society’s governance structure—council, boards, and committees—makes significant decisions on Law Society priorities and budget but is largely male and white, with an inclination toward a conservative perspective. Activities here include providing training on diversity and inclusion, including on unconscious bias, for both individuals and for the chairs of each of these bodies.¹⁶⁷ The aim is to help them understand what diversity and inclusion is and how unconscious bias can adversely influence decision making. Separately, a program has been started to help underrepresented members understand what the governance bodies do, how they influence what happens in the profession, and why it is important that they become more diverse. The aim is to encourage more diverse members to apply for committee posts and stand for election.¹⁶⁸ As well as articles in the Law Society Gazette, there are a series of roadshows featuring diverse speakers who are already involved to educate others about the benefits of engagement and how to apply.

166. *See id.*

167. *Id.* at 3.

168. *Id.*

2. Develop and Communicate the Case for Diversity in Law Firms As a Means of Enhancing Robustness, Performance, and Competitiveness

The Diversity and Inclusion Charter, outlined above, is a key initiative for this objective. In addition, in 2013 two guides were researched and developed on the business case for diversity: one for smaller firms¹⁶⁹ and another for larger firms.¹⁷⁰ Not only do these underline the legislative and regulatory requirements, but they also include data about the diversity profile of the United Kingdom and the key arguments for greater diversity, such as: (1) the potential to attract significant numbers of diverse clients; (2) access to a wider recruitment pool;¹⁷¹ and (3) the benefits of retaining a happy and motivated workforce.¹⁷² An online databank also has been set up with a series of good practice case studies, drawn from the shortlisted applications to Law Society Excellence in Diversity Awards and from the Charter annual report. And advice and webinars are produced on subjects such as targets and unconscious bias.

3. Improve the Diversity of Recruitment to the Profession

As well as contributing to annual handbooks for students, the Law Society works with schools and universities to improve the quality of careers advice, and organizes events for school pupils and undergraduates, explaining what can be expected from a career in law, what academic and other skills are needed, and providing access to role models. What is key here is encouraging students from nontraditional and underrepresented areas to think about law, while making clear that the competition is fierce. In 2013, 15,348 graduates were chasing 5302 training contracts.¹⁷³ Advice is also provided to firms on good practice in internships and blind recruitment, and support for women returners and others who have taken a career break.

As well as running the Diversity Access Scheme outlined above, the Law Society provides financial and other support for a variety of initiatives to promote social inclusion:

- PRIME, a profession-wide collaboration of legal practices providing fair access to high-quality work experience for students who have the least opportunity to access it otherwise;¹⁷⁴
- Access Professions, a website that matches state school students to work experience opportunities in all sectors. All signatories of the Diversity and Inclusion Charter are able to upload

169. LAW SOC'Y, *DIVERSITY AND INCLUSION IN SMALL LAW FIRMS: THE BUSINESS CASE* (2014) [hereinafter *SMALL FIRMS*].

170. LAW SOC'Y, *DIVERSITY AND INCLUSION IN LAW FIRMS: THE BUSINESS CASE* (2014) [hereinafter *LARGE FIRMS*].

171. *SMALL FIRMS*, *supra* note 169, at 6; *LARGE FIRMS*, *supra* note 170, at 9.

172. *SMALL FIRMS*, *supra* note 169, at 6–8.

173. 2013 REPORT, *supra* note 7, at 35, 41.

174. See PRIME, www.primecommitment.org (last visited Mar. 25, 2015).

opportunity details free of charge through the Law Society's sponsorship;¹⁷⁵ and

- Pathways to Law aims to get low-middle income students from non-privileged backgrounds to the best universities. The program delivers lectures, seminars, advice, and guidance sessions to help students develop the skills they need.¹⁷⁶

4. Provide Practical Support on Career Development

This is an area where activities are aimed at individual solicitors, so there are leadership programs, advice on curriculum vitae writing, courses for women returners, and workshops for minority solicitors interested in judicial appointments. Major events profile the achievements and contribution of groups of minority solicitors, such as an inspirational evening for Black History Month and a celebration of Diwali. The Law Society hosts the biennial Stonewall Lecture and organizes the legal presence at London Gay Pride. Research recently has been sponsored into LGB networks in the profession: mapping what exists and what works, as well as the role for straight allies. A new initiative is a program of speed networking for women in London and the regions, where senior women partners or in-house lawyers host group tables for fifteen-minute discussions. The program has proved very popular and a similar event now is being organized for LGB solicitors. Mentoring is also an important aspect of career development, and a mentoring scheme for women, ethnic minorities, LGB, and disabled solicitors is being developed.

5. Support Firms in Improving the Working Conditions of Staff As a Means of Attracting and Retaining a More Diverse Workforce

In recent years the Law Society has campaigned for law firms to adopt flexible working practices for all their staff, not just working mothers. In addition to providing advice as part of the Charter benefits, events have profiled the benefits of flexible working in terms of reduced absenteeism and workforce stress, and brought together female and male role models to illustrate how flexible working can operate. A campaign is now under way for equal pay in the sector, not only to raise awareness of the data, but also to develop a pay audit toolkit and practical guidance to help firms learn from those who have already started working on equal pay.

E. Divisions

In 2013, the Law Society set up three demographic divisions: the Women Lawyers Division, the Ethnic Minority Lawyers Division, and Lawyers with Disabilities Division. Membership is open and free, and the

¹⁷⁵ See ACCESSPROFESSIONS.COM, www.accessprofessions.com (last visited Mar. 25, 2015).

¹⁷⁶ See *Pathways to Law*, SUTTON TRUST, www.suttontrust.com/programmes/pathways-to-law (last visited Mar. 25, 2015).

benefits include regular newsletters, best practice guidance and advice, career development and networking opportunities, and peer-to-peer support. They provide an invaluable opportunity for the Law Society to engage directly with members in these groups.

F. Other Work

It was clear from all the research that promoting diversity in the legal profession requires both practical tools and advice as well as winning hearts and minds. To supplement the tools outlined above, twenty-five firms' diversity forums are held in London and across England and Wales every year. These bring firms together to learn about best practices on specific issues and to network with like-minded people. Subjects covered have included age discrimination, working with disabled employees or clients, social mobility, support for parents, including fathers, and BAME recruitment and progression. Speakers are drawn from organizations working on these issues, non-legal companies, and law firms.

There is often joint work with the Bar Council (for barristers) and CILEx (for paralegals), such as coordinating the legal presence at London Gay Pride and running workshops on judicial appointments. The Law Society provides sponsorship and support for other organizations working in the sector, for example, the Black Solicitors Network Diversity League Tables, in which larger law firms and barristers' chambers participate every year, and research by the Inter-Law Diversity Forum, which originally specialized in LGB equality but now covers other areas of diversity.

IV. HOW SUCCESSFUL HAS THE WORK BEEN?

The latest report from the Social Mobility and Child Poverty Commission states that "in law . . . , the move to a broader profile is, at best, slow," and this is borne out by analysis of the annual data.¹⁷⁷ However, the range and depth of the Law Society's activities has raised the profile of diversity issues in the legal profession and helped firms to understand what good practice is and the benefits of it. Yet, sometimes progress is reversed; for example, the pay gap between male and female solicitors increased in 2013.¹⁷⁸ A survey of partners at Magic Circle law firms found that young partners of today are almost as likely to have been educated in private schools (71 percent) as the older partners of twenty years ago (73 percent).¹⁷⁹ "So while law firms did appear to open up to a generation of partners educated in state secondary schools in the 1960s . . . , this does not look to be a lasting change, and more recent recruitment appears to have resulted in a growth in the representation of those from the fee-paying sector."¹⁸⁰ Outside the Magic Circle, the

177. SOC. MOBILITY & CHILD POVERTY COMM'N, *ELITIST BRITAIN?* 63 (2014).

178. SOLICITORS REGULATION AUTH., *supra* note 3, at 32.

179. SUTTON TRUST, *supra* note 111, at 7.

180. *Id.*

percentage of Oxbridge graduates in the profession has declined,¹⁸¹ reflecting in part the expansion of higher education in recent decades and the existence of a broader range of institutions.

But, there have been positive changes¹⁸²:

- The number of women holding PCs has nearly doubled since 2003;
- The main growth in PC holders over the past thirty years is accounted for by women entering the profession;
- At 36.3 percent, the proportion of those accepted onto first-degree law courses from ethnic minorities was the largest on record; and
- Of the firms who have been signatories to the Diversity and Inclusion Charter and have reported more than once, three times as many (67 percent) improved their scores as those who went backwards (21 percent).

However, this progress cannot be attributed to the activities of the Law Society alone. Some increases are a reflection of the changes in national demographics, for example representation of BAME groups amongst solicitors increased further in 2013, mirroring growth of ethnic minority groups in the England and Wales' general population. Competition among larger firms and pressure from clients, as well as lobbying groups such as the 30% Club have also played a part. And Generation Y is coming through with different expectations of the work environment.

V. CHALLENGES

Despite some progress in improving diversity in the legal profession, challenges remain, both for law firms and for the Law Society. The Diversity and Inclusion Charter has unsuccessfully tried to be all things to all sizes and types of firms. Large firms do not find it stretching enough, while small firms claim the questionnaire can be too cumbersome. The procurement protocol, which assures that its signatory law firms are committed to diversity and inclusion, can seem long-winded and bureaucratic. It has been claimed that the DAS scheme raises unrealistic expectations by providing bursaries to study without the certainty of finding work in the legal sector. This section explains these challenges more fully.

A. *Diversity and Inclusion Charter*

The Charter is a popular initiative, illustrated by a doubling of signatories in the last twelve months. But an external review by Schneider-Ross¹⁸³ in 2013 revealed some concerns. Chief among these concerns was that a "one size fits all" approach tended not to be appropriate or relevant for many

181. *Id.* at 9.

182. See CHARTER, *supra* note 156, at 5.

183. SCHENIDER-ROSS LTD., REVIEWING THE D&I CHARTER (2013) (unpublished report) (on file with the Law Society).

firms. Large firms complained that the Charter did not hold them to account, and said that the questionnaire was too cumbersome and not stretching enough, especially compared with other tools, such as the Stonewall Workplace Equality Index.¹⁸⁴ On the other hand, small firms found the questionnaire too onerous to complete every year and the large firm terminology off-putting, especially against a backdrop of business pressures and reductions in legal aid. Nor has the terminology been adapted to Alternative Business Structures (ABSs)¹⁸⁵ and in-house legal counsel.

As a result, the Charter is being revised. The existing standards are being expanded and a new, more sensitive questionnaire is being introduced. This will enable firms to monitor their progress between years and against each other. A Platinum Plus level is being introduced for those firms who can demonstrate significant outcomes from innovative work. There will be a simple checklist for small firms and the opportunity to share case studies. The new version of Lexcel,¹⁸⁶ just launched, includes more diversity and inclusion standards and will be a formal accreditation for law firms.

B. Procurement Protocol

The protocol was reviewed in 2011 to assess how it was being used by its signatories. There was a general perception that U.K. law firms currently demonstrated disappointingly slow and limited progress in their diversity figures, despite significant measures and initiatives. The protocol itself has been criticized as being too long-winded and bureaucratic with not enough focus on outcomes. More work will need to be done to fine-tune the protocol in the future.

C. DAS Review

As the data shows, the Diversity Access Scheme does help some people to become solicitors when they would not otherwise have been able to find the funding or practical support to do so and the success rate in obtaining training contracts is about the same as for non-DAS students. However, the scheme has also been criticized for raising the aspirations and expectations of students hopes, which have subsequently been dashed when the individual fails to find work, or even a training contract, in the sector. A revised scheme will be introduced in 2015 with two guaranteed training contracts, including in the Law Society's own legal department. Training in softer skills will be included to help improve application rates. But, even with these changes, the impact on social mobility will remain quite small.

184. See *Workplace Equality Index 2015*, STONEWALL, http://www.stonewall.org.uk/at_work/workplace_equality_index_2015/default.asp (last visited Mar. 25, 2015).

185. For a definition of ABS, see Legal Services Act, 2007, c. 29, §§ 71–111 (Eng.), available at <http://www.legislation.gov.uk/ukpga/2007/29/contents>.

186. Lexcel is the Law Society's legal practice quality mark for excellence in legal practice management and legal client care. For additional information, see *Lexcel—Excellence in Legal Practice Management and Client Care*, LAW SOC'Y, <http://www.lawsociety.org.uk/accreditation/lexcel/> (last visited Mar. 25, 2015).

D. General

As has been illustrated above, we have learned to adapt services and advice for small and large firms in recognition of the lack of homogeneity in the sector as well as the reality that some firms are further ahead on diversity and inclusion than others. Many firms, especially the international ones, “get” diversity and inclusion, but there are still significant pockets that do not, especially in private practice outside the big cities.

Small firms have complained that some of the guidance is simply not appropriate for a firm where there is only one partner with a spouse doing support work, or where there are just a few employees and in a locality with little obvious diversity. As one put it, “if we need a toilet roll we go to the supermarket, we don’t have a procurement policy.” And yet, some small firms tell us that they welcome the opportunity to think about diversity on a regular basis and to try to attract more diverse clients. It can also be argued that small firms are more agile and can adapt to diversity more easily.

We have had to take a different approach with larger law firms in London, which tend to be more advanced on diversity and inclusion than those in the regions. This is probably because the City law firms are working more closely with other sectors that are more advanced than they are. A number of City law firms have joined the 30% Club,¹⁸⁷ which is a corporate group led by CEOs and chairs with a goal of achieving 30 percent women on FTSE boards by the end of 2015. There is also growing interest in targets for ethnic minority representation at board level.

City firms are also driven by their desire to attract clients. As we discovered with the procurement protocol, the client driver is increasingly described as instrumental in driving change with purchasers of legal services wanting assurances from their suppliers that they have good equality and diversity policies. Or do they? There is some skepticism that clients may say they want their providers to be good on diversity and inclusion, but when they need a service from the lawyer they have been dealing with twelve hours a day at 10 p.m. on Friday or Saturday, sometimes they no longer care whether this affects flexible working or the mental well-being of their lawyer. The sector has been described as over-lawyered and this contributes to a fear by law firms that unless they accept client demands, that client will simply move to another firm. This has sharpened competition and a willingness to compromise on good diversity and inclusion practices. And the impact of IT makes it even harder for solicitors to get away from work—they can be flexible about where they work, but not when they work.

One of the key issues in all diversity work is measuring outcomes rather than just outputs. We know how many firms are signatories to the Diversity and Inclusion Charter, and we trust them to complete the annual questionnaire honestly, but we have no way of checking if they are actually doing what they say they are and there are no recriminations if they are not making any progress.

187. See 30% CLUB, <https://30percentclub.org> (last visited Mar. 25, 2015).

CONCLUSION

The Law Society's policy on diversity and inclusion has been shaped by research over the last twenty years. The research showed the extent of the barriers and challenges, and it led to the allocation of more staff and financial resources to supporting members. It also helped to prioritize activities and sectors of diversity. The Corporate Responsibility, Equality and Diversity team have developed significant expertise and is delivering a range of support and advice to help meet the statutory obligation to improve diversity in the legal sector and to help law firms meet their regulatory obligations.

But progress is achingly slow. Solicitors see the Law Society as a source of advice, but they do not expect to be criticized publicly. And while many want to know what their competitors are doing, few are willing to talk about their own experiences, good and bad. As a result the Society sees its role here as a critical friend. We have concentrated on:

- Lobbying and campaigning with law firms on specific issues, such as flexible working or equal pay;
- Sign-posting good practice in the sector or elsewhere, both to appeal to the competitive nature of the larger firms, and also to help small firms avoid reinventing the wheel;
- Helping to measure progress, for example, with the Diversity and Inclusion Charter;
- Profiling role models from diverse backgrounds to help those already in the profession and to demonstrate that there is room for diversity; and
- Providing practical support with guidance notes on relevant issues, such as blind recruitment.

Like most diversity practitioners, we can only conclude that our work is like a dripping tap on stone. We can provide as much support, guidance, and advice as we can and hope to make slow but steady progress! Meanwhile, research helps us to target limited resources on areas most in need.