

Equal before the law?

Dan Bindman looks at what is being done to improve the legal profession's record on equality and diversity, and talks to Fellows who have suffered prejudice

An apparently never-ending stream of research reports, polls and academic studies in recent years suggests that problems with diversity, equality and social mobility are endemic in the legal profession. It's no surprise then that some people at the sharp end of the statistics have begun to wonder if things will ever change.

Yet amidst the gloom there are some good news stories. Various initiatives are seeking to improve diversity and social mobility in the profession. More women than men are being admitted to the roll of solicitors and being called to the Bar.

People from black and minority ethnic (BME) backgrounds now make up 13% of solicitors, 24% of admissions to the roll and 16% of barristers. Among legal executives 75% are women and 13% are ethnically diverse (15% among students).

But the overall picture of women and BME lawyers' progress after entering the profession, when compared with white males, is bleak. Among barristers, women are more than twice as likely to have probationary, squatter or pupil status than men. White male barristers are twice as likely to make silk as BME men and nine times as likely as BME women.

Solicitors fare little better. Only a quarter of law firm partners are women and 3.5% of partners in the biggest 150 firms are BME. Across the profession, women and people of BME origin are disproportionately represented in lower-paid areas, such as family, immigration, social welfare and criminal practice.

Language of diversity

Social mobility, a more recent addition to the language of diversity and equality, has risen up the political agenda in recent years and parts of the legal profession are vulnerable on this score.

Again, the statistics often look bad if you happen to be a bright youngster from a disadvantaged

background and are calculating your chances of scaling the heights in a legal career. Most depressingly, one recent study found that state-educated students are around seven times less likely to become a legal professional than someone who has been to public school.

This reinforced findings by the Legal Services Board (LSB) which suggest that the 'social capital' which flows from going to the right school can determine whether doors open to a career in the law.

Not every corner of legal practice is as prone to negative class or educational bias. Legal executives in particular have a good story to tell on social mobility. Neither of the parents of more than 80% of them went to university.

Equality duty

Several initiatives have been developed recently to try to improve mobility, some inspired by recommendations contained in the 2009 government-commissioned report on fair access to the professions chaired by Alan Milburn.

Perhaps the most eye-catching has come from the LSB. It would require law firms and chambers to publish information about their staff, covering the diversity strands of the new public sector equality duty in the Equality Act 2010 – age, race, disability, religion or belief, gender reassignment, sex, pregnancy and maternity, and sexual orientation – plus social mobility.

If adopted it would also attempt to drill down into the statistics to find patterns that, for instance, 'may mask under-representation of a particular ethnic group'. All legal and non-legal staff would be asked to fill in voluntary questionnaires and firms and chambers would be expected to analyse and act upon the results.

The hope is that by making legal entities publish the information, they will be motivated to improve their performance. 'It is the firm or chambers that recruits the workforce, establishes the culture,

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trains and promotes employees and allocates work; it is therefore the firm or chambers that is best placed to drive change,' says the LSB.

Detailed monitoring

Many lawyers accept there is some value in the principle of detailed monitoring, although many have concerns about how data is collected, how accurate it is likely to be, the bureaucratic burden it imposes – especially in smaller firms and chambers – and what use is made of it after collection. Monitoring must

not be an end in itself, some say.

Alan Kershaw, chairman of ILEX Professional Standards, says: 'You can collect as many statistics as you like, but if you don't change attitudes and processes, then you're not really achieving anything. The really important question is do you promote equality, do you celebrate diversity and do you take practical steps to make it possible for people to enjoy genuinely equal opportunity?'



A key ingredient in freeing lawyers from discrimination or unfair barriers to their upward mobility is allowing them to set up their own law firms, Mr Kershaw argues: 'From ILEX's point of view, one of the best ways to promote equality and celebrate diversity within the legal profession is to allow people to run their own firms. This is one reason why we are pressing so hard for independent practising rights for legal executives.'

Along similar lines, in a recently published impact assessment, the Solicitors Regulation Authority has suggested that the introduction of alternative business structures may help break down the dominance of

the traditional partnership model, which appears to be holding back equality and diversity.

Apparent prejudice

It may not be representative and it's certainly not scientific, but three legal executives, chosen randomly to describe their experiences from within a particular minority group, all reveal that prejudice has made an unwelcome appearance during their careers (and, to pick up Mr Kershaw's point, two of them have set up their own practices).

First is Mukesh Basra, a Fellow and senior solicitor in litigation at Leicester law firm Mander Cruickshank LLP. From an Asian background, in his 30-year career in the law Mr Basra feels he has had to work extra hard to compensate for his ethnicity.

He says: 'I think the only way ethnic minority lawyers can advance in their careers is if they offer something much more than their white counterparts, whether it's the time they put in, or gaining additional qualifications or experience.'

To boost his own profile, Mr Basra says he has qualified as a solicitor, obtained a master's degree in advanced litigation and dispute resolution, became a non-executive director of an NHS trust, and works for the Law Society as, among other things, a monitor and examiner in client care.

The second minority legal executive is personal injury specialist Chris Linnitt, a Fellow and partner at Linnitts, the Devon law firm he set up with his wife Clare, who is a Fellow and solicitor. Mr Linnitt is an above-knee amputee. He wears a prosthetic limb and is a keen sportsman. He was selected to train in archery for the 2012 Paralympics, although his workload prevented him from pursuing a place in the British team.

One of his early experiences as a legal executive in search of law firm employment, taught him to be wary about revealing his disability when job-hunting. The interviewing partner could not get past his concern that Mr Linnitt would struggle to commute to work with his disability, despite the fact that he was physically mobile and had a car.

'I learned from that and when I next went for an interview I didn't mention my disability. I feared that if I did, I wouldn't be given the job,' he says.

The third minority legal executive is Philip Warford, a Fellow who recently launched his own law firm, Renaissance Legal, in Brighton, specialising in wills, trusts, tax planning, powers of attorney and probate. A gay man, he started work aged 18 at a solicitors' firm in Norfolk and qualified as a legal executive some years later.

During his 21-year career at firms in east and south-east England, Mr Warford says he is certain that at times his sexuality affected his prospects: 'I think it held me back, on and off. Despite everything I was doing, which was better than a lot of my colleagues, I missed promotion on a number of occasions. In some cases I suspect this was because they didn't want one of their partners being openly gay; they feared it would be detrimental to the firm.'

He adds: 'I had a fair idea about what my struggle would be from day one, so I don't tend to get too wound up about it. But I do think I've ended up having my own firm because of it. I really enjoy not being restricted by other people's views and opinions.'

Force feeding

If the experiences of these three lawyers is in any way representative, it highlights that a change in attitudes at senior levels of the profession is needed. Mr Kershaw acknowledges his limitations as a regulator, but insists that simply waiting for that change to happen is no solution:

'Attitudes and ethics change profoundly only over a generation. But in order to effect that change, you have to force it on the present generation – by making it clear in ethical codes that part of the business of being a professional is to promote equality and diversity.'

In its overhaul of the Solicitors Code of Conduct, the Solicitors Regulation Authority is adding a core duty that will require the law firms and alternative business structures it regulates businesses to operate 'in a way that encourages equality of opportunity and respect for diversity'. Perhaps the best measure of the legal profession's intent to improve its record will be how seriously it treats those members who are found to have breached this.

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