



The Bar Council

Katherine Duncan, Chair of the Bar Council's Young Barristers' Committee

Welcome speech: Annual Bar & Young Bar Conference, 18 November 2020

Forward thinking: Bar of the Future

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On behalf of the Young Barristers' Committee, I too extend my welcome to this year's Annual Bar and Young Bar Conference. There has never been a more important year to be informed and engaged with how the justice system is developing and changing.

I would like to use these next few minutes tell you a little bit about the work of the Young Barristers' Committee. This year was not anything like I expected it to be. We have striven to ensure that the voice of the young Bar is heard by the leadership of our profession, the judiciary, and HMCTS. What we have tried to do is to highlight how vulnerable the young Bar was pre Covid-19 and is during the current crisis.

The young Bar is most the diverse group within the profession. The pandemic has highlighted the fragility of the progress the profession has made in increasing and sustaining diversity.

Before lockdown, Amanda Pinto QC and I got together to make a video for International Women's Day about women at the Bar. Both of us spoke about the gender micro aggressions we face at the Bar. This year we have also seen a recognition by the profession that it needs to start looking at the barriers to succeeding in the law particularly for Black barristers and those from ethnic minority backgrounds. This is a start to the conversation about the institutional and cultural barriers that exist which means that only 3% of barristers are Black and 1% are Black QCs.

Part of the committee's work this year has been about trying to improve accessibility of early career advancement in the first seven years of practice. There is lots being

done to improve accessibility to entrance to the profession, but what happens after tenancy or employment?

Becoming a barrister is part of an extremely structured path - there are clear stages of entry and progression. Once you have achieved tenancy there is very little in the way of defined career progression. This very much makes it a sink or swim approach to development.

This tends to favour those from privileged backgrounds who already have a network, or the skillset taught to them about how to access those networks to ensure early career advancement. It also includes the ability to take risks because you have the financial backing and the support if it all falls apart.

From research undertaken by the Bar Council, early career advancement is an essential element of a thriving practice and has significant impact on future success and retention. Women, barristers from ethnic minority backgrounds and barristers with disabilities, as well as those from less privileged backgrounds all appear to have less access to these important early opportunities.

How work is allocated within chambers can reinforce this unfairness. In some sets and workplaces this is monitored closely, and practices are well managed, but in others it is clear barristers are still operating completely independently with little support.

Many chambers have policies on the fair allocation of work but how many of us have stopped to look at whether they are functioning properly? It is not a case of do you have a diversity policy, but how diverse is your chambers or workplace?

Simply having the policy in place isn't enough. There should be scrutiny by the management committee or external auditors to ensure that these policies are functioning properly. It's all very well and good to have diverse pupils but if they don't have the foundations and support to maintain a practice then it's meaningless.

It's important we examine the make-up of committee membership within chambers and also on Specialist Bar Associations (SBAs), Circuits and the Bar Council. It's not just important that the leadership reflects the Bar because that itself is a good thing, but it's important for decision making. When committees and working groups are made of people from similar backgrounds, they tend to reinforce each other's thinking. Generally, people aren't doing this maliciously, but it does mean the same ideas tend to be produced year on year.

For example, a lack of diversity on who decides the marketing budget in a chambers or workplace can be very damaging. A lot of marketing practices are still outdated and tend to be heavily focused on alcohol and sport.

This is excluding to those barristers who don't want to or can't spend hours in the pub or don't enjoy a day out at the cricket. It limits the pool of opportunities to those people who enjoy such activity which in turn means that those people are the ones to progress in chambers and be in charge of the decision making and the distribution of the budget. And so the cycle continues. This form of marketing is completely out of sync with the City and professional services.

Each area of law has its own idea of what 'men's work' is. In crime, that work is fraud, corruption, drugs and firearms. While 'women's work' is sexual offences. In family law, although it's an area with a higher proportion of women to men, high value divorce cases have a higher proportion of men undertaking this work.

This translates across to the differences in men and women's pay. The BSB recent report shows that women are significantly over-represented in the three lower income brackets and significantly underrepresented in the highest four income brackets.

There are also significant differences between the income of white barristers vs barristers from ethnic minority backgrounds. The latter group is overrepresented in the lower two earning income brackets vs white barristers. The differences between groups are starker if gender and ethnicity are examined together.

For female barristers from minority ethnic groups, 44.9% are in the lowest two income bands – this is more than double the proportion of White male barristers (19.4%). Black African barristers have a lower average income band than other Black/Black British ethnic groups, while Asian Pakistani and Asian Bangladeshi barristers have a notably lower average income band than Asian barristers as a whole.

There is a lack of transparency about how you progress within your career at the Bar. This year, the YBC session at Conference focuses on how to make the most of your practice review. We are running this session because so many people we have spoken to this year didn't realise what a practice review was or that they should be having one.

In addition, the YBC has produced an Insider Guide on life at the Bar for all new practitioners. It includes the ins and outs of, among other things, finances, work life balance, practice reviews, time management, chambers politics. There are so many resources available for the young Bar, but we want to ensure these were clearly publicised rather than people relying on being part of a network. Access to support and resources should be transparent.

Many think that because of the way we work, we should not look to other professions to see how they have progressed and adapted to new ways of working. The lack of diversity gets in the way of thinking creatively about new structures, or workplace patterns or cultures that could improve the way we work and sustain diversity.

Quite often this year when trying to discuss with senior members of the profession institutional changes we could make to sustain diversity, I am met with the cry that it is in effect for someone else to do. It requires people to have uncomfortable conversations because it is often the most privileged fearing they will lose their privilege.

The Bar is not so unique and special that it is immune from change. The lockdown this year has forced us to work in new ways and the Bar has risen to the challenge. When presented with a new context the Bar can and will change.

I am really pleased to welcome you all to this year's conference. I have sorely missed life at the Bar as I previously knew it. This conference, even though virtual, offers a glimpse of normality and a chance to engage and learn from colleagues once more.

It gives us an opportunity to learn from one another as we always do at the Bar Conference, but most importantly, it provides us with an opportunity to look forward and there has never been a better time to look forward than 2020.

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