



The Bar Council

Race at the Bar: A Snapshot Report

November 2021

Foreword



This report was commissioned to produce a set of recommendations for Bar Council and Bar-based stakeholders to consider in order to tackle race inequality at the Bar. This report is for the Bar as a whole to action but inevitably it speaks more to the self-employed Bar.

Data in the report categorically and definitively evidences, in quantitative and qualitative terms, that barristers from all ethnic minority backgrounds, and especially Black and Asian women, face systemic obstacles to building and progressing a sustainable and rewarding career at the Bar. Based on evidence showing that particular inequalities are faced by Black barristers and students, we agreed that addressing this would be our initial focus. Not all data can be cut by specific ethnicities, where it can be cut, we have done so. We have endeavoured to make recommendations as targeted as possible towards groups where the greatest disadvantage can be evidenced.

Quite rightly, practising barristers within the profession have expressed frustration over the amount of talk about race inequality at the Bar, and the lack of action and failure to bring about change.

More research can always be commissioned to further explore the barriers faced by aspiring and practising barristers from different ethnic backgrounds. But it is time to acknowledge there is already enough evidence available to make the case for action now.

In publishing this report we make that case. We believe the Bar needs to move from good intentions and an 'ad hoc' approach to more strategic, properly funded and measurable action.

This - we believe - with everyone working together, might finally start to shift the dial in improving career outcomes for barristers from under-represented ethnic groups. This will ensure that the Bar is reflective of the society it serves.

Over the coming weeks and months, we look forward to working with you to turn our recommendations into tangible action.

We recognise many – and from many different ethnic backgrounds - have contributed to this research and placed their faith in us to bring about change. We therefore commit to come back to the Bar regularly to report progress.

Barbara Mills QC and Simon Regis, Co-Chairs Bar Council Race Working Group

I am grateful for the work that the Bar Council's Race Working Group - which represents all parts of the Bar - has put into this report. In rising to the challenge that it sets we should reflect honestly on whether long held, and perhaps defensive, assumptions about the Bar can survive the evidence and data which the report draws together. The Bar is, for most of its members, a modern profession in which hard work and talent offer individuals the opportunity to thrive and contribute to our justice system. That opportunity needs to be open to all.



The spotlight shone on race since the death of George Floyd in 2020 has exposed the structural inequalities that exist across many institutions and workplaces. This report highlights obstacles that our fellow barristers of colour face in terms of recruitment, retention and progression. Experiences may differ in different parts of the Bar, but the overall conclusion is clear; there is a moral and practical imperative for the profession to urgently promote diversity and to be more reflective of the society it serves.

The focus of this report is on practical ways in which the Bar can address racism, provide equal opportunities and tackle the under-representation of Black, Asian and ethnic minority barristers – at all levels. It also recommends that we should set out clear goals and the timeframes in which we will work to achieve them; many institutions and organisations within the law and more widely have already done so.

Over the last year, I have been encouraged by the huge amount of work and collaboration currently underway across Specialist Bar Associations, Inns, Circuits and a range of networks. Some of the recommendations made in this report are already in place in one form or another. There has been real progress, not just in identifying problems but in setting out plans to tackle them.

We must now work together to make the Bar more inclusive and accessible for every aspiring and practicing barrister irrespective of their background.

Derek Sweeting QC, Chair of the Bar 2021.

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Acknowledgements

Thank you to members of the Bar Council's [Race Working Group](#)¹ and to all the barristers, clerks, chambers' staff, judges, pupils and students who took part in the Bar Council's Race Summit (Part 1) discussions in September and October 2021 that contributed to this report.

We would particularly like to thank the following barristers who volunteered their time to facilitate these roundtable discussions: Elaine Banton, Gemma de Cordova, Karen Kabweru-Namulemu, Martina Murphy, Natasha Shotunde, Sally Penni MBE, Sean Wilson and Winston Hunter QC.

¹ <https://www.barcouncil.org.uk/uploads/assets/044277f9-534f-4664-bc25644b3f657b5c/RWG.pdf>

Executive summary

This report was produced by the Bar Council in the Autumn of 2021. It provides a data summary of the ethnic profile of the profession with respect to access (who is getting in), retention (who is staying in) and progression (who is getting on). It also provides a snapshot on reports of bullying, discrimination and harassment and wellbeing cut by the ethnic background of respondents² – both considered within the context of Bar culture. The lived experience behind these numbers was then explored in discussions with aspiring and practising barristers from different ethnic backgrounds, and with those across the Bar who support them.

We have looked to provide detail based on different ethnic groups where it is available. Recommendations in this report are also targeted when possible towards those groups where the greatest disadvantage is identified. On this basis some are directed towards those with Black/Mixed Black ethnic backgrounds, whilst others include all those with an ethnic minority background.

Key Findings:

- a) This report categorically and definitively evidences, in quantitative and qualitative terms, that barristers from ethnic minority backgrounds, and especially Black and Asian women, face systemic obstacles to building and progressing a sustainable and rewarding career at the Bar.
- b) Candidates from ethnic minority backgrounds are less likely to obtain pupillage than candidates from White backgrounds, even when controlling for educational attainment³ [university ranking, BPTC grade and degree class]
- c) Black and Asian women at the Bar are 4 times more likely to experience bullying and harassment at work than White men⁴.
- d) Even when factoring in practice area, work volume, region and seniority, women earn on average less than men; Black men earn less than White men; and Black and Asian women earn less than Black and Asian men, and Black women earn the least. The income differentials vary between practice area but are significant⁵.
- e) Black and Asian barristers are under-represented in taking Silk (becoming Queen's Counsel). There are just 5 Black/Black British female QCs and 17 male

² To a number of recent Bar Council led surveys

³ See Chart 2, page 16. Source BSB Diversity Data 2020

⁴ Barristers Working Lives 2021

⁵ BMIF, Criminal Legal Aid Review Report, BSB Income at the Bar report November 2020

Black/Black British QCs in England and Wales. There are 16 male and 9 female Silks of Mixed ethnicity. There are 17 Asian/Asian British female QCs and 60 male Asian/Asian British QCs. This compares 1,303 White men and 286 White women⁶.

- f) Black, Asian and other ethnic minority candidates are less successful in achieving judicial appointment; rates of recommendation from the eligible pool of applicants are an estimated 36%, 73% and 44% lower respectively when compared to White candidates⁷.

Our Role

Although the Bar Council is the Approved Regulator it does not regulate the profession; regulation is devolved to the Bar Standards Board. Shifting the dial on this agenda will require all Bar stakeholders to play their role. We commit to work collaboratively with Chambers, our Regulator, the Inns of Court, the Circuits, the Specialist Bar Associations, the Institute of Barristers Clerks (IBC), The Legal Practice Management Association (LPMA), the Judicial Appointments Commission (JAC), Queen's Counsel Appointments (QCA), and major clients of the Bar and we encourage them to engage with us. We will report on our progress in this area annually.

In November 2020, the Bar Standards Board published an [Anti-Racism Statement for the Bar](#). This statement requires chambers to:

1. Complete a race equality audit to identify the barriers to race equality
2. Design and implement positive action measures
3. Undertake comprehensive anti-racist training for all barristers and staff
4. Produce and publish an anti-racist statement for members of chambers and the public

Given that the BSB has already made clear what chambers are expected to do we will work with the regulator to establish how these obligations will be complied with.

Overarching Recommendations

We recommend the following:

1. **Target setting and evaluation.** Bar-based stakeholders⁸ should consult on, identify and publish their goals for improving diversity and the timeframe within which

⁶ QCA; Bar Council's CRM data (October 2021)

⁷ [Judicial Diversity Statistics 2021](#)

⁸ E.g. Bar Council, Chambers, SBAs etc.

they intend to achieve them; in other words, they should set targets⁹ for improvement from baseline data – not just for activity. Whilst goals may differ, we recommend that timeframes should be, one year to identify and set targets, and five and ten years stages to implement them. Programmes to support the access, retention and progression of barristers from ethnic minority backgrounds should then be properly evaluated against agreed targets. Targets should be based on a principle of meet the target or explain why a target has not been met (an approach which has been adopted successfully elsewhere e.g. in target setting for Women on Boards¹⁰). The Bar Council commits to having established appropriate targets by Autumn 2022 for its own staff and representative committees.

2. **Data Transparency and Monitoring.** The Bar Council should analyse data on barristers from ethnic minority backgrounds annually to record progress. There should be a concerted effort to encourage data analysis and sharing by all organisations across the Bar to enable progress to be tracked. Ethnic minority data must wherever possible be split by ethnic groups to expose any differences in experience by standard ethnic background descriptors. The impact of intersectionality¹¹ should be properly analysed. Any barriers to data collection and analysis should be identified and removed.
3. **Action Plan.** All organisations across the Bar should develop an action plan to implement the first two recommendations at a minimum. Whilst the detail of individual plans may differ, we recommend that action plans follow as much as possible the template set out in the conclusion to this report.

There are 23 specific detailed recommended actions for the individual areas (i) Access; (ii) Retention; (iii) Progression; and (iv) Bar Culture within each chapter exploring these issues within the report. [These recommended actions are also summarised in a table](#) in the Conclusion. Recommended actions include a range of measures such as training; monitoring work distribution by race; targeted career support/development, sponsorship and mentoring. The table provides a clear list of activity that any Bar-based stakeholder should consider in order to tackle race inequality.

⁹ Targets are voluntary time bound measurable objectives set by individual organisations. Quotas are mandatory and usually set externally by a body with the authority to impose them on organisations.

¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482059/BIS-15-585-women-on-boards-davies-review-5-year-summary-october-2015.pdf

¹¹ Intersectionality is the way in which various forms of inequality often operate together and exacerbate each other e.g. race and gender; race and socio-economic background etc.

We acknowledge that some of the challenges faced by barristers from Black, Asian and ethnic minority backgrounds may be felt by others across the Bar – although the impact may be felt more acutely by specific under-represented groups, for example: income/cuts to legal aid and workload/lack of control over work. The Bar Council will continue to work to address these issues on behalf of everyone at the Bar and with an interest in our Justice system.

The Bar Council will also consider what further research should be undertaken to establish the challenges specific to other (non-Black/Mixed Black) ethnic minority groups that are under-represented at the Bar.

The Bar Council commits to review progress on our overarching recommendations annually and more fully in 2024 (after 3 years).

Introduction

About Bar Council

The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad. It discharges its regulatory functions through the independent Bar Standards Board (BSB).

A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented individuals from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend.

Background to the report

The Bar Council recognises that we live in a society in which interpersonal, structural and institutional racism contribute to differing experiences and outcomes for individuals based on their race and ethnicity. There is an additional impact where race and ethnicity intersect with other protected characteristics such as sex or religion, or with poverty or social class.

This intersectionality is especially acute in the legal profession, where we are conscious that barristers work as part of a legal system affected by structural racism, particularly in the criminal justice system.¹² For those who work at the Bar, their career is not purely based on an objective meritocratic evaluation of their own ability. Access to the Bar, career progression at the Bar, access to the most prestigious and best paying work, retention, and working environment are all bound up with forms of privilege and power.

¹² The Lammy Review (2017)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

The Bar Council's Race Working Group

The Bar Council set up a Race Working Group in June 2020. The Group meets monthly to address race inequality at the Bar. Based on evidence showing that particular inequalities are faced by Black barristers and students, it was agreed that addressing this would be the initial focus of the group's work¹³

The Race Working Group is made up of representatives from the Inns of Court, Specialist Bar Associations, Circuits, and Black and Ethnic Minority-led Bar Networks and is co-chaired by Barbara Mills QC and Simon Regis. With the contributions and guidance of this group, Bar Council has produced [a framework for taking action](#) on race equality in chambers, a [positive action guide](#), a [race discussion guide](#) and advice on appropriate [race terminology](#). In 2021, The Bar Council signed up to support two wider business led initiatives: the [Charter for Black Talent](#) and the [10,000 Black Interns](#) programme; these two positive action initiatives were set up to address inequalities experienced by Black members of, and aspirants to, the professions.

As part of the evidence gathering for this report, the Bar Council with the support of the Race Working Group organised a summit on race at the Bar. Part 1 of the summit took place in September and October 2021. Part 2, which will include the launch of this report, is scheduled for 5 November 2021.¹⁴

Purpose and scope of this report

As the representative body for barristers, the Bar Council has an ongoing responsibility to document, recognise and respond to the lived experiences of members of our profession and those aspiring to join it.

As part of that effort, this report compiles and presents the latest evidence available on race at the Bar, takes stock of where we are, identifies the most urgent priorities, and formulates a set of recommendations for action.

Data on different ethnic groups is reported according to the race categories set out by the Legal Services Board and [Bar Standards Board](#) based on the current standard census categories. We recognise that this means data is not provided on those for example with a Jewish background (monitored across the profession under the category of religion/belief). On this basis we have not provided detailed analysis of the experience of Jewish barristers within this report, although some important discussion took place on the topic of Jewish identity in the course of the roundtable

¹³ Membership and Terms of Reference of the Race Working Group.

<https://www.barcouncil.org.uk/uploads/assets/044277f9-534f-4664-bc25644b3f657b5c/RWG.pdf>

¹⁴ <https://www.barcouncil.org.uk/training-events/calendar/the-bar-council-race-summit-2021.html>

discussions. We acknowledge that further work may be required with regard to the experiences of those of other faiths which might also constitute an ethnic minority group, and in relation to the intersection of faith with race.

We have separated out the discussion into four aspects of people's experiences at the Bar: Access, Retention, Progression and Culture.

There is some inevitable overlap between the sections, particularly in relation to issues around income and workplace culture, which pertain to all aspects of an individual's ability to build a sustainable and rewarding career at the Bar.

The expansive nature of the themes covered means that we have not been able to cover all possible areas of discussion and explore potential improvements within the scope of this report. Monitoring and documentation of these will be ongoing; the immediate aim of this report is to ensure that effective priority actions are taken to address the issues identified.

Methodology

The research that informs this report was carried out in two stages.

Stage 1: Data gathering

First, a data-gathering exercise compiled a summary of the latest data on race at the Bar, from Bar Standards Board and Bar Council monitoring, survey data and external sources. The main source of internal data is the membership database that is shared by the BSB [the regulator] and Bar Council [the representative body]. Each practising barrister updates their membership data each spring when they renew their practising certificate. Reporting rates for sex and race are over 90%, which means we can speak with some degree of certainty about those demographic variables. Reporting rates for other protected characteristics and social mobility are much lower, which limits our ability to say as much as we would like about the way in which race intersects with, for example, disability, sexual orientation, caring responsibility, or socio-economic background, and the way in which these intersecting variables impact on an individual's career development.¹⁵

We have supplemented this membership data with additional internal research where appropriate. Evidence on aspirant barristers has been compiled from our Pupillage Gateway.¹⁶ Our Barristers' Working Lives survey from April 2021 gives valuable qualitative data about the experience of working in the profession.¹⁷ We have additionally used reports from the Bar Standards Board, the Ministry of Justice (MoJ) and from the Queen's Counsel Selection Panel.

Working within the limitations of the data available we report data as granularly as possible. We try to avoid the term "BAME", and instead separate ethnic groups into 5 groups: Asian/Asian British; Black/Black British; Mixed/Multiple Ethnicity; Other ethnic group; White. We additionally try to separate out the variables of sex and race. At times, the numbers we report are so small that in order to adhere to GDPR standards of data reporting, we need to use the "BAME" grouping.

¹⁵ Reporting rates at Authorisation to Practice 2021 were 60.8% for disability; 58.8% for sexual orientation; 59.9% for primary caring responsibility; 60.2% for type of school attended; 12.9% for whether eligible for free school meals; 57.4% for whether the respondent was a first-generation university attendee.

¹⁶ Bar Council (September 2021) "Pupillage Gateway Report"
<https://www.barcouncil.org.uk/resource/pupillage-gateway-report-2021.html>

¹⁷ Bar Council (September 2021) "Barristers' Working Lives Survey 2021"
<https://www.barcouncil.org.uk/resource/bar-council-survey-shows-rising-reports-of-harassment-and-discrimination-in-barristers-profession.html>

Stage 2: Roundtable discussions

This data was organised in the form of discussion guides under four themes: Access; Retention; Progression; and Culture. The discussion guides were the basis of a series of roundtable discussions, organised by the Bar Council and held in September and early October 2021.

Participants in the roundtables included barristers across different ethnic backgrounds and in a range of roles including as Equality & Diversity Officers (EDOs) and Heads of Chambers (HofC). Participation was partially self-selective on the basis of interest in the topic, and partially convened by the Bar Council and the Race Working Group through identifying those with: i) expertise on the topic and lived experience of the relevant issues; ii) those with influence and responsibility for effecting progress in this area on the basis of their role i.e. as EDO or HofC.¹⁸

The intention was for the roundtable discussions to be directly informed by the evidence, to act as focus groups to unpick and explore some of the themes raised, and to coalesce around a series of questions that would directly inform the recommendations in this report.

This report is therefore based on the data and the roundtable discussions to produce a snapshot discussion of the state of play around race at the Bar, and of recommendations to improve racial diversity, and the experience of barristers of different ethnic minority backgrounds across the Bar. Whilst the focus was on the experience of Black barristers and students some of the discussions reflected the lived experience of those of other ethnic backgrounds.

¹⁸ Contents of the roundtable discussion group discussions were recorded by minute takers who took comprehensive notes live in person (not from a recording); therefore, in some cases quotations may not be a verbatim but as close as possible to what was said. All discussions took place under Chatham house rules to ensure participants felt able to share personal experiences and views, and therefore quotes are non-attributable to individuals.

Access to the Bar

Aspirant barristers must be qualified with an undergraduate degree, a law conversion course (Graduate Diploma in Law (GDL)) if their undergraduate degree is not in law, and a Bar Training Course. They must then secure a pupillage, either within chambers or at the employed Bar. Securing pupillage is highly competitive. On their first round of applications, about 1 in 20 suitably qualified candidates receive an offer of pupillage. On second, third and fourth rounds this increases to around 1 in 10.¹⁹

Once a barrister has completed their 12-month pupillage they then need to secure ((i) tenancy if they choose to pursue a career in chambers at the Self-Employed Bar; or (ii) a contract/employment at the Employed Bar. Around 80% of barristers in England and Wales are self-employed and work within chambers.

Pupillage data and analysis

There are two main sources of data on pupillage: the BSB's annual "BPTC Key Statistics Report", and the Bar Council's new reporting on pupillage, which comprises an analysis of data on aspirant barristers from the Pupillage Gateway [The Bar Council's pupillage recruitment portal], and an annual survey of pupils.²⁰

It is clear from both data sources that candidates from ethnic minority backgrounds are less likely to obtain pupillage than candidates from White backgrounds, even when controlling for educational attainment [university ranking, BPTC grade and degree class].²¹

"When controlling for degree class and BPTC grade, UK/EU BPTC graduates from minority ethnic backgrounds who enrolled from 2014-2018 were less

¹⁹ Bar Council (September 2021) "Pupillage Gateway Report"

<https://www.barcouncil.org.uk/resource/pupillage-gateway-report-2021.html>

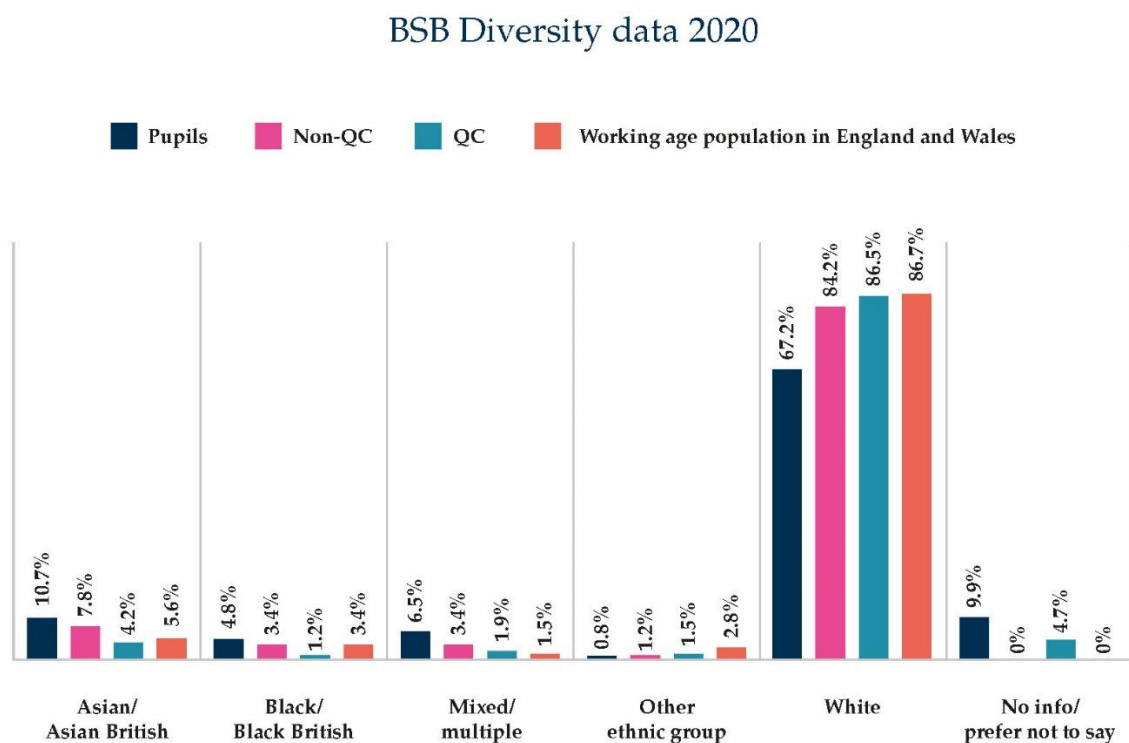
²⁰ There is a difference between the data between the pupil ethnicities in the BSB report and the Pupillage Gateway data. The BSB includes all the pupils in 2020 whereas with the Pupillage Gateway data, around 50% of AETOs that offer pupillage opportunities use the Pupillage Gateway to facilitate their recruitment processes, and an estimated 60-70% of all pupillage applicants register with Gateway each year to apply for opportunities. The Gateway records datapoints include personal data, educational achievements, protected characteristics, and application outcomes. There are some limitations with the data – around 25% of AETOs do not categorise their main area of practice (sometimes because they do not have one) in the way, which is required for reporting purposes, and 7% in 2019/20 did not update final offer data. It nonetheless represents the best available source of data we have on those who seek to obtain, and eventually do obtain, pupillage at the self-employed Bar.

²¹ Bar Standards Board (2020) "BPTC Key Statistics 2020"

<https://www.barstandardsboard.org.uk/uploads/assets/3f953812-cb0e-4139-b9dcc76f085de4e2/BPTC-Key-Statistics-Report-2020-All-parts.pdf>

likely to have commenced pupillage than those from White backgrounds. For example, of UK/EU domiciled BPTC graduates with an upper-second class degree and Very Competent overall BPTC grade, 41 per cent of them from White backgrounds had commenced pupillage, compared to around 23 per cent of those from a minority ethnic background with the same degree class/BPTC grade. The relative differences by ethnicity across degree class and BPTC grade are also present when further controlling for ranking of first-degree institution.”²²

Chart 1: Ethnicity at the Bar as of 1 December 2020 (%)



Pupils from ethnic minority backgrounds find it harder to secure pupillage than similarly qualified White British peers. While they are not under-represented at the Bar when compared to the working age population, they are when compared to the pool of applicants.

²² Bar Standards Board (2021) “BPTC Key Statistics 2021”
<https://www.barstandardsboard.org.uk/uploads/assets/e7d22219-ffb2-4f36-a206b21736e2d2d8/BPTC-Key-Statistics-Report-2021-All-parts.pdf>

Table 1: Ethnicity of pupils as of 1 December 2020 compared to the working age population in England and Wales (%)

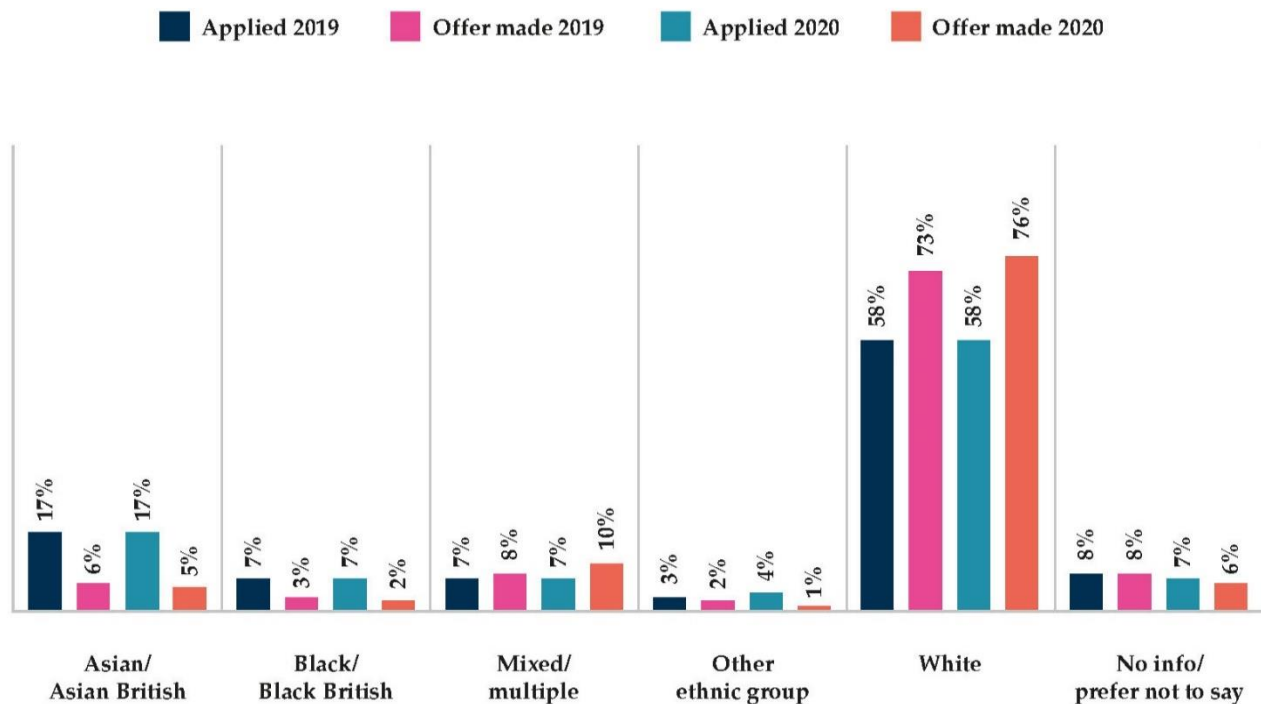
Ethnicity	Pupils 2020	Working age population in England and Wales²³	Working age population aged 25-34 in England and Wales²⁴
Asian/Asian British	10.7%	8.1%	12.0%
Black/Black British	4.8%	3.4%	4.1%
Mixed/Multiple Ethnic Groups	6.5%	1.8%	2.4%
Other ethnic group	0.8%	1.1%	1.7%
White	67.2%	85.6%	79.8%
No Info/ Prefer not to say	9.9%	0.0%	0.0%

In 2019 and 2020, higher proportions of White applicants secured pupillage offers when compared to other ethnic groups. Had pupillage offers in 2020 represented the ethnic composition of the original pool of applicants then 42% of those receiving an offer would have been from an ethnic minority or mixed-race background.

²³ ONS, "Working Age Population" Census 2021 data <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/working-age-population/latest#working-age-population-by-ethnicity>

²⁴ We have presented the benchmarking data for overall working age population in England and Wales, and additionally for the working age population aged 25-34, the age bracket that most aspirant barristers fall into (84.9% of aspirant pupil barristers in 2021 for whom age was reported fell into this age bracket). This benchmarking is from 2011 census data, so is probably lower than we would expect to see from the new 2021 census. It also does not reflect the London-centric nature of the Bar (60% of barristers have their primary practising address in London).

Chart 2: Pupillage applications in 2019 and 2020 based on ethnicity and offers made (%)



The Bar Council’s Pupillage Gateway report suggests a likelihood that intersectionality with class, education, and access to private means may be related to the challenges faced by some barristers from ethnic minority backgrounds:

- A higher proportion of men than women received an offer of pupillage (8.8%:7.1%).
- White (British/English/Welsh/Northern Irish/Scottish) candidates disproportionately secured pupillage compared to candidates from ethnic minorities (10.2%:4.3%).
- Applicants without a disability were slightly more likely to receive an offer of pupillage than applicants with a disability (8.1%:7.3%)
- Applicants from lower socio-economic backgrounds were less likely to receive an offer of pupillage (using parental occupation or free school meals as a metric). (Candidates from professional backgrounds 1.6 x more likely to get an offer)
- Candidates with a first-class degree or Outstanding at BPTC-level were more likely to receive an offer than those without (~2-3 x).

- Applicants with an Inns scholarship were significantly more likely to receive an offer of pupillage (~4 x).

Roundtable discussion group participants identified key issues within the theme of access to pupillage as: i) inequality of access to networks and contacts; ii) financial challenges as a barrier to getting to the Bar; iii) the perceptions of students from ethnic minority backgrounds in interviews and recruitment stages; iv) representation on chambers websites and in recruitment panels; iv) the nature of selection criteria and the selection processes of chambers. It should be acknowledged that whilst a number of these issues are not exclusively about race, they can each be exacerbated by racial inequality.

Networking and contacts

Participants recognised the importance to the pupillage application process of networks, mentors and knowing the “codes”.

“It’s knowing the people. People like me who don’t know a lot of barristers and coming from a non-law background. It’s much harder. I think it’s unfair that we have to work twice as hard at Bar school as some of our counterparts.”

Those who had been mentored, or who had been part of professional networks, emphasised how helpful they had found it. Participants suggested that more at the Bar should support mentoring initiatives:

“Some people already do this [outreach/mentoring], but it should be compulsory for everyone to be involved in outreach/mentoring – part of professional development (CPD). What we are talking about is everyone’s responsibility – not just those who are doing it or those from a minority background.”

The Bar Council’s survey of pupils in January 2021 emphasised the importance of networks at the beginning of a career as a barrister. It found that by far the most challenging aspect of the pandemic for pupils was the loss of networking opportunities (cited by 82%).²⁵ Those from professional backgrounds, or those who

²⁵ Bar Council (March 2021) “Survey of Pupils”
<https://www.barcouncil.org.uk/uploads/assets/047f34eb-e7ee-42f7-9c36b372fefb6411/Bar-Council-Pupil-Survey-Summary-Findings-2021.pdf>

have family who are barristers, have easier access to networks and knowledge about how to enter the profession.

Financial barriers

Participants in the roundtable discussions discussed the financial challenges involved in pursuing a career at the Bar, particularly the self-employed Bar, and felt that an extra level of resilience and determination was needed for those from backgrounds where there was no access to financial support. It was suggested and heartily endorsed that a fund could be ring-fenced from the Bar Representation Fee/other sources to support aspirant barristers from under-represented groups without access to independent means. Another suggestion was that Circuits could fund specific competitive pupillage scholarships for Black pupils.

Recruitment experiences

Black and Asian barristers at the roundtable discussion groups reflected on how they felt they were seen at interview, and on how hard it was to work out whether it was their qualifications that were the reason for their lack of success, or how they were perceived.

“I have the education that a lot of White men might have, from Cambridge, masters educated. The discrimination that I face is different as an Asian woman. Often, I got feedback that I was nervous. People are quick to identify sorts of qualities that are typical of some minorities - stereotyping.”

“Because it’s difficult for us to get feedback, we often jump to racism as the reason. Looking at pupils you think what do they have that I didn’t? They are White. I was very conscious of how I look during interviews. There is a need to tone down your blackness. I wear the straightest bob for interviews. I wish I could be bold enough to go to interviews in my afro or braids.”

“In my experience it also doesn’t feel like my hair is acceptable and I have had a similar experience. Even as a tenant.”

“I think about this every day, should I change my hair colour otherwise I might not get tenancy. It not just at the point of pupillage its tenancy and progression.”

“There are issues about being your authentic self and inclusion.”

These sorts of concerns are based in the reality of notions around “neatness” and “professionalism” etc. that are only heightened at the Bar. Judging a candidate negatively because of stereotypes about their hair etc. is capable of amounting to race and/or gender discrimination.

It was felt that offering feedback from unsuccessful interviews could help candidates; but it was recognised that not all chambers had the staff levels to realistically be able to provide this. It was suggested Chambers explore ways to provide more general feedback for applicants and an insight into their selection process if more detailed feedback was not viable. This might for example, involve something like a generalised form of feedback which summarised the most common areas for improvement that could be identified from unsuccessful applications or candidates; with tailored feedback to candidates who reach the Final Round(s) of interview.

Representation

Barristers reflected on the fact that chambers needed to be upfront, self-reflective and proactive if they wished to recruit pupils from more diverse backgrounds. It was felt that chambers websites showing profiles of members who had attended the same elite institutions and were from similar backgrounds was off-putting to aspirant barristers who had had different experiences:

“most Chambers have an E&D statement out there says ‘we value xyz’ on diversity and inclusion, but not what they are doing about it. What it comes down to is how we decide on who gets pupillage.”

“The power of a target [on representation] could be that if a student, particularly at a school that says they cannot be a barrister, sees chambers are actively trying to recruit Black people, this might encourage people to apply. They will self-select out if they see on a chambers website that everyone is White.”

“...in terms of applying to sets, when you look at chambers profiles and all you see is White men you are less likely to apply. What happens then, is if you are that first black person in an all-White set, you are going to have difficult experiences and not fit in.”

“chambers need to be welcoming and safe, black and brown faces help – anything to demonstrate inclusivity is important”

Diversity on the recruitment panel was judged to be helpful, particularly if candidates were told who was to be on their panel in advance of the interview:

“Some chambers say who is going to be on the panel. This is really helpful so the applicants can look them up.”

“In my experience knowing who was going to be on my panel really helped me.”

Although it may not always be possible for panels to be as diverse as chambers might want them to be, particularly within chambers where there are lower numbers of ethnic minority practitioners at present, this should be considered whenever possible as it can be invaluable for individuals not to be the only person from an ethnic minority background in the room when attending an interview.

In any case, chambers should seek to demonstrate genuine values of diversity by the means available to them in order to promote confidence among interviewees that they will be valued for who they are, and therefore can be themselves at interview.

Selection Criteria

This discussion was linked to the criteria that chambers used to decide who gets pupillage. There were two aspects to this: the fact that some people have not had the same opportunities to make themselves stand out by, for example, doing mini-pupillages or unpaid internships or participating in extra-curricular activities; and the fact that many interview panellists do not understand this, or seem to candidates to not understand this.

“The lie is that all you have to do to succeed at the Bar is work hard. The point about selection – it may be a class thing, but the truth is that as a Black person it will be mostly White people. They will not know where you are coming from.”

“One thing that allowed me to stand out in the interview was ‘tell us about a challenge that you faced’ – we need more questions about lived experiences. I think there should be more scope for hearing people’s stories.”

“For the last round of applicants [in chambers] we had a whole new system. One group in chambers took the view that we only take Oxbridge. Whereas others of us were of opposite view. We decided that the sift should not include any aspect on school or university.”

There is existing guidance from the Bar Council providing fair recruitment advice for chambers²⁶. Participants in the roundtable discussions suggested this is not

²⁶ Bar Council (2021) “Fair Recruitment Guide” <https://www.barcouncilethics.co.uk/documents/fair-recruitment-guide/>

consistently taken account of by those involved in the selection of pupils. Observations indicated that in order to equalise outcomes, it is crucial that those involved take account of guidance and undertake training in this area. Also, that those involved demonstrate an interest in advancing diversity as an inherent competence of their work. The roundtable discussion groups also highlighted that a broader range of experiences and attributes could potentially be taken account of when considering applicants, which would benefit candidates from diverse backgrounds.

There were comments that the mitigating circumstances section of pupillage applications did not give applicants enough opportunity to expand on knowledge and strengths gained through adverse experiences; and this could be an area for improvement in recruitment strategies.

Outreach

Those who had provided outreach and leadership emphasised that speaking with university students or aspiring pupils was too late to make a difference – that you needed to be able to reach school students to make a genuine intervention. However, it was acknowledged that the statistics bear out that there is not a problem in young people from ethnic minority backgrounds aspiring to become barristers. The numbers of aspirant barristers from ethnic minority communities is sufficiently high to be representative, the problem is that these candidates are not getting pupillage places at the same rate as their White counterparts.

Tenancy

For many securing Pupillage is just a step in what becomes a 12-month interview for tenancy at the self-employed Bar or employment at the Employed Bar. Gaps in Bar Council and BSB data make it difficult to establish whether there is a differential outcome in success in securing tenancy between White and Black ethnic minority pupils. Roundtable discussion group participants commented:

“it is a struggle from the beginning: to start and stay in the profession. It speaks to the resilience of those able to get through training and obtain tenancy”

“The data should also include people’s experiences in the interview, and at pupillage and towards tenancy. We need data on pupils getting tenancy.”

This is an area for future research/monitoring to identify the action that is required.

The Bar Council's survey of pupils from January 2021 identified four best practice principles for chambers to support pupils once they had secured pupillage. It's important to note that, even during the pandemic, a majority of pupils felt very well supported by their chambers/employer.²⁷ These principles held across all groupings.

- Daily contact with pupil supervisors, particularly when talking through cases.
- Regular diarised work and social contact with other members of chambers including clerks or other barristers. Initiatives such as tea/coffee mornings, being included in chambers events and weekly meetings with junior members of chambers were helpful.
- As much exposure to court attendance/remote hearings as possible under the circumstances, and the opportunity to talk through cases/hearings afterwards.
- Participatory decision-making about their pupillage, including on issues such as remote working and court attendance.

Limitations

The majority of barristers in our roundtable discussion groups were those who had gone through pupillage and secured tenancy. Most had built a practice and, in some cases, were involved in the recruitment process for new pupils. We spoke with a small number of students and with those who had recently secured pupillage. We did not speak with individuals who had been unsuccessful in securing pupillages; it was recommended by those attending the roundtable discussion groups that we look to consult this group separately in future research.

Conclusion and Summary of recommended actions on access

It is clear that the Bar is not - and does not feel - accessible on equal terms to people from Black, Asian and ethnic minority backgrounds, and particularly to those who do not come from backgrounds where they have financial support and/or access to professional networks. Recently published Pupillage Gateway application success data may reinforce these assumptions.

²⁷ Bar Council (March 2021) "Survey of Pupils"
<https://www.barcouncil.org.uk/uploads/assets/047f34eb-e7ee-42f7-9c36b372fefb6411/Bar-Council-Pupil-Survey-Summary-Findings-2021.pdf>

It is lawful²⁸ to take positive action measures in order to improve recruitment from under-represented groups (See Bar Council's [Positive Action Guide](#))

To improve access to those from diverse backgrounds, we recommend the following actions for chambers/AETOs:

1. Target setting and evaluation. Targets for recruitment of barristers from different ethnic minority backgrounds are set and access programmes are properly evaluated against these.
2. Mentoring/Network consolidation and collaboration. We should learn from the experience of, publicise/promote and support successful initiatives that focus on mentoring and interview preparation.
3. Targeted financial support. We should consider ways to provide financial support for further expansion of means tested scholarships and grants for students and pupils²⁹.
4. Website Bar literature/messaging should demonstrate an authentic commitment to race diversity and inclusion, i.e. a commitment to race, diversity and inclusion more broadly, which is not only visual but demonstrable in specific actions and tangible commitments.
5. Recruitment processes should be improved. Specifically:
 - a. Information/Application pack messaging (Chambers that wish to be more diverse should be explicit about this in their pupillage recruitment strategy and communications)
 - b. Application form weightings (should be reviewed to recognise overcoming adversity; opportunities available to candidates)
 - c. Panel make-up (should be diverse as possible)
 - d. Feedback (as much feedback as possible should be provided at each stage e.g. scoring data)[The Bar Council will support chambers with the above by monitoring the impact of existing recruitment tools on diversity and providing additional advice and guidance to chambers where needed].
6. Further research should be undertaken to better understand why candidates from under-represented groups have not been shortlisted/selected for pupillage

²⁸ Equality Act (2010)

²⁹ Recognising that the Inns of Court award large scholarship sums, ways to provide financial support for further expansion of means tested scholarships and grants for students and pupils should be considered

7. Careers Resources should be developed to amplify messaging to schools and colleges. Use of media (e.g. films 'Becoming a Barrister' etc.) should be considered where asking barristers to visit educational settings is too resource intensive. Those educational settings attended by barristers should be targeted based on the diversity of their students.

See Appendix 1 of this report for further reading recommendations for understanding barriers to access and improving access to the Bar.

Retention at the Bar

New evidence indicates that barristers from some minority ethnic backgrounds (this intersects with sex) may face additional challenges in establishing a sustainable practice in the early years (0-7) of their career. This may be related to factors such as Area of Practice, amount of legal aid work, ability to access credit, debt levels on commencement of practice, whether someone has financial support, and access to work that attracts higher fees.

Barristers in our roundtable discussions emphasised the centrality of two issues to retention; income and parenthood, especially at the publicly funded Bar. For many, being a publicly funded barrister, particularly a criminal barrister, simply became unviable at the point at which they became parents, and the issue was especially stark for mothers.

Note: It is recognised that wellbeing and Bullying, Discrimination and Harassment play a key role in retention. Whilst these are considered separately in this report (See: Bar 'Culture') they are inextricably linked and in interventions should not be considered in isolation.

Intersectional analysis of retention Data

It is first important to emphasise that, when considering challenges with retention at the Bar, the evidence suggests sex is the most relevant protected characteristic to consider.³⁰ One barrister described her experience, which we know is shared by many women at the Bar,

“I practiced in crime for 10 years before I gave it up. For me it was difficult at that time 25 years ago when I joined the bar. There were no such discussions or papers or data collection. The main protected characteristics which were always at the forefront was sex or gender. The fact that you were a woman and may want children was a real problem at the criminal bar which is why I gave it up. I didn't know then how much less I was earning than others. It was obvious that once I had a kid it was impossible to remain in criminal practice.”

³⁰ See The Western Circuit Women's Forum (2019) "Back to the Bar: A survey of obstacles, aids and recommendations for parents returning to the Bar" <https://westerncircuit.co.uk/wp-content/uploads/2018/11/WCWF-Back-to-the-Bar-Final-version.pdf>

However, the evidence indicates that there is some intersection with race, particularly for Black and Asian women barristers as compared to their White colleagues, in building a financially sustainable practice that can withstand a period of maternity leave.

As barristers progress from pupillage through the junior level and then (for those who apply successfully) to Queen’s Counsel, the data shows that the proportion of all other ethnicities except White and Other Ethnic Group decrease. For Asian/Asian British and Black/Black British barristers, the number of Queen’s Counsel barristers falls below the working population percentage.³¹

Part of this is down to historic recruitment – there were fewer barristers from ethnic minority backgrounds at junior levels 25 years ago than there are today – but part of it can be attributed to systemic challenges in career progression.

New research from the BSB and the Bar Council on retention patterns at the Bar, 1990-2020, allows us to approach the subject of retention from a longitudinal perspective, so we can monitor trends over the course of a barrister’s whole career.³²

“Barristers from ethnic minorities were found to be more likely to spend periods out of practice during the earlier stages of their career than White barristers.”

The limitations of the data available for this analysis meant that it was not possible to analyse the data in a more granular way. It is likely that the patterns may look very different for different ethnic groups.

Our roundtable discussion groups suggest that the reasons for this can largely be attributed to financial pressure and the related opaque individualisation of earnings at the self-employed Bar. Those without financial support find it very difficult to establish a financially sustainable self-employed practice, especially in publicly funded work. Student debt, housing costs, the need to support a family, all increase the pressure on the junior Bar. It’s important here to note that pupil barristers are, on

³¹ Bar Standards Board (January 2021) “Diversity at the Bar 2020”

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

³² Bar Standards Board (July 2021) “Trends in retention and demographics at the Bar: 1990-2020”

<https://www.barstandardsboard.org.uk/uploads/assets/12aaca1f-4d21-4f5a-b213641c63dae406/Trends-in-demographics-and-retention-at-the-Bar-1990-2020-Full-version.pdf>

average, now aged 30, so are likely to have more mature financial priorities than the pupils of a generation ago.³³

“when talking to my peers, they feel in the dark as to what happens after pupillage in terms of earning potential in the first 5 years and how work is allocated. And so, the lack of transparency puts a lot of people off not just in terms of retention but access.”

Access to Work

The BSB handbook outlines two responsibilities for chambers in respect to allocation of work. First, chambers must regularly review the allocation of unassigned work³⁴, including collecting and analysing data broken down by race, disability and gender, investigating the reasons for any disparities in that data and taking appropriate remedial action.³⁵ Second is the requirement for a fair distribution of work opportunities among pupils and members of chambers³⁶.

Our roundtable discussion groups discussed the challenges for chambers that systemically collect and review this data in doing any meaningful analysis or review. There is limited guidance at present on how to collect or analyse the data, and few chambers have the financial or staffing resource required to devote to this.³⁷ Some chambers management software can assist with automating the data collection and reporting. While barristers in our roundtable discussion groups recognised the challenges faced with monitoring and effective reporting of the distribution of unallocated work, they agreed that monitoring, accompanied with conversations and practice reviews within sets, would make the greatest difference to ensuring barristers have access to the work they want to develop their practices.

Roundtable discussion then coalesced around two additional key strands to work allocation within sets; the chambers staff, particularly clerks, and the directories. It

³³ Bar Standards Board (July 2021) “Trends in retention and demographics at the Bar: 1990-2020” <https://www.barstandardsboard.org.uk/uploads/assets/12aaca1f-4d21-4f5a-b213641c63dae406/Trends-in-demographics-and-retention-at-the-Bar-1990-2020-Full-version.pdf>

³⁴ Unassigned work is a brief that comes into chambers without a barrister’s name on it or a brief that is returned as a barrister is unable to undertake the work

³⁵ BSB (2020) “The BSB Handbook” <https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/the-bsb-handbook.html>

³⁶ rC1110i (Bar Standards Board Equality & Diversity Rules [here](#))

³⁷ The Bar Council does provide guidance on this, Bar Council (2021) “Workforce monitoring: information for chambers” <https://www.barcouncilethics.co.uk/documents/workforce-monitoring-information-chambers/>

was felt that clerks should be supported by chambers management in ensuring that work distribution processes are regularly reviewed.

“More diversity on practise desks and in clerking rooms, would help progression of barristers.”

“We have a diverse clerk’s room, and it makes a difference with these issues being dealt with in chambers.”

“The main management body should ensure that part of every clerk’s appraisal and reporting duties is for them to explain how cases are allocated, why did they decide the junior brief goes to x or y? and what is the criteria they are using?”

Clerks have a critical role in practice development but are by no means solely responsible for deciding who gets work. As one barrister pointed out,

“When work is up for grabs clerks are asked by solicitors to give 4 names. The clerks will put 4 names into the hat and the solicitors will choose John Smith.”

Senior counsel within chambers make decisions about who will be led on a case. Getting good briefs as a junior is crucial in building a sustainable practice, and conversation within sets should at times challenge the decisions made on which junior is seen as a “star”. In addition to allocating work within sets, clerks can be instrumental in supporting barristers in getting listed in legal directories. If a clerk feels a barrister has been overlooked, they can contact a directory and provide evidence as to why an individual should be included. Directories have begun to review their inclusion processes as they relate to sex, but it appears there is progress to be made in terms of race.

Addressing fair allocation of work and distribution of all work is something that must be done at a chambers level. It is potentially worth considering the US-based Diversity Lab’s Mansfield rule, which recommends that to create culture change 30% of senior leadership should be from under-represented groups.³⁸

Income

Data taken from the Bar Council’s CRM database indicates that, at all band levels, White male barristers earn the highest fee income.³⁹ This is especially stark from the higher income bands - Band 5 to Band 8. Asian/Asian British males earn the most after

³⁸ <https://www.diversitylab.com/pilot-projects/mansfield-rule-5-us-uk-canada/>

³⁹ This is derived from the Bar Council’s CRM - data that is obtained at the Authorisation to Practise process on an annual basis when barristers have to register for their practising certificates with the BSB. This is based on data for 15713 practising barristers out of a total of 16983; the remaining 1270 barristers either provided no information or preferred not to say.

White males and female barristers. Further breakdown can be seen in the table as follows which shows the percentage of the self-declared income in each band and how the income band is distributed according to ethnicity and sex. Each band is measured out of 100%.

Table 2: Breakdown of the 2021 self-declared income in each band by ethnicity and sex (%) as of 1 June 2021

	White M	White F	Black/Black British M	Black/Black British F	Asian/Asian British M	Asian/Asian British F	Mixed/Multiple Ethnic Group M	Mixed/Multiple Ethnic Group F	Other Ethnic Group M	Other Ethnic Group F	No info
Band 1 (£0 - £30,000)	33.9%	27.6%	2.4%	2.7%	6.1%	4.3%	0.8%	1.2%	5.6%	5.8%	9.6%
Band 2 (£30,001 - £60,000)	37.1%	31.8%	1.9%	2.5%	4.1%	3.6%	0.9%	1.3%	3.4%	5.4%	8%
Band 3 (£60,001 - £90,000)	43%	31.6%	1.1%	1.8%	2.4%	2.8%	0.9%	1.2%	3.7%	3.3%	8%
Band 4 (£90,001 - £150,000)	47%	31.2%	1.2%	1.1%	2.9%	2.1%	0.6%	0.8%	3.6%	3%	6%
Band 5 (£150,001- £240,000)	51.5%	26.5%	0.8%	0.8%	2.7%	2%	1.1%	0.7%	4.5%	3.3%	6.1%
Band 6 (£240,001 - £500,000)	61.2%	17.9%	0.6%	0.4%	2.6%	1.1%	0.9%	0.7%	6.1%	2.5%	6%
Band 7 (£500,000 - £1,000,000)	67.6%	13.2%	0.1%	0%	2.7%	0.6%	0.7%	0.4%	6.8%	0.9%	7%
Band 8 (1,000,000 and above)	70.2%	6.6%	0.2%	0%	3.9%	0.7%	0.5%	0%	10.3%	1.2%	6.4%
Total number of barristers	7898	4625	216	252	579	435	140	163	777	628	1270

Some of the difference in income can be attributed to the concentration of barristers from some ethnic minority backgrounds in publicly funded or more poorly remunerated areas of practice.

The table below shows the percentage % of barristers by Ethnicity/Sex and Area of Practice(sex plus ethnicity grouping) as of 1 June 2021

Table 3: % of barristers by Ethnicity/Sex and Area of Practice(sex plus ethnicity grouping) as of 1 June 2021

Ethnicity /Area of Practice	Crime		Family - Children		Family - Other		Commercial & Financial Services		Employment		Personal Injury		Immigration	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Asian/ Asian British Male	157	3.9%	31	1.5%	13	2.6%	93	6.1%	14	2.7%	38	2.6%	90	26.4%
Asian/ Asian British Female	108	2.7%	100	5.0%	20	4.0%	50	3.3%	20	3.9%	20	1.6%	36	10.6%
Black/ Black British Male	67	1.7%	23	1.1%	4	0.8%	16	1.0%	15	2.9%	10	0.8%	22	6.5%
Black/ Black British Female	80	2.0%	60	3.0%	9	1.8%	25	1.6%	12	2.3%	5	0.4%	13	3.8%
Mixed/ Multiple Ethnic Groups Male	38	0.9%	5	0.2%	1	0.2%	23	1.5%	5	1.0%	11	0.8%	7	2.1%
Mixed/ Multiple Ethnic Groups Female	46	1.1%	27	1.3%	4	0.8%	16	1.0%	9	1.7%	14	1.1%	3	0.9%
White Male	2345	57.8%	623	31.1%	255	50.6%	1006	65.7%	275	53.0%	861	65.8%	94	27.6%
White Female	1214	29.9%	1137	56.7%	198	39.3%	302	19.7%	169	32.6%	351	26.8%	76	22.3%
Total	4055	100%	2006	100%	504	100%	1531	100%	519	100%	1310	100%	341	100%

Table 4: % of barristers by Ethnicity/Sex and Area of Practice. BAME grouping. As of 1 June 2021

Ethnicity /Area of Practice	Crime		Family - Children		Family - Other		Commercial & Financial Services		Employment		Personal Injury		Immigration	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
BAME Male	262	6.5%	59	2.9%	18	3.6%	132	8.6%	34	6.6%	59	4.5%	119	34.9%
BAME Female	234	5.8%	187	9.3%	33	6.5%	91	5.9%	41	7.9%	39	3.0%	52	15.2%
White Male	2345	57.8%	623	31.1%	255	50.6%	1006	65.7%	275	53.0%	861	65.7%	94	27.6%
White Female	1214	29.9%	1137	56.7%	198	39.3%	302	19.7%	169	32.6%	351	26.8%	76	22.3%
Total	4055	100%	2006	100%	504	100%	1531	100%	519	100%	1310	100%	341	100%

Roundtable discussion groups discussed their observation that there seemed to be more women and barristers from ethnic minority backgrounds in publicly funded areas of law. Some of this can be attributed to individual choice, but it was felt the higher-earning commercial sets had a duty to self-impose targets for recruiting and retaining Black talent. This might involve challenging established perceptions of ‘merit’ based on White cultural norms of what constitutes the “best” credentials:

“a lot of pathways to progression are affected by practice area and that applies not just to income but to different areas of the bar, some take silk earlier, some apply for judicial appointments earlier, we know criminal practitioners take silk later so my suspicion is when looking into statistics is that an important factor lying behind differential outcomes is practice area.”

While some of the difference in income can be attributed to practice area, evidence is emerging that the disparity in access to the best-paying work goes beyond this. The BSB published a report in 2020 documenting that, even when factoring in practice area, region and seniority, women earn less than men, and Black women earn the least.⁴⁰ It is by no means a given that this is an issue that will self-correct as the Bar naturally becomes more diverse over time. Evidence from the experience of women at the Bar suggests that the reverse is true. The Bar Council has published an analysis of Bar Mutual data by sex that shows that, even as more women enter the profession, the income gap between men and women continues to increase.⁴¹

⁴⁰ Bar Standards Board (November 2020) “Income at the Bar” <https://www.barstandardsboard.org.uk/uploads/assets/1ee64764-cd34-4817-80174ca6304f1ac0/Income-at-the-Bar-by-Gender-and-Ethnicity-Final.pdf>

⁴¹ Bar Council (September 2021) “Barrister earnings by sex and practice area report 2021” <https://www.barcouncil.org.uk/resource/earnings-data-by-sex-2021.html>

Income in criminal practice

A recent informal survey by the Criminal Bar Association of 26 junior criminal barristers from black and minority ethnic backgrounds is revealing.⁴² Some have left the criminal Bar already; others are actively trying to leave. All reported that low rates of pay meant that they could not afford to stay. The vast majority were still paying off significant student debt, whilst struggling to cope with the basic cost of living, particularly those living in London. A significant minority also had financial commitments to extended family. All were passionate about a career at the criminal Bar and wanted to remain working in crime. They were frustrated and angry that low fee rates, particularly for low level crime, had made it impossible for them to progress their careers without suffering significant economic damage. Most had struggled to obtain pupillage and then tenancy; despite working consistently for several years, they had been unable to make enough money to allow even the most basic standard of living.

Women in particular expressed concern that the low rates of pay made returning to crime after a period of maternity leave less likely; women hoped to diversify their practices with a view to moving into better paid, and often less demanding areas of law, upon their return. Those who have found work on inquiries or secondments have been paid significantly higher rates than in general crime; none of these barristers will now return to full time criminal work, because of the low rates of pay.⁴³

In addition to the challenges in developing a sustainable practice in the early years, firm evidence is increasingly emerging that access to work and fee income is categorically not equitable between groups. It has previously been challenging to demonstrate this, despite copious anecdotal evidence, as we collect data on fee income, but do not collect data on work volumes. However, research done under a Data Sharing Agreement with the MoJ to inform the 2021 Criminal Legal Aid Review has demonstrated that there are systemic issues with access to work at the criminal Bar by ethnicity/sex.⁴⁴

⁴² Bar Council (May 2021) "Bar Council Response to the Criminal Legal Aid Review Call for Evidence" <https://www.barcouncil.org.uk/uploads/assets/7bb32f9d-ffce-4ce0-aa50239091e2713f/CLAR-Bar-Council-submission-final.pdf>.

⁴³ As cited in, Bar Council (May 2021) "Bar Council Response to the Criminal Legal Aid Review Call for Evidence" <https://www.barcouncil.org.uk/uploads/assets/7bb32f9d-ffce-4ce0-aa50239091e2713f/CLAR-Bar-Council-submission-final.pdf>.

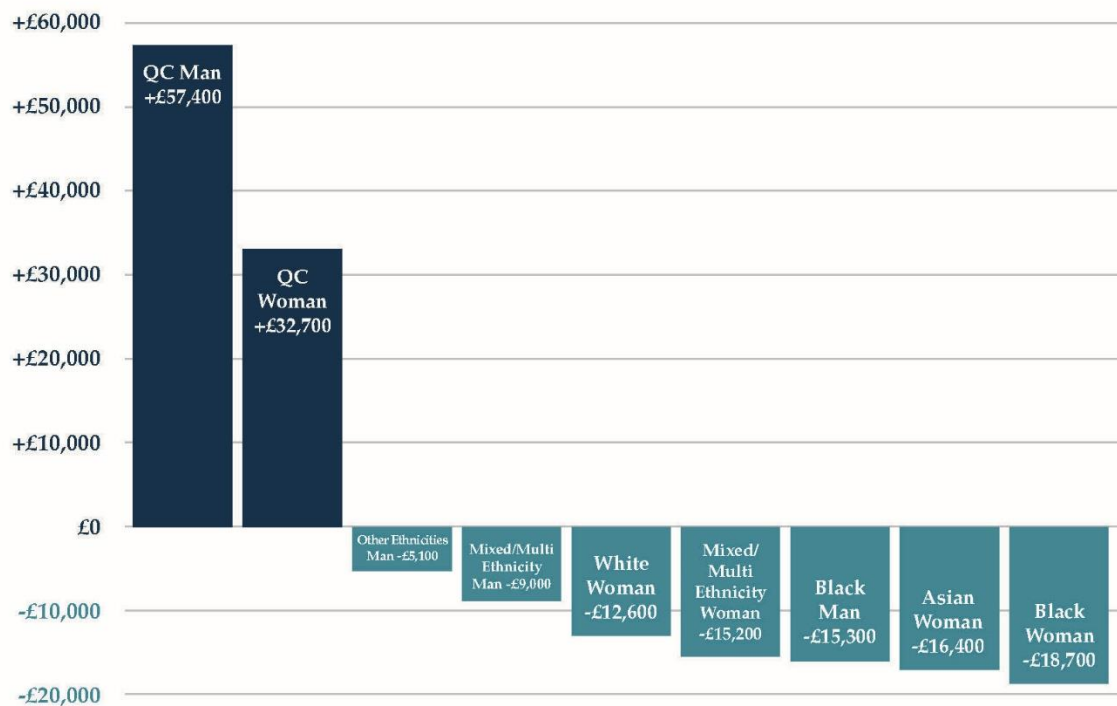
⁴⁴ Bar Council (May 2021) "Bar Council Response to the Criminal Legal Aid Review Call for Evidence" <https://www.barcouncil.org.uk/uploads/assets/7bb32f9d-ffce-4ce0-aa50239091e2713f/CLAR-Bar-Council-submission-final.pdf>

“Profit between groups of barristers is not equitable, and Black women earn the least of all. This holds true even once differing volumes of work are considered. The ‘volume adjusted’ difference in pre-tax profit between White men and White women is £11,400 rather than £12,600, so volume adjustment accounts for only 10.5% of the total difference in pre-tax profit.”

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Chart 3 below demonstrates how annual pre-tax profit was impacted by race and sex at the criminal Bar in 2019 when controlling for all other variables such as experience and region. The graphic presents a multiple regression analysis of how simply altering the sex, race and seniority level impacted remuneration. The benchmark figure was a White male junior at 17 years call. So being a QC represented a considerable uplift for both men and women, but it was £24,700 a year more lucrative for a man than a woman. On the debit side, a Black woman junior with the same level of experience as a White male junior would bill on average £18,700 a year less, and an Asian woman £16,400 less.

Chart 3: How sex, race and seniority affect pre-tax profit at the self-employed criminal Bar



⁴⁵ Bar Council (May 2021) “Bar Council Response to the Criminal Legal Aid Review Call for Evidence” <https://www.barcouncil.org.uk/uploads/assets/7bb32f9d-ffce-4ce0-aa50239091e2713f/CLAR-Bar-Council-submission-final.pdf>.

This type of analysis also demonstrates how important it is to break the “BAME” categorisation down further by sex and race where possible. Asian men, for example, are not included in this graphic as their average fee income is very similar to that of White men. If this analysis were to be run using merely “BAME” and “White”, much of the nuance would be lost. Arguably too, we should acknowledge there may well be differences within the Asian men category (e.g. Indian vs. Bangladeshi and Pakistani) which merit further investigation beyond the scope of this report.

Income and civil practice

We are aware that areas of practice other than crime have different challenges; a key one of these being the availability of data on work volumes in other practice areas which would be needed in order to identify any disparities. However, it seems likely that there is some commonality of experience. Roundtable discussion group participants discussed experiences of different practice areas:

“There is no way for me as a family practitioner to know how much everyone in the team is earning.”

“Chambers that don’t collect data means that there is an opaque situation at chambers level. Even if you are outside criminal practice and are doing more commercial common law matters then junior opportunities are very, very crucial. If you start missing them and if its White men who get that experience, then you get shelled.”

It was clear from our roundtable discussion groups that better monitoring of work allocation within chambers was crucial to improving understanding of income inequalities at the Bar (across different civil practice areas) and addressing these.

It was raised that clerks had a key role to play in understanding and improving outcomes for anyone affected by income disparities:

“In civil, in my own chambers, the way you got ahead was by being led. The people who decided who would be a junior, was the clerks. Clerks are missing from this meeting. They hold huge amount of power. When you are starting the only people, who can commend you are clerks.”

Meanwhile, leaders, solicitors and those in senior positions have an equally important role to play:

“Leaders have the choice of who to work with as their juniors. They will choose those that they like working with or who chambers perceive as star juniors and there is a real problem there. People who are just as good as the

‘so called’ the star juniors do not get the pick from the leaders with big briefs”.

To play their part in improving retention of both women and barristers of minority ethnic backgrounds, roundtable discussion group participants emphasised that leaders (silks) have an obligation to be diverse in their selection of juniors.

Conclusions and recommended actions on retention

Cuts to legal aid funding since 2013 means there are severe financial challenges at the self-employed publicly funded bar in developing a sustainable practice in the first 7 years of practice. This affects the retention of women and also barristers from ethnic minority groups (and consequently those that fall into both categories) disproportionately.

In addition to these disparities, lack of access to data on work allocation in non-criminal practice areas remains a barrier to monitoring and understanding reasons behind lower rates of retention of diverse practitioners in these areas. Further, the experiences of roundtable discussion group participants demonstrate that practices of clerks, leaders, and solicitors contribute to disparities in experiences of access to work and will need to be improved upon to ensure positive change in retention trends.

Inevitably, access to work and negative impact on the viability of a barrister’s practice can also influence experience of the challenges of caring and expose a barrister to less attractive aspects of Bar culture. The more vulnerable a practice, the less ‘power’ a barrister has, potentially leaving them more likely to experience bullying, harassment or discrimination and be less resilient when facing such experiences (examined in detail in a later chapter).

To improve the retention issues identified in this report we recommend the following actions:

8. Target setting and evaluation. Targets for retention and career progression of barristers from ethnic minority backgrounds are set and programmes are properly evaluated against these.
9. Barristers income should be monitored at a chambers level by ethnicity and information used to support practice management
10. Bar Council should establish a methodology and toolkit to support monitoring work allocation/income by race and training/guidance for clerks
Bar Council should establish a methodology and toolkit to support

monitoring work allocation/income by race and training/guidance for clerks.

11. Action plans should be developed to address inequalities in income/work distribution by race in chambers and by clients of the Bar.
12. Practice Management & Development. The Bar Council should work with chambers to develop practice management resources that recognise the discrimination faced by ethnic minority barristers. We should promote the development of practice management and training for practice managers. We should recognise progress made.
13. Bar Council should encourage the establishment of support and nurturing programmes for (i) New Practitioners; and (ii) Senior Juniors from Black/Mixed Black backgrounds. Programmes should be designed to help participants build and sustain a successful practice. Increased opportunities for mentoring and shadowing are part of this.
14. Improving ethnic diversity in clerks' rooms should be made a priority

Progression at the Bar

It can be difficult to measure career progression at the self-employed Bar. Indicators we can use are self-declared fee income and access to high profile work (covered in the previous section on Retention). For the purpose of this section of the report we propose to use appointment to Panels e.g. Treasury Counsel, CPS Advocate Panels, AG Panels; taking Silk (becoming Queen's Counsel) and judicial appointments; as well as more general leadership roles (e.g. on Circuit, in Chambers, the Inns, SBAs).

At the Employed Bar there are other more significant ways to mark progression e.g., promotions

Access to high quality work is the building block for career progression as the type of cases, amount of advocacy and where a barrister appears will determine how an individual barrister hones their craft and is evaluated in any application to a Panel, Silk and/or Judicial applications.

For that reason, adoption of the recommendations with respect to work distribution in Retention will be necessary alongside any recommendations we propose with respect to Progression.

Panel Appointments

Appointment to panel counsel is a prestigious source of regular work for self-employed barristers. All government departments and agencies of government departments must use panel counsel. Panels include the AG's Civil Panels London and Regional; Treasury Counsel; SFO Counsel Panels and CPS Public Advocate Panels (including RASSO).

Composition of panel lists and allocation of work within those lists are therefore of significant monitoring interest.

Analysis, for example, of Senior Treasury Counsel (7 members) does not include any members from an ethnic minority background; whilst the AG's Civil (London) Panel A has no Black members⁴⁶.

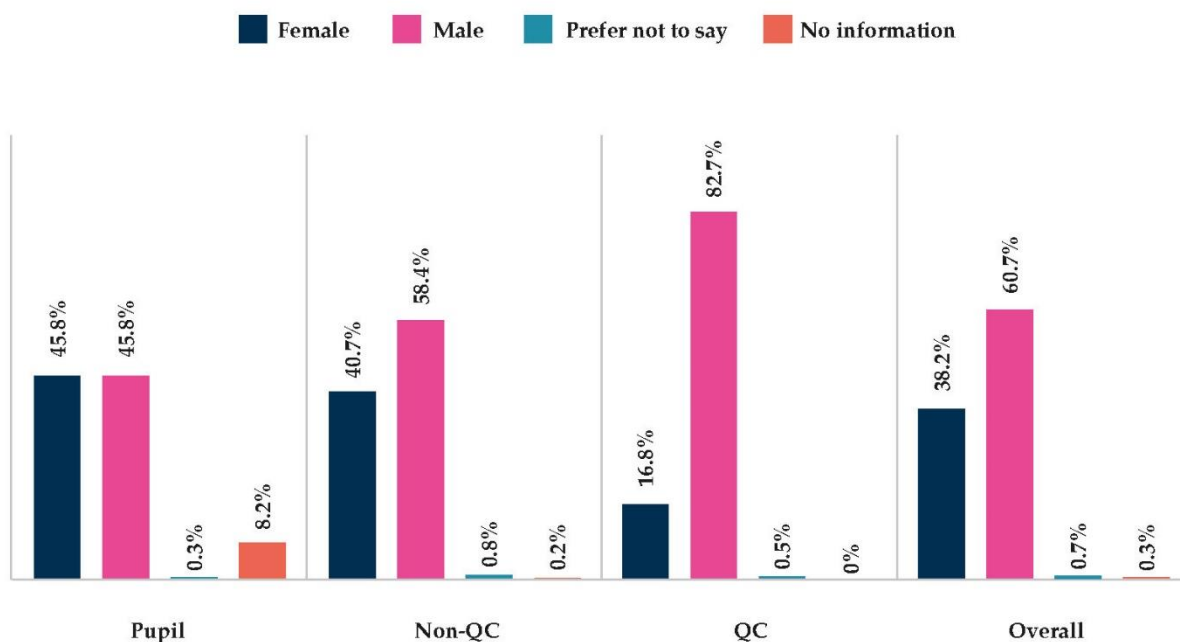
The Bar Council would like to encourage collection, collation and publication of Panel monitoring data.

⁴⁶ Based on published lists and Bar Council's CRM data

Queen’s Counsel

At pupil level, there is an equal split between female and male at 45.8% and at non-QC level, there are 40.7% female and 58.4% male. At QC level, 82.7% are male and 16.8% female. This is illustrated in the chart below produced by the BSB.⁴⁷

Chart 4: Sex at the Bar as of 1 December 2020 (%)



In addition to the pre-existing under-representation of women at QC level, this intersects with ethnicity to some extent, although more barristers from ethnic minority communities/backgrounds are becoming QCs than in 2015, “in December 2015 the proportion of non-QC practitioners from a minority ethnic background was 2.1 times higher than the equivalent proportion of QCs; in December 2020 the ratio between the two was 1.71.”⁴⁸

The intersection between under-representation of women at QC level and under-representation of barristers from ethnic minority backgrounds at QC level results in very small numbers of Black and Asian women barristers at the most senior levels.

Data taken from the Bar Council’s CRM database shows that there are 5 Black/Black British female QCs and 17 Black/Black British male QCs in England and Wales. There

⁴⁷ Bar Standards Board (January 2021) “Diversity at the Bar 2020”

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

⁴⁸ Bar Standards Board (January 2021) “Diversity at the Bar 2020”

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

are 17 female QCs who are Asian/Asian British and 60 male Asian/Asian British QCs. There are 9 women QCs of mixed/multiple ethnicity and 16 male QCs of mixed/multiple ethnicity.⁴⁹

Barristers in our roundtable discussion groups reflected on the shocking nature of these statistics, even to those who had anecdotally seen few Black colleagues at QC level. It was considered that the system of multiple references and the need for colleagues to encourage, support and validate your application process could limit visibility and confidence in making QC applications.

“progression in the profession is not a transparent process. Given the nature of self-employed practice, career progression relies on references from senior members of the judiciary, still predominantly White. We all know that lists are circulated to judges behind the scenes. For people of ethnic background, it is difficult to get references from judges. The feeling and practice is that some people are more aligned and easier called upon to give reference in comparison to others. One can’t make any proper progression unless you they can call on good references from members of the judiciary and it is that much more difficult if you don’t have an obvious link or common ground with members of the judiciary.”

It was felt that, short of imposing and regulating quotas, the main intervention that could be helpfully made in terms of juniors progressing to QC level would be for chambers to set their own targets internally, regularly monitor practice development and support colleagues in making applications. Key individuals in this would be pupil supervisors proactively taking more of a lifelong mentoring role, and Heads of Chambers in implementing regular practice reviews, mentoring and coaching within sets.

“Pupil supervisors and Heads of Chambers need to take a proactive step in career development and progression. We need to be calling on the resources we already have at the Bar and making people positively go out and help.”

It was established in discussion that senior leadership within individual sets would be instrumental in driving change,

⁴⁹ This is derived from the Bar Council’s CRM which is data that is obtained at the Access to Practise process on an annual basis where barristers have to register for their practising certificates. This is based on data for 15713 practising barristers out of a total of 16983; the remaining 1270 barristers either provided no information or preferred not to say.

“we need to engage more and convince Head of Chambers and senior positions to think about other ways of addressing what is going on in Chambers. The lower-level things are also harmful.”

Table 5: Breakdown of the number and percentage of QCs by region, ethnicity, and sex for 2021 as of 1 June 2021

Ethnicity	Number of QCs	Total number of barristers	Percentage of cohort who are QCs	Region	
White Male	1303	7903	16.5%	East Midlands	5
				East of England	2
				London	1126
				North East	8
				North West	68
				South East	7
				South West	16
				Wales	11
				West Midlands	28
				Yorkshire and The Humber	21
No information	8				
White Female	286	4634	6.2%	East Midlands	1
				London	240
				North East	1
				North West	18
				South East	1
				South West	8
				Wales	5
				West Midlands	6
				Yorkshire and the Humber	4
				No Information	1
Asian/Asian British Male	60	580	10.3%	East Midlands	1
				London	49
				North West	2
				West Midlands	2
				Yorkshire and The Humber	4
				No Information	2
Asian/Asian British Female	17	437	3.9%	London	16
				No information	1

Black/Black British Male	17	216	7.9%	London 13 North West 1 South East 1 Yorkshire and The Humber 1 No Information 1
Black/Black British Female	5	252	2%	London 5
Mixed/Multiple Ethnic Groups Male⁵⁰	16	38	42.1%	London 13 South West 1 No information 2
Mixed/Multiple Ethnic Groups Female⁵¹	9	46	19.6%	London 8 Yorkshire and The Humber 1

In the six main practice areas: Crime, Family – Children, Family – Other, Commercial & Financial Services, Employment and Personal Injury, some have no QC representations from barristers of different ethnicities.

This is particularly the case for Black/Black British female QCs where there are 5 Black/Black British barristers - all in London. Taking into account the female mixed ethnic groups, there are 2 barristers who are of White and Caribbean ethnicity, bringing the total number of female QCs of African or African Caribbean heritage up to 7. Of the 7 female QCs, 6 took silk in 2020 and all 7 practice in the London region. The table below highlights the gaps in representation.

⁵⁰ Based on the CRM data, the composition of the QCs are: 9 White and Asian, 1 White and Black African, 3 Black and Caribbean and 3 White and Chinese barristers.

⁵¹ Based on the CRM data, the composition of the QCs are: 6 White and Asian, 2 White and Caribbean and 1 White and Chinese barristers.

Table 6: Number of non-QCs and QCs in the 5 main practice areas based on ethnicity and sex for 2021 as of 1 June 2021

Ethnicity/Area of Practice	Crime		Family - Children		Family - Other		Commercial & Financial Services		Employment		Personal Injury	
	Non-QC	QC	Non-QC	QC	Non-QC	QC	Non-QC	QC	Non-QC	QC	Non-QC	QC
Asian/Asian British Male	138	19	30	1	12	1	74	18	11	3	38	0
Asian/Asian British Female	106	2	100	0	20	0	45	5	18	2	19	1
Black/Black British Male	66	7	22	1	4	0	12	4	15	0	8	2
Black/Black British Female	73	1	58	2	9	0	25	0	11	1	5	0
Mixed/Multiple Ethnic Groups Male	35	3	4	1	1	0	17	6	5	0	10	1
Mixed/Multiple Ethnic Groups Female	42	4	26	1	4	0	15	1	8	1	13	1
White Male	2027	318	592	31	219	36	759	247	236	39	749	112
White Female	1137	77	1099	38	188	10	276	26	160	9	332	19

Judicial Appointments

Barristers from Black, Asian and other ethnic minority backgrounds are under-represented in the judiciary.⁵² And barristers from some ethnic minority backgrounds get recommended for judicial roles at lower rates of pay than their White counterparts. The most recent statistics on Judicial Diversity were able to provide stark numbers:

“In the past three years of legal exercises, Asian, Black, Mixed ethnicity and Other ethnic minority individuals were over-represented in applications for judicial appointment, but Asian, Black and Other ethnic minority candidates had lower recommendation rates than White candidates. From the eligible pool, recommendation rates for Asian, Black and Other ethnic minorities candidate groups were an estimated 36%, 73% and 44% **lower** respectively compared to White candidates.”

⁵² Ministry of Justice (September 2021) “Diversity of the judiciary: Legal professions, new appointments and current post-holders” <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2021-statistics/diversity-of-the-judiciary-2021-statistics-report>

The numbers of Asian judges has been increasing since 2014, and now stands at 5% of the judiciary. However, still only 1% of judges are Black and 2% are from mixed ethnic backgrounds.

Barristers in our roundtable discussion groups recognised that the senior (QC and judicial) levels of the profession needed to be more diverse if the culture were to change.

“The bar *has* to do better with career progression: too few are making it through the ranks.”

Other Leadership Roles

Some data⁵³ is available on barristers from ethnic minority backgrounds in leadership positions across the Bar.

Table 7: Leadership Positions (Chambers & Bar Council October 2021)

Heads of Chambers (>10 members)

Total: 286 White: 86% Ethnic Minority: 9%

Comment: 3% no information; 1% Black, 3% Asian and 3% Mixed/Multiple Ethnic

And on Bar Council:

Bar Council Members

Total: 121 White: 75% Ethnic Minority: 21%

Comment: No information on 4%; 4% Black, 8% Asian and 5% Mixed/Multiple Ethnic

Bar Council’s General Management Committee

Total: 43 White: 74% Ethnic Minority: 16%

Comment: No information 9%; 7% Black; 2% Asian and 5% Mixed/Multiple Ethnic

This and other leadership data needs to be regularly collected and published.

Conclusions and Recommendations on Progression

Access to high quality work is the building block for career progression as the type of cases, amount of advocacy and where a barrister appears will determine how an

⁵³ Based on Bar Council CRM data (October 2021)

individual barrister hones their craft and is evaluated in any application to a Panel, Silk and/or Judicial applications.

For that reason, adoption of the recommendations with respect to work distribution in Retention will be necessary alongside any recommendations we propose with respect to Progression.

To further improve opportunities for barristers from ethnic minority backgrounds to progress their careers, we recommend the following:

15. Target setting and evaluation. Targets for career progression of barristers from ethnic minority backgrounds are set and progression programmes are properly evaluated against these.
16. We should develop formal structured sponsorship programs with the core purpose of achieving career-oriented results for Black/Mixed Black barristers.
17. The Bar should campaign for targets to be considered for Panels, Silk and JAC appointments for barristers from ethnic minority backgrounds.
18. Panel, Silk and Judicial Career Pathways for barristers from under-represented ethnic minority backgrounds should be developed
19. Leadership Career Pathways for barristers from under-represented ethnic minority backgrounds should be developed

Culture at the Bar

Defining Culture

Culture can be defined as “the way of life” at the Bar. It includes codes of conduct, dress, language, religion, traditions etc. Any workplace culture is important because it impacts on engagement, happiness, productivity, retention rates, positive recruitment efforts and more.

Organisation cultures are created by a variety of factors, including “founders' values and preferences, industry demands, and early values, goals, and assumptions”.⁵⁴ The culture of the Bar (and of specific practice areas and Chambers) is maintained through attraction-selection-attrition (who gets in, who stays and progresses), leadership, and organisational reward systems (for the Bar - who gets what work/wins).

Many at the Bar celebrate its culture – its history, language and traditions. Whilst this can be important to them in creating a sense of belonging, joint enterprise and support – it can exclude or ‘other’ those for whom the rituals, language and behaviours (based on traditions of race and class that do not reflect contemporary society) are alien.

The impact of Bar Culture on ethnic minority students, pupils and barristers

Barristers from Black, Asian and other ethnic minority backgrounds can feel hyper-visible, bullied, harassed and marginalised at work, especially at court.

The sense of being hyper-visible when there is a problem has been reinforced by complaints data which indicated barristers from ethnic minority backgrounds were more likely to be referred for disciplinary action in comparison to White barristers. Since 2017, analysis of complaints by ethnicity⁵⁵ suggests this pattern has weakened but this has undoubtedly had a negative impact on practising barristers from ethnic minority backgrounds.

Rates of bullying and harassment at work are far higher for Black and Asian barristers than for White barristers. Nearly six in ten (58%) female, Black and minority ethnic barristers have personally experienced bullying and harassment at work or online compared to 15% of White men...almost four times the likelihood.⁵⁶

⁵⁴ <https://opentext.wsu.edu/organizational-behavior/chapter/15-4-creating-and-maintaining-organizational-culture>

⁵⁵ <https://www.barstandardsboard.org.uk/uploads/assets/c10fdf70-e3aa-4a28-8f06ca4ef3689644/PCD-Complaints-Research-July-2021.pdf>

⁵⁶ Bar Council (2021) “Barristers’ Working Lives” <https://www.barcouncil.org.uk/resource/barristers-working-lives-report-2021.html>

One in five (20%) of all barristers responding to the Bar Council's most recent Barristers' Working Lives survey indicated that they have personally experienced bullying, harassment and/or discrimination at work in person. 13% say they have experienced it while working online, 21% say they have observed bullying, harassment or discrimination in person or online. 14% say they have personally experienced discrimination in person at work, 6% say they have experienced discrimination online and finally, 15% say they have observed discrimination in person or online at work.

Taking these figures together three in ten (30%) of all barristers completing the question have personally experienced bullying, harassment or discrimination at work (either in person or online).

Sex, disability and ethnicity were the strongest correlates that predicted an individual barrister's likelihood of having personally experienced bullying, harassment or discrimination at work.

More than a half (53%) of all barristers with Black/Black British, African and Caribbean backgrounds report that they have personally experienced bullying, harassment or discrimination while working at the Bar. The equivalent figures for Asian/Asian British, mixed origin and White respondents are 47%, 46% and 26%.

Perpetrators of bullying behaviours fall mainly into two categories - judges and barristers⁵⁷ - though others are cited including solicitors and clerks (it should be noted that most judges were barristers earlier on in their careers). For some, they would perceive their behaviour as simply robust advocacy, or tactics to undermine an opponent in an adversarial setting. What is and is not acceptable is inevitably subject to debate, context and the power dynamic between the perpetrator and victim. But what is undeniable is that the targets for this behaviour are predominantly women and those from Black, Asian and other ethnic minority backgrounds.

This hostile behaviour occurs within a wider framework, with evidence which demonstrates disparities of treatment of ethnic minorities within every part of the justice system, other than outcomes from jury trials.⁵⁸ Too often the assumption is that the person of colour, and perhaps more often the Black person, is the person in trouble or the person "in need of help". It is perceptions such as these that contribute to the over-representation of Black people in the criminal justice system in sentencing etc.,

⁵⁷ Based on an analysis of Talk to Spot reports and Bar Council Helpline calls

⁵⁸ The Lammy Review (2017)

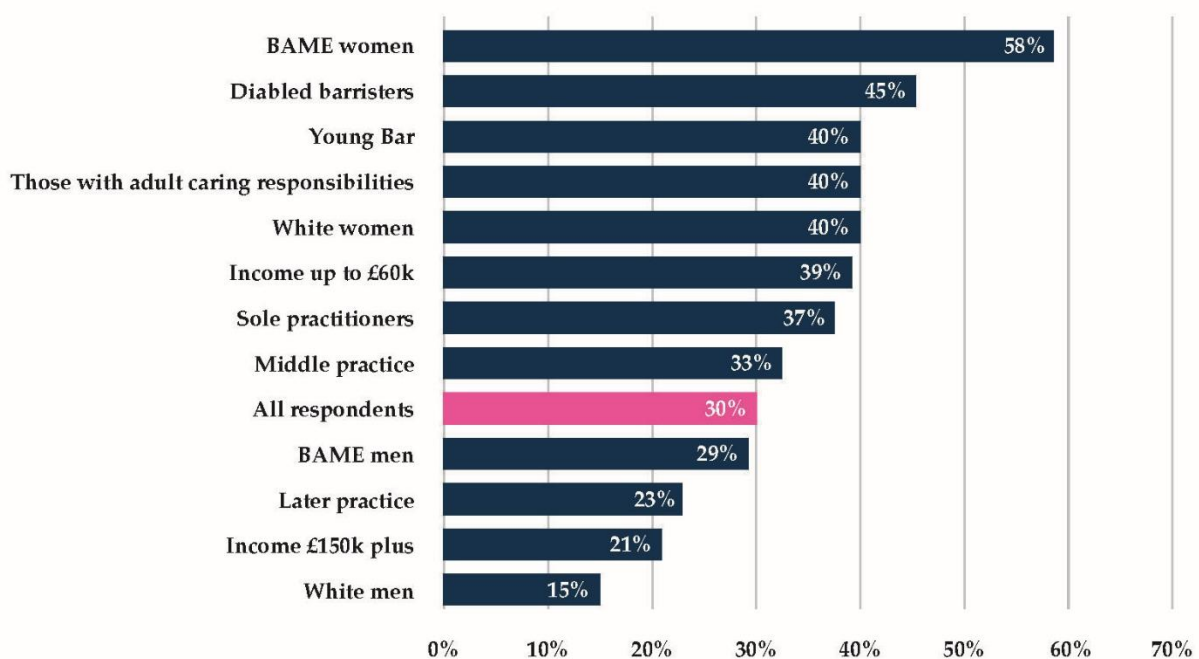
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

but which also play into the over-representation of people of colour in care and other areas of state intervention.

Perceptions and prejudices held against certain groups of defendants/ litigants will also impact upon barristers from ethnic minority backgrounds being able to do their job without facing the ripple effect of these assumptions. Leslie Thomas QC related an incident in an article for Counsel Magazine,

“One barrister described how a White immigration judge, having heard an appeal by a Somali appellant, commented on how refreshing it was to see a Somali family working. The same barrister, who is herself black, was told by a different judge that it was nice to see her ‘sitting on this side of the table’, pointing to the side of the table where counsel sit. Another judge told her at a training event that she did not have ‘negroid features’.”⁵⁹

Chart 5: Personal experience of bullying, harassment or discrimination in person or online key demographics (percentages)



Source: IES/Bar Council: Barristers Working Lives Survey, 2021

Our roundtable discussion groups reflected on their experiences of bullying, harassment and discrimination. The point was made that there is not an obvious route

⁵⁹ Leslie Thomas QC (11 June 2020) “Racial diversity at the Bar matters” Counsel Magazine <https://www.counselmagazine.co.uk/articles/racial-diversity-at-the-bar-matters>

for a self-employed barrister to raise the bullying where it was not potentially detrimental to an individual's career. Participants felt that they had to quietly internalise others' behaviour,

“you have to get over the initial hurdles [of judgement and incorrect assumptions] before you can even start to do the job you have been instructed to do.”

Comments being fleeting or masked as “banter” or naivety meant it was sometimes difficult for people to identify and raise issues, and described as,

“a whole mist of experiences that come together to make you feel uncomfortable. I don't know how to pinpoint and raise concerns in a useful way. Calling it out has been incredibly difficult.”

Discussion ranged around the experience of the courtroom being different for barristers from ethnic minority communities and backgrounds, with repeated assumptions that an individual of colour is not, in fact, a barrister being offensive and harmful.

“At Court, junior barristers of ethnic minorities are treated poorly. I have been asked if I am a social worker. I have been in a room with the mum's barrister, and I have been asked if I am a social worker even though the social worker would not be in the room with the mum's barrister. We need to draft policies for chambers to know how to deal with these things. You have a stressful practice and people assume that you are a cleaner wearing a suit. I don't have the energy to feedback to chambers.”

“one black young barrister was over introduced to many, many clerks in courts so he would not be considered not a barrister or the defendant. He would over dress deliberately so they would know they were the barrister. People are getting wrongly labelled – more so online.”

“I have anxiety going to a new court centre and being so visible. I now go to 4-5 court centres, that anxiety remains. I feel like this when I go, knowing I will be the only Brown face in that place.”

Also, in the courtroom when judicial bullying and hostility were repeated the experience was inevitably both unpleasant and exhausting for counsel.

“Some emotional support is needed; you have to go to judges who have already bullied you and face this again.”

Recognition also needs to be given to the impact on perceptions of the justice system and on perceptions of the decisions that are reached about clients of ethnic minority barristers. Clients, witnessing bullying and discriminatory treatment of their counsel, may well have the feeling that if counsel is not treated with basic respect, they themselves can have little confidence that the case being made on their behalf has been fairly considered.

Wellbeing

Bullying, harassment or discrimination inevitably impacts on barrister wellbeing. [The Bar Council's latest research on barrister wellbeing](#) (with the University of Portsmouth) shows that those barristers who have personally experienced bullying or harassment at work report significantly lower wellbeing than those who have not. Additionally, Black, Asian and other ethnic minority barristers reported significantly lower wellbeing than white barristers.⁶⁰

Whilst it is an obvious priority to address and put an end to discriminatory behaviours, evidence from the survey also indicated that a supportive and inclusive employer or chambers can transform lived workplace experience even if a barrister experiences discriminatory behaviour in court or from colleagues.

Participants in the roundtable discussion groups were keen for increased support resources such as forums or networks where collective experiences could be shared, and barristers could mutually support each other. Barristers who are the only, or one of very few, minority ethnic people in their job or chambers, can feel extremely isolated.

“I hate surveys – the best way is to share – I would like to speak to other people, speak to others in other areas [and] would like to listen to people doing this [work] in different environments”

“I think it is important to find a safe space for young barristers/pupils – an opportunity to come together and support each other. It is difficult to share lived experience of being isolated.”

⁶⁰ Reference Wellbeing survey once published.

Conclusion and recommended actions on culture

It is important to recognise culture is dynamic – it can evolve.

Our roundtable discussion groups identified leadership and diversity in prominent positions as key to culture change. This relates to all three of access, retention and progression; as there is more diversity in senior leadership roles at the Bar, we would expect to see culture change. As one barrister put it,

“Culture will be helped by greater representation. The greater the diversity at Bar - the better it will be.”

It is clear from the data that the Bar is not as inclusive as it could be. The Bar’s systems and culture are based on the norms of the dominant group. These “norms” have been shaped and set predominantly by the mores of well-to-do, white men. They are the product of race, sex and class privilege which can make ‘outsiders’ of those from under-represented groups, including ethnic minority backgrounds. The intersection with sex and educational background (as an approximate proxy for socio-economic background) is significant.

In order to make the Bar’s culture more inclusive, we recommend the following:

20. Better signposting and support race-based Networks for barristers.
21. Equality & Diversity (including race awareness) training. Barristers/Staff and those working with the Bar should undertake regular training on Racism/Anti-Racism. Any barrister taking on a leadership role (in their chambers; SBA/Circuits; Silk or Judicial appointment) should undertake enhanced Equality & Diversity training.
22. Supportive Work Environments. Bar-based organisations should adopt zero tolerance approach to bullying, harassment or discrimination with effective sanctions, leaders standing up for colleagues etc. and create more inclusive cultures that acknowledge and support difference (social events, marketing, celebrate diverse cultures) they should also take responsibility to proactively understand of the needs/lived experience of those with different backgrounds).
23. Leadership, Representation & Visibility. A targeted and strategic approach should be taken to encourage Black and ethnic minority practitioners to stand/take up leadership positions across the Bar

Conclusion

The data in this report provides evidence that barristers from ethnic minority communities and backgrounds, and especially women, face (i) systemic obstacles to building sustainable careers; and (ii) a more hostile and fatiguing working environment than White colleagues.

Further, some ethnic minority groups face more significant challenges than others, and that intersectionality (e.g., sex) further enhances these barriers. Anecdotal experience suggests socio-economic background is also likely to be a factor, although we do not at present have the data to categorically state this.

It is a collective responsibility of the entire profession to actively address this.

Taking Action

It falls to a wide range of bar-based (and other) stakeholders to take targeted and sustained action. We know many bar-based organisations (Circuits, Specialist Bar Associations, the Inns of Court, individual chambers and Networks) have convened working groups to explore ways to take meaningful action to tackle racism over the past eighteen months. We hope this report contributes to these discussions.

Below is a summary of the range of actions that we believe can be taken to address challenges identified during this research and in our work on race, alongside other equality and diversity issues, at the Bar Council.

Commitment to Review

The Bar Council commits to provide an update on actions taken against these recommendations annually and a comprehensive review in 2024 (after 3 years).

This table has been produced to encourage everyone including Chambers, the Circuits, Specialist Bar Associations, as well as Networks, and individual barristers to consider what actions might be appropriate for them/their organisations.

All stakeholders can play some role in respect to each of the actions proposed - either directly or by supporting others to take action.

The Bar Council will continue to facilitate partnerships, learning and collaboration between Bar-based stakeholders to support action and will explore - in conjunction with others - strategic funding to improve diversity.

If you would like to discuss how you/your organisation can meet any of the expected actions below, contact equality@barcouncil.org.uk.

Change is the collective responsibility of every member of the Bar and is in the interests of the Bar - as a barrister we ask you to consider what you can do individually and as a member of these organisations.

Recommended actions	Please tick where you or your organisation can take action (and indicate the action you can take)
ACCESS	
1. Target setting and evaluation. Targets for recruitment of barristers from different ethnic minority backgrounds are set and access programmes are properly evaluated against these.	
2. Mentoring/Network consolidation and collaboration. We should learn from the experience of, publicise/promote and support successful initiatives that focus on mentoring and interview preparation.	
3. Targeted financial support. Consider ways to provide financial support for further expansion of means tested scholarships and grants for students and pupils.	
4. Website Bar literature/messaging should demonstrate an authentic commitment to race diversity and inclusion. i.e. a commitment to race, diversity and inclusion more broadly, which is not only visual but demonstrable in specific actions and tangible commitments.	

<p>5. Recruitment processes should be improved. Specifically:</p> <ul style="list-style-type: none"> a. Information/Application pack messaging (Chambers that wish to be more diverse should be explicit about this in their pupillage recruitment strategy and communications) b. Application form weightings (should be reviewed to recognise overcoming adversity; opportunities available to candidates) c. Panel make-up (should be diverse as possible) d. Feedback (as much feedback as possible should be provided at each stage e.g. scoring data) <p>[Bar Council to support chambers with the above by monitoring the impact of existing recruitment tools on diversity and providing additional advice and guidance to chambers where needed].</p>	
<p>6. Research unsuccessful applicants from ethnic minority backgrounds. Further research should be undertaken to better understand why candidates from under-represented groups have not been shortlisted/selected for pupillage</p>	
<p>7. Careers Resources should be developed to amplify messaging to schools and colleges. Use of media (e.g. films 'Becoming a Barrister' etc.) should be considered where asking barristers to visit educational settings is too resource intensive. Those educational settings attended by barristers should be targeted based on the diversity of their students.</p>	
RETENTION	
<p>8. Target setting and evaluation. Targets for the retention and development of barristers from ethnic minority backgrounds are set and programmes are properly evaluated against these.</p>	
<p>9. Barristers income should be monitored at a chambers level by ethnicity and information used to support practice management.</p>	
<p>10. Bar Council should establish a methodology and toolkit to support monitoring work allocation/income by race and training/guidance for clerks.</p>	
<p>11. Action plans should be developed to address inequalities in income/work distribution by race in chambers and by clients of the Bar</p>	

12. Practice Management & Development. The Bar Council should work with chambers to develop practice management resources that recognise the discrimination faced by ethnic minority barristers. We should promote the development of practice management and training for practice managers. We should recognise progress made.	
13. Bar Council should encourage the establishment of support and nurturing programmes for (i) New Practitioners; and (ii) Senior Juniors from Black/Mixed Black backgrounds. Programmes should be designed to help participants build and sustain a successful practice. Increased opportunities for mentoring and shadowing are part of this.	
14. Improving ethnic diversity in clerks' rooms should be made a priority.	
PROGRESSION	
15. Target setting and evaluation. Targets for career development of barristers from ethnic minority backgrounds are set and progression programmes are properly evaluated against these.	
16. We should develop formal structured sponsorship programs with the core purpose of achieving career-oriented results for Black/Mixed Black barristers.	
17. The Bar should campaign for targets to be considered for Panels, Silk and JAC appointments for barristers from ethnic minority backgrounds.	
18. Panel, Silk and Judicial Career Pathways for barristers from under-represented ethnic minority backgrounds should be developed.	
19. Leadership Career Pathways for barristers from under-represented ethnic minority backgrounds should be developed.	
CULTURE	
20. We should help signpost and support race-based Networks for barristers.	

<p>21. E&D (including race awareness) training. Barristers/Staff and those working with the Bar should undertake regular training on Racism/Anti-Racism. Any barrister taking on a leadership role (in their chambers; SBA/Circuits; Silk or Judicial appointment) should undertake enhanced Equality & Diversity training.</p>	
<p>22. Supportive Work Environments. Chambers and Bar based organisations should adopt zero tolerance approach to bullying, harassment or discrimination with effective sanctions, leaders standing up for colleagues etc. and create more inclusive cultures that acknowledge and support difference (social events, marketing, celebrate diverse cultures; take responsibility to proactively understand of the needs/lived experience of those with different backgrounds).</p>	
<p>23. Leadership, Representation & Visibility. A targeted and strategic approach should be taken to encourage Black and ethnic minority practitioners to stand/take up leadership positions across the Bar.</p>	

Appendix 1: Further Evidence and Resources

Evidence:

- Bar Council: [Pupillage Gateway Report](#) (August 2021)
- Black Barrister's Network: [A report on the experience of Black Self Employed Barristers](#) (November 2020)
- [Barristers Working Lives Report](#) (September 2021)
- BSB: [Diversity at the Bar 2020](#) (January 2021)
- [Wellbeing at the Bar Report](#) (November 2021)
- [Bar Council Survey of Pupils Report](#) (March 2021)
- [Northern Circuit – Race Working Group Report](#)
- [Middle Temple Race, Equality and Anti-racism Working Group proposals.](#)

Resources:

- [Workforce monitoring: information for chambers](#)
- [Pupil Equality Monitoring Toolkit](#)
- [Fair Recruitment Guide](#)
- [Framework for taking action on race equality](#)
- [Positive Action Guidance](#)
- [Race Terminology Guidance](#)
- [Introduction to Race: Starting a conversation about race in chambers](#) (training guide)
- [Allyship Collection – Inner Temple](#)

Contact information:

- For comments or questions regarding this report email equality@barcouncil.org.uk
- To request training on race or equality & diversity in your chambers, email trainingandevents@barcouncil.org.uk
- To speak to someone on the E&D helpline call: 020 7611 1426
- To report an incident anonymously use [Talk to Spot](#)