

To mark International Women's Day 2021, and this year's theme 'Choose to Challenge', members of Carmelite Chambers have contributed articles highlighting and challenging an aspect of the Justice System that impacts women's rights and welfare.

The Importance of Being Equitable

Ben Heaviside, Carmelite's Senior Clerk, looks at the importance of practice management, fair allocation of work and a tailored approach to clerking those returning from parental leave to ensure that female barristers in particular are able to stay – and flourish – at the independent Bar.

A lot has happened during the century that women have been able to practise law, yet it is only in recent years that the inequalities — and lack of diversity — prevalent at the Bar are being properly addressed, and steps are being taken to tackle them. International Women's Day provides a welcome opportunity and platform to address what can and should be done to support women in practice.

As a clerk, nothing is more frustrating than seeing talented female practitioners pursuing alternative careers because “a career at the independent bar isn't conducive to raising a young family”.

Being married to a practising female barrister who chose to move to the employed bar at an early stage of her career, almost ten years ago, I am very aware of the financial and logistical difficulties faced by women who choose to stay at the independent bar.

Acknowledging the problem

Many feel pressure to make that decision at the outset of their careers. For others it is the imminent prospect of parenthood, often around 8 – 13 years' call, which brings the options into focus. It is a tough decision to make, and the historically unhelpful and uncompromising

attitude of the Bar goes some way towards explaining the lower numbers of senior female practitioners, including QC's and women in the judiciary.

Things have undoubtedly changed for the better in the years since my wife made that decision. Many chambers — Carmelite among them — now have meaningful parental leave policies covering rent breaks and return to work plans. Nonetheless, comprehensive research presented by [HHJ Emma Nott](#) in a series of articles from 2019 and 2020 makes clear that there is some way to go.

In relation to the Criminal Bar in particular, the data released by the government in its [Summary Information on Publicly Funded Criminal Legal Services](#) in February 2021 shows that although 52% of barristers of 0–2 years' call are women, by 8–12 years' call that reduces to 34%. That attrition is unacceptable.

Finding solutions

The Bar Council's [Monitoring Work Distribution Toolkit Part 1: Sex](#) published in December 2020 provides some constructive guidance. Section A offers various suggestions for modelling income levels to facilitate monitoring, and Section B gives practical steps for Management Committees, Senior Clerks, and individual members of chambers.

Data and analysis

Gathering data and analysing the allocation of work is an important tool at our disposal to monitor equality of opportunity.

Different software and administration systems offer differing levels of capability: some systems offer shockingly little capability. In my view, all chambers should investigate the ability of a platform to provide equality of opportunity data before committing to that platform — there is no good reason why such capability is not industry standard, and providers should be given that steer. Our chosen system requires input from the clerking team underpinned by training, but importantly enables data to be collected and reviewed to ensure that work is being fairly allocated and that no one is being overlooked, particularly with regard to protected characteristics.

We can look at what work comes in and we can see where it goes. Importantly, we as a clerking team can then present the data and discuss it with our Equality and Diversity Officers and Committee.

Which of the five suggested data modelling approaches is most effective and appropriate for each individual chambers will vary depending on culture, practice areas, and the size of the data set. Larger chambers will be able to carry out more meaningful analysis than smaller sets.

Practical Steps

Invest in training

Mandatory training on equality and diversity, and ensuring that chambers has comprehensive policies covering fair access to work, parental leave, discrimination and harassment, flexible working and reasonable adjustments should all go without saying.

Equality of opportunity

Unallocated briefs are a dangerous potential source of inequality of opportunity, but they can be a powerful tool in redressing it. Look at the data, identify where problems are, fix them, and check that they have been resolved.

Opportunities which need to be monitored must include (but not be limited to):

Selection of juniors — many barristers are creatures of habit, and some may have a ‘junior of choice’ for certain types of case. These are the sorts of practices, however well-intended, which need to be monitored and challenged. Depending on the stage of a barrister’s practice, having no access to led junior briefs can be a huge impediment to career progression.

Marketing and business development — events and networking opportunities have to be given careful thought, so that women are not inadvertently discriminated

against, either by the nature of the event or its timing. Chambers needs to understand that not every barrister is going to be available between 5pm and 9pm on a weekday, many will have (new) caring responsibilities, and not every barrister has a passion for football or alcohol.

A range of marketing options should be available: writing articles or giving seminars are examples of more universally-accessible opportunities. One of the key aims of our Carmelite Briefing editorial team has been to increase the opportunity for tenants to write articles in their chosen areas. I hope that the results and level of engagement speak for themselves. Further, if the pandemic has one silver lining, it is the increased focus on working from home and using platforms such as Zoom. These are tools we should continue to use once lockdown restrictions ease.

Engage in dialogue

The barristers at Carmelite primarily practise in the areas of crime, regulatory, professional discipline and Inquest work. The work carried out is in large part court-based, bringing with it the unpredictability of late changes to listings with the result that availability – potentially at very short notice – is more of a factor than in civil sets. There are therefore different pressures to consider, and the fair allocation software alone cannot ensure that all barristers receive equal access to opportunities.

This is where training and dialogue come into play. Responsibility lies with chambers as a whole: with clerks, committees and individual members all working together.

As clerks, we must ensure that everyone has the opportunity to develop their practice and to thrive. Different measurable targets will mean different things to different people, and one barrister's ambitions will differ from the next. It is our responsibility to ensure that we understand the goals of each individual barrister. We can only achieve this through open dialogue.

Regular and meaningful practice reviews are crucial, so that every barrister has a forum for discussion about whether they are happy with their practice, to relay feedback from lay and professional clients, to consider marketing options, and to identify what support is needed

to pursue long term plans. Without an agreed direction and target, there is no way to monitor and gauge success.

Mentoring and support

In even the most open and collaborative atmosphere, sometimes barristers don't want to discuss certain aspects of their lives or practices with their clerks. But that does not mean that chambers is entitled to be ignorant.

Many chambers — Carmelite among them — recognise this danger. A genuine emphasis on welfare and the availability of 'people you can talk to' is important. The existence of a well-chosen welfare representative can be the difference between a barrister talking about an issue in their practice, and leaving the profession.

Mentoring schemes can provide similar informal opportunities to discuss practice difficulties or worries, especially for young female barristers. Indeed, in our own Chambers, we have introduced a mentoring scheme for all junior barristers when they are taken on as tenants. Selecting a mentor for a new tenant can't be an arbitrary exercise — it is important to identify and assign the right mentor for that individual.

Parental leave

A return from parental leave can be among the most pivotal moments in any barrister's career. Managed well, the return will ensure that barrister's success for many years to come. Managed poorly, it may drive them out of the profession altogether. The clerks' room and chambers management must be supportive and appreciative of the issues and difficulties that can arise upon a parent's return to practice.

Communicate. Understand the issues. Work together to find solutions.

As a parent, I know very well that a new arrival means a new routine. It is important that the clerks' room knows this too, and that for each barrister there are regular discussions around 'how much how soon' and the viability of certain cases — long-running trials outside of London, early or late conferences, courts sitting at different hours — and that there is a

sensible and informed approach taken which adapts over time to meet the changing needs of the parent.

With the pandemic, we may have found a route around many of these issues with remote hearings and with many clients embracing video conferencing, but will those habits last when the opportunity to meet in person returns?

The needs of new parents are likely to continue changing for years after a return to work. Parental leave is not the end of the story. In the longer term, it is important that the clerks' room understand the needs of parents generally, as with any barrister with caring responsibilities. Again, open dialogue and joint problem-solving must be the answer.

We all need to play our part. We must continue to challenge our approaches to working patterns, commitments, allocation and opportunity. If we do not, the independent Bar will suffer. But if we identify and engage with the issues that lead to inequality and attrition, together we can ensure that the independent Bar diversifies and flourishes, and women at the Bar continue to excel within the system, rather than in spite of it.

Ben Heaviside