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# **Women in Law Literature Review for the Law Society of England and Wales**

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## Background, method and approach

There is no shortage of excellent studies on women in the legal profession upon which may be drawn for a review such as this. And so, as with other academic literature reviews, it has been necessary to impose a central focus on this study to target the most relevant material. This review has been commissioned by the Law Society of England and Wales as part of its Women in Leadership in the Law project, an empirical, action-led project to collect data from women in law, largely from those allied to the solicitors' profession.

This review has focused on empirical and theoretical studies that address this group, with relevant international literature that has examined women in similar legal professional groupings overseas. It has sought to answer the research questions: "To what extent have women solicitors reached a position of equality within the profession, and to the extent that they have not, why not and what can be done to remedy the inequality?" It has conformed to traditional academic definitions of "literature" and draws upon peer reviewed studies that we have read in published form.

This review does not refer to grey literature, which may be excellent in nature but has not been through an external peer review process or does not provide sufficient detail on method to allow for an academic review to be done. Further, it has not sought to address the literature on women barristers or women judges given that the Law Society represents women in the solicitor's profession. These other literatures are extensive, and fall outside the commissioned study, but where individual studies have been pertinent to women solicitors they have been examined. It is not possible to undertake an exhaustive academic literature on women in the legal profession given the constraints of a time-limited and focused project.

There have been several important women lawyer initiatives undertaken by lawyer professional associations and regulators which have led to developed and extensive toolkits, best practice statements and training opportunities to address female representation in the legal profession. Some of these have been based on surveys undertaken by the profession to inform these initiatives. These include:

- the American Bar Association (ABA) Zero Tolerance,
- the Grit Project,
- Women of Color Research Initiative and Achieving Long-Term Careers for Women in Law
- Bias interrupters<sup>1</sup> the International Bar Association's Report on Women in Commercial Legal Practice<sup>2</sup>,
- the Interlaw Diversity Forum Career Progression report<sup>3</sup>,
- National Association of Law Placements publications<sup>4</sup>,

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<sup>1</sup> See the ABA site for details including upcoming research reports for some of these initiatives: <https://www.americanbar.org/groups/diversity/women/>

<sup>2</sup> See the IBA's website [https://www.ibanet.org/Legal\\_Policy\\_Research\\_Unit.aspx](https://www.ibanet.org/Legal_Policy_Research_Unit.aspx)

<sup>3</sup> See, for example, the Interlaw Career Progression report <https://www.interlawdiversityforum.org/the-career-progression-report> and the Apollo Awards for best practice in diversity initiatives <http://theapolloproject.net/apollo/about-the-apollo-project/>

<sup>4</sup> See, for details, <https://www.nalp.org/diversity>.

- and Institute for Inclusion in the Legal Profession<sup>5</sup>.

Stakeholders from some of these initiatives have taken part in the Law Society's roundtables, and references to these resources may be found in the bibliography and on the Law Society's website.

Those reading academic literature reviews often have three distinct needs:

- firstly, they wish to know the key studies that have been undertaken, learn a little about those projects and understand their key findings.
- secondly, they may wish to understand the state of knowledge in the academic community once all the findings are synthesised.
- thirdly, they may wish to know what areas require further examination and/or emerging areas of debate.

Considering this, the review has been organised into three distinctive sections, each fulfilling one of these needs. The first main section sets out twenty key studies that many academics return to as the baseline for their own studies; we hope this meets the first need. The second main section synthesises the findings of all the literature we have reviewed, which includes but goes beyond the key studies in section one. This addresses the second need. The third section, the conclusions, draws together what remains unclear or in need of further consideration. The review ends with a full bibliography.

We have identified the relevant academic literature on women in the legal profession by:

- using our previous literature reviews as a starting point;
- following up literature that we have come across cited in others' work;
- undertaking a Google Scholar review using relevant keywords, to come across material with which we do not have or have less familiarity;
- undertaking a review of academic databases that contain scholarly work; and
- cross referencing with recent conference contributions on gender and/or diversity in the legal profession, both by checking our notes from conference attendance and by searching databases in which conference contributions are often made available for comment (SSRN; Academia.edu; Researchgate). Much of the research that we have reviewed is socio-legal, although some of it has been undertaken by academics from disciplines such as business studies, economics, and human resource management.

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<sup>5</sup> See, for example, the IILP Review: The State of Diversity and Inclusion in the Legal Profession <http://theiilp.com/IILP-Review-on-the-State-of-Diversity-and-Inclusion-in-the-Legal-Profession>.

## Summaries of key studies

This section provides summaries of twenty studies that are regularly referred to in women in the legal profession research. Each summary provides information about who conducted the study, how and why, along with their key relevant findings. We have set out the studies alphabetically by first author last name, for ease of reference.

### **Bolton, S. & Muzio, D. (2007) 'Can't live with 'em; can't live without 'em: gendered segmentation in the legal profession, 41, 1, *Sociology*, 47.**

Bolton and Muzio, then affiliates of the University of Lancaster, investigated the feminisation of the legal profession by focusing on organisational (internal) closure regimes and occupational (external) closure regimes.

They argue occupational regimes, which regulate access to the legal profession, have been formalised and reformed with the inclusion of women. However, female solicitors are kept in a position of subordination and isolation from the higher echelons of the legal profession through organisational regimes, which have been founded on informal and gendered criteria. The study addresses the claim that the influx of women into the legal sector has eradicated glass ceilings.

Using data from the Law Society's research unit, supplemented with other Law Society surveys from 1983 to 2003, the historical analysis captures the journey of a female solicitor over time, addressing long-term trends and patterns. Bolton and Muzio argue gender segmentation, prospering on the philosophy of women's difference, is used as an exclusionary 'defence mechanism'. This 'defence mechanism' focuses the spotlight on women's difference, allowing elite segments or coalitions to preserve traditional privileges and rewards. By perpetuating notions of women's difference, particularly in areas that demonstrate a lack of commitment, such as maternity leave, part-time and flexible working hours, domestic and parental responsibilities, acts as a powerful exclusionary mechanism.

Despite removing exclusivity in who gains access to the legal profession, notions of women's inclusion are limited and thus applicable in an exclusionary manner. The patterns of organisational regimes have exposed gender stratification, segmentation and sedimentation. Bolton and Muzio argue these regimes allow the profession to transform feminisation from a potential threat into a tactical resource. The findings do not suggest an optimistic and progressive environment.

Further, they indicate that research into work expectations, career trajectories and rewards of women solicitors provide a truer picture of their lived reality than the statistics would suggest. The statistics do not provide insight into the hurdles that face female solicitors or recognise the complex interplay of processes occurring at the individual, organisational/institutional and macro level. By focusing on this interaction and tracing patterns of discrimination female solicitors face in equal and full participation, the study exposes a series of powerful biases in the design and operation of organisational closure regimes. By interpreting this lived reality as a strategy employed by people in power in the profession, as opposed to a wider societal misfortune arising from patriarchal structures, it is possible to reconceptualise the ways in which we understand the different dimensions of power in the legal profession and look to create a working sector that adheres to equality.

## **Bowman, Cynthia Grant “Bibliographic Essay: Women and the Legal Profession” 7 Am. U. J. Gender Soc. Pol’y & L. 149 (1998-1999)**

Bowman, Professor of Law at Northwestern University School of Law USA, provides a historical analysis of the status of women lawyers. The study is a bibliographical account using literature from historical interpretations, biographies, gender bias reports, personal accounts, studies of women in law firms, law schools and the judiciary. The data investigates temporal trends from the early 1970s to the early 1990s. It aims to highlight continuing discrimination and discover ways in which the entrance of women into law may transform the profession.

Bowman outlines the impact feminist theory may have on the persistence of discrimination against women in the legal profession. The author concludes the entrance of female lawyers into the legal profession has had a profound impact and laid a path for women to challenge organisational structures. However, the legal landscape still requires substantial changes to enable the integration of female lawyers with full and equal participation.

Bowman suggests subtle forms of discrimination are still present, with judges and male lawyers reproducing sexist remarks, practices, derogatory treatment, and inappropriate and gender-based conduct intended to intimidate women lawyers, diminish their credibility and professional stature, and leave them feeling dissatisfied and dejected.

The study concludes women are more likely to work in certain career specialisms, such as family law, which are lower paid and lower in status, or in different work settings such as government, private agencies and teaching in law clinics, to seek satisfaction. Bowman argues women should follow these career paths out of a genuine choice as opposed to as victims of subtle forms of discrimination which may conform to societal expectations.

Arguably, by identifying themes and explanations of female lawyers’ lived experience in the legal profession, this study provides a means for women to discuss their experiences and to challenge the stereotypical notion of what it is to be a lawyer. This requires people to reflect and critique ascriptions of gender-based behaviour and to reevaluate the criteria of success in the legal profession to determine its accessibility to women. This study remains useful even given its focus on the US profession from the 1970s-1990s in that it provides a means by which we may judge how far the profession has come, and yet how far it has yet to go.

**Duff, E. (Liz), Shiner, M., Boon, A. and Whyte, A. (2000), Entry Into the Legal Professions: Law Student Cohort Study Law Society Research Study No. 39 (London: The Law Society, 2000), distilled here: Boon, A., Duff, L. and Shiner, M. (2001), “Career Paths and Choices in a Highly Differentiated Profession: The Position of Newly Qualified Solicitors”, 64:4 The Modern Law Review 563-594.**

The Law Student Cohort Study was funded by the Law Society and undertaken by a team of researchers from the University of Westminster and Goldsmiths College. This was the sixth and final survey in a cohort study of approximately 4,000 undergraduate law and Common Professional Exam (CPE) students. The aim of the study was to identify the key factors that

affected patterns of entry into the legal profession of England and Wales. The sixth survey was conducted in the summer of 1999 and this report also drew upon the data collected from the previous surveys. Some respondents were also interviewed about their experiences of entry into the profession.

The students who formed the cohort were selected from 29 'Oxbridge' colleges and 31 redbrick and modern universities. The study is significant as it followed a large cohort through academic and professional legal studies and ultimately entry in to the legal profession. The study found that women were marginally disadvantaged in terms of pay and training. Further, women who had the care of very young children more likely to opt out of searching for a training contract, whereas men with very young children had no such issue. City firms provided the highest rate of child-related benefits whilst high street firms provided the least.

Women reported that the culture of the workplace was crucial to combining work in legal professional practice and motherhood. The data showed that whilst there was no significant gender gap in pay at trainee level, on qualification the rate of salary increase was lower for women, however this was related to the type of firm where they were employed as men were paid similar rates. Those who completed the training contract were virtually guaranteed continued employment with the same firm, emphasising the process of selection for training contracts ultimately shapes the profession.

**Duff, L. and Webley, L. (2004), "Equality and Diversity: Women Solicitors Research Study", 48 Volume II, Law Society Research Study Series (London: The Law Society) pp. 64 and Siems, J. (2004), "Equality and Diversity: Women Solicitors Research Study", 48 Volume I, Law Society Research Study Series (London: The Law Society) pp 125 distilled here: Lisa Webley and Liz Duff, "Women Solicitors as a Barometer for Problems within the Legal Profession – Time to Put Values before Profits?" Journal of Law and Society 34(3) (2007): 374-402.**

Duff and Webley from the University of Westminster were commissioned by the Law Society to find out why women were leaving the solicitors' profession following Siems, of the Law Society's Strategic Research Unit's quantitative study. Siem's quantitative study was undertaken in 2003 by the Law Society with the support of the Association of Women Solicitors and Young Solicitors' Group.

This volume is the report of the quantitative findings of two surveys of women solicitors. The first survey was of women who had either taken a career break or had ceased to renew their practising certificate and the Law Society's Annual omnibus survey, exploring the career aspirations and work experiences of men and women solicitors from private practice and the employed sector. The report provides a comprehensive view of women in the profession and the reasons for taking breaks or leaving. Despite the increasing numbers of women entering the profession, women are less likely to become partners than their male peers. Records also showed that women were leaving the profession at an age when most solicitors were thinking about or becoming partners. Male non-renewers of their practising certificates were on average 52 years old, compared with women who were on average 40.

Duff and Webley's qualitative study was carried out in July 2003 and was conducted using focus groups of 3 to 6 women who had offered to be interviewed. These participants were selected from a potential 341 interviewees using a stratified random selection technique. The focus groups took place in Leeds, Manchester and London. All the participants had a break in their practising certificates at some point in the preceding five years. The women were classified as 'leavers' or 'returners' although it became clear that some returners thought that in the future they might leave the profession and some of the leavers thought they might return.

Returners had two main reasons for their break: childcare (rather than continuing employment with maternity leave), and travel. The women consistently reported lack of flexibility in the work place, a culture of long hours, difficulties associated with fitting into a male working paradigm, lack of transparency around promotions, and poor management practices. The masculine culture of the profession led women to leave private practice to work as in-house lawyers, where there were better management conditions.

Interviewees from all types of firms reported that they were expected to act more like men if they were to progress, particularly in relation to being more entrepreneurial and bringing in new clients. The long hours working culture and the impact this had on women with caring responsibilities alienated some of them. If women opted out of the long hours 'badge of honour' culture, they were sidelined from more interesting work likely to lead to promotion. The long hours culture was universally condemned as a threat to health, commitment, enthusiasm, work quality and professionalism.

Good management and recognition of the value an individual contributes to a firm were regarded as exceptionally important, in some cases making the difference between solicitors leaving or staying. Respondents were passionate about the need of firms to look at other sectors that value talent rather than conformity and warned if this did not happen, the culture in many law firms will only deteriorate further. Good management that recognises the importance of each individual and regarded profit as only one of the firm's objectives was a significant asset. Good mental health and wellbeing remains a challenge for the legal profession more than a decade after this study was completed.

### **Michelson, E. (2013), "Women in the Legal Profession, 1970-2010: A Study of the Global Supply of Lawyers", 20 Ind. J. Global Legal Stud. 1071**

This international study charts the changing global supply and composition of lawyers over a period from 1970-2010 in 86 countries, with a focus on feminisation of the profession. The data is largely drawn from census data. The study is a demand side evaluation of feminisation of the legal profession and considers the role of women as consumers of legal services in increasing the number of women in the legal profession. There is a clear correlation between the number of women law consumers and the number of women lawyers in a country.

The study does not seek to provide a demand side evaluation of law firm factors for greater numbers of women lawyers, nor does it evaluate women's experience in law firms or the profession more generally. The study notes that it is rare for a country to reach 30% female representation in the profession until there is at least one lawyer per 2,000 people, and so

the proportionate increase in the size of the profession is a necessary precondition for feminisation to occur. The study posits that increased feminisation has also likely increased female access to justice too. The study provides a wealth of data on the number of women in the legal profession in a range of regions in the world, and is a useful starting point for those seeking to understand legal demographics over time.

**Epstein, Cynthia Fuchs (2000-1), “Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors” 49 *U. Kan. L. Rev.* 733 (2000-2001)**

In the article Epstein chronicles the journey of female lawyers since their genesis. The study provides a chronological analysis using statistics from the book *Women in Law* to compare women’s progress culturally since their introduction to the legal sector. The study seeks to document women’s progress and continuing problems in the profession from the vantage point of continuous study of women in the law since the 1960s.

The author concludes that women’s progression into the legal profession has improved and has continued to do so. Epstein argues that despite the elimination of the most blatant forms of discrimination, some less overt discrimination still remains, for example through billable measures of productivity, cultural themes that enhance imbalanced work ethos, visibility, mentorship and access to resources for promotion coupled with division of domestic responsibilities.

These result in women facing obstacles in workplace performance mobility and inadvertently lead women away from the higher echelons of the profession. Epstein argues problems about gender attributes are not easily changed with time nor the influx of female lawyers. The conclusions suggest the need for a broader conversation, encompassing national and international voices, with greater attention paid to the covert and subtle forms of discrimination that limit female lawyers from assuming their rightful places within the profession and outside it. By focusing on women lawyers in the 20th Century and how the role of lawyer and mother interlink and jar, she provides a platform for future research to reconceptualise the identity of the woman in her personal and professional life, for the 21st Century.

**Kay, F. and Gorman, E. (2008), “Women in the Legal Profession”, *Annual Review of Social Science* Vol 4 299-332.**

Kay and Gorman undertook a macro study published in 2008, an extensive review of the existing literature both from North America and beyond, on the legal profession and its changing nature and membership. They describe their study as tracing “*the parameters of integration and inequality in the careers of women and men in the contemporary legal profession... [to] ...document and assess the theoretical explanations of gender inequalities that persist across legal education, hiring, remuneration, promotions, and other professional opportunities in law.*”



They also explore the way in which women lawyers respond to this and the impact that they believe that women have had on both the law and on the profession. Their study addresses:

- legal education;
- gender imbalances about entry into and later hiring of women in the profession;
- experiences of legal work including disparagement, sexual harassment, and work/family conflict;
- promotion and upward mobility;
- gender imbalances in pay and reward;
- the perceptions of women in the profession, double standards to which they are subject, and the extent to which this has an impact on women's abilities to thrive;
- their willingness to remain within organisations.

It also considers the extent to which there is evidence that women have reshaped the professional landscape and law. They note the progress that has been made in the number of women in the profession and the proportion of the profession who are female, but also the segmented nature of their practice being concentrated in less prestigious areas of practice and roles, with lower status and pay. They indicate that gender bias is acknowledged by women, and some men, in the profession, and yet this does not seem to translate into lower female satisfaction with the profession than is reported from men.

They posit that women may process their dissatisfaction with gender bias in ways that do not impact on their satisfaction with the work that they do and their performance in their role. They are also optimistic about women's abilities to reach the top of their profession, citing examples of women who have achieved leadership roles, while recognising the continued existence of structural barriers to make this more difficult than for some of their male counterparts. This is a robust and very full review of the literature, and is a very useful point of reference for those undertaking work in this field.

### **McGlynn, CMS (2000), "The Business of Equality in the Solicitors' Profession", *Modern Law Review* 63(3): 42.**

In this review article McGlynn examines and critiques the business case for diversity as a means by which women may advance within the legal profession through the findings of an important study conducted by Hilary Sommerlad and Peter Sanderson: *Gender, Choice and Commitment – Women Solicitors in England and Wales and the Struggle for Equal Status*, Aldershot: Ashgate, 1998.

The first part of the article examines Sommerlad and Sanderson's analysis of women solicitors (1997), a key study in England and Wales that sought to examine women's experience of the profession. McGlynn notes that: *"In Gender, Choice and Commitment, Hilary Sommerlad and Peter Sanderson argue that 'gender remains a principal determinant in the career trajectories of women solicitors' (p 4). Whilst to many this would appear to be obvious, the tragedy is that this is little recognised within the profession itself. Indeed, there would appear to be a silent conspiracy not to mention gender, let alone feminism, in any debates within the profession concerning women, paradoxical though this may seem. The result is a deeply unsatisfactory situation in which the gendered obstacles in the way of women's full and equal participation in the profession remain 'remarkably durable' (p 13), but*

*the strategies being adopted by campaigners seeking to improve women's status overlook the significance of gender, focusing instead on what has been termed the 'business case' for sex equality."*

It then outlines the business case as a potential remedy for the problems identified in Sommerlad and Sanderson's study, and finally whether it has the potential to address them. She notes that the business strategy is misconceived, because it attributes women's marginalisation to a range of factors that have only a limited impact on the barriers that they face.

In short, it seeks to distance itself from the real problem – their attitudes and behaviours towards women as professionals. It also seeks to harness the power of the market, of profit, to reshape women's position within the profession, rather than address the moral imperative to do so. She notes that the business case may lead women as a group to make some gains in the profession, and it may be useful for women as individuals to harness in particular contexts to further their careers within willing firms. But sooner or later the strategy will cease to be effective, because the only way to combat discrimination is to do so head on by challenging the assumptions and the practices that lead to unequal treatment. To begin to do this, we will need to recognise it as a moral imperative.

**Menkel-Meadow, C. (1986) 'The Comparative Sociology of Women Lawyers: The 'Feminization of the Legal Profession' Osgoode Hall Law Journal, 987 followed by "Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change" (1989) 14 (2) Law and Social Inquiry 289-319**

The study explores the increased participation of female lawyers and the influence of their presence in the legal profession. The data has been derived from secondary sources, such as national reports prepared for the Working Group for Comparative Study of Legal professions and primary data has been reanalysed from Canada and US.

The author concludes that the feminisation of the legal profession is more than an increase in mere numbers. Menkel found that some barriers to female lawyers' success can be attributed to covert and overt discrimination by male counterparts, others are socially constructed organisational impediments. By exploring the implications of the socially constructed structural limitations of the legal profession, it is possible to identify clusters and patterns that inform female experiences and struggles, which enables researchers to indicate sites of and means by which reform may advance women towards the higher echelons of the legal sector.

Three years later Menkel published another article entitled, '*Exploring a Research Agenda of the Feminisation of the Legal Profession: Theories of Gender and Social Change*' which examined the role that gender difference, as a social construct, would play in the transforming of legal practice. Similarly, the author found that, regardless of country or nature of the legal system, there was a prevalent theme of job segregation. She concluded that a woman's career choice was dependent on the stratification system within the legal profession. The system differed country by country but the prevalence of women in lower status roles and disciplinary areas persisted.

**Pierce, J. (2002) “‘Not Qualified?’ or ‘Not Committed?’ A raced and gendered organizational logic in law firms”, in R. Banakar and M. Travers (eds), *An Introduction to Law and Social Theory*, Oxford, Hart**

Noting that existing evidence shows that white women and Black, Asian and Minority Ethnic (BAME) individuals tend to be under-represented and to face discrimination in the profession, this study looked at the experiences of white women and African American men working as litigators or advocates in corporate law firms.

It is based on in-depth interviews carried out in a large in-house legal department in California with 33 litigators in both 1988-9 and 1999 (and a further 10 in 1988-9 alone), as well as document analysis and participant observation. It argues that ‘not committed’ and ‘not qualified’ are shorthand expressions of the presumed relationships between women and work (and family), and black men and work respectively.

Pierce presents two narratives from this sample to illustrate the experience of these two groups. In relation to black men she finds that a failure to recognise patterns of behaviour create systematic exclusion and a hostile environment. Black men were seen as unqualified, although not uncommitted. In relation to women, there was evidence that women were regarded as mothers (whether they were, or not), who will put family before career, and are seen as less committed, although not unqualified.

She links the language used of ‘choice’, ‘commitment’ and ‘qualification’ to the ideology of individualism and its tendency to attribute responsibility for failure to succeed to the individual rather than the institution or environment. The individualistic culture also caused difficulty for those experiencing discrimination to convey what had happened to them within this logic. This research continues to remind us of the complexity of the matrix of privilege and disadvantage within an intersectional context, and the importance of considering coded ways that discrimination can operate.

**Rackley, E. (2007), ‘Judicial diversity, the woman judge and fairy tale endings’ 27, 1 *Legal Studies*, 74.**

This paper by Professor Ericka Rackley explores stories relating to the lack of diversity amongst judges. The analysis goes back to the 1990s to the time of writing (2007) and focuses on England and Wales but incorporates elements from various jurisdictions.

Rackley recounts numerous accounts that shed light on the hostility and exclusion experienced by women in the judiciary, however she goes beyond these meanings to explore deeper structural issues affecting women on the Bench. The first issue explored is the Department of Constitutional Affairs’ (as it then was) limited success at increasing diversity in the judiciary, highlighting that despite this insufficient progress the English and Welsh judiciary is considered one of the best, leading to a conclusion that this is linked to unconscious assumptions about who the best is.

She rejects a tolerance-based rhetoric and calls for a diversity where difference is valued, and also where the focus is placed on majority groups letting go of privilege. Rackley then

uses allegations of bias stemming from difference, in this case of gender, as a starting point for a deeper analysis which rather than denying bias, accepts differences in judging as an indication that who the judge is matters.

From that point, difference continues to offer an opportunity to look at new or overlooked ways of judging and to challenge the pervasive notion of the unbiased judge viewing from nowhere. Rackley highlights that this image of the judge and of judging serve to portray the woman judge as a 'dangerous outsider'. These insights provide a means by which to consider notions of merit within all branches of the legal profession, and ways in which unconscious (and sometimes conscious) biases affect the way in which people are measured and thus appointed and promoted, even within a context where there is real willingness to appointment and promote women and where diversity and equality discussions are relatively open and mature.

**Rhode, D. (2001), "The Commission on Women in the Legal Profession The Unfinished Agenda: Women and the Legal Profession" (American Bar Association, 2001) <http://womenlaw.stanford.edu/pdf/aba.unfinished.agenda.pdf>**

This American Bar Association's Women in the Profession Commission provided the most exhaustive review of women in the American legal profession at its time, and arguably since. The Commission, which began in 1987 and has continued in similar form until 2001 (and has since developed into other initiatives), has charted the progress of women in the profession, showing the increasing levels of women law students, newly qualified lawyers, and more senior professions.

It notes, however, that "... *despite substantial progress towards equal opportunity, that agenda remains unfinished. Women in the legal profession remain underrepresented in positions of greatest status, influence, and economic reward.*" It demonstrates a lack of parity of opportunity for promotion, and a gender pay gap even when male and female lawyers have similar qualifications, experience, and roles. The report draws upon previous academic literature about the barriers that women, and BAME lawyers (lawyers of colour) face and studies them with reference to empirical data. It notes that the main and significant barriers include "*unconscious stereotypes, inadequate access to support networks, inflexible workplace structures, sexual harassment, and bias in the justice system.*"

The report provides evidence of these, as well as recommendations for responses to them. These include:

- the need for a clear commitment to equality and to redress the problems of and to eradicate discrimination;
- training for members of the profession;
- professional development and leadership opportunities for women;
- means to allocate and evaluate work in a non-discriminatory way;
- to remunerate that work fairly;
- flexible working policies;
- mentoring programmes and women's networks;
- effective action to end sexual harassment;

- recognition by firms of women's pro bono work and related activities that assist women in need of development opportunities.

**Sommerlad, H. "The Gendering of the Professional Subject: Commitment, Choice and Social Closure in the Legal Profession" in ed Clare McGlynn, *Legal Feminisms - Theory and Practice*, (Aldershot: Dartmouth, 1998).**

This study is based on a combination of a synthesis of existing sociological and feminist theory, and empirical evidence. The latter comes from a survey of senior or managing partners and women practicing solicitors in West and North Yorkshire. The questionnaire also went to women out of practice who could be traced. Further data was obtained through targeted in-depth interviews. The survey was conducted between 1990 and 1994.

The starting point for this study were reports about an increased number of women employed as lawyers (across various jurisdictions), and their remaining marginal within the profession. It argues that this marginalisation is reinforced through the notion of commitment which renders the marginal position a consequence of 'choice'.

Sommerlad describes how several factors led to the undermining of the stability of the profession and its traditional image of itself, whereby credentials could no longer stand as a proxy for conformity to the dominant male norm. She describes how a focus on 'commitment' responds to this by enabling the discounting of women's credentials against this commitment deficit, through the concept's vagueness and flexibility. She highlights findings from other research that women offer equal or greater 'affective commitment' to the work.

She compares the way that credentialist strategies of exclusion were defeated by women's academic successes, with the way that gendered criteria of commitment continues to confound attempts to overcome it. She concludes that the professional model requiring absolute commitment is built upon an understanding whereby the expectations of domestic, social and work life are completely integrated for men, but in conflict for women who will therefore be perceived as lacking commitment. The construction of women's lack of commitment is built on contested positions: the distinction between the labour market and the domestic relations which sustain it, naturalisation of the domestic role for the woman following childbirth, acceptance of employers' views of the qualifying conditions for participation, and the neutrality of the gendered concepts of 'commitment' and 'choice'.

**Sommerlad, H. (2002) 'Women Solicitors in a fractured profession: intersections of gender and professionalism in England and Wales, 9, 3, *International Journal of the Legal Profession*, 213**

This study employs several methods: analysis of data from the Law Society, content analysis of the trade press, and interviews with solicitors primarily (but not exclusively) from Leeds, Keighley and Skipton working in commercial and legal aid sectors, as well as interviews from previous research.

Whilst there was some evidence that the combination of a more corporate style of management and an increase in the number of women entering the profession may be generating conditions where gender does not hinder progression, this was set against evidence of indirect discrimination against those with caring responsibilities, survival of the 'men's club' and statistics showing lower salaries, less autonomy and less chance of promotion.

This leads Sommerlad to the conclusion that women are increasingly playing a proletarian role in the profession. This role was enforced in several ways. Both commercial and legal aid firms had a significant long-hours culture which in effect amounted to a need for open ended availability, partly driven now by a new managerialism, and leading to workaholism becoming the core value of professionalism.

Whilst the move to managerialism might prove positive for women, this appears to have been limited by only surface adoption with, for example, the prevalence on male networking, personal patronage and indeterminate criteria limiting the usefulness of appraisal systems. Finally, sexualisation of women and compulsory heterosexuality of the social environment was also apparent for example in general discourse, comments on dress, comments on photos of job candidates, direct harassment and exclusionary practices.

**Sommerlad, H. (2006), "Becoming a lawyer: gender and the processes of professional socialisation" in E. Sheehy & S. McIntyre (eds) *Calling for Change: Women, Law and the Legal Profession Ten Years after Touchstones for Change*, Ottawa, University of Ottawa Press**

This chapter, by Professor Hilary Sommerlad, outlines a research project which captures the processes by which the concept of professionalism reconstitutes itself in the training of new lawyers. At the stage of writing, the project had involved a survey of LPC students from Leeds Metropolitan University, and some interviews with those students (with the intention of following their progress).

Sommerlad outlines the theoretical understandings of the academic process of identity formation and enculturation into the profession's 'official language' which is itself exclusionary of women and working classes. The theoretical understanding identifies the vocational stage as the stage most effective at suppressing the primary identities of 'outsiders', and explains how the apprenticeship stage requires the assimilation of a range of characteristics.

It explains how the requirement for a vaguely defined 'feel for the game' favours those who already have what Bourdieu describes as the right habitus (for example, the children of judges or barristers), or those who have elements of it. For those individuals their *'private existence is moulded to support their public career and their public career makes use of their private world'*. For others, who must 'become' from scratch, if they are able to do so there is the prospect of needing to engage in self surveillance in order to continue to conform. Sommerlad uses a vignette of one of her respondents on placement to illustrate some of these processes and also offers examples of the way in which the environment pressures women to adopt either a 'male' female identity or a sexualised female identity, and gives evidence of both sexism and ageism, ultimately acting to exclude that student. Elements of

the vignette can also demonstrate a requirement of the stripping away of self to 'become' a lawyer. Sommerlad concludes that the way many lawyers become lawyers and retain an aspect of identity is to work outside of mainstream professionalism.

**Sommerlad H., Webley, L., Duff, L., Muzio, D. and Tomlinson, J. (2013), "Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices", London: University of Westminster Law Press, first published 2010, reissued 2013 with Legal Services Board Foreword, with career strategies distilled here: Tomlinson, J., Muzio, D., Sommerlad H., Webley, L., and Duff, L., (2013), "Structure, Agency and the Career Strategies of Women and BME Individuals in the Legal Profession", 66(2) Human Relations 245-269.**

The research team who were based in the University of Leeds, University of Leicester and University of Westminster were commissioned by the Legal Services Board (LSB) to conduct a qualitative study of female and BAME legal professionals, who were at different career stages including pre-entry, in a range of specialisms and sectors, to investigate the reasons for these practitioners' career patterns.

The data showed a profession that was stratified on gender, race and class and where early career lawyers did not have same opportunities. The available data indicated that women and ethnic minorities were more likely to leave the profession but it was not clear why. The interview team used two methods to explore the influences on the participants' experiences of the profession; the biographical interview and the focus group.

Seventy-one people were interviewed, and of these sixty-four were women and with almost half (31) from an ethnic minority. The group represented a range of experience including solicitors, barrister, paralegals, law students and an academic lawyer. Data about recruitment demonstrated that despite the formal bureaucratic processes stated by many employers, these were not followed with inappropriate questions and presumptions made about female and BAME lawyers. The data also revealed that the workplace culture was an issue with examples of unfairness such as informal mentoring focussing on young white male lawyers.

Women taking part in the study found themselves in areas of law including family and personal injury that were considered by the dominant culture 'more suitable' for them. However, once finding themselves in the specialism making a conscious decision to remain as they provided protection from the difficult behaviours of colleagues in other legal specialisms. Long hours in the office was perceived to be equated to commitment, although commitment was not defined by the firms.

A lack of transparency over billing targets, salaries and progression criteria were all referred to as issues. Responses from firms that were considered positive included diversity training at all levels, flexible working patterns combined with career routes that allowed women to continue to work flexibly and advance their career. Formal mentoring schemes were welcome and considered effective, although these initiatives were much more likely to be in large city firms. Respondents were very resourceful, adopting strategies to progress their career that exploited the issues they found, such as strategically volunteering for high profile

committees that provided a good deal of exposure to senior partners, whilst others endeavoured to transform their workplace by campaigning and networking.

**Thornton, M. (1996), *Dissonance and Distrust: women in the legal profession*, Oxford, Oxford University Press**

This ground-breaking book explored the experiences of women in the legal profession in Australia in the 1990s, drawing upon data from interviews with more than 100 women in law, including law students, legal academics, solicitors, barristers and judges.

It considered the nexus between understandings of the feminine, sometimes referred to as perceptions of femaleness, and the relationship between that and how we perceive those who are successful in the world of work, business, law and influence (the public sphere), where authority, autonomy and power are prized but are also associated with notions of masculinity.

Thornton's work challenges the assumption that women will become accepted within the legal community as increasing numbers are permitted to join. She argues that the way in which the "fictive feminine", people's perceptions of what it is to be a woman, is invoked means that women are not recognised as being capable of authority and be fully autonomous and thus cannot be fully professional. Thornton's work, at its core, concludes that our unconscious, and sometimes conscious, perceptions of women lead us to see women less favourably in professional contexts than we do men. Unconscious bias is largely accepted within the literature now, but this was one of the first studies that showed how it can lead to differential opportunities for men and women, how and why.

**Thornton, M. (2007) "Women Entering the Legal Profession: change and resistance" chapter 5 in Susan Ehrlich Martin & Nancy C. Jurik (eds) *Doing Justice, Doing Gender: Women in Legal and Criminal Justice Occupations***

The chapter titled '*Women Entering the Legal Profession: change and resistance*' explores the history of women in the legal profession with specific consideration of the nature, organisation and challenges of legal work.

Thornton explores the dramatic changes in the legal environment and concludes gender bias, through overt and covert practices, is the main factor in female lawyers' struggle for equality. By using a historical timeline, the author carries out an investigation into the integration of female lawyers using a comparative approach encompassing data from the US, UK, Europe and other Commonwealth countries.

Thornton concludes the gendered legal culture and images have continued to severely disadvantage female lawyers in the legal landscape. The results show that despite the enormous strides made by female lawyers, men and women have different career trajectories and diverge over the course of their career.

Thornton concludes that these dissimilar career paths are a product of gender inequality prospering in the legal sector. She demonstrates that female lawyers are more likely than men to begin in government employment and public interest work, and their representation



in these sectors increases over time as they move out of private practice. Those that remain in private practice are haunted by informal and invisible barriers in the legal culture and are pushed towards less prestigious and lower paid specialities, are less likely to be visible and acquire mentorship, and are less likely to become partners than their male equivalents.

Thornton professes that women are thus perceived as less competent, insufficiently committed, provided with limited access to opportunities and face covert self-perpetuating cycles of gender bias which limit their career mobility. By positioning these conclusions in the context of the current legal climate, she sheds light on how informal and professional interactions can be influenced by gender bias. Once the more covert forms of discrimination are identified, steps can be taken to rectify the consequences to allow women to move towards the higher echelons of the legal profession.

**Wald, E. (2010) “Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future Of Women Lawyers At Large Law Firms” Vol. 78 *Fordham Law Review* 2245-2288.**

Wald’s study of US large law firms from the 1960s to the 2000s, addressing the transformation of large law firms, and the persistence glass ceilings experienced by women in those firms. He indicates that the glass ceiling problems persist for four main reasons: first, the lack of recognition in some quarters that the problem persists, given that some continue to argue – erroneously – that the problem will cease to exist once sufficient women enter the legal profession. The trickle-up theory of increasing female representation has been disproved, as while there are more women at the top, the proportion of women who reach the top compared to the proportion who enter the profession is not increasing to any real extent over time. The problem is not a self-correcting one. Second is the perception of the issue as a “women’s issue”, preoccupation for feminists, not something that everyone is obligated to address. The marginalisation of the issue reduces its significance as well as the potency of any attempts to address it. Third is a failure to recognise this as a truly complex problem that cannot be fixed through one or two initiatives, or through purely regulatory intervention. It is an issue that needs to be addressed by everyone interrogating their practices and decision-making processes and taking responsibility for the impact they have, through a range of means and on an ongoing basis. Finally is the problem of viewing the issue as one which affects all women in similar ways without recognising the intersectionality of other strands of diversity, nor the differing experiences of women and the need for a wide range of approaches to tackle the problems that women face.

Part 1 of the article looks at the ongoing glass ceiling effect. Part 2 addresses the changing contexts in large law firms and the economic realities that drive their work. Part 3 examines large law firm ideologies and their impact on equality. Part 4 examines gender stereotypes and their impact on women lawyers in large law firms. Part 5 brings together then hypercompetitiveness of law firm ideologies with gender stereotypes to explain the continued existence of subtle yet evident glass ceilings. And the final part, Part 6, addresses the instability of hypercompetitive meritocratic ideologies alongside economic changes and considers that the instability of these ideologies is such that women lawyers may begin to benefit from the breakdown of these ideological constructs and reap some of the benefits of equality. This is a fascinating article that brings together theory and practice to reveal some

of the unconscious thinking that currently keeps many women stuck at the mid-level of law firms and demonstrates that this is a product of culture rather than female deficits.

**Webley L. and Duff, L. (2016), “Diversity and Inclusion as the Key to Innovation in Innovating Talent Management in Law Firms”, in Mottershead, T. (ed), *Innovating Talent Management in Law Firms* (NALP, 2016).**

Webley and Duff from the University of Westminster draw upon literature from the UK, US and Australia to consider issues of access to, and promotion and retention in, the legal profession. This chapter challenges the methods used to measure success of diversity initiatives, rejecting indicators purely associated with the business case and profitability of an organisation. A historical overview of the approaches to diversity and inclusion policies is provided and referred to as the ‘First Wave Initiatives’ introduced in the 1990s; these included a response from the professional bodies to poor retention and promotion for women and included a plethora of policies associated with maternity leave, flexible working and recruitment. Later ‘Second Wave Initiatives’ were designed to ensure greater numbers from low participation groups extending to race, sexual orientation, disability and class, with the UK, US and Australia each introducing university schemes with the objective of widening participation by increasing law student numbers from low-participation backgrounds, the professional bodies and firms became involved too. The initiatives introduced during the second wave provided an opportunity for a discussion about the existence of unconscious bias. Third Wave Initiatives focus on issues such as how high-quality work was allocated, and how promotion and recruitment criteria are applied. If the proxies associated with system one thinking are removed, for instance the university where a candidate studied the evidence indicates that decisions are made with reference to the criteria rather than allowing an opportunity for unconscious bias to disadvantage low-participation groups.

The authors argue that talent is not universally understood, with different understandings in the Western tradition based on genetics, suggesting talent is innate and the Eastern tradition where talent is a product of striving. Legal professional Talent Management (TM) in English speaking countries is understandably orientated to the Western tradition, when it can be argued that law firms require an element of both. The authors contend that law firms would benefit from identifying the key roles that make a difference to the business and then articulating the skills, knowledge and attributes needed for the roles. They further argue that creating successful teams and talent pools that can be developed is essential if there is to be an opportunity for talent to develop. TM then becomes integral to the business and can lead to much greater diversity as decisions about recruitment, promotion and development are made consciously and carefully with reference to clearly stated criteria. As law firms develop to meet the needs of a changing market, TM provides the foundation for a new approach to recruiting and retaining the right staff for the business.

## **Synthesis of the main findings from the literature**

This section synthesises the main findings from all the academic literature we have reviewed. In keeping with most academic literature reviews, it is organised thematically such that findings are juxtaposed against each other and conclusions may be drawn.

## Increased representation of women in law over the past 100 years and the reasons identified as barriers to equal representation

Studies and relevant statistics demonstrate the increasing numbers of women who are entering legal education, the profession, and the profession's senior ranks. However, given that 65% of all law graduates, LPC graduates and solicitor trainees are female and have been for more than a decade, we would by now be seeing a sea change in the percentage of women in senior levels of the profession if it were the case that other issues associated with promotion and retention were solved simply by the sheer number of women entering the profession (Rhode, 2000; Sandfeur, 2007; Webley, 2017). This is, of course, not unique to the legal profession (Ashley et al, 2015) – other elite professions are similarly affected. Trickle-up theory, roundly criticised in the literature (McGlynn, 2000, 2003; Sommerlad, 1994; Sommerlad et al, 2013; Wald, 2010; Webley and Duff, 2007), has been debunked given the number of women that have been entering the legal profession over the past 30 years and their slow progress up through the ranks. Had greater numbers been capable of resolving the issue of poor female representation in the higher levels of the profession, it would by now have been resolved. Feminisation of a profession is not simply a product of numbers of women within it; diversity is a product of power-diversification (Bolton & Muzio, 2007; Costello, 1997; Menkel-Meadow, 1986, 1989; Smithson & Stokoe, 2005; Sommerlad, 2002; Thornton, 1996; Webley and Duff, 2016). And there is limited evidence to indicate that power is being distributed effectively to non-traditionally dominant groups within the profession (Bertrand and Mullainathan, 2004; Bolton and Muzio, 2007; Hagan et al, 1991; Pierce, 2002; Thornton, 2007). Although there have been genuine attempts to change the culture of the solicitors' profession via diversity initiatives aimed at increasing female representation (see below as regards Law Society, ABA research on this point), much of the thinking remains locked in traditional notions of merit that are seen as objective markers of worth as opposed to being subjective assessments associated with particular ways of conceiving of what it is to be a successful solicitor (Rhode, 2001; Shiner, 2000; Sommerlad, 1998, 2000; Webley and Duff, 2017). A large number of studies provide evidence of structural barriers to equal opportunities over a long period of time and up to the present day, including barriers associated with work patterns (full-time, part-time, flexible, on call), qualification pathway (traditional route into the profession) etc. (Costello, 1997; Holmes, 1990; McGlynn, 2000; 2003; Sommerlad et al, 2013; Tomlinson, 2013). This is where unconscious bias training is so important, as is the development of a library of job descriptions and person specifications as well as a corresponding matrix of the evidence that people could use to make out their ability to meet the criteria for different levels of seniority or against which a more nuanced assessment of merit can be made (for details see Tomlinson et al, 2013). Further, retention and talent management strategies should be tied to these specifications and matrices to allow fair development opportunities for all, not simply those identified as particular "stars" (Webley and Duff, 2017). Workforce planning and skills development and management need to become active endeavours shared between professionals, who take individual responsibility for decisions that have an impact on equality, but also firms who take responsibility at a collective level as employers.

## Parenthood and its impact on careers

The literature is full of examples of the way in which either potential motherhood (the fact that young women are "tainted" with an expectation that they will have children and take time off to do so) and motherhood are viewed as examples of the lack of female commitment to

full professional vocationalism (Bradshaw and Thomas, 1995; Collier, 1998; Epstein, 2000-1; McGlynn, 2000, 2003; Pierce, 2002; Sommerlad, 1998, 2002; Sommerlad and Sanderson, 1997; Sommerlad et al, 2013; Thornton, 1996; Webley and Duff, 2004, 2007). And that a “mommy or mummy career track” needs to be available to allow women to continue in the profession but be able to balance their need to be primary carers. This is much criticised in some of the more critical literature, because the underpinning ideology is that professionals are unencumbered by a private life, that this demonstrates their sacrifice and thus their worth (Botlon and Muzio, 2007; Webley and Duff, 2007, 2016), and that they are more productive and useful to the firm as a result. Interestingly, many of the studies indicate that working parents, often mothers, are more productive than their apparently unencumbered counter-parts as they tend to be more focused on work and more driven to complete projects on time and with the minimum focus (for examples see Sommerlad et al, 2013). They do not have the luxury of presentism but thus get more done in less time. Further, the studies that critique the “mummy track” indicate that if one leaves this view unchallenged then women will be assessed as less worthy than male counterparts simply due to the lens through which their contribution is viewed (unconscious bias) and also by virtue of women’s reproductive potential, all women are likely to be considered less committed, and less valuable. In contrast, some of the more recent literature points to the parenthood dividend for new fathers who are hands-on in their parenting – they are seen as being ‘super dads’ and more not less committed, and yet mums suffer a penalty for the same activities (Sommerlad et al, 2013). Having said that, the literature is more complex in this regard, as some studies have indicated that men too feel that parenthood has led them to be discriminated against by their firms, for their commitment to be called into question and their career progression arrested or slowed; their attempts to seemingly buck traditional notions of masculinity can have negative consequences (Collier, 1998). And there are some suggestions that if men demand work-life balance for family reasons then it is more likely that women will also be able to benefit from these initiatives without prejudice, but if they are driven by women they come under “the mummy track” and are by way of concessions rather than positive initiatives (Webley and Duff, 2007).

### **Work/life balance and its implications for women in law**

This is an extension of the theme above but extends beyond motherhood to involvement in other caring responsibilities, and work in the home and domestic roles that remain relatively gendered in England and Wales. The literature on this point confirms the findings in the parenthood literature but interrogates this further, pointing to the fact that care-giving and domestic work at home (often seen as irrelevant to a professional context, as it is not in keeping with traditional notions of how professionals prioritise the public sphere over the private sphere) extends into the workplace too. Women often undertake more of the emotional and domestic labour in firms and organisations and this goes largely unseen, data is not captured to measure it, and it thus goes unvalued. Work-life balance is a key battle-site in the literature to consider whether calls for a better work-life balance allow people to downplay women’s commitment to the profession (as commitment is seen as single-minded focus on work) and whether it also misidentifies full-time and part-time work given that we all work part-time – much of our time each week is spent away from work. Although at first glance this may seem a trite point, it is much deeper that it first appears as notions of full-time and part-time are often ways in which some people are deemed committed and worthy of higher pay or promotion and others not (Sommerlad et al, 2013). Much literature suggests

that one must challenge the underlying assumptions to get beyond biased value judgements about merit and worth (Malleon, 2003; Rackley, 2007; Webley and Duff, 2017). However, a small number of studies suggest that advancement is actually on merit, and that inequality is a product of individual choices rather than faulty systems of promotion (Hakim, 2000). Following this reasoning, it is people's choices that need to be investigated and their consequences addressed, rather than the proxies used to determine advancement. The dichotomy between the two approaches is at the heart of the discussion about what needs to be done to achieve equality of opportunity and outcome for women (and other groups) in the legal profession.

### **Unconscious bias and its role in the recruitment, career development and promotion of lawyers**

As indicated above, the literature (much of it drawn from human resource management and business studies) points to the importance of being able to identify merit/excellence/talent in the context of all activities in an organisation and then to nurture it by managing people to ensure staff development, retention and promotion. This is discussed in different terms from the business case for diversity, although the two literatures do intersect in places. There are suggestions about how to do this (Fried-Fiori, 2017), but the first important step is to recognise that many decision-making groups are relatively homogenous and will likely default to similar biases about merit/excellence unless they have taken active steps to challenge their thinking and developed means to collect and analyse data that will help to shape their decision-making too (Webley and Duff, 2017). Decision-making groups may include people involved in first sifts for jobs (recruitment consultants) or administrative staff in the firm, as well as more senior lawyers (Duff and Webley, 2004). Much of this work draws upon the difficulty of using proxies, measures, to assess people without a constant reminder that those measures are not objective but rather subjective means to try to assess complex phenomena that are difficult to get at other than via indirect means (Kahneman, 2011; Webley and Duff, 2017). Further, some of the literature indicates that proxies drive behaviour and culture and so in order to recruit, retain and promote high quality people, and a diverse pool of talent, the proxies or measures are as foundational to success as is the diversity of the decision-makers (Bolton and Muzio, 2007; Rackley, 2007). Diversity does not warrant against group-think but it is much more likely to challenge it; and slower decisions that have to be evidenced and argued for are more likely to be more nuanced and robust than those made through quick decision-making processes with people of similar backgrounds working in consort (Kahneman, 2011).

### **Equal pay**

This draws on much of the same literature as the talent management and unconscious bias literatures although there are some new, if somewhat short, pieces written in the context of the gender pay gap which illustrate difficulties associated with: not counting certain types of activity, over-counting and over-weighting others; differential and subjective workload allocation that allows some (often but not always men) to show their potential and others not (often but not always women) (Harkness, 1996; Manning and Swaffield, 2008). More transparent competency-based assessment is one means by which colleagues may be evaluated and remunerated on the basis of performance (Mansch, 2017), presupposing that workload allocation and equality of opportunity are in themselves fair. The literature suggests that minority groups are similarly adversely affected (Rhode, 2001; Kay and

Gorman, 2008). There is some older literature on women's experiences during maternity leave and on return suggestion that their cases are attributed to others and their pay is docked or flat lines as a result (Duff and Webley, 2004; Sommerlad and Sanderson, 1997; Siems, 2004). Further, that penalties applied for part-time working are far greater than is justified given the number of hours that part-time lawyers work in their non-working days. Additionally, requests to work from home can lead to pay penalties. In short, there is a very broad literature on pay disparity in professions more widely and much of it suggests that the lens through which women's work is valued, the way in which emotional and domestic labour including client relationship work is under-valued or ignored entirely, and winning new business is prioritised in pay structures, is discriminatory. Workload allocation is also particularly poorly done within the legal profession compared to, for example, the accountancy profession (Ashley and Empson, 2013) and there is much to be learned from more systematic practice that prioritise staff development and staff utilisation over partner choice of junior fee-earners to work on their matters (Ashley and Empson, 2013).

### **Workplace culture and women in law**

There is a huge body of literature on this addressing the way in which business is transacted, lawyers are expected to behave and who is privileged as a result. It includes some of the themes we have already addressed (long hours culture, dismissive views of part-time lawyers and mothers, workload allocation practices) and also the need to socialise with clients (in some types of firm) involving sport and drinking or "female friendly activities" such as chocolate making courses, and the need to dress in certain ways (skirts, high heels, make-up) and be willing to accept a degree of sexualised behaviour such as flirting and touching from some high-profile male partners of clients (see particularly, McGlynn, 2000, 2003; Sommerlad, 1998, 2002, 2006; Sommerlad et al, 2013; Webley and Duff, 2007 cf Hakim, 2000). There are examples of much healthier gender-neutral cultures too, and of male allies acting as correctives to some inappropriate behaviour from other men in the firm (see Sommerlad et al, 2013 for examples). There are also examples of poor behaviour from senior women. In short, a positive working culture gets the best out of most people – one that marginalises or objectifies women does not, and nor are many of the men in the organisation comfortable in that kind of environment. Often, negative cultures are a product of a very small number of senior people being permitted to behave badly, either because the senior team are unwilling to confront the behaviour, or wish to minimise it as the person concerned is considered to be "rain-maker" of a business owner. The literature suggests that unchecked behaviour of this kind may infect some sections of the organisation and embolden or incentivise more junior colleagues to behave similarly. The only way of addressing it is effectively to challenge the senior leader in that context. Other less obvious negative cultures (long hours, the privileging of certain types of work over other equally necessary work) are much subtler and less susceptible to change (Kay and Gorman, 2008). They are systemic, meaning that they pervade most firms and the profession, rather than being personality-driven by individual biases, and may be overcome only once legal practice is altered through greater use of technology and alternative business structures and entrants into the market.

## **The changing nature of the profession and the extent to which regulatory, educational and technological changes may have a differential impact on male and female lawyers now and in the future**

There is not a great deal written on this area within traditional academic literature, but much more written by academics in shorter pieces charting changes in legal practice brought about by recent regulatory and technological changes and proposed educational changes. These include the possibility of greater stratification and inequality brought about by the proposed introduction of the SQE and the ways in which technology may commodify and routinise a lot of current legal work and lead to a small group of expert elites and a larger pool of service personnel who triage and assemble documents with the aid of technology (Sommerlad, et al. 2015). There are others who suggest that these changes may disrupt traditional legal practice to such an extent that old ways of doing and allocating work and managing people may soon become a thing of the past. And new professional entrants from other disciplines may challenge current thinking with a positive dividend for women. Much of this work is speculative, although the medical professional literature provides a more solid basis from which to draw inferences (Ahern, 2011; Berger et al, 2012; Buchanan, 2012; Desvaux et al, 2007). That suggests greater stratification between types of work, but lesser inequality between men and women in some technologically enhanced specialisms. The role of legal education as regards women's advancement in the profession is relatively under-researched. What research exists tends to be situated in the context of the need to educate those going into the profession (and by extension those within the profession) of issues associated with unconscious bias and underpinning ideologies that are not neutral but favour dominant groups over newer entrants (Boon et al, 2001; Shiner, 1994, 1999; Nicolson, 2005). Much of this literature takes a feminist perspective or perspectives, but some of it comes from critical race theory and queer studies. This theme is part of a wider educational discourse about education being emancipatory, if it seeks to challenge traditional ways of seeing the world, and developing reflexivity in students and later professionals (Webley and Duff, 2019 – forthcoming). Only once we have changed the way in which male-female roles are thought of and play out in domestic environments are we likely to see real change in the workplace. Some of the literature points to the relative lack of progress in male-female working patterns and professional trajectories as evidence of this.

The literature on the role of regulation in this context is relatively new and focuses on the profession's duty of equal treatment and professional obligations to treat all with dignity and respect and without unfair discrimination (Webley, 2015). It suggests that it may be time to take a more muscular approach to equality and diversity as in the context of the big accountancy firms and blue-chip companies (all strands, not simply in the context of women). Some suggestions include an anonymous whistle-blowing line, the requirement to undertake unconscious bias training (as at the Bar), that job descriptions and promotions criteria and suggested evidence bases be made publicly available so that they are transparent and can be challenged by those outside the firm – not just those who may feel vulnerable bringing a challenge.

## **Intersectionality of other diversity characteristics and its effects on women in law**

Much of what we have said above has focused on women, but the literature often notes that where there is gender inequality/discrimination, there are often other forms of inequality too (Bertrand and Mullainathan, 2004; Buchanan, 2012; Gorman and Kay, 2010; Neal and Johnson, 1996; Webley et al, 2016; Wilkins, 2004) – and the more a lawyer diverges from the white male middle class norm, the more likely they are to suffer less favourable treatment. Consequently, it is important to note that the themes within the literature review also have relevance to other groups within the profession, and that those who have multiple forms of difference are likely to be more rather than less challenged by traditional legal practices and systems (Pierce, 2002). And there is much to be learned, too, from initiatives that have sought to tackle other forms of discrimination, including initiatives to tackle racial, religious and sexual orientation discrimination. Interestingly, a small section of the literature suggests that there is less stigma in being referred to as sexist than racist and that sex discrimination can sometimes be considered a badge of honour rather than shame (Sommerlad et al, 2013). This may be one reason why stubborn stereotypes still have so much traction in some sections of the profession.

## **Best practice in diversity practice to improve female representation at all levels in law**

While much has been written about best practice approaches, there is scarcely any empirical data that can be used effectively to assess their worth. Many practices have been lauded – such as coaching, mentoring and sponsorship by senior figures in law firms who may champion their female colleagues, no male-only shortlists for jobs, no male-only partnership rounds, and targets for female promotion (Mottershead, 2010; Mottershead, 2017). Competency-based assessment may mitigate against some unconscious biases when assessing value and worth for remuneration and promotion, although that is dependent on the development of a sophisticated competency framework and a nuanced assessment against it (Mottershead and Magliozzi in Mottershead, 2017). However, progress is still relatively limited. While there may be approximately 30% female partners in firms, that is not an improvement when one considers that two-thirds of entrants are women. In fact, it could be considered evidence of little progress at all. Some studies categorise initiatives into different waves of maturity (Webley and Duff, 2016). Others suggest that they are still largely premised on the deficit model of women's ability – that initiatives are needed to improve women's ability to work in current legal environments rather than to challenge the environments themselves (Thornton, 1996). Women are encouraged to lean in, to become more resilient, to have more confidence to speak up. In other words, to change so that they can thrive in an environment that requires them to be different in order to succeed. This way of thinking obscures the fact that the environment is not equal but skewed in favour of a particular set of traits that play more easily to one group than another. While the deficit model continues to be used, little will change in the environment and little real progress will be made. The economically rational business case is also subject to some criticism, in part because data is hard to come by to prove (rather than to demonstrate a correlation) that a diverse workforce is a more profitable one (although note the McKinsey, Catalyst and Reibey Institute research cf. Buchanan, 2012; Wright et al, 2014), and further because it places concerns about equality and fairness at the mercy of an economic model (Ackroyd and Muzio, 2007; Ashley and Empson, 2013; McGlynn, 2000; Sommerlad, 2012, 1994,



2002, 1998; Webley and Duff, 2007; Wilkins, 2004). The positive messages about diversity and inclusion may be lost if its economic benefits cannot be proven, and equality may be reduced to a balance sheet calculation. The literature indicates the need to engage with ethical values in place of pure profit drivers (Scullion et al, 2010) and to challenge discriminatory structures and practices rather than provide a means by which women may “measure up” to their archetypal ideal male colleagues (Ashton and Morton, 2005).

## Conclusions

The academic literature suggests that there have been many gains in women’s advancement in the solicitors’ profession. Women make up nearly two thirds of the entrants to the practising profession in England and Wales and are at similar levels or at least at the 50-percentage stage in many other jurisdictions too. But relatively few still reach the top of the private practising profession, and those that do often report that they have had to struggle to do so, facing barriers that they believe are attributable at least in part to their gender. Many of the blatant forms of discrimination identified in the earlier studies set out in this review are now largely a thing of the past, but there is still evidence in contemporary studies of egregious sexism, such as sexual harassment and the use of attractive young female solicitors at marketing events to entertain clients. There is also evidence that there is a zero-tolerance approach to these kinds of behaviours in many organisations. But more subtle forms of discrimination persist, and may, at least in part, explain why women are not reaching the tops of their profession in the numbers one would expect with two-thirds of entrants being female.

Much of the literature points to the continued problems of the long-hours culture, notions of commitment being bound up in presentism rather than high-quality work undertaken as efficiently as possible, and the fact that being a mother, or the potential to be a mother, brings with it some assumptions about commitment and capability. Some of the well-intentioned initiatives to assist women to work part-time, or to help them to lean in, also carry with them a set of deficit model assumptions – that women need to be helped to be able to be equal with their male counterparts, rather than a recognition that what needs to change are the assumptions and practices that model “ideal” against a very narrow and usually masculine norm. Education, whether at law school or via continuing professional development initiatives, and regulatory responses to overt and covert discrimination may assist to some extent. Technological changes in the way in which clients seek out legal services, and in how professionals deliver these, may also play a role. But in order to disrupt embedded cultural and, often, unconscious assumptions there will need to be a real attempt to unpick what it is to be a successful, productive lawyer through an assessment of competencies and attributes that moves away from blunt hours billed and new business won, to include the emotional labour of being a professional (a good colleague, someone who seeks to develop others, to retain clients, to provide a productive atmosphere within which to work), and takes into account any structural barriers to opportunity such as workload allocation models that skew high value work towards certain types of people.

In short, the profession and senior professionals within it will need to examine the extent to which mid-20th Century notions of professionalism are fit for purpose, and old stereotypes about merit are fair and non-discriminatory. Without that difficult dialogue it is unlikely that the great deal of good intentions, effort and money put into diversity

initiatives will yield truly transformative results in supporting women into leadership positions within the solicitors' profession.

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## Other resources and toolkits

The **Law Society's** 'Women in Law' and 'Male Champions for change' toolkits outlining key barriers to women's progression in the legal profession and identifying actions to address these: <https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/women-in-leadership-in-law/>

The **American Bar Association** website for details of toolkits to use and upcoming research reports associated with the Grit Project, Women of Color Research Initiative and Achieving Long-Term Careers for Women in Law: <https://www.americanbar.org/groups/diversity/women/>

The **International Bar Association's** website for the report on Women in Commercial legal Practice: [https://www.ibanet.org/Legal\\_Policy\\_Research\\_Unit.aspx](https://www.ibanet.org/Legal_Policy_Research_Unit.aspx)

The **Interlaw Diversity Forum** Career Progression report: <https://www.interlawdiversityforum.org/the-career-progression-report>

The **Apollo** Awards for best practice in diversity initiatives <http://theapolloproject.net/apollo/about-the-apollo-project/>

The **National Association of Law Placements**: <https://www.nalp.org/diversity>

The **Institute for Inclusion in the Legal Profession**: The State of Diversity and Inclusion in the Legal Profession <http://theiilp.com/IILP-Review-on-the-State-of-Diversity-and-Inclusion-in-the-Legal-Profession>.