

**Encouraging Diversity at the Bar and Bench**  
**Observations for TECBAR's Annual Conference**

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What can someone who is the living embodiment of the Judiciary's diversity problem have to offer on the subject of diversity? Put in slightly different words: what on earth is he doing talking about encouraging diversity at the bar?

Well, I have two answers for you.

The first was provided by one of ten Bridging the Bar interns who participated in the Court of Appeal Scheme at the end of last month. We were told that the scheme was intended to provide an opportunity for mutual learning. I don't know what the interns learnt from us; but the almost universal experience of the LJs who took part was that we learned more than we could have imagined possible. They were a really remarkable group of people from what I am going to call, rather euphemistically, "non-traditional backgrounds"; and one of the sessions was devoted to them explaining the difficulties that they had faced in getting to where they now were. Two things was repeated over and over again in slightly different words. The first was: "none of my contemporaries know what a barrister is, unless they are in prison or think a barrista makes coffee"; and "I look at the barrister's profession and it is not interested in people like me: it simply wants to replicate itself as a place for the affluent white middle classes".

The second answer comes from my profound conviction that encouraging diversity, in all its guises, is the equivalent for the bar and bench of climate change for the planet. It is an existential challenge where it is simply not good enough to agree that something needs to be done: unless each one of us makes a positive contribution, however modest, the challenge will not be met. And if the society we intend to serve sees the bar and bench as self-electing and self-perpetuating enclaves for the affluent, we will be rightly be seen as increasingly irrelevant, with catastrophic consequences for the rule of law and civil society.

I am, however, acutely conscious of the perils of old-age and looking back. When I joined my first chambers in 1978, there were about 20 tenants of whom one was a woman and no-one, in my recollection, could otherwise be described as from non-traditional backgrounds. Today those chambers have 61 members of whom 24 are women, including 5 female silks out of a complement of 14. Looking briefly at the websites of some of the distinguished sets of chambers here today, the same picture emerges. And it is very easy to look back and see that as great progress. Similarly, if you look in the 1978 Queen's Bench Reports, you will not be surprised to find that there was not one single woman in either the Queen's Bench Division or the Court of Appeal. Now, without resorting to numbers, you all know the extraordinary breadth and brilliance of the women in the senior judiciary.

This is progress indeed; but if one looks forward even for a moment, it is obvious how much change is required. I am going to start with the Bench, where it is obvious that increasing diversity involves increasing the diversity of the pool of talent from whom the bench is recruited. And, in my view, changing the criteria that are applied when considering who will

or will not be a good judge is also required, as the competencies as presently expressed clearly favour the traditional.

I don't want to be hide-bound by numbers, but the picture is clear. As at 1 April 2022, 35% of all court judges (salaried and fee paid) were women, which was 11 percentage points higher than in 2014. 52% of tribunal judges were women, which was 9 percentage points higher than in 2014. When one considers ethnicity, the figures are much more stark. Of all judges in post for courts and tribunals combined:

- 5% were Asian or Asian British - a rise of 1 percentage point since 2021 and 5% since 2014;
- 1% were black or black British - no change since last year or indeed since 2014
- 2% were of mixed ethnicity - 1 percentage point higher than in 2021; and
- 1% were individuals with ethnicity other than Asian, black, mixed or white - no change since last year or indeed 2014.

In other words, 91% of those in post were white and the increase in non-white judges was barely perceptible since 2014. Even against a figure of 14% non-white people in the population at large, the scale of under-representation is clear. The other statistic that I will offer you is that, as at 1 April 2022, 69% of all Court Judges had been barristers.

I am not going to spend much time on the steps being taken to increase the diversity of the judiciary because, whatever else is done, it seems obvious to me that increasing the diversity of the bar comes first; and, after all, this is your Conference. But I will just mention that there is a Judicial Diversity and Inclusion Strategy for 2020-2025 and that the Judges' Council has as its chair of the Judicial Diversity Committee the tireless Ingrid Simler. The overarching aim of the strategy is to increase the personal and professional diversity of the judiciary at all levels over the five year period by increasing the number of well qualified applicants for judicial appointment from diverse personal and professional backgrounds and by supporting their inclusion, retention and progress in the judiciary.

The Strategy lists four core objectives:

- Creating an environment in which there is greater responsibility for and reporting on progress in achieving diversity and inclusion. In pursuit of this, it has become a core commitment of every judge in a leadership role, from top to bottom, to uphold and promote the principles of equality and fair treatment;
- Supporting and building a more inclusive and respectful culture and working environment within the judiciary: avoiding both major pitfalls and the micro-aggressions that can so quickly poison working relationships;
- Supporting and developing the career potential of existing judges:
- Supporting greater understanding of judicial roles and achieving greater diversity in the pool of applicants for judicial roles: this involves a number of initiatives including the Judicial Work Shadowing Scheme and the Judicial Mentoring Scheme. There is also a pre-application Judicial Education programme.

The Judiciary's efforts are not solely invested in those who might become judges in the near or medium term future. Moving further afield, Diversity and Community Relations Judges are engaged in visiting schools all over the country and, as I mentioned, the Judges are actively supporting the Bridging the Bar initiative which gives promising students from non-traditional backgrounds internships and the chance to meet and work with judges at all levels up to and including the Supreme Court.

St Ignatius Loyola, the founder of the Jesuit Brotherhood, famously said "Give me a child till he is seven years old and I will show you the man." Leaving the rather gender-specific connotations aside for one moment, that translates now into the observation that social and educational disadvantage is likely to be fixed by the age of five, or thereabouts. So how can a profession such as the bar, that rightly requires the highest standards of ability, advocacy and professionalism reach those who have are at a disadvantage if judged solely by traditional academic and social criteria?

What is quite discombobulating is the sheer number of initiatives crammed into the small area of the Inns, the Bar Council and Chambers. There is an increasing awareness of the size of the problem, driven by commitment and scholarship from individuals and groups. You will surely be aware of the work of the Black Inclusion Group, whose report contains both startling and sobering statistics and also pragmatic proposals for improvement written by people who really understand the problems from the inside. He is far too modest to acknowledge it, but whenever I mention the BIG, I am told that the progress that has been made thus far is very largely due to the relentless efforts of Riaz Hussain KC, who provides a perfect model of how selfless commitment may contribute to real change.

The Bar Council, an organisation that even 20 years ago would hardly have been relied upon to be at the forefront of change, has a major commitment to EDI, with a Race Working Group formed in 2020 and pragmatic support by, for example, its support for the Bar's steering group for the 10,000 Black Interns initiative. One of the features, to which I will return, is the provision of a Living Wage to interns, funding being vital if the bar is not to be an enclave for the well-off. £478: what is that in terms of a brief fee for a two-hour application on a Friday afternoon? The initiative needs chambers to sign up to support it; but you will have to hurry – the deadline for chambers to sign up to a commitment to take at least one candidate for one week in the summer of 2023 has been extended to 28 November. Next Monday. What about it?

Another Bar Council initiative is its Bar Placement Scheme, which allows students to spend up to 4 days shadowing their barrister in chambers and in court. To be eligible you have to be a state-educated sixth form or college student. Places are awarded on the basis of quality of application, demonstrated commitment to and interest in a career as a barrister and fulfilment of social mobility criteria. Reading the blogs of past students on the scheme demonstrates both their high quality and the life changing effect of coming into contact with the profession for people who would previously have assumed, perfectly reasonably, that it could not be for them.

At the level of the Inns, my own Inn, Gray's, has a wide-ranging commitment to improving access, which concentrates on finding talented students as early and as reliably as possible. It has a well-developed outreach programme which works with schools to create opportunities for capable pre-university students from under-represented backgrounds. It has moved to making its scholarship awards means-tested over a basic minimum award, and towards making

its selection criteria concentrate on contextualised potential rather than simply past academic achievement; and application forms are rigorously redacted at the selection stage so as to avoid unconscious bias as far as possible. And, as many of you will know, it has entered into partnership arrangements with Keating for a new social mobility scholarship, funded by Keating, to be awarded through the Gray's Inn Scholarship Programme.

Inner has a very similar sounding initiative called the Pegasus Access and Support Scheme, or PASS, which works with various partner chambers, aimed in particular at those students from under-represented and disadvantaged background (e.g. recipient of free school meals, first in their family to attend university, schools with low rates of attainment and progression to higher education). The Pegasus Scheme identifies high achieving students, and offers them mini-pupillage and advocacy training to help them on their journey to the Bar. They also operate a Schools Project, working with many of the inner city London schools and having open days for the students who come to the Inn and meet barristers and judges, attend talks, and perhaps even practice mooting or debating. The other Inns, too, are pursuing similar paths.

Such initiatives are not confined to the Inns, or to the TCC or TECBAR. You will probably know that COMBAR is offering two £50,000 scholarships to study the BCL at Oxford to candidates of "black and mixed black ethnicity" who demonstrate exceptional academic merit or potential and who demonstrate a serious interest in commencing a career at the commercial bar. And, 4 Pump has joined another COMBAR initiative providing mentoring for applicants from groups who are under-represented at the Bar, and the Commercial Bar in particular. In order to ensure that as diverse a pool of potential applicants is reached as possible, COMBAR will advertise the scheme through the careers departments of all English and Welsh universities with a law department, together with a number of universities in Scotland and Ireland, third sector organisations such as the Social Mobility Foundation and Sutton Trust, and commercial publications such as Legal Cheek. Advertising in Legal Cheek is a new one on me; but you can see the logic behind it.

Then there are the other organisations, of which Bridging the Bar is just one, all of whom set out in one way or another to de-mystify the profession and to persuade people that barristers do more than just make coffee.

I have only scratched at the surface, but what I think this whistle-stop tour shows is that there is no shortage of real commitment within the profession to make real inroads into levelling the playing field and making the bar accessible to all who have the talent to make a career as a barrister. From my own limited observations and from talking to those who are actually engaged in making a difference I would offer four thoughts.

First, engaging with people is the crucial first step. Only by meeting people can one persuade them that the bar and the bench are not intent on creating a bar for the future in the image of its past.

Second, funding is key. We have seen how the reduction in criminal fees in real terms has led to a major exodus from the criminal bar by people who simply cannot make ends meet. That exodus is inherently discriminatory. If the bar, and particularly the specialist bar, is not to become an affluent enclave for a small section of society, funding must be available and be seen to be available to all. That involves relentlessly publicising the availability of funding

that targets social and financial mobility. Small things matter: 4 Pump's laudable contribution to the mentoring scheme is to be found on a tile at the bottom right of the second page of their website's news pages. Could it not be, should it not be, emblazoned on their home page? I could make the same observation about almost all the initiatives I have mentioned.

Third, while the sheer number of different and recent initiatives is almost dazzling, one is entitled to a lurking suspicion that it would be possible to increase the potency of the effort that is being devoted to EDI by a greater level of co-ordination, starting with the Bar Council and the four Inns, but also at the level of individual chambers. The co-operation between the specialist bar associations that has led to the BIG Report is greatly to be applauded; and it is an example that others could and should follow.

Fourth, if I am right that EDI is an existential challenge, a change of emphasis and perception is required at every level of the profession. Let me put it this way: what if everyone in this room went back to their place of work and found one change that could be made, however modest? It might be signing up to the 10,000 Black Interns initiative at a cost to chambers of £478; or it could be putting your own initiative on the front page of your website; or it could be persuading your chambers to fund mini-pupillages if they don't already; or it could be putting your commitment to EDI at the centre of your home page. Even if you don't realise it, your chambers needs to diversify. Only in that way will the bar as a whole and then, finally, the bench come to reflect the society in which we live. It is not just a case of "every little helps": it is a matter of professional life and death.

You might say, with reason, that the main contribution I could make to increasing diversity on the bench would be to retire and make way for someone else. I am very sorry to disappoint you but, God willing, you have got to put up with me for a little while yet. Bad luck!