

THE SPECIALIST COMMERCIAL BAR & BLACK INCLUSION – FIRST STEPS

A Report Commissioned by The Commercial Bar Association,
The Chancery Bar Association and The Technology and Construction Bar Association

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TABLE OF CONTENTS

TABLE OF CONTENTS

| | |
|---|-----------|
| TABLE OF CONTENTS | 2 |
| FOREWORD..... | 5 |
| EXECUTIVE SUMMARY..... | 6 |
| INTRODUCTION AND OBJECTIVES | 11 |
| METHODOLOGY | 12 |
| OUTREACH..... | 14 |
| The Population of England and Wales | 14 |
| The Bar in England and Wales..... | 15 |
| Bar Professional Training Course (BPTC)..... | 15 |
| Pupillage Gateway (2019-2020): chancery and commercial pupillage applications | 16 |
| Specialist Bar Associations (SBAs) | 17 |
| Chambers' and other organisations' initiatives | 18 |
| Round-table discussions issues | 19 |
| Outreach: recommendations..... | 23 |
| RECRUITMENT..... | 25 |
| Introduction | 25 |
| Pupillage numbers..... | 25 |
| Black/Black British numbers | 25 |
| Pupillage Gateway..... | 26 |
| Chambers' and other stakeholders' initiatives | 31 |
| Round-table discussions..... | 31 |
| Recruitment: audit and implement positive action measures on race | 33 |
| Recruitment: recommendations..... | 33 |
| RETENTION & PROGRESSION | 35 |
| BSB data on Black QCs..... | 35 |
| Government data on Black Judges..... | 37 |
| Judges in post..... | 40 |
| Judicial initiatives | 43 |
| The substantive evidence on retention & progression from the Round-tables | 43 |
| <i>Overt racism as a barrier to progression</i> | <i>43</i> |
| <i>Structural barriers to progression.....</i> | <i>48</i> |
| <i>Institutional barriers</i> | <i>48</i> |
| <i>Clerking/Work allocation.....</i> | <i>50</i> |
| <i>Mentorship.....</i> | <i>55</i> |
| Recommendations for retention and progression | 59 |
| CULTURE..... | 61 |
| Introduction | 61 |
| The experience of race and/or ethnicity related behaviours | 62 |
| The impact on the individual | 63 |

TABLE OF CONTENTS

| | |
|--|-----------|
| The witnessing and awareness of such behaviours | 64 |
| Support, mentoring and race and/or ethnicity related behaviours | 65 |
| Culture change & first steps | 67 |
| Culture: Recommendations | 68 |
| APPENDIX 1 – THE BIG COMMITTEE | 70 |
| Abdul-Lateef Jinadu Called: 1995 | 70 |
| Krista Lee QC Called: 1996 Silk: 2020 | 70 |
| Gary Pryce Called: 1997 | 70 |
| Jeremy Richmond QC Called: 2000 Silk: 2020 | 71 |
| Brie Stevens-Hoare QC Called: 1986 Silk: 2013 | 71 |
| Acknowledgments | 72 |
| APPENDIX 2 – THE ROUND-TABLES | 73 |
| Round-table discussions: methodology | 73 |
| Outreach | 74 |
| <i>Black barristers</i> | <i>74</i> |
| <i>Raising awareness of the Bar as a career</i> | <i>74</i> |
| <i>Few Black barristers are at the Chancery and Commercial Bar</i> | <i>74</i> |
| <i>Few professional organisations are focused towards Black barristers</i> | <i>75</i> |
| <i>Continue outreach to undergraduates at the early stages of university study</i> | <i>75</i> |
| <i>Outreach to A-level students about opportunities at the Specialist Commercial Bar</i> | <i>76</i> |
| <i>Disseminate practical information to students on available funding for training for the Bar</i> | <i>76</i> |
| <i>Higher visibility of existing Black barristers</i> | <i>76</i> |
| <i>Intersection between issues of race and social class</i> | <i>77</i> |
| <i>Introduce students to areas of practice at the Chancery and Commercial Bar</i> | <i>77</i> |
| <i>Encouraging professionals outside the law seeking to practise</i> | <i>78</i> |
| <i>Wider attention to a larger group of universities</i> | <i>79</i> |
| <i>Focus attention on a limited number of universities</i> | <i>79</i> |
| Recruitment | 81 |
| <i>Why does it matter whether we recruit Black talent to the Bar?</i> | <i>81</i> |
| <i>Perception Chancery and Commercial chambers focus on Oxbridge</i> | <i>81</i> |
| <i>Chambers communication that they are seeking to attract and recruit Black applicants</i> | <i>82</i> |
| <i>Chambers’ perception of Black applicants</i> | <i>82</i> |
| <i>Modify recruitment practices to address an urgent recruitment problem at the Specialist Commercial Bar?</i> | <i>83</i> |
| RETENTION | 84 |
| <i>The attractiveness of a career at the Bar</i> | <i>84</i> |
| <i>Barristers and direct marketing</i> | <i>84</i> |
| <i>Mentoring on building a practice</i> | <i>84</i> |
| <i>Allocation of work and the role of instructing solicitors</i> | <i>85</i> |
| <i>Allocation of work and the role of barristers’ clerks</i> | <i>85</i> |
| <i>Allocation of work and the role of QCs</i> | <i>87</i> |
| <i>Overt racism</i> | <i>89</i> |
| <i>Pregnancy and childcare intersecting with race</i> | <i>90</i> |
| Progression | 90 |
| <i>Applying for silk</i> | <i>90</i> |
| <i>Mentoring for QC applications</i> | <i>91</i> |
| <i>Silks progressing to the judiciary?</i> | <i>91</i> |

TABLE OF CONTENTS

| | |
|---|------------|
| APPENDIX 3 – THE BLACK INCLUSION GROUP SURVEY | 93 |
| Part 1 - Analysis of those who responded | 94 |
| <i>By SBA Membership.....</i> | <i>94</i> |
| <i>By Ethnicity %.....</i> | <i>95</i> |
| <i>By Gender %.....</i> | <i>96</i> |
| <i>By Age %</i> | <i>97</i> |
| Part 2 – Career & Career Progression | 98 |
| <i>Comparison of the ERG and the BRG.....</i> | <i>98</i> |
| <i>Areas of Practice</i> | <i>98</i> |
| <i>Applied for/Appointment to Silk and/or Judicial Appointments.....</i> | <i>99</i> |
| <i>Divergence from original desired areas of practice.....</i> | <i>100</i> |
| Part 3 – Behaviours based on Race and/or Ethnicity | 101 |
| <i>Points to note.....</i> | <i>101</i> |
| <i>Generally.....</i> | <i>102</i> |
| <i>Behaviours as reported by those participants who witnessed and/or experienced them</i> | <i>102</i> |
| <i>The frequency witnessing and/or experiencing such behaviours.....</i> | <i>102</i> |
| <i>The sources/locations of such behaviours (multiple answers were permitted)</i> | <i>103</i> |
| <i>Direct Experience of bias and bullying/harassment based on race or ethnicity by number reporting</i> | <i>103</i> |
| <i>The sources/locations of the direct experience by numbers reporting it (multiple answers were permitted) ..</i> | <i>104</i> |
| <i>Experiencing or Witnessing discrimination – during your pupillage</i> | <i>105</i> |
| <i>Positive & Negative impact on Practice Development & Support with Race/Minority Issues</i> | <i>106</i> |
| Part 4 – Opinions..... | 108 |
| <i>Are there currently discriminatory practices in relation to race and ethnicity in pupillage selection that need addressing?.....</i> | <i>108</i> |
| <i>Is there anything unique about being a Black person at the Bar?</i> | <i>108</i> |
| Notes | 109 |

FOREWORD

FOREWORD

This report on Black Inclusion was commissioned in June 2020 by three specialist bar associations: COMBAR, ChBA and TECBAR (the **SBAs**). We are very grateful to the authors of this report (the **BIG Committee**) for volunteering their time, efforts and energy to carry out this task. We are also really very grateful to all those who have shared their experiences with the BIG Committee, whether through responding to its open survey, by participating in the roundtable discussions, or by providing feedback on discrete issues. Some of those experiences make for distressing reading. We need to hear these voices in order to progress.

The work of the BIG Committee follows, and adds to, the important work of the Bar Council's Race Working Group (the **RWG Report**), which produced its report and recommendations in November 2021 with specific focus on the experience of Black barristers. The measures recommended by the RWG Report are being taken very seriously by stakeholders, including by the three SBAs. Concerted effort and action is already underway across the Bar, including by the SBAs, to tackle inequality faced by barristers and students from particular ethnic backgrounds. A number of the recommendations made by the BIG Committee in this report are already in place in one form or another. Others are in the process of implementation. We encourage all our member sets of chambers to consider carefully what is set out in this Report. We ourselves will do likewise within the remit of the work of the SBAs and keep this under review.

We look forward to the strengthening of a Bar that not only better reflects the make-up of the society in which we all live up and down the country but also allows talent from every corner to obtain pupillage, tenancy and then progress through the profession, without fear of harassment or discrimination. We will work tirelessly with the profession to achieve this.

David Joseph QC, Chair COMBAR

Amanda Hardy QC, Chair Chancery Bar Association

Rachel Ansell QC, Chair TECBAR

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. This report is produced by a committee of 5 practising barristers, the Black Inclusion Group (the “**BIG Committee**”)¹. It was commissioned by 3 Specialist Bar Associations (“**SBAs**”): the Chancery Bar Association (“**ChBA**”), the Commercial Law Bar Association (“**COMBAR**”) and the Technology and Construction Bar Association (“**Tecbar**”). The BIG Committee’s remit was to explore the representation and experience of “**Black**”² (i.e. of African, Caribbean or mixed African/Caribbean heritage) barristers in these specialist areas (“**the Specialist Commercial Bar**”). The BIG Committee gathered extensive evidence: data from the Bar Council and Government; a bespoke questionnaire; and round-table discussions with Black barristers at or aspiring to the Specialist Commercial Bar, at all levels of practice from prospective pupils to senior silks.
2. The BIG Committee investigated outreach, recruitment, retention, progression and the culture of the Bar for Black barristers. The data demonstrates that the representation of Black barristers at the Specialist Commercial Bar falls far below that which would be expected. The Specialist Commercial Bar is failing to attract, recruit and retain Black barristers, as demonstrated by the relatively low success rate of Black applicants for pupillage, the paucity of Black silks and the apparent lack of any full time Black High Court Judges. The outcomes for Black barristers are notably worse than for other ethnic minorities.
3. The substantive evidence gathered through the questionnaires and round-tables deserves careful scrutiny and vividly illustrates some of the cultural hurdles and barriers faced by Black barristers. The evidence gathered by the BIG Committee’s work points to a culture experienced by Black barristers characterised by profound levels of isolation, dislocation and not belonging. The evidence also points to high levels of race and/or ethnicity related behaviours including banter, bullying and/or discrimination/bias. Surprisingly and disappointingly high proportions of those who responded to the survey (of all ethnicities) reported direct experience and/or witnessing and/or awareness of such behaviours. A lack of support particularly from senior barristers and clerks/practice managers was also reported.
4. These problems appear to be more pronounced at the Specialist Commercial Bar than other areas of the Bar, such as the Criminal Bar and the Family Bar, where there is a higher representation of Black barristers.

¹ See Appendix 1 for biographies of the Committee

² This report uses Black as a collective noun to represent any barrister with an African, Caribbean or mixed African/Caribbean heritage. This definition is deliberately wide, and it should be noted that the list of ethnic groups in questionnaires on diversity (e.g. Census) does not always include under the heading “Black” those of mixed heritage. The Committee appreciates this is a diverse group and respects the particular cultural identities of individual barristers.

EXECUTIVE SUMMARY

5. The need to recruit and retain Black talent to the Specialist Commercial Bar is vital to retain the reputation, relevance, standing and success of the Specialist Commercial Bar and London as a centre for the resolution of international commercial disputes.
6. Against this background, the BIG Committee makes the following recommendations to the SBAs and their member chambers, as positive action that can be taken to redress the lack of Black representation.
7. **Outreach:**

RECOMMENDATION 1

Develop online content directed at attracting school pupils and undergraduates to the Specialist Commercial Bar and demonstrating the possibility of a career at the Specialist Commercial Bar for Black individuals, such content must include video and written material showcasing a diversity of barristers, including Black barristers.

RECOMMENDATION 2

Hold annual career events at highly ranked universities, which incorporate a specific agenda to attract Black students. This can be achieved through targeted advertising, through connections with, for example, African Caribbean Societies and similar networks and groups.

RECOMMENDATION 3

Collaborate with at least one organisation, whose aims include reaching Black students, to advertise the Specialist Commercial Bar to students.

8. **Recruitment:**

RECOMMENDATION 4

Together fund at least three annual university scholarships for UK domiciled graduates of Black African, Black Caribbean and mixed heritage intending to practise at the Bar in our practice areas who (a) seek to undertake a taught Masters-level degree course in law at a highly ranked English or Welsh university; and (b) without such funding would otherwise be unable to undertake the course.

EXECUTIVE SUMMARY

RECOMMENDATION 5

Invite member chambers to provide annual data on pupillage applications and outcomes in their practice areas to the Bar Council's Pupillage Gateway, irrespective of whether those chambers do recruit their own pupils through the Pupillage Gateway.

RECOMMENDATION 6

Invite member chambers to: (a) conduct an audit of past pupillage recruitment processes and outcomes, to identify whether Black candidates are being disproportionately deselected at any stage of the application process and if so taking action to redress any imbalance; (b) set pupillage recruitment targets for future recruitment of Black pupils and tenants; and (c) openly report on (a) and (b) to the SBAs.

RECOMMENDATION 7

Support the 10,000 Black Interns programme by consulting with member chambers to provide at least six new places for the next available summer programme.

9. Retention:

RECOMMENDATION 8

Invite member chambers to monitor and measure the allocation of junior briefs from silks, to ensure fair allocation of opportunities (particularly junior briefs), which are likely to enhance career development and progression.

RECOMMENDATION 9

Invite member chambers to provide annual monitoring information to them on income disparities in chambers between white barristers and ethnic minority barristers with comparable Call dates and practice areas, with particular focus on the position of Black practitioners.

RECOMMENDATION 10

Collaborate with existing Black practitioner networks and organisations to provide regular mentoring and sponsorship opportunities for Black juniors with leading practitioners in their practice areas.

EXECUTIVE SUMMARY

RECOMMENDATION 11

Arrange workshops with the editors of each of the principal legal directories concerning the Bar, to address under-representation and other identified disparities affecting ethnic minority barristers being included in the directories, particularly Black practitioners in the SBAs' practice areas.

10. Progression:

RECOMMENDATION 12

Provide focused mentoring programmes and sponsorship opportunities for junior Black practitioners contemplating applications for Queen's Counsel and judicial appointments.

RECOMMENDATION 13

Invite member chambers to establish their own focused mentoring programmes and sponsorship opportunities for their Black junior practitioners contemplating applications for Queen's Counsel and judicial appointments.

RECOMMENDATION 14

Hold annual events, to which representatives of the Judges of the Business and Property Courts are invited to assist in explaining to practitioners the evidence required to support a positive reference for the QC Selection Panel.

11. Culture:

RECOMMENDATION 15

Keep the inclusion of ethnic minority barristers, particularly Black practitioners on the Specialist Commercial Bar's agenda

RECOMMENDATION 16

Facilitate Black practitioners at the Specialist Commercial Bar networking together

RECOMMENDATION 17

Consider when planning all initiatives and events whether there is an opportunity to encourage senior white barristers to engage proactively with supporting the inclusion, retention and progression of Black practitioners.

EXECUTIVE SUMMARY

12. We consider speedy implementation of our recommendations represents an important opportunity for the SBAs, their member chambers and individual practitioners in our practice areas to make substantial progress towards tackling the existing race disparity and under-representation issues that we have examined.

INTRODUCTION AND OBJECTIVES

INTRODUCTION AND OBJECTIVES

13. The BIG Committee is a working group jointly set up by ChBA, COMBAR and TECBAR.

It was formed in the Autumn of 2020.

Its remit is to investigate and issue an advisory report with recommendations on enhancing outreach to and recruitment, retention and progression of ethnic minority barristers, with a focus on Black barristers at the Specialist Commercial Bar.



METHODOLOGY

14. The BIG Committee took a four-pronged approach to its exploration of the representation and experience of Black barristers at, and interested in, the Specialist Commercial Bar. The BIG Committee:
 - sought evidence from the Specialist Commercial Bar itself;
 - held meetings with those involved in inclusion work and projects;
 - discussed the subject with the Bar Council and the Bar Standards Board; and
 - reviewed the available relevant reports and statistics.
15. The evidence gathering took two forms. First, the BIG Committee hosted three confidential round-table meetings involving only Black barristers. Second, an open survey was promoted through the SBAs.
16. The round-table meetings involved 26 barristers, which included three facilitators who were members of the BIG Committee. A commitment was made to confidentiality in relation to the identity of the participants and the attribution of any statements or opinions. Only those at the meeting know who attended and who said what. The participants were invited to consider and discuss particular issues, but the course of their discussions was a matter for them. All participants were asked to confirm their consent to the use of their statements and/or opinions after the meetings. For more information about the methodology and the evidence obtained see Appendix 2.
17. The survey included 38 questions, 5 of which addressed the responders' characteristics or willingness to be contacted. A total of 428 responses were received. It was possible for those responding to undertake the survey more than once and to skip questions. It follows that the number answering any particular question varies significantly. The responses were analysed as a whole and by reference to the responses from those who identified themselves as Black. The survey was not intended to, and could not, provide any reliable statistical analysis of the Specialist Commercial Bar as a whole. Accordingly, it is not put forward for that purpose. However, it does provide another form of snapshot evidence which is wider (because of the numbers involved and the responders are not confined to Black barristers) but has less depth in terms of content than the round-TABLE evidence. A detailed presentation of the evidence obtained can be found at Appendix 3.

METHODOLOGY

18. The BIG Committee held discussions with and received assistance from Sam Mercer, Head of Diversity and Inclusion at the Bar Council and Amit Papat, then the Head of Equality and Access to Justice at the Bar Standards Board. Both made themselves available to discuss their understanding of the position of Black barristers and diversity at the Specialist Commercial Bar. They also shared insights into their current work relating to Race.
19. Harry Matovu QC (Brick Court Chambers) met with the BIG Committee to discuss his work establishing the Charter for Black Talent and the insights it gave on the issues addressed in this report. Johnson Adeyanju and Shelly O’Gilvie of the Bright Network made time to meet the committee and were able to discuss how they work with employers in professional services sectors to increase inclusivity by attracting, recruiting and retaining Black talent. Paulette Mastin, a partner at Reed Smith, and Chair of the Board of Black Solicitors Network and BSN City Group, also gave her time to meet with the Committee and discuss the work of the BSN and in particular the BSN City Group. She spoke about their annual publication, the Diversity League Table and the importance of statistics and reporting data, which made firms more accountable. She also shared the work the BSN does in terms of mentoring and networking, to retain and advance the careers of Black practitioners. Baroness Ruth Hunt also made time to meet with the BIG Committee to discuss culture and its role in creating barriers to recruitment and progression and creating inequality as well as the role of allies in challenging Black exclusion.
20. Throughout its work, the BIG Committee was supported and assisted by the Chairs of the equality and diversity sub-committees of the SBAs: Riaz Hussain QC (TECBAR), Nicola Rushton QC (ChBA) and Ruth Hosking (COMBAR).
21. The BIG Committee also reviewed numerous existing statistics and reports that may be of assistance in its work, including those produced by the BSB, Bar Council, Middle Temple, Northern Circuit, BSN, Interlaw and the Bridge Group. The BIG Committee also looked to the ChBA’s work on the Voices of Women.

OUTREACH

“obviously part of the recruitment [process] is to get more ... black young people who don’t know anything about the Bar to think about the Bar.”³

The Population of England and Wales

22. The 2011 UK Census collected ethnicity data based on 6 broad groups⁴: (1) Asian: Asian or Asian British; (2) Black: Black, Black British, Caribbean or African; (3) Mixed/Multiple Ethnic Groups: White and Black Caribbean, White and Black African, White and Asian, Any other Mixed or multiple ethnic background; (4) White British; (5) White Other; and (6) Other.
23. According to the 2011 census⁵: 3.3% of the population of England and Wales was Black⁶, 7.5% was Asian, 2.2% comprised people of Mixed/Multiple Ethnic Groups⁷, 1.0% was Other Ethnic Groups, 80.5% was White British and 4.4% was Other White.
24. As regards the population of London, which the BIG Committee considered more pertinent to the Specialist Commercial Bar, which is focused in London, the 2011 census⁸ reported: 13.3% was Black; 18.5% was Asian; 5.0% comprised people of Mixed/Multiple ethnic groups; 3.4% comprised Other Ethnic Groups; 44.9% was White British; and 14.9% was White Other.

³ Quote from a round-table participant

⁴ <https://www.ethnicity-facts-figures.service.gov.uk/style-guide/ethnic-groups>

⁵ Source: <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest>

⁶ Black, Black British, Caribbean or African. This does not include those with mixed African/Caribbean heritages, who fall within “Mixed/Multiple ethnic groups” (2.2%) see next foot note.

⁷ White and Black Caribbean; White and Black African, White and Asian, and Any Other Mixed or multiple ethnic background

⁸ Source: <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/regional-ethnic-diversity/latest>

The Bar in England and Wales

25. The Bar Standards Board's ("**the BSB**") report on Diversity at the Bar 2021⁹, has collected data using similar ethnic groups to the UK Census. This reports the following ethnic proportions of practitioners¹⁰ at the Bar in England and Wales:

- Pupils:
 - (i) Black/Black British: 2.9%
 - (ii) Asian/Asian British: 8.6%
 - (iii) White: 75.5%
- Juniors (Non-QCs):
 - (iv) Black/Black British: 3.3%
 - (v) Asian/Asian British: 7.4%
 - (vi) White: 77.5%
- QCs:
 - (vii) Black/Black British: 1.3%
 - (viii) Asian/Asian British: 4.7%
 - (ix) White: 85.4%

Bar Professional Training Course (BPTC)

26. The BSB provided statistical information about the Bar Professional Training Course ("**BPTC**") in a report called *BPTC Key Statistics 2021*. In the course year 2019-20 there were 1,685 students taking the BPTC.¹¹ In 2019-20, 35% of the UK/EU domiciled students who were enrolled on the BPTC reported their ethnicity was Asian, Black or another minority ethnic background. The fall of 5% on the previous year was the lowest rate since 2015-16. The outcomes for all of the cohort of UK/EU domiciled students on the 2019-20 BPTC course were that 52% had passed the course,

⁹ BSB Diversity at the Bar 2021 (January 2022), 4.2 (Ethnicity).

<https://www.barstandardsboard.org.uk/uploads/assets/be522642-160b-433b-af03a910a5636233/BSB-Report-on-Diversity-at-the-Bar-2021.pdf>

¹⁰ 7.5% provided no information/preferred not to say

¹¹ BSB BPTC Key Statistics Report (July 2021).

with the remainder yet to complete the full-time course (as at May 2021).¹² The BPTC was replaced as the vocational training course from 2020-21 by four new routes to becoming a barrister. Those following the same three-stage route as before will take the Barrister Training Course (BTC).

27. The BSB reports that UK BPTC graduates from Asian, Black or another minority ethnic background who were enrolled during the 2015-19 were less likely to have commenced pupillage than BPTC graduates from a White background. For example they examined the outcomes for UK/EU domiciled BPTC graduates with an upper-second class degree and a Very Competent grade on the course, who had enrolled from 2015-19. This demonstrated that there were differential overall outcomes depending on broad ethnic background. 41% of BPTC graduates with a White ethnic background had a commenced pupillage by May 2021; whereas only 23% of BPTC graduates with an Asian, Black or another minority ethnic background had a commenced pupillage by May 2021. These relative differences apply after controlling for the rank of the BPTC graduates' first degree institutions.

Pupillage Gateway (2019-2020): chancery and commercial pupillage applications¹³

28. The Pupillage Gateway is managed by the Bar Council. It is a centralised system for advertising pupillages and managing applications provided by chambers (and other Authorised Education and Training Organisations – “AETOs”). Chambers are not obliged to use the Pupillage Gateway, and the Bar Council reported in August 2021 that **“the Pupillage Gateway is currently used by approximately half of all AETOs at the Bar”**. The BIG Committee are aware that a significant number of Chambers at the Specialist Commercial Bar do not use the Pupillage Gateway, though it is noted that the ChBA encourages the use of the Pupillage Gateway.
29. Thus, the Pupillage Gateway does not hold the data on the total number of pupillages that are offered in each year. The Bar Council through the Pupillage Gateway does hold all the data for chambers who advertise and recruit through it but does not hold outcomes data on those chambers who only advertise through it. However, some more comprehensive outcomes data is available from the Bar Standards Board as to the total number of pupillages which are registered with it each year.
30. The candidate data for all pupillage applications through the Gateway for 2019-2020 records that there were 2,058 applicants overall. Of this overall number, 186 applicants (9%) stated their ethnicity was Black African, Black Caribbean or mixed ethnicity including Black African or Black Caribbean heritage.

¹² BSB BPTC Key Statistics Report (July 2021)

¹³ Application data courtesy of the Bar Council.

31. The candidate data for pupillage applications through the Gateway for Chancery pupillages only records there were 459 applications. Of this number, 31 applicants (6.75%) stated their ethnicity was Black African, Caribbean or mixed ethnicity including Black African or Caribbean heritage.
32. The candidate data for pupillage applications through the gateway for Commercial pupillages only records there were 891 applications. Of this number, 62 applicants (6.96%) stated their ethnicity was Black African, Caribbean or mixed ethnicity including Black African or Caribbean heritage.
33. Thus, it can be seen that numbers and proportions of candidates applying for Chancery and Commercial pupillages of Black African, Caribbean or mixed heritage are substantially higher than the proportions of barristers of that ethnicity practising at the Bar as whole.

Specialist Bar Associations (SBAs)

34. The SBAs publicise and introduce to students opportunities for careers at the Bar in their practice areas in a variety of different ways. Members of the SBAs meet prospective practitioners in a number of different settings, including university law fairs, pupillage fairs, university-organised gatherings, social media communications and, on an individual chambers basis, through mini-pupillages and ad hoc schemes.
35. The Bar Council is also active in promoting the Bar at university law fairs across England and Wales. This scheme was originally set up by COMBAR, and is now supported by COMBAR, ChBA and TECBAR, along with other specialist bar associations and the four Inns of Court. The scheme seeks to ensure outreach to universities based on various equality and diversity criteria.
36. The SBAs do not have separate outreach programmes which focus specifically on promoting careers in their practice areas to Black students. However, the achievement of further diversity is stated to be an important objective of the SBAs and it is noted that the SBAs support outreach programmes set up by third parties. For example, COMBAR is a major supporter of the Charter for Black Talent in Finance and the Professions¹⁴ and Bridging the Bar¹⁵, whose stated aim is to increase the equality of access to opportunities in the legal profession across all underrepresented groups.
37. There is current work by a group of COMBAR chambers providing targeted mentoring, and providing advice and support to under-represented groups, including specifically prospective Black pupils. The TECBAR BAME Network has as one of its stated aims the encouragement and assisting of Black, Asian and other ethnic minority people considering a career at the Technology and Construction Bar through engagement with existing schemes, schools, universities and student bodies. ChBA held an open webinar careers event in October 2020 on Race & Ethnicity at

¹⁴ <https://www.blacktalentcharter.com/>

¹⁵ <https://bridgingthebar.org/>

OUTREACH

the Chancery Bar, providing an opportunity to hear from QCs, junior barristers and offshore practitioners from Asian, Black African, Black Caribbean and other ethnic minority backgrounds at the Chancery Bar about their path to the Bar, the work they undertake and steps that they have taken to succeed at the Bar. SBA representatives are also members of the Bar Council's Race Working ("RWG"). As members of the RWG, they are engaged in examining data, auditing race diversity programmes and identifying positive action to address systemic discrimination at the Bar.

Chambers' and other organisations' initiatives

38. There are a variety of initiatives which have been taken by the Bar Council, the Inns of Court, individual chambers, groups of chambers and other legal practice-related organisations and networks which are engaged wholly or partly in seeking to increase access to the Bar for students and applicants from Black African, Caribbean or mixed heritage. Some of these initiatives are focused on outreach and increasing diversity in Chancery and Commercial areas of practice. In particular, they include the 10,000 Black Interns programme.
39. The Bar Council has various current outreach initiatives targeted at prospective pupils. There is a nationwide Bar Placement Scheme, offering short work-shadowing experience with a barrister to students attending state sixth form and college students who fulfil social mobility criteria. The Bar Council has an E-Mentoring scheme for students in years 12 and 13 at school or college and first year undergraduates. It is an online scheme which aims to give students practical advice and guidance about careers at the Bar, open to students who have attended state school or college in England or Wales. The Bar Council also has a Barristers in Schools and Colleges scheme, where schools, colleges or universities who would like it can request to have a barrister attend to provide practical information, advice and guidance to students about the route to becoming a barrister.
40. The four Inns of Court have outreach events and schemes for students not yet applying for pupillage. We set out a few examples below, which we acknowledge is not a comprehensive review. Gray's Inn held a University Advocacy Day in 2021 for university students and staged introductions to the legal profession and advocacy for year 12 and 13 students. Gray's Inn also have a programme called the Griffin Scholarship where they team up with sixth form students from a particular academy trust (now London and Birmingham) and mentor them for a year. COMBAR runs one session a year on that programme. Inner Temple holds Discovery Days for students aged 16-18 years, to inform them of opportunities at the Bar, including workshops and activities. Inner Temple also holds Insight events around England and Wales, where year 12 and 13 students can meet judges and barristers who talk about their routes to the Bar. Lincoln's Inn hosts an Information Afternoon and Dinner whereby university students are encouraged to hear talks from practitioners and obtain advice about training for the Bar. The students are also invited to dinner at Lincoln's Inn, to have the opportunity to meet barristers and Benchers. Middle Temple holds an annual Open Day, providing discussions, lectures, networking opportunities and

OUTREACH

workshops. Middle Temple also provides Access to the Bar Awards - funded fortnights of work experience and marshalling for undergraduates from disadvantaged backgrounds.

41. We are aware of other initiatives and organisations and networks working for greater inclusion of underrepresented groups at the Bar, including aspiring Black barristers, e.g. Black Barristers' Network, Bridging the Bar, Black Women in Law, BME Legal, Black Men in Law, Charter for Black Talent in Finance and the Professions, 10,000 Black Interns, Mentoring For Underrepresented Groups: A Scheme Run By Commercial Barristers' Chambers, 11 King's Bench Walk scholarship for black students on the BPTC.
42. The various initiatives and schemes are publicised in different ways. Some initiatives are targeted at different ethnic, cultural and other underrepresented groups of intended recipients. As a result, it can be a challenging exercise to acquire and maintain a clear and current understanding of all the activities of all of the programmes, schemes and initiatives carrying out significant work to increase outreach to underrepresented groups at the Bar. Plainly, the work being undertaken is important. However the ability to access information about relevant initiatives and programmes in a straightforward manner is also an important objective.
43. A greater element of co-ordination and aggregation of information is a desirable aim among groups working towards greater inclusion of Black practitioners. The Bar Council's Race Working Group (RWG) is working to be a hub of information on the activities of different organisations, networks and programmes. The RWG is also using its capacities to promote greater liaison between different groups, with one of its aims being to ensure the energies of different groups are not expended on duplicating the work of other organisations and networks operating in the same field.

Round-table discussions issues

44. One of the themes considered by participants in the round-table discussions was the nature and effectiveness of current outreach work by Bar-related organisations, particularly our SBAs, to prospective Black barristers, and what changes might be worth implementing in future.
45. A common observation from participants was that it was particularly striking at the Bar, in comparison to other professional service environments, how few Black barristers there were at the Specialist Commercial Bar.
46. It was also observed by a number of participants that until very recent years there has been quite low levels of professional, organised liaison amongst Black members of the Bar.
47. Commercial law firms begin their outreach to law students, as prospective solicitors, during the academic stage, in the first and second year of university. In order to help students to assess the

OUTREACH

career opportunities at the Bar at that important stage, the view during discussions was that Bar-related organisations like SBAs should increase their outreach to students at that same stage, in order to provide information and interaction on the careers available at the Bar before students commit themselves to a certain career path, in the absence of substantial information about careers as advocates at the Specialist Commercial Bar. At the moment, the activity of the SBAs appears to be limited to attending university law fairs, in association with the Bar Council.

48. Most leading solicitors' firms offer to pay for students undertaking the vocational training stage (GDL and LPC) as well as the practical training stage with their firms. In discussion, it was felt by some that information should be made more easily and comprehensively available to younger undergraduates about the existence of funding and the size of awards and scholarships available for strong candidates through the four Inns of Court and individual chambers for the vocational training stage and during pupillage. The knowledge that there are clear routes to funding during training for the Bar may mean fewer younger undergraduates are put off considering a career at the Bar due to concerns about financial insecurity immediately after graduation from university.
49. As regards outreach to Black students, views were expressed that any presentations or information about the Specialist Commercial Bar would be enhanced if in fact Black members of the profession at established Specialist Commercial chambers continue to participate and were more visible in outreach activities. The message that some Black barristers have been able to establish careers at the Specialist Commercial Bar is more strongly demonstrated and reinforced to students where some of those practitioners participate in outreach events.
50. It was observed that it is important to ensure that aspiring Black prospective entrants to Specialist Commercial Bar can see and appreciate that they will not be alone. It was observed that in the Arts and other contexts the use of appropriate group photographs, for example, has had a powerful effect in addressing assumptions that Black entrants to demanding and competitive professions and employment sectors will always have to operate as the sole or one of the few Black practitioners in the field.
51. However, in the course of discussions, it was carefully observed that when one is considering questions of outreach, particularly on a chambers' basis, it is important to bear in mind that Black barristers may also decide to practice at the Criminal Bar and the Family Bar, in part because their research into Specialist Commercial chambers shows them that significant number of the established sets of chambers have very few or no Black members. This state of affairs may cause prospective pupils to question whether such chambers see a man or woman of Black African, Caribbean or mixed heritage as a future Specialist Commercial barrister. A participant followed up their contribution on this point by observing that they could not recall when their own chambers last took on a Black pupil, and their chambers had not recruited any new Black members of chambers for a number of years.

OUTREACH

52. In addition to concerns that feelings of isolation or dislocation may be experienced by a sole Black practitioner or a small number of Black practitioners at the Chancery and Commercial Bar where the other barristers are predominantly White, one participant observed in discussion that there may be an intersection between issues of race and social class to consider. They perceived that Black practitioners entering the profession as pupils were likely to come from a working-class social background.
53. However, other contributors emphasized that their own experience, coming from a relatively affluent background, was that there were hurdles at the Bar for Black practitioners, irrespective of your socio-economic background and it was a mistake to elide issues of Black inclusion with issues associated with poor socio-economic backgrounds.
54. Some perceived that substantially, but not exclusively, established Specialist Commercial practitioners are from middle-class managerial or professional social backgrounds. Participants in our discussions described first-hand experiences of Black prospective entrants to the Bar ruling themselves out of pursuing a career at the Specialist Commercial Bar because they perceived that they would not feel a sense of belonging in chambers and would not be viewed as a potential member of chambers.
55. As well as visibility and direct contact with established Black practitioners, a consensus developed around the notion that more detailed work could be done to introduce and familiarise Black law students with particular areas of practice at the Specialist Commercial Bar in the earlier undergraduate years, prior to most having an opportunity to take mini-pupillages. Some, not necessarily all, undergraduates from this underrepresented ethnic group may not have an understanding in their early years at university of what a career at the Bar in trusts, banking, international trade, construction and engineering, pensions, tax and so on might look like, and whether it is something that would appeal to them. It was also considered that some more moves towards providing appropriate information, advice and points of contact for older school-aged students about careers at the Specialist Commercial Bar is appropriate in order to widen inclusion amongst students of Black African, Caribbean or mixed heritage. It was considered by some participants that giving pre-university students access to information would also be an opportune point at which to reach out to underrepresented groups in schools at a point in time which may help them to shape their university institution, course and subject choices, too.
56. In addition, some participants drew specifically on their direct mentoring and development experiences to suggest that working with school-aged students (years 12 and 13) from underrepresented groups, including those from Black backgrounds, is a valuable and effective way of making broader and earlier interventions to encourage students to think about the possibility of a career at the Bar.

OUTREACH

57. The discussion between participants also considered the possibility that attention should be given to addressing Black women and men in other professions and careers outside the law, who have all the fundamental skills required to become an established practitioner at the Specialist Commercial Bar. There are examples of practitioners who have taken exactly this course. Practitioners have joined and established themselves at the Specialist Commercial Bar having had a previous career in consulting, construction, or finance, for example.
58. There is a question of where Bar-related organisations may most effectively focus their outreach. Thoughts were expressed that current focus and targeting may reflect past experience and knowledge of the universities from which successful past pupils had graduated. The BSB reports that when controlling for BPTC overall grade and first degree classification, those BPTC graduates between 2015 and 2019 who commenced pupillage as of March 2021 who took a first degree from universities in *The Times* and *The Sunday Times* Good University Guide Top 10 in the UK were more likely to have commenced pupillage, compared to graduates of the next forty universities in those rankings.¹⁶ This might suggest that there is a distinct group of universities whose graduates have an established a track-record of obtaining pupillages. This in turn may reflect the pattern of outreach activity by Bar-related organisations.
59. Some participants questioned whether re-focusing outreach to improve the inclusion of Black prospective pupils requires leading Specialist Commercial chambers to re-consider their understanding of merit. It does appear that there is a strong bias towards recruiting pupils who are graduates of Oxford and Cambridge universities. If a degree from either of these institutions is regarded as a very strong marker of merit, this may present a significant structural impediment to increasing the sort of inclusion we are concerned with here, because each year only very small numbers of Black undergraduates matriculate at those universities in aggregate in all subject areas.¹⁷
60. This may be addressed in a number of ways.
61. First, there is a need to widen the outreach to other to redress the balance given this underrepresentation of Black students at institutions such as Oxford and Cambridge.
62. In the course of discussions it was recognised that in terms of outreach, the issue of which universities to engage with and to what extent is extremely difficult in some senses. The practice at the Specialist Commercial Bar regularly requires practitioners to deal with complicated and difficult concepts and facts. A high level of intellectual ability is required; often the universities are a proxy which helps to bring the appropriate candidates and chambers together. Also, identifying

¹⁶ BSB BPTC Key Statistics Report (July 2021), 4.A.10.

¹⁷ For example, at Cambridge University in 2020 of the 3,122 undergraduate acceptances by UK applicants there were 210 (6.7%) who declared a Black African, Caribbean and mixed heritage ethnicity. In Law, the number of acceptances from Black applicants was 26 and the number of acceptances from Black mixed heritage undergraduates was not more than 17. University of Cambridge, Undergraduate Admissions Statistics 2020 cycle.

OUTREACH

prospective Black pupils is difficult because the number of candidates in a large field is relatively small. A concern was expressed that spreading university outreach too thinly would be ineffective because not enough good work could be done with any particular institution. Engaging with universities in a focused way may be the best use of finite resources in seeking to widen inclusion for Black prospective pupils at the Chancery and Commercial Bar.

63. Secondly, there is a need to focus on targeting the very small numbers of Black undergraduates at the highest ranking universities, such as Oxford and Cambridge, who (on the basis of current practice) appear to be most likely to satisfy the academic criteria of chambers at the Specialist Commercial Bar.
64. An insight offered during the discussions was to consider seeking to participate more creatively in outreach events at universities. For example, perspectives were offered to the effect that working with African-Caribbean Societies at universities on outreach activities would be a positive and effective development, as this may be an alternative means of reaching Black law and non-law undergraduates and graduate students who may be considering careers at the Specialist Commercial Bar.
65. Thirdly, it was recognised that in order to improve their chances of obtaining pupillage, an increasing number of students are taking post graduate degrees at higher ranking universities than the institution where they undertook their undergraduate degree. Assisting Black students to take post-graduate degrees could therefore assist in redressing this issue.
66. The SBAs and other Bar-related organisations already produce material to outline different areas of work under the umbrella of the Specialist Commercial Bar. It would seem appropriate to review the current available resources, and to consider both the depth and breadth of the content and the form in which it is presented. The SBAs may consider developing more online interactive and video content outlining different areas of Chancery and Commercial work, which accurately shows the presence of Black practitioners at the Specialist Commercial Bar. This could partly be undertaken in collaboration with other organisations which are currently working to reach well-qualified Black undergraduates and graduates interested in starting professional service careers, including in commercial law, e.g., the Bright Network.

Outreach: recommendations

67. Prospective pupils and the practitioners undertaking outreach work with Black African, Caribbean and mixed-race heritage students should have access to reliable contemporaneous data on the ethnic diversity of the Specialist Commercial Bar from the Bar Standards Board, supplemented by information from the SBAs.

OUTREACH

68. Likewise, prospective pupils and the practitioners undertaking outreach work with Black students should have access to reliable contemporaneous data on applicants who have most recently obtained an offer of pupillage in Specialist Commercial practice areas from the Bar Council and Chambers.
69. The SBAs should develop an introduction to the Specialist Commercial Bar programme directed at year 12 and 13 school students and first year undergraduates (in any subject area), to provide information, advice and an opportunity to discuss the available careers in those practice areas with practising barristers. The programme should be directed at giving students from underrepresented groups, particularly Black students, an opportunity to engage directly with practitioners about their own careers and the career possibilities at the Bar.
70. The SBAs should identify an appropriate number of universities with higher proportions of law and non-law students from Black backgrounds, to engage with them to introduce career opportunities at the Specialist Commercial Bar. Outreach should be directed in particular towards first-year law undergraduates and early years non-law undergraduates. As part of this focused outreach programme, the SBAs should also look to develop contacts with the African and Caribbean Societies at the selected universities, in order to devise outreach activities with them which reach as many Black students as possible.
71. As part of the material produced by SBAs to inform prospective applicants about careers at the Specialist Commercial Bar, they should take further steps to state and show that there is a small but significant number of established Black practitioners in these practice areas.
72. The SBAs should look to liaise with the Bar Council's Race Working Group, the Inns of Court and other organisations and networks working to increase Black inclusion at the Bar (including, where appropriate, organisations that are not specifically Bar-related), in order to reduce the prospect of duplication of work, to share experiences of running different programmes and initiatives, and to collaborate where that appears to be beneficial and viable.
73. We feel that these recommendations are practicably achievable in reasonably short order. If the SBAs accept these recommendations, we recommend that each SBA prepares and publishes a report within six months of acceptance indicating whether the recommendations have been implemented, and where an accepted recommendation has not been implemented, the reasons why it has not been implemented.

RECRUITMENT

“... the basic starting point is that it is important for I think all professionals to try and reflect the society that they are in ... I think there has to be an appreciation that there is talent within the black community. I think that is - for me, that is the starting point. There is talent. There are exceptional people, many exceptional people within the black community, who are not being given a fair [shot] in my opinion. I mean I think that if they start from that perspective, an appreciation of that, an acknowledgement of that, it should automatically follow, in my view, that there should be widespread support ... for that mission in what we would like to consider to be a progressive profession, because I think that is how the Bar wants to see itself, or wants to be seen, and should be seen. And without diversity, and without a push to encourage talent from diverse backgrounds, you know, you are doing nothing more than [giving] lip service to that goal.”¹⁸

Introduction

74. Our focus here is on the route by which most barristers join the Specialist Commercial Bar, which is by recruitment as pupils who then have the opportunity to practise as junior tenants in those practice areas following successful completion of pupillage. It is features of this recruitment process into pupillage that we shall look at in this section of our report.

Pupillage numbers

75. Between about 450 to 550 pupil barristers usually begin pupillage in England and Wales each year.¹⁹ In 2019/20 there were 404 first six months pupillages and 522 second six months pupillages registered with the BSB.²⁰

Black/Black British numbers

76. According to the 2011 UK Census, people of Black/Black British background make up 3.3% of the population of England and Wales and 13.3% of the population of London.²¹
77. As at 2021, according to the BSB 3.3% of the Bar is of Black/Black British background. 3.5% of junior barristers are of Black/Black British background (1.89% Black African background, 1.37%

¹⁸ Quote from a round-table participant

¹⁹ Trends in retention and demographics at the Bar: 1990-2020 (BSB), para.61.

²⁰ Pupillage Statistics, (BSB).

²¹ See paragraph 22ff. above.

RECRUITMENT

Black Caribbean background and 0.25% other Black background). 3.1% of all pupils are of Black/Black British background (down from 5.3% the previous year).²²

Pupillage Gateway

78. The Bar Council published a substantial report on the Pupillage Gateway in August 2021.²³ It is stated in the Bar Council report that there is an intention to consider further statistical analysis on the correlation between success rates for pupillage applicants and protected characteristics and socio-economic indicators.²⁴
79. The earliest point at which applicants can apply for pupillage is when they are in the academic year in which they will complete a qualifying law degree or the Graduate Diploma in Law (“GDL”). An applicant for pupillage who has completed the vocational stage must usually apply for pupillage within five years of having completed the vocational stage, subject to BSB waivers.
80. The Bar Council reports that in the period from November 2020 to May 2021, there were 176 AETOs advertising 406 pupillages. Of those, there were 101 AETOs advertising 246 pupillages who also used the Pupillage Gateway for recruitment.²⁵
81. The effect of the Covid-19 pandemic appears to have been uneven for recruitment in different practice areas. In 2020/21 compared to 2019/20, the Bar Council reported that the number of pupillages offered in most practice areas decreased; however, the Commercial bar saw no decrease and there was a 6% increase in the number of Chancery pupillages offered. There has been a recovery in the number of pupillages advertised in all practice areas in 2021/22 (as of August 2021 the number was 453, up from 421 the previous year).
82. The Bar Council through the Pupillage Gateway has data on success rates amongst its recruiting chambers and other AETOs for pupillage offers in 2020/21. It is recognised that limited conclusions can be drawn from the data because matters such as applicants’ higher education institution, degree class and BPTC grades have not been controlled for in that data.²⁶ Also, where

²² Diversity at the Bar 2021 (Bar Standards Board), p.16.

²³ Pupillage Gateway: Report 2021 (Bar Council)

²⁴ Pupillage Gateway: Report 2021, p.20, para.18 (footnote 33).

²⁵ The Pupillage Gateway closed for the current round of recruitment on February 9, 2022. 499 pupillages were advertised. 309 of those pupillage advertisements were from Gateway sets. 202 AETOs advertised pupillages in the current recruitment round. (“Bar Talk”, Bar Council on February 24, 2022.)

²⁶ The BPTC Key Statistics 2021 (BSB) found that when controlling for degree class and BPTC grade, UK/EU BPTC graduates from Black and other ethnic minority backgrounds who enrolled from 2015-2019 on the BPTC were less likely to have commenced pupillage than those from White backgrounds. An example given in the report is that of UK/EU domiciled BPTC graduates with an upper-second class degree and Very Competent overall BPTC grade, 41% of those from White backgrounds had commenced pupillage, compared to around 17% of the Black/Black British cohort with the same degree class/BPTC grade (see table 4.A.7.1).

RECRUITMENT

there are fewer than five individuals in a protected characteristics group the data has been suppressed by the Bar Council to prevent identification. Also, in some instances either higher numbers or zero may be suppressed where numbers less than five may otherwise be identifiable. We set out below a selection of the Bar Council data from the Pupillage Gateway for the November 2020 to May 2021 recruitment round which is relevant to our investigation.

Table A1. Pupillage applications: overall absolute numbers table.

| Ethnicity | Applied | 1 st round | 2 nd round | Offer made |
|--|---------|-----------------------|-----------------------|------------|
| White - British/English/Welsh/Northern Irish/Scottish | 1300 | 651 | 307 | 132 |
| Black/African/Caribbean/Black - African | 154 | 36 | 10 | <5 |
| Black/African/Caribbean/Black British - Caribbean | 69 | 22 | 6 | <5 |
| Black/African/Caribbean/Black – Any other Black Background | 16 | 6 | <5 | 0 |
| Mixed – White and Black Caribbean | 14 | 14 | 9 | <5 |
| Mixed – White and Black African | 154 | 6 | <5 | <5 |

RECRUITMENT

Table A2. Pupillage applications: overall percentage table.

| Ethnicity | Applied (%) | 1 st round (%) | 2 nd round (%) | Offer made (%) |
|--|-------------|---------------------------|---------------------------|----------------|
| White - British/English/Welsh/Northern Irish/Scottish | 46.9 | 55.8 | 59.0 | 60.8 |
| Black/African/Caribbean/Black - African | 5.6 | 3.1 | 1.9 | <2.3 |
| Black/African/Caribbean/Black British - Caribbean | 2.5 | 1.9 | 1.2 | <2.3 |
| Black/African/Caribbean/Black – Any other Black Background | 0.6 | 0.5 | <0.9 | 0.0 |
| Mixed – White and Black Caribbean | 0.5 | 1.2 | 1.7 | <2.3 |
| Mixed – White and Black African | 5.6 | 0.5 | <0.9 | <2.3 |

Table B1. Pupillage applications: Chancery absolute numbers table.

| Ethnicity | Applied | 1 st round | 2 nd round | Offer made |
|--|---------|-----------------------|-----------------------|------------|
| White - British/English/Welsh/Northern Irish/Scottish | 818 | 224 | 68 | 35 |
| Black/African/Caribbean/Black - African | 84 | 7 | <5 | 0 |
| Black/African/Caribbean/Black British - Caribbean | 36 | <5 | <5 | <5 |
| Black/African/Caribbean/Black – Any other Black Background | 9 | 0 | 0 | 0 |
| Mixed – White and Black Caribbean | 19 | <5 | <5 | <5 |
| Mixed – White and Black African | 8 | <5 | <5 | <5 |

RECRUITMENT

Table B2. Pupillage applications: Chancery percentage table.

| Ethnicity | Applied (%) | 1 st round (%) | 2 nd round (%) | Offer made (%) |
|--|-------------|---------------------------|---------------------------|----------------|
| White - British/English/Welsh/Northern Irish/Scottish | 48.4 | 57.7 | 54.4 | 56.5 |
| Black/African/Caribbean/Black - African | 5.0 | 1.8 | <4.0 | 0.0 |
| Black/African/Caribbean/Black British - Caribbean | 2.1 | 1.3 | <4.0 | <8.1% |
| Black/African/Caribbean/Black – Any other Black Background | 0.5 | 0.0 | 0.0 | 0.0 |
| Mixed – White and Black Caribbean | 1.1 | <1.3 | <4.0 | <8.1 |
| Mixed – White and Black African | 0.5 | <1.3 | <4.0 | <8.1 |

Table C1. Pupillage applications: Commercial absolute numbers table.

| Ethnicity | Applied | 1 st round | 2 nd round | Offer made |
|--|---------|-----------------------|-----------------------|------------|
| White - British/English/Welsh/Northern Irish/Scottish | 706 | 243 | 88 | 36 |
| Black/African/Caribbean/Black - African | 76 | 11 | <5 | <5 |
| Black/African/Caribbean/Black British - Caribbean | 31 | 5 | <5 | <5 |
| Black/African/Caribbean/Black – Any other Black Background | 9 | <5 | 0 | 0 |
| Mixed – White and Black Caribbean | 14 | 5 | <5 | <5 |
| Mixed – White and Black African | 6 | <5 | <5 | <5 |

RECRUITMENT

Table C2. Pupillage applications: Commercial percentage table.

| Ethnicity | Applied (%) | 1 st round (%) | 2 nd round (%) | Offer made (%) |
|--|-------------|---------------------------|---------------------------|----------------|
| White - British/English/Welsh/Northern Irish/Scottish | 46.0 | 53.4 | 53.7 | 51.4 |
| Black/African/Caribbean/Black - African | 5.0 | 2.4 | <3.0 | <7.1 |
| Black/African/Caribbean/Black British - Caribbean | 2.0 | 1.1 | <3.0 | <7.1 |
| Black/African/Caribbean/Black – Any other Black Background | 0.6 | <1.1 | 0 | 0 |
| Mixed – White and Black Caribbean | 0.9 | 1.1 | <3.0 | <7.1 |
| Mixed – White and Black African | 0.4 | <1.1 | <3.0 | <7.1 |

83. In 2020/21, for applications for Chancery pupillages, 4.3% of White candidates received an offer of pupillage compared to 3.1% of all ethnic minority candidates. In 2020/21, for applications for Commercial pupillages, 5.1% of White candidates received an offer of pupillage compared to 4.0% of all ethnic minority candidates.²⁷
84. The data for Black applicants for pupillage places set out above demonstrates that the overall proportions of applicants seeking pupillage are higher than the proportions of people from those ethnicities in the population of England and Wales, but lower than the proportion of those ethnicities in the population of London.
85. The data also demonstrates that in terms of outcomes, there are markedly small numbers of Black applicants obtaining pupillage offers at the end of the process. The nature of some of the Bar Council suppressed data in the outcomes for 2020/21 means that the precise picture cannot be stated here. However, it is clear from the data that there are material numbers of Black applicants seeking pupillage places at Specialist Commercial chambers. This fact indicates that there is a relatively high degree of awareness and desire to secure the opportunities that exist amongst Black students, but only a modest number of prospective pupils from this ethnic background are chosen when they step forward and apply.
86. The BIG Committee is grateful to the Bar Council for providing us with access to data in relation to the Pupillage Gateway outcomes for 2019/20. The detailed data we have seen for the previous annual round of pupillage applications to chambers who recruit through the Pupillage Gateway

²⁷ Pupillage Gateway: Report, August 2021 (Bar Council), paras.21.2 & 21.3.

RECRUITMENT

demonstrates that outcomes for pupillage applications made by Black applicants was even more frustrating and dejecting in that year than they are for the most recent year for which data is available.

87. We welcome the indication from the Bar Council that it intends in future to consider further statistical analysis of pupillage application outcomes by reference to protected characteristics, socio-economic backgrounds, and other material factors. It is also necessary to produce more informative data where it can be controlled for the applicants' higher education institutions, degree classes and BPTC grades. (See e.g., BPTC Key Statistics 2021, table 4.A.10)

Chambers' and other stakeholders' initiatives

88. The BIG Committee is aware from the experience of its own members and familiarity with the practices of other sets in our practice areas that a number of Specialist Commercial chambers have incorporated into their recruitment processes measures, which aim to move closer to achieving an objective assessment of candidates, even when their achievements do not appear readily comparable on the written page. The practice of assessing written applications on a "blind" basis, which ensures an assessor does not have personal identity and other selected information for the candidate under consideration is a familiar practice. Rare Recruitment is a well-known organisation which has a contextual recruitment system, which seeks to review a candidate's application in the context of their socio-economic background. For example, the system considers a candidate's achievement at A-Level in the context of the performance of their school, so as to assess whether objectively a candidate has over-achieved.²⁸ The BIG Committee's remit did not include assessing the efficacy of these practices, but the disparity in outcomes for Black candidates indicates a need to review and address the fairness of recruitment practices across the Bar and at the Specialist Commercial Bar.
89. We consider that continued active and effective steps to reduce subjectivity and unfairness in the recruitment of pupil barristers through the adoption of reliable and verifiable methods, with the assistance of professional recruiters, is essential to address the disparity in success between White prospective pupils and applicants for pupillage from Black backgrounds.

Round-table discussions

90. During the round-table discussions, participants were invited to give their views on the question of improving recruitment of Black pupils to practise at the Specialist Commercial Bar.
91. Participants offered their opinions from a range of perspectives. All participants had experienced the recruitment process. In addition, several participants had acquired a good deal of experience

²⁸ Currently, 13 Specialist Commercial chambers are listed as clients of Rare Recruitment on its web site.

RECRUITMENT

in assessing applications for pupillage and interviewing prospective pupil barristers for places in their own chambers.²⁹

92. It was observed that the practice of many chambers is to attempt to exercise objective assessment of written applications by concealing any identifying information which may disclose an applicant's personal characteristics which are not relevant for selection, e.g. ethnicity. Also, some participants were satisfied that they and their colleagues tried to adopt the highest and fairest standards when interviewing pupillage candidates. However, it was felt there was a strong degree of affinity or similarity bias³⁰ which had a material effect on the selection process. A brief survey of the websites of a number of leading Specialist Commercial sets disclose, where stated, that a significant proportion of their members are graduates of Oxford and/or Cambridge universities. An occurrence in interviews which was discussed was that a candidate from the same university as a member of the interview panel formed an instant rapport with a panel member, based on them having graduated from the same college or having engaged in an activity, sport or interest unique to or synonymous with their university. This sort of occurrence is likely to shift the interaction favourably towards the interviewee, based on affinity or similarity bias. Therefore, while the recruitment processes may appear to strive for fairness and objectivity, if one measures by outcomes it appears that (with fairly rare and notable exceptions) Specialist Commercial chambers appear to be consistently recruiting pupils in the image and with the biography of some of their existing members on a recurring basis, with little ethnic diversity, particularly as regards candidates of Black heritage.
93. A related point during discussion was that it is right that a number of the leading sets in these practice areas are making public statements about their resolve to ensure their businesses have a diverse membership and that they value inclusivity. However, it is considered that the process probably should be infused with greater transparency and accountability to assist in the achievement of the stated objectives. This transparency and accountability may perhaps be achieved by involving the Bar Council through the Race Working Group assisting chambers and the BSB as regulator in examining the steps chambers are taking to achieve their objectives. Additionally, or alternatively, chambers could publicly set out measurable short-term and medium-term processes and challenging targets to achieve greater ethnic diversity and review their progress at agreed intervals by reflecting and reporting publicly.
94. Chambers which state their commitment to diversity and inclusion should also inform interested parties of the steps they are taking to achieve those objectives. Where chambers have audited their recruitment processes and outcomes and set targets for improvement, for example, this

²⁹ We recognise that there is a cohort of applicants who participated in the pupillage recruitment process without success. As a practical matter, we have found this cohort hard to reach for the purpose of participating in our investigations.

³⁰ Bar Council, Fair Recruitment Guide, section 1/part 4 (bias in recruitment): "Affinity bias – the tendency to warm up to people who are like you or familiar to you. In recruitment this leads to unfairly favouring some applicants and can mean diverse applicants are disadvantaged."

RECRUITMENT

type of authentic activity may be more likely to encourage aspirant pupils to apply to them, perhaps irrespective of considerations about the current degree of ethnic diversity among their membership and staff.

Recruitment: audit and implement positive action measures on race

95. The BSB's Anti-Racist Statement (November 2020) expects all chambers to audit and analyse their available data regarding their practices and outcomes, including recruitment. If the outcomes upon analysis do not demonstrate effective promotion of diversity and inclusion in chambers, the expectation is that chambers will design and implement positive action measures. There is published help and guidance available from the Bar Council.³¹ In the area of recruitment, the BSB specifically noted that targeted advertisements by chambers to recruit Black and other ethnic minority pupils and members is a good example of a positive action measure. Where appropriate, and consistent with evidence of past outcomes, a positive action measure could be aimed at specific groups, e.g. prospective pupils from Black backgrounds interested in joining chambers in Specialist Commercial areas. The BSB stated it will launch a thematic review of the profession's response to the Anti-Racist Statement in the business year 2021/22. The BSB stated it will ask what actions have been taken in response to the statement.

Recruitment: recommendations

96. It is of high importance that the data concerning annual applications for pupillage and recruitment of pupil barristers is comprehensive and publicly available as a single source. The BSB data and the Bar Council Pupillage Gateway data are not identical; neither data source is comprehensive. In particular the Pupillage Gateway data does not include all pupillage applicants and does not include all recruitment decisions by all chambers/AETOs recruiting pupil barristers. We recommend that all chambers/AETOs should be required annually to provide the Pupillage Gateway with data on all applications and recruitment decisions in order that the Bar Council can work with comprehensive data for the benefit of all chambers and other stakeholders.
97. Chambers should carry out a race equality audit within the next eight months with particular focus on past recruitment processes and outcomes, and their contribution to promoting race diversity and inclusion within chambers. Chambers should review in particular how many Black candidates were eliminated at each stage of their recruitment processes in the past five years and the reasons for it. The information from audits should inform the positive action measures chambers decide to take.

³¹ Bar Council Equality & Diversity Guides: Positive Action Guide for Chambers (2020) & The Short Guide to Positive Action (2020) and Bar Council Fair Recruitment Guide. The Bar Council's November 2021 Race at the Bar report resulted in the production of positive action recommendations for the entire Bar and a race action plan template as a guide for chambers. The Bar Council's Race Working Group has also developed an introductory training course, designed to raise awareness of race equality issues and promote anti-racism at the Bar – "Introduction to race training: starting a conversation about race in chambers."

RECRUITMENT

98. In order to improve transparency, accountability and effectiveness of their positive action measures, chambers should publish online their challenging recruitment targets (not quotas), set out their plans and timetables to meet those targets, and schedule reviews of plan implementation, outcomes and provide analysis as to whether their plans are succeeding, or what plan adjustments are required to achieve the agreed targets. Chambers should share information about their work and progress with the relevant SBAs.
99. In addition to chambers publishing their own positive action measures, the SBAs should also host online their member chambers' current plan and most recent review of their positive action measures for diversity and inclusion in a dedicated area on their websites, accessible to non-members and members alike.
100. The SBAs should proactively collaborate with existing groups³² already supporting aspirant pupil barristers of Black heritage seeking pupillages at the Specialist Commercial Bar, to hold joint sessions offering practical guidance and support on completing written pupillage applications and preparing for pupillage interviews.
101. The SBAs should commit to support the 10,000 Black Interns programme by agreeing to arrange funded work experience in collaboration with their member chambers and the existing groups and networks (see above) for aspirant pupil barristers of Black heritage for the remainder of the current five-year timeframe of the programme. The SBAs should consult member chambers in order to create at least six new places for the next available summer programme of internships (2023).
102. The SBAs should together fund at least three annual university scholarships for UK domiciled graduates of Black African, Black Caribbean and mixed heritage intending to practise at the Bar in our practice areas who (a) seek to undertake a taught Masters-level degree course in law at a highly ranked English or Welsh university; and (b) without such funding would otherwise be unable to undertake the course. In our experience, the opportunity to obtain higher level law qualifications from highly ranked institution does assist prospective pupils to secure pupillages in chambers.

³² e.g., Black Barristers' Network, Bridging the Bar, Black Women In Law, BME Legal, Black Men In Law

RETENTION & PROGRESSION

RETENTION & PROGRESSION

“And there is this standard of “black excellence”. If you are going to come to the Commercial Bar and you have a certain degree of melanin, you need to be exceptional. You cannot just be good. You need to be absolutely phenomenal and even then you are going to have to work four times as hard.”³³

103. The next theme addressed by the round-table discussions was “Retention and Progression”. The aim was to explore the experience of Black barristers in progressing their careers towards applying for and obtaining silk and judicial appointment and whether there were any issues of race that might affect an individual’s ambitions or successful application for silk or judicial appointment.
104. The statistics published by both the Bar Standards Board (BSB) and the UK Government indicate that there is a significant under-representation of Black QCs and judges. The data published does not specifically focus on the practice areas of the SBAs. However, the committee’s own experience is that there is less QC representation at the Specialist Commercial Bar and with only a few notable exceptions, almost no representation in the judicial roles in these areas of the Bar, namely deputy High Court Judge and above.

BSB data on Black QCs

105. The latest BSB report is “Diversity at the Bar 2020” published in January 2021³⁴. The Report indicates a particular lack of QCs from Black/Black British – African³⁵ ethnic backgrounds, even when compared with other minority ethnic backgrounds. The Executive Summary highlights the following with regards to Ethnicity:

“There is still a disparity between the overall percentage of barristers from minority ethnic backgrounds across the profession (14.1%), and the percentage of QCs (8.8%) from minority ethnic backgrounds. This may reflect the historically lower percentage of such barristers entering the profession but may also suggest barriers to progression for practitioners from minority ethnic backgrounds.

There are some notable differences when further disaggregating by ethnic group. There was a year on year increase in the overall proportion of Asian/Asian British barristers of 0.3pp; Black/Black British barristers of 0.05pp; of Mixed/Multiple ethnic group barristers

³³ Quote from a round-table participant

³⁴ <https://www.barstandardsboard.org.uk/uploads/assets/88edd1b1-0edc-4635-9a3dc9497db06972/BSB-Report-on-Diversity-at-the-Bar-2020.pdf>

³⁵ By definition, these statistics may not include all barristers of mixed African or Caribbean Heritage

RETENTION & PROGRESSION

of 0.2pp; and a decrease year on year in the overall proportion of White barristers of 0.5pp.

When excluding those that have not provided information, there is a slightly greater proportion of Asian/Asian British practitioners at the Bar compared to the proportion of Asian/Asian British individuals in the UK working age population (7.5% vs 5.6%), and the same can be said for those from Mixed/Multiple ethnic backgrounds (3.3% vs 1.5%). By contrast, there is a slightly smaller proportion of those from Black/Black British backgrounds (3.2% vs 3.4%), and a greater relative underrepresentation for those from other ethnic groups (1.2% vs 2.8%).

There is also a greater disparity in the proportion of all non-QCs from Black/ Black British backgrounds compared to the proportion of all QCs from the same background, with the disparity being particularly high for those of Black/Black British – African ethnic backgrounds.”

(underlining added)

106. The section on the BSB report entitled “Black/Black British” reported:

“– Around 3.2 per cent of the Bar, 5.3 per cent of pupils, 3.4 per cent of non-QCs, and 1.3 per cent of QCs are from a Black/Black British background. This compares to around 3.4 per cent of the UK working age population.

– The proportion of Black/Black British barristers at the Bar has increased by around 0.3pp since 2015 and by 0.05pp compared to December 2019.

Of the 3.43% of non-QCs and 1.29% of QCs from a Black/Black British background:

– 1.84% of non-QCs and 0.45% of QCs are from Black/Black British – African backgrounds;

– 1.32% of all non-QCs and 0.62% of all QCs are from a Black/Black British – Caribbean background; and

– 0.27% of all non-QCs and 0.22% of all QCs are from any other Black background.”

107. In real numbers, the report found that there were 17 Black/Black British pupils, 481 Non-QCs and 23 QCs. The BSB Report does not indicate which of these 23 QCs are at the Specialist Commercial Bar. However, the BIG Committee’s own research indicates that the majority of these QCs are not at the Specialist Commercial Bar.

RETENTION & PROGRESSION

Government data on Black Judges

108. The Government's latest publication on diversity at the judiciary is entitled "Diversity of the judiciary: Legal professions, new appointment and current post-holders – 2021 Statistics" published 15 July 2021³⁶ ("**the Diversity of the Judiciary Report**"). The Diversity of the Judiciary Report represents a statistical analysis of the available data. It is not presented in terms of actual numbers, but only percentages. Further, it looks at all judicial appointments to Tribunals as well as Courts. From the perspective of the Specialist Commercial Bar, the disparities which are of particular significance relate to (1) Judicial Appointment to the Courts and (2) Judicial Appointment to Courts of higher level i.e. the High Court and above.

109. The Diversity of the Judiciary Report includes the following Main Points:

In the past three years of legal exercises, Asian, Black, Mixed ethnicity and Other ethnic minority individuals were over-represented in applications for judicial appointment, but Asian, Black and Other ethnic minority candidates had lower recommendation rates than White candidates

From the eligible pool, recommendation rates for Asian, Black and Other ethnic minorities candidate groups were an estimated 36%, 73% and 44% **lower** respectively compared to White candidates. All of these estimates were statistically significant.

The proportion of Asian and Mixed ethnicity individuals in the judiciary has increased since 2014, while the proportion of Black individuals has stayed the same in that time. Proportions of ethnic minorities remain lower in senior court roles

As at 1 April 2021, 5% of judges were from Asian backgrounds, 1% were from Black backgrounds, 2% were from Mixed ethnic backgrounds and 1% were from Other ethnic minority backgrounds. The proportion of ethnic minorities is lower for senior court appointments (4% for High Court and above) compared to others.

(underlining added)

110. The Diversity of the Judiciary Report includes a lot of data that has been analysed and presented by statisticians. The raw numbers are presented separately³⁷. This is particularly significant with regard to any analysis that attempts to focus on Black judges. The Diversity of the Judiciary Report

³⁶ <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2021-statistics/diversity-of-the-judiciary-2021-statistics-report>

³⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002374/diversity-of-the-judiciary-2021-data-tables.ods

RETENTION & PROGRESSION

often comments that the numbers of Black applicants and appointments are too low to be statistically significant. This explanation is often given for grouping all Black, Asian and minority ethnic applicants/ appointments together. In this regard, the Statistician's Comment in section 2 of the Diversity of the Judiciary Report is particularly significant:

"The proportion of judges who identify as Black, Asian or minority ethnic has also continued its gradual increase from 7% in 2014 to 10% of judges at 1 April 2021. However, within this gradual increase of ethnic minority judges there are different trends depending on the ethnic group. Most of the increase has been in judges of Asian and Mixed ethnicity, while the proportion of Black judges has stayed at 1% during that time.

...

Aggregated data across all legal exercises between April 2018 and April 2021 demonstrates varying disparities and outcomes for the different ethnic groups. For example, the recommendation rates from the eligible pool for Asian candidates were an estimated 36% lower than for White candidates, while rates for Black candidates were an estimated 73% lower than for White candidates. In contrast, recommendation rates from the eligible pool for mixed ethnicity candidates were an estimated 82% higher than for White candidates. All of these rate differences are statistically significant, meaning that we can be confident that there are real differences between ethnicity groups in terms of rates of progression through to the judiciary. These findings demonstrate the importance of looking at ethnicity more closely, as the experiences of different ethnicity groups within the Black, Asian and minority ethnic categorisation are not the same. Looking solely at the broad group can mask underlying disparities."

(underlining added)

111. The Diversity of the Judiciary Report's main tool for comparing the relative success of different groups is the "Relative Rate Index" or "RRI".

112. For Judicial Appointments from 2018 to 2021 (tribunals and courts), its findings in relation to Black or Black British applications were as follows:

“Black or Black British

Across all legal exercises that closed between 1 April 2018 and 31 March 2021, overall:

- ***Black or Black British candidates constituted 4% of applications and 1% of recommendations; this compares with an expected 3% of recommendations if these were in line with the eligible pool***
- ***Recommendation rates from the eligible pool for Black candidates were an estimated 73% lower than for White candidates (shown by the estimated RRI of 0.27). This estimate is statistically significant, meaning that we can be confident that there is a real difference between Black and White candidate progression rates (Figure 16)***
- ***The shortlisting rate from application for Black candidates (10%) was less than a third that of White candidates (36%)***
- ***The recommendation rate from the shortlist stage for Black candidates (26%) was just over half that for White candidates (45%).***
- ***The recommendation rate from application for Black candidates (3%) was around a fifth of that of White candidates (16%), with the differences at both shortlisting and recommendation stages compounding the overall effect (Figure 15).***

When considering Black candidates relative to White candidates, from the eligible pool to recommendation:

- ***No individual exercise types had high enough numbers of Black recommended candidates for an RRI covering all stages to be reliably calculated. An RRI is only available for Black candidates across all legal exercises combined and is described above.***

Considering the representation percentages at different stages for Black candidates:

- ***For most exercise types considered, representation was higher at the application stage than the eligible pool, apart from Recorder where it was the same.***
- ***Again for all exercise types considered, representation among recommended candidates was lower than among all applications.”***

113. The Diversity of the Judiciary Report also considered Judges in post as at 1 April 2021. Its findings were that there was only 1% Black or Black British Judges. The same 1% figure applied to both court judges and tribunal judges. There is a predominance of white men in the judiciary and whilst representation of Asian or Asian British judges is increasing, the representation of Black or Black British Judges has remained the same since 2014. This is recorded in the following section:

“At 1 April 2021, 5% of judges were from Asian backgrounds, 1% were from Black backgrounds, 2% were from Mixed ethnic backgrounds and 1% were from Other ethnic minority backgrounds. Black, Asian and minority ethnic individuals together constituted 10% of judges.” (see footnote 40 below)

114. The representation of ethnic minorities varied with appointment type, and was lower for senior court posts (4% for High Court and above) though there was no clear pattern with regards to seniority overall. Individuals from Asian and Mixed ethnic backgrounds were represented at a higher level among new entrants than those in post and leavers from the judiciary. Individuals from Black backgrounds had consistent representation across new entrants, in post judges and leavers.

Judges in post

115. As at 1 April 2021, of all judges in post for courts and tribunals combined:

- 5% were Asian or Asian British - a rise of 2 percentage points since 2014 (which is equivalent to a more than 50% increase in representation)
- 1% were Black or Black British - no change since 2014
- 2% were Mixed ethnicity - 1 percentage point higher than in 2014 (which is equivalent to a doubling of representation in that time)
- 1% were individuals with ethnicity other than Asian, Black, Mixed or White - no change since 2014

116. Diversity of the Judiciary Report concludes the figures of Black judges were so small as not to be statistically significant on their own. The report therefore groups together Black, Asian and minority ethnic groups into a single category. The relevant section of the report finds:

“Patterns by type of appointment

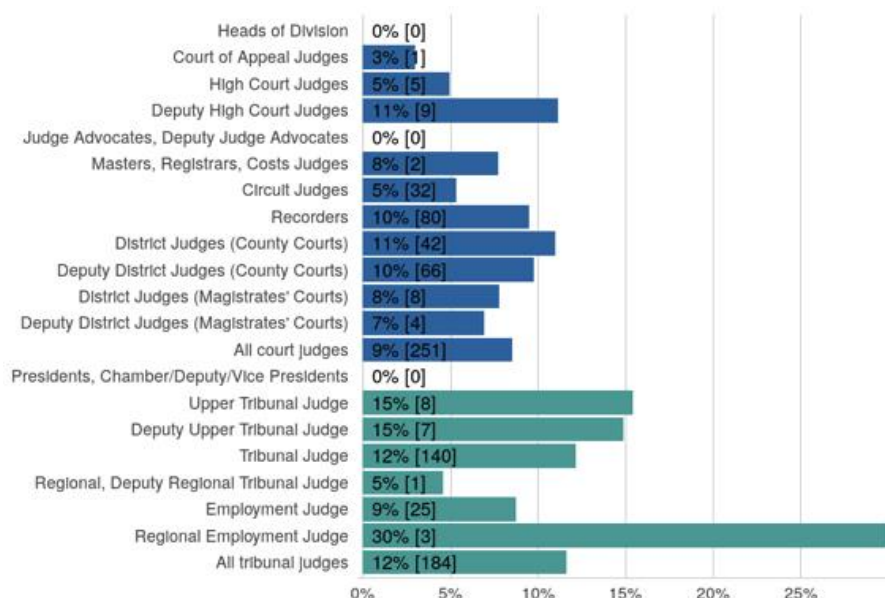
Due to small numbers for individual ethnicity groups within the Black, Asian and minority ethnic category, here we only consider the aggregated category overall.

RETENTION & PROGRESSION

In the courts, representation of Black, Asian and minority ethnic individuals was fairly high for Deputy High Court Judges (Figure 21) but otherwise generally lower for the more senior appointments (e.g. Court of Appeal, High Court and Circuit Judge) with 4% of judges in the High Court or above being Black, Asian and minority ethnic backgrounds.

Black, Asian and minority ethnic representation was higher among judges of the Upper Tribunal than tribunals overall, though there were no Black, Asian and minority ethnic judges whose primary appointment was in the most senior tribunal positions (presidents).

Figure 21: representation of Black, Asian and minority ethnic individuals among court and tribunal judges by appointment, 1 April 2021. The representation of Black, Asian and minority ethnic individuals varied with appointment-type, but there was no clear pattern with regards to seniority.”



117. The significance of the colours in Figure 21 is not explained. However, the overall picture is that the representation of Black, Asian and minority ethnic judges among the higher posts is disproportionately low (compared to the population, the Bar or the legal profession). There are:

- 9 Deputy High Court Judges
- 5 High Court Judges
- 1 Court of Appeal Judge
- No Heads of Division or Judges in the Supreme Court.

RETENTION & PROGRESSION

The Diversity of the Judiciary Report does not state how many of these judges are of Black heritage. However, the accompanying statistics show the following raw data:

| Appointment | Total | Asian or Asian British | Black or Black British | Mixed | Other Ethnic Group | Total Black, Asian and minority ethnic (BAME) | White | % BAME ² |
|---|--------------|---------------------------------|---------------------------------|------------|--------------------------|---|--------------|------------------------|
| Heads of Division | 5 | - | - | - | - | - | 5 | * |
| Court of Appeal Judges | 37 | 1 | - | - | - | 1 | 33 | 3 |
| High Court Judges | 105 | 3 | - | 1 | 1 | 5 | 96 | 5 |
| Deputy High Court Judges | 96 | 1 | 3 | 2 | 3 | 9 | 72 | 11 |
| Judge Advocates, Deputy Judge Advocates | 6 | - | - | - | - | - | 5 | * |
| Masters, Registrars, Costs Judges ⁴ | 29 | 1 | - | 1 | - | 2 | 24 | 8 |
| Deputy Masters, Deputy Registrars, Deputy Costs Judges ⁴ | 41 | - | - | 2 | - | 2 | 21 | ~ |
| Circuit Judges ⁴ | 660 | 16 | 4 | 7 | 5 | 32 | 572 | 5 |
| Recorders | 987 | 38 | 11 | 25 | 6 | 80 | 762 | 10 |
| District Judges (County Courts) | 403 | 24 | 6 | 9 | 3 | 42 | 340 | 11 |
| Deputy District Judges (County Courts) | 753 | 40 | 8 | 13 | 5 | 66 | 610 | 10 |
| District Judges (Magistrates' Courts) | 118 | 6 | - | 2 | - | 8 | 95 | 8 |
| Deputy District Judges (Magistrates' Courts) | 74 | 2 | 1 | - | 1 | 4 | 54 | 7 |
| All court judges | 3,314 | 132 | 33 | 62 | 24 | 251 | 2,689 | 9 |
| Presidents, Chamber Presidents, Deputy and Vice Presidents ¹² | 14 | - | - | - | - | - | 14 | 0 |
| Upper Tribunal Judge | 57 | 3 | - | 4 | 1 | 8 | 44 | 15 |
| Deputy Upper Tribunal Judge | 50 | 6 | - | 1 | - | 7 | 40 | 15 |
| Tribunal Judge | 1,239 | 74 | 21 | 27 | 18 | 140 | 1,013 | 12 |
| Regional, Deputy Regional Tribunal Judge | 30 | - | - | - | 1 | 1 | 21 | 5 |
| Circuit Judges ⁴ | 2 | - | - | - | - | - | 2 | * |
| Employment Judge | 309 | 10 | 8 | 5 | 2 | 25 | 261 | 9 |
| Regional Employment Judge | 10 | - | 1 | 2 | - | 3 | 7 | 30 |
| All tribunal judges | 1,711 | 93 | 30 | 39 | 22 | 184 | 1,402 | 12 |
| All judges (courts + tribunals) | 5,025 | 225 | 63 | 101 | 46 | 435 | 4,091 | 10 |
| Tribunal member - medical | 1,191 | 242 | 20 | 24 | 36 | 322 | 807 | 29 |
| Tribunal member - disability | 378 | 11 | 5 | 3 | 4 | 23 | 340 | 6 |
| Tribunal member - other ⁷ | 1,565 | 83 | 46 | 10 | 14 | 153 | 1,203 | 11 |
| All tribunal members | 3,134 | 336 | 71 | 37 | 54 | 498 | 2,350 | 17 |
| All judges and non-legal members | 4,845 | 429 | 101 | 76 | 76 | 682 | 3,752 | 15 |

RETENTION & PROGRESSION

118. Since the publication of the Diversity of the Judiciary Report there have been further appointments of Deputy High Court Judges³⁸ and High Court Judges³⁹. These appointments are not believed to have increased the representation of Black, African, Caribbean or mixed heritage judges.

Judicial initiatives

119. The BIG Committee notes that in there is substantial activity with regard to increasing the judicial diversity and has considered:
- the Courts and Tribunals Judiciary “Judicial Diversity and Inclusion Strategy 2020-2025”⁴⁰;
 - the JAC’s Diversity Strategy⁴¹ and Targeted Outreach and Research Team⁴²; and
 - the Pre-Application Judicial Education Programme⁴³.

The substantive evidence on retention & progression from the Round-tables

120. The participants at the Round-tables were asked for their views on retention and progression of Black barristers at the Specialist Commercial Bar and they were asked for their personal experiences and intentions regarding the progression of their careers. It is relevant to note in this section of the report that of the 24 participants: 2 held part-time judicial posts; 3 had been appointed QC; and there were number of senior juniors.

Overt racism as a barrier to progression

121. There were instances when participants in the discussions reported experiencing overt racism and of overt racism having a direct impact on their practice and progression. One participant stated:

“I think we are all super intelligent people. But I find with this topic people tend to be quite obtuse. When there is systematic and structural racism you are going to have problems and people with my physical features are going to be less prevalent in the professional. So I have experienced direct racism and the “softer” stuff, as you might want to call it. ... I am the only person of colour in every single case that I am working on

³⁸ <https://www.judiciary.uk/announcements/section-94-deputy-high-court-judges/>

³⁹ <https://judicialappointments.gov.uk/what-it-is-like-to-be-a-judge/high-court-judges-2021/>

⁴⁰ <https://www.judiciary.uk/wp-content/uploads/2020/11/Judicial-Diversity-and-Incluision-Strategy-2020-2025.pdf>

⁴¹ <https://judicialappointments.gov.uk/diversity-strategy-including-outreach/>

⁴² <https://judicialappointments.gov.uk/targeted-outreach-and-research-team/>

⁴³ <https://www.judiciary.uk/diversity/pre-application-judicial-education-programme-paje/>

RETENTION & PROGRESSION

at the moment, and there is something to be said for improving recruitment practices and making them fairer. Retention, role modelling. ”

122. Another participant commented:

“... I mean, I’ve been a victim of racism in the other sense, that I was told on two occasions as a junior that I had been rejected as a potential candidate for a brief because I was black. In one case, it was a Greek shipping owner who had a case and I was told by my clerk, who was very apologetic, that my name was not going forward because the solicitor thought that the Greek shipping owner would not want a black person. And another case was more blatant, where the client said, “I don’t want that person.” ... That was express, overt. Who knows how often unconsciously might just prefer to go for John Smith rather than [Q] or me or anybody else.”

123. Another commentator stated as follows:

“... So, I’ve had clients, I’ve had solicitors basically share their racist views with me, seemingly in ignorance of my own background. And so I am fully aware that racism exists in terms of-- you know, I am fully aware that in terms of the views of solicitors, in terms of clients and lay clients that these racist views are out there, because it’s clear to me if obviously I have a solicitor who is sharing with me the various groups that he hates in society or just, well, expressing racist views, ... I actually had a client once who in a mediation said to me that he found it really, really objectionable that there was now such a large number of mixed-race people in London. ...

...

... I’ve had barristers expressing views to me which I consider to be pretty racist and I can only imagine these views are expressed to me because they are not—are not aware of my own ethnic background. ...”

124. A further participant alluded to a survey carried out by the Black Barristers Network⁴⁴:

“But I should comment that the BBN did do a survey to - you know, I think 100 black barristers responded, which from my recollection - or their recollection, I am actually looking at it right now - certainly more than 50 per cent of barristers who were surveyed on that test either thought that their race did negatively affect their allocation or work, or might have done. So whilst my experience might not - whilst I may not be able to pinpoint to anything personally, I know that certainly lots of other black barristers have, or think they might have been able to.”

⁴⁴ Page 15 lines 27 – 33.

125. In addition to the obvious examples cited above, participants also made reference to instances where they suspected that race influenced decisions affecting their practice and the distribution of work, but the acts were not sufficiently overt to allow the conduct to be categorised as racism. One of the commentators commented that⁴⁵:

"I agree. I mean, generally, you know, maybe it is a mixture of luck or naivete, but I don't think in terms of allocation of work I have felt anything with respect to race. I mean, there are obviously times where you think you are perfect for a case and you don't get it but, you know-- and sometimes I think that there is occasionally a lack of explanation and perhaps it is just because the clerks have not received an explanation and, you know, I do wonder about-- you know, it is probably not feasible for an explanation to be provided to all the four people that were put forward that did not actually get the case. But I do agree about allocation in terms of-- I mean, everything that [B] has just said, I was nodding because that kind of thing, you know, resonates with me. And, you know, in both ways. I mean, I recently did a case with a Silk for the first time, and, you know, a fellow junior made a comment to me that, you know, they were glad that that Silk was working-- ultimately, you know, through-- reading between the lines, they were saying: "I am glad that that Silk is working with somebody who isn't like a young white male, young posh white male". You know, that is ultimately what they were saying. I have had other instances where people were like: "Okay, well, I have never worked with those people", and I think that, you know, we have a very significant overlap, and I have expressed interest in that area and I have known they have a lot of groups where they meet, juniors. ..."

126. On this same theme of the distribution of work, another participant commented that:

"... If you are light and bright you will get more work, because visually you are more appealing and you fit better. In a Technology and Construction Court, or in a Commercial Court in a Chancery Bar it is just easier, and most of my clients do not look like me – although they are trying to do better."

127. Another participant commented about their experience of opponents challenging their ethics in Court saying as follows:

"I also had a consistent experience, maybe it has gone away now, but at the beginning of practice of people I appeared against for the first time, sub silentio in their submissions relying upon the idea that Mr [Name] must be misleading you in some way. That is from other advocates. And it happened too often, and I am too fastidious about being precise with the court and not misleading in any way for it to have come from nowhere. And I think that came from colour-- used to come from colour."

⁴⁵ Meeting 1 page 22 lines 1 – 17.

RETENTION & PROGRESSION

128. In the same meeting another participant commented in respect of the reaction of some members of the bench as follows:

"...I experience quite often as a junior, and still sometimes experience, going to court and particularly in front of District Judges, and I think them just being slightly surprised when I open my mouth and speak as I do. And I just sometimes just get a feeling that they – and I don't think it actually manifests itself in terms of affecting their reasoning or their decision-making, but I do sometimes feel that judges are sometimes just ever so slightly surprised to see a young black barrister speaking and, you know hopefully making sense and making good points."

129. Along similar lines, another participant had this to say about his clerks and fellow barristers and the impact of race on their practice⁴⁶:

"So, the sooner you realise that, you know, you have virtually got to be your own rainmaker, then you learn to depend less on them. But the difficulty again is that the more you then achieve generating on your own feet you probably attract resentment."

And you see that resentment to do with your race?

I struggle to find what else to put it to, because clearly I realised quite early on that if nothing is going to come from the Clerks' Room I'm going to have to do it myself."

...

-- then you are wondering what that barrier is. I'm not ---- The discrimination is probably not blatant, but it's subtle and is effective."

130. An issue which arose during the discussions with the participants was the reluctance of individuals to complain even when they have been the subject of discriminatory acts whether in chambers or from solicitors or the bench. There was a marked reluctance to make use of any established complaints procedure due to the belief that being seen as a "troublemaker" would have a detrimental effect on career progression.

131. There was discussion of this issue in Meeting 2:

"Does anyone have any ... experience of any reporting of (inaudible) in race/bias allegations in Chambers, or generally?"

X: I have chaired one and it was not a black complainant, but I have chaired an inquiry, investigation. Subsequently the complainant left Chambers and we were not able to

⁴⁶ Page 10 lines 10 – 21.

RETENTION & PROGRESSION

continue to with it. But I suspect, from the rest of everybody in this group not responding, that I am right in thinking that no one knows here knows of anyone, or has themselves raised any complaints that are associated with race at the Bar. I suspect that that - because it is very unusual for anyone to put their head above the parapet like that and complain about things. If I am wrong, I would be interested to hear about it. But I do not know of any black member of the Bar making a complaint and suggesting that they have been treated unfairly on the grounds of race.

Y: I do actually, honestly.

Z: ... I do too, and generally it has not ended well, and generally the process ends without a conclusion. And I think in the two cases that I know of, both the complainants left the Chambers where the complaints arose. And so realistically I think people are very conscious that if their complaints are raised it can make their position in their Chambers, rightly or wrongly, pretty difficult to hang on to, and so that is - if people are worried about raising their heads above the parapet, I would say that is a rational response to empirical evidence; albeit my sample is small."

132. Another participant commented that:

"And the third thing I would say, as regards to complaints I would never, ever complain irrespective of whatever experience I would have, because I would like to remain in my career at the Bar – and I am not mad – because I know, I am fully aware of just quite how prejudicial it would be and how harmful it would be to do so."

133. Another participant said:

"--who said, 'We weren't going to ask that question,' it was discouraging, okay. So what would I say to somebody else in that situation? If it sits well with you to make that complaint, fine. But be aware of the ramifications. As [X] has indicated, it could potentially ruin, you know, your career or put you in the spotlight, so to speak. So I do not have the answer to that but ----"

134. A third participant said:

"And unfortunately – and I think this possibly is along the lines of something that [X] might have mentioned – not rocking the boat sometimes seems like the best way to remain on the right path; you know, progressing, to progress within the profession. So I do not tend to rock the boat. I do not have that many reasons to want to rock the boat personally. But I think – you know I do not think I have been held back in that respect."

RETENTION & PROGRESSION

135. The evidence from the round-table discussions supports a conclusion that overt racism plays a part in the professional lives of Black barristers and it may have an impact on hindering progression. However, without more focused specialist research it is difficult to quantify the extent and impact of such conduct. Furthermore, as will be discussed below, the evidence from the round-tables is that a more subtle and structural form of racism has a more direct and pernicious impact on the progression of Black barristers.

Structural barriers to progression

136. On the evidence structural barriers appear to have a more significant impact on practice and progression than overt racism. The evidence from the discussions at the meetings was that there were three categories of structural barriers: institutional barriers; clerking/work allocation; and mentorship.

Institutional barriers

137. A number of participants alluded to the impact of institutional bias or the idea that the Specialist Commercial Bar was not a natural environment for Black people in their practice and progression. One participant commented as follows :

“... I think there are some cultural practices in some parts of the Bar that have equivalent effect. So I guess I am talking from personal experience that I think these practices of sledging, going from room to your opponent’s room, enclosed areas, narrow areas of the Bar where you are against people in chambers all the time, and telling them how shit their case is, and then telling everybody else, when they appear against you and you win, that your own-- that that person then says their case was shit all along and that’s why they lost. People who will express views on your ability without ever being against you or seeing you in court, happens.”

138. Another participant commented:

“- But in ordinary times there is that going down to the pub, going for a drink, etc., etc., etc. That can be challenging particularly - there are certain establishments that barristers like to go to, particularly in London, that are not as welcoming to some people from certain backgrounds compared to others, and just knowing how to navigate those environments in the best way and having support. As [X] says, also from external people, because we do not have enough [support], would be great.”

RETENTION & PROGRESSION

139. Participants also alluded to other forms of institutional barriers to the progression of Black barristers in commercial practice. A participant commented that:

“And there is this standard of “black excellence.” If you are going to come to the Commercial Bar and you have a certain degree of melanin, you need to be exceptional. You cannot just be good. You need to be absolutely phenomenal and even then you are going to have to work four times as hard. So there is something to be said about this kind of “Oxbridge bias,” and what does merit look like, and getting engagement from senior practitioners as well. Not those - not people of colour but those who - all the people I work with, they are directing where the juicy work is going; these QCs that have been in the game for over 35, 40 years. ...”

140. A major institutional barrier which was referenced by a number of participants was the profound sense of isolation experienced by Black practitioners at the Specialist Commercial Bar. This isolation resulted from the absence of a large cohort of peers and the consequent lack of an informal social network. This lack of a supportive network is related to the third form of structural barrier viz. the lack of mentorship, but it is a separate and identifiable barrier.

141. There were a number of comments addressing this issue:

“... have not really spoken about being black at the Bar, save for with a couple of friends who are also black and at the Bar I think this group is a great next step ...”

“... I have very little kind of interaction with barristers generally at the moment, let alone barristers in a similar field to me or black barristers. ...”

“... I, like you all, had very little interaction with my fellow black members of the Bar except people I studied with both at Bar school and at university, until about two or three years ago – And it struck me that I knew very little about that activity until then, and I learned from there and started to make a point of reaching out to people on issues, and I was astonished at various things along the way: ...”

“... My experience is similar to those of you, albeit you are slightly younger than me, which is that I had a small network of black barristers who I would know socially, and we might talk about things in an ad hoc way. I started practice more than 20 years ago. I, rightly or wrongly, felt inhibited about my peers at chambers seeing me reaching out to other black barristers in my initial years of practice. And so I did not get involved in any kind of formal organisation to try and give support, reassurance and just have a good time with other people with the same ethnic and cultural influences. ...”

“... I said earlier, I had not spoken to that many other black barristers about being a black barrister, ...”

“I will take this one. I really think – and it goes back to when you come to the Bar and then kind of what you were discussing about how you felt when you entered into the profession – I really doubt we are at the stage where the support that you best need as a black member of the Bar can be in Chambers, because there are not enough black people in Chambers.

...And I just think, being realistic, what we need now is collaboration and the joining up of the various black people in various spaces to provide external support. There are a number of reasons for it. But I mean one of the headline ones is this whole issue of, “Can I raise race as an issue in my organisation? And what is the outcome going to be for me? And do I even want to do that? Do I want to spend my time doing that when it is so competitive and I need to be focused on what I am trying to achieve?” And I hear this from students all the time, and most of the younger people who are coming through, they have realised that speaking to the one other black person, if there is one in my organisation, who also have the same worries and concerns as me and is subject to the same pressures and drive as me, is not going to be as helpful as if there are 40 or 50 black, young barristers across all of the Chambers who are all talking, who all have a WhatsApp group, who all connect on LinkedIn. So I definitely think it is cross organisation.”

Clerking/Work allocation

142. Issues concerning clerking and the allocation of work were a major topic of discussion at the round-tables. In relation to discrimination on the basis of race, as opposed to other forms of discrimination, a number of participants had positive comments regarding their experience of clerking and the impact on their practice and progression. In the first meeting one participant commented as follows:

“The other thing is that I am very confident that you don’t get that kind of bias from our clerks, though I am not so sure that that is true in relation to sex, for instance; that is a lot easier for women not to be getting [stereotypically male subject matter] work and be getting cases to do with [stereotypically female subject matter], or something like that, which has been vocally dealt with in our chambers.”

143. In the second meeting a participant also expressed positive views regarding the attitude of their clerks to racial bias:

“So our clerks have been hammered with, you know, equality and diversity for years and years and years, and they are actually really good at making sure that when somebody calls in that they are given - there is no particular barrister; that is what I mean. The issue with asking a particular barrister, as [L] said, is when you ask for that barrister you want that barrister for whatever reason, and it may be because you have worked with them before, you liked the way they were with the clients, you know.

RETENTION & PROGRESSION

But there are times where solicitors will call in because they want a particular barrister because of the way they look or the way they might sound, or where they have gone to university, and our clerks are really switched on in making sure that whatever they are given is a mixed group both in terms of race and in terms of sex. And I was----

F: Has that worked, do you think?

Yeah, yeah, it actually works very well in our Chambers.

But the reason I am explaining is this that it is possible for your clerks to be trained in a way that is - to make sure that they are putting out work to everyone in an equal way, both in terms of sex and gender, and they have gone to training, they have gone to - all of them have gone to training. They speak to the barristers very often about it. We have talks about it. We have equality and diversity. Our committee is constantly reminding them of this. So it is possible and it does work. But I think it is just a question of, I think, moving away from that "old school" clerking where the clerk does what they want and nobody tells them what to do basically.

And we found, one of the things that works for us, is actually getting the junior people in because they are slightly more modern in their thinking. So, there we go."

144. Another participant commented as follows:

"Well I mean it is difficult really trying to sort of - almost being a person who is listening to everybody without saying, "You should do something about that," because what [X] says is very refreshing as to how they currently operate. But at [Chambers] we have an Equality Diversity Officer who is - I mean it is such a big job, but one of the things she is absolutely passionate about is work allocation, and the clerks have to report the number of opportunities they have put forward, each barrister has been put forward for. So they can say, you know, a barrister has been put forward for five opportunities this month, and so if someone is put forward for nothing then obviously that is going to raise a question. ..."

145. There were however also a number of negative comments from participants regarding clerking and the allocation of work. A particular source of concern was the opacity surrounding the marketing of Black barristers and the allocation of work. In the first meeting a participant commented:

"... But, anyway, from my first month of pupillage my heart was set on construction, and I got tenancy, but we were a very mixed set and there were five of us who did pupillage and they were going to take on one/two. -- And the other-- my co-tenant did not want to do construction and he made that very clear. But every construction case that came in, obviously construction is at the Commercial end of chambers and so more lucrative, he

got offered it first, and it was not til a Silk joined chambers who started preferring me as his junior to get construction work. So probably, with hindsight, I am thinking: "Well, why did the clerks prefer this other guy to me when he stated he absolutely said he did not want to do construction? Why did it take this other Silk to come in from outside chambers for me to suddenly get construction work?" And when I look back, it could have been because I was a woman. It could have been because I was black. It could have been that the clients were being offered both of us and did not choose me. So it is difficult to tell, but I wonder whether anyone else has any experiences that you think do relate to race or biases or what you might perceive to be unfair allocation of work, for whatever reason, which means perhaps you do not get the choice of work you want - Commercial, Chancery, Construction."

146. Another participant commented that⁴⁷:

"I must say I don't think I have ever known an occasion where I have got the work that I wanted to get without, effectively, a massive uphill struggle. Never. Assumptions are immediately made every single time. ..."

147. The issue was also discussed at the second meeting:

"But also just looking at working with lots of - I have worked with lots of different law firms and there is a piece of work to be done with the Law Society in ensuring that when they are instructing people, that they think about diversity and inclusion when instructing people so that people at the Bar can have the career development that they quite rightly deserve.

...

And then also training for clerks. I have had dealings with clerks who have just blocked me from instructing ----

F: Oh really? I am aghast.

--or working with certain people when I have wanted to, and when I have said I want to work with -- there is one person of colour, and because the world is so small I will not say any more, that I wanted to instruct and work with and their clerks presented me with a white candidate and said that the person was unavailable, even though I know that they were available, and it is a pandemic and I wanted to ensure that they had some work and we could do something really good together. So there is something to be said about talking to the Clerks Institute about antiracist training and how to implement that, and how to support people during their practice when they enter practice as well.

⁴⁷ Quote from a round-table participant

...

Yeah, I have never had clerks, in the areas that I have put forward, any diverse candidate ever, and that is in all my experience. So currently all of the other barristers that I work with on a day to day basis, and the work is highly lucrative, are all white and have all attended - in fact I am the only person who has not attended Oxbridge. Yes, in all of my work actually at the moment, over the past 18 months."

148. Another correspondent made the following comments, specifically in relation to clerking:

"--if you are not able to earn a decent living. So that is - and I completely agree that that is a massive starting point, and I actually I really agree with [X] about - we call them Practice Managers - but clerking, because it goes back to [X]'s point. You know, we have got to look at clerking and practice management and who traditionally does these jobs and why it is so limited, because until that starts changing it does not - you know, you can do a lot of bias training, etc., but as I said that is ironing out kinks. That does not make it an objective, or wholly objective process. So I think you need more people who are different, who are in the room doing these sorts of - in the clerk's room when allocation is happening, when calls are being taken.

...

... But I do think it is about having the criteria set up from the outset so that clerks have to evidence base why people are being put forward for things. So it is working it all out in advance so that there is a structure they have to plug in and can be asked about later, so you have got a hope of making sure that there is some sort of rotation with the way work is being offered; and that is before you even get to Silk work and Junior work and (inaudible – over speaking)."⁴⁸

149. In one meeting a participant commented on some of the difficulties in identifying unfair allocation of work:

"... One of the difficulties that we have found in chambers, and I suspect this is reflected elsewhere because I have discussed it on numerous occasions with those doing diversity training, issues of confidentiality in determining whether or not there has been fair allocation. Because if one is doing a monitoring programme, one barrister winds up monitoring what others are receiving and not receiving. ..."

⁴⁸ Quote from a round-table participant

RETENTION & PROGRESSION

150. Another participant added:

“... I think in terms of allocation and retention, obviously, they go together, and there seems to be seems to be a sort of holy triangle between silks, clerks and solicitors how work is allocated and you never quite know where it breaks down. I mean, certainly, when I first started, I had no idea about marketing. No-one took me aside and said, “Look, this is what you’ve got to do.” What I saw people doing was taking solicitors out and getting them really, really drunk and then somehow wheedling a brief out of them. (inaudible). I think we’ve moved on from there, from that position, since. It’s a bit more professional. I only really got to understand how to market myself by actually being made to do it. ... But I found that that was a really good way of promoting myself, particularly amongst [Type] lawyers, many of whom were also black. That did not always translate to work in the Clerks’ Room. Although we had a black senior clerk, I didn’t have the words for it then, but I think I do now, and it’s something that we, if we’re all truthful to ourselves, probably understand and have experienced, there’s a degree of self-negation, we all need to be kind of (inaudible) to one degree or another. So, although he was senior clerk and could make decisions, he wasn’t allowed to make a decision. So he always had an eye over his shoulder, making sure that the silk was approving where the work went. So, I would perhaps start a case and then find it had been shifted over to somebody else for the appeal or what have you, or the same solicitor who was regularly giving me work, when something really juicy came in I’d find out that somebody younger than myself was doing it.”

151. In the same meeting a participant said as follows:

“Then the second point, and I think this goes off what [X] was saying, is not really-- not fully understanding how it is the clerks sell you. And the reason I think that’s an issue is because if you don’t quite understand what it is the clerks are saying about you and don’t really feel in a position that you can ask, like, that’s an appropriate question to ask. And it’s not always clear how-- what you can do or what you can change to get more of the work that you want to be doing and to push your practice in the direction you want and I’m about to have a practice management meeting soon and still always in that process for me, what are the questions you can ask and what are the ones that you can’t? For me, those are the two points that really resonate for me when I think about my own progression.”

152. The participants commented on the absence of diversity in the clerks’ room and the impact that this has on their practice and progression:

“... The question really is what is it that, if you like, the blacks can do to break into clerking, because irrespective of what you say and do, one thing that is unfortunate at the

RETENTION & PROGRESSION

bar, as [X] did say, when you are coming into the bar you are coming in marginally naïve, without knowing that you're going into business, that you've got to prepare to market yourself and you are throwing your entire career into the hands of a clerk, who might take a liking to you and therefore choose to sell you and therefore you get instructions, or otherwise. Now, if you have people like you sitting in the Clerks' Room, the likelihood is that they may think about you when work comes in. ..."

153. Finally, a participant in the third meeting commented:

"... At this primary stage, we largely—most of us of any degree of seniority of practice, would have had the obstacles of race. Even when it's not explicit, we know that it's implicit. The question is how can we begin to organise ourselves and begin to bring a degree of influence in the Clerks' Room? Because that's really where decision are made. Barristers are trained not to be in the frontline of taking instructions. ..."

Mentorship

154. From the evidence, participants in the round-table discussions identified the lack of mentorship (linked to the first structural barrier discussed above) and in particular the lack of support from Silks as the single most significant barrier to career progression for Black barristers practising at the Commercial Bar.

155. In the third meeting a participant commented as follows:

"But speaking to my experience when I was a junior, I think one of the biggest vices of the Commercial Bar has always been that silks have their favourite juniors and if you are appointed as a favourite junior early on out of pupillage you have got a seat and a berth to success for the rest of your career. Conversely, if you're not, you're stuck. So, in my chambers---- Well, not stuck, but you're not as successful. In my chambers, there were certain people who worked with [X] from an early stage. Once they were tucked in behind [X] and [X] was asking for them all the time, they flew. And I think if black people in chambers are going to advance or have parity with white barristers we've got to do something about the allocation by silks of juniors in chambers, because that is the real way to retain and progress black barristers."

156. A similar point was made by another participant:

"...One thing, though, I do wonder about and sort of query to myself at least and maybe not actually raise it expressly with anyone so far, is how Silks allocate their work, in a sense. You know, Silks always end up having their favourite juniors, and so on. It is going to be very difficult to tell the Silks that they have to rotate round juniors, but, equally,

RETENTION & PROGRESSION

that sort of process of becoming one of the favoured juniors, if you like, I do query how that can be, sort of, fairly done, in a sense, and whether there is more that chambers, as organisations, can do to ensure that Silks are not just, kind of, going back to the same junior over and over. ...”

157. At a different meeting a participant made the following similar point:

“... to basically have some favour with the silks and unless you’re in that situation it’s very hard for you to be-- you can have the clerks batting for you, you can have really good relationships with solicitors in your own right, but you probably are not going to be in the same league as the juniors that are being led by the leading silks in your chambers all of the time. And I can certainly say from my personal experience that in the last couple of years I’ve been in a situation where I have developed a really good relationship with a silk who’s not even in my chambers and I can see there’s a huge, marked difference in my practice because he asks for me in cases and he is recommending me all the time to solicitors and the fact that now an older, white man is telling everybody that I’m really good is making a huge difference to my practice. ...”

158. Another participant echoed these sentiments:

“And as a positive thing, I think things-- so one thing that some people miss out on is being mentored on the extent to which relationships with other members of chambers, particularly leaders, and with solicitors, are so important to the development of your practice at the Bar. And this over-emphasis, false emphasis on meritocracy. Because if you are innocent at the beginning of practice, it is very easy to be lulled into the sense: “Well, if you do your cases well and you act professionally with solicitors, that is all you need to do”, and you don’t. You need to build relationships with people in terms of trust and repeat business, and so on. And no one-- people rarely tell you that. Every now and again a senior clerk might explain it to you, but you have to be really lucky for that to happen, I think.”

159. This lack of mentorship was noted to affected progression and potential applications for silk:

“Now, the problem is of course you have got to get to that point of getting the right cases and the right referees, and if there is, you know, structural racism at an early stage on the way to getting there, on the way to getting the right cases or getting lead on the right cases, then of course, you know, it is going to be more tricky to get yourself in that position.”

“... That the trick is getting the right work and that does depend on allocation through clerks or through Silks. I am going to share with you, because I think it might help you. I think it is absolutely alright to be naïve by the way. I kept my head down on all of this

stuff till I got Silk, and you do just work away and work at getting the right cases so that you put them on your CV and then you can apply for Silk."

"Because I think you did indicate it earlier, about getting the work. Certainly in my Chambers getting the big ticket commercial work – and I assume it is most Chambers – is about getting a leader.

...

... I do not know whether it has anything to do with race. But there are people in my Chambers who have absolutely no issue knocking on people's doors and saying, "Hi, how are you, So and So? You know, I am looking for some good work. Can, you know, you take me up?" And, you know, I do not whether – you know it is possible it could be the fact that, you know, if I had a black QC in my Chambers maybe I would feel more comfortable knocking on their door and doing it. But it does not seem to be something that I am hugely comfortable with, whereas others are."

"So then to build up those connections with Seniors doing that quality work might be more difficult, and whilst there is a piece about external marketing, there is also a piece about how you can effectively market internally, whether within your Chambers or organisations. [X] might well remember, but [law firm] is not dramatically different. You have to make sure that you are onside the best partners to get the best quality work, and then in turn you want to make sure that those leaders, in the various sets, like you and think you are fantastic and see your quality drafting, so that you are on those really big ticket, juicy core cases. And that can be really challenging, especially with the "social" side. I mean we have some awful social this evening----"

160. Another participant commented as follows regarding building relationships with Silks:

"Yeah. So, I think it's been made very clear to me that marketing and self-promotion is going to be really key to my success at the Bar and, to be honest, I've been quite supported in that within chambers and it's something I'm still kind of really learning and figuring out how to do. I think the two big points that resonate with me here, and I can't say that it's anything related to race, but something I think about my own progression. The first is where I am, at least, I find there's a-- there is a real lack of transparency as to how instructions come out from silks as to how to get led on good work and at the moment I'm in that stage of just trying to figure out how do I get and build those relationships with the people-- with the silks doing the best work in chambers and how do I somehow get on their radar, which you'll understand has been made more difficult in the circumstances in which we're in."

RETENTION & PROGRESSION

161. Another raised the possibility of training of clerks, senior juniors and QCs:

"I don't want to suggest, sort of, like, another training thing, if you like, but it, kind of—it feels to me as if that perhaps is-- it is some sort of making QCs and senior juniors aware, where they are bringing people on, of the potential impact of their choices and how—it clearly is important to junior barristers to be able to get onto led cases, and so on, and maybe just, sort of, raising their consciousness about that. I don't know precisely how that would be done, you know, it is kind of-- it is-- I suppose it is something maybe—maybe even the fact that-- I know the QC selections panel takes diversity into account as one of the factors for when you are trying to apply to become a Silk."

162. Another participant made the following observation:

"So when I talk about structure, I think, you know, not just mentoring inside chambers, though I think it would be good if the Silks did take personal responsibility, say, for a couple of juniors to get them over the hill, but as well engaging. And so-- because this is a specialist Bar Association group, we can think more widely whether we could, like I say, hire an executive coach available to any black barristers to go and talk to about their career, or a QC consultant they could go and talk to. And obviously that is confidential, and it is just career advice. Because there is not very much-- there is not very much career progression at the Bar. You are either a junior or a Silk."

163. A significant comment was made regarding progression by way of judicial appointment and tokenism, which may deter Black barristers applying for a judicial role:

"I've come to the view that if you, at my stage, go for judicial office, it will be very much on the basis that, quite apart from any abilities you may have, you are going to be the black person on the bench. I've spoken to people who have-- ethnically diverse people who've gone on the bench who have said it's very, very lonely and it looks, in retrospect to them, as purely a box-ticking exercise. And I don't want to give people the comfort of thinking, "Okay, we've got [X] on the bench," even if I were ever selected, "We've got [X] on the bench, job done!" I think there are ways of not allowing them to do that, but I think that is something that many in the judiciary want to achieve. Just give us some statistics, give us-- it's tokenism, in a sense. And I'm afraid at the moment there simply aren't enough senior black barristers or lawyers who could be in a position to go on the bench to make it look like anything other than tokenism. And I think it's much more important for us to focus on applications to silk rather than applications to the judiciary. ..."

RETENTION & PROGRESSION

Recommendations for retention and progression

164. **On Retention**, we recommend that the SBAs should:

- Invite member chambers to monitor and measure the allocation of junior briefs to silks, to ensure fair allocation of opportunities (particularly junior briefs), which are likely to enhance career development and progression.
- Invite member chambers to provide annual monitoring information to them on income disparities in chambers between white barristers and ethnic minority barristers with comparable Call dates and practice areas, with particular focus on the position of Black practitioners.
- Collaborate with existing Black practitioner networks and organisations to provide regular mentoring and sponsorship opportunities for Black juniors with leading practitioners in their practice areas.
- Arrange workshops with the editors of each of the principal legal directories concerning the Bar, to address under-representation and other identified disparities affecting ethnic minority barristers being included in the directories, particularly Black practitioners in the SBAs' practice areas.

165. **On Progression**, we recommend that the SBAs should:

- Provide focused mentoring programmes and sponsorship opportunities for junior Black practitioners contemplating applications for Queen's Counsel and judicial appointments.
- Invite member chambers to establish their own focused mentoring programmes and sponsorship opportunities for their Black junior practitioners contemplating applications for Queen's Counsel and judicial appointments.
- Hold annual events, to which representatives of the Judges of the Business and Property Courts are invited to assist in explaining to practitioners the evidence required to support a positive reference for the QC Selection Panel.

166. The evidence that was gathered on retention and progression strongly supports the recommendations set out above for two compelling reasons:

- The lack of active monitoring of progress and intervention to support Black barristers acts as hindrance to professional development. If the problem is not diagnosed it cannot be remedied. It is important for support to be provided to the small number of Black barristers practising at the Specialist Commercial Bar and this requires the monitoring of key indices

RETENTION & PROGRESSION

such as work allocation and incomes and well as setting up formal processes to support Black barristers applying for silk.

- It is clear that the progression of Black barristers at the Specialist Commercial Bar is being hampered by the lack of support for their progression that others receive both formally and informally. The small numbers of Black barristers at the Specialist Commercial Bar and more importantly the absence of Black barristers who have progressed to judicial appointments results in the absence of professional and social networks which are essential for progressing at the Specialist Commercial Bar.

167. The nature of the recommendations mean that some will have to implemented by individual chambers while others require SBA wide action.

CULTURE

“... have not really spoken about being black at the Bar, save for with a couple of friends who are also black and at the Bar I think this group is a great next step ...”⁴⁹

“... My experience is similar to those of you, albeit you are slightly younger than me, which is that I had a small network of black barristers who I would know socially, and we might talk about things in an ad hoc way. I started practice more than 20 years ago. I, rightly or wrongly, felt inhibited about my peers at chambers seeing me reaching out to other black barristers in my initial years of practice. And so, I did not get involved in any kind of formal organisation to try and give support, reassurance and just have a good time with other people with the same ethnic and cultural influences.”⁵⁰

Introduction

168. The round-table meetings produced a significant amount of evidence about the lived experience of Black barristers at the Specialist Commercial Bar. The themes that emerged from those meetings included isolation, dislocation, not belonging and a lack of support particularly from seniors and clerks/practice managers and were also reflected by the survey responses which are summarised in Appendix 3.
169. Most of those attending the round-table meetings were clear that the meetings were their first experience of having an intentional, organised discussion about race/ethnicity in their professional lives.
170. A fear of raising and/or speaking about the experience of being a “Black at the Bar” was an issue that became very apparent to all of the BIG committee and those commissioning from the SBAs in the context of forming the Committee, as well as in the course of talking to individuals and organisations interested in Black inclusion and in both the round-table meetings and the survey. A number of senior and junior barristers felt unable to be named members of the BIG Committee. Those on the BIG Committee arranging the round-table meetings rightly anticipated that a great deal of care and reassurance around confidentiality was an essential component of making those meetings happen and enabling the BIG Committee to use the evidence gathered.
171. The anonymous survey responses also provide anecdotal evidence of the lived experience of those Black barristers who self-identified as such as well as some interesting insights into the experience and awareness of others at the Specialist Commercial Bar. The survey was not designed to provide reliable statistical information about the nature, extent or impact of race and/or ethnicity related behaviours such as banter, bullying and discrimination/bias at the

⁴⁹ Quote from a round-table participant

⁵⁰ Quote from a round-table participant

Speciality Commercial Bar. The summary report is not put forward as providing a statistical evaluation of such behaviours.

172. The BIG Committee provide it as the observations, given the option of anonymity, that some at the Specialist Commercial Bar have been prepared to share. It should be noted that in relation to each of the questions about such behaviours:

- In excess of 340 barristers who practice, or aspire to or aspired to practice at the Specialist Commercial Bar responded.
- 4 or 5 of the 46 Black African, Black Caribbean barristers and those of African and/or Caribbean mixed heritage at (or who aspire or aspired to be at) the Specialist Commercial Bar elected not to respond to those questions.

The experience of race and/or ethnicity related behaviours

173. The round-table meetings revealed that many of the participating barristers had experienced direct overt race or ethnicity-based banter, bullying and/or discrimination/bias. See paragraph 121ff under “Overt Racism as a Barrier to Progression”

174. Direct experience was reported in our survey [see Appendix 3] by

- 47 individuals (more than 10% of those responding) in relation to race or ethnicity-based bullying or harassment
- 28 individuals (6.5% of those responding) in relation to race or ethnicity-based bias.

175. Those who reported direct experience were not confined to those who identified as Black, but this must be considered in the context of the ethnicity of the entire response group [see Appendix 3 page 3 table 4]. On any view a high proportion of those who identified as people of colour (16.1%) have direct experience of such behaviours.

176. The answers by those who identified as being of Black to question 36 “Do you think there is anything unique about being a black person at the Bar” were also significant in this context. By way of example only:

“Constant prejudice and bias.”

“I consider that it is unique to be of Caribbean heritage at the bar but for those under the catch-all term black the direct and conscious discrimination faced is acute and more severe than other groups.”

“Everyone assumes you are anything but a Barrister”

“Black people are more harshly judged when they make mistakes, than their white contemporaries”

“Negative stereotypes about black peoples are particularly harsh. The bar is not a haven that does not suffer for the same subconscious bias etc. there are noticeably few self-employed black barristers in commercial, chancery or construction i.e. the areas of the bar that are the most well-paying areas.”

“You understand the nuances in language and the micro-aggressions that are conveyed more often through things unsaid.”

177. The sources of such direct bullying/harassment and bias reported showed colleagues in chambers and the judiciary to be the most significant sources but not the only ones. Reference was made in the round-table meetings to the BBN survey to which there were 100 participating Black barristers of African or Caribbean origin. The survey was a more in-depth analysis of such behaviours, the frequency and sources of the same and took an intersectional approach factoring in the impact of gender and age. It evidenced significant levels of inappropriate treatment including micro-aggressions and being patronised. The reported levels of interactions being negatively affected by their race were 54% in relation to opponents and 56% in relation to the Bench.

The impact on the individual

178. The impact of working in a profession and area of practice where you are usually the only one and your status is questioned or doubted was described in some of the other responses to question 36. The themes of loneliness, exclusion and the additional pressure to perform were clearly and repeatedly expressed. Some examples included:

“it’s the constant feeling of being the only one you can’t shake.”

“Throughout my career, people have regularly doubted I really am a barrister”

“You are always on trial”

“...there are so few of us that unless you are very self-assured you feel like an imposter”

“Being highly visible while being overlooked”

“Feelings of hypervisibility by reason of being a minority. Feelings of no[t] belonging by reason of there being so few people with shared experience.... Assumptions by court staff, some court users and some barristers that you are not a barrister.”

“it may be hard for some to imagine what it feels like when you are in an almost exclusive pocket of white affluent professionals. Frankly, I find it humiliating and shameful. ...I continue to insist on being a commercial practitioner because I know that other professionals expect me to specialise in more ethnically populated areas.... It is highly unlikely any of my white peers have to deal with any of these barriers – something which only cements the sense of entitlement at the white commercial bar. By contrast I take nothing for granted and feel I have to work harder to prove my worth and earn my place in the court room, on [each] case. This is an absurdity...”

“...you understand the requirement for “Black excellence””

179. The impact of isolation, exclusion and the pressure that comes with hypervisibility and/or being judged as an exception when you excel, and an example for your whole group when you make a mistake, have been extensively studied and documented in relation to other professions and also in relation to women in the law.
180. For the purposes of this report it is sufficient to say there is no reason to believe the impacts on wellbeing as well as retention and progression will be in anyway mitigated by being in a largely self-employed profession, which demands the appearance of confidence and the practice of resilience.

The witnessing and awareness of such behaviours

181. Almost half (47%) of those who responded to the survey expressed the view that discriminatory practices in relation to race and ethnicity are current in pupillage selection and they need addressing.
182. The survey responses make it very clear that the cause for concern goes beyond pupillage selection. The survey informs us of the existence of negative race and ethnicity-based behaviours. Those behaviours are exhibited by other members of the profession, the Bench and clerks/practice managers. They are witnessed by a substantial number of barristers in practice at the Specialist Commercial Bar.
183. For race and/or ethnicity-based banter and/or bullying/harassment, 180 individuals, more than 47% of those responding to the question, confirmed they had at some point witnessed such bias in their professional life. When asked about the frequency of race and/or ethnicity-based banter and/or bullying/harassment the number of individuals who reported having witnessed such behaviours increased to 192 when indicating they witnessed it at least very occasionally. More than 30 people reported witnessing such behaviour at least annually and more than 100 reported witnessing it as being occasional or more.

184. For race and/or ethnicity-based bias 184 individuals, or 49.7% of those responding to the question, confirmed they had at some point witnessed such bias in their professional life. When asked about the frequency of witnessing such bias, the number of individuals who reported having witnessed such behaviours at least very occasionally increased to 190. Again 34 people reported witnessing such behaviour with a frequency of at least annually and more than 101 reported witnessing it being occasional or more than that. More than 70 people reported witnessing or experiencing bias occasionally or more often.
185. When asked specifically about race and/or ethnicity-based discrimination witnessed or experienced during their own pupillage almost 23% of those who responded indicated that they had experienced or seen it. That was 44 individuals. Given lack of power and vulnerability of those going through pupillage the potential adverse impact on the recruitment and retention of talent from the widest pool for the benefit of Specialist Commercial Bar and its clients is of serious concern.
186. The survey provides clear evidence of negative race and ethnicity-based behaviours which are sufficiently overt for a significant number of barristers practising at the Specialist Commercial Bar to be aware of them. The frequency data makes it absolutely clear that those responding to the survey were not reporting historic behaviours that are no longer a feature of life at the Bar.
187. Whatever view is taken about the existence of institutional or systemic racism the round-table meetings and survey responses provide ample evidence that race and/or ethnicity-based banter and/or bullying/harassment behaviours are a significant feature of life at the Specialist Commercial Bar and a significant proportion of the Specialist Commercial Bar, including many who identify as white, are aware of that fact.
188. Even for those who believe there is a prevailing culture that such behaviours are unacceptable, the obvious questions are: why is so much unacceptable overt behaviour continuing unchecked? and how much more covert behaviour is there in play?
189. For those at the Bar who consider that such behaviours are an anathema to a profession that is dedicated to the proper administration of justice, public service and/or equality before the law there are some very difficult questions to be addressed and solutions to be found. For those who believe no one in our profession should be subject to such behaviours and/or that such behaviours deprive our area of practice of talent, the need to change the current culture must surely be clear.

Support, mentoring and race and/or ethnicity related behaviours

190. The responses to the survey questions relating to who has had a positive and who a negative impact on a barrister's practice development provide a further important context for considering

what is not working for Black barristers. Generally the most significant positive impact comes from senior barrister colleagues with contemporaries and former or current pupil supervisors or mentors being the next most significant people for individuals. The vast majority of those who responded reported a positive impact from those people along with other barristers and clerks/practice managers.

191. The proportion of the Black barristers who identified a positive impact from any of those groups was much lower (many simply did not respond to the question). In addition, the differential between the proportions who identified a positive impact and a negative impact in relation any barrister or member of chambers' staff was consistently greater for Black barristers. The survey responses strongly suggest that Black barristers are less likely to experience a positive impact on their practice development from other barristers or chambers' staff and more likely to experience a negative impact with the negative exceeding the positive in the case of clerks or practice managers and being particularly marked in the case of senior barristers in chambers and contemporaries.
192. It appears that as a group the very people barristers consider to have the ability to have the most positive impact on a barrister's career are less likely to have a positive impact and more likely to have a negative impact on Black barristers.
193. The Bar has increasingly come to understand the importance of mentors, it is also starting to understand the role less formal sponsors and other fellow practitioners have in an individual's career development. To adopt a description given by Nicola Williams, Services Complaints Ombudsman, at a Lincolns event in 2019, to succeed you need a board working with you. It should consist of:
 - A mentor
 - A sponsor who is "in the room" you aspire to and will be your advocate in that room
 - A connector who knows the people you need to know and will connect you to them
 - A points expert who knows your specialism and will help you develop your knowledge and skills
 - A friend who will keep your confidences and have your back
194. Seen in those terms the role of senior and contemporary barristers in and out of chambers and clerks/practice managers in a barrister's career is clear. Any group that generally struggles more to find that support will inevitably find it much harder to develop their career. Any group that finds the opposite of support from those people will be pushed back further.

195. The sentiments expressed by a number of participants in the round-table meetings tend to show that even without negative behaviours unless senior members of the Bar and/or clerks/practice managers are proactive about giving career support it will be harder. A clear example came in the second round-table meeting:

... I do not know whether it has anything to do with race. But there are people in my Chambers who have absolutely no issue knocking on people's doors and saying, "Hi, how are you, So and So? You know, I am looking for some good work. Can, you know, you take me up?" And, you know, I do not whether – you know it is possible it could be the fact that, you know, if I had a black QC in my Chambers maybe I would feel more comfortable knocking on their door and doing it. But it does not seem to be something that I am hugely comfortable with, whereas others are."

196. In that context familiarity, comfort, shared terms of reference can all operate to confer a huge advantage on members of a dominant group and being "the only one" becomes a huge disadvantage without anyone in that dominant group meaning to do that or realising it is happening. When the experience of negative race and ethnicity behaviours is added into the picture the exercise of "knocking on a door" or locating and bonding with seniors, contemporaries and clerks/practice managers is all the more challenging.

Culture change & first steps

197. The call for change was expressed very powerfully by one of the individuals who responded to the invitation in the survey to tell us anything else they wished to tell us or suggest.

"The problem is about equity. E&D initiatives are fine and inoffensive. But you need to question how we arrive at a situation where the commercial bar in London which is basically a white over-privileged enclave that appears very capable of reproducing itself indefinitely despite the progress of the commercial world more generally. Sadly, I do not think our interests converge. I am having extraordinary conversations with black commercial solicitors who see this inequality and are sick and tired of it. The SBAs and commercial bar should be urgently having difficult conversations about race and inequality. Not about diversity. This [is not] about a few black speakers, some black students or a black or Asian silk at an event or two. The enduring and frankly racist structures that have produced this white enclave have to be dismantled. They are not about to do it by themselves and without challenge, pushback and struggle. Ultimately if it is deemed right that largely white persons should enjoy the monopoly over equally qualified black and brown professionals then the message has very serious consequences for the talent available to the Bar and the clients it serves. The culture needs to change from one of white entitlement/black exclusion to genuine inclusivity and access to all with skills and knowledge to do the job."

198. Real culture change is hard and not quick. The BSB has made it clear in its November 2020 Anti-racist statement that it is looking for a real commitment to change⁵¹. Academia and the corporate world have a far more significant track record and more experience and knowhow than most of the Bar. Many of the Specialist Commercial Bar's professional and corporate clients have also been actively seeking to challenge these issues for a while. Good examples include the work of Interlaw Diversity Forum⁵², Barclays Race at Work Action Plan⁵³ and Travers Smith's "What makes an effective ally?" project⁵⁴.
199. A number of common elements can feature in work related to culture change such as:
- facilitation of honest conversations
 - gathering data and ongoing monitoring
 - setting achievable and measurable goals
 - senior commitment to keeping the subject on the agenda and producing
 - challenging those who mentor and offer sponsorship to monitor who they do that for
 - setting targets
200. The round-table meetings and survey have been a small first step into the facilitation of more honest conversations and gathering data. They demonstrate there is a lot of work to be done and the commissioning SBAs are to be commended for taking that first step. It is believed they have recognised that given their reach, which is focused on this specialist, well financed part of the Bar but also wide in that it reaches across the divisions created by competition between individuals and chambers they are well placed to help set the agenda and maintain a focus on it. The BIG Committee is conscious that the commissioning SBAs have some existing experience in driving change in the context of gender which may also assist.

Culture: Recommendations

201. On Culture, we recommend that the SBAs should continue to collaborate to
- Keep the inclusion of ethnic minority barristers, particularly Black practitioners on the Specialist Commercial Bar's agenda
 - Facilitate Black practitioners at the Specialist Commercial Bar networking together

⁵¹ <https://www.barstandardsboard.org.uk/about-us/equality-and-diversity/anti-racist-statement.html>

⁵² <https://www.interlawdiversityforum.org/race-ethnicity-bame-network>

⁵³ <https://home.barclays/who-we-are/our-strategy/diversity-and-inclusion/multicultural/race-at-work/>

⁵⁴ <https://www.traverssmith.com/media/5179/travers-smith-bame-ally-booklet-november-2019.pdf>

CULTURE

- Consider when planning all initiatives and events whether there is an opportunity to encourage senior white barristers to engage proactively with supporting the inclusion, retention and progression of Black practitioners.

APPENDIX 1

APPENDIX 1 – THE BIG COMMITTEE



Abdul-Lateef Jinadu

Called: 1995

Abdul specialises in construction, infrastructure, marine engineering and oil and gas disputes. He practices from Keating Chambers. He is a member of the tenancy committee and was a member of the Fair Recruitment Committee set up by chambers to conduct a root and branch review of chambers' recruitment practices to improve the racial make up of chambers by focusing specifically on the recruitment of Black barristers.



Krista Lee QC

Called: 1996 Silk: 2020

Krista is a specialist in engineering, construction and energy disputes. Krista is a Londoner, of mixed Jamaican and Chinese heritage. She attended a state comprehensive school, before obtaining a BA in Jurisprudence and the BCL at University College, Oxford University. She later obtained an engineering degree by correspondence, to advance her career at the construction Bar.

Krista is an active member of Lincoln's Inn mentoring scheme, has hosted several students on the Bar Council's Access to the Bar Scheme, and has been a member of the Equality and Diversity committee of Keating Chambers.



Gary Pryce

Called: 1997

Gary was called to the Bar in 1997 and practises from New Square Chambers in Lincoln's Inn, specialising in property litigation and related professional liability disputes. Gary is a member of the Bar Council Race Working Group and an active member of the Chancery Bar Association. Gary is Black British of eastern Caribbean ethnicity. Gary came to the Bar from a Birmingham comprehensive school, followed by a Law degree at Trinity College, Cambridge University and a Masters in Law from the University of Virginia Law School (US). Gary also experienced applying for pupillage under the first centralised application and recruitment system introduced at the Bar in 1996 (the Pupillage Application Clearing House - PACH).

APPENDIX 1



Jeremy Richmond QC

Called: 2000 Silk: 2020

Jeremy specialises in commercial and modern chancery law. He is ranked as a leading barrister for Commercial Litigation and Insolvency in The Legal 500 and has been described in Chambers and Partners as a “superb advocate” whose “expertise in chancery, commercial and banking matters is a useful complement to his insolvency skills”.

Jeremy’s practice spans a broad range of commercial chancery and insolvency matters. It encompasses company law (including directors misfeasance), shareholder and joint venture disputes, banking law, sale of goods (both international and domestic), fraud (with an emphasis on asset recovery) and all aspects of general commercial law. He also has a specialisation in cross-border insolvency issues particularly in relation to the shipping, commodities, insurance and aviation sectors. He regularly appears in the Chancery Division as well as in the Commercial and Circuit Commercial Courts.

Many of his cases involve a cross-over between ‘modern’ chancery and commercial litigation.

Jeremy was admitted to the New York Bar in 1996 and has worked as a New York lawyer for blue chip law firms in Manhattan and then the City.



Brie Stevens-Hoare QC

Called: 1986 Silk: 2013

Brie is a client focused specialist property barrister experienced in dealing with all aspects of property litigation, property related probate and professional negligence as well as franchising.

Brie is Co-Head of Gatehouse Chambers, Chair of the Property Bar Association. Brie is also a JAC Commissioner and fee paid Tribunal Judge in the First Tier Tribunal (Property Chamber) (Land Registry).

Brie is a member of Lincoln’s Inn EDI Committee and actively involved in FreeBar (a forum focused on LGBTQIA people and their allies working at and for the Bar). Brie has written on issues relating to EDI, particularly affecting women and LGBTQIA people for the Lawyer, Counsel magazine, the Estates Gazette and Legal Cheek.

APPENDIX 1

Acknowledgments

1. The BIG Committee expresses its thanks to all those who answered the BIG Committee's survey and in particular to all those Black barristers who gave their time to contribute to the round-table discussions, reviewed the transcripts and authorised us to use their words in this report.
2. The BIG Committee has been assisted by the SBAs and in particular Ruth Hosking, Riaz Hussain QC and Nicola Rushton QC. Special thanks are also due to Annell Smith, who attended and offered her advice at several BIG Committee meetings.

APPENDIX 2

APPENDIX 2 – THE ROUND-TABLES

Round-table discussions: methodology

1. The aim was to obtain some qualitative information on the issues of outreach, recruitment, retention and progression from prospective pupils, pupil barristers and practising barristers who were of Black African, Black Caribbean and mixed heritage.
2. Our approach was influenced by the work of Women at the Chancery Bar, including their insightful qualitative report, *Voices of Women at the Chancery Bar: experiences recorded during 2019* which was released in February 2021. In addition, the materials and guidance produced by The Law Society 2018 research programme: *Women In Leadership In Law* was also very beneficial in offering a suggested approach to organising round-table sessions.
3. Three members of the BIG Committee facilitated the confidential round-table discussions, with at least two facilitators at each session. The round-table discussions were held remotely on a video conferencing platform on three separate occasions in February and March 2021. The sessions were recorded. The contributions from each session were fully transcribed. Each of the participants had the opportunity to review the draft transcript relating to their session and make their comments on it before it was finalised.
4. The participants were drawn from our direct contacts, indirect word-of-mouth contacts and also participants who expressed a willingness to participate after an open invitation was extended to all qualified practitioners through the SBAs. We then organised them into groups for the three sessions we held.
5. There were 26 participants: 12 female and 14 male. There was a full range of seniority from prospective pupil to Queen's Counsel level. Most participants were junior barristers in private practice in chambers in excess of 7 years call. Applying the model of the round-tables organised by the Women at the Chancery Bar, all participants, including facilitators, were Black so as to provide a safe space for candid discussion.
6. In the course of those discussions a range of themes were common and arose in all three sessions and the comments from the participants provides evidential basis on which reasonable conclusions can be drawn regarding the experience of Black practitioners, practising at the Specialist Commercial Bar.
7. The quotations below are a small part of an aggregate of 112 pages of anonymised transcript. They represent the substantive points addressing the issues: outreach, recruitment, retention and progression. Save for the quotations in this report, the transcripts are and will remain confidential and unpublished.

APPENDIX 2

Outreach

Black barristers

Understanding and differentiating between those of different ethnic backgrounds is an important prerequisite to analysing the present picture and making recommendations for the future.

“I think we need to be clear about [what] we are talking about. Lumping African-Caribbean black, putting them together, it is not helpful, and me, personally, as someone of Caribbean heritage has a different experience at the Bar, and in life, to someone who might be of Ghanaian heritage, or Zimbabwean heritage, or a combination of heritage, and it is from my European sounding name, ... to physical appearances ... as a starting point, it would be helpful to be clearer about who it is that we are talking about and who it is that we are trying to include ... The Caribbean includes a lot of different people. Lots of my family do not look quite as melanated as I do, but they still have quite a hard time especially when they have an accent. But it is a different kind of hard time to me. I think the distinctions are important because they are layers of privilege. For example, there are issues of colourism - particularly I can say for the commercial side of things. If you are light and bright you will get more work, because visually you are more appealing and you fit better. In a Technology and Construction Court, or in a Commercial Court in the Chancery Bar it is just easier”

Raising awareness of the Bar as a career

“... obviously part of the recruitment [process] is to get more ... black young people who don't know anything about the Bar to think about the Bar.”

Few Black barristers are at the Chancery and Commercial Bar

Some participants observed it is particularly striking, in comparison to other professional service environments, how few Black people are practising at the Specialist Commercial Bar.

“So what-- but what I found really striking was about two or three years ago when the Black Barristers' Network was set up and they had their first initial meeting, it was quite interesting. It was quite interesting trying-- you know, speaking to everybody and realising there were so few of us who were, kind of, more that commercial, kind of, direction.”

“I worked for [Bank] when I was in banking and it is a huge organisation, a huge HR department, and stuff like that. So there are certainly some differences I have noticed. I

APPENDIX 2

agree definitely both with [A] and [E] about just significant lack of obviously black people at the Commercial Bar."

Few professional organisations are focused towards Black barristers

Until recent years there have been relatively low levels of organised professional and social liaison focused on Black members of the Bar.

"I am [D]. I practice [commercial] at [Chambers], so a specialist [commercial] set, [xxx] I worked [xxx] for some years before I was called to the Bar. I, like you all, had very little interaction with my fellow black members of the Bar except people I studied with both at Bar school and at university, until about two or three years ago -- And it struck me that I knew very little about that activity until then, and I learned from there and started to make a point of reaching out to people on issues, and I was astonished at various things along the way: how few of us had reached out to each other before."

Continue outreach to undergraduates at the early stages of university study

The SBAs should reach out to students at an early stage of their studies, to provide information and insight about careers at the Specialist Commercial Bar.

"... I guess at the same time as the commercial law firms, so first year, second year of university, if you are doing a law degree. It seems to be the time that a lot of commercial law firms are trying to poach law students. So that would seem to be a good time to kind of show that the Bar, the Commercial Bar, is a good alternative to being a commercial solicitor, and, speaking of considerations for black applicants in particular, maybe just more visibility of black people at the Bar. Great chambers such as yourselves would really, kind of, reinforce the point that black people do make it to that area of the Bar"

"So from my perspective I definitely think it is a lot to do with bad visibility and just knowledge, to be honest, so the fact that it is even an area that you might go into. And I mean that in the sense that [F] was just saying, like, it is first year, second year students, maybe, and I definitely agree it should be at least as early as that, if not perhaps a little bit earlier. I feel, at least from my perspective, perhaps the reason that we see a lot of representation in Criminal and Family Bar is in part because that is just what people think a barrister is - right? - before you really know a bit more about the Bar perhaps. And perhaps by the time you are starting to learn about the different areas you might go into, then it is essentially too late, almost, to get yourself into a position where you can make a successful application or have a good chance at least of making a successful application to Commercial-type sets. So I suppose-- I definitely agree it should be at least as early as first or second year, potentially maybe a bit earlier than that because I have done-- so I

APPENDIX 2

live in east London. I have done some mentoring in local schools, and I do not think I have ever talked to anyone, you know, any black students in local schools who really knew what the idea of being a Commercial barrister was at all.”

Outreach to A-level students about opportunities at the Specialist Commercial Bar

If the university one graduates from is an important factor in being a competitive candidate for recruitment to Specialist Commercial Chambers, should more be done to raise awareness to A-level students before they make applications to for university courses?

“... universities are important. The university that you attend is important. Therefore I think you need to start before university and have dialogue with A Level students so that they can see what the Bar is, what the Commercial Bar is in particular, and start to think about the types of institutions that they need to apply to have a realistic chance of success, at the moment, because I think we do need to be pragmatic.”

Disseminate practical information to students on available funding for training for the Bar

Disseminating information about routes to available funding for training for the Bar may mean fewer younger undergraduates are put off from considering a career at the Bar due to financial insecurity concerns immediately after university graduation.

“But I think that a lot of the early work we have got to do is to make sure people are not put off, and I think that is probably not going to be by way of ground-breaking changes as to how chambers market themselves or what events are like. But it is things like-- you know, one thing, I think, is really focusing on the fact that there is funding available to good candidates, particularly through the Inns and through chambers. I mean, a lot of the Commercial chambers pay comparably well, if not better, in pupillage than law firms do in training contracts. Now, law firms make express that they will pay for your GDL and ... your LPC. And obviously that money is up front. It is slightly different with chambers with the drawdown system, but it is things like that that I think ... are the little things that put people off because of, you know, financial security, and so on, and, you know, not seeing similar faces, that we fix by reminding them of the scholarships, putting them in contact with another black barrister beforehand, you know, before they apply, and so on.”

Higher visibility of existing Black barristers

Higher visibility of Black practitioners could help to address assumptions that Black entrants to demanding and competitive professions and employment sectors are one of few Black practitioners in the field.

APPENDIX 2

“... speaking of considerations for black applicants in particular, maybe just more visibility of black people at the Bar. Great chambers such as yourselves would really, kind of, reinforce the point that black people do make it to that area of the Bar, because I think we would all, kind of, recognise that there are more black faces at the Criminal Bar than at the Commercial Bar. So I think it might seem like less of a possibility to black students.”

“... use photographs, so that young people can see that black people are in the professions. When we have articles in magazines like The Lawyer, and so on, and things like that. And I think as well group photos can be powerful - they have been used powerfully in the arts - just to send out that message that you are not going to be alone. And that is distinct from sometimes what you see now.”

“There are people here on this call that I have met in different situations at different events, which have not related to race at the Bar, and equally there are people here that I have never seen before, that I had to look up and I was like, ‘Right, who is that? I have never heard of this person,’ and I think it is so important to be more visible. I think sometimes it can seem like being the one black face in Chambers, you are always going to be put on promo material or, you know, reeled out at Black History Month, you know to be that token black person. But at the same time you are serving a dual purpose of saying, ‘I am present. I am here. I can do this. If I can do this then you can too.’ And I just [think] that more visibility ... and each of us just being a bit more vocal. I know that looks different for different people but for me that is something that has really helped.”

Intersection between issues of race and social class

There are issues arising from the intersection between race and social class to consider. Prospective Black entrants to the Bar sometimes rule themselves out of pursuing a career at the Specialist Commercial Bar.

“I have quite a few African-Caribbean aspirants to the Bar, who I talk to quite regularly, and I think it is difficult to have this conversation about race without having it about class as well, and looking at that intersection, because I find that black people from working class backgrounds generally rule themselves out of applying to commercial sets. They do not believe that they belong there.”

Introduce students to areas of practice at the Chancery and Commercial Bar

More detailed work could be done to introduce and familiarise Black law students with particular areas of practice at the Specialist Commercial Bar in the earlier undergraduate years, prior to most having an opportunity to take mini-pupillages, which may help to inform their university subject choices and career choices

APPENDIX 2

"In terms of the specific things that could be done in terms of outreach, I think more collaborative events. So every university has an ACS for example, an African-Caribbean Society, and I think that might be a non-traditional way in, because my experience of the university was the Law Society was full of white students and they became the gatekeepers of opportunities. So a lot of opportunities were not getting shared. When you go to pupillage fairs sometimes you are always coming across the same white faces. In terms of the Bar course ... every year they had a panel of barristers come in, many of them the same people every year, always white, and I found that to be quite a consistent theme over the years, and I think we really need to be quite creative in meeting people where they are at. So quite a lot of young, black students are being creative LinkedIn, Twitter, they're forming their own groups, their own support groups, WhatsApp groups, and we need to be having people at the forefront saying, "Look, I am here. This is what I am doing."

"... it seems to me, particularly from the outreach piece, often with black candidates we're too late when we get to them in their first year of university. So, I'm [Position and location stated]. We're doing a pilot year at the moment where we have a link with one school, [School and location stated]. We're taking these year 12 students through a one-year programme. So, we've got 30 students on it and they're getting access to mentoring and development for a year with barristers and in the end we'll expect perhaps-- they're all from non-traditional backgrounds; in the end, we'll expect probably maybe we'll retain five or something that may still be interested in the Bar and then with the hope of possibly being able to support those students, some of those students, going forward from the Inn and perhaps we'll see some of them coming to the Bar. We think this programme is working so far and if it does bring in something like that kind of on a broader basis, but just really getting those interventions in at a much earlier stage I think traditionally than what the Inns and a lot of chambers do".

Encouraging professionals outside the law seeking to practise

Steps should be taken to invite Black women and men in other professions and careers outside the law to consider a second career at the Specialist Commercial Bar.

"You know, speaking to people, you know, before A-levels or around A-level time. I would also point out that - and maybe this is my experience from the [Sector] - a lot of people in the kind of Commercial Bar area, this is almost their second career. So they have gone in from banking or they have gone in from construction, or something, and then they, kind of, said: "Oh, well, actually I have got these skills", and have moved in. But I do not see that many black barristers do that, and so you cannot-- I feel there is always-- there will be a danger that too much focus will be on that kind of, like, inspiring and giving knowledge to black people, kind of, before they make those decisions to go into law, and not enough approach to people who actually have perfectly good skills for the

APPENDIX 2

Commercial Bar who have already had one career and are now looking at what else they want to do. So I would say that cannot be ignored in the, kind of, scheme of things, and I think that could potentially be a quick win”.

Wider attention to a larger group of universities

Re-focusing outreach to improve the inclusion of Black prospective pupils requires leading Specialist Commercial chambers to re-consider their understanding of merit. It does appear that there is a strong bias towards recruiting pupils who are graduates of Oxford and Cambridge universities. Such an approach is unlikely to be consistent with efforts to widen inclusion of prospective Black pupils and qualified graduates from other underrepresented groups as prospective pupils. Working with African-Caribbean Societies at universities on outreach activities would be a positive and effective development, as it may be an alternative means of reaching Black law and non-law undergraduates and graduate students.

“... one thing that came up in this area from a number of different contributors was that the Bar’s definition of meritocracy is a systemic problem for black applicants. This was a consensus in a group where most of the speakers had one or more Oxbridge degrees saying that the Bar’s definition of merit is Oxbridge ... but if the Bar’s definition of merit is Oxbridge then given the extremely small number of black/mixed race applicants from those universities then there is going to be a systemic problem in getting students into pupillage at the Bar ...”

“we have just identified that a lot of us here went to Oxbridge. I think it is undoubted that a lot of the Commercial Bar went to Oxbridge. Effectively all of the Commercial Bar went to a very good Russell Group university. And when you look at-- I mean, I am quite involved in these kind of issues but not just at the Bar. If you look at Oxbridge recruitment, there are just very few black students who are applying, and part of it is there are very few that have the qualifications, part of it is also there are a large number who have the qualifications but don’t want to, are put off, aren’t interested, aren’t encouraged. And I suspect that the Bar, it being a journey which often people who get there have gone through by Oxbridge, suffers from the same problems. I think it would be, kind of, mistaken for us to think otherwise.”

“Go to the Afro-Caribbean Societies of all the universities, go the professors and the lecturers at all the universities and say, ‘Give us your good black students. Tell us who they are.’”

Focus attention on a limited number of universities

Engaging with a limited number of universities in a focused way may be the best use of finite resources in seeking to widen inclusion for Black prospective pupils at the Specialist Commercial Bar.

APPENDIX 2

“One of the things we ought to do is people-- identify people who are at the universities that make up 99 per cent of the Commercial Bar, which are the Russell Group universities, and identify them as early as possible. Because if you are in the second year, especially if you are not studying law - obviously 50 per cent of the cohort comes into the Bar - you are probably unlikely, I think, to think about the Bar. And if you do then think about the Bar, the obstacle of getting minis [pupillages] and the obstacle of persuading yourself to go for the Bar despite the lucrative offers from law firms and other non-legal professional jobs that you might be interested in, that is where I think we can do some quite good work. But, ultimately, it is just us being around and available and able to be spoken to, and so on.”

“Look, I think it's extremely difficult, particularly in commercial law, partly because there's such a close association in these areas that we do with very high kind of academic qualifications. Actually, for sound reasons, because some of the stuff is actually unbelievably hard. And so one wants to have people who are able to cope with, you know, defective rig design in engineering, or whatever it is, and so forth. That requires very high levels of intellectual ability and, in some senses, the universities are proxies for that. So, I think that there is a-- we have difficulties that some other areas find it easier to deal with. Finding those people who are able to compete at absolutely the top level among minority communities is always going to be hard simply because of the numbers. It's not a question of ability, it's just there aren't that many. And I think what one needs to do is to focus on probably a few universities and try and engage with them particularly. And part of the reason for that is because one cannot-- if one spreads oneself too thin, one doesn't actually solve the problem.”

APPENDIX 2

Recruitment

Why does it matter whether we recruit Black talent to the Bar?

“... the basic starting point is that it is important for I think all professionals to try and reflect the society that they are in ... I think there has to be an appreciation that there is talent within the black community. I think that is - for me, that is the starting point. There is talent. There are exceptional people, many exceptional people within the black community, who are not being given a fair [shot] in my opinion. I mean I think that if they start from that perspective, an appreciation of that, an acknowledgement of that, it should automatically follow, in my view, that there should be widespread support ... for that mission in what we would like to consider to be a progressive profession, because I think that is how the Bar wants to see itself, or wants to be seen, and should be seen. And without diversity, and without a push to encourage talent from diverse backgrounds, you know, you are doing nothing more than [giving] lip service to that goal.”

Perception Chancery and Commercial chambers focus on Oxbridge

There is a perception and strong evidence that Chancery and Commercial chambers focus on Oxbridge graduates when recruiting pupils, with adverse effects for racial diversity in recruitment.

“... one of the problems, is that there are very few people of African-Caribbean origin at Oxford and Cambridge. So we really need to look further and we really need to perhaps be a bit more imaginative in our pupillage recruitment processes.”

“... time and time and time and time again you look at the people who end up with pupillage offers and they tend to be those people who do have firsts from Oxbridge and I think that there needs to be a change of attitude in terms of who is good enough, who is good enough to be here. And part of that I think is a change of mindset. Because I’ve sat on interview panels and we try to be scrupulously fair, you know, we try to be as objective as possible. But some people just come in and they connect with the panel. And the reason they connect with the panel is because they, you know, there is shared experience, there’s sort of shared history and you can talk about ... your secondary school education or your college at Oxford or whatever, or rowing or some extracurricular activity that you do that connects you with the people on the panel and I think it’s difficult because, in a sense, until we get more representation at the top the Commercial Bar will continue to recruit in its own image.”

“... if you want to take the Commercial view of meritocracy on its own terms, there are a hell of a lot of really good black students in my sons’ universities, in Oxford and Cambridge, who are doing doctorates and they don’t want to come to the Bar. My sons’ friends look at my chambers and they see one black face there and they say, ‘Well, why

APPENDIX 2

would I want to go there?’ And that’s what we should be tackling as well as the more difficult work which people have been describing about outreach. There’s a very low hanging fruit here. ... Go to the Afro-Caribbean Societies of all the universities, go the professors and the lecturers at all the universities and say, ‘Give us your good black students. Tell us who they are.’”

Chambers communication that they are seeking to attract and recruit Black applicants

Is there a perception amongst qualified applicants that Specialist Commercial Chambers are interested in recruiting them for pupillage and tenancy?

“But the problem that I see at the [specialist commercial] Bar is not to do with bias at that stage of recruitment but the door not being open to a wide enough range of people, or visible to a wide enough range of people so-- because once people are there being interviewed, and so on, and their CVs are being looked at, the standard is incredibly high. But I think it is objectively applied. I don’t think there are people there looking at the surname the way people used to, or the way some judges do when you turn up in court, and sort of roll their eyes. That does not happen, I think, in the recruitment side of the Bar. But I think people do not know that they could come to us in the first place.”

“Having just seen a whole range of application interview processes, it seems to me that you’ve got a lot of sets at the moment saying that diversity is important to them and they want to create better processes. Perhaps there are some sets out there that are better than others. But one of the difficulties perhaps a number of sets, particularly commercial sets, have is that they’re all just marking their own homework. They’re the only ones doing it. ... And perhaps some might say that’s quite right, it’s their set and they get to decide who comes in. But if you had, I think, greater sharing, or even some kind of external assessment, either from other sets that are doing particularly well, or perhaps from some of the powers that be that actually challenge them on some of their processes or why some of their outcomes look like the way they are and having to explain this externally actually involving someone from the outside in those processes I think that may have some kind of impact. Obviously, we haven’t seen this done, but that’s always something that I’ve thought.”

Chambers’ perception of Black applicants

Do Specialist Commercial chambers perceive Black applicants as prospective members of their chambers who will practise at the Specialist Commercial Bar?

“... it feels to me like you are, sort of, starting at the wrong place because, is there going to be a chambers for people to go into? You know, I mean, are black barristers going into

APPENDIX 2

family and crime because that is where they are, to some extent, expected to go into if the-- you know, the public law, the least well-funded areas of the law. But it is also-- there are also the areas with the bigger numbers. Do chambers look at black barristers and see Commercial and Chancery barristers? When you look-- I mean, I remember looking for pupillage and looking at websites, and seeing some chambers did not have-- did not even have a woman, never mind a person with any colour. So it is all-- so for me it is all well and good going and talking to primary school kids and secondary school kids and saying this, but if actually we have not sorted out our houses to make sure that there is actually going to be a chambers, what is the point of getting people enthusiastic about possibly coming to a Commercial or Chancery Bar?"

Modify recruitment practices to address an urgent recruitment problem at the Specialist Commercial Bar?

Should existing recruitment practices be modified because there is an urgent recruitment problem to address regarding the recruitment of pupils and junior barristers at the Specialist Commercial Bar?

"Because we, the way we do it is the first sift that comes in through the Gateway - and I do not know if this is the same for everyone - but ours is done on an anonymous basis, so we just get the applications. We do not get, you know, anything about their race or their names of anything. It is just purely their questions, and I do not know what it is, but by the time it gets to the pupillage interview process we just are not getting the numbers at all. It is not like they are interviewing and not making it through. It is just we just do not get the people through. And I suppose what we have not done, and I am not even sure if we are really allowed to, is then go back at those anonymous people, you know, who have applied and see what the kind of numbers are and whether there is something that we are missing. And for us it is kind of just on, purely on the merits. I mean it should be for everyone purely on a merits basis but, you know, I am just not sure how we can kind of get around that issue. ..."

"I mean I think we have the same experience at [Solicitors] of not getting the numbers through. But I think that there are sometimes - and we do have candidates that get quite far and I just do not know why they do not get over that last hurdle, and whether we should think that there is some kind of urgency to recruit African-Caribbean people so that we might be more generous. I do not know. Given that we all have subjective recruitment strategies I do wonder that the people who do get through whether if we, as the Bar, considered it to be an urgent problem we might take a different approach in our subjective analysis of people. I do not know. But that is something certainly I have been frustrated by, when someone gets so far. Surely we should see this as urgent and we should push them over the line and, you know, people would say, 'Oh, that is positive discrimination.' But that then depends on how you define merit."

APPENDIX 2

RETENTION

The attractiveness of a career at the Bar

“I would say the independence and the constant challenge and the really interesting cases, and the ability to use your skills that you have gained more widely than just in the narrow scope of appearing in court on the kind of cases that we do. I really value that, and that is why I have never thought about leaving. I have sometimes been forced to think about how you manage to do this job without getting so tired.”

“I also find the camaraderie of chambers and the support from the many members of chambers really positive, and the very good friends I have there of all sorts of backgrounds, and the way that they value individuality, not the uniformity of being like them.”

Barristers and direct marketing

“And I think in terms of marketing oneself there is something to be said, whether you are Junior, Senior, in the middle, [for] really engaging with the legal departments at those organisations. [X] will be aware at law firms we do an insane amount of business development and socials, and that literally leads directly to work. So should I want to build a practice as a self-employed practitioner - which a couple of my friends have gone from employed back to self-employed - it is so much easier, because you have all these skills about how to build your practice without having to necessarily deal with some of the drama that you might have in a clerk's room I have done and we do talks and things. Maybe they are not open to all but there is something to be said about effective marketing, whether to your professional client in law firms, or lay clients, or corporates, or high networth individuals, or whoever you happen to be working with. It is a skill and it is a skill that is taught in firms but it is not taught for self-employed practitioners as much, and it is important particularly in a modern world.”

Mentoring on building a practice

Some junior barristers in the early years of practice have limited understanding of the practicalities of building successful relationships with solicitors and Silks, and thus they may miss valuable early opportunities to build their practices.

“... one thing that some people miss out on is being mentored on the extent to which relationships with other members of chambers, particularly leaders, and with solicitors, are so important to the development of your practice at the Bar. And this over-emphasis, false emphasis on meritocracy. Because if you are innocent at the beginning of practice, it

APPENDIX 2

is very easy to be lulled into the sense: 'Well, if you do your cases well and you act professionally with solicitors, that is all you need to do', and you don't. You need to build relationships with people in terms of trust and repeat business, and so on. And no one-- people rarely tell you that. Every now and again a senior clerk might explain it to you, but you have to be really lucky for that to happen, I think."

"... always say to younger members I was incredibly naïve when I started out and I just thought, "Oh, I'm at [Chambers] and I'm just going to sort of coast along and work is going to come in," and I was not really thinking about things in terms of marketing myself, firstly, to more senior members of chambers, and just being visible and being-- just engaging with the clerks more, explaining to them the kind of work that I want to do and being more forceful and more forthright, you know - in practice management meetings. And I think actually it would have helped if someone just sat me down, you know, in the first [...] year and said, "Actually, you know, this is what you've got to do. Yes, you've got to do good work, but you know, this is a business and you've got to do X, Y, Z." And I just didn't have that-- I didn't think I had that guidance. So, I sort of figured it out along the way. And I think - Yeah. Certainly, I wish that I had paid more attention to building/establishing relationships, I think, with more senior members of chambers earlier. I think that would have helped, from my perspective, I think it would have helped."

Allocation of work and the role of instructing solicitors

Solicitors firms and the Law Society have a role to play in supporting racial diversity at the Specialist Commercial Bar by thinking holistically about whom they instruct and why.

"... I have worked with lots of different law firms and there is a piece of work to be done with the Law Society in ensuring that when they are instructing people, that they think about diversity and inclusion when instructing people so that people at the Bar can have the career development that they quite rightly deserve."

Allocation of work and the role of barristers' clerks

The role of barristers' clerks in the allocation of work and promoting the development of individual barristers' careers is an important one. Their engagement is vital to address the low numbers of Black barristers at the Specialist Commercial Bar. There is concern that some barristers' clerks are not promoting all barristers in fairly due to subjective influences, which should be irrelevant.

"I have had dealings with clerks who have just blocked me from instructing ... or working with certain people when I have wanted to, and when I have said I want to work with - there is one person of colour, and because the world is so small I will not say any more,

APPENDIX 2

that I wanted to instruct and work with and their clerks presented me with a white candidate and said that the person was unavailable, even though I know that they were available, and it is a pandemic and I wanted to ensure that they had some work and we could do something really good together. So there is something to be said about talking to the Clerks Institute about antiracist training and how to implement that, and how to support people during their practice when they enter practice as well. I have never had clerks, in the areas that I have put forward, any diverse candidate ever, and that is in all my experience. So currently all of the other barristers that I work with on a day to day basis, and the work is highly lucrative, are all white and have all attended ... Oxbridge."

"So our clerks have been hammered with, you know, equality and diversity for years and years and years, and they are actually really good at making sure that when somebody calls in that they are given - there is no particular barrister; that is what I mean. The issue with asking a particular barrister, as [X] said, is when you ask for that barrister you want that barrister for whatever reason, and it may be because you have worked with them before, you liked the way they were with the clients, you know. But there are times where solicitors will call in because they want a particular barrister because of the way they look or the way they might sound, or where they have gone to university, and our clerks are really switched on in making sure that whatever they are given is a mixed group both in terms of race and in terms of sex. ... But the reason I am explaining is this that it is possible for your clerks to be trained in a way that is - to make sure that they are putting out work to everyone in an equal way, both in terms of sex and gender, and they have gone to training, they have gone to - all of them have gone to training. They speak to the barristers very often about it. We have talks about it. We have equality and diversity. Our committee is constantly reminding them of this. So it is possible and it does work. But I think it is just a question of, I think, moving away from that "old school" clerking where the clerk does what they want and nobody tells them what to do basically."

"... we will not retain black talent if they cannot progress and if they cannot feel included and comfortable in the organisation. So I think it is really that big, you know? It is not neat and easy and there is a quick way necessarily to resolve this. But I think those are the big things. A fair allocation of work is a massive part of it because you cannot survive at the Bar ... if you are not able to earn a decent living. So that is - and I completely agree that that is a massive starting point, and I actually I really agree with [X] about - we call them Practice Managers - but clerking, because it goes back to [X]'s point. You know, we have got to look at clerking and practice management and who traditionally does these jobs and why it is so limited, because until that starts changing it does not - you know, you can do a lot of bias training, etc., but as I said that is ironing out kinks. That does not make it an object, or wholly objective process. So I think you need more people who are different, who are in the room doing these sorts of - in the clerk's room when allocation is happening, when calls are being taken."

APPENDIX 2

"I remember when I first came to the Bar ... clerks always used to say, 'So and so is sticky.' I do not know if anyone else heard this. But I took that to mean, 'So and so is repeatedly getting work all the time from [the clerks] that other people should be getting, because [the clerks] think So and So is so great, and [the clerks] are giving So and So a pipeline into all the work,' and that is why 'So and so is sticky.' And that is the way I used to interpret it. But it was a very common thing that clerks used to say and, like everyone, they want a shortcut for what they do and their attitude, a lot of the time then, was, 'If it ain't broke, don't fix it,' and it was really difficult to get into that. I do think it is about having the criteria set up from the outset so that clerks have to evidence base why people are being put forward for things. So it is working it all out in advance so that there is a structure they have to plug in and can be asked about later, so you have got a hope of making sure that there is some sort of rotation with the way work is being offered; and that is before you even get to Silk work and Junior work ..."

"... I think, we have a review every term to see what work has come into chambers. We do that using the LEX system, and that is done by the senior clerks and the heads of chambers to maintain confidentiality as far as possible. However, nobody really gets an update or a report on the outcome of those deliberations, so I am not sure how effectively the whole thing is run. But it seems to me, and I don't know what others think, just picking up on [Q]'s point that solicitors know who they want. My experience is that very often solicitors-- unusually, solicitors don't actually know who they want. What the clerks tell me, and I've had long discussions with my clerks, is that solicitors come to chambers and say, 'Give us four names.' And they'll go to other chambers and say, 'Give us four names.' So you put names into a hat and then the solicitor takes all those names to the client and somehow, and in some way that we don't know, a team of counsel emerges from that. And so the clerks, when I say, 'Look, you know, how is work being distributed?' they say, 'Everybody's name is going into the hat.' I think the real problem that we're going to have to deliberate on is work allocation involving recommendations from silks."

Allocation of work and the role of QCs

A strong and consistent view was expressed that the decisions of QCs about who should be appointed as their junior in particular cases has an important influence on the development of junior barristers' careers in the same chambers.

"... when I was a junior, I think one of the biggest vices of the Commercial Bar has always been that silks have their favourite juniors and if you are appointed as a favourite junior early on out of pupillage you have got a seat and a berth to success for the rest of your career. Conversely, if you're not, you're stuck. So, in my chambers---- Well, not stuck, but you're not as successful. In my chambers, there were certain people who worked with [X] from an early stage. Once they were tucked in behind [X] and [X] was asking for them all the time, they flew. And I think if black people in chambers are going to advance or have

APPENDIX 2

parity with white barristers we've got to do something about the allocation by silks of juniors in chambers, because that is the real way to retain and progress black barristers."

"I just think in terms of the best opportunities as a junior and in terms of the opportunities to be on the best cases, that does require you to have-- to basically have some favour with the silks and unless you're in that situation it's very hard for you to be-- you can have the clerks batting for you, you can have really good relationships with solicitors in your own right, but you probably are not going to be in the same league as the juniors that are being led by the leading silks in your chambers all of the time. And I can certainly say from my personal experience that in the last couple of years I've been in a situation where I have developed a really good relationship with a silk who's not even in my chambers and I can see there's a huge, marked difference in my practice because he asks for me in cases and he is recommending me all the time to solicitors and the fact that now an older, white man is telling everybody that I'm really good is making a huge difference to my practice."

"One thing, though, I do wonder about and sort of query to myself at least and maybe not actually raise it expressly with anyone so far, is how Silks allocate their work, in a sense. You know, Silks always end up having their favourite juniors, and so on. It is going to be very difficult to tell the Silks that they have to rotate round juniors, but, equally, that sort of process of becoming one of the favoured juniors, if you like, I do query how that can be, sort of, fairly done, in a sense, and whether there is more that chambers, as organisations, can do to ensure that Silks are not just, kind of, going back to the same junior over and over."

"I recently did a case with a Silk for the first time, and, you know, a fellow junior made a comment to me that, you know, they were glad that that Silk was working-- ultimately, you know, through-- reading between the lines, they were saying: "I am glad that that Silk is working with somebody who isn't like a young white male, young posh white male". You know, that is ultimately what they were saying. I have had other instances where people were like: "Okay, well, I have never worked with those people", and I think that, you know, we have a very significant overlap, and I have expressed interest in that area and I have known they have a lot of groups where they meet, juniors. You know, it is the type of thing which I guess-- maybe [B] feels the same. It is difficult to-- well, partly you don't want to second guess it too much, and it is difficult to actually put-- raise these issues because you feel that you are, in a sense, speculating, and it is hard-- you know, I personally sometimes think I hard-- I don't know whether I am just speculating in my own mind because it is, you know, the kind of, I suspect paranoia that everyone feels sometimes. Or whether you think actually there might be some substance but I am not quite sure how to really dig out the substance. I suspect a lot of the time you just think: "Well, I am fortunate enough to have work, so I will just get on with what I am doing". You know, most of the time you don't really bother thinking about it."

APPENDIX 2

"And there is this standard of 'black excellence.' If you are going to come to the Commercial Bar and you have a certain degree of melanin, you need to be exceptional. You cannot just be good. You need to be absolutely phenomenal and even then you are going to have to work four times as hard. So there is something to be said about this kind of 'Oxbridge bias,' and what does merit look like, and getting engagement from senior practitioners as well. Not those - not people of colour but those who - all the people I work with, they are directing where the juicy work is going; these QCs that have been in the game for over 35, 40 years. You need to get their engagement if we are going to make any kind of progress."

"... I think there was a recognition in chambers that for commercial work certainly the silks are the key. They are the ones with the relationship with the solicitors, they are the ones, you know, the solicitors will often know what silk they want for their case and they will ask the silk for-- or they will ask the clerks for junior recommendation. But, ultimately, it's the silk who's going to say, 'I want to work with X, Y, Z.' And, therefore, in terms of allocation, the key is knowing why silks are choosing particular people. And in order to succeed at a set like [Chambers], essentially, you have to become the junior that the silks go to by five years call, because once you start getting to sort of six, seven, eight, it's almost too late, they've established relationships with those baby juniors that they are going to be working with and that's going to carry them through throughout."

Overt racism

An insight from a barrister on current overt racism which may be unique.

"... one of the things that I've experienced is well, I've experienced racism, but I've experienced it from the other side. So, I've had clients, I've had solicitors basically share their racist views with me, seemingly in ignorance of my own background. And so I am fully aware that racism exists in terms of-- you know, I am fully aware that in terms of the views of solicitors, in terms of clients and lay clients that these racist views are out there, because it's clear to me if obviously I have a solicitor who is sharing with me the various groups that he hates in society or just, well, expressing racist views, then obviously that same solicitor or client, if they were aware of the fact that actually, you know, I am of Caribbean descent, presumably they wouldn't want to instruct me. I actually had a client once who in a mediation said to me that he found it really, really objectionable that there was now such a large number of mixed-race people in London. ... As I say, this has happened-- I mean, this has happened to me multiple times during my career and I think that, you know, and I suppose what you would say to that is, you know, so I sometimes have a bit of imposter syndrome when, you know, if someone asks me what is my experience as a black barrister because actually what I have experienced is-- and I've had it in chambers as well, I've had barristers expressing views to me which I consider to be

APPENDIX 2

pretty racist and I can only imagine these views are expressed to me because they are not-- are not aware of my own ethnic background."

Pregnancy and childcare intersecting with race

An important issue which intersects with race is the treatment of women during pregnancy and parents on return to work after their children are born.

"... when I had children ... I have three, so ... I am not sure it is down to-- I would put it down to race, more, sort, sort of, sex, but the attitude definitely at the time was decisions were being made for me, ... The issue that arose in my case ended up leading to a change in terms of how chambers now deals with women and maternity leave and maternity plans and things like that, and how now- ... for my X-year old, when I had her, things came to a stop. I stopped being put forward for work that would take me out of London without being asked whether that was something that I wanted. 'Oh, she is going to want to be with her baby. We had better not put her forward for a case in which somebody needs a junior because she is going to be doing bath time'. Or, you know, just-- with well intentioned, well-meaning attitude, but, sort of, in terms of retention and clerks making decisions for me, which I then had to call out, which is what I did, and said: 'This isn't-- this isn't-- I am the primary breadwinner. I have a 'stay at home' husband, I have child care. I can be a junior. I can leave London. I have never asked for these accommodations or adjustments to be made, and I resent them because they are not helping me, they are resulting in me earning less money'. And it ended up resulting in a whole review about-- because chambers had a large number of young women who there was concern would eventually end up 'breeding' and that, you know, they would end up leaving ..."

Progression

Applying for silk

Applying for silk in recent times:

"I think I'm like [S], I'd say that everyone should do it, everyone should try if they think they can, to become silk, because I do think we need more representation. I was absolutely determined to get it. ... I'm just like that, I'm just driven that way. The first time I didn't get it and you get feedback and you can narrow it down as to which judge you felt spoilt your copybook. Now I've got silk, and I have been busy ever since, just because I was so determined as I had so much work getting into silk that I'm still kind of inundated by it."

APPENDIX 2

Mentoring for QC applications

There was a suggestion that Black QCs could provide important mentoring to Black middle seniority juniors about making applications for appointment to QC.

“... black Silks mentoring middle juniors at the stage when they should be thinking about Silk but won’t be told by their clerks or their chambers that they should be, because all of their competitors will be thinking: ‘How do I get in there before them?’ ... I have a supportive clerking team about it ... But I think that-- I remember being told early at the Bar that there was a tradition that people who are ahead of you-- sorry, of lower call, lesser call than you, will tell you before they are applying for Silk. It is just not true that there is this etiquette. There is not. And what you realise is that you-- it is only you who has got to make that judgment, and sometimes opportunities to do that can appear early on in your practice, and then the practice settles down in a way that does not really make it realistic, and then later again it presents itself. And I think mentoring would help people make those judgments in an environment where otherwise they do not feel supported.”

Silks progressing to the judiciary?

Appointment to the judiciary as a silk.

“I’ve considered judicial office. I’m in silk. ... I’ve come to the view that if you, at my stage, go for judicial office, it will be very much on the basis that, quite apart from any abilities you may have, you are going to be the black person on the bench. I’ve spoken to people who have-- ethnically diverse people who’ve gone on the bench who have said it’s very, very lonely and it looks, in retrospect to them, as purely a box-ticking exercise. And I don’t want to give people the comfort of thinking, ‘Okay, we’ve got [my name] on the bench,’ even if I were ever selected, ‘We’ve got [my name] on the bench, job done!’ I think there are ways of not allowing them to do that, but I think that is something that many in the judiciary want to achieve. Just give us some statistics, give us-- it’s tokenism, in a sense. And I’m afraid at the moment there simply aren’t enough senior black barristers or lawyers who could be in a position to go on the bench to make it look like anything other than tokenism. And I think it’s much more important for us to focus on applications to silk rather than applications to the judiciary. Those who want to go up will go up, but we need to focus, I think, on silk and below.”

“I think actually everyone should really try to do at least part-time [Judicial Post]. I mean, I got into it because at the time there wasn’t even an application process for [Judicial Post]. You were just told, ‘You’re appointed.’ It wasn’t just me, I mean, there was a whole lot of other people who were appointed at the same time because they just needed [Appointment stated] in that area. I would not have had the hutzpah, if I can put it like

APPENDIX 2

this, to apply, to be honest. It would never have crossed my mind. I was actually, in retrospect, quite grateful that the Lord Chancellor, or whoever it was, just said, 'Right, you're on.' It's a very good experience and I think people should try and do it at least part-time and see whether they enjoy it. That actually led to my saying, 'Okay, I'll take another part-time appointment,' that I do as [Appointment stated] and sit in [Area]. And one of the things, just following up the points that some people have made, is I actually think it's really important that people step up to the plate in, broadly speaking, minority, protected characteristics communities as far as they can, as far as they're comfortable with. This issue of loneliness in a full-time job, that's a big issue, people shouldn't do it, like, to have the weight of the world on their shoulders and be kind of pointed to, 'You're the person who is representative of every aspect of ethnicity and gender and so on.' Yeah? It's an incredibly exposing position. But to do it in a more gentle way in the sense of part-time and so on, I think it's a really good thing to do. And I found it made me twice as good an advocate. I learned so much from doing it."

APPENDIX 3

APPENDIX 3 – THE BLACK INCLUSION GROUP SURVEY

1. The survey was distributed by the commissioning SBAs to their members. Members of the SBAs were asked to pass the survey on to others who may be practising or have been interested in practising at the Specialist Commercial Bar when they joined the Bar or did pupillage even if they were not doing so currently.
2. The results summarised in this Appendix include comparison of the responses from:
 - (i) The entire group who responded (“**ERG**”) consisting of up to 428 individuals⁵⁵
 - (ii) Responses from those identifying themselves as Black African, Black Caribbean and mixed African/Caribbean heritage (“**BRG**”) consisting of up to 46 individuals⁵⁶
3. Where possible an appropriate comparison is also made against BSB data for the Practising Bar in 2020⁵⁷ and/or 2011 Census for UK.
4. For more information about the survey see the notes at the end of this document.

⁵⁵ exact numbers responding varied for individual questions given the option of not responding

⁵⁶ exact numbers responding varied for individual questions given the option of not responding

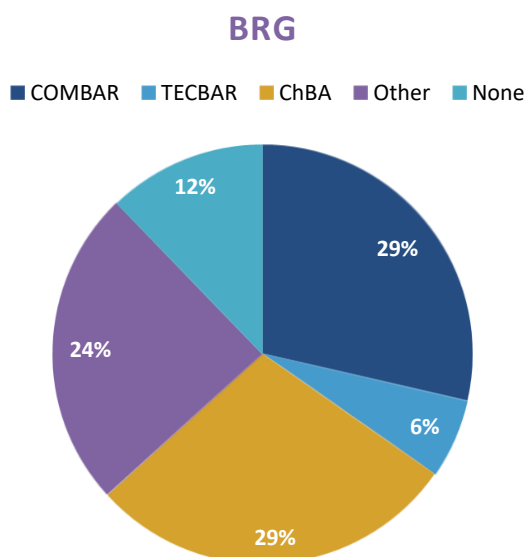
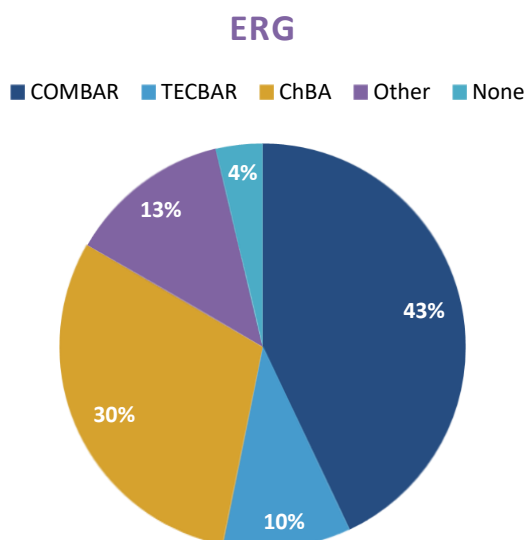
⁵⁷ The BIG Survey was carried out between November 2020 and February 2021. Accordingly for the purposes of comparison, the BSB data for 2020 (rather than 2021) has been used.

APPENDIX 3

Part 1 - Analysis of those who responded

By SBA Membership

5. The question about SBA Membership permitted multiple answers including none. Only 4% were not a member of any SBA.

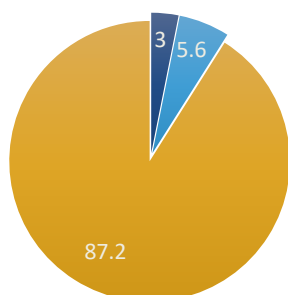


The fact that many who responded are members of more than one of the commissioning SBAs limits the conclusion that can be drawn. However, it is noted that the number of Black African, Black Caribbean or of African or Caribbean mixed heritage responders who are members of COMBAR is noticeably lower than for the ERG.

APPENDIX 3

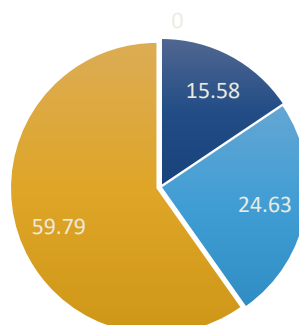
By Ethnicity %

UK Population - 2011 census



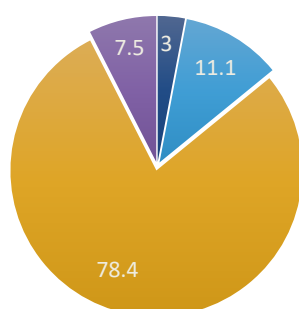
■ Black ■ Other PoC ■ White ■ No Response

London Population - 2011 census



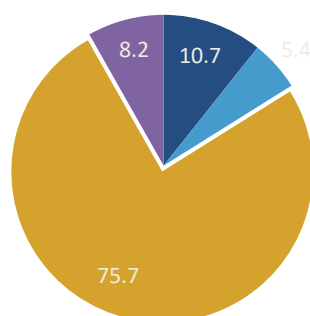
■ Black ■ Other PoC ■ White ■ No Response

The Practising Bar - BSB report



■ Black ■ Other PoC ■ White ■ No Response

ERG



■ Black ■ Other PoC ■ White ■ No Response

The ERG

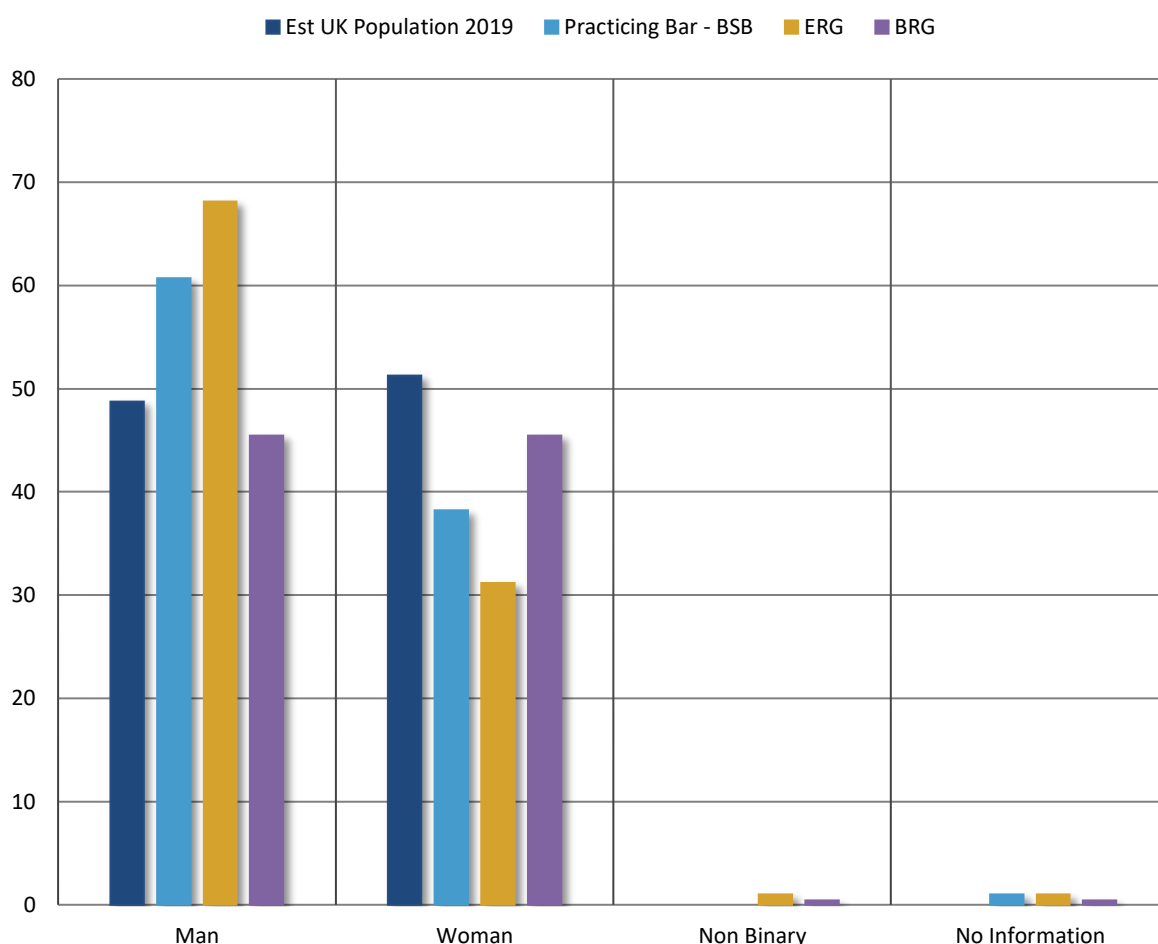
- 91.8% of participants disclosed their ethnicity
- 10.7% identified themselves as Black African, Black Caribbean, African or Caribbean mixed heritage
- 75.7% of participants identified themselves as white
- A total of 16.1% of participants identified themselves as people of colour

APPENDIX 3

It appears, unsurprisingly that those members of the Bar who identify as being Black African, Black Caribbean or of African or Caribbean mixed heritage were more likely to respond to the survey.

By Gender %

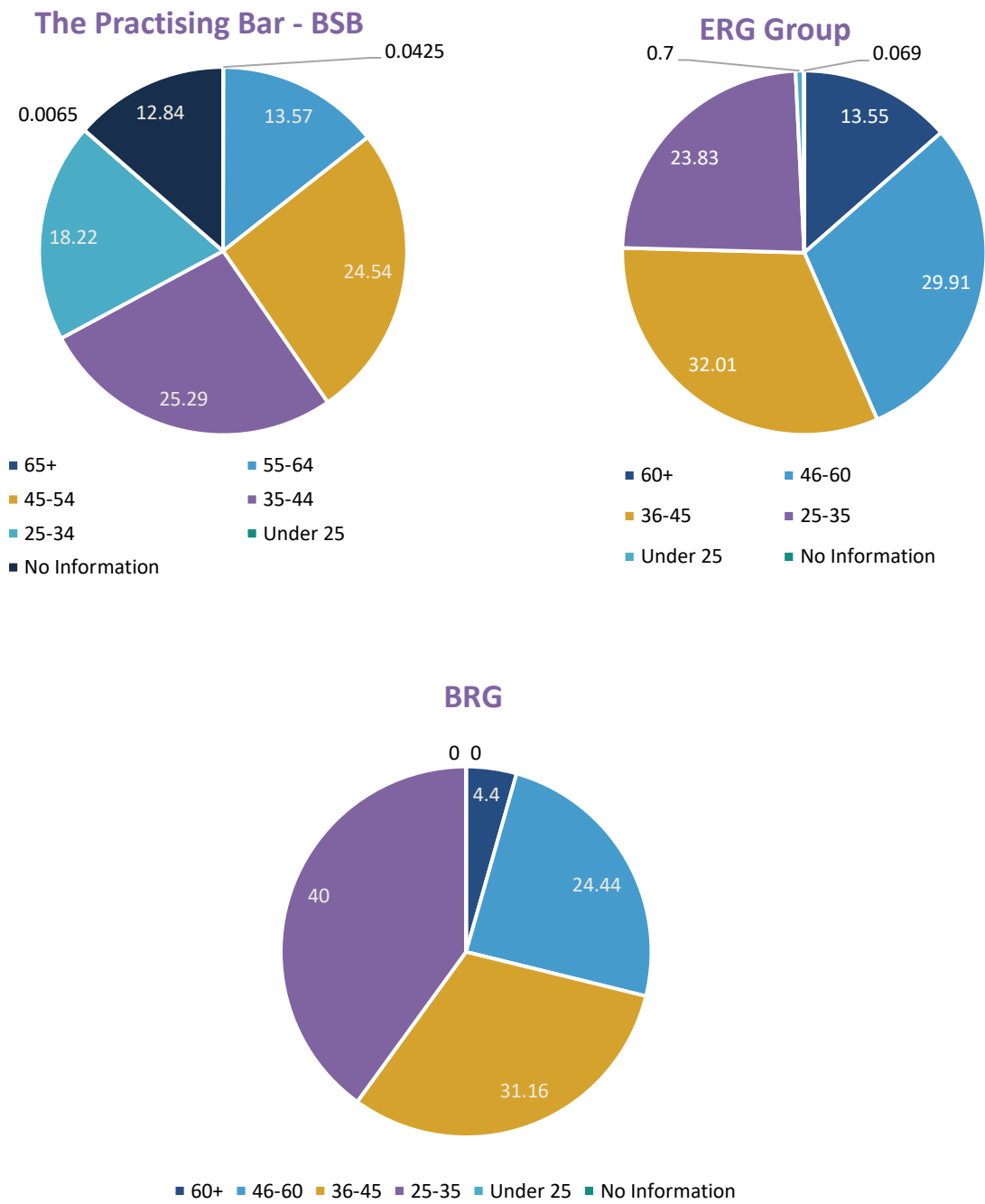
Comparison - UK Population, the Bar, the ERG & BRG



It is noted that the same number of Black African, Black Caribbean or of African or Caribbean mixed heritage women as men responded despite the gender disparity at the Bar and the Specialist Commercial Bar in particular.

APPENDIX 3

By Age %



The ERG was weighted slightly in favour of younger people than the make-up of the Bar as a whole would suggest. The BRG included fewer people over 60 and more under 25 than the Bar generally and the ERG.

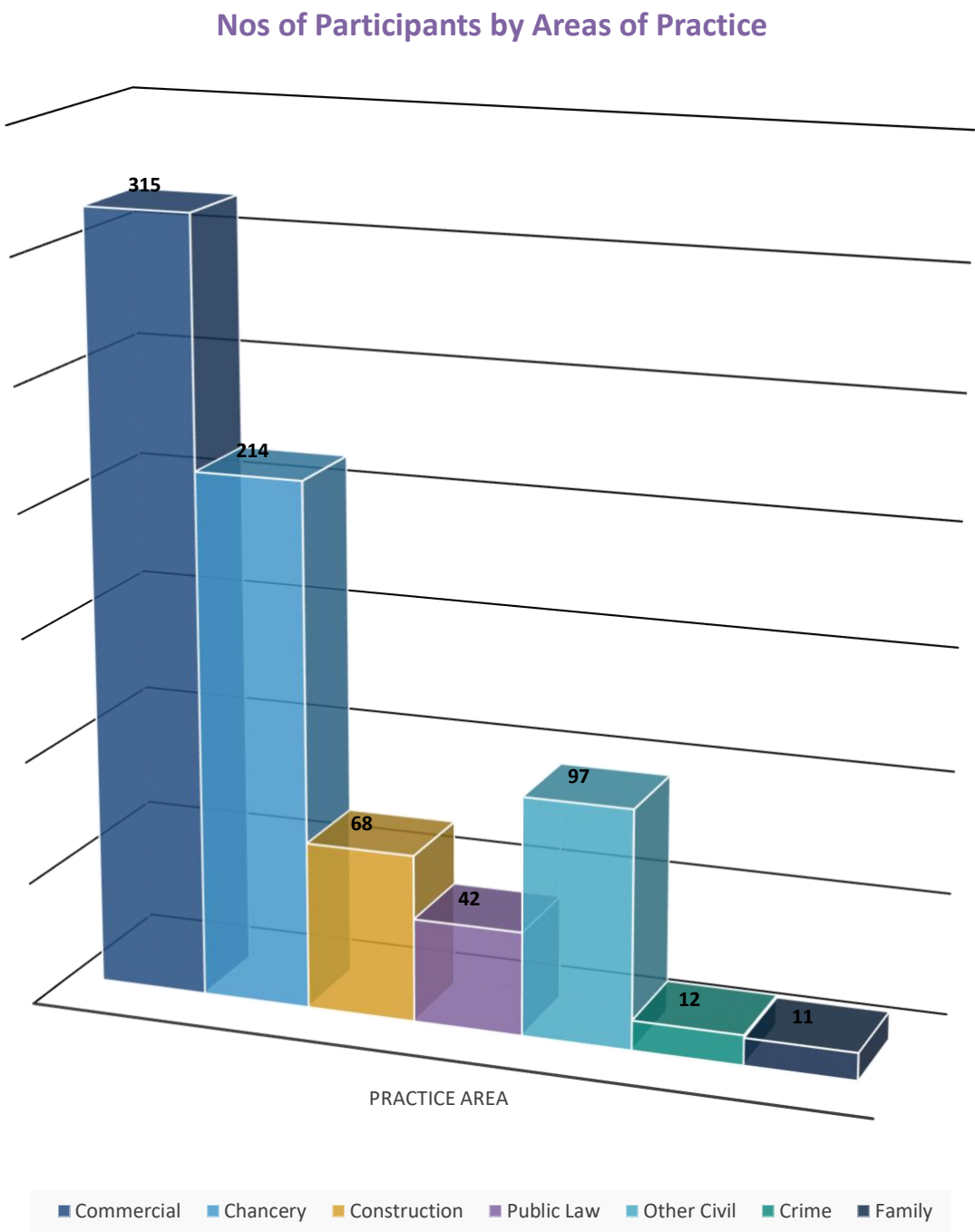
APPENDIX 3

Part 2 – Career & Career Progression

Comparison of the ERG and the BRG

Areas of Practice

6. The question about areas of practice allowed multiple answers.



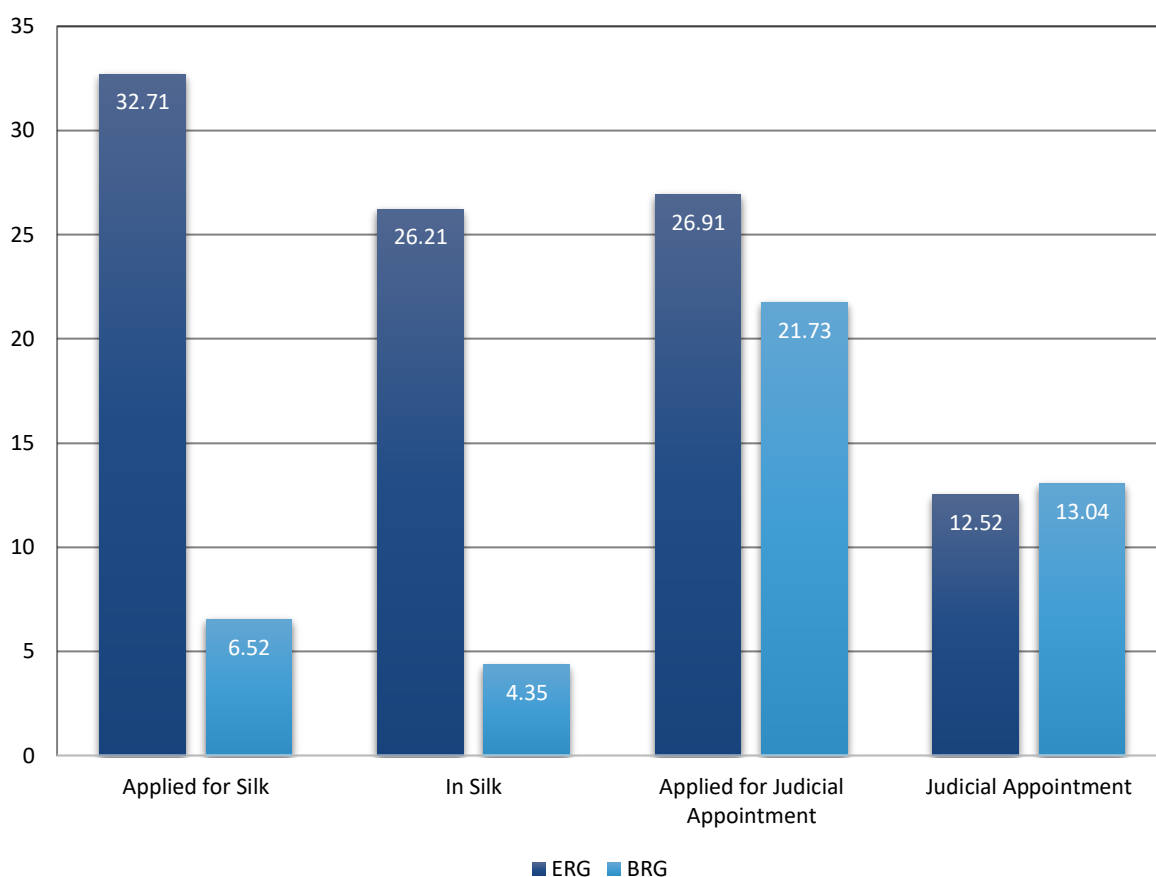
APPENDIX 3

Applied for/Appointment to Silk and/or Judicial Appointments

7. Comparing the % of the ERG and the % of the BRG who:

- applied
- who were appointed

Silk and Judicial Appointment by %



The ERG does not represent the whole pool of potential applicants for appointment. Other statistics point to variations in application and a success rate across age and gender. Accordingly, this analysis is not of statistical value.

However it is noted that the percentage of the BRG who applied for silk (6.52%) was significantly less than the ERG as a whole (32.17%). The comparative success rates for QC appointment were 72% for the ERG and 66.7% of the BRG. The numbers point, as other reports do, to applications by those who are Black African, Black Caribbean or of African or Caribbean mixed heritage being less likely to succeed – but these numbers are small and not themselves statistically reliable.

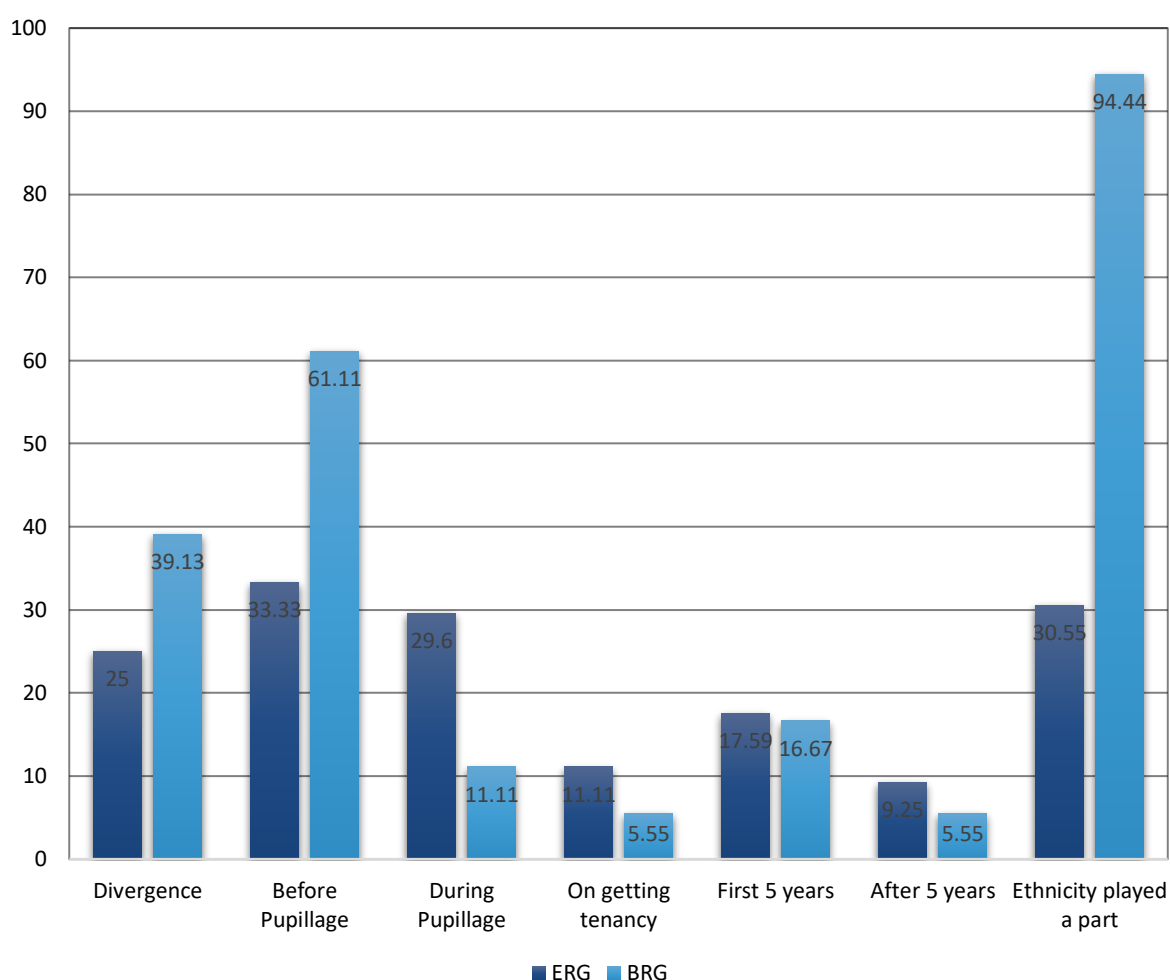
APPENDIX 3

The percentage of the BRG applying for judicial appointment was much closer to the percentage of the ERG. The percentage success rates broadly equivalent.

Divergence from original desired areas of practice

8. Comparing the % of the BRG whose current area of practice does not match the area of practice that they originally wanted to do. It should be noted that the survey did not ask if that change was desired or not desired either when it occurred or in retrospect.

Divergence from area of practice originally wished to undertake and current area by %



Across the ERG just under 25% of respondents reported a divergence. The BRG reported a 39% divergence. It should be noted that the ERG figures include the data for the BRG.

Although the numbers are small and must be treated with caution it appears the experience of securing pupillage has a greater impact on the divergence between the BRG's desired and ultimate areas of

APPENDIX 3

practice than across the ERG. For the ERG pupillage selection and the experience of pupillage were the greatest factors with the experience of the early years being a significant factor for both groups.

It is also striking that almost all of the BRG considered ethnicity to have played a part in that divergence.

Part 3 – Behaviours based on Race and/or Ethnicity

9. The responses received provide clear evidence of significant levels of unacceptable behaviours based on race or ethnicity occurring at the Bar, specifically the Specialist Commercial Bar. The responses do not enable proper statistical analysis but are nevertheless valuable anecdotal evidence.

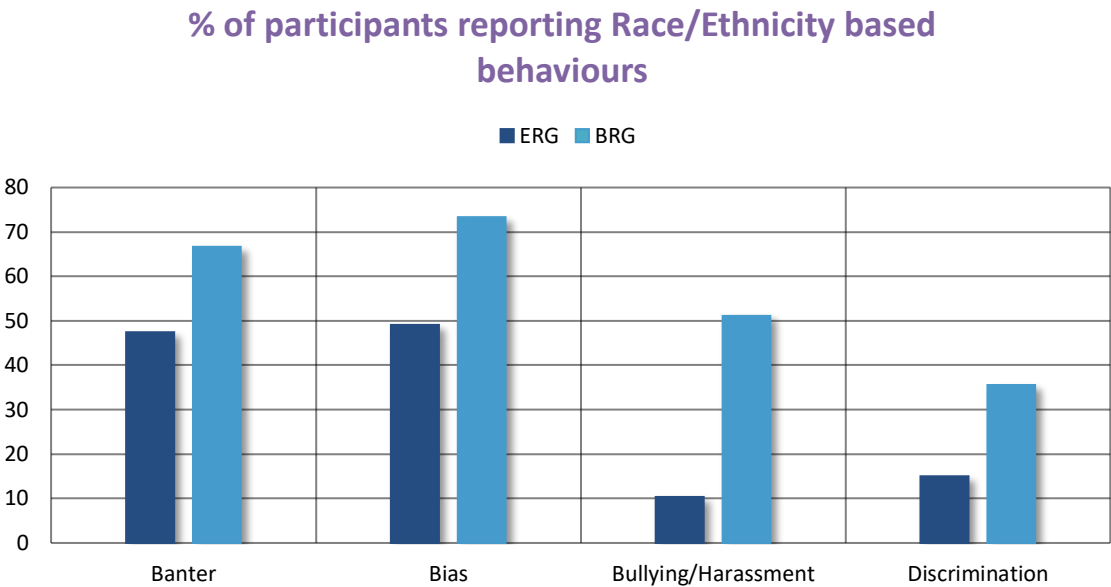
Points to note

10. The questions in the survey were not limited to:
 - behaviours targeted at any particular race or ethnicity
 - any particular period of time
11. Much of the evidence was provided by those responding who did not identify as Black African, Black Caribbean and mixed African/Caribbean heritage. In particular it is relevant to note that:
 - the BRG make up only 10.7% of the ERG.
 - Just over 10% of the BRG elected not to answer any of these questions.
 - a small number of the BRG reported that they had not witnessed or experienced behaviours identified.

APPENDIX 3

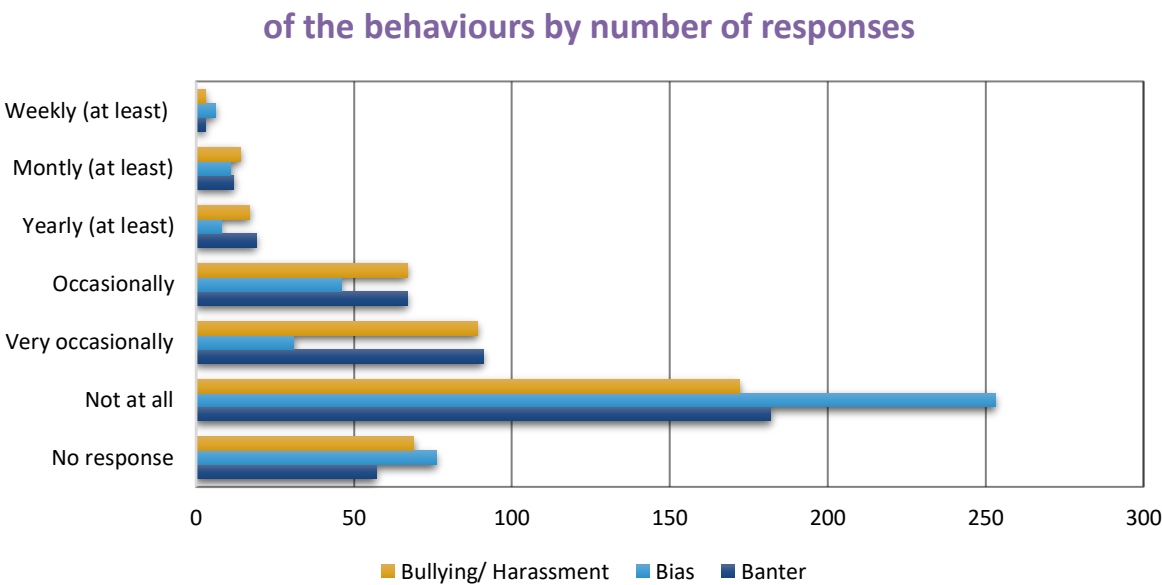
Generally

Behaviours as reported by those participants who witnessed and/or experienced them



47% of the ERG expressed the view they had witnessed and/or experienced banter related to ethnicity and 49% expressed the view they had witnessed bias related to race or ethnicity. The same percentages for the BRG were 66.66% and 73.33% respectively.

The frequency witnessing and/or experiencing such behaviours

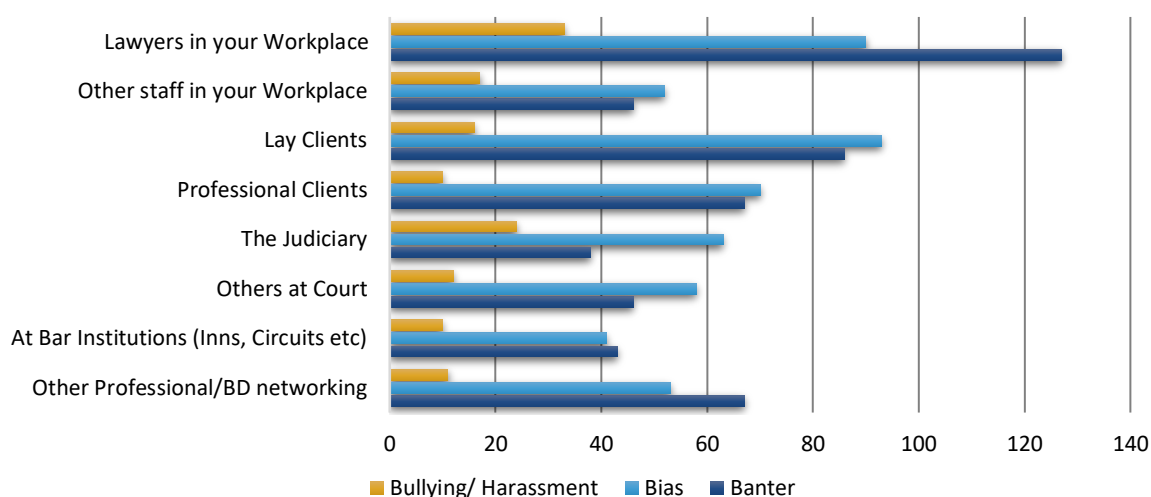


APPENDIX 3

For both banter and Bullying/Harassment more than 3 people report a frequency of at least annually and more than 100 reported it being occasional or more. More than 70 people reported witnessing or experience of bias occasionally or more often.

The sources/locations of such behaviours (multiple answers were permitted)

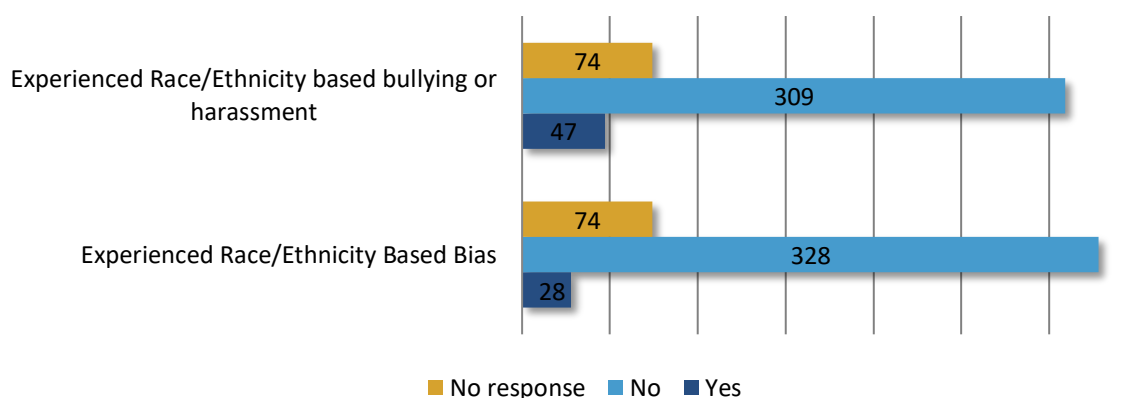
of banter/bias/bullying by number of responses



The possible sources of banter included all possible sources identified with some greater emphasis on the Judiciary and lawyers in the responder's own work place. It is noted that the behaviours of other lawyers were more often described as banter or bullying/harassment whereas the behaviour of the Judiciary and clients (both lay and professional) was more often described as bias.

Direct Experience of bias and bullying/harassment based on race or ethnicity by number reporting

Direct experience by number of responses



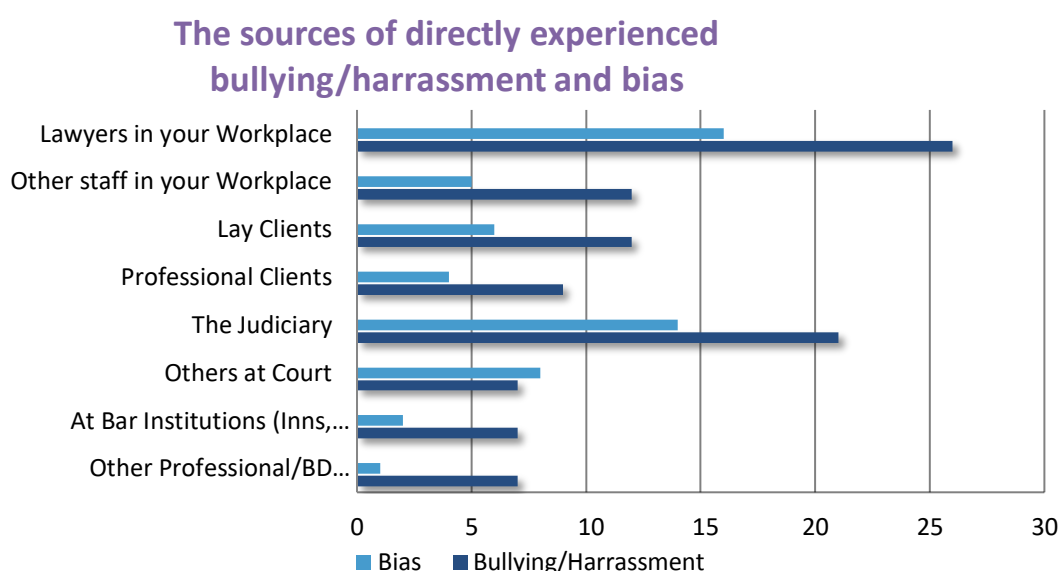
APPENDIX 3

More than 10% of ERG reported direct experience of race/ethnicity-based bullying or harassment and more than 6.5% reported direct experience of race/ethnicity-based bias.

Those figures should be considered in the context of the ethnicity spread of the ERG

- 10.7% identified themselves as Black African, Black Caribbean, African or Caribbean mixed heritage
- A total of 16.1% of participants identified themselves as people of colour

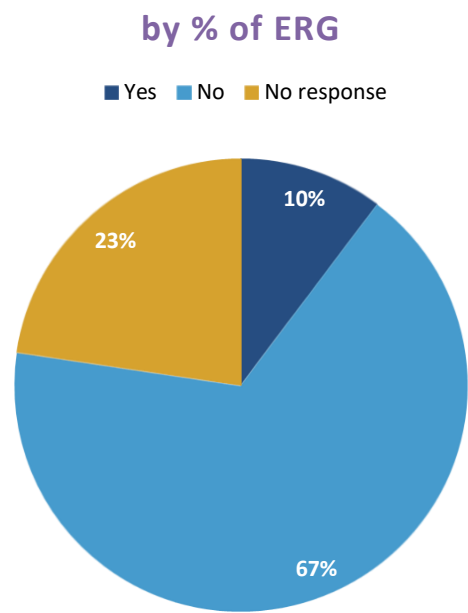
The sources/locations of the direct experience by numbers reporting it (multiple answers were permitted)



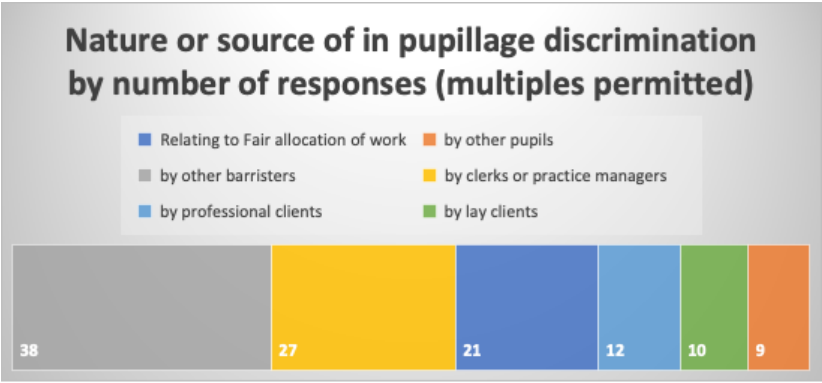
The reported sources and locations suggest such behaviours run across all aspects of the professional life of a barrister with colleagues in chambers/the workplace and the Judiciary being the most significant sources

APPENDIX 3

Experiencing or Witnessing discrimination – during your pupillage

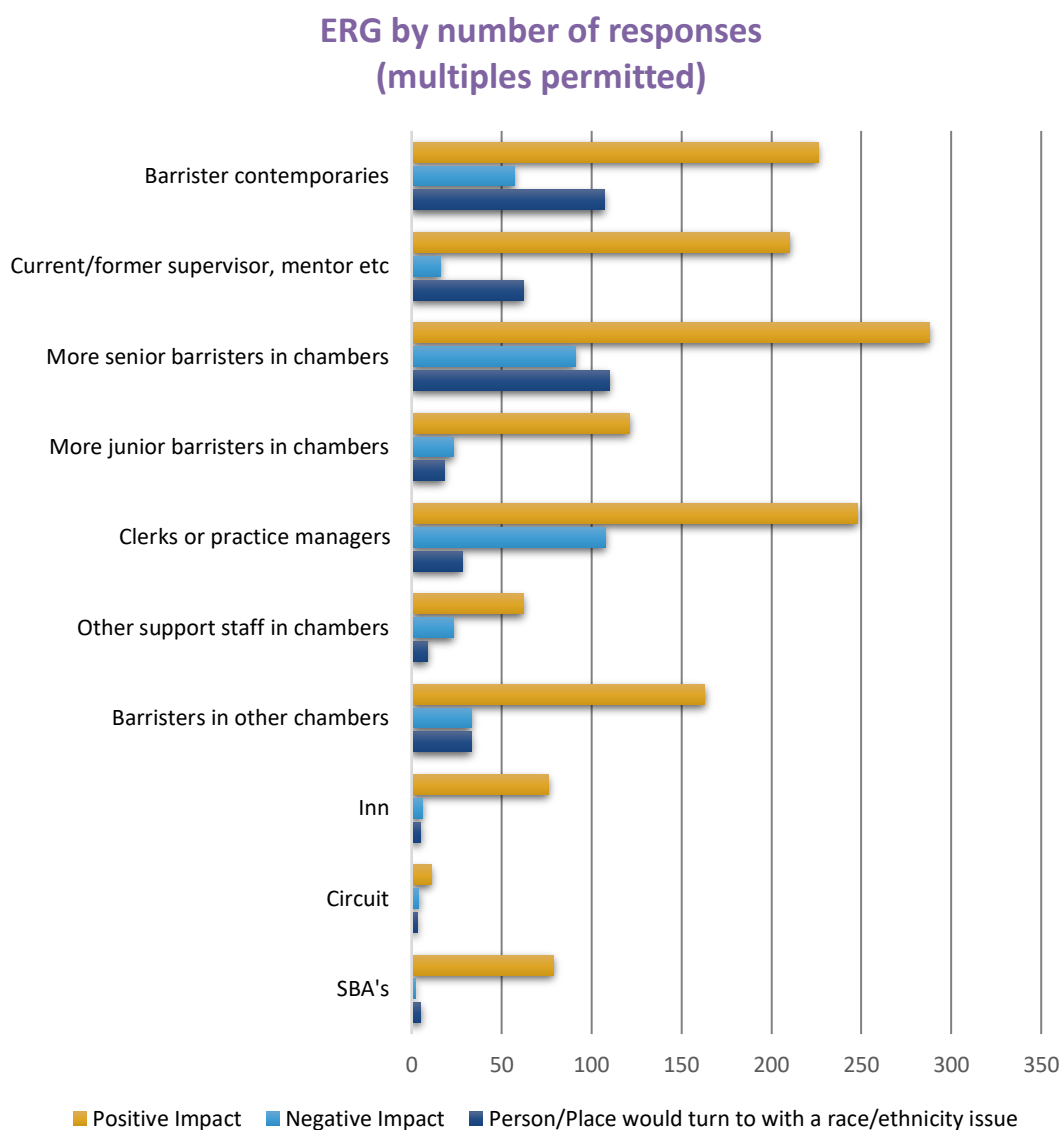


23% of ERG experiencing or witnessing discrimination during their pupillage is noticeably higher than those who report experiencing or seeing it later during the rest of their careers.



APPENDIX 3

Positive & Negative impact on Practice Development & Support with Race/Minority Issues



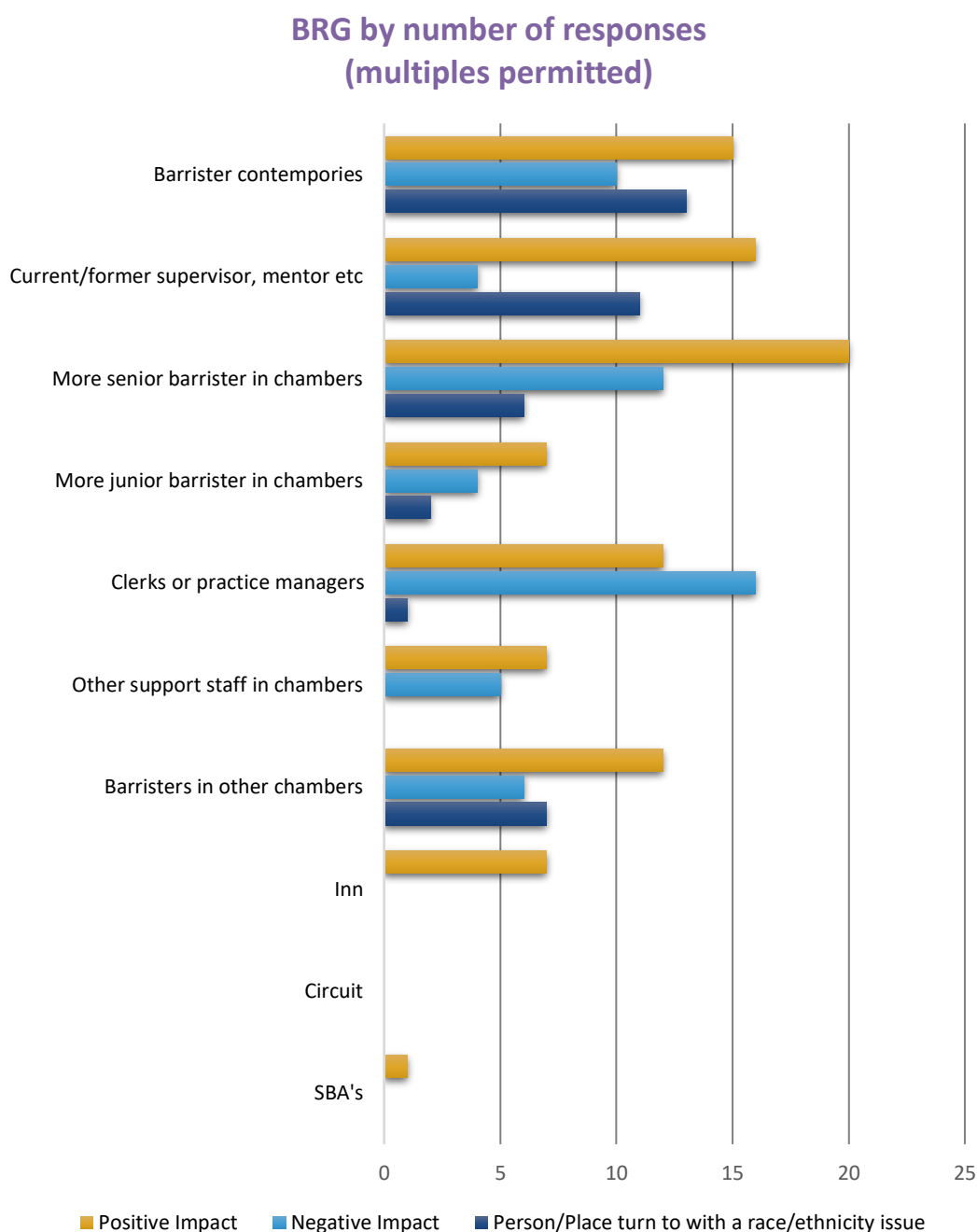
The relatively high levels of positive impact from the barristers (particularly senior & contemporaries and both colleagues & those in other chambers) and Clerks/Practice Manager are noted.

Although those same groups have had a negative impact for some the numbers benefiting from positive impacts are much greater than the negative.

Across the ERG support dealing with Race/Ethnicity issues was felt available from the same sources as have a positive impact although to a significantly lesser extent. Many who answered the positive impact question did not answer either the negative impact or support question.

SBA's feature positively along with the Inns

APPENDIX 3



More than 17% of BRG did not respond to any these questions. The majority indicated they would not turn to the listed places of support preferring friends, family and other people the same ethnicity as themselves.

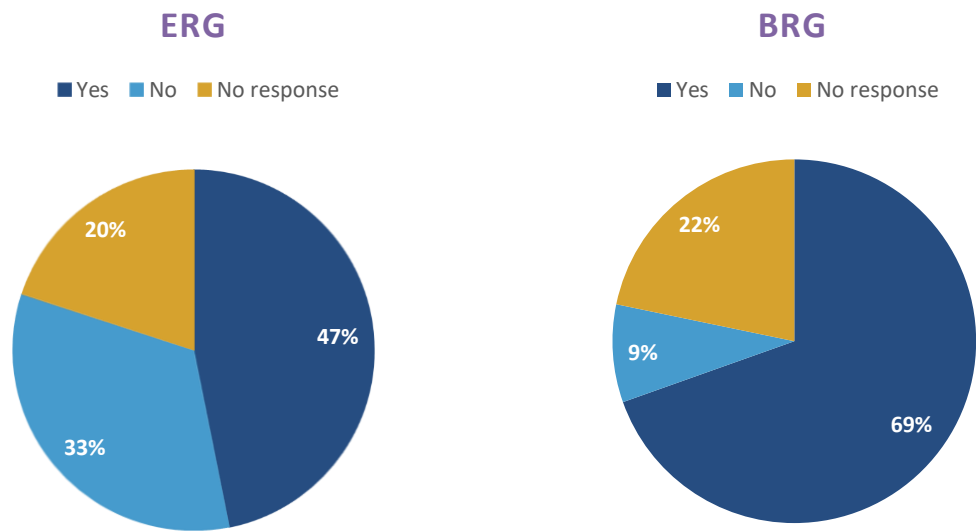
The differential between positive and negative impact of different groups is much reduced compared to the ERG responses and in the case of Clerks/Practice Managers the negative exceeds the positive.

The positive impact of the SBAs is largely missing.

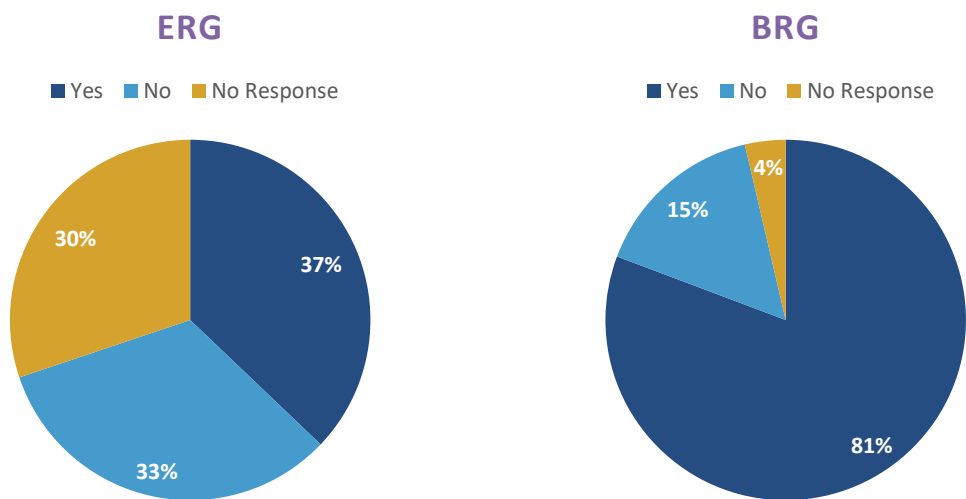
APPENDIX 3

Part 4 – Opinions

Are there currently discriminatory practices in relation to race and ethnicity in pupillage selection that need addressing?



Is there anything unique about being a Black person at the Bar?



The explanations that accompanied the “Yes” responses from BRG were various different versions of “Hypervisibility along with being overlooked” “Unique by reason of experience not ability or practice” “Not belonging in an inherently white space” and “Assumptions by Court staff, other court users and some barristers that you are not a barrister”.

APPENDIX 3

Notes

12. Data sources:

- 2011 Census – <https://www.ons.gov.uk/census/2011census/2011censusdata>
- Practising Bar – BSB report on Diversity at the Bar published January 2021
<https://www.barstandardsboard.org.uk/uploads/assets/88edd1b1-0edc-4635-9a3dc9497db06972/BSB-Report-on-Diversity-at-the-Bar-2020.pdf>
- ERG – all 431 participants in the survey
- BRG – a sub-group the ERG consisting of 46 participants who identified their ethnicity within one of the groups identified as Black below

13. The BIG Survey – survey questions – <https://www.surveymonkey.co.uk/r/93TGQPS>

- The survey was launched in w/c 30.11.20 by ChBA, COMBAR & TECBAR
- Others asked to circulate the survey included the Inns, Circuits and other SBAs
- The survey was open to anyone who chose to respond
- Responses were anonymous unless individuals chose to identify themselves at the end of the survey
- Includes the responses given by those who did not complete the survey or did not complete all questions
- It was possible for an individual to respond more than once and there is no way of knowing if that happened.
- The survey results are confined to responses received by COB 16.2.21

APPENDIX 3

14. The BRG includes those responding to the BIG survey identifying themselves as:
- Black/African/Caribbean/Black British – African
 - Black/African/Caribbean/Black British – Caribbean
 - Black/African/Caribbean/Black British – Any other Black background
 - Mixed – White and Black Caribbean
 - Mixed – White and Black African
15. Other People of Colour (“PoC”) includes those responding to the BIG survey identifying themselves as:
- Arab
 - Asian or Asian British – Indian
 - Asian or Asian British – Pakistani
 - Asian or Asian British – Chinese
 - Asian or Asian British – Bangladeshi
 - Asian or Asian British – Other Asian background
 - Mixed – White and Asian
 - Mixed – White and Chinese
 - Mixed – Any other Mixed Multiple Ethnic Background
16. The remaining groups who are not included in either of those descriptions are those who responded to the BIG survey identifying themselves as:
- White – British/English/Welsh/Northern Irish/Scottish
 - White – Gypsy or Irish Traveller
 - White – Irish
 - White – any other white background



APRIL 2022