

## Post-LASPO and the role of diversity in family law

Celebrations and policy campaigns continue to mark a 100 years of women in law. In 2017, 'for the first time, the number of female practising certificate (PC) holders exceeded male colleagues...women made up 50.1% of all PC holders – up from 43.4% in 2007.'<sup>1</sup> Black Asian Minority Ethnic (BAME) professionals as practising solicitors were at its highest at 16.5% of the profession.<sup>2</sup> While significant strides have been made, little attention has been paid to the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) on the role of diversity, with particular reference to women and BAME, in family law.

### Historical development of women and BAME lawyers

Diversity in law took hold in 1922 when the Law Society formally recognised women, as legal practitioners, in law. Naturally, gender set itself as the rudimentary benchmark for diversity. The impetus for institutional recognition, it could be said, began with the parliamentary narrative on the role and inclusion of women,<sup>3</sup> and the developing recognition to accept multi-culturalism across all fields of society intensified in post-war Britain.<sup>4</sup> The trajectory of the equality and inclusion policy was assisted by the historical overt<sup>5</sup> transfer of jurisdictional power from the ecclesiastical courts to the common law courts. The transfer diversified family law from the constrictions of religious expectations to one of societal norms, which in the process repositioned women to secular norms. The subsequent transformative nature of divorce laws, and the marrying manoeuvres<sup>6</sup> to embrace women in law as right bearers and practitioners began its course.

Supplemented by various forthright equality laws,<sup>7</sup> the Law Society was forced to allow women to sit law exams to practice law. The first woman, of four, who took Law Society examinations and to be called as a solicitor was Carrie Morrison.<sup>8</sup> And, with Ivy Williams as

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<sup>1</sup> The Law Society's Annual Statistics Report Flyer 2018, found at the end of this link: <<https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2017/>> 1, accessed 18 June 2019.

<sup>2</sup> The Law Society's Annual Statistics Report Flyer 2018, found at the end of this link: <<https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2017/>> 1, accessed 18 June 2019.

<sup>3</sup> See campaigns surrounding abortion and the Life Preservation Act 1929.

<sup>4</sup> See Richard T Ashcroft and Mark Bevir, 'Multiculturalism in contemporary Britain: policy, law and theory' (2017) 21:1 Critical Review of International Social and Political Policy.

<sup>5</sup> By way of the Matrimonial Causes Act 1853.

<sup>6</sup> See the historical equal pay and the contraceptive pill campaigns.

<sup>7</sup> See the Sex Disqualification Act 1919.

<sup>8</sup> See Carrie Morrison at <<https://doi.org/10.1093/odnb/9780198614128.013.111790>> accessed 18 June 2019, and <https://www.oxforddnb.com/view/10.1093/odnb/9780198614128.001.0001/odnb-9780198614128-e-111790> accessed 18 June 2019.

the first female to be called to the English bar,<sup>9</sup> albeit not practising, it seemed that women began to set a female standing in law. By 1925, Daw Phar Hmee became the first Burmese female barrister, and, in 1933 Stella Thomas became the first West African woman to be called to the Bar.<sup>10</sup>

Despite the breakthrough and notwithstanding the substantial support through laws,<sup>11</sup> the Law Society examination fees hindered the development of gender equality. To this effect, the rise of women was incremental because in 1967 only 2.7% of women held practising certificates,<sup>12</sup> and by the 1990s the figure moderately rose to 23%.<sup>13</sup> In 1982, 'Black, Asian and Minority Ethnic (BAME) backgrounds constituted 0.25% of all practitioners,'<sup>14</sup> and the growth of BAME remained progressively slow, as BAME backgrounds accounted for only 2% of the profession in the mid-1990s.<sup>15</sup> The figures set a desolate tone for the progression of diversity for the Law Society's Race Relations Committee,<sup>16</sup> which was set up to promote diversity. Overall, the Committee's relative late formation in 1986 and its impact demonstrated the stilted nature of diversity in law. It was not until the Equality Act 2010 that significant institutional improvements took place.

The Equality Act 2010 was catalyst for diversity as it obliged the Law Society to adopt a diversified work-force. The manifestation was that diversity and inclusion became a Law Society flagship policy. Practised through the Law Society's Diversity and Inclusion Charter 2009, the Law Society highlighted the business case<sup>17</sup> for the need of the legal professional work-force demographics to characteristically represent the clients it seeks to serve.<sup>18</sup> The Law Society's practical efforts and demands began to reflect the theoretical expectations of diversity and inclusion policies. The connections began to symbolise the role of diversity in law and the Law Society's flagship policy has since remained in place in title, mandate and activity.

## Female and BAME (family) lawyers today

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<sup>9</sup> See Ivy Williams at <https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-36924> accessed 18 June 2019.

<sup>10</sup> See First 100 Women <https://first100years.org.uk/digital-museum/timeline/> accessed 18 June 2019

<sup>11</sup> Sex Disqualification Act 1919.

<sup>12</sup> See 75 Years of Women Solicitors at <http://news.bbc.co.uk/1/hi/uk/40448.stm> accessed 18 June 2019

<sup>13</sup> How Diverse are Law Firms <<http://www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page>> accessed 18 June 2019.

<sup>14</sup> S Aulakh et al, Mapping advantages and disadvantages: Diversity in the legal profession in England and Wales: Final Report for the SRA (2017) 12.

<sup>15</sup> S Aulakh et al, Mapping advantages and disadvantages: Diversity in the legal profession in England and Wales: Final Report for the SRA (2017).

<sup>16</sup> Now called the Ethnic Minority Division Committee.

<sup>17</sup> Solicitors Regulation Authority, Diversity and inclusion in law firms: The Business Case.

<sup>18</sup> Solicitors Regulation Authority, Diversity and inclusion in law firms: The Business Case 6.

In today's era, the Law Society notes that 'the success of any legal practice is based on its ability to understand and meet the needs of its clients.'<sup>19</sup> To achieve this, the Law Society is

committed to help the legal profession to be

- Inclusive - its composition reflecting the diversity of our society.
- Responsive - able to provide a sensitive, appropriate and highly professional service to all sections of society.
- Good employers - recruiting on merit and offering training and development opportunities to all employees regardless of background.<sup>20</sup>

The asserted business case is that diversity is inexorably linked to the composition of society, and the workforce must reflect the changing nature of society. The Law Society's effort to achieve this, in today's climate, is reflected in 9 distinctive diversity-led membership organisations.<sup>21</sup> This includes Women Lawyers Division, Women in Leadership in Law and Ethnic Minority Lawyers Division.<sup>22</sup> With diversity as a leading policy, the diversity numbers have intensified with women accounting for 'over one-half of new entrants to the profession,'<sup>23</sup> and it was claimed that 'this proportion is set to increase for the foreseeable future.'<sup>24</sup>

But, LASPO, it appears seems set on halting the trajectory of diversity in family law. LASPO's removal of legal aid in all private family law work commenced with a hit on family law firms. Family law, classed as private work, is routinely and traditionally practised at medium-sized and small firms.<sup>25</sup> These are often high street firms, which undertake legal aid contracts to provide family law advice and representation. It is the high street firms that often employ a large proportion of lawyer staff who are first generation graduates and/or female and/or have a significant share of Black, Asian and Minority Ethnic (BAME) solicitors.<sup>26</sup> They 'offer...white

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<sup>19</sup> See <<https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/>> accessed 18 June 2019.

<sup>20</sup> See The Law Society, Diversity and Inclusion <<https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/>> accessed 18 June 2019.

<sup>21</sup> See The Law Society, Diversity and Inclusion <<https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/>> accessed 18 June 2019.

<sup>22</sup> See The Law Society, Diversity and Inclusion <<https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/>> accessed 18 June 2019.

<sup>23</sup> See The Law Society, Diversity and Inclusion <<https://www.lawsociety.org.uk/support-services/practice-management/diversity-inclusion/>> accessed 18 June 2019.

<sup>24</sup> The Law Society, Diversity Profile of the Profession: Short Synopsis (2014).

<sup>25</sup> See Legal 500, which lists the types of firms that practice family law. These, as the website lists, are often medium to small sized firms: <<https://www.legal500.com/c/london/private-client/family>> accessed 18 June 2019.

<sup>26</sup> Solicitors Regulation Authority, How Diverse are Law Firms, <http://www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page> accessed 18 June 2019.

females and BAME females the greatest opportunities to become a partner and an almost equal chance of doing so.<sup>27</sup> This is important given the emphasis placed on the low levels of women in senior posts, which is no less highlighted by the Women in Lead in Law campaign. Again, those doing private client work have a higher proportion of the BAME practitioners at 37%.<sup>28</sup> And, over 1/3 (34%) of BAME lawyers are at one partner firms in contrast to larger firms with 50 plus partners, where there has only been a 1% increase of BAME lawyers.<sup>29</sup> 'The proportion of partners who were the first generation to attend university is highest within the smallest firms and this decreases with size of firm.'<sup>30</sup> Thus, 'high-street firms give BAME males, white females, and BAME females the greatest opportunities to become a partner.'<sup>31</sup> And 'BAME...are proportionately more likely to work in smaller firms.'<sup>32</sup> This is fundamental because 'BAME women are particularly, disadvantaged in progressing within the solicitors' profession.'<sup>33</sup> The figures evidence the significant role small law firms to medium firms, which practice family law, have on the role of diversity in law. Such firms provide a platform for women and BAME to excel and proportionately participate in family law practice. An attack or regression of these firms is, fundamentally and unfortunately, an attack on diversity and inclusion.

### **Effect of LASPO on family law firms, its practitioners and legal aid clients**

The statistics from the Legal Aid Agency for the volume and value for family law private work demonstrates the LASPO-effect of obstructing the trajectory of family law practitioners. This is of value in the context of diversity, as seen above, as family law firms offer women and BAME the greatest opportunities.

In 2009-10, legal aid family help and controlled representation cases in respect of private family law work volume was at 250,568, value 55,781.<sup>34</sup> But by 2016-17 the volume considerably reduced to £13,922 with the value of cases costed at £ 2,211.<sup>35</sup> The dramatic

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<sup>27</sup> Solicitors Regulation Authority, How Diverse are Law Firms, 49 <<http://www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page> accessed 18 June 2019

<sup>28</sup> Solicitors Regulation Authority, How Diverse are Law Firms, 49 <<http://www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page> accessed 18 June 2019

<sup>29</sup> Solicitors Regulation Authority, How Diverse are Law Firms, 49 <<http://www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page> accessed 18 June 2019

<sup>30</sup> Solicitors Regulation Authority, How Diverse are Law Firms, <http://www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page> accessed 18 June 2019

<sup>31</sup> S Aulakh et al, Mapping advantages and disadvantages: Diversity in the legal profession in England and Wales: Final Report for the SRA (2017) 49

<sup>32</sup> Solicitors Regulation Authority, The Business Case for Diversity 10

<sup>33</sup> Solicitors Regulation Authority, The Business Case for Diversity 10

<sup>34</sup> Bach Commission and Fabian Society, *The Right to Justice: The Final Report of the Bach Commission*, September 2017 <https://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission-Appendix-5-FINAL-1.pdf> accessed 18 June 2018

<sup>35</sup> Bach Commission and Fabian Society, *The Right to Justice: The Final Report of the Bach Commission*, September 2017 <https://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission-Appendix-5-FINAL-1.pdf> accessed 18 June 2018

decline has meant that fewer firms are practising family law. This claim is further substantiated by the fact that published statistical data revealed a 20% drop of legal aid providers<sup>36</sup> and more specifically, over the last 5 years there has been a fall in the number of provider offices completing legal aid work.<sup>37</sup> Legal professionals, it appears indicatively, are moving away from practising legal aid work, which includes family law. The effect in the decrease of independent providers offering family law legal advice and representation has created advice deserts. This can be seen at Bodmin County Court and Family Court and/or Truro County Court area,<sup>38</sup> which provides a vivid example of a family law advice desert, as the Legal Aid Agency received insufficient tenders for the family law legal aid contracts in this area. A retender process in London<sup>39</sup> demonstrates that low or limited availability of family law services is not restricted to remote areas of England but that cities, such as London, are feeling the effects of LASPO. The disconcerting presence of advice deserts was seen regardless of region, as the legal aid agency was forced to re-open its civil contract tender process, primarily for family law, due to insufficient applications in London in 2018. The upshot is that the diminution of family law practitioners is not restricted to the once traditional rural areas of England and Wales but it is now permeating to the large cities. As family law firms decrease, so do the opportunities to contribute to a diverse workforce through family law practice.

This is also of concern because legal aid is still available for family law public proceedings, domestic abuse cases and other limited areas of family law. The current available data from the Legal Aid Agency<sup>40</sup> provides that legal aid areas of work still continue to represent a higher number of female and BAME clients. It should be noted that the following information must be treated cautiously as it is representative of the entire civil legal aid system, and it therefore includes non-family law areas of work. The data still, however, provides useful indicative information. For example, in 2013-14, the civil legal aid client base presented above the national average of women clients, and 'the overall civil legal aid client diversity profile differs from the national profile with a greater proportion of clients from black and minority ethnic (BAME) origin.'<sup>41</sup> This may be affected by the high numbers where ethnicity is unknown' but it, nonetheless, demonstrates that legal aid has a significant client base of BAMEs. In 2017-18, 'the profile of civil legal aid clients in 2017-18 broadly matches the general population,

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<sup>36</sup> The Guardian, of legal aid providers falls 20% in five years, figures show (2017)

<<https://www.theguardian.com/law/2017/sep/19/number-of-legal-aid-providers-falls-20-in-five-years-figures-show>> accessed 18 June 2018.

<sup>37</sup> Ministry of Justice, Legal Aid Statistics quarterly, England and Wales, January to March 2018

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/720647/legal-aid-statistics-bulletin-jan-mar-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720647/legal-aid-statistics-bulletin-jan-mar-2018.pdf)> accessed 18 June 2019.

<sup>38</sup> Law Society Gazette, Enough is enough, Law centre prepare to fight MoJ in court, 2018

<<https://www.lawgazette.co.uk/law/enough-is-enough-law-centres-prepare-to-fight-moj-in-court/5065482.article>> accessed 18 June 2019.

<sup>39</sup> Legal Aid Bulletin, Legal Aid Agency, Civil contracts 2018 retender, 15 June 2018.

<sup>40</sup> See the Ministry of Justice, Quarterly Legal Aid Statistics in England and Wales.

<sup>41</sup> Ministry of Justice, Legal Aid Statistics in England and Wales, Legal Aid Agency 2013-2014

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/366575/legal-aid-statistics-2013-14.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/366575/legal-aid-statistics-2013-14.pdf)> accessed 18 June 2019.

though civil representation has a slightly greater proportion of female clients (59%) and Legal help slightly smaller (44%).<sup>42</sup> In respect of BAME, ‘...the proportion of legal help and ECF clients reporting as Black/Asian/Minority Ethnic (BAME) is much larger than in the general population.’<sup>43</sup>

## Conclusion

Family legal aid provision and the Law Society’s diversity campaigns mandate that whatever little practice of family law there is, the law firms and its practitioners should seek to reflect the clients it serves. But, with the closures of family law firms, little opportunity exist for women and BAME to represent their clients or contribute to diversity in law. While celebrations continue for the rise of women and BAME practitioners in law, in light of the above this is indeterminate in the context of family law practice. So it seems, once again, that LASPO has struck in more ways than one.<sup>44</sup> On this occasion, LASPO has been inimical to the efforts of diversity within family law practice.

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<sup>42</sup> Ministry of Justice, Legal Aid Statistics quarterly, England and Wales, January to March 2018 <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/720647/legal-aid-statistics-bulletin-jan-mar-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720647/legal-aid-statistics-bulletin-jan-mar-2018.pdf)> accessed 18 June.

<sup>43</sup> Ministry of Justice, Legal Aid Statistics quarterly, England and Wales, January to March 2018 <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/720647/legal-aid-statistics-bulletin-jan-mar-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720647/legal-aid-statistics-bulletin-jan-mar-2018.pdf)> accessed 18 June 2019. This may reflect the fact that controlled legal representation (CLR) for immigration is included within legal help and the majority of ECF grants are for immigration work. In 2017-18 only 7% of immigration legal help/CLR work and 5% of immigration ECF grants had a White ethnicity recorded.

<sup>44</sup> See Rosemary Hunter, ‘Inducing demand for family mediation – before and after LASPO’ (2017) vol 39:2 JSWF for discussion about the LASPO effect on mediation.