

# **FOLLOWING THE BLACK LIVES MATTER MOVEMENT: DOES RACIAL INEQUALITY EXIST IN THE LEGAL PROFESSION?**

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## **ABSTRACT**

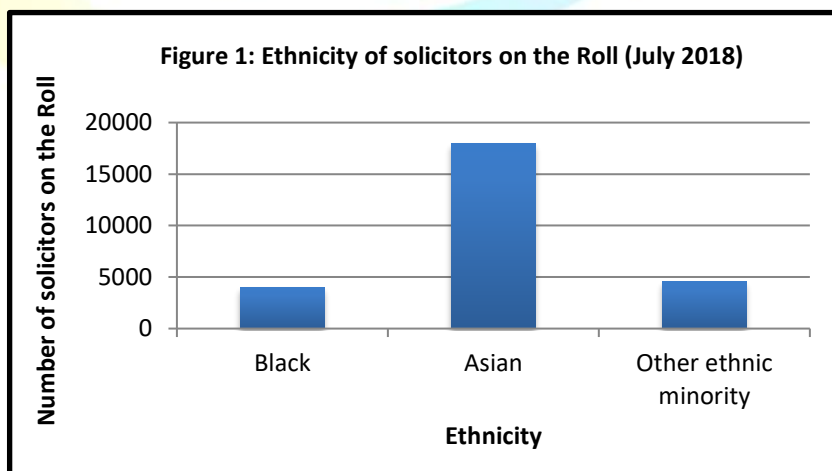
Black Lives Matter is predominantly an American movement that began in 2013, however following the recent murder of George Floyd, the movement has become of an international movement to tackle racism in the modern day. This extends to include the United Kingdom, and has consequently resulted in the Conservative government issuing a review into racial inequality within the UK. Despite the Equality Act 2010, it is suggested that racial inequality is still prevalent as ever, and for that reason, the aim of this article is to analyse whether racial inequality is prevalent within the legal profession relating to solicitors, and barristers in England and Wales. Whilst it is shown that racial inequality exists within the profession, this article extends to provide reasoning for why.

## SOLICITORS

The statistics for the solicitor profession are reflective of 'The Law Society's' 2018 report.<sup>i</sup> The report has indicated that BAME solicitors (with a practising certificate) have increased by +2.1% since 2017, accounting for 21% of the profession. In regards to proportionality, the BAME population in England and Wales (as of the 2011 census) is over 14%, indicating that on the face of profession, this is somewhat adequate.<sup>ii</sup> Nonetheless, the statistics in relation to representation, and career progression only has to be delved into to reveal inequality within the profession.

### *Representation*

Overall, it has been established that BAME groups are adequately represented within solicitors, however figure 1<sup>iii</sup> demonstrates that this is not uniform within differing BAME groups. There is no denial that the statistics for BAME solicitors on the Roll is increasing, however there is an unequal representation within Black solicitors. On the contrary, Asians are strongly represented making up for 17,932 solicitors on the Roll. Although when these statistics are compared with the statistics from the number of acceptances of students onto a first law degree course, 11.1%<sup>iv</sup> of the acceptances are Black. This is not proportional to the 3% of Black solicitors on the Roll and can largely be deduced to the cycle of deprivation. The reason for this is because this deprivation results in a poorer quality of education, which can be explained through household income, where it was found that 42% of Indian households brought in a weekly income of £1000, in comparison to 19% of Black households.<sup>v</sup> In effect this partially explains the disparity between Asian and Black solicitors, as it is more likely that Asians will successfully enrol onto a first law degree course, as opposed to a Black candidate. The Black Solicitors Network (BSN) recognise socio-economic in bridging the gap in promoting equality and

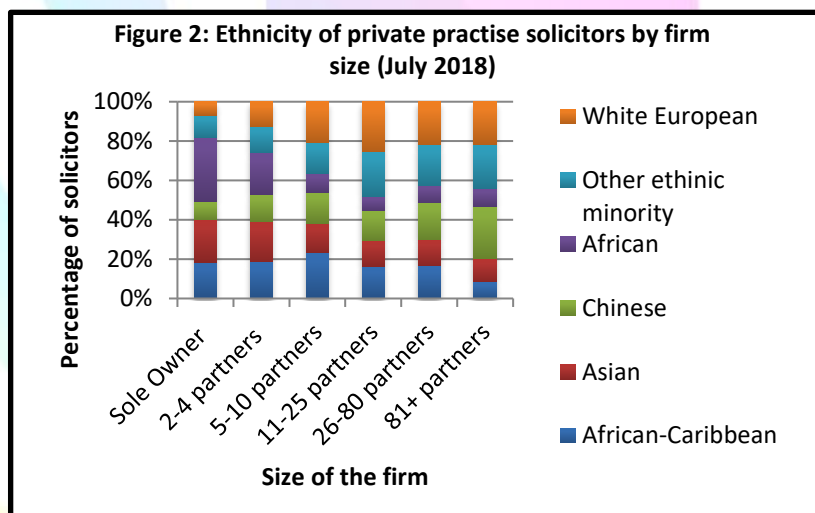


challenging discrimination in response to racial inequality within the profession.<sup>vi</sup>

### ***Career Progression***

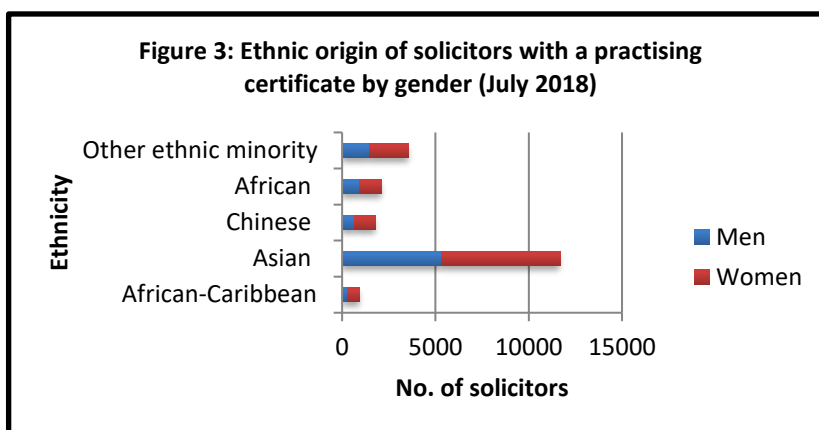
In order to address the inequality in regards to career progression, figure 2<sup>vii</sup> provides a detailed insight into highlighting distinct differences. As figure 2 demonstrates, Black (including both African-Caribbean and African) and Asian solicitors are underrepresented from medium firms (with 5+ partners) to large firms (at +50 partners). Likewise with general representation, Black solicitors are significantly underrepresented; the BSN's research actually found that amongst the 756 UK magic circle partners, only 5 of the partners are black.<sup>viii</sup> In spite of this, the rate for Black solicitors as a sole practitioner drastically increases; this should be enough to demonstrate the inadequate level of career progression amongst BAME groups.

On the other hand, larger firms have a strong representation amongst Chinese solicitors as it overtakes the number of White European solicitors in larger firms with 81+ partners, though this supports the fact of unequal representation amongst BAME solicitors.



## Gender

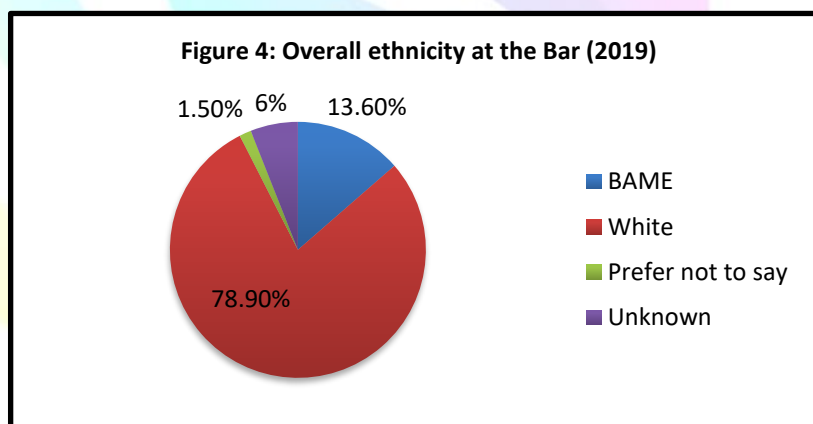
Having said that, the 2018 report revealed that the number of female solicitors increased to 49% in 2018.<sup>ix</sup> Whilst this has increased for White Europeans, figure 3<sup>x</sup> reveals how this has also increased for BAME



female solicitors to the extent they even overtake BAME male solicitors. For all female solicitors, this marginally breaks the glass ceiling, as this progressive statistic should not overshadow the inadequate statistics for career progression amongst all women, and even gender inequalities within the pay gap.<sup>xi</sup>

## BARRISTERS

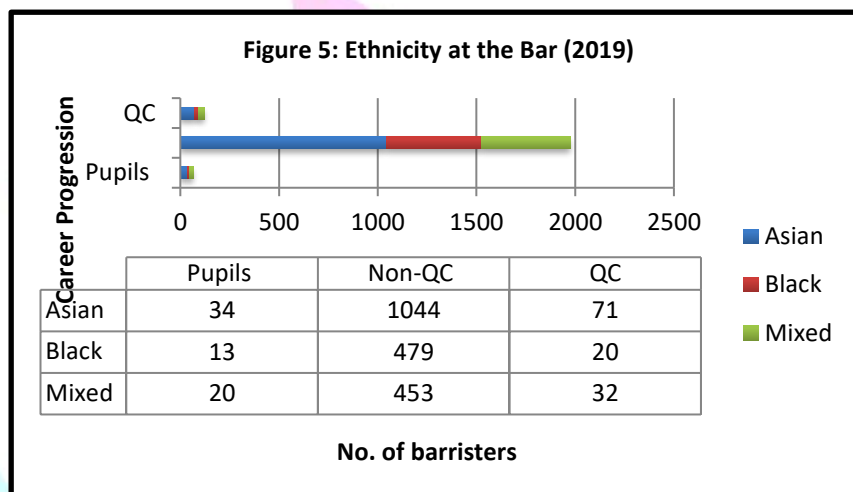
The statistics for the barrister profession is reflective of the Bar Standards Board's (BSB) 'Diversity at the Bar 2019' report.<sup>xii</sup> Historically the barrister profession has been argued to be "elitist", raising controversy into whether the Bar is representative of BAME groups as a result of this controversial elitism.<sup>xiii</sup>



As indicated by figure 4<sup>xiv</sup>, it can be established that BAME does not even scratch the surface of representation, as less than a 1/7 of all 17,367 barristers are from BAME groups. In the same way there was inequality with representation within different BAME groups, and career progression in the solicitor profession, inequality within these areas are consistent within the barrister profession.

### *Ethnicity*

Similar patterns that arose in relation to representation amongst solicitors resemble those in figure 5<sup>xv</sup>. For instance, Asian barristers are more represented as opposed to their Black peers by 637 more barristers, and also their Mixed peers by 644 more barristers. The reasoning for this also comes down to the same reason for differing representation amongst solicitors, social mobility. Expanding upon this concept of the cycle of deprivation, a report by UCAS in 2015 revealed that only 2,740 Black students, 7,285 Asian students, and 3,940 Mixed students were accepted into Russell Group universities in 2015<sup>xvi</sup>; however the Russell Group understand that BAME



participation rates are underrepresented and have even explained that “low attainment at school is a key reason why too few students from disadvantaged backgrounds apply to leading universities”.<sup>xvii</sup> The reason that Russell Group universities are specifically mentioned can be explained by Sam Mercer, as it is stated that Russell Group universities are the “traditional recruiting ground for the Bar”.<sup>xviii</sup> This is problematic as privately educated students are more likely to attend Russell Group universities, and would not only consequently explain the discrepancy between Asian and Black barristers, but also White and BAME barristers within the profession. Hence it can be said that social mobility amongst BAME representation is an overriding barrier to equality.

### *Career Progression*

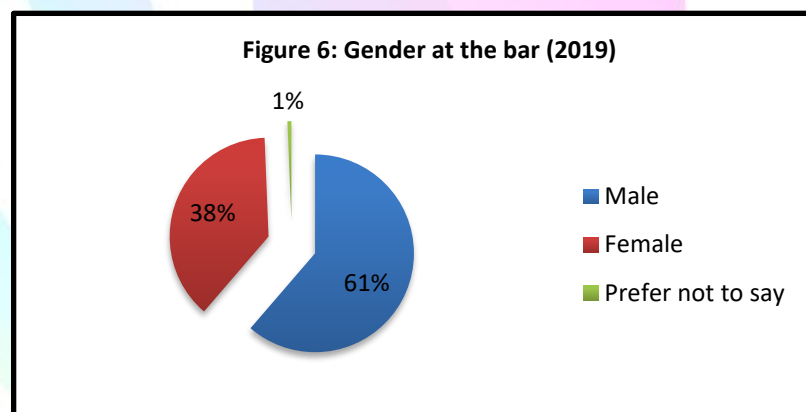
Simultaneously, figure 5 also demonstrates career progression amongst BAME groups into 3 varying levels: pupil, Non-QC, and QC. Overall, White barristers are dominant in all 3 varying levels of career progression. Starting at pupils, 79.7% of pupils are White, whereas BAME pupils account for 19% of all pupils.<sup>xix</sup> Although even this is a large improvement in comparison to QC barristers where only 8.1% of BAME barristers are accounted for.<sup>xx</sup> The

process for QC barristers is a role that is taken via seniority, and can thus be explained from earlier representation where White pupils were more strongly represented than BAME pupils.

However, figure 5 suggests that earlier on Asian barristers were the most strongly represented in comparison to Black barristers as figure 5 demonstrates a decline by 51 QC barristers. Stephen Jagusch suggests the reason for the lack of diversity is based on the significant factor of fees, explaining the initial fee of the application (never mind the fees for funding the BPTC) can be seen as “excessive”, and consequently an issue.<sup>xxi</sup> This supports the previous point raised about household income within the UK, and serves as a factor in highlighting the clear differentiation between the number of Black and Asian barristers.

### ***Gender***

In regards to gender at the bar, the BSB’s figures are only limited to distinguishing between both male and female (as shown in figure 6 <sup>xxii</sup>), and cannot be filtered to account for White and BAME female barristers. Regardless of this, this is also an issue that needs to be addressed. When these figures are compared to



solicitors, progressively female solicitors nearly account for half of the solicitor population whereas only female barristers account for 38%. Despite this being a 12% variation, this is still remarkable difference. An article outlined that “the practical difficulties of being a carer and coping with the vagaries of being a self-employed, sole practitioner, doing a competitive, stressful and unpredictable job, undoubtedly lead many women to leave the independent bar” would serve as an explanation and reason for the fluctuating statistics of women at the Bar.<sup>xxiii</sup>

## **WHAT IS BEING DONE TO REDUCE RACIAL INEQUALITY?**

In an open letter, the BSN have urged both, law firms and legal service providers to follow five action points.<sup>xxiv</sup> The first action point refers to metrics, targets and accountability; meaning

data collection should be implemented, as well as implementing systems that monitor racial diversity through the employee life-cycle. The second action point covers retention, seeking to reduce attrition levels by introducing and implementing schemes from equality of opportunity to mentoring schemes to tackle the high attrition levels. The third action point addresses that a poor level of career progression can be improved with promotion, the BSN have suggested that law firms need to invest in black talent management in order to tackle the inadequate statistics for BAME partners in law firms. The fourth action point seeks to tackle the organisational culture through inclusive leadership, and suggests tackling racial bullying and micro-aggression through mandatory inclusion training for all staff. Inclusive leadership is central to this as the BSN call for all leaders to account for this progression on racial diversity. Finally, the fifth action point is at a community level, and suggests that firms show work with local state schools, provide bursaries/scholarships to support black candidates from unprivileged backgrounds, and even establish pro bono initiatives.

Whilst the BSN's action points can be applied to both chambers, and the Bar, Sam Mercer states "work is ongoing to improve diversity at the Bar".<sup>xxv</sup> Yet at the time being, initiatives by the Bar Council has been implemented to tackle social mobility by expanding their 'Bar Placement Week' programme to talented Year 12 students from unprivileged backgrounds. Most importantly though, the Bar Council are working to improve the quality of data in the profession, and as such, evaluate the impact of the existing programmes.<sup>xxvi</sup> Though this is a prolonged initiative, the Bar Council has every intention and is seeking to improve BAME representation within the Bar.

## CONCLUSION

In regards to both solicitors and barristers, the profession is not wholly diverse and for that reason it can be said that racial inequality does exist within the profession. For solicitors, ostensibly it appears to be somewhat diverse, it is unfortunately not very representative of differing BAME groups. As for barristers, the profession is not diverse. In spite of this, by the day, more initiatives are being introduced and implemented; thus, reducing the impact of racial inequality. Unfortunately, there is a long road to totally eradicate racial inequality within the profession, but optimistically one day, it shall be eradicated.

## ENDNOTES

- <sup>i</sup> The Law Society. (2019). Annual Statistics Report 2018 <https://www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2018/> (accessed 23<sup>rd</sup> June 2020).
- <sup>ii</sup> GOV.UK. (2018). Population of England and Wales [https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest#:~:text=data%20shows%20that%3A,the%20total%20population%20of%20England%20and%20Wales%20was%2056.1%20million,White%20ethnic%20group%20\(4.4%25\)](https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/population-of-england-and-wales/latest#:~:text=data%20shows%20that%3A,the%20total%20population%20of%20England%20and%20Wales%20was%2056.1%20million,White%20ethnic%20group%20(4.4%25)) (accessed 3<sup>rd</sup> July 2020).
- <sup>iii</sup> Ibid (n1).
- <sup>iv</sup> Ibid (n1).
- <sup>v</sup> GOV.UK. (2019). Household income <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/pay-and-income/household-income/latest> (accessed 4<sup>th</sup> July 2020).
- <sup>vi</sup> Black Solicitors Network. (n.d.). Aims and Objectives <https://www.blacksolicitorsnetwork.co.uk/about-the-bsn/> (accessed 6<sup>th</sup> July).
- <sup>vii</sup> Ibid (n1).
- <sup>viii</sup> Black Solicitors Network. (2020). Seen & Heard. *Law Society Gazette* (29<sup>th</sup> June, 13).
- <sup>ix</sup> Ibid (n1).
- <sup>x</sup> Ibid (n1).
- <sup>xi</sup> The Law Society. (2020). The Law Society Group Gender Pay Gap Report <https://www.lawsociety.org.uk/about-us/our-governance/the-law-society-group-gender-pay-gap-report> (accessed 7<sup>th</sup> July 2020)
- <sup>xii</sup> Bar Standards Board. (2020). Diversity at the Bar 2019 <https://www.barstandardsboard.org.uk/uploads/assets/912f7278-48fc-46df-893503eb729598b8/Diversity-at-the-Bar-2019.pdf> (accessed 7<sup>th</sup> July 2020)
- <sup>xiii</sup> Baksi, C. (2007). Bar Council aims to tackle elitism in the legal profession. *The Law Society Gazette* 4(2).
- <sup>xiv</sup> Ibid (n12).
- <sup>xv</sup> Ibid (n12).
- <sup>xvi</sup> Russell Group. (2016). University admissions <https://russellgroup.ac.uk/news/university-admissions/#:~:text=The%20number%20of%20Mixed%20ethnicity%20students%20accepted%20by%20Russell%20Group,2010%20to%203%2C940%20in%202015.> (accessed 8<sup>th</sup> July)
- <sup>xvii</sup> Russell Group. (2015). Opening Doors: Understanding and overcoming the barriers to university access (page 7) <https://www.russellgroup.ac.uk/media/5034/opening-doors-understanding-and-overcoming-the-barriers-to-university-access.pdf> (accessed 8<sup>th</sup> July)
- <sup>xviii</sup> Mercer, S (2015). All Inclusive? 165 *The New Law Journal* 7647 page 17.
- <sup>xix</sup> Ibid (n12).
- <sup>xx</sup> Ibid (n12).
- <sup>xxi</sup> Freeland, F. (2016). How to... become a QC. *Law Society Gazette* (25<sup>th</sup> Jan, 15).
- <sup>xxii</sup> Ibid (n12).
- <sup>xxiii</sup> Pinto, QC.A. (2019). 100 years of women in the legal profession – some personal reflections from three perspectives. *Criminal Law Review* 1004.
- <sup>xxiv</sup> Black Solicitors Network. (2020). BSN's Open Letter: A call to action for racial diversity. <https://www.blacksolicitorsnetwork.co.uk/bsns-open-letter-a-call-to-action-for-racial-diversity/> (accessed 11<sup>th</sup> July 2020).
- <sup>xxv</sup> Ibid (n18).
- <sup>xxvi</sup> GOV.UK. (2015). Improving Judicial Diversity. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/438207/judicial-diversity-taskforce-annual-report-2014.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/438207/judicial-diversity-taskforce-annual-report-2014.pdf) (accessed 11<sup>th</sup> July 2020).