CHAPTER 9

Towards Gender Equality in the Solicitors’ Profession in England and Wales A Practical, Intersectional, Socio-legal Approach

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9.1 BACKGROUND

At the time of writing, it is almost 100 years since Carrie Morrison was admitted as the first woman solicitor in England, on 18 December 2022, so it is an opportune moment to reflect on how far women have advanced as solicitors since then. This chapter, which confines its subject matter to the jurisdiction of England and Wales, uses a socio-legal perspective to interrogate the position of women solicitors in private practice and thus provides a critical analysis of relevant equality law, policy, practice and research. Since the 1970s, equality laws in statute have made it illegal to discriminate on the basis of gender in terms of work and pay. Yet, despite their legal entitlements, these measures have failed to translate into equality for women who practise as solicitors.

More recently, the Equality Act 2010 (2010 Act), which came into force on 1 October 2010, sought to simplify and strengthen equality law,
giving greater protection to individuals against discrimination on several grounds, including race, sex, age, being pregnant or having a child\(^1\) (Ministry of Justice, 2010). Law firms have duties as service providers and employers under the 2010 Act (Equality Act 2010, Chapter 1; Law Society, 2020a). The Law Society, Solicitors Regulation Authority (SRA) and Legal Services Board (LSB) also have duties to meet their obligations under the 2010 Act in respect of equality and diversity (Law Society, 2012, 2020a; LSB, 2021; SRA, 2014, 2017, 2021). Many initiatives were introduced to implement the 2010 Act, including collecting data on workforce diversity. Nevertheless, regardless of legal duty and supporting strategies, the burden of enforcing the 2010 act, falls on the individual facing discrimination.

For the past 50 years, significant numbers of women in England and Wales have entered the solicitors’ profession and remained at junior levels. In 1970, women comprised 10% of people admitted to the profession by registering on the Roll of solicitors. This figure increased to 51.1% in 1992–1993, rising to 60% in 2004–2006, and by 2018–2019, 63.4% of new admissions were women (Aulack et al., 2017; Cole, 1998; Law Society, 1988, 2015, 2019). Since 31 July 2017, women who hold practising certificates\(^2\) have outnumbered men (Law Society, 2018). There is, however, a gap, between the participation rates of men and women holding practising certificates, which steadily increases as solicitors grow older: Over time, the numbers of women practising reduces with age and experience (2019a Law Society, 2015, 2019a). This gap between men and women solicitors is not a new phenomenon, socio-legal studies have observed this for years, although predictions of a “trickle up” process towards full equality have not materialised (Sommerlad & Sanderson, 1998, p. 106; Law Society, 2019a).

This chapter highlights discrepancies between the substantive law on equality enacted by Parliament and the failure to achieve equality in practice in the solicitors’ profession in England and Wales.

Barriers to career progression and equal pay faced by women solicitors include law firm cultures (Sommerlad, 2016; Sommerlad et al., 2013) work–life balance (Nicolson, 2005; Webley & Duff, 2007) and childcare issues (Bacik et al., 2003; Nicolson, 2005; Sommerlad, 2002; Sommerlad & Sanderson, 1998). As documented by the First 100 Years Project (Acland & Broomfield, 2019), a small number of women have made significant progress reaching senior positions; however, the Law Society’s report on women in leadership confirms that men dominate the senior
levels of the profession (Law Society, 2019a). During her time as Law Society president, 2018–2019, Christina Blacklaws initiated and led the Women in Leadership in Law project that was designed to better understand why men continue to lead the solicitors’ profession, regardless of the numbers of women who have entered the profession since the 1990s. The subsequent report found that contributing factors included unconscious bias, a gender pay gap and the need for flexible working practices (Law Society, 2019a). Blacklaws not only drew attention to the dominance of male leaders in a profession populated mostly by women, she also highlighted further conditions of under-representation:

Women from minority ethnic communities or who have disabilities face further barriers in their careers and continue to be significantly underrepresented in positions of leadership in the sector. (Law Society, 2019a, p. 4)

The current Law Society president, I. Stephanie Boyce, is the Society’s first ever Black office holder, the first person of colour, and only the second in-house lawyer to hold the post in nearly 50 years. She has an agenda to bring about change and hopes that when she leaves office, it will be a more diverse and inclusive profession. Her objectives include the promotion of genuine equal opportunities and equal treatment in the profession and the judiciary (Law Society, 2021a & 2021c). Increasing diversity, inclusion and social mobility is a presidential priority, and there is a focus on overcoming mid-career and progression and retention gaps to accommodate a more diverse range of solicitors. In her inaugural presidential address, Boyce stated (Law Society, 2021b, p. 2):

Solicitors with disabilities, solicitors with caring responsibilities and solicitors from minority ethnic backgrounds continue to face obstacles. Personal characteristics or an individual’s socio-economic background should not determine how far people can go.

Boyce’s position reflects themes from socio-legal studies and is found in research commissioned by the Law Society, SRA and LSB, and it reminds us that significant diversity issues still need to be addressed within the solicitors’ profession. Given the parliamentary intention behind equality legislation, serious reflection is required about the amount of work which needs to be accomplished to ensure that women achieve, in practice, the
same equality that they have been legally entitled to, in statute, for so many years.

I will argue that making inequality history requires urgent action and must incorporate an intersectional and practical strategy within a socio-legal framework. I term the approach “practical, intersectional, socio-legal approach”, to address how the combined diversity characteristics of individuals affects their progression, advancement and exit from the solicitors’ profession. The approach engages with quantitative and qualitative methods to develop a range of practical initiatives based on issues identified by practising solicitors (on the Roll and with a current certificate of practice), non-practising solicitors (on the Roll without the certificate of practice) and solicitors who have left the profession (no longer on the Roll or with a certificate of practice).

This chapter represents a bridge between collating existing research and outlining elements of my current research. The juxtaposition exemplifies the argument, for instance, I use a wider range of participants than those included in recent Law Society (2019a) and SRA commissioned research (Aulack et al., 2017) whose inquiry was focused on practising solicitors. The aim of my research is to close the highlighted equality gaps and enable solicitors to stay in the profession, make career progress or return to practise after a spell away from work. These subsequent proposals compliment those developed by the Law Society and the SRA; furthermore, they include examples of good practice and offer practical toolkits to facilitate career progress for a more diverse profession.

9.2 Practical, Intersectional, Socio-legal Research: Law in Action

The term “socio-legal” is difficult to define and is a contested concept often used as an “umbrella term” rather than falling within clearly defined boundaries (Cownie & Bradney, 2013, p. 35). Banakar and Travers (2005) also view the open-endedness of socio-legal research design as a mark of interdisciplinary strength within the discourse of the sociology of law. The unclear parameters of socio-legal research also provide space to consider transformative approaches to diverse legal issues, particularly in interdisciplinary research (Moran, 2002).

For the purposes of the practical, intersectional, socio-legal research discussed in this chapter, I follow Pound’s (1910) original description of
“socio-legal” as representative of “law in action”, in other words a way of examining how the law is applied in practice rather than how it appears in books (Banakar & Travers, 2013). Sommerlad argues that, for a long time, socio-legal studies have focused on law as a cultural practice and so develops our understanding of the relationship between the law and the social. Such a framework, therefore, applies well to this examination of gendered inequalities among solicitors’ (Sommerlad, 2013) because it allows an understanding about the operation of law and legal institutions as embedded in other social processes and institutions (Menkel-Meadow, 2019).

Recent research commissioned by the SRA assessed individual experiences of the legal profession. The researchers argued that it would be impossible to capture the data by focusing on singular variables, which would measure only gender or ethnicity, and, instead, they adopted an intersectional approach (Aulack et al., 2017). The concept of intersectionality was codified by Crenshaw (1991), and is now used to examine how social characteristics are critical to understanding the complexity of human relations in societies and organisations. Originating in Black feminist research, intersectionality emphasised how black and white women had different experiences of gender-based discrimination. The lens of intersectionality stressed that gender is not the only focus of inequality, because race and class are also arenas of inequality; moreover, these social characteristics co-construct each other (Crenshaw, 1989; Hill-Collins, 1998). An intersectional approach is applied in this research to develop an understanding of the complexity of women’s experiences within the solicitors’ profession.

9.2.1 Mixed Methods Approach

A mixed methods approach is taken that follows Banakar and Travers’ (2005, p. 5) view to “transcend some of the theoretical and methodological limitations” of past socio-legal research. Quantitative data from the Law Society and the SRA, cited earlier, is used to identify issues that need resolution. My research triangulates data obtained from surveys and qualitative methods (following a constructivist approach) that provide data from round tables and semi-structured interviews. My ongoing investigations capture the professional perspectives of practising, non-practising and former women solicitors.
9.2.2 Positionality

My research has been developed from my perspective as a non-practising solicitor and is, therefore, “insider research”. I am adopting a reflexive approach to this research, commenting on my positionality throughout to demonstrate the complex relationship between processes of knowledge production and the contexts of these processes. This disclosure includes my involvement as a reflective and interpretative knowledge producer (Alvesson & Skoldberg, 2009). Following Bourdieu and Wacquant (1992), I also include knowledge associated with my membership and position in the field as a non-practising solicitor.

9.3 Equality Legislation

The Sex Disqualification (Removal) Act 1919 enabled women to qualify as solicitors (and barristers) for the first time, by removing the legal barriers that prevented them from entering the professions because they were women or married. This was not a case of overnight success; indeed, the change in the status quo followed years of campaigning (Acland & Broomfield, 2019; Sommerlad, 2016; Sommerlad & Sanderson, 1998).

9.3.1 Equal Pay

Fifty years after the 1919 act and after a similarly long campaign, enactment of the Equal Pay Act 1970 (which came into force on 29 December 1975) meant that, legally, on the basis of gender, women could no longer be paid less than men for the same work or work of equal value. Today, nearly 50 years after it came into force, the 1970 act has still not translated into equal pay for women solicitors in private practice in the twenty-first century, or, indeed for most women, wherever they work. Recent gender pay gap reporting from the Office for National Statistics in June 2019 indicates that women solicitors hold 54% of these jobs and earn 13.1% per hour less than men, at £21.89 per median hourly earnings compared with £25.19 per median hourly earnings for men solicitors (Office for National Statistics, 2019).
9.3.2 Equality in Law

Since the enactment of the Sex Discrimination Act 1975, it has also been illegal to treat women and men less favourably at work because of their gender or marital status. The current Equality Act 2010, which came into force on 1 October 2010, aimed to simplify and strengthen equality law and introduced a public sector duty of equality. The act gives greater protection to individuals against discrimination on grounds including sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, disability and age (Ministry of Justice, 2010). Law firms have duties as service providers and employers under the 2010 act and are subject to SRA requirements on equality and diversity (SRA, 2014 & 2021). The public sector duty of equality applies to the SRA and the LSB, requiring them to have due regard for the need to eliminate unlawful discrimination, harassment and victimisation. It also requires them to advance equality of opportunity and good relations between people with and without protected characteristics under the act.

Despite these equality provisions, there are ongoing, long-term issues with retention, progression, promotion and equal pay for women solicitors (Law Society, 2019a) that indicate discrepancies between equality legislation and its implementation in practice, which will be discussed below alongside recent initiatives by the Law Society and the SRA.

Currently, individuals facing discrimination must bring individual claims to combat this through the courts. This burden has long been criticised by socio-legal scholars (Bacik et al., 2003; Sommerlad, 2016). The House of Commons Women and Equalities Committee investigated how both the Equality Act 2010 and the role of the Equality and Human Rights Commission (EHRC) were being enforced. Their inquiry found that the current individual approach to enforcement was “not fit for purpose”, and proposed a change in approach so that individual challenges to alleged discrimination through the courts would become an exception rather than the rule. The Committee envisaged a “fundamental shift” in the way the act is thought about and implemented. They wanted to create a model that not only acts as a “sustainable deterrent” but also tackles “institutional and systemic discrimination” through system-wide transformation. The committee recommended that the EHRC should engage more in enforcement activity to deter discrimination, suggesting more action is taken by, inter alia, regulators, inspectorates and ombudsmen.
Further proactive participation by the Law Society, SRA and LSB will help facilitate these changes, and my proposed research is designed to contribute towards the same goals.

9.4 Women Solicitors: Retention and Progression in Private Practice

In 2014, women solicitors made up around 60% of practising certificate holders under the age of 35 years. By contrast, men solicitors represented 60% of practising certificate holders over the age of 35 years (Law Society, 2015). The participation rate for solicitors is the percentage of solicitors on the Roll of Solicitors holding practising certificates, which is higher for men than women aged 26 years and above. This gap increases as solicitors grow older, with the number of women reducing with age and experience (Law Society, 2015, 2019, 2019a, 2020b). Figures from July 2018 show 60% of solicitors (0–9 years since admission) were women, with similar proportions of women spread across private practice and in-house. Women who are practising certificate holders continue to be younger on average than men, with the difference currently being over five years. In 2017, the difference in median ages of male and female practising certificate holders was greater at seven years since admission, with the distribution of female solicitors remaining “skewed to those under 40” (Law Society, 2018, p. 13). Mid-career solicitors (10–29 years since admission) were spilt fairly evenly between men and women, with a larger proportion of men in private practice compared to in-house (Law Society, 2018, 2020b).

The Chambers Student Guide (2021) examines how, between 2014 and 2020, law firms recruited, trained and promoted women solicitors in UK law firms. The “retention gap”, which measures the percentage difference between women partners and trainees, is the core issue of the report. The study shows that during the six-year period against a backdrop of women making up 63% of law school graduates, women partners and trainees grew by 5% and women associates by 2%. Meanwhile, the retention gap remained flat. Chambers acknowledges that their measurement of the retention gap is a “blunt” instrument because it does not track women solicitors hired and their actual promotion histories. Their research
does, however, find that law firms across the UK “are doing little to change the working cultures that cause attrition” and are narrowly approaching the “diversity problem by hiring more women at graduate level” (Chambers, 2021, p. 2).

Recent research commissioned by the SRA, which adopts an intersectional approach, has begun to identify how the combined diversity characteristics of individuals may affect solicitors’ progression, advancement and exit from the legal profession. The SRA looked at records of individual solicitors on the Roll of Solicitors in England and Wales between 2006 and 2016, and their key findings demonstrated that white men are most likely to become partners than any other groups (Aulack et al., 2017).

In 2019, 49% of women solicitors were working in private practice compared with 29% in 1994, women partners in private practice increased to 31% compared to 14% in 1994 (Aulack et al., 2017), but only 18% of women solicitors in private practice were partners, compared to 40% of men (Law Society, 2020c). Analysis of SRA data indicates that women are four times less likely to obtain partnership than men (Tomlinson et al., 2019). Law Society statistics show that a smaller number of women in private practice, with 10 to 19 years post-qualification experience, were partners or partner equivalents as sole practitioners in 2009 (47%) and 2019 (31%). This suggests that the progression gap is not a reflection of the age profile of women solicitors. Women are likely to leave private practice or work in-house (Law Society, 2019a & 2020c).

The statistics indicate there are major differences between the law in statute and the law in practice.

### 9.5 Law Society Research

The Law Society’s *Women in Leadership in Law Project* used round tables to help identify gender equality needs in the legal profession. Issues that arose included unconscious bias, the gender pay gap and flexible working issues (Law Society, 2019a). In a 2017–2018 Law Society survey, unconscious bias in the profession was cited by 52% of respondents as the most common reason why few women reach senior positions in law firms (Law Society, 2019a, pp.13–14). Sixty per cent of respondents were aware of a gender pay gap in their organisation (Law Society, 2019a), with women often being paid less than men (Law Society 2015, 2019a & 2020c). Ninety-one per cent of respondents believed that a flexible working culture was critical to improving diversity in the legal profession. Although in
the five years leading up to the survey there had been improvements in this area and flexible working was embedded in some organisations, a long-hours culture in the legal profession which valued “presenteeism” remained, which the report challenged (Law Society, 2019a, p. 25).

Recommendations were made to address unconscious bias, the gender pay gap and flexible working conditions (Law Society, 2019a, pp. 26–27). Men were recommended as champions for change and catalysts for increasing diversity in the profession. This resulted in a series of round tables for men who proposed making flexible working available to everyone, using clear policies and encouraging men to take paternity and shared parental leave. Distributing work evenly, regardless of working arrangements, and encouraging regular monitoring of policies and practice were also suggested. Developing returners programmes were advised, together with improving retention of senior women solicitors and offering “alternative sourcing” to clients for skilled, experienced lawyers to work on fixed periods of contract work if they preferred not to work full time (Law Society, 2019b, pp. 14–15).

At the time of writing, research on the career experiences of Black, Asian and other ethnic groups of solicitors is currently being conducted by the Law Society, which notes that some of the barriers faced by these groups are “largely societal and as such not wholly within the gift of law firms to influence and change” (Law Society, 2020c, p. 19). Despite this view, some law firms have worked alongside client networks to provide career development opportunities for students from these groups.

My ongoing practical, intersectional, socio-legal research will highlight good practice, developing additional toolkits and approaches to facilitate women’s progress in practice from the research data, using a wider range of participants than have been involved to date and similarly address issues of ethnicity.

9.6 **Making Inequality History through Practical, Intersectional, Socio-legal Research**

To make inequality history in the legal profession in England and Wales, I argue that new practical, intersectional, socio-legal research based on additional quantitative surveys and qualitative information obtained from research participants will assist in developing practical approaches to flexible working, developing job shares, career breaks and returnships.
Additionally, taking advice from leaders in these approaches will assist in developing realistic strategies and practical toolkits to help overcome barriers, for instance, on previously reported matters like childcare issues (Sommerlad, 2016; Sommerlad & Sanderson, 1998). This study will highlight examples of good practice within the profession and in other fields to develop best practice practical guidelines to develop equality in this area. Part of this approach will use models of good practice abroad, for example in France and Scandinavian countries (Glancy, 2021; Shieldgeo, 2021), to develop alternative national strategies for maternity/paternity and parental leave.

Tomlinson et al. (2013) argued that a detailed socio-legal study of solicitors who had left the profession is required to better facilitate initiatives designed to fortify their retention. Sommerlad (2016, p. 61) suggests that although a rhetorical commitment to diversity is “almost universally espoused” across the legal profession, its working conditions continue to require “a professional identity unencumbered by responsibility for social reproduction”, which suggests that equality and a corresponding work–life balance “appears remote”. Therefore, efforts must be concentrated on practical measures to develop retention, progression, partnership and equal pay and to overcome childcare related issues.

### 9.7 Conclusion

It has been argued that as the first centenary arrives since the first woman was admitted as a solicitor in December 1922, a new socio-legal approach is required to address ongoing inequalities in the legal profession. This approach would complement recent initiatives by the Law Society, the SRA and the LSB. It is further argued that representative voices across practising, non-practising solicitors and solicitors who have left the profession must be heard. Accordingly, this practical, intersectional, socio-legal approach will develop strategies to assist women solicitors, by involving a wider range of participants covered by recent research and Law Society and SRA initiatives. Given the issues identified in terms of retention, progression, partnership and equal pay as well as maternity and childcare, it is envisaged that some of the measures considered will include flexible working, job sharing, career breaks, returnships, appropriate work–life balance strategies and measures to facilitate working practices around childcare responsibilities.
Approaches routinely used outside the legal profession will also be incorporated. The Covid-19 pandemic has demonstrated that flexible working and other initiatives can be a highly productive approach to legal working practices and other arenas of employment that previously centred on office-based working. If the proposed improvements do not translate to major changes within a limited time frame, as suggested by the House of Commons Women and Equalities Committee (Women and Equalities Committee (2019) Enforcing the Equality Act: The Law and the Role of the Equality and Human Rights Commission (HC) Tenth Report of Session 2017–2019, 1470), it is envisaged that practical strategies will be introduced whilst additional national strategies to strengthen equality legislation and its enforcement are developed. Finally, it is suggested that the proposed practical opportunities should not only apply to those women currently in the profession but also extend to those who have left so that, if they choose, they can readily find avenues to return to the profession. In short, the proposed approaches have an underlying ethos to maximise the opportunities available for all.

Notes

1. Equality Act 2010, Chapter 1: Protected characteristics also include disability, gender reassignment, marriage and civil partnership, religion, belief and sexual orientation.

2. Practising certificates are issued annually by the Law Society to individual solicitors before a solicitor may practice in the profession. The practising certificate renewal fee for 2021/22 for an individual solicitor is £306, which includes £266 for the regulatory fee and a £40 contribution towards the Solicitors’ Compensation Fund. Reduced fees are payable by solicitors on statutory maternity leave or who started this during the current practising year. Crown Prosecution Solicitors are exempt from paying the Compensation Fund contribution. Firms also pay mandatory annual periodic fees based on turnover. Detailed information is available at https://www.sra.org.uk/mysra/fees/current-fees/.

3. Once a person is admitted to the Roll of solicitors, they are automatically a member of the Law Society and are entitled to apply for a practising certificate to practise as a solicitor. Until 2015, the keeping of the Law Society’s Roll of solicitors was conducted annually. Since 2015, solicitors can remove themselves from the Roll at any time, or may wait until the next roll-keeping exercise.
REFERENCES


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