



The Law Society

Ethnic diversity in law firms

Understanding the barriers

May 2010

supporting
solicitors

Contents

Executive Summary	4
1. Introduction	10
1.1 Background	10
1.2 Methodology	11
1.3 Participants.....	11
1.4 To frame the findings that follow... ..	12
2. Choosing Law	13
2.1 Lack of information	13
2.2 Who you know	15
2.3 School.....	17
2.4 University	19
2.5 Legal Practice Course	22
3. Becoming a trainee.....	24
3.1 Securing a training contract.....	24
3.2 Defining excellence	31
3.3 Towards qualification.....	33
4. Life as a BME solicitor.....	35
4.1 Recruitment practices	35
4.2 Career progression.....	40
4.3 Perceptions of discrimination.....	48
4.4 Raising a grievance	53
4.5 Support networks and groups.....	55
4.6 Mentors and role models	59
5. Pay	62
5.1 Working for no pay	62
5.2 Negotiating pay.....	64
5.3 Pay disparity	67
5.4 Transparency of pay structures	76

6. Lawyers as employers.....	78
6.1 Equality and Diversity in law firms	80
7. Taking action.....	83
7.1 Where we are now and the future.....	83
7.2 What's the point of more talking?	84
7.3 What can be done?.....	85
8. Conclusion and recommendations	97
Recommendations.....	98
Appendix: Law Firms - Equality and Diversity Forum.....	100

Executive Summary

This report presents the findings from a series of focus groups conducted by The Law Society with BME practitioners, in October-November 2009. The research was initiated in response to findings of the Law Society 2008 Salary Survey, which indicated a pay disparity between BME and white solicitors. The focus group research probed pay levels and mechanisms for deciding pay. It also examined other variables in the experiences of BME individuals which could be seen as contributory factors to the pay disparity. Factors explored were: access and entry into the profession, transparency of pay structures, measurement of performance, and the criteria and opportunities for career progression. In addition to the focus group participants, BME solicitors who were unable to attend the groups in person submitted their experiences via the web. These data supplement the focus group findings throughout the report.

Choosing law

- BME participants across all focus groups, irrespective of their ethnic group, gender or geographical location, felt they were ill-informed when embarking on law as a career. Many did not realise the disadvantage their early choices played until they had been in the profession for several years. Realisation usually came when an individual attempted to move into a different type of firm, a different area of law or to negotiate a higher salary.
- All participants cited that more information about 'how to succeed in law' and the 'consequences of your choices' is vital to help BME students make better informed decisions on how to enter the profession. Without access to accurate and relevant information, BME students will continue to make ill-informed choices, such as choosing the 'wrong' university, and miss opportunities to gain the experiences which would enhance their future careers.

Becoming a trainee

- Having completed the Legal Practise Course, BME candidates believed that they would be on a 'level playing field' with all other LPC graduates and that, irrespective of their gender, ethnicity or social background, they would have the same chance to succeed. However, this had not been the case and the dawning reality of the actual situation had hit many BME participants hard. Typically, focus group participants had not been successful in securing a training contract on their first attempt and, for many, finding a training contract involved several years and hundreds of applications.
- It was clear to participants that firms judged capability by academic qualifications and attendance at particular institutions. A misguided view, by firms, of what constitutes excellence meant that, for many participants, good, able solicitors are being passed over because of their social background.

- For some participants, requiring large City and corporate firms to meet recruitment quotas for BME trainees was seen as the only way to widen access for BME students. However, other participants warned that putting too much emphasis on these 'tick-box' categories could undermine BME solicitors.
- Across all groups it was felt white trainees were typically encouraged towards corporate and commercial work, whilst BME trainees were 'pushed' towards Personal Injury, Legal aid, Immigration and Family work. By pushing different ethnic groups towards different areas of law, pre-qualification, BME trainees were already potentially being groomed for areas where they will earn less – not just because these areas may be lower paid, but also in terms of their ability to attract new business for the firm.

Recruitment

- Almost all web and focus group participants felt that law firms, in their experiences, did not operate fair or transparent recruitment processes.
- Participants identified particular similarities between partners, senior solicitors and the trainees who were taken on at the firm. They observed that partners were essentially looking for miniature versions of themselves. Where BME solicitors had been taken on in City firms and were surrounded by 'Oxbridge types', many felt pressure to 'tone down' their personality in order to fit in.
- Participants perceived Oxbridge graduates who had taken a gap year, or who could cite activities in common with partners, such as horse-riding or scuba diving, to be more successful in getting opportunities in the larger firms.
- It was seen as an unrealistic expectation that the Law Society could have any positive influence over firms' recruitment practices or would be able to introduce protocols that firms would take seriously.

Career progression

- Some participants expressed confusion over the criteria firms used to promote solicitors and gauge performance. The lack of clarity was to do with how the criteria were being applied or how performance was being measured.
- The ability to bring in new clients seemed to be the key criterion for career progression within a private practice firm, particularly in the current economic climate. In addition, solicitors are also seen to be rewarded for their non-fee-earning work; yet firms control who participate in non-fee-earning business.
- For BME solicitors, setting up their own practice was an alternative for those who had no interest in becoming a partner, or who felt the barriers to partnership were too great. An alternative career option to setting up their own practice, was to pursue a judicial appointment.

- Disproportionate numbers of BME solicitors are setting up their own practices, compared to white practitioners. This was seen as an inevitable consequence of a legal profession which closed other routes to BME solicitors' career progression.

Perceptions of discrimination

- Those solicitors working in City firms were more likely to hold perceptions that they had not been discriminated against in their career to date.
- Despite individuals' perceptions or experiences of discrimination, the solicitors' profession is still seen as more diverse and accepting than other branches of the legal profession.
- Participants were wary of initiatives that would require firms to meet quotas of BME solicitors. Throughout the research BME solicitors expressed the desire to be given the chance to compete fairly and did not want to be given an unfair advantage.

Raising a grievance

- Participants held the perception that raising a grievance could do irreparable damage to their career prospects.
- Individuals felt that asserting their employment rights was not enough to protect them from poor employment practices. Even if they were proven right or backed up by legislation, they felt that taking action would 'mark their card'. It was felt that firms would later discriminate against them or push them out.

Support groups and networks

- The Black Solicitors' Network was highly thought of. However, the groups represented in the BME Forum were criticised for not communicating with their members and for not taking a pro-active enough stance on issues affecting BME professionals.
- Overall, participants had mixed responses to support groups based on ethnicity. For some it went against the principle of an integrated legal profession, instead encouraging practitioners and firms to think along segregated lines.
- The majority of focus group participants spoke of the importance of networking. It provides a means of finding out about opportunities, keeping up to speed on developments and gauging salary levels.

- It was important to BME solicitors to have role models to inspire them. Role models demonstrate that people from BME backgrounds can succeed at high levels and forge a respected reputation for themselves in the legal profession. Mentors were equally valued. It was considered important that the mentoring partnerships be formally structured and monitored.

Pay

- Participants revealed that some BME candidates had become so desperate to secure a training contract that they worked unpaid. Participants stressed that this set a dangerous precedent both from the point of view of how individuals perceive their own worth and how they are valued by firms.
- Much of the difficulty in negotiating pay came as a result of firms not having transparent pay structures in place. Participants argued that the pay disparity between white and BME solicitors is perpetuated by not disclosing pay scales. Those most vulnerable to the lack of transparency were newly-qualified solicitors, returners to the profession or those who become desperate for the work.
- Firms seem to be using the current economic climate as an excuse not to address issues around pay, appearing to apply a pay freeze fairly across the board; yet, managed to find other ways to incentivise white solicitors.
- A view commonly held across all focus groups was that female BME solicitors face the greatest disparity in pay.
- Other participants had no experience of disparity in pay in the legal profession, and certainly nothing they could attribute to gender or ethnicity.
- Many BME solicitors work in low-paid legal aid or small high street firms. The survival of these types of firm in the evolving legal services market and the effect this would have on opportunities for BME solicitors was raised as a concern.

Lawyers as employers

- It was felt that poor employment practices were more likely to be experienced by those working in smaller and high street firms. Smaller firms, including BME firms, were often seen as 'making it up as they went along'. BME partners were not reported as always being better employers of BME solicitors than white partners.
- BME solicitors held the perception that they were expected to be 'grateful' for any position or salary offered to them. This was one of the ploys used by firms to avoid meeting their responsibilities as employers.
- BME solicitors who had not encountered any discernible barrier in their career progression, and who had secured good jobs in the City, reported an underlying sense of 'always being the only' BME face at work.

What can be done

Participants were keen that a structured and implemental programme of ideas emerge from this research; a careful chiselling away to reshape the profession. Actions that leave observable changes will be the most effective approach. This was seen as preferable to the 'grand gestures' that participants associated with the Law Society. The Law Society will work with the profession to address the challenges highlighted in this report and to address the recommendations.

Recommendations for discussion

i. By individuals

- Participants acknowledged the responsibilities individuals have to speak out and take action. However many participants felt vulnerable to reprisal and felt that any action taken by an individual would be ineffectual against the power of the firm.
- However, it was suggested that individuals could do a wide range of things to support improvement:
 - i. improve their negotiating and assertiveness skills through attendance at workshops and training events;
 - ii. visit schools and universities to talk to younger BME candidates and give them an insight into the profession;
 - iii. take action against discrimination or unfair treatment - if the individual feels confident enough to do so;
 - iv. support various groups and networks;
 - v. offer themselves as a mentor to other BME trainees or solicitors; and
 - vi. if possible, offer work placements for BME students from disadvantaged areas/schools.

ii. By firms

- Participants were least hopeful that firms would change, however, they called on firms to:
 - i. show greater transparency around pay and around the firm's decision making processes.
 - ii. publish their pay scales.
 - iii. anonymise application forms (remove an applicant's name and photo and, ideally, history before LPC).

iii. By the Law Society

- Comments during discussions implied a role for the Law Society in offering workshops around assertiveness training, self-presentation and negotiating skills.
- The six main recurring requests were for:
 - i. an anonymous way of reporting a firm for bad practice;
 - ii. written guidelines on best practice;
 - iii. better monitoring of firms around Rule 6;
 - iv. monitoring and publication of pay scales for all solicitors, across all firms, not just at trainee level;
 - v. lobbying for positive action and on behalf of legal aid firms; and
 - vi. better information provision to schools and universities.

1. Introduction

The Law Society has an important responsibility to represent every member of the profession and to support the profession in its efforts to better reflect the society it serves. The Law Society Equality & Diversity Framework sets out the Society's commitment to go beyond legal compliance toward, and embedding, best practice on equality and diversity in firms. As a part of this framework, the Law Society Diversity and Inclusion Charter is the flagship diversity initiative of the legal profession. The Charter is a public commitment by providers of legal services, regardless of practice size, to develop and implement best practice in equality, diversity and inclusion. Signatories to the Charter believe that a commitment to diversity and inclusion is essential to reflect the society they serve. They strive to achieve best practice in recruitment, retention and career progression opportunities within their respective firms. The signatories work in collaboration to support the practical implementation of the aims of this Charter.

In support of the Law Society's work in this area, this research was undertaken with BME solicitors. It examined their experiences of working within the legal profession and, drawing from these experiences, makes recommendations for change. The report presents the findings from a series of focus groups conducted with BME practitioners, in October-November 2009. The research was initiated as a result of the findings of the Law Society 2008 Salary Survey. The Salary Survey indicated a pay disparity between BME and white solicitors. Whilst the focus groups probed pay levels and mechanisms directly, they also examined other factors which could contribute to pay disparity. Factors considered were: access and entry into the profession, transparency of pay structures, measurement of performance, and the criteria and opportunities for career progression.

Those who wished to participate, but were unable to attend a focus group in person were invited to submit their experiences using a web-based questionnaire; these additional data supplement the focus group findings throughout the report.

1.1 Background

Findings from the Law Society 2008 Salary Survey revealed a disparity in pay between genders and between the pay of white and BME solicitors. Analysis of the data revealed that the disparity was less likely to occur when both white and BME solicitors were working at large or City firms. The disparity was more often a reflection of the fact that BME solicitors are commonly based in small high street firms, or sole practices, and work in areas of law which are notoriously low paid, such as legal aid, personal injury and immigration.

On the face of it this would appear to explain the disparity, however, looking more closely at this explanation began to raise questions as to why BME solicitors were more often clustered in particular types of firm or areas of work. Was there any evidence that BME solicitors out of choice shied away from the corporate banking and mergers and acquisitions work in favour of the more socially-oriented applications of law, or in fact were BME individuals being coerced into certain career 'choices' by underlying mechanisms? By widening this research beyond the immediacy of the pay disparity highlighted in the 2008 survey, to probe career choices and decision-making processes, it is hoped that this report can shed light on any emergent patterns around BME solicitors and their experience of the legal profession.

1.2 Methodology

The methodology employed in this research was, primarily, focus groups. A total of 9 focus groups were scheduled across London (5), Birmingham (2) and Manchester (2), comprising a total number of 42 participants.

Initial contact was made with a random sample of Law Society members who had given their consent to be contacted for issues pertaining to ethnicity. It became apparent that not all of those wishing to take part could be accommodated in the focus groups. Therefore, those who were not able to attend in person were invited to share their experiences on the same topics, by web-based questionnaires; sixty-eight people participated in this way. In addition, for reasons of convenience, two face-to-face in-depth interviews were undertaken.

1.3 Participants

The forty-two focus group participants came from a range of Black, Asian and Chinese backgrounds and included one white South African. Participants were based in a variety of types of firms including: sole practices, legal aid, high street and City firms and local authorities; others were currently unemployed and seeking work as a solicitor. Some had chosen to give up practice, but maintain contact with the profession. For those participants currently working in private practice, positions ranged from trainee to partner.

Where quotations from these participants are included in the report, attribution is as follows:

[Location/number of focus group; gender; ethnicity; respondent number within the group]

The gender and broad ethnic category of each cited participant is included as a frame to their comment. Further information such as type of firm or position within the firm are excluded in order to preserve the anonymity of participants. Where a comment has been extracted from text submitted via the web the quotation is attributed:

[Web respondent]

A total of 68 people sent responses via the web; less personal data is available for web respondents than the focus group participants. The usual caveats apply when considering this web data: i.e. there are no mechanisms to control who can respond to this or how many times. The low number of responses (given that the link was sent profession-wide via Professional Update) is less of an issue because the responses we sought were qualitative and would not be taken to have numerical significance or to be representative in any case. That said, the web responses held strong commonality with experiences and points raised in the focus groups.

1.4 To frame the findings that follow...

Focus group participants were invited to address factors which focused on the pay disparity between white and BME solicitors. The nature of this agenda in some ways promotes participants sharing negative experiences. Those who were attracted to participate in the research felt they had particular experiences or insight to share. Therefore, this report, from necessity, reflects a particular bias in that it only conveys the voices of those BME solicitors who felt they had applicable experiences to share and by participating in this research could contribute positively to change.

It is not possible to identify from this research whether experiences and views expressed are unique to these particular BME solicitors, or if they are common to other (BME or white) members of the profession. Thus, the views of these participants are not a representative picture of either all BME solicitors, all firms of a type, or the legal profession as a whole.

It is evident from participants' contributions that they perceive potential to improve access to opportunities in the legal profession. Although the report shows that various problems exist at least in some instances, it also highlights actions that can be taken - by individuals themselves, by firms or by the Law Society. The report aims to promote critical discussion around issues raised and recommendations made, in ways which will enhance the work that is already being done within the profession to identify and address issues of equality and diversity.

What began as a 'simple' disparity in pay has given rise to a complex range of factors which cannot be explained merely as the notion that that BME solicitors are paid less because they gravitate towards lower paid areas of the profession; nor is it dismissible as overt and targeted discrimination. It is clear that a wide range of socio-economic factors influence career outcomes for BME solicitors. The importance of the role educators play in shaping and guiding students, and the decisions made by partners/senior partners in respect of access to opportunities, cannot be denied. However, findings also highlight factors around decision-making, confidence and negotiating skills which suggest BME solicitors may in fact be contributing to the creation of their own ceiling.

2. Choosing Law

The decision to become a solicitor may be one taken tentatively as a student leaves secondary school, it may not be until after A' levels that a young person will decide that law is for them. Even undertaking a law degree does not necessarily indicate that the individual ultimately hopes to practise as a solicitor; however, by then it may be too late. Increasingly success at training contract and beyond is being attributed to decisions made in the early stages of education. Applications for training contracts continue to privilege not only the degree and the institution where the degree was undertaken, but A' level grades and the type of secondary school attended. Beyond academic grades, success may also depend on work placements, extra curricular activities and the content of gap years. Focus group participants cited a lack of information from an early age, which meant that many made the decision to 'do law' ill-informed and not knowing what they needed to do to get that all important first step on the rung to a successful career in the legal profession.

2.1 Lack of information

In response to the question 'how do you become a solicitor?' many solicitors, career advisers or teachers will describe a simple linear path from law degree to Legal Practice Course to Training Contract (or a slight detour from a non-law degree via a conversion course to the LPC). There is an underlying assumption that if you successfully complete one step you will proceed smoothly to the next, but no longer is this a guarantee; numbers seeking training contracts consistently exceed the number of places available, not helped by the individuals passing the LPC and adding to the bottleneck each year. Increasingly, recruiting firms, in addition to tracing candidates' academic path back to school age, look for 'extras' to distinguish individuals such as: work experience placements, gap year activities and outside interests.

It was felt that the top City firms closely guarded information as to what they were looking for, making this knowledge available only to candidates at particular universities. Focus group participants stressed the lack of information available to them when they were choosing law as a career:

I don't believe you're given all the information that you need, I mean, when you're at university or at college or even when you're at high school when you're preparing for your actual career.

[Manchester group 1, female, Asian, R2]

Pointed along the linear route, many BME individuals were not made aware of the other things law firms would be looking for or, in fact, that there were other ways to qualify than this direct route:

There's so many ways of actually qualifying, but people just aren't told about it. If you're just starting out in this profession and your family haven't worked in it, if you're from a working class background, then you're not going to know these things until you're a number of years along the road already working as a paralegal.

[London group 4, male, Asian, R2]

Decisions made from school age are proving critical to where an individual ends up in the legal profession. Yet, many students at secondary school or in the first year of their degree are making these decisions without being fully informed of their choices or the potential consequences. The experiences and understanding of these participants suggested that the pay disparity between BME and white solicitors potentially originates from their earliest decision about how to enter law. BME candidates were less likely to come from 'privileged' backgrounds or private schools which primed them for Redbrick universities. Prior to entering the profession many BME individuals believed the successful completion of a law degree and LPC was enough to make them attractive to firms and it was not until several years after taking the LPC that the reality of the situation was revealed:

I wasn't provided with all the information about what working in the law was really like, and the different types of specialism there are and how you could be hindered if you choose a particular area of law to practise in.

[Manchester group 1, female, Asian, R5]

For some participants, the Internet offered a valuable supplement to what they were told (if anything) at school or university. Sources on the web provided a more fleshed out picture of areas they were considering and, in some instances, offered background information to firms' recruiting processes. One participant described:

There's quite a lot of information out there, but what it is, is knowing where to look for it, um, and then also telling people that it's there and they can use it.

[London group 4, male, Asian, R5]

Participants saw a role for the Law Society in working directly with schools and universities to ensure the widest range of information was available to all candidates and that BME individuals would be better positioned to make decisions fully-informed. One particular source of information many BME solicitors felt they had been lacking was someone amongst friends, family or their immediate community who was already successfully embedded in the legal profession. Many participants cited instances where fellow (white) students had been able to secure valuable vacation placements or training contracts through personal contacts.

Even now, as solicitors, they witnessed the children of partners or clients coming into the firm and being groomed for successful entry into the 'elite' of the profession from the youngest age. In addition to actual placements, participants felt that those with contacts within the profession were privy to insider information about what firms wanted and how to be successful, which would never be shared with (implied BME) 'outsiders'.

2.2 Who you know

Frequently participants mentioned that it was 'who you know' that could make all the difference in securing work placements, offers of training contracts or smoothing a path into a particular firm. They cited examples of colleagues from school, degree and LPC who either had parents or parents' friends who could facilitate access into the profession. Some even noted at their own firm that the boss' children would come in for work experience.

The partner I sit with, his daughter is 15 this year and he was able to just bring her in for a week. At the age of 15, how many kids have the opportunity to do that? but that assumes that the parent is already in a job like that.

[London group 1, female, Chinese, R1]

Another participant suggested that these young people did not even realise the advantage they were getting:

I asked them why they're there, 'oh my dad is a partner', 'oh my dad knows X partner', 'oh my dad is a client of the firm' and half the time they can't even be bothered, they're not even interested... but what happens then, they have the big shiny City law firm on their CV, that they've done work experience, so when they go to make applications for a proper vacation placement they're going to get it and then when they make applications for a training contract, they'll get it and if you don't have that advantage then it's not an even playing field.

[London group 1, female, black, R3]

Although most participants stressed the importance of having friends or relatives already embedded in the profession who could share information and offer them work experience:

Unless you have somebody in the family or a close friend who can mentor you and give you an inside track, you really don't know, you just bluff your way along and make mistakes and you're wasting time to actually get there.

[London group 4, female, black, R6]

It depends on who you know still, what work experience is available to each school depends on the individual, on who you know, which parents, which aunties, which teachers.

[London group 2, female, black, R1]

Others felt very strongly that this was an easy excuse too often used by BME candidates:

I disagree with that completely because I think you can get to wherever you want to on your own merits. I disagree with the notion that there are people out there who can't get anywhere because they don't know someone in the profession.

[Manchester group 2, female, black, R1]

Across several focus groups, being a member of a sports club appeared to offer an important 'in' for networking with senior solicitors and fostering working relationships built on common interests. BME individuals found that this had worked both for and against them:

My training contract, I got that because I was a member of a water-skiing club and as a member of that club, a number of the members were solicitors so they were on the look out for a training contract for me.

[Manchester group 2, male, black, R4]

Just try to get a vacation placement or a work placement for two weeks, even unpaid, in a medium or large City firm, it's virtually impossible, whereas if you're buddies with your cricket mate and his father's a partner...

[London group 2, female, Asian, R3]

Overall, participants attributed the importance placed on 'who you know', and consequently the lack of opportunities available to BME individuals without contacts, as evidence that:

There is an old boys network that teaches the next generation how to get ahead... they know how to get ahead and they know the things you need to do extracurricular wise and what subjects are liked by the profession and so on. We're finding our way through the dark because no-one's actually feeding these little secret titbits of information through to us.

[London group 2, female, Asian, R4]

One participant finally, after years of failing to make partner, asked a white male colleague what he had done to make partner so quickly. She explained:

Nobody tells you 'you need to do X and Y' and all of a sudden it all clicks together, you know, about getting a following in some respect or getting contracts, you know, it's about having the understanding of what's required of you or seeing what the other person has done because nobody actually tells you and you're scrabbling along and suddenly you wake up and think 'I've got this totally wrong and this is what I need to do', but by then it might be too late.

[London group 2, female, black, R5]

Secondary school, choice of university, and the type of firm/area of law in which the training contract is located, accumulatively shape where the individual will end up later in their career. Taking a 'wrong' turn at any stage can close off many avenues until the individual finds that they are 'stuck' in a particular type of firm, at a particular level and the higher paid positions or more lucrative work is no longer there for them. Participants did not express this as being solely a problem for BME solicitors; white solicitors making 'poor' choices early on would be similarly vulnerable. It was clear, however, that participants felt a lack of information was disproportionately affecting the progression of BME solicitors. Participants urged that more 'insider' information be shared with secondary school students considering law as a career because by the time they are in their first year at university it may already be too late.

2.3 School

The school an individual attends can play a key part in how they are viewed by firms, particularly in their ability to get into the 'right' sort of university to be attractive to future firms. Schools can be very influential in preparing students for university:

I was fortunate, I changed schools as a teenager and from that point onwards it completely changed the direction because that school then made me apply to certain universities, then I got into that certain university and that enabled, so that whole path was sort of alright then.

[London group 1, female, black, R3]

Participants could not stress enough the determinant connection between school, university and law firm. Many cited the example of 'Russell schools' who groomed secondary students, from their first year, to be ready to make successful applications to Redbrick universities. Participants articulated each school as a springboard to a particular group of universities and the impact that being at the wrong school and thus choosing the wrong university could have on a law career:

It's at school level, where people aren't aware that going to a, I say 'wrong' university, but for purposes of getting into a City law firm that could really kill their chances.

[London group 1, female, Chinese, R1]

If you've got people applying for university places who possibly might want to work in a City firm in the future, but don't realise this whole sort of you've got to go to this university in order to get an interview at this type of firm.

[London group 1, female, black, R3]

A young person seldom gets to choose, personally, where they go to school. However, across focus groups those participants who are parents revealed that they had made particular efforts to get their children into certain schools with a view that their journey into a profession should be easier than they themselves had encountered. Several participants had opted to send their children to private schools in order to increase their chances of getting into a Redbrick university:

Some Asian and black people are beginning to put themselves in that [elite] group because their parents are making sacrifices to send them to these schools and put them through into these universities.

[London group 4, female, black, R6]

State schools don't have anybody coming in and supporting them. You might have somebody in school who might want to be a successful lawyer and I don't think they're getting any advice.... in the City here and if you see the resources that come in, you've got MPs coming in you've got doctors coming in, they've got like their 5th form, 6th form are already getting the stuff ready for the Oxford, for the Cambridge, for the medical schools. There's no comparison.

[London group 2, female, black, R5]

For those unable to attend private schools, participants suggested that BME practitioners or the Law Society should supplement a lack of resources by visiting secondary schools and talking to the students. One participant already did this:

I go to secondary schools. I went to my son's secondary school, actually, and did what they call a 'Careers Day'. So, I took information from here, literature from the Law Society, in a big bumper pack and I gave information to people who wanted to go into the legal profession and they found it very useful. That was people who were secondary school, between third year and fifth year, and it was useful, but you have to break the language down and be realistic. You can't put them off.

[London group 1, female, black, R3]

For the sake of the legal profession, if it was to attract the cream talent of future generations, focus group participants were keen that BME practitioners and the Law Society put more effort into connecting with schools and making sure:

At age 11, if you can get people at that age who have got real talent and start mentoring them and nurturing them at that age to actually see law even as a possibility, then that's where it starts before they start choosing options for GCSE. Most people at comprehensive school won't even consider law as a possibility.

[London group 4, female, black, R6]

Before you start your A' levels, they need to know what you need to know in order to achieve these things, because right from age 11 or even 10 I wanted to be a lawyer and I went to the careers office, 'I want to be a lawyer' and there was no direction.

[London group 2, female, black, R1]

2.4 University

On the whole, focus group participants had not realised the relationship that exists between particular types of firm and certain universities until, for many, it was too late and their route into the legal profession had been chartered onto a particular course. As one participant expressed:

I didn't realise that by applying to this university, I'll then be offered a training contract at this type of firm.

[London group 1, female, black, R3]

Again, participants cited a lack of information about how important their choice of university was, albeit that financially or academically some participants may already be outside the remit of Oxbridge type universities. Even once inside a university participants felt that careers staff were, on the whole, largely uninformed about the more detailed aspects of pursuing a career in law:

I suppose there is responsibility on the universities, Redbrick or former polys or whatever, to inform students, but to be honest half of the people in the careers office don't even know themselves.

[London group 4, female, black, R4]

For those universities favoured by City firms, the firms themselves made up for any deficit in information by visiting the institutions and providing their own careers fairs to lure potential applicants. Some focus group participants had attended 'Redbrick'

universities, though they had not consciously chosen the university with their training contract in mind. However, these individuals could relate how City firms courted students at their institution firsthand:

My university, probably because it was, at the time, a Redbrick university, there was a lot of firms that did come round and explain what you have to do or what you need to do to qualify as a solicitor. I think, when I was at university, I was well informed and that's why I was reluctant to go into the LPC until I had secured some sort of contract.

[London group 4, female, Asian, R1]

A lot of the City firms came and gave presentations to students at the university... they would actually give some fairly detailed information. They would actually tell you the kinds of things that they are looking for... they would give you hints and tips and say 'these are the kinds of skills that we're looking for, try to give as many examples, or as many pertinent examples, of these kinds of skills'.

[London group 4, male, Asian, R5]

As a consequence of their own experience, more than one BME solicitor claimed to go back to either their school or university on an annual basis and help provide the information that had been missing to them at that age:

I go to my Uni, I go to my previous Uni and lecture to the students, the undergrads. I go every year, I offer myself, I go there with a group of people and I give them advice.

[London group 1, female, black, R4]

One participant described a scheme being piloted by some universities, whereby students from disadvantaged backgrounds or from minority ethnic groups were awarded points according to their position on a social inclusion scale. The additional points were added to the individual's grade points on the UCAS form to assist them to gain entry to certain universities. Although going to the right university can be seen as a vital way of increasing the likelihood of getting into a City or large firm, it was by no means guaranteed that BME students attending universities such as Oxford, Cambridge, Durham or Warwick would find it as easy to get into a City firm as their white fellow students.

I actually went to Cambridge... I think it was very clear to me that that in itself wasn't enough to guarantee that I was going to have a charmed life... I was still doing an awful lot of knocking on doors and people were still sceptical, I was a bit of a novelty, but it wasn't a passport to an easier time at all and in some cases it was almost the opposite, you could get a bit of resentment from people who would look at your CV and go 'well, how come you've done that?'.

[London interview, female, black]

[she] had a typically Asian name, she's got excellent academics, and she applied to XXXX, she applied to some big firms in Birmingham, basically, and she did not even get through to the interview stage. She went to Warwick University, she got a Masters, she got a distinction in her LPC, 4 As at A' level, she's got amazing academics and she didn't even get through to the interview stage... we couldn't think of anything other than that it could be because you can tell from her name that she's Asian.

[Birmingham group 1, female, black, R2]

Whether a BME student is able to get into one of the universities favoured by 'elite' firms is not necessarily down to their academic aptitude. For many BME students, not knowing other BME individuals who have applied and been accepted into such institutions can be enough to preclude them putting themselves forward; rather, they may prefer to go to a lesser university if more of their friends are applying there. In addition, the government's position on tuition fees may also deter BME candidates from applying to the more 'prestigious', and thus often more expensive, universities. As grants are replaced by student loans it becomes increasingly expensive for any student, regardless of their ethnicity, to graduate into the professions. Whereas focus group participants ventured a white middle class student may be prepared to take on the debt of student loans knowing that they would ultimately get a good job and be able to pay off the debt, they saw their own debt as magnified, as it was exponentially more difficult for them to secure a high paying job in the legal profession:

You take the risk by going into debt and then you take the risk that you're going to be able to pay it off, but if you've got a situation where no matter how talented you are you're going to find it difficult to progress in your career because of who you are, then obviously you've got a problem there. You take on the risk, but then through no fault of your own you can't really deal with that anymore.

[London group 4, male, Asian, R2]

In this respect some participants placed the pay disparity out of their own hands, suggesting that no matter how skilled they were as a lawyer, who they were as an individual would be a bigger determinant of their future pay. This was not a commonly held view by any means and, in consideration of the criteria for progression, participants were divided over whether ethnicity had anything to do with progression at all. This is discussed in Section 4.2.

2.5 Legal Practice Course

Participants suggested that the Law Society or LPC providers could be more helpful in terms of preparing them to apply for and secure a training contract:

[LPC providers]...weren't particularly helpful with relation to training contracts or anything and that side, they didn't really help the BME students and say 'look, you're going to have to take a different route or approach applications in a particular manner'

... you need to do more than just do your law degree or your LPC, you need to do activities outside of that to then be able to get training contracts.

[Manchester group 1, female, Asian R3]

The comment of this individual demonstrates an understanding that BME students applying for a training contract need to consider a 'different route or approach'. Other participants explained that by LPC stage, Magic Circle and large City firms had already recruited their trainees, confirmed by the fact that most of their white counterparts already had a training contract secured for after their course. The financial advantages to being recruited at university level did not go unnoticed:

When we were doing the solicitors' exams a lot of people there were sponsored and they were rich anyway, they didn't need the sponsorship and they were the ones that subsequently got jobs in the City firms. So the ones who did need the sponsorship were having to work two jobs to pay for themselves, they ended up with no jobs, sometimes they had to beg to get work experience and then you do the training contract two years without pay.

[London 1, female, black, R4]

For BME solicitors embarking on the LPC without guarantee of a training contract at the end of it, the confidence they had felt on entering the LPC dissipated as did their choice of areas in which to practice. Again, a lack of information left one participant feeling she had made the wrong decision about the route to take in her LPC:

I didn't know when I did the LPC that if I chose the general route, which is what I did, that that would bar me from doing anything commercial. I just thought 'ok, I don't know really what I want to do' and at the age of 21 I still wasn't 100% sure, like some of my peers were. I thought 'I want to do law, I'm passionate about law, I don't yet know what specific area I want to practice in, so I'll do the areas that interest me'. It's the worst thing I ever did in my life!

[London group 2, female, Asian, R2]

Participants were critical of the part played by LPC providers in contributing to the bottleneck of those seeking training contracts each year. A lack of information had not prepared this individual for how difficult it would be to secure a training contract and she speculated that law schools may have their own (financial) reasons for not sharing this information:

I had no idea when I did my law degree and went in and did my LPC, I had no idea how difficult it was to get entry into the profession, no one tells you, it's almost like the law schools are there to take your money. BPP, they're an accountancy school, why are they doing the LPC? Because it's financially feasible, they let loads of people in, you know, so many people on to the course, they pay their fees and then there's not enough training contracts to go around.

[Birmingham group 1, female, black, R2]

BME participants across all focus groups, irrespective of their ethnic group, gender or geographical location, felt ill-informed when embarking on law as a career. Many did not realise exactly how ill-informed they had been until they had been in the profession for several years and, even then, realisation usually came when an individual attempted to move into a different type of firm, a different area of law or to negotiate a higher salary. Even those individuals who had attended Redbrick universities and had secured a training contract or job with a City firm felt that their route had been a fortuitous coincidence rather than something they planned.

All participants cited that more information about 'how to succeed in law' and the 'consequences of your choices' would be a crucial determinant in helping BME students make informed decisions around how to enter the profession. Participants argued that from school age BME candidates should have access to the sort of information or 'insider knowledge' currently guarded between City firms and their preferred universities. Without access to more and better information, BME students will potentially choose the 'wrong' university for the sort of legal career they aspire to and, from this point, as the training contract becomes increasingly difficult to secure, the early signs of pay disparity begin to take root.

3. Becoming a trainee

At the end of the day I'm grateful that I got a training contract, because I think that's what you're supposed to be, grateful that you actually got a training contract!

[London group 1, female, Asian, R2]

'Grateful' was a word often heard in the focus groups, namely a perception that after years of struggling to secure a training contract or that first job, BME candidates should be grateful for whatever they are offered. Participants described a pivotal point where they became desperate to secure a training contract, any training contract, many still believing that if only they could qualify and get into the profession things would improve, they would have their pick of jobs and finally be in a position to pay off student debts. For some participants, the idea that securing a training contract would be difficult had not even occurred to them.

3.1 Securing a training contract

Having completed the LPC, BME candidates perceived that they would be on a 'level playing field' with all other LPC graduates, irrespective of their gender, ethnicity or social background. However, the dawning reality of the actual situation had hit many BME participants hard. The huge competition for training contracts is exacerbated by the fact that each year the numbers passing the LPC exceed the number of trainee places available, leading to a bottleneck of those waiting to start their legal career. LPC providers must take some responsibility for this. As places on the LPC continue to grow, the providers happily accept the maximum number of students onto their course - in some institutions the quality of the candidate potentially holding less weight than their ability to pay the course fees. Admittedly, universities and colleges need to raise fees in order to ensure their own survival, but from past research with LPC students (Fletcher 2004), and from comments made in focus groups, it was not always clear that potential LPC students are given sufficient counsel as to the fees they will be required to pay in relation to their chances of securing a training contract afterwards.

Typically, focus group participants had not been successful in securing a training contract on their first attempt and, for many, finding a training contract involved several years and hundreds of applications.

I remember looking back on the number of applications I made and it was in the region of 200 applications, the majority didn't even reply, quite frankly, so unless you've got some knowledge of the actual inner workings of the profession, it's a bigger, bigger struggle.

[Manchester group 2, male, black, R4]

I didn't get anything the first year round, then I reapplied the second year and then I got something, but I still didn't get that many interviews out of all the applications I made, but then I thought I've got one offer and that's all I need.

[London group 1, female, black, R3]

Some attributed their difficulty to the academic criteria required by firms, but this was compounded by what they saw as a lack of information about the 'extras' attractive to firms:

I struggled with the work experience aspect that was required and when I graduated I didn't get a 2:1, which is basically what most firms are looking for, that have a structured application system. So I really struggled to get my training contract so I had to focus on getting work experience and getting into a firm, showing that I'm capable and worthy of becoming a solicitor.

[Manchester group 2, female, Asian, R2]

As with the above participant, BME candidates initially blamed themselves for not attaining the right grades or for not knowing what was required. Yet, a pattern emerged as focus group participants recounted their realisation of how uneven this playing field really was and how they were forced to adjust their sights accordingly:

I went from applying to [City] firms and in the end my training contract was with a sole practitioner from an ethnic minority. But you don't think from the start 'oh I might not get it, I won't bother applying', you think 'well, why not?' You know? 'I've got the same qualifications as my counterparts, surely I should have a fair chance', but then experience teaches you otherwise.

[London group 2, female, Asian, R4]

Where an individual undertakes their training contract can have major implications for where they end up in the legal profession. The training contract can delimit a trainee to a particular type of firm or area of law – few firms would want to absorb the expense of re-training a newly-qualified solicitor who had trained in a different area of law. As BME students are typically channelled towards training contracts with smaller high street, legal aid or BME practices, this training stage then sets the precedent for where they might work in the future and the cracks of pay disparity begin to open up.

3.1.1 How firms recruit trainees

It was not until they had been in the profession for several years that participants displayed an understanding that not only did top City firms only recruit from their preferred pool of universities, but also that they visited universities in order to pitch to the students and provide them with the information about the firms' recruitment processes. BME candidates faced barriers on multiple levels. Firstly, many had not realised the significance of their choice of university for where they would be able to secure a training contract or for how attractive they would appear to particular firms. Even those who had been to favoured universities described this as a lucky coincidence rather than an informed choice. Secondly, as others began to comprehend the hierarchy of universities and their relationships with firms, individuals deliberately excluded themselves - not applying to certain firms to avoid what they saw as inevitable rejection. Those who were not at the top pool of universities and decided to apply to top firms anyway were not privy to how to complete the application forms or what sorts of skills to include; by only sharing this information with the universities they planned to recruit from, the firms loaded the application process in their favour. One participant who worked at a City firm described their policy on trainees:

I've had that on the record. They've been told to recruit, XXXX were told this, '60 per cent of our recruits have got to be Oxbridge' and that's come from the partners.

[London group 4, female, black, R6]

BME solicitors knew that large City firms favoured the Redbrick universities and by only recruiting from them they were more likely to acquire white middle and upper class trainees. Although there were BME candidates at these elite universities they were not guaranteed success:

There is a preference to the Oxbridge and to the higher universities, you know, the blue universities, as they're called. So if you've got a degree from one of those universities then there is a preference, that the City will be recruiting those people and the City has a lot of recruitment drives in those universities, as well, so you know that there is this prejudice that exists, but there are also black and ethnic minority students who go to those universities, as well.

[Manchester group 2, female, black, R1]

In 2006, there was a big drive to get the Magic Circle firms to be more reflective of the population as a whole because you were finding, you know, Oxbridge black minority lawyers that were applying, some of them without particularly sounding ethnic names, and they'd go along for the interview and they'd have the same qualifications as someone who was white, but they were being turned down.

[Manchester group 1, female, black, R6]

Participants also made the point that BME individuals attending, for example, Oxford or Cambridge were more 'like' their white counterparts and, thus, were not significant contributions to a firm's diversity policy. Here, social class was seen to be a stronger determinant in stratifying the groups than ethnicity. Participants urged firms, if they were serious about fostering a diversity amongst their solicitors, to look beyond their usual points of recruitment and consider candidates from other universities:

If you're going to recruit from only ten or fifteen universities then you're immediately cutting yourself off from people from different backgrounds, from different cultures.

[London group 1, female, black, R3]

If they really want to attract a diverse range of people to come to their firms they can't just go to Kings and the other ten universities, they want to get their butt down to Greenwich and Westminster and get that real nugget of talent that's there.

[London group 4, female, black, R6]

Discussions suggested that firms went to particular universities because they had a reputation for excellence and, in many cases, these were the universities where the partners themselves had attended. By recruiting from familiar universities these firms were obtaining candidates from a known academic context who would most likely have interests and outside activities in common with the firms' partners, solicitors and clients:

If you come from a good university and you have had some kind of, I mean, a privileged life in the sense that your activities are horse riding or things like that, things they can relate to, then you've got a better chance of getting a training contract in a City firm.

[London group 4, female, Asian, R1]

A BME partner at one of the focus groups explained his theory why Asian applicants were often denied interviews for training contract places::

Sifting through 100s of CVs, the ethnic minority ones, everybody had a 2:1 or 2:2, there's nothing to distinguish them on their academics. What really distinguished them was extra curricular activities. The Asians had hardly anything and if they did it was all religious oriented, which of course rang alarm bells with me because, you know, it kind of put me off 'why did you join the Sikh Society? Are you going to bring it into work?' They had nothing interesting to say about themselves.

[Birmingham group 2, male, Asian, R4]

This insight suggests that being too prominently involved in religious activities may go against minority ethnic applicants in the eyes of (even BME) partners. Equally, having no extra curricula activities to cite told the recruiter little about the applicant as a person and, more often than not, this participant claimed to dismiss such applicants as 'boring' people. Other participants suggested there was a cultural difference in attitudes towards gap years and things like the Duke of Edinburgh's Award scheme:

That whole gap year, extra curricular activities, is quite a Western middle class thing that they have to know about before you can do it. ... There are just hundreds of people who don't know they are supposed to do that stuff, basically.

[Birmingham group 2, female, Asian, R3]

Those participants who had been involved in recruiting trainees explained that faced with hundreds of applications for one place they could not give too much consideration to the factors behind an individual's history and experiences. Yet, other participants continued to cite the importance of recognising cultural differences. They claimed that where applicants were children of first generation minority ethnic families, girls, in particular, were often precluded from undertaking extra curricular activities, therefore firms should take this into account when making their decision. However, those recruiting, particularly from larger firms, were realistic that firms just would not have the time to do this and it was certainly unlikely that firms would start awarding 'compensatory points' to those whose application may have been 'disadvantaged' by their cultural or social background.

Although participants pointed out that in maintaining their current approach City firms excluded swathes of people from ever having the chance to prove their worth at the firm, some participants acknowledged the need for a good fit between clients and solicitors. Elsewhere discussion focused on the idea of partners recruiting miniature versions of themselves (see Section 4.1.1), but participants did see the need to be able to fit in and share attitudes or interests with colleagues. This potentially caused problems for one Muslim participant seeking work in a corporate firm:

Say we're doing a deal with one of the corporate clients, I would only go to a bar and I couldn't then spend hours and hours because they obviously have lots to drink, I don't drink alcohol, after about half an hour or an hour or so I'd think there's only so far I can take it, I'm going to leave. Whereas, if you don't spend that sort of quality time with them you don't win those large contracts. So that put me off the culture of socialising and going wining and dining and clubbing afterwards, that kind of thing completely drove me away.

[Birmingham group 2, male, Asian, R5]

For other participants, this had not been their experience, rather, those solicitors who were either teetotal or who did not go out socialising all the time were given greater respect at the firm.

Participants stressed that, whilst having a university or social background in common, a first from Oxford did not necessarily make a great lawyer:

It's not about your qualifications, it's about who you know and whether you are able to justify to a prospective employer that you're going to be an asset at that firm.

[Manchester group 2, male, Asian, R3]

The City firms cannot just base it on grades from the law school or the LLB or the LPC, you can't tell who will be a perfect lawyer, who will be an exceptional lawyer, until he's brought into a job to do the job.

[London group 2, male, black, R6]

For those working at small high street or criminal legal aid practices, a white socially advantaged Oxbridge graduate was not the most appealing choice for their firm:

I don't think we'd want to take on somebody who's got a first from Oxford because I don't think they'd be able to relate to our clients. Well they wouldn't! Bearing in mind you might have to go out at 2 'o'clock in the morning to a police station and, you know, you have to speak to these people who every second word is a swear, you have to relate to these people... you have to be able to talk their lingo and I don't think some of these Oxbridge types would be able to do that. They'd probably be too scared to come into work the next day!

[Manchester group 2, male, Asian, R3]

This participant could see, potentially, how discrimination could work in the other direction, whereby legal aid criminal or immigration practices might deliberately avoid recruits from Redbrick universities because they did not feel they had enough in common with the firm's main client base. Yet, all participants acknowledged that the journey from Redbrick university or City firm to legal aid practice flowed much more smoothly than for those trying to swim up stream in the other direction, from legal aid or small BME firm to the City. Perceptions around this were so strong that many BME participants had already excluded themselves from applying to certain types of firm:

You create your own ceiling where you don't even seek jobs in the big Magic Circle firms because you've already been told that your education and your background and the journey you've made to becoming a lawyer is not enough to be attractive to them.

[London group 2, male, white South African, R7]

These top firms cannot be blamed for wanting elite candidates and when they find a model that delivers why would they want to change it? One focus group participant expressed 'enough of the carrot, it's time for the stick' – indicating that she no longer believed firms would change on diversity of their own accord and it was time for mandatory measures to force firms to either take on more ethnic minorities or at the very least become more transparent about their recruitment, assessment and reward mechanisms. However, the idea of becoming part of a mandatory tick box exercise held fear for many participants.

3.1.2 Ticking boxes

More than one participant described firms' recruitment of trainees as a box-ticking exercise:

It's almost like box ticking, look what school did they go to? Right, what university? What degree? And you're immediately discriminating against so many people by doing that... For various reasons, maybe you didn't go to the right school so you didn't get the right grades to get into that university, you know, it's not fair to sort of just discriminate against whole groups of people.

[London group 1, female, black, R3]

They joked that a firm which had found a BME candidate at one of their favoured universities had 'lucked out':

If you're getting into that kind of university or that kind of law school you tick the box as someone from the right background and if you're ethnic minority as well, it's Christmas, they get what they want and they're hiring an ethnic minority.

[London group 3, male, Asian, R1]

For some participants, requiring firms to meet quotas and recruit a certain number of BME trainees was the only way to widen access for BME students to the larger corporate and City firms. Yet, other participants warned that putting too much emphasis on these 'tick-box' categories could backfire on BME solicitors. Stressing caution to the participants who demanded the publication of firms' diversity statistics and cited the need for the Law Society to put pressure on firms to demonstrate their commitment to diversity, these individuals feared this approach would lead to increased tokenism amongst firms:

What you don't want is a stigma being attached to a firm who's renowned for not being particularly diverse and suddenly they recruit, one year, I don't know, 50% of their intake of trainees happen to be of ethnic minority background - then the perception there is that these people have only got in because of their background... therefore they're trying to tick that box and I think that's the danger and I would be very wary of doing something like that.

[London group 1, female, Chinese, R1]

BME solicitors were determined that they be taken on, on their own merit and for their skills, rather than to meet a quota. However, many participants were realistic that this was unlikely to happen until firms revisited how they defined excellence.

3.2 Defining excellence

It was clear to participants that firms equated 'excellence' primarily with academic qualifications and particular institutions. The traditionally prized universities, such as Oxford, Cambridge and Durham, were seen as a guarantee of a certain level of excellence in candidates' academic and personal capabilities:

I suppose from their perspective it's about the standard and the academic excellence of that individual. Generally speaking, if you've been to a certain institution and you've been moulded in a certain way, it's almost like a guarantee to them that you are going to be of a certain level in order to do the job, which, given what we do for a living, it is fairly academic what we do.

[London group 1, female, Chinese, R1]

Participants were realistic that it would be difficult to convince firms to change their selection criteria:

*The fact is, if their criteria is four A*s, ten A**s, plus a 2:1 or a first from these ten universities, until they change their criteria, but they then feel that anything less than that is not excellence and does not merit top, as far as they're concerned and that is the problem.*

[London group 4, female, black, R6]

The prevailing perception across focus groups was that firms saw excellence purely in terms of the reputation of teaching institutions and grades on paper. One participant suggested that firms were flawed in privileging grades when they should, in fact, be assessing strength of character, merit and attitude rather than how good students were at exam technique:

*Until they can see the value of talent other than A*s and 2:1 from the top ten universities, they can see that people have struggled against the odds to get through school, to get through university, any frickin' university for that matter, yeah? They can nurture that talent, they can have positive action programmes, give that person a mentor, a coach, if they've got the right attitude they can be taught the skills.*

[London group 4, female, black, R6]

This participant continued with the notion that senior partners, from Redbrick universities, or with advantaged backgrounds, carried a misguided view of what constitutes merit:

Merit? Merit is clawing your way through a council estate and getting out without a criminal record, getting yourself into a college or university without being sucked into whatever gang culture there is, getting a degree. As far as I'm concerned, that is more merit than mummy and daddy signing cheques through your whole career and sending you on gap years and horse riding courses.

[London group 4, R6 female]

Only those BME participants who work in legal aid or high street practices were less concerned with academic excellence:

It makes no difference to us if someone's got a first, if they can show that they're committed, if they can show that they can um, bring work in. That's the criteria and that's probably not something some of the bigger firms, we're not massive, we're only 50 solicitors, but certainly we're not like the bigger national practices, so for us it's a question of whether somebody can bring work in that makes them attractive.

[Manchester group 2, male, Asian, R3]

A misguided view of what constitutes excellence means that, for many participants, good, able solicitors are being passed over in favour of social background. The Law Society's proposal to allow individuals to qualify without undertaking a training contract, whilst theoretically widening access, potentially jeopardises any attempt to encourage firms to widen their perceptions of excellence. The Solicitor Regulation Authority (SRA) is testing work-based learning as a way of training people, opening a path to BME LPC graduates who have not been able to secure a training contract with a firm. From the problems focus groups participants have described, even getting interviews for a training contract, it seems this work-based learning approach will be very attractive to BME candidates. Concerns were expressed that –such an approach could irreparably dividing the profession and contributing yet another variable to the pay disparity. For example, might firms try to pay someone who has qualified this route less than someone who has undertaken a training contract, or even see them as 'not a proper' solicitor? Should this scheme appear successful and be implemented profession-wide, again, BME solicitors will need to be fully informed of the potential consequences of choosing this route into the profession.

3.3 Towards qualification

Once they had secured a training contract, participants did not feel the struggle had dissipated. Individuals cited experiences where they were not able to pursue the areas of work within the firm that they had hoped to. Across all groups, white trainees were typically encouraged towards corporate and commercial work, whilst BME trainees were 'pushed' towards Personal Injury, Legal aid, Immigration and Family work:

There was a distinct difference between ethnic minorities and white students, they were pushed more down the corporate because, on the face of it, clients would accept them more than an ethnic minority.

[Manchester group 1, female, black, R6]

If conclusive evidence cannot be found to link pay disparity to choice of university or early academic qualification, the disparity can certainly be seen to stem from this point in the training contract. By pushing different ethnic groups towards different areas of law, pre-qualification, BME trainees are already being groomed for areas where they will always earn less – not just because these areas may be lower paid, but also in term of the ability to bring in clients:

I felt as though I was being pushed to qualify into personal injury and I find, generally... that it's kind of a shrinking market, your pay doesn't really reflect the work that you do.

[Manchester group 1, female, Asian, R5]

Later in the report (see Section 4.2) individuals stressed the importance of how many clients you bring in and how those client relationships are managed as key criteria for how far or how fast a solicitor progresses through a firm. Yet, if from training contract stage BME trainees are being edged to qualify into areas which are less lucrative in terms of client yield, they are already facing a ceiling on how far they are likely to progress.

One participant, who had worked as a paralegal in one of the large City firms, revealed that their trainees and first year solicitors were treated little better than admin staff:

I know at XXXX, as a paralegal, I was working overnight, I was there with the trainees, even with first year lawyers who were doing the exact same admin job I was doing. I mean, you get paid a lot, but you're there all night putting files into a box, that's not what lawyers should be doing. I think it's a bit stupid because you hire people from the best places in the world and make them do admin.

[London group 3, male, Asian, R1]

This raised the question amongst participants: why would the top firms go out of their way to secure the cream talent of elite universities only to have them then doing menial admin tasks? Participants understood the training they received in small or high street practices to vary drastically from the training received at City firms. Whereas the large City firms operate a structured programme in accordance with Law Society guidelines, participants who had been trainees at sole practices or small firms often found they had to 'muddle in' and do a bit of everything at once – often assuming more responsibility than would be expected of a City trainee:

With the City firms you know you're going to have six month seats in four different areas and at the end you're going to be in a department, in X years you can be a partner, it's all very mapped out and structured. I worked for a high street practice, I did everything and anything in the course of a year. You're supposed to fill in these training forms and you've got to fabricate, you can't say 'I've done 12 months of everything at once!' It's really arbitrary and at the end of it you don't have any of the support or structure you would get with a bigger firm, at all, and you've actually taken yourself out of the running to apply for a very good firm because what you've done is not one of their prerequisite seats or it's not relevant to them.

[London group 2, female, Asian, R3]

So, whilst on the one hand BME candidates in small high street practices potentially get more hands-on experience of what it is actually like to be a solicitor in that firm, than City trainees do at their firms, this hit-the-ground-running mentality was not attractive to large firms because the areas of law were not ones relevant to the work of City or large corporate firms.

4. Life as a BME solicitor

4.1 Recruitment practices

Of participants responding via the web, only 18% (n=12) thought that law firms operated fair recruitment practices. Focus group participants described a range of barriers they perceived when applying to the bigger City firms, from attending a 'wrong' university or not attaining the 'required' grades to having a 'too ethnic sounding name' – all of which they felt went against them in the short listing process. Even those who had been in the profession for several years expressed that their post-qualification experience counted for less in firms' eyes than their performance at school or university:

I've been working in the profession for 14 years and I still get recruitment agents saying to me 'you haven't got 2:1' and I was like, 'but I've been to the court of appeal, what do you mean?'.

[London group 4, female, Asian, R1]

If you've got your practising certificate it means you've achieved your education, should it matter what secondary school you went to or what university you went to?... why should you have to go right back to where you did your A' levels, where you did your O' levels?

[London group 2, female, Asian, R4]

Participants perceived Oxbridge graduates who had taken a gap year or who could cite activities such as horse-riding or scuba diving in common with partners to be particularly attractive. A web respondent related an interview where:

The second round interview consisted of discussions based on what I do in my social time, what my parents did etc. i.e. it was clear that the line of questioning was targeted to see if I would 'fit in'.

[web respondent]

Conversely, participants felt that any gap in their own academic or employment past was viewed far less favourably, although the following quote indicates perhaps the degree to which BME solicitors conform or play along with existing stereotypes:

If my mum had paid for me to go on a round the world cruise, that would build my personality as well. If you have somebody from an ethnic minority community who takes a year out, the immediate question is 'where were you locked up?'.

[London group 4, male, Asian, R2]

Comments across the focus groups suggested that BME candidates could not necessarily afford to take time out on a gap year or even to pursue unpaid vacation placements as they needed to work and earn money in-between course periods. This put them at a further disadvantage when it came to recruitment:

Your white counterparts have all these contacts and other privileges. I wouldn't have dreamed of not working during the Summer on my LPC and degree, but, you know, all these wealthy people can go and build a well in Africa or get vacation placements, so they can get the experience which makes them look amazing on their CV.

[Birmingham group 1, female, black, R2]

It was the perception of focus group participants that firms held all the power and fashioned their recruitment criteria to suit who they ultimately wanted at their firm:

Some of the firms are very snooty. I've been to firms where I've walked in, they've looked at my face and said 'we don't need anyone anyway'.

[London group 1, female, black, R4]

I think, in a free market, firms want to choose who they want to work with, they want someone they gel with, they don't want this anonymous piece of paper, because some are even asking for photographs... they said we should put our photo on the application forms, so I said to them 'is that so the black faces end up in the bin or what?'

[London group 1, female, black, R4]

Several interviews I attended were largely run by partners with little or no HR intervention and seemed to be all about one's ability to get on with the partner. This is in contradistinction to Local authority interviews which are highly structured, usually involve testing, and involve several decision makers as well as use information provided by the interviewee to demonstrate competencies.

[web respondent]

Overall, local authority practices were also related by focus group participants as being different and slightly more just than those encountered in private practice. For some this was due to the lack of pressure to pursue partnership or meet billable hours targets in local authorities. For others, the recruitment and promotion decisions made by private practice firms were attributable to a need to appeal to or 'please' clients. As one web respondent claimed:

Law firms are perpetually concerned about 'image', and having the 'right' lawyers, rather than fair recruitment.

[web respondent]

It was deemed an unrealistic expectation that the Law Society could have any positive influence over firms' recruitment practices or would be able to introduce protocols that firms would take seriously. Rather, the inclination was that if firms were committed to employing an ethnically diverse workforce, they would already be doing it, unprompted. For others, the Law Society telling them how to run their business would not be a welcome intervention:

The last thing the partners from your firm want to know is to be told who to recruit and I think they would react quite badly to that, that's certainly my view of the people I work with in my firm.

[London group 1, female, Chinese, R1]

The 'us and them' divide of employer and employee was broken down as some focus group participants volunteered that they now found themselves in the position of the employer – either as a sole practitioner or as someone with recruitment responsibility within their firm. These individuals showed some empathy with the need to ensure that new recruits would fit in with the firm's existing staff and clients, rather than recruiting from different groups as a box-ticking exercise.

It's through a course of interviews that you suddenly feel that you get on with someone, you've got similar views, you've got similar hobbies, you inevitably end up wanting to recruit someone like that if the only other benchmark is your academics.

[London group 1, female, Chinese, R1]

A lot of it, when I think about it, is if your face fits.

[Manchester group 1, female, black, R6]

I want to see how they work in the office, for example, what sort of skills do they have, interviewing skills, you know, do they smile? Will they fit in? Will I like them and will they like me? I'm not going to spend tonnes recruiting someone just for them to take me to a tribunal because I got it wrong in the beginning.

[London group 1, female, black, R4]

Other participants felt that a large number of firms, in their experiences, could not be seen to truly embrace the spirit of diversity as an employer nor was it evident that firms saw value in fostering diversity in their staffing policies. This left some individuals sensing a degree of tokenism:

It did strike me every time I would go to court that there was never any other Asian solicitors. I'm aware that I'm probably just the token Asian solicitor in the firm and there's been recruitment since I've been there, sort of admin staff to solicitors, and they've only recruited white people.

[Manchester group 1, female, Asian, R3]

Those who had undertaken their training contracts at small and/or BME firms also found this now went against them if they sought employment in a larger firm:

I found it extremely difficult to get into a City firm despite my experience. I went to a Top 50 firm and I felt that I was looked down by the interviewing Partner who boasted about large City firms and their clients, the 'big boyz'. The impression that I got also was such that these firms looked down upon smaller firms (1-5) partners which is made predominantly of ethnic minorities.

[web respondents]

Perceptions such as this, across focus groups and web responses, suggested that some senior partners really sought to populate the firm with clones of themselves.

4.1.1 'Mini-me's

Participants described the similarities amongst partners, senior solicitors and the trainees who were taken on at the firm. They made observations that partners, in favouring candidates from their own Redbrick universities, with similar backgrounds and outside interests, were essentially looking for miniature versions of themselves:

When I was a trainee it was so obvious to me, partners are just recruiting miniature versions of themselves! So if the partner isn't a version of me, then they're not sort of interested, you can just see it.

[London group 1, female, black, R3]

It doesn't matter which type of firm it is, people will recruit people who reflect themselves.

[London group 4, female, R1]

Although this didn't help the firms' diversity, participants were generally empathetic that faced with such strong competition for each place, partners would veer towards the familiar:

I think that's a natural reaction, I don't think it's an active or proactive intention that they choose someone who's like themselves, but perhaps because you have to spend so much time with your assistants and your trainees, it's inevitable that you will instinctively feel more affinity to someone who is similar to yourself.

[London group 1, female, Chinese, R1]

But if you are all equal and considered equal then they are going to give it to the person they like the most.

[Birmingham group 1, female, black, R2]

If you're from a certain college or university you're going to look for people from that because you're going to know what they went through, you're going to know how they are, you'll know they're probably going to fit in.

[London group 3, male, Asian, R1]

Though this raised the question that if solicitors were being employed on their ability to 'fit in', how easy would it be for firms to diversify from their current 'model' solicitor or for BME candidates to be wholly acceptable to 'white, upper class' corporate firms.

4.1.2 Fitting in

This notion of 'fitting in' arose in more than one focus group. Whilst some spoke of the need to 'fit in' (with clients and staff) as a criteria firms used to exclude BME applicants, others suggested the situation was the same in reverse - as a similar logic could be used to exclude white, middle/upper class, Oxbridge graduates from BME, high street or criminal legal aid practices.

If a white guy went to the heart of Brixton or Tottenham or whatever, he might find it difficult.

[London group 4, male, Asian, R3]

The main difference in this situation was that BME solicitors perceived that the Oxbridge graduates would not seek such poorly paid areas of the profession to start with. Where BME solicitors had been taken on in City firms and were surrounded by 'Oxbridge types', many felt pressure to 'tone down' their personality in order to fit in. Black women, in particular, described instances where they held themselves in check.

But you shouldn't have to change your personality to fit in with the mould. That's the sad thing about it, that's what I'm finding because they say black women can be a bit 'fiery', I've been told I'm 'fiery', I thought, 'well, what's fiery? what do you mean by 'fiery'? I just think you'll end up having to change your personality to fit in with that firm and, again, that's completely wrong.

[Manchester group 1, female, black, R6]

I've been told I come across as over ambitious... I don't think people like you to open your mouth and say what's what, and maybe they think 'oh typical black person, ready to get on and have a good rant about something!'

[Manchester group 1, female, black R1]

Others related a similar experience where the BME individuals had changed in order to fit in:

The black and Asian people who are in those firms actually become like the other people who are in those firms. They start to speak like them, you notice that! They start to speak the same, they start to dress the same, they start to think the same, which is what happens, it's the culture and if you're going to fit in that's how it is.

[London group 4, female, R6]

Here a BME candidate is potentially being judged on his/her ability to adapt to the 'model' solicitor preferred by the firm. This, in some sense, whilst recruiting BME solicitors into the firm, teaches them that to be successful there they must change who they are – as such participants did not feel that this was embracing the essentials of diversity, rather it was questioning the extent to which a BME individual was prepared to adapt to a dominant white male culture to get that all important promotion.

4.2 Career progression

Having been accepted by a firm for a training contract or for a job, participants were not able to assume that they were now viewed as part of the firm's future. Several participants reported how they had reached a certain point in their firm, but then seemed unable to progress any further, instead watching people they themselves had trained or people with less experience progress past them:

You stay on the same grade for donkey's years whereas people you've trained are going to progress above you and you start to report to them and stuff.

[London group 4, female, black, R4]

What they do, to rub it in your face, is go and make somebody who's less qualified and has less experience than you, contributed less than you to the firm and the department, they go and make her an associate.

[Manchester group 1, female, Asian, R5]

Although gender was seen to affect progression where firms were concerned about time off for maternity leave or to deal with childcare issues, participants reported greater evidence of change around the progression of white female solicitors than they had noticed for either gender of BME solicitors. The visibility of seeing 'someone like you' achieve partnership was very important to many participants and, whilst some perceived that gender would not be a barrier to making partner, role models amongst BME practitioners were seen to be notably fewer (see Section 4.6):

Recently a woman was made a partner in the firm and that was like a really big thing. It was just unimaginable because it's predominantly male dominated... that's really important because obviously I need to see that there is, not only that somebody is telling me 'yes you can progress', but I can actually, you know, see it happen for me to believe it... I think you do need to see it in action.

[Manchester group 2, female, Asian, R2]

Some participants were confused over the criteria firms used to promote solicitors or gauge performance. More often, though, the lack of clarity was to do with how criteria are being applied or how performance is being measured. Individuals reported instances of watching colleagues progress past them without, on the surface of it, being any better at their job. This led some participants to speculate that, much as with training contracts, there was some insider knowledge as to what you needed to do to progress that was not being shared with BME solicitors. The lack of transparency, particularly in small firms was frustrating:

What's the criteria, what do I have to do to get to salaried partner, to get to equity partner? There's no way you can know what do you have to do to get to a partner.

[Manchester group 1, male, Asian, R4]

4.2.1 Criteria for progression

Some participants claimed to have little idea what they needed to do to progress at their firm. For these individuals the structure of progression or criteria used to measure performance was more often seen as a whim of the senior partner (commonly small firms):

It's pretty much what impression you end up making on the partners, on the heads of departments, it's quite whimsical. I wouldn't say there is any fixed criteria or that they actually base their final decision on that criteria.

[London group 1, female, black, R3]

I can see that there's other solicitors who have qualified and moved through the firm, I'm not necessarily sure what the criteria are for that.

[Manchester group 2, female, Asian, R2]

Participants were less likely to cite 'who you know' or 'the old boys' network' as an overt obstacle to their career progression once they had got into a firm. Only a couple of individuals suggested this was the case:

If you don't live in XXXX or XXXX and if you don't play golf, you don't stand a chance of partnership!

[Manchester group 1, female, Asian, R5]

Because some of the partners, their father was already within that firm, so, you know, it was kind of guaranteed the son was going to be a partner one day.

[Manchester group 2, female, Asian, R2]

More likely, participants spoke about the law firm as a business and, as such, it was obvious to them that if you were bringing in a lot of clients and helping the firm increase its profits then it was in the firm's own interests to keep you – thus you would be offered promotion or a higher salary. In such instances, theoretically, individuals felt the solicitor's ethnicity would be irrelevant or 'overlooked'. The ability to bring in new clients seemed to be the key criteria for career progression within a private practice firm. In the current climate, especially, the ability to keep a firm ahead of its competitors and help with the development of the business was seen to be a priority for firms when choosing partners. Comments from several participants portrayed progression as a straightforward equation of whoever brings in the most business and can service that business will progress the fastest:

I think what we have to remember is that all practices are businesses and any business will only survive and succeed if they're making money and, I think, I think any practice that doesn't see it that way will in the long run possibly not be there, especially in the difficult times we are at the moment. So I have to agree, a major criteria for becoming a partner is the amount of work you bring in and being able to service that work and those who are not bringing in any work or are not able to service it probably won't make partner.

[Manchester group 2, male, Asian, R3]

I agree that how much money you earn and how many clients you bring to a firm is a factor in terms of how you're viewed by that firm in terms of grooming you for partnership.

[Manchester group 2, female, black, R1]

Legal aid is not going to bring in as much as say corporate clients or family and so on, because if you're an associate and your turnover is quite large you're going to make partner, they're not going to want to see you leave, that's always a big criteria and you'll find that the associate who's not bringing in as much will not be made a partner as quickly.

[Manchester group 2, male, Asian, R3]

However, it became clear that 'who you know' did still play a part in an individual's ability to attract outside clients to the firm as it was often through university alumni, through sports clubs or private members clubs, that solicitors brought business to the firm:

The chap who plays cricket, he's able to make contacts on the cricket field and if you play cricket, the people in a cricket club tend to be more affluent and things like that, so I think a lot of spokes, it's not just colour alone, it's class, it's not just ethnicity or sex, it's your age, a number of things.

[London group 2, female, black, R1]

A [white] boy who started when I did, he chats to the partners about golf because they go golfing, they invited him to go play golf... I don't even know how to play golf, I don't even know how to hold a club! Football, cricket, you know, all the sports... And when you consider people for promotions and partnerships, well, it's just human isn't it?.

[Birmingham group 1, female, black, R2]

Comments such as those above suggest that even if a firm is persuaded to diversify in its recruitment and take on a BME solicitor or trainee from an inner city who attended a former poly, once inside the firm this individual remains disadvantaged if they do not have the 'head start' of affluent contacts they can bring to the firm as clients. As one participant explained:

Where people have come through a different route, you still have this disparity about who can bring in work, and if that is still a criteria for partnership, how much work you bring in, who you socialise with at weekends, you'll still have that problem.

[London group 4, female, black, R6]

In addition to bringing in new business, solicitors were also seen to be rewarded with partnership for their non-fee-earning work. Again, participants did not see that there should be an ethnicity-based differential here and, on paper, accepted that anyone who helped the business through non-fee-earning activities had an equal chance of progression. Yet, in reality, one participant explained the situation as very different, as firms could control who was in a position to be able to contribute:

There was a young lad who set up the IT system, he was made equity partner very quickly because he set up the IT system. If you're never given that opportunity to do anything other than fee-earning, you're never going to satisfy the criteria.

[Manchester group 1, male, Asian, R4]

In this participant's experience, he was denied opportunities to undertake non-fee-earning work or to assume more managerial and business development responsibilities. Thus, put in a position where he was unable to contribute beyond his fee-earning work, this individual was cut off from opportunities to progress and this situation then also risked affecting his application for judicial appointment, as discussed in Section 4.2.2

Where firms use this criteria to justify salary levels or career progression, this means that BME solicitors who are denied the opportunities to do anything other than fee-earning work, as with the above participant, will always be on a lower salary than their peers who are given the chance to demonstrate their skills. One participant called for firms to be more transparent and forthright about how they applied this criterion, saying that if firms insisted on paying someone based on their specialism or on their contribution to the non-fee side of the business, then all solicitors must be given a chance to implement their ideas and demonstrate their skills:

Say you want people to be paid based on their specialisms and their skills, then I think you have to be a lot more involved in what each individual does and what they bring to your team and if they want to do something then you've got to back them a lot more which wasn't the case there and I'm sure isn't the case in a lot of firms.

[London group 3, male, Asian, R1]

Those BME solicitors who felt that they had reached the peak of their progression at their current firm, began to look for avenues for progression outside the firm.

4.2.2 Judicial appointments

For those BME solicitors who had no interest in becoming a partner, or who felt the barriers to partnership were too great, an alternative to setting up on their own was to pursue a judicial appointment. Participants felt that the judiciary should reflect the communities they serve, but, in fact remains, with the Bar, perhaps even less diverse than solicitors:

Only 4 per cent of judges are BMEs, given that in London 40 per cent in some places are minorities that situation is intolerable and can't continue. You still have that problem of solicitors not being able to get through to the judiciary and barristers having their careers stymied by not getting allocation, getting fair allocation of work and being able to progress in chambers.

[London group 4, female, R6]

Whilst participants acknowledged mechanisms such as the Judicial Diversity Panel, set up to ensure fair processes and increase access for all solicitors hoping to apply for a judicial appointment, one BME solicitor described a Catch-22 situation:

I looked into the composition of that judicial diversity panel and it doesn't instil confidence, it doesn't instil confidence... if you're saying the judicial diversity panel, you can only be on that panel which is looking into diversity and making the judiciary a fairer process, if you're already a member of the judiciary, it's a closed door already, and are you saying that people round this table are not equivalent or cannot make a contribution to something like that, merely because they are not a member of the judiciary?

[Manchester group 1, male, Asian, R4]

In his understanding, only existing members of the judiciary were eligible to sit on the Judicial Diversity Panel, which excluded many BME solicitors who he felt could contribute valuably to creating fairer application processes. Yet, he also related a much more significant way in which BME solicitors were being indirectly discriminated against in their applications for judicial appointments:

[judicial positions]... if you look at the competencies of the applications, it involves you putting yourself in positions where you have to deal with difficult tasks and managerial issues and stuff like that. If at every stage you're denied that opportunity to progress, if you're not afforded that opportunity to deal with tricky management situations then it just reduces your chances of meeting that criteria.

[Manchester group 1, male, Asian, R4]

It became apparent from this individual's explanation that applicants are required to cite examples of managerial experience and handling of complex issues that they would ordinarily have been expected to acquire through increasing levels of responsibility at their firm. Yet in a double-edged barrier, this participant observed that BME solicitors were already, in many examples, being restricted in the degree to which they could undertake non-fee-earning tasks. This, he felt, impacted not only on their ability to progress within the firm, but also when they tried to pursue career progression elsewhere through the judiciary. The resulting frustration led BME solicitors to seek other outlets for their career progression and, anecdotally, this drove many BME solicitors to set up on their own as sole practitioners.

4.2.3 Going it alone

More than one focus group expressed the view that the number of BME solicitors setting up on their own was disproportionate compared to white practitioners. Discussion in one focus group suggested that this may be a cultural characteristic:

It is very much indicative in Asian communities that you will have those who will want to have their own businesses, that's nothing to do with discrimination or racism or whatever, that's just a personal aspiration to set up their own businesses. The amount of time I've been asked by family members and friends 'oh haven't you got your own firm?', so you can't assume it is purely down to racism.

[Birmingham group 2, male, Asian, R6]

Across the other focus groups participants disabused the idea that this was explainable by a cultural trait to be one's own boss or to be in control, which manifest as a natural tendency towards sole practice. Instead, individuals explained the decision to go it alone as the inevitable consequence of a legal profession which closed down other outlets where BME solicitors could progress their career:

When I started in the profession, I didn't really want my own firm, I didn't want the headache, but when you speak to people, the further down the profession you go, the more qualified, you're pushed into a corner where you have to set up in practice on your own if you want to progress.

[Manchester group 1, male, Asian, R4]

On the high street you see all of these Asian or black and minority firms opening up, whereas you don't see 'white and white' appearing on your high street or whatever. It's always Asian firms and they are forced into that position because they are not given the opportunities early on, people make the assumption these people haven't got the skills.

[Birmingham group 2, male, Asian, R4]

Other participants claimed that even as sole practitioners, they still felt discriminated against:

This is the first year, you've got to pay £96 to be a sole practitioner and you've got to justify being a sole practitioner as well!

[Manchester group 2, male, black, R4]

They've gone off and set up by themselves, but then when you see the interventions that the SRA do, it's disproportionately against BME solicitors, so we're stuck aren't we?

[Manchester group 1, female, black, R6]

For one focus group participant, the only solution she could see was to increase the segregation of the ethnicity groups to the point where there would be big BME-only firms to rival the Magic City and largest firms:

Perhaps that's something the Law Society should be helping us so we can set up our own big black firms. I'm not afraid of trying to be in a black firm, and if someone in a firm says 'you only got in because you're black', I'd say 'that's good'... if I had a big black firm what would happen is I would employ more black people and they would get the jobs then and someone would pay them, because the white people are not going to employ me, are they?

[London group 1, female, black, R4]

Let's just be realistic here. If they won't take us on we can't force them, let's do something different. It works in America, I know British people keep saying 'positive discrimination, we don't want it', but when is it ever going to change?

[London group 1, female, black, R4]

The idea of BME-only firms, not the small high street firms often formed out of necessity, but large, corporate, deliberately-constructed behemoths, was only raised by one participant at one of the focus groups. This approach was not favourably received by the other members of that group, who argued that fighting discrimination by becoming the bigger discriminator would not change the overall mentality of the legal profession or help the ultimate goal. This goal was described as fair and transparent practices, a 'level-playing field' in which all solicitors, regardless of ethnicity or gender, performed within equal pay structures and equal chances for progression; and where firms viewed diversity as an asset of the practice.

4.3 Perceptions of discrimination

Those solicitors working in City firms were less likely to hold perceptions that they had been discriminated against in their career to date. These individuals commonly expressed the view that firms were businesses and would be looking to retain those solicitors most valuable to the business as a profit-making enterprise. For these participants, failure to progress within a firm or receive substantial bonuses was more a reflection on how effective you were at making money for the firm and bringing in new clients than your gender, ethnicity or age:

I generally don't think I have been discriminated, to date, in terms of my applications to law firms or doing my training contract or beyond that. I do think that if you are indispensable to your firm, i.e. if you are working which helps the firm make a profit then I do genuinely think they have an incentive to keep you regardless of whatever background you come from.

[London group 1, female, Chinese, R1]

I just don't think, certainly at my level, that's an issue of your race or anything along those lines, because they are, at the end of the day, businesses, if you're going to make a profit for them they'll keep you on, regardless of your race, if you are going to make a profit for them that's an incentive to keep you on and I don't feel there is inherently, and it maybe different at different firms, but my view is that I don't feel that there is any discrimination, certainly at junior level.

[London group 1, female, black, R3]

The latter participant made the point that whilst she didn't feel she had been overtly discriminated against in her applications for a training contract or job, she was wary of getting into the mindset where she was always looking for discrimination. This participant preferred to see any rejections as the consequence of a naturally over-subscribed and competitive profession, making the point:

I don't know whether I've been discriminated against. I find it very hard to tell, I don't want to be always thinking 'oh am I being discriminated against here?'

[London group 1, female, black, R3]

A comment from a participant in a different focus group suggested that it was easy for BME solicitors, particularly those who had experienced discrimination in the past, to slip into the mindset that discrimination was the underlying reason for decisions which went against them:

The person reading the CV, he's going to convince himself and people around him that he's doing it on merit, but probably there is discrimination going on.

[London group 2, female, Asian, R4]

Equally, outcomes which may have been purely coincidental or judged on the standard of work displayed at an individual level could be coloured with perceptions of discrimination:

After the training they found a way to get rid of all of us and got us to sign a contract that said 'we will train you to the best of our ability, but will not guarantee to offer you a job'. All the white trainees got jobs.

[London group 1, female, black, R4]

Despite individuals' perceptions or experiences of discrimination, the solicitors profession was still seen as more diverse and accepting than other branches of the legal profession, including the Judiciary and, most notably, the Bar. One participant who had started off down the barrister route had encountered overt discrimination against the BME pupils:

I actually went to train to become a barrister and that was a very, very terrible period... I went to the Bar school in XXXX, did really well throughout the year that I was doing it, got really good grades, and then in the actual finals was failed on almost every paper... then even worse, most of the black students that were there I found had failed in that year, to the point that we all just looked at each other and thought this cannot just be coincidence.

[London interview, female, black]

She described a year on the course where she and her BME colleagues had done exceptionally well in their work to the point that they were starting to believe that the rumours of discrimination and barriers for BME candidates entering the Bar were exactly that, just rumours. However, at the final hurdle, only the white students passed, and the Bar, she felt, did not even attempt to be subtle in their decision:

Everyone who had been failed who felt there was something to it was turning up at this meeting and there was like, everyone in the room was black or Asian, except for the two Irish students who had turned up, and it was almost laughable, actually, because it was so stereotypical, but also it was tragic as well.

[London interview, female, black]

For this individual, the exclusion from the Bar was potentially devastating as she described 'the personal doubt and loss of confidence that something like that does to you'. Yet, in starting from square one in her decision to apply via the solicitor route, this participant displayed a tenacity and strength of character which she felt could only make her a better and more empathetic solicitor. Focus group participants often described the knocks or struggles they had encountered as contributing to their ability as a lawyer, but one should not underestimate the affect such barriers can have on an individual's feelings of self-worth, and their associated worth when it comes to negotiating salary (see Section 5.2).

Participants who did feel they had encountered discrimination at their firm related how most of their immediate colleagues and friends were oblivious to what was going on:

One of my friends told me racism in the profession doesn't exist, she said 'it doesn't exist, I've never experienced it'. I said 'you're white, you've got blonde hair, you've got blue eyes, your dad's a multi-millionaire, why on earth would you ever experience it?' She was like, 'well, I've never heard any one call any one names or anything like that'.

[Birmingham group 1, female, black, R2]

Discussion in one focus group suggested there was even a hierarchy within the BME solicitor population, whereby solicitors from one minority ethnic group not only perceived white solicitors to have an advantage over them but also other minority groups:

With due respect, I think somebody your colour and somebody my colour can be treated very differently in the same firm... because if a person was Asian they thought 'oh we can get into the Asian market', but if they was my colour they thought 'oh well...'

[London group 1, female, black, R4]

Whereas a Chinese speaking solicitor was perceived to be an attractive addition to firms entering the Asian market, it emerged that language was not always an asset for BME solicitors and, in some cases, even the BME solicitor's native country favoured white City firms over their own nationals:

A firm like XXXX will go to Africa and they will get a local barrister to help them, then they will put their name on it and charge £500 an hour for the same work. The country I come from will not employ or instruct me to do any work for them because they prefer the name of the firm and the fact that it's a white firm dealing with the work... they do not come to us, we speak the language and this is our own countries... they just do not want to take any risks with their own people.

[London group 1, female, black, R4]

The perceptions held by clients arose as a driver for some decisions made by firms. Whilst the above comment suggests the name and reputation of the firm was more important to clients, to the extent that the firm would hire interpreters rather than use native solicitors who knew the local context and language, in another instance it was fear of the clients' perception of the firm that led to an Asian solicitor being asked to remove her headscarf:

I wore a headscarf and I was actually told to take it off and I wasn't invited to client meetings purely because I was Asian and I wore a headscarf and they were worried about the impact it would have on their clients and their clients' views of them.

[Manchester group 1, female, R5]

Breaking down perceptions of barriers or discrimination further, several focus group participants attributed attitudes to their social background rather than their ethnicity. However, this was interrelated because the social background of the individual most often informed where they went to school and/or university which would potentially put them into the eye-line of big City firms. BME candidates were hugely under-represented at the favoured pool of universities. Equally, people from 'advantaged' backgrounds were more likely to have interests in common with the firms' partners. One participant explained:

I didn't see any difference based say on my ethnicity, maybe my background which is a different thing, I think, because I hadn't been to Oxbridge, I didn't have that kind of year, I didn't speak about going skiing or yachting or things like that. That's more a social discrimination thing I noticed.

[London group 3, male, Asian, R1]

But then he also warned that decisions based on ethnicity should not be confused with those based on a particular standard:

Obviously as a solicitor when you're giving legal advice you should try to be at ease with your client and I think a lot of people like to think that a solicitor knows what they're doing and can speak English properly, at least.

[London group 3, male, Asian, R1]

It became clear throughout the focus groups that many participants had encountered BME solicitors or trainees who they felt did not 'make the grade' and were creating a bad image for the rest of the BME solicitor population. For this reason some participants were wary of invectives that would require firms to take on a certain proportion of BME solicitors, risking that they would take people on just to fill quotas and end up with the over-aspirational characters who were rightly being rejected from positions. Frequently, the point was made by individuals that they wanted to be hired on their own merit:

One thing I'm not really sympathetic to is sort of the word quota, I mean wherever we are, whatever we do it has to be by merit. I just don't really think quotas work because it breeds resentment, but I'm not sure how much power the Law Society has to compel firms to take a certain number of ethnic minority people?

[London group 5, male, Asian, R1]

You're going to say 'we need to hire more ethnic minority solicitors because it looks bad' and I would never want to be hired on that basis because, you know, I felt that I'm good enough to make it on my merits.

[London group 3, male, Asian, R1]

Commonly throughout this research the complaint was not that BME solicitors wanted to be given an unfair advantage or to be 'forced' into training contracts or jobs via outside intervention, but that they wanted to be given the chance to compete. It was important to BME participants that they be considered and given the opportunity to demonstrate their skills, but increasingly saw that, through a middle class white protectionism, this was being denied:

It's all the way throughout the profession, the profession is geared to making sure a lot of people from middle class backgrounds, that their kids gain a step up on the ladder first.

[London group 4, male, Asian, R2]

Perceptions of discrimination, not only in consideration of whether an individual was taken on and how they were viewed by senior solicitors, partners and clients, also became manifest in BME solicitors' relationships with admin and support staff.

4.3.1 Dealing with support staff

Two individuals at one focus group described how they had encountered particular difficulties in their relationships with support staff at their firms:

I dictated a statement that was about 10 pages long because it was warranted due to the business of the injury... But she dumped half the tape on my desk and she said 'do you know, this is a crap statement!' I went up to her and said 'I need this finishing off, you are not qualified to pass judgement on my statement, can you please finish it off. If you've got an issue let's take it out there'. That's all I said and I walked out, and all the secretaries were like, they just looked at me.

[Manchester group 1, female, Asian, R5]

When I first started they refused to do my typing. They saw me typing one day, saw I could type and said 'oh you can do your own typing'. They just wouldn't do it and I'd sent out an urgent dictation and they just point blank refused and then they went straight to the partners to tell them that I had sent 'urgent dictation' again.

[Manchester group 1, female, Asian, R2]

What became evident from both of these examples was that not only did white support staff feel 'superior' to the BME solicitors, but that in both cases white partners were reluctant to intervene or back up BME solicitors in such wrangles – leaving these individuals to either tackle the issue head on and create an 'atmosphere' or invoke formal grievance procedures and locate themselves as a 'contentious' person.

4.4 Raising a grievance

The overarching perception across all focus groups was:

If you raise a grievance, or even informally, it will lead to leaving a firm.

[London group 4, female, Asian, R1]

Participants held the perception that raising a grievance could do irreparable damage to their career prospects – whether they were able to remain at their current firm or if they then sought work elsewhere, now or in the future. The perception arose that the legal profession was littered with potential grievances or employment law suits; serious issues that were endured by BME solicitors who felt that to give voice to their concerns was to essentially make themselves unemployable. One participant suggested:

The number of solicitors who contact me, working on a weekly basis, for advice, but who are then terrified of actually doing something about it... if people were brave enough I could make a very comfortable living just suing law firms, with employment law, if people were brave enough to do that because there's so much of it out there.

[Manchester group 1, male, Asian, R4]

Individuals felt that acting within their legal employment rights was not enough to protect them, even if they were proven right or backed up by legislation. Instead, they felt that taking such action would 'mark their card' and firms would later find other ways to discriminate against them or push them out.

You're entirely within your rights, but when you're that agitated you're not thinking calmly, you're not thinking 'I've got my rights as an employee they can't possibly do X, Y and Z to me', you might just think 'well, now he's got it in for me, if this goes away he'll still always be gunning for me'.

[London group 3, male, Asian, R1]

The above comment typifies the attitude held by many BME solicitors participating in this research. Whilst some were happily employed in City firms and had not knowingly encountered any barriers or discrimination in their career, others voiced their concerns that despite Equality & Diversity legislation (and even training for managerial staff), they were powerless to use these laws because firms would then see them as a 'litigious person' and they would ultimately be 'punished' in some form or another.

Having the confidence to say 'I've been discriminated against' and taking it up, it takes a lot of courage and a lot of guts to hold your ground. Most people won't and most people will not discuss money or have the confidence to say to their colleagues, or even to say to their prospective employer, 'what are you paying everybody else?'

[London group 2, female, black, R1]

Those who displayed hesitancy to address issues regarding pay disparity and employment practices were not reassured by hearing that in rare instances where a BME solicitor had decided to raise a grievance, firms did not respond in a satisfactory or timely manner, and ultimately issues had not been resolved. One participant was continually 'fobbed off':

It's idiotic because you speak to the HR person and the HR person's like 'you've got to speak to the CRM'. I don't even know what CRM stands for! And someone else says 'you've got to speak to the marketing director'. The marketing director says 'you've got to speak to the CEO'. The CEO is too busy until November!

[Manchester group 1, female, Asian, R5]

Whilst, for another, the firm turned the problem back to her being a 'contentious person' instead of acknowledging any deficiency on their part:

I raised issues to do with professional conduct and because it came from an ethnic minority it was considered that I was being contentious rather than the fact there were areas where the firm, there were issues of negligence and basically it was issues of negligence on the part of the partner who supervised me.

[London group 4, female, Asian, R1]

Where individuals were reluctant to raise grievances within their firm, or for those who had raised a grievance only to find the firms did not following the mechanisms set out in their own staff handbooks...

my complaint to HR, my complaint to the head of department, it was not addressed at all, certainly not in the way they set out in the staff handbook, I tried to keep it as informal as possible, rather than raising it as a grievance because that was not a route I wanted to look at anyway.

[London group 1, female, Asian, R2]

... the Law Society was not seen as a point of support or place where BME solicitors could go for assistance:

I didn't feel like I could go to the Law Society and everything would be sorted. I felt if I went to the Law Society, that's it, it's the end of my legal career, so the best thing to do was just to fight my little battle, which I did and then shut up and just do my job.

[Manchester group 1, female, Asian, R5]

So, if the Law Society wasn't seen as a place BME solicitors could turn to, to resolve employment issues, what other avenues presented themselves?

4.5 Support networks and groups

Comments from web respondents suggested there was a mixture of experiences out there: from those BME solicitors who felt well supported by their employer and/or various networks to those who felt unsupported and were not sure who they could turn to:

I have been qualified two years and five months and I feel as if I am stagnant. I am not progressing at all in my career and I do not know where to obtain support from.

[web respondent]

I have no support at all in relation to my career progression. I would really need some support in this area.

[web respondent]

I have very good support from my employer. There is a clear career path and I am fully supported in the direction I wish to take.

[web respondent]

The larger and City firms were more likely to have internal support mechanisms or groups that their solicitors could turn to for advice. Beyond law firms there are a series of groups and networking opportunities which are available to offer advice or provide a way for BME solicitors to make contact and socialise with other BME practitioners. In 2008, the Law Society launched the BME Forum to provide a collective voice for BME representative groups within the legal profession. Seven groups are represented at the Forum: the Black Solicitors Network, the Association of Asian Lawyers, the Association of Muslim Lawyers, the Society of Asian lawyers, the Society of Bangladeshi Lawyers, the British Nigerian Lawyers' Forum and the British Turkish Lawyers' Society. Of these groups, the Black Solicitors Network was the only one that, individually, appeared to be highly thought of by participants:

The Society of Asian Lawyers, Muslim Lawyers Network and all that, you know, they're all a waste of time. The only body that's stuck their neck above the parapet is the Black Solicitors Network, they're the only body that I've ever read or heard about that's made any campaigning noises about the inequalities in the profession.

[Manchester group 1, male, Asian, R4]

Instead, the Forum was generally not considered a valuable resource by those participants who were aware of it: 'the same old token bodies that haven't done anything for us for all these years'. Aside from the Black Solicitors Network and the African-Caribbean Lawyers Association (a past group, since disbanded) both of which were spoken of highly, the groups represented in the BME Forum were criticised for not communicating with their members and for not taking a pro-active enough stance on issues affecting BME professionals.

Overall, participants had mixed responses to the idea of ethnically stratified support groups. For some, having groups such as the Association of Asian Lawyers, Association of Muslim Lawyers and so on went against their principle of wanting an integrated legal profession, instead encouraging practitioners to continue to think along segregated lines.

It's all divided, Asians here, whites here, blacks here, what's this all about? So, I think what we should be seeking to achieve and what the Law Society should be seeking to achieve...is proper integration, not people developing along ethnic lines, that's very, very disturbing, again, if the black society, BME or whatever, I've never been there, if all they're going to succeed in doing is put people into ethnic fences, then I disagree.

[London group 2, male, black, R6]

Other participants feared that becoming associated with such groups would locate them as 'more ethnic' or 'difficult' in the eyes of their firm. This ultimately meant that they shied away from joining such networks:

I never joined any of those groups, I never ticked that box just because I didn't want it to count later on... in your firm you don't want any decisions to be made based on, I mean it's like knowing a part of your life, it's me, it's who I am, but it shouldn't impact on how I'm perceived in the workplace or my job.

[London group 3, male, Asian, R1]

If I'm honest, I find I'm reluctant to join them because would I be perceived differently?... Am I joining that group because I've got something to fight for, you know, have I got an issue? Am I exposing myself that I've joined that group because I've got issues?

[Birmingham group 1, female, Asian, R1]

A participant confessed: 'I didn't approach it as "I'm going to go into this profession and I'm going to be a BME solicitor", I didn't have that thought process', and instead he advocated the natural networks that form just from interacting with different sorts of people everyday: 'I felt as if you're going to get a support network, you're going to meet people anyway, you don't have to go to those specific things.' Another participant suggested that firms discouraged minority ethnic groupings:

I think sometimes in firms, where you have small groups of ethnic people, they're almost a little bit scared to stick together because they don't want to be perceived as creating that other, they want to fit in... [firms] also don't want you to gang up with the other ethnic groups because, you know, you might feed each others' ideas, you know?.

[Birmingham group 1, female, black, R2]

A web respondent stated:

I have plenty of support, but that's because I'm a business man and networker first and foremost bringing in the cases, and the colour of money is more powerful than the colour of my face.

[web respondent]

Aside from formalised groups, the majority of focus group participants spoke of the importance of networking as a means of finding out about opportunities, keeping up to speed on developments and, crucially, gauging salary levels so the individual would be prepared when negotiating their own pay. Participants felt that BME solicitors who did not network were doing a disservice to BME solicitors as a whole and, in some cases, may have a skewed view of whether a firm's practices were acceptable:

It hampers us, as in those of us who are here, ethnic minorities, all that hampers us again because by not networking you're not hearing, you don't have your ear to the ground, you're not hearing what the current pay is. You're not hearing that Tom Jones down the road is getting 60k, so you can't go to your boss 'How come Tom's getting 60k and you're only giving me 20k?'. All that does matter.

[London group 2, female, black, R1]

If you're scared to link with somebody who's different then it's almost like [the firm's] won because you're trying so desperately to fit in and you do whatever it takes and then you'll never step outside that box and you'll never question anything, but if you have contact with someone who's from a similar group to you then maybe they would have experienced things and then you realise 'oh this is not normal, I shouldn't have to put up with this'.

[Birmingham group 1, female, black, R2]

Those who had given up attending networking events or the social events organised by groups such as the Black Solicitors Network did so because the meetings were not 'business-oriented' enough for them, with too much emphasis placed on 'having a laugh'. Those outside London also suggested that events were too London-focused with not enough happening in the regions. Others argued that it was exactly through informal gatherings that opportunities could be found. Some participants had attended networking events in the hope of finding out about job vacancies, yet revealed that you had to have quite a lot of confidence to do this, especially as, increasingly, they found they were the only unemployed solicitor at the event:

invariably it's like, you know, when you have singles nights, you have to have men and women for a singles night, so like if you're looking for work you need to have employed and unemployed people mixing to make the networking work and most of the networking I end up doing, I'm the one unemployed person and everyone else is in a job, and you lose your confidence, you know, you don't have the confidence then to tell people you're not working or you're looking for a job, just because you feel a little bit isolated or a little bit alone.

[London group 2, female, Asian, R4]

For someone who might not be as confident or they haven't been in the game for a while or they've just had too many knocks, or too many rejections, it's difficult then to want to network and feel that the network can support you because you feel so unsupported already.

[Manchester group 2, female, Asian, R3]

In the situation of the above participants, it is then that mentors and role models can offer a particular welcome form of support and encouragement to help solicitors rebuild their confidence.

4.6 Mentors and role models

It was important to BME solicitors to have role models to aspire to and as confirmation that people 'like us' could succeed at high levels and forge a respected reputation for themselves in the legal profession.

You're aware of a lot of female lawyers who are exceptional role models and who have, not just black lawyers, but other female lawyers, who have succeeded at a very high level and I think that that, there are role models out there for black lawyers and also for women.

[Manchester group 2, female, black R1]

It's a matter of role models and knowing other people who have attempted to apply, who have similar racial or social or economic backgrounds to themselves.

[London group 1, female, Chinese, R1]

Mentors were equally esteemed and a large proportion of the focus group participants had themselves become mentors to young BME law students, trainees and newly-qualified solicitors. Over three-quarters (76 per cent; n=50) of participants responding via the web indicated that they had been involved with mentoring schemes either as mentor or mentee. One participant indicated that, on occasion,

BME solicitors could be quite guarded about sharing information with younger BME solicitors who they saw as their competition:

I remember one person said to me 'frankly, I'm having such a struggle as a black lawyer getting work the last thing I want to do is encourage somebody else who's going to be competition for me'. You know, full marks for being frank about it, but I still think you're wrong!

[London interview, female, black]

However, the overwhelming attitude in the focus groups was one of giving something back. Now that these solicitors had reached a certain stage in their career, for some after many years of struggle, they wanted to share with those coming after them the knowledge they had lacked in their own early years.

I think it's important to have mentors, yeah, you're not going to ask a white lawyer what it's like being an ethnic minority and trying to get into the profession.

[London group 3, male, Asian, R1]

I started mentoring people and I mentored them from sixth form and a lot of them are now in the City somewhere... I mentored people within the black and, well, ethnic minority community and a lot of them were referred to me, I reached out to the Black Solicitors Network and offered myself as a, somebody who wants to mentor, so I attended all the events and, you know, got to meet them one to one, give them advice about CVs, job hunting, things like that and they found it very useful.

[London group 1, female, black, R4]

I worked in Positive Action training programmes, some quite well funded ones, that demonstrated to me the power of mentoring, supporting people and bringing them on, the power of someone saying 'yes you can', it's a very genuine thing and I really believe in it. I've got a personal commitment myself to helping young people, and older people, anybody who wants to come into the profession.

[London interview, female, black]

Participants had, themselves, found mentoring useful, but were quick to point out it was not enough to just bring two people together:

If you are going to have mentoring it's got to be really well planned and structured and there's got to be some incentive for the mentor as well... There's almost an argument for having full time mentors who are paid and salaried, they just do that rather than relying on people who are busy, who have their own private practice and families, whatever, on a voluntary basis to be mentoring people.

[London group 4, female, black, R6]

They've obviously paired the people up, but they've had support through the scheme, you know, the person who's mentoring is supported and can talk to someone, likewise the mentee person. They've got together for workshops every now and again and also they work towards a clear goal at the end of it, so it isn't just an unspecified number of meetings.

[London interview, female, black]

It was considered important to have a mentor who had some idea of what you might be going through, and with whom you could speak freely. This was not the reality in one participant's experience:

We have a scheme, but it's more like trainees being mentored by the partners, by the senior partners, which I don't quite think is the idea... what are you going to say to them, 'is this wrong?', 'is this right?' A trainee can't turn around and say anything really in the position that they are, for them to say anything negative at all.

[London group 1, female, Asian, R2]

Participants claimed that the mentor did not necessarily have to be from the same ethnic group as the mentee, or even from any minority ethnic group, as some BME solicitors had had particularly helpful white mentors; yet, when issues based on ethnicity arose, individuals felt that a minority ethnic mentor would have a greater empathy with their mentee. Of equal importance, was the ability to speak freely without fear of anything said impacting on their job, thus schemes deemed to work particularly well paired mentees with mentors at different firms.

5. Pay

5.1 Working for no pay

A remarkable fact that came up in nearly every focus group was that some BME solicitors were working for no pay whatsoever. Participants could relate their own experiences or experiences of friends and colleagues who had become so desperate to secure a training contract that they offered to work for free. In today's society with wrangles over minimum wage and government guidelines about the minimum amount people need to live on, it seems incredible that individuals are still prepared to work without remuneration in order to fulfil their passion to break into the legal profession. One participant related:

I know it's frowned upon, but it is still happening, where there are people working without remuneration, sometimes, completing their training contract because it's the only way they're going to get a training contract.

[Manchester group 2, male, Asian, R3]

He explained the huge amount of competition that enabled such practices to go unchallenged:

Where you've got say 180 applicants for one position, inevitably you will get some people who will think 'there's no way I'm going to get a training contract if I'm up against 170, maybe it'll increase the chances if I say to a prospective employer that you don't have to pay me if you allow me to do my training contract at this firm'.

[Manchester group 2, male, Asian, R3]

An additional consequence of the fact that BME solicitors were being pushed to qualify into particular areas (see Section 3.3) or to undertake their training contracts at particular types of firm (often because it was the only place they could get in) meant that they were left with skills that were seen as less transferable by others sectors of the profession. The most commonly cited example of this was by those solicitors who were newly qualified, or had one to two years PQE, in the area of residential conveyancing. The current downturn in the property market meant this was a sector badly hit in terms of redundancies, but these individuals found it was not easy for them to move into another sector of law, as other firms would essentially have to train them all over again. One participant described the example of a female BME solicitor he knew who had been made redundant from her conveyancing job and, after months and months of applying for others positions, was finally resorting to the idea of working for nothing just to get work:

That she'd go in somewhere and work without pay for the next four to six to eight months with a view to try to get trained up in another field.

[Manchester group 2, male, Asian, R3]

Those solicitors who had been driven into positions where they were working without pay supported themselves by either staying with friends/family or by taking on second jobs:

My work in London I did for no remuneration for six months. I was lucky in so far that I had backup from family and, in London, I had an aunt who I could stay with so I didn't have to pay any rent.

[Manchester group 2, male, black R4]

I know one person, for certain, who's just completed his training contract now and he's done that without pay, for two years, and he's been able to justify that because of the out of hours police station work that he's done, out of hours and at a weekend, because of the amount of out of hours police station work he's done, that's effectively been able to maintain him, his wife and his child.

[Manchester group 2, male, Asian R3]

One participant, who was an employer herself, was emphatic that future generations of BME solicitors be discouraged from resorting to working for no pay - she saw this as setting a dangerous precedent for how the individual valued their own worth and how they were valued by firms in the future:

A number of people tell me 'if you give me a contract you don't have to pay me'. 'No! You should be paid, you've done your training, you know, your experience, you've gone to university to gain, you see, you still come across that all the time and that's what we need to tell the younger lawyers coming through 'do not start on that premise'.

[London group 2, female, black, R1]

From the experiences and anecdotes related by focus group participants, it appeared to be disproportionately BME individuals who were volunteering to work without pay. In each focus group at least one person had undertaken to work for nothing whether that was to secure a training contract, or train in a new area or just to get into work. Yet, this did not set BME solicitors on a good footing when it came to negotiating their pay at a later point.

5.2 Negotiating pay

Many participants had been put in the position of negotiating their pay, whereby they were required to present the figure they thought was an appropriate salary and the employer would either accept or, more likely, make a counter offer. This was a new experience for most participants entering the profession and it was only the solicitors with higher levels of PQE who had the confidence to hold out for what they knew to be their worth. Newly-qualified solicitors were more anxious to get the job and, thus, were more likely to cave to the pressure to accept less than they had been led to believe was appropriate; and without knowing what peers were on.

You think: you're newly qualified, you're getting your feet in there and you're still learning, so who am I to argue about pay?

[Birmingham group 1, female, black, R2]

I think there's just a part of us that accepts it and don't question it, it is scary that we do, though.

[Birmingham group 1, female, Asian R1]

It could be expected that individuals would take the responsibility to do their 'homework' and research what they might reasonably expect, prior to negotiations. However, in more than one instance, BME solicitors found that entering into such negotiations armed with what the Law Society had told them was the average salary for their position, employers still pushed figures lower:

I checked with the Law Society, I rang them up and said 'what level of pay, post-qualified as myself, should I expect in this location postcode?' 50k minimum. So I went to the Head of the firm and said 'this is how much I'm worth' and he said 'well, let us start you on 30k and let's see how it goes'... The secretaries were earning more, and when I asked them, they said 'well, let's just give it three months'.

[London group 1, female, black, R3]

I went to an interview and that was the very first question that he asked me, 'let's cut to the chase, what do you want for this job?' And I had done my little bit of research with the Law Society, so I pitched it exactly right and it was the first job I was properly interviewed for, returning, I said '30k' because that is what I had been told would be reflective of my work and he said 'oh no, I was thinking of at least 10k less than that'.

[London group 2, female, Asian, R4]

Whilst some participants indicated they had had no chance to negotiate their pay, others had feared to do so in case they negotiated themselves out of a job:

I think sometimes we just accept the low pay because we want to get in and I think if you insist on something higher you don't stand a chance of getting in.

[London, group 2, male, black, R6]

You have BME solicitors or trainees who believe they are not going to get a higher salary than this and if they try to ask for anything higher, then they're not going to get the training contract or they're not going to get the job.

[London group 4, male, Asian, R2]

One participant believed that white solicitors generally had greater confidence and were less likely to be under pressure to accept 'ridiculous' offers:

A white, middle class boy, who'd been private schooled and then went to one of the Oxbridge universities, would fall on the floor laughing if you attempted to offer him what they offer us.

[London group 2, female, Asian, R4]

However, she had reached the point where 'I had somebody offer me a £12 hour job and I got to the point where I even considered accepting that, it was just the desperation to get back into work.' Those participants who had been in the profession for longer felt more power in their ability to face up to firms and hold out for what they knew they were worth:

R5: You have to know your worth... I think it's knowing what you're entitled to as well and being able to put it across without being dominated by the fact you need the job.

R1: So, we can say that now because you're 15 years PQE, you're not like XXX here who is one year PQE, so you just feel you have that power.

[London group 2]

Participants explained a confidence that came with years of experience and with a growing understanding of how the legal profession works:

I made it quite clear 'I'm not coming back to private practice to be constrained, I have three young children, take me on and take me on on my terms...'. So I think it's to do with being able, to be at that stage of my life, I had nothing to prove to anybody else, I was qualified and I was confident in what I could do.

[London group 2, female, black, R1]

Yet, one web respondent worried that negotiations were viewed differently depending on your gender, almost imposing a further obstacle for female BME solicitors:

I have found more that the BME issue, being female affects a difference in pay structures. And also the attitudes for when you ask for a pay review - it is respected in the male sex but found to be aggressive in the female sex.

[web respondent]

Focus group participants highlighted that negotiating power came with how much you were valued by your firm:

It comes down to how much the firm wants to keep you as well, I think. My instinct is that if you're of use to your firm then you are in a much stronger bargaining power or position.

[London group 1, female, Chinese, R1]

Much of the difficulty in negotiating pay came where firms did not have transparent pay structures in place (see Section 5.4). Without knowing what other solicitors in the firm were being paid or what the firm had budgeted for the position, solicitors were operating in the dark. As seen above, even researching the average salary the individual might expect based on their experience and location, with the Law Society, did not guarantee they would be perceived to have pitched it right by firms. Those most vulnerable to the lack of transparency were newly-qualified solicitors and those who had not yet developed the confidence to know that they were not essentially negotiating themselves out of a job:

When I negotiated [the figure] wasn't that low, but then the partner said 'well this is what I offered you' and I said 'no it wasn't', but you're thinking 'I'll take what you're saying' and then you get in and you find you're doing more work and, you know, it's difficult knowing what to pitch it at without putting yourself out of a job.

[London group 2, female, black, R5]

For many BME solicitors who had either offered to work for nothing in their previous position or who had become used to accepting low offers just to get through the door, being faced with a blank slate and asked to negotiate their salary was a confusing and anxious task. This difficulty was compounded by the lack of transparency within many firms (see Section 5.4) and by the individual's own desire to appear an attractive prospect for the firm. As one web respondent explained:

The pay structure is often curtailed by the individual's negotiation skills; and often solicitors from ethnic minorities are so grateful for the job and opportunity with the firms that they do not challenge the fact that they are being paid less than the paralegals as was the case in my situation.

[web respondent]

Thus, alongside the academic path and training contract of the individual, negotiating skills and the ability to present one's self to senior partners also potentially contributes to any pay disparity or an inability to progress through the firm.

5.3 Pay disparity

The 2008 Salary Survey highlighted a pay disparity between white and BME solicitors. For one web respondent this disparity could be described as the following formula:

The darker your skin colour, the lower your salary. Commission a UK wide study. It's a fact!

[web respondent]

Pay disparity within a firm was often seen to stem from a divide between 'home grown' and 'bought in' talent:

Their decision is based on whether it's home grown talent, I've seen the case, I've spoken to other trainees, they've always received less pay to people who are coming from outside the firm and who tend to get market rates.

[London group 1, female, Asian, R2]

I know this happens in firms, when you train there and qualify, you know, people coming in from outside are normally going to get paid a little more just to incentivise them coming to your firm.

[London group 3, male, Asian, R1]

So for some participants, straight from qualification they were already being paid less than peers of the same PQE who had joined the firm from a different training provider – whilst evidence of multiple pay scales within a firm, this may lead to a disparity between two BME solicitors as much as between BME and white solicitors. The gap originating at this level is unlikely to ever close for as long as the individual stays at the firm. Whilst participants had assumed that all newly-qualified solicitors at their firm would be paid the same, as arguably they had not had the time to acquire specialist skills or a client base yet, for many there was a growing awareness that they were not all on the same scale:

I gradually found out that she as receiving about 10k more than me and what I was being offered, post qualification, even though the difference between us, post qualification was only about five or six months... they've never addressed the fact that in the first place they placed her and me on a different salary altogether. I mean, a five month difference in experience does not really lead to a 10k difference in salary.

[London group 1, female, Asian, R2]

Those individuals who raised this disparity with senior partners, as the above participant had done, found that firms were using the current economic climate as an excuse not to address issues around pay:

It would be a case of 'we can't do anything for you now, but in three months time, six months time', just the hook to keep you in. It may just be because they genuinely couldn't afford it, I don't know, but transparency is an issue when you come down to, ok, we're not going to get a salary review this year, everyone's pay is frozen, why then is someone being offered the chance to get more of a premium billing? Then obviously once you're billed charge-out at a higher rate you're going to say 'I'm doing work that's worth more, I'm worth more I should be paid more'.

[London 3, male, Asian, R1]

This participant explained how firms, forced to freeze salaries due to the recession found other ways to incentivise (white) solicitors and increase their pay, whilst appearing to apply the pay freeze fairly across the board. He described how instead of giving this colleague an explicit pay rise, the firm raised his charge-out rate, thus giving him valuable negotiating power to attain a higher position or salary as he was arguably bringing in more money.

Participants at small high street or legal aid firms described many examples, such as:

My head of department left, who was on twice as much as me in terms of salary and I took his place, but they're refusing to increase my salary.

[Manchester group 1, female, Asian, R2]

Yet across the focus groups participants struggled to pin down the exact reason why individuals with the same experience, doing the same job, should be paid different salaries. Female participants in particular, felt that the reason to pay them less increased the longer they stayed in the profession:

I don't know whether it's because I'm a woman or because I'm a returner, or because I'm older or less qualified, I don't know why and it would be really interesting to see if the disparity is there between the ethnic minorities and the main stream and it breaks down further doesn't it to men and women?

[London group 2, female, Asian, R4]

5.3.1 Disparity by gender and ethnicity

They'll find every way not to pay you the right amount and for ethnic minorities you're way down the list, if you're a woman and an ethnic minority you'll only get maybe 25 per cent or less what other people are earning.

[London 1, female, black, R3]

A view commonly held across all focus groups was that female BME solicitors were at the very bottom of the pay pile. It was acknowledged that women and men are already paid at different levels, but to be a BME woman is to earn even less than a white female solicitor. In some instances:

Women are in for a double whammy and it can't be explained in terms of the billable hours you're doing, you know.

[Manchester group 1, male, Asian, R4]

I think being a woman definitely impacts, I think a BME male solicitor definitely earns more than a BME female solicitor, who are in a similar field and of a similar level... if you're of a minority background and you're a woman, compared to your white female counterpart, you're still earning less.

[Manchester group 1, female, Asian, R5]

To one participant it was a surprise to learn that a pay disparity existed between genders, let alone between ethnicity groups:

I rang the Law Society to find out what I ought to be expecting in terms of salary..., they gave me figures, but there was nearly £4000 between males and females and I was really, really surprised that the figures they were giving alluded to discrimination between the sexes. Obviously they can't go further because they don't have figures, if I'd said 'I'm brown and I'm newly-qualified and I'm female, what should I be expecting?'

[London group 2, female, Asian, R4]

Discussion in one focus group suggested that solicitors were more likely to take action and protest pay disparity between genders than they were to act on a disparity in pay between BME and white solicitors:

When the pay and equality survey was discussed in the Gazette, not the last one, the one two years ago, the flood of letters that came in... there was a load of letters that came in on gender discrimination, not one letter, not one person was prepared to write in on the basis of race.

[Manchester 1, male, R4]

However, experiences were not all bad. Other participants recounted no experience whatsoever of disparity in pay anywhere they had worked in the legal profession, and certainly nothing they could attribute to an individual's gender or ethnicity.

I don't think I've had experience of pay inequity, or gender inequity to be fair, I think we've got more female solicitors at our office than we've got male solicitors; we've got nine female and six male. No, I can't say I've had any experience of gender or pay inequity.

[Manchester group 2, male, Asian, R3]

My experiences haven't been of that sort of gender inequity in the legal profession and I've worked in four different cities and two different countries in legal firms and in legal organisations.

[Manchester group 2, female, black, R1]

Probing further, it appeared that where pay disparity existed, the area of law or type of firm in which the individual worked was a determining factor.

5.3.2 Disparity by area of law

A partial explanation for the pay disparity between white and BME solicitors is that white solicitors are more likely to be working in corporate and commercial areas, whereas, on appearances, BME solicitors gravitate towards areas such as Personal Injury and legal aid which, across the board, are much lower paid. However a focus group participant raised the question:

Is there a pattern of black and ethnic minority solicitors being kept away from commercial, employment type of areas, you know, are they being biased towards personal injury, family, conveyancing, and if so, because if you monitor that over a long period of time you can ask the firm why that is, you know, not all black ethnic minority lawyers love doing PI, surely there must be some sort of grooming going on there or pressure?

[Manchester group 1, female, black, R1]

One participant warned that one should not assume that just because it is possible to cite greater proportions of BME individuals in the solicitors profession, that this meant they were in the same position as white entrants. He cited the example of nursing:

You'll find a significant proportion of ethnic minority nurses are working in the 'Cinderella Specialisms', areas no-one else wants to work in, like geriatrics, or the dirty areas, they do unpopular shifts like night time, when you look closer at the information it reveals something else.

[Birmingham group 2, male, Asian, R6]

Earlier in the report it has already become apparent that BME solicitors end up working in the poorly paid areas of the profession for a number of reasons including: it was where they could get in when they were looking for a training contract and having trained in such an area found it hard to move to a different area, or when in need of a job it was all that was open to them. Some gave examples that they were 'pushed' towards such areas of law either from their LPC or from the first year of their training contract. One participant suggested it was a cultural thing that parents in minority ethnic communities not only put pressure on their children to enter a profession in the first place (particularly favouring law and medicine), but to secure a job on qualification, causing some individuals to succumb to this pressure and take whatever they could find on their doorstep:

There's an issue, I think, where parents are very much, as soon as you qualify you need to get a job and be moving into whatever's available and as they tend to be living in certain areas where immigration law and criminal law are practised by other BME firms, they tend to go into that area straight away because they need to be making money.

[London group 4, male, Asian, R2]

Evidence from past research (Fletcher 2004) highlighted that young people from minority ethnic communities were more likely to live as extended families and to share the care responsibilities of their household. In most cases this necessitated the individual attending a university or taking employment near to their family home. Participants in this research suggested that BME solicitors did often see their immediate community as a source for training contracts or newly-qualified positions. However, they pointed out that BME solicitors often lived in inner city contexts where they would encounter disproportionate numbers of small BME firms oriented towards

legal aid and high street areas of law – again the more poorly paid sectors of the profession. Thus, through local contacts or community links, BME individuals were more likely to end up in the low paid areas of law. Yet one participant expressed the demand for BME solicitors in a BME community context:

If you're an ethnic minority person and if you've got something personal like an Islamic or domestic problem to do with touchy issues that are cultural in nature, you're not going to want to go to a faceless law firm, you're going to want to go to someone you think might at least understand it.

[London group 3, male, Asian, R1]

For other participants, the decision to work in a BME firm and or within a BME community was less a sense of belonging, or to remain close to family and friends, than the fact that access to better paid areas of law was repeatedly denied them:

BMEs are going into areas of work which are poorly paid. The reason for this is because there is still a closed door, closed access to them to the more lucrative positions and to the most lucrative type of work.

[London group 4, male, Asian, R4]

In the experience of one participant, even if you managed to get into a big City firm, BME solicitors were channelled towards the less lucrative areas of practice:

Even in the City firms you'll find black people are working in employment type practices, which do pay less, the salary is probably 60k for an employment lawyer and it would be 100k for an M&A lawyer, within the same firm.

[London group 4, male, Asian, R4]

This division impacted not just on the immediate salary of BME solicitors, but also on their ability to bring in clients, to progress the business and thus also on their ability to earn bonuses and to meet the criteria for progression (see Section 4.2). The same participant related her experience in a City firm:

I always wanted to do shipping and they said 'no, you'll do probate'. Probate? I said 'I don't want to deal with that area of law' and they said 'well, that's the only thing we offer you'. How am I going to bring in probate clients? Do you see? So if they want to manipulate the situation, partners can.

[London group 1, female, black, R4]

Despite the experiences of this individual, focus group participants who were working in City firms were less likely to perceive they had been discriminated against or to cite barriers to their progression. These individuals explained that for their training years and years one to two PQE they were on structured pay systems, transparently articulated across the firm. These were generally younger participants who surmised that perhaps they might encounter barriers at later stages of progression or where bonuses accounted for a more substantial part of their remuneration – but this was yet to be the case for them and they were hopeful that such issues would not arise. Pay disparity was more evident between types of firm. Where BME students or trainees had been pushed towards qualifying in certain areas of law, or had taken what was left in order to at least start their career, many now found they were limited in the types of firms to which they could apply. Thus hand in hand with working in lower paid areas of law, BME solicitors often found themselves in small legal aid or high street practices that, beyond entertaining the lowest paid areas of practice, could not by their own financial standing accommodate higher salary bands. Whilst BME candidates suggested there was not discrimination here and white solicitors doing the same work would get the same low salary, they observed that white middle class solicitors just would not end up in the same types of firm as their BME counterparts in the first place.

5.3.3 Disparity by type of firm

From their own career history, and from experiences of friends and peers, participants across all focus groups described an understanding that BME solicitors were disproportionately based in small high street practices, in sole practices, in legal aid firms and often in 'BME' firms.

It seems to be minority firms for minority lawyers. I still do feel that there is, the Magic Circle has got a brick wall around it.

[London group 2, female, Asian, R4]

Participants described how they had come to work in a BME firm:

Why do we end up working for ethnic minority firms? It's because those guys hiring are the ones who've pounded the streets and struggled to get to where they are, they might have a little bit of understanding and empathy with us, and that's why, like you say, that's where you always end up.

[London group 2, female, Asian, R4]

If you're from an ethnic minority background, you're being, actually, schooled straight from university that as an ethnic minority background you will be high street... The impression I'm getting is if you're from an ethnic minority background, the high street will be your ceiling; corporate work, shipping work and the high profile work, senior positions in government will not be there for you.

[London group 2, male, white South African, R7]

I end up working for ethnic minority firms because they are the ones who would give you the job and in the open market what happens is they hold the competition in offering lower salaries.

[London group 2, male, Asian, R8]

Legal aid firms, in particular, were seen as a destination for BME solicitors:

I think you'll find that the legal aid practices have got more black and minority ethnic solicitors than the corporate practices. I think there is a disproportionate number of black and ethnic minority solicitors in the legal aid practices.

[Manchester group 2, male, Asian, R3]

Because legal aid firms are becoming our bread and butter, there's a divide isn't there? ... the young, white, middle class, privately educated boy who wants to be a lawyer isn't even going to go near legal aid jobs because of the pay, and ethnic minorities fill the gap because we'll take that pay... So those firms are going under leaving less choice for us.

[London group 2, female, Asian, R4]

The fact that so many BME solicitors are located in legal aid or small high street firms raised concerns about the survival of these types of firm in the evolving legal services market. Although participants questioned why so many BME solicitors were 'pushed' towards poorly paid legal aid work (and it is evident that the lower pay of this area accounts for a substantial part of the aggregated pay disparity between BME and white solicitors), the idea that this type of firm may now also be removed from them raised alarms for many focus group participants. Changes to current legal aid contracts left many BME solicitors feeling vulnerable that they would be disproportionately affected should legal aid firms decide they could no longer afford to practice:

It would be interesting to see the statistics of black and ethnic minority lawyers in smaller practices like ours where we're doing legal aid work as opposed to those practices who are doing commercial work, practices like XXXX and I think, I may be wrong, I think you'll find that the firms who do legal aid work probably have a higher proportion of black and ethnic minority solicitors, and if that is the case, with the squeeze on legal aid work it would mean a squeeze on black and ethnic minority solicitors.

[Manchester group 2, male, Asian, R3]

Those participants working in City firms described a more structured approach to pay than was evidently in operation at legal aid and high street firms:

The difference tends to be is that the medium and City firms say they have pay scales and for the first five years they tend to have bands of pay. The difficulty is anyone entering doesn't really know where those bands are pitched, they're never told where they're pitched.

[London group 2, female, Asian, R2]

In small high street firms and sole practices, decisions around pay were described by more than one participant as 'arbitrary'. Participants were divided as to the reasons why BME solicitors working in high street firms were so notoriously poorly paid in comparison to white high street solicitors or to solicitors in other types of firm:

What happens is that the senior partner or principle will decide how much they pay you, when they pay you, if they pay you! And, also, if you're a woman they tend to pay you less and if you're a man they tend to pay you more, regardless of whether you bring clients in. Some now pay commission only, so you get paid a third of what you earn if the client pays, so if the client doesn't pay you go home with no pay.

[London group 1, female, black, R4]

[high street] firms don't have enough funds...and I think it's because a number of types of firms, that I fall into the category of now, cannot really afford to pay much more... What I find now is there's much more smaller firms and they really just do not have the funding and that's what the problem is now when it comes to equity of pay or offering silly money, because they're small firms.

[London group 2, female, black, R1]

This latter participant, having worked in high street practices and now working as a sole practitioner, explained that, for small high street firms, the financial margins were much tighter and they genuinely did not have the funds to offer more generous or competitive salaries. However, without the insider understanding of a sole practitioner or a senior grade solicitor at a high street firm, participants were left feeling that the lack of transparency around pay structures in the smaller firms was to hide the fact that firms were acting unfairly in their decisions around pay.

5.4 Transparency of pay structures

Participants argued that firms perpetuated the pay disparity between white and BME solicitors by not disclosing pay scales; in more than one instance a participant recounted:

They've got specific clauses in the contract saying salaries should not be discussed.

[London 1, female, Asian, R2]

Without a formal transparent pay structure (as favoured by the larger corporate firms), or the ability to discuss pay with peers, participants were less able to comment on whether they were being treated unfairly:

There's such a lack of transparency on it so I couldn't really say for certain if what I'm earning is reflective of what my contemporaries are earning. What I will say is, certainly at a junior level, as I understand it, as a firm policy, everyone of a junior level who is of the same PQE should be paid exactly the same. Where the discrepancy lies is in terms of the bonuses that you get.

[London 1, female, Chinese, R1]

I have no idea in any of the places I've worked whether I'm being paid more or less or whatever because each time I've been 'ok you're giving me a job, I'll take it'.

[London group 2, female, Asian, R3]

Some participants had discussed their salary with colleagues regardless of any stipulations by the firm that they should not do so. However, for others, discussing salary was a dismissible offence which individuals felt obliged to comply with for fear of losing their job. A lack of transparency around pay and progression was more often a problem in small high street practices. Participants working in City firms described various structures which were communicated firm-wide and which gave them a certain sense of security that all was fair:

I talked with the other junior solicitors and other trainees as well and we were all on a pay scale, but I worked in the City and they all have structures.

[Manchester group 2, female, black, R1]

Everybody of the same PQE is paid the same wage, depending on what your role is, which department you are in. So, everybody in corporate, two years' PQE, they should all be getting paid the same, at least that's how it's shown to us. Each year they distribute the spines, the salary spines for each level within each department, so we should all be getting paid the same - not the same across the firm, but the same in each department.

[London group 1, female, black, R3]

Without this transparency, one participant warned of the potential for resentment amongst colleagues if they found out someone doing the same job as they were was being paid substantially more.

If there was transparency, because it's not really your responsibility to explain that decision [to pay you more], it's the people above you, but when it's all smoke and mirrors and hiding in the shadows I think it's not good for morale.

[London group 3, male, Asian, R1]

As a fundamental ethic of being a business, participants felt firms should be required to be more transparent; and that this was not an ethnicity-specific issue:

Make it, well it is a mandatory requirement to have a transparent procedure, as to what criteria you have to meet to progress. Why don't the Law Society pick up on that?

[Manchester 1, male, R4]

I think in the first place firms should be transparent. That's a corporate governance thing, it's not, it's not an ethnic issue, that's something that should just happen.

[London 3, male, Asian]

That they were not transparent in their processes and decision-making was just a sign, for many, that lawyers did not make the best employers.

6. Lawyers as employers

Discussions at more than one focus group turned the spotlight on law firms as employers in consideration of the types of recruitment and promotion practices operating within the legal profession. One BME solicitor remarked that entering the legal profession it had come as a great surprise to her 'that lawyers are treated so badly!'. It was surmised as individuals familiar with employment law, fair and legal processes, as well as Equality and Diversity legislation, lawyers of all people should be amongst the most equitable to work for. However, one person argued that lawyers could turn this familiarity with the law to their advantage in ways which were not of benefit to their employees:

I think the problem is with law firms, or it's just bad employment practice, they don't feel, being lawyers, that they have to comply with good employment practices because they look for every loophole to avoid implementing.

[London group 4, female, Asian, R1]

In all of the focus groups the word 'grateful' was used often in relation to training contracts and jobs. BME solicitors held the perception that they were supposed to be 'grateful' for any position or salary offered to them; this was seen as characteristic of BME solicitors, participants did not feel this expectation of gratitude was held in consideration of white applicants. For those who bought into the notion that they were grateful for what they could get, such feelings served to diminish their feelings of self-worth and undermined their confidence. It also served on one level to absolve the firm of meeting their responsibilities as an employer. As one participant explained:

There's a perception out there with employers that we should be grateful that they've just given us a job, they don't acknowledge their responsibilities that go with it in terms of treating people fairly, having equality, having transparent processes.

[Manchester 1, male, R4]

Poor employment practices were more likely to be experienced in smaller and high street firms than in the large City practices:

When I've worked in the City I've not experienced as much discrimination or bad employment practices as I have working for smaller firms.

[London group 4, female, Asian, R1]

Whereas large City firms most often had separate human resources departments and various self-regulated mechanisms in place to manage their workforce, smaller firms, including BME firms, were often accused of 'making it up as they went along'. The following exchange is a good example of the employer-employee mindset often described in focus groups:

- vii. R4: The smaller firms, you will find that a lot of the time as it's getting nearer to Christmas, the partner or principle will take themselves off to Paris, you know, for a shopping spree, or gets the BMW and doesn't pay the staff, all the staff.
- viii. R1: I suppose his view is that he is the owner of the firm so how he determines the allocation of the profits of that firm is up to him.

R4: *But is that fair?*

R1: *From his perspective that's an irrelevant question, though.*

[London group 1]

Participants acknowledged that power resided with the firms and that 'having the upper hand' meant that smaller practices would try to 'get away with as much as they could', but one individual, playing devil's advocate, suggested that how a (BME or white) solicitor was treated came down to exactly how good that solicitor was at their job:

From their perspective, their argument is that if you're not happy you have the right to leave. That's their bottom line and if they want to keep you, if you are of use to them, then they will find ways of incentivising you, and the best way to incentivise you is to increase your pay, but if they think actually you're quite dispensable, then, you know, then the world is their oyster.

[London group 1, female, Chinese, R1]

This was an individual working in one of the larger City firms and who, from her comments, had not experienced barriers to her career and was evidently valued by her firm. However, in the current financial climate, with so many individuals competing for each vacancy, it became clear that firms would go out of their way to retain their most valuable employees (utilising financial rewards), but often neglected their responsibilities in respect of other employees who could easily be replaced. BME partners were not always seen as better employers of BME solicitors than white partners. For many there was a sense that:

Some of those turn around and say 'I pounded the street for seven years so you can pound the street for seven years! I had to work a year for nothing so you can do that too'. You suffered it, why must you carry it on?

[London group 2, female, black, R1]

This participant, who now found herself a prospective employer, felt it was important that:

I do not carry on all those bad practices because I would hate to think I'm going to offer someone like myself twenty years ago, a bad deal just because I can, because of the power dynamics.

[London group 2, female, black, R1]

One participant summarised what he saw as the hypocrisy in the legal profession:

If we're representing like, administration of justice, fairness and equality, but we're doing completely the opposite behind closed doors and our governing body knows that, and the Law Society know that, and you've known that for years and years and years, I just don't see why the Law Society is still failing people like ourselves?

[Manchester group 1, male, Asian, R4]

For this individual, monitoring visits (in the past undertaken by The Law Society and now within the remit of the SRA) failed truly to engage with and examine the employment practices of firms, instead restricting vision to client care letters, handling of client complaints and office manuals. Past Law Society research in the Great Quality of Life Debate highlighted how 'great' lawyers do not necessarily make great managers and this appeared to be the case in many examples cited across the focus groups. A talented young lawyer who secures partnership is required to assume tasks beyond fee-earning and, in many instances, may inevitably take on a more managerial role. Different skills are required to undertake legal casework and to understand the intricacies of a particular area of law to those skills required to be an approachable and effective employer. The Great Quality of Life Debate revealed that senior lawyers are often not given the support or training to make this transition in what is required of them. As firms are able to take on non-lawyer partners or form practices with other professions, the current model of employment structures and practices may change.

6.1 Equality and Diversity in law firms

Overall, participants did not think that law firms were particularly diverse in their staffing. For those BME solicitors who had not encountered any discernible barrier in their career progression, and who had secured good jobs in the City there was an underlying sense of 'always being the only' BME face they encountered in their working environment:

Particularly within the City, in the places I've worked, there are so few ethnic minorities and just I'm always the only one, wherever I work I'm always the only one and I just thought 'why am I always the only one?'... for black solicitors there's hardly any of us in the City, really.

[London 1, female, black, R3]

This participant found it difficult to articulate her concerns. She did not feel she had been discriminated against herself and worked at a firm with a set and transparent pay structure, so was confident she was on the same as her white counterparts. She did not understand why quality BME applicants were not being accepted at her firm and yet it also raised questions about how she perceived her interaction with colleagues:

The more time I've spent in the profession when I don't see any change at all, it's starting to grate a little bit. Not like, it's hard to explain, it's not like, I don't really feel like I can't interact with people other than those of my race because that's ridiculous, but it's that I know people are applying and it doesn't make any sense to me that still there's no change, but there are good applicants and I just don't know why it's not changing. It's that that bothers me more than anything else.

[London group 1, female, black, R3]

Other participants described how BME staff at law firms were more likely to be paralegals or secretaries, or from another participant: 'librarians':

There's only one minority partner in a firm that's 600-700 people. One minority partner and the other minority lawyers are not really solicitors, they're more like paralegals or office juniors.

[Manchester group 1, female, Asian, R5]

When I did my training it was very rare to see any black faces at all. I can remember one of the first times I went to court, the usher actually thought I was the defendant!

[Manchester group 1, female, black, R6]

One participant described how he saw Equality and Diversity legislation as ineffective in terms of closing the disparity in pay and practices between BME and white solicitors:

This is where the BME solicitors are, this is where the white solicitors are and what equality is doing is 'okay, one or you one for us, one for you one for us', it's never going to close that gap.

[Manchester group 1, male, Asian, R4]

For this individual, although certain things were improving for BME practitioners, they were improving at an equal rate for white solicitors to the point he foresaw that there would always be a differential and BME solicitors would never catch up to be truly equal; in his opinion the playing field would never be level.

7. Taking action

7.1 Where we are now and the future

Almost all participants responded favourably to ways in which the profession had changed for BME solicitors over the last ten years or so. Although one participant celebrated:

We're now 2009 and I've seen the most fantastic things happen in that a lot of ethnic minority people are now into the City firms, they are running their own businesses, some are into politics... we have a 4000 strong Black Solicitors Network and a lot of them, they may be sole practitioners, they may be judges or QCs, but a lot of them are proud women.

[London group 1, female, black, R4]

Moments later she returned to her assertion that:

It's never going to change, they would prefer us to be at a certain level. Unless we own our own big black firms, nothing will change, I'll tell you that much. It's never going to change.

[London group 1, female, black, R4]

This participant felt there was a ceiling for BME solicitors so that although more were being taken on as trainees there was still no obligation for firms to keep them on after their training – and in her experience it was usually the white trainees who got the jobs. Further, even if solicitors were taken on, she perceived that they would be held back at a certain level and not able to make partnership. Her solution was the formation of big BME firms to rival City firms, employing only BME solicitors. As discussed in Section 4.2.3, this was not an approach voiced in other groups, nor was it well accepted in this group. Whilst another participant questioned whether the increasing numbers of BMEs entering the legal profession each year would eventually trickle through to higher levels of the profession...

I think it would be interesting in ten year's time to see what the statistics are because there are more people going in at the entry level, it would be interesting to see if they've made partner.

[London group 1, female, Chinese, R1]

...others were discernibly impatient. Those with a greater number of years PQE had seen change, but at glacial pace. Some had taken part in discussion groups or network events asking 'what can be done?' in the past and although these participants had still been willing to take part in this research, they were jaded with the idea that anything practical could come out of yet more talking.

7.2 What's the point of more talking?

Participants welcomed the opportunity to meet with fellow BME solicitors and to share experiences, but for many this was merely a personal networking event rather than the springboard to action. One participant summed it up:

It's nice to come along and have a discussion group here, but I probably will go away thinking well, what is going to be the outcome of this discussion, what is going to be resolved? Is it going to change the mindset of the people in charge of the firms? Probably not.

[Manchester group 1, female, black, R6]

For younger participants, the idea of a regular discussion forum where they could meet and consider issues concerning BME solicitors – in general, or issues affecting them in particular – was welcome:

I think forums for discussion are worthy and certainly give people at least the opportunity to vent their frustration and put forward their discussion points and hopefully get some action out of it.

[Manchester group 2, female, black, R1]

Yet, for those participants who had been in the profession longer everything had been said before and for these individuals action would need to be seen before they would consider yet more talking:

I'm getting old! I'm just not at that age where I want to be continuing discussing, I want action! And if it's not happening then I don't want to know!

[Manchester group 2, male, black, R4]

Beyond the fact that the Law Society had been the instigator and facilitator of these focus groups, participants did look to the Law Society, as their representative body, to represent them and to 'set the ball rolling' by taking action. For one participant the Law Society had already missed valuable opportunities to act:

I think the time sort of ten years ago there seemed to be more ethnic minorities at the colleges and that was the time for the Law Society to be more proactive.

[Manchester group 1, female, black, R6]

Although participants would like the Law Society to 'dispense justice', to ensure fair and transparent processes in all firms and to 'make' firms embrace diversity, they were realistic on the whole about the amount of influence the Law Society could have with firms:

What is the Law Society planning on doing about these disparities which do tend to take place in the workplace, what kind of influence can they really have on private firms because I suppose private firms are like proper private businesses, how much can you achieve or force them to do something about anything really?

[London group 1, female, Asian, R2]

Yet, analysis of the discussion groups suggested there were practical steps that the Society could take without overreaching their relationship with firms.

People always talk or complain, but I think people want to see action, they want to see things changing because even if we're talking here and complain about pay differences, we want to see action, we want to see what the Law Society's going to do, we want to see a system where firms are being more onboard and where heavy penalties are being imposed...I think practices, written down practices and guidelines so you can actually look and say this is what you're supposed to do and these rules will make change otherwise we're just going to talk and talk and hope...

[London group 2, male, white South African, R7]

Participants were keen that a structured and implementable programme of ideas emerge from these groups; a careful chiselling away and reshaping of the profession that left observable changes was seen as a more valuable approach than the ineffective 'grand gestures' participants more often associated with the Law Society.

7.3 What can be done?

The remainder of this report is devoted to what practically can be done next.

Only one group spoke at any length about affirmative action by name. For these individuals affirmative action was a way of initially forcing people to accept changes or to act differently, in order that they might see for themselves the benefits of what they would not previously even consider:

Affirmative action has forced people to accept, first of all they've been forced and then they've generally acknowledged that their company, their business, their local authority is richer and better off for having input from the other minorities and groups, but initially they've had to be forced.

[London group 2, female, Asian, R4]

I've seen affirmative action in South Africa and it gets things to move on because if you have regulations and things which say 'please respect equal opportunities' people will do nothing.

[London group 2, male, white South African, R7]

One participant suggested a quota should be introduced in order to get BME candidates into all types of firm and all areas of law. The idea of an enforced quota system was not popular overall in the groups as some suggested it would lead to tokenism and others stressed that they wanted to be recruited on their own merit, not just to tick a box (see Sections 3.1 and 3.2).

I wouldn't want say 'oh there should be a quota' because that, I think, in itself is discriminatory, you know, to ourselves, there shouldn't have to be a quota, so many of us getting to promotion, to associate, partner whatever, it should be a natural thing.

[Birmingham group 1, female, Asian R1]

Yet one participant felt a quota would help:

Some sort of quota should be introduced because, simply because we are not given the chance, that we did not have the chance to show our true potential.

[London group 2, male, black, R6]

This was a concern for most participants who did not want the Law Society to hand them a career on a plate, but wanted to be given the chance to compete. The perception was that BME solicitors were being disregarded from the start and not given the chance to interview or trial a job so that they could demonstrate their skills alongside other applicants.

Data from the focus groups suggested that alongside the Law Society, positive steps forward could be taken by firms and by individual solicitors themselves.

7.3.1 Individual solicitors

Focus group participants felt there was a certain onus on individuals to take responsibility for bad situations they found themselves in and be prepared to take action themselves, rather than devolving responsibility to the Law Society or government:

We could say yes it's up the government to do it etc and all the rest of it, but partly it has to come from us as well, we have to stand, be willing to stand up and put the work in as well.

[London group 4, male Asian, R2]

The onus will always remain on the individual to do something about it whether it's a grievance procedure or going to an employment tribunal.

[Manchester group 1, female, Asian, R5]

Those of us who have been through it, we owe our debt to those who come behind us to speak out.

[London group 2, female, black, R1]

Section 4.4 of the report suggested that many BME individuals were afraid to speak out because of the impact it might have on their longer term career and possible immediate reprisals at their current firm. Web respondents echoed this caution:

We would need to feel empowered to challenge without fear of repercussions. We need a body to support us in negotiation and to check standards across the board e.g. Doctors have a body that will check employment contracts to see that they are fair; lawyers have nothing near comparable Otherwise how can you bite the hand that feeds?

[web respondent]

Web respondents also suggested that any action taken by an individual would be ineffectual when up against the decisions of a firm or legal organisation, and claimed it was firms' responsibility to ensure fair practices, in any case:

Individual solicitors cannot do anything. I practice in Crime legal aid. If a sole practitioner has a contract from the Legal Services Commission, there is no bigger businessman than them. One has to literally 'suck up' to them to obtain a training contract or to remain in a job.

[web respondent]

Very little as individuals - individuals who are assertive can be viewed negatively as pushy and trouble making; those who don't are seen as complacent and can be easily taken advantage of. It is of structural importance and an issue of fairness in the workplace which employers should take responsibility for.

[web respondent]

Actions individual solicitors can take mostly revolved around confidence and negotiating skills; the confidence to know your worth, to pitch your case well and to present yourself assuredly in negotiations around pay. It was important to participants that something be done about BME solicitors working for nothing. Those who had been in the profession for longer had developed a certain confidence which aided their ability to negotiate with firms, particularly when setting pay levels, target hours or casework goals and they hoped that younger BME solicitors could acquire skills in these areas which would increase their feelings of self-worth.

What could be done by individual BME solicitors was suggested as:

- Improve negotiating and assertiveness skills through attendance at workshops and training events;
- Visit schools and universities to talk to younger BME candidates and give them an insight into the profession;
- Take action against discrimination or unfair treatment - if the individual feels confident to do so;
- Support groups and networks;
- Offer yourself as a mentor to other BME trainees or solicitors; and
- If possible, offer work placements for BME students from disadvantaged areas/schools.

7.3.2 Firms

Firm level change was where participants were least hopeful. Ultimately as the owners and/or senior decision makers, firms were seen as in charge of their own destiny – the only thing standing in the way of a firm changing its practices was essentially the firm, and their related concerns around clients and profit margins. Web respondents stated:

In many ways the solution is very much in their hands and if they were simply more proactive about equality issues I am sure the situation would improve. As it is it seems that both law firms and public sector employers simply pay lip service to equality opportunity and diversity issues.

[web respondent]

It was acknowledged that firms had to be persuaded through the carrot of increased profits or more competitive business models:

You're going to have to spin it in a positive way, i.e. saying that by diversifying their group of trainees in some way that's going to be beneficial to them in the future, that's going to enhance their business, that's going to make them more profits, that's the way to spin it.

[London 1, female, Chinese, R1]

I think it's really finding champions within those sorts of organisations and really finding and working with them to champion some of those ideas and say 'look, it works, this is what we're doing in our firm and we're very proud of it', and just to sort of get that culture change and support it really.

[London interview, female, black]

Participants were divided over whether firms should make more of an effort to reflect the community they serve by having solicitors with relatable backgrounds:

Does a firm ever look at the demographics of where they're based and say look this is our target, this is our demographic, this is the BME population of where we are, say two per cent, or one per cent, or three per cent, you know, we'll try to have our workforce at that percentage, let's try to have that percentage of partners?

[Manchester group 1, male, Asian, R4]

I never accept this idea that I should get something because I'm an ethnic... I don't like this idea that there's three per cent of the population is Asian therefore you must have three per cent partners and three per cent this and that.

[London group 5, male, Asian, R2]

Vitally, participants felt that before firms could take action or even be persuaded to make changes to their practices they had to acknowledge that a problem existed. A key step towards this, suggested by a web respondent, was that communication channels between employers and employees be improved:

Most firms look after their own interests and not that of their employees. Employers should be prepared to meet with employees and to engage with them on as many aspects of the decision making processes.

[web respondent]

In terms of recruitment, it was suggested that application forms be given a greater degree of anonymity so that firms would not be reacting to an ethnic sounding name. Some participants argued that names and photographs be omitted from applications as standard. Others went further still to suggest that anything before the LPC be removed from the application form.

Participants called for greater transparency around pay structures and a greater objectivity and transparency around all decisions made by the firm:

More transparency, just generally, so you know everyone's on an equal footing.

[Birmingham group 1, female, R1]

Adopt transparent pay and reward schemes, which are published and tied to the appraisal system and the firm's/ organisation's main aims. Introducing greater objectivity in all these practices, including interviewing, will also help ensure fairness can be demonstrated.

[web respondent]

Although all focus groups came up with the idea that law firms be made to publish their pay structures, few thought the firms themselves would think this a good idea. It was then that the participants called on the Law Society to question what sort of pressure the Society could put on firms to make them publish this information.

7.3.3 Law Society

Participants called for the Law Society, as their representative body, to take action to resolve the current inequities in the profession:

I think the Law Society needs to take on more of a role where people feel that they are a trade union.

[London group 4, female, Asian, R1]

I think they really need to have an annual AGM where members of the Law Society throughout the country, not all in London, can attend and voice their concerns about what they think the Law Society should be doing.

[London group 4, male, Asian, R2]

I do think being involved with like a BME angle is good for the Law Society... it should be more than just ticking a box on a form saying you're ethnic minority, it should be more involved, there should be debate about issues or the facility should be there.

[London group 3, male, Asian, R1]

Although it was not explicitly mentioned by focus group participants, the importance afforded to knowing your worth, confidence and assertiveness when negotiating pay and/or presenting oneself for promotion suggests that workshops around negotiating skills and or self-presentation would be a welcome resource for BME participants. In addition, the facilitation of more employment-focused networking events was also implied as something BME participants would value. Almost two thirds of web

respondents (65 per cent; n=43) claimed that they would attend Law Society run workshops in assertiveness training and negotiating skills; of these 42 per cent (n=28) felt that attendance at such workshops would help improve their position in their firm.

Across focus groups, the six main recurring requests were for:

- i. an anonymous way of reporting a firm for bad practice;
- ii. written guidelines on best practice;
- iii. better monitoring of firms around Rule 6;
- iv. monitoring and publication of pay scales for all solicitors, across all firms, not just at trainee level; and
- v. lobbying for positive discrimination and legal aid.
- vi. better information provision to schools and universities.

i. Anonymous reporting

Participants were sceptical about the possibilities for the Law Society to force change within private practice firms. That being the situation, one of the most important things participants in all focus groups called for the Law Society to do was to provide a way that BME solicitors could report discrimination or unfair practice without fear of reprisal. Section 4.4 discussed the difficulty BME solicitors faced when presented with disparity or unfair employment practices. An overwhelming sentiment was that to raise a grievance or make a complaint to a senior partner was to essentially make yourself unemployable and many participants chose to either fight their own battle at a local level, endure the situation or leave. The reluctance of BME solicitors to risk taking issue with unfair treatment was seen by one participant as a 'handy excuse' for the Law Society:

What you're going to say is without complainants there's nothing we can do, that's a brilliant answer for the Law Society. Without people being brave and putting their neck on the line there's nothing you can do and the Law Society's going to keep saying that for time and memorial. We've got to look at a way of making it easier for people, making it more comfortable for people to come forward and make these complaints, even anonymously, so there's got to be some process so you can make a complaint without it tarnishing you for the rest of your career.

[Manchester group 1, male, Asian, R4]

As a solution, this participant suggested it would be easy for the Law Society to set up a phone line or web site where BME solicitors could relate, anonymously, what was happening at their firm. For this participant that would then give the Law Society the information they needed to intervene or at least monitor the firm with the complaint in mind:

What the Law Society can do is they can have an anonymous system, complaints system, grievance system, where you can ring the Law Society, you can disclose who you are, you don't have to disclose who you are, and say 'look, this is happening at this firm'. The Law Society does monitoring visits, they can go, not on the basis of the complainant, but very soon, the Law Society needs to go into the firm on the basis of the monitoring visit and look at what's going on and see if they can spot something.

[Manchester group 1, male, Asian, R4]

This participant seemed confused as to the roles of the Law Society and Solicitors Regulation Authority, as it is now the remit of the SRA to undertake monitoring visits. That said, even armed with the name of the firm and the complaint of the individual it is questionable the power the Law Society would have to question the firm over the incident. Participants continued to request anonymous reporting mechanisms:

If you don't pay your staff we can maybe ring up a line, like a whistle blower or whatever and say 'this is what the firm is doing', or like 'this Monday they decided they won't pay you at all because they haven't earned anything', you know?

[London group 1, female, black, R4]

Maybe a blog, even, where you can say 'I've got this problem at work, how would you handle it? Do you think I should play the race card?'

[London group 3, male, Asian, R1]

Before setting up such reporting systems the Law Society will need to be very clear about what it intends to do with the information it is given, if only to manage the inevitable expectations of the BME individual that once they have told the Law Society the issue will be resolved in a timely and effective manner. Equally the Law Society will need some mechanism to sort genuine complaints from those where the individual is having a bad day and decides to incriminate their firm, perhaps unjustly. There is no question that some mechanism needs to be found which enables individual solicitors to raise a grievance without facing consequences which tarnish the rest of their legal career. If legislation such the Equality & Diversity Act is to be truly affective solicitors must feel comfortable using it.

ii. Written guidelines

Participants suggested that Law Society official written guidelines on good practice would offer some support to BME solicitors wishing to take issue with their firm and would perhaps act as a deterrent to bad practice in the first place:

[a solicitor could] go to HR, or your representative within the firm and say 'I would like there to be some kind of transparency here, I want to be assured that I'm getting paid the same as X. If I'm not, I'd like to know why and the reason I'm asking is because according to what I've been reading the Law Society says' you know...it gives you a crutch to support you.

[London group 3, male, Asian, R1]

Where participants felt written guidelines or protocols would be most valuable was where they could be policed and firms would face penalty for non-compliance.

Law Society would greatly assist by 'listening' to the complaints made by individual solicitors; providing written protocol on equity and fairness (in addition to what already exists), and imposing a penalty on firms that do not adhere to it.

[web respondent]

As it stood, participants were cynical that the Law Society could do anything other than hope that firms would take on board best practice or instigate new protocols at their firm. Yet, one participant felt the Law Society was missing a trick by not making more of Rule 6 in the Code of Conduct.

iii. Better monitoring of firms around Rule 6

Scope to monitor the operating practices of firms should already be covered by the Code of Conduct and one participant was quick to cite Rule 6 any time others questioned the feasibility of acting against firms:

Rule 6, that was a very carefully and skilfully drafted rule... typically worded in such a wide way to give permission to the SRA to actually make diversity, I mean, it's just there, firms have to demonstrate that they have done everything to not discriminate... They need to take it as seriously, I've always said this, they need to take it as seriously as breach of the money rules.

[London group 4, female, black, R6]

Rule 6 outlines a solicitor's duty not to discriminate. Whilst the provisions contained in this Rule are based upon legislative provisions, the Rule goes beyond the scope of the legislation in a number of key areas. The Rule requires firms to adopt and implement an appropriate policy for preventing discrimination and harassment and promoting equality and diversity within their firm. This participant suggested a radical implementation of Rule 6, whereby unless firms could demonstrate they had done enough to meet their E&D obligations, they would not be issued with their solicitors' practising certificates:

No firm should be given a practising certificate until they have demonstrated a commitment to diversity. They should all be made to put forward their statistics, show a commitment to monitoring, compulsory monitoring in the firms and they should submit those statistics with their application for a practising certificate, then we'd start to see what's going on, otherwise no pc!

[London group 4, female, black, R6]

It is not possible for the Law Society to go to such extremes, yet the Rule itself potentially offers some avenues the Law Society could look to push further through written guidance, training or case studies of best practice. Again, in terms of monitoring firms against their compliance with this Rule, the Law Society will need to be clear (and communicate clearly to BME practitioners) what is in their remit and what they might lobby the SRA to undertake.

iv. Publication of pay scales

Participants called for the Law Society to become involved in the salaries of all solicitors, across all types of firm, much in the way that they were doing for trainee solicitors. Whilst the Law Society already publishes minimum and recommended salaries for trainees, participants felt the Society should be doing the same for all positions within a firm. One web respondent stated:

The Law Society could initiate a process whereby pay structures in individual firms is looked at in much the same way that trainee solicitors salaries are monitored. They would find that some long qualified solicitors are not earning that much more than a trainee or newly qualified solicitor.

[web respondent]

In agreement with this web respondent, focus group participants suggested there should be one single matrix of salaries applicable to all private practice firms. This complete transparency would negate the need for solicitors to negotiate their pay as both employer and employee could consult the matrix based on position, years PQE and so on. At the very least, participants called for the Law Society to monitor how firms paid their staff and to make firms publish their pay scales:

I think it would be really, really valuable to have the pay monitored and published because none of us are able to say whether we're suffering pay discrimination because we don't know what everybody earns.

[London group 2, female, Asian, R4]

Participants were not quite at the stage of asking for league tables based on firms' salaries, however it was implied that greater transparency across firms might encourage a levelling in approaches to pay or, at the very least, give BME practitioners a stronger starting point from which to negotiate.

v. Lobbying for positive discrimination and legal aid

In Section 5.3.3, participants expressed concern about the future of legal aid firms, stating that as a disproportionate number of BME solicitors worked in legal aid firms they would be disproportionately affected by any closures or changes to fee structures. Thus participants, whilst acknowledging what the Law Society had already done for legal aid, urged them to continue lobbying in this area:

I think the Law Society ought to do more about defending legal aid because it will have an impact on legal aid practices inevitably and then it has a knock on effect on those who work in legal practices.

[Manchester 2, male R3]

Beyond legal aid, participants called for the Law Society to lobby for positive discrimination in order to get more BME trainees into City firms:

The Law Society should lobby for positive discrimination to ensure the magic circle firms do make adjustments, with the appropriate penalties for non compliance - SRA staff SHOULD be more polite when dealing with ethnic minorities- it feels sometimes that as soon as they hear an accent- they become less friendly- that is not helpful.

[Web respondent]

As discussed in earlier sections of the report, participants were mixed in their attitude to quotas, affirmative action and positive discrimination. For some, the reality of their experience left them feeling that however much they disliked the idea of positive discrimination, it was the only way they thought firms would change; it was a last, but much needed resort. For others, positive discrimination or affirmative action was self-defeating as they felt BME individuals would then become taken on only to tick a box, rather than for their merit. For one or two participants this mattered less than the fact that this would get them through the door, yet for most participants being able to compete on a level playing field and to earn a position on their merit was of far greater importance. To this end, a web respondent saw a role for the Law Society as facilitating communication between different groups, that through meeting and discussion some barriers could be eroded:

Have a BME figurehead group which can facilitate dialogue between the various splintered ethnic minority lawyer groups and the profession - the prevention of discrimination on the basis of ethnic origin should be the key focus of this group.

[Web respondent]

Again, focus group participants were less hopeful that this would work, having little faith in the current Law Society BME Forum. The BME forum was obviously not meeting the needs of participants who were aware of it. Equally, many participants were tired of all the talking and wanted to see direct action – that's not to say that future groups, as described by this web respondent, would not be fruitful.

vi. *Better information provision to schools and universities*

As discussed in Section 2 of the report, participants called for the Law Society to provide better and more information on careers in law and entry into the profession, to all schools and universities (particularly those which are currently not favoured or visited by City firms). Participants felt it was vital that BME students learn from the earliest age the relationships between various universities and firms, also between training contracts, types of firm and areas of law. It was a goal of participants that BME students in all secondary schools be fully informed before deciding on their route into a legal career, and understand the potential consequences of their decisions. Participants suggested the Law Society could:

- Run regional road shows or career fairs;
- Send detailed information packs to schools;
- Visit schools and give talks;
- Arrange for BME practitioners to talk to schools groups – either at the school or at the Law Society;
- Facilitate a work experience relationship between City firms and BME students;
- Offer a point of advice for any questions students may have; and
- Provide information to, and brief, university careers officers.

8. Conclusion and recommendations

Experiences shared by focus group participants and web respondents revealed a complex of factors around their entry to the legal profession and subsequent career progression. The pay disparity between white and BME solicitors, which had been the driver for this research, proved to be only a small manifest symptom of many compound underlying mechanisms.

It must be said that some BME participants had no experience of barriers, discrimination or pay inequity in their career, these were generally those individuals working at larger or City firms which had set pay structures in place. The problems more often came for those working in small high street practices, who had not been able to secure a training contract with a larger firm and ended up taking whatever opportunity they could get. In smaller practices decisions around pay and progression were not transparent and more often were described as 'arbitrary' or at the whim of a partner.

The difficulty securing a training contract could be attributed to a range of factors such as: having attended the 'wrong' university, having a name that was too 'ethnic sounding' and not having enough work placements or extra curricular activities on the application form. From this point, where an individual undertook their training contract set the path for where they would end up – thus, many BME solicitors found themselves in small practices, often undertaking legal aid and poorly paid areas of law. From here they described it as virtually impossible to make a move up to a larger firm or more lucrative work. For many participants, a lack of information when they were first considering law as a career left them making ill-informed decisions which had impacted significantly on their later career prospects.

Participants themselves struggled to pin down exactly the reason for any barriers or problems they had encountered. Few comments suggested that issues were based on ethnicity, in isolation, and as many participants cited social background as a discriminatory factor. It is not possible to separate what is attributable to an individual's ethnicity and what to their social or cultural background as, in many ways, these factors are inextricably interlinked – and factors such as social background impact equally on white applicants. Participants cited cultural differences in attitudes to extra curricular activities, to socialising with clients and maintaining community links. Social background often dictated the influential contacts available to the individual, where they went to school and thus university, and their ability to take a gap year or unpaid vacation placement, rather than having to work to earn money.

Participants called for firms to reconsider their emphasis on particular institutions and academic grades and how they defined 'excellence' in terms of their recruits. Few participants supported the idea of affirmative action or requiring firms to meet quotas of BME employees, yet many were coming round to the idea that this may be the only way to get firms to change. The overwhelming attitude across focus groups was that BME solicitors did not want to be given a free ride or forced onto a firm, rather they wanted a chance to compete on an even playing field; the chance to get to interview and be able to demonstrate their skills alongside other candidates. Those with a greater number of years PQE reported that there had been positive change in the profession, but at a glacial pace and they were not hopeful that things would be any different in another ten years.

Certainly one of the next steps for the Law Society should be to engage employers with the findings of the report – especially those employers deemed, by participants, to have particular criteria which tend to exclude BME applicants. Before campaigning for firms to change their practices it is vital that the Law Society engage with the senior decision makers at the firms and really pick apart certain business models to understand their decision-making processes. Only then might the Society be in a position to be able to best convince firms how BME solicitors can be a part of their model and a valuable asset for the firm. Of course firms are not obliged to share this information with the Law Society or to change their current practices, therefore, a key job for the Law Society is to find champions who have made diversity work, especially champions from a variety of firm types and sizes and encourage other firms to engage with these successful case studies.

Recommendations

This report has been a lengthy one and the findings from the focus groups and web contributions elicit many valuable insights and potential ways forward for the Law Society to consider. Whilst much of Section 7 has been devoted to participants' articulation of what can be done next, in summary, the report closes with bullet points of recommendations for taking these findings forward.

It is inevitable that further discussion and research needs to take place. Importantly, the Law Society needs to engage employers and the senior decision makers at firms with these findings before it can hope to instigate effective and sustainable change. However, participants in this research cited previous discussion groups and much 'talking' from which they had seen little action. Whilst these individuals were willing to indulge the Law Society for yet another discussion group, it is now of vital importance that the Law Society begin to take action in ways which are demonstrable and clearly articulated to the profession, if it is not to lose the faith of individuals such as these participants in the future.

- One of the key things participants felt the Law Society could do was to generate a mechanism where they could report firms for unfair treatment without risk of reprisal. If the Law Society can do this it would not only generate a way of finding out the practices implemented within firms, but also help BME practitioners feel better represented by the Society. However, it is vital the Law Society is clear what it can do with this information before setting such a mechanism in place – to have a system in place, only for it then to appear that the Law Society listens and does nothing, would do irreparable harm at this stage. Thus the feasibility of an anonymous reporting system or helpline needs to be fully scoped.

Whilst participants were realistic in their understanding that the Law Society may be limited in the degree to which it can force (or enforce) change in private practice firms, as private business, it was preferable to participants that the Law Society take small practicably achievable steps rather than invoke grand, but ineffective, gestures; or do nothing at all. Things the Law Society could act on immediately include:

- Develop a series of workshop events aimed at BME practitioners to help improve skills around self-presentation, communication, negotiation and assertiveness.
- Assess the current law career information provision of schools and become more proactive in engaging secondary students considering law as a career. Develop mechanisms to make sure all students are fully informed when making decisions about their entry into the legal profession – including what firms look for and how to apply. (see Section 7.3.3 (vi)).
- Organise more high profile events with BME role models from senior levels across different professions.
- Organise networking events around topics such as: training contracts, salary, career progression and social inclusion.
- Organise round table and networking events with senior decision makers to encourage them to revisit their perceptions of excellence and ideals of the 'model solicitor'; also, to unpack their criteria for progression and the ways in which they measure performance.
- Consider the feasibility of a 'life swap' style senior level exchange scheme, whereby a senior partner from one type of firm gets to work with a senior partner at another type of firm/different region etc for a day.

Appendix: Law Firms - Equality and Diversity Forum

In November 2009, the interim findings from this study were presented to the Law Society Firms Diversity Forum for discussion and consultation. This Forum was set up by the Law Society to establish a mechanism for collaborative working. The Law Society and the Firms Diversity Forum have jointly developed the Diversity and Inclusion Charter, a set of equality & diversity standards and a toolkit for the profession. The Forum has over 200 representatives from over one hundred firms. Representatives on the Forum include senior partners and those who have responsibility for embedding equality, diversity and inclusion in their firms.

The findings were presented as a series of quotes covering the five main discussion areas identified at the interim stage of the study. These areas were:

- pay/transparency of pay structures;
- mentoring;
- access to information at the right time;
- promotion/criteria for measuring performance; and
- recruitment and interviewing.

Forum members were asked to consider the quotes with a view to identifying the possible issues underlying these quotes, as well as identifying the practical solutions that could be effectively adopted by Law Firms to address these underlying issues. Forum members welcomed the opportunity to comment on the interim findings and a range of issues and effective solutions that could be adopted to address these were suggested by the Forum. For each of the above five themes, the quotes, along with the identified issues and suggested solutions, are presented in the following tables.

PAY / TRANSPARENCY OF PAY STRUCTURES

"A lot of private practices don't disclose their pay, I mean, I came into the firm I'm at now and I'm seven years' PQE with my colleague, but she's £2000 ahead of me!"

"City firms say they have pay scales and for the first five years they tend to have bands of pay. The difficulty is anyone entering doesn't really know where those bands are pitched, they're never told where they're pitched, so they don't know where they're negotiating or who they're negotiating against."

"It's difficult knowing what to pitch it at without putting yourself out of a job, so that you're a contender and what you're saying about people offering silly salaries etc. I mean, sometimes they know how desperate you are."

"They brought in someone from outside, another newly qualified solicitor and I gradually found out that she was receiving about 10k more than me... even though the difference between us, post qualification, was only about five or six months."

"I think sometimes we just accept the low pay because we want to get in and I think if you insist on something higher you don't stand a chance of getting in."

"I think it would be really, really valuable to have the pay monitored and published because none of us are able to say whether we're suffering pay discrimination because we don't know what everybody earns."

"I've found, if you're in a high street practice, there isn't any set rules. What happens is that the senior partner will decide how much they pay you, when they pay you, if they pay you!"

"There's a perception out there with employers that we should be grateful that they've just given us a job, they don't acknowledge their responsibilities that go with it in terms of treating people fairly, having equality, having transparent processes".

"My head of department left, who was on twice as much as me in terms of salary, and I took his place, but they're refusing to increase my salary."

"I've never ever talked with any of my colleagues about what we're paid. So I have no idea in any of the places I've worked whether I'm being paid more or less or whatever."

Identified issues	Suggested solutions
<ul style="list-style-type: none"> It was felt that most of the issues that were identified could easily be applicable to anyone, not just to Solicitors from BME backgrounds There was a feeling that complete transparency around pay could never be achieved. A move from PQE to 	<ul style="list-style-type: none"> Firms should be transparent about pay structures where they can. Salary bands within competencies. More work could be done to make people realise that pay is based on performance – not just on the length of service.

competencies, combined with the right feedback given at the right time, would be positive.	<ul style="list-style-type: none"> • Those making decisions around pay should be better educated. • This should be accompanied by a robust and open appraisal process.
--	--

MENTORING	
<p>“It's a matter of role models and knowing other people who have attempted to apply, who have similar racial or social or economic backgrounds to themselves.”</p> <p>“to meet them one to one, give them advice about CVs, job hunting, things like that and they found it very useful. So mentoring at every stage is useful, even peer mentoring sometimes, I've found, you can share ideas, if there's something going wrong, you can talk to them and a lot of people should be encouraged to do the mentoring.”</p> <p>“I think they're always an inspiration and I think not only in the workplace, outside as well, in your past life, everyone from teachers that I had at school, it's incredibly important.”</p> <p>“I can't stress enough how important it is to have role models and people who keep you going when it all seems quite overwhelming.”</p> <p>“If you're just pairing people up and leaving them to get on with it then that's not going to be enough and I think the very best mentoring and positive action schemes that I've been involved in have been more than that”.</p>	
Identified issues	Suggested solutions
<ul style="list-style-type: none"> • Visibility in respect of BME role models in relation to marketing for recruitment was very important. • This could be more advantageous to bigger firms who may have more BME employees who could act as visible role models. • There may be a lack of awareness in firms on how to effectively raise the profile of their existing BME employees. • Mentoring is linked to promotion and career progression. • Generally, there is a lack of structured mentoring in firms 	<ul style="list-style-type: none"> • New recruits should be explained ‘the rules of the road’. • Firms should look at effectively involving role models from BME backgrounds (existing employees) in recruitment – for example by using positive images of role models in advertisements and the firms website as well as using positive statistics on workforce diversity. • Solicitors identified as mentors should be trained to be mentors – not just elected, volunteered or nominated into this important role. • Where firms do not have existing employees who could offer

<p>(although some firms are doing this well).</p> <ul style="list-style-type: none"> • There can be resource issues attached to mentoring which need to be addressed by firms. 	<p>mentoring, there should be an opportunity to signpost recruits to other organisations.</p>
---	---

ACCESS TO INFORMATION AT THE RIGHT TIME
<p>"I didn't realise that by applying to this university, I'll then be offered a training contract at this type of firm."</p> <p>"It's actually hitting the younger level, maybe it's not even at undergraduate level, perhaps it's at school level, where people aren't aware that going to a, I say 'wrong' university, but for purposes of getting into a City law firm that could really kill their chances."</p> <p>"There are so many people applying for work experience it's usually the people with contacts who win through."</p> <p>[at the LPC provider] "they didn't really help the BME students and say 'look, you're going to have to take a different route or approach applications in a particular manner', they were never that hands on."</p> <p>"I asked him how he made partner because nobody tells you 'you need to do X and Y' and all of a sudden it all clicks together, you know... or seeing what the other person has done because nobody actually tells you and you're scrabbling along and suddenly you wake up and think 'I've got this totally wrong and this is what I need to do', but by then it might be too late."</p> <p>"If you're from an ethnic minority background, you're being actually schooled straight from university that as an ethnic minority background you will be high street, City firms are out."</p> <p>"I didn't know when I did the LPC that if I chose the general route, which is what I did, that that would bar me from doing anything commercial."</p> <p>"You create your own ceiling where you don't even seek jobs in the big Magic Circle firms because you've already been told that your education and your background and the journey you've made to becoming a lawyer is not enough to be attractive to them."</p> <p>"Even before you start your A' levels, they need to know what you need to know in order to achieve these things, because right from age 11 or even 10, I wanted to be a lawyer and I went to the careers office, 'I want to be a lawyer' and there was no direction."</p> <p>"There was a guy who became a partner and he wasn't a particularly brilliant lawyer, but he played cricket for XXXX and these little tips almost where, they know how to get ahead and they know the things you need to do extracurricular-wise and what subjects are liked by the profession and so on. We're finding our way through the dark because no-one's actually feeding these little secret titbits of information through to us."</p>

Identified issues	Suggested solutions
<ul style="list-style-type: none"> • Importance of role models and mentors and getting them into schools at an early stage. • Education and outreach programmes should begin as early as possible – information can be useful to students at GCSE stage. • Important to use modern communication methods in order to get information to as many people as you can at the right time. 	<ul style="list-style-type: none"> • The Law Society should help to facilitate structured outreach work on all strands – schools/mentoring/careers. • The Law Society should organise a work placement scheme and act as a facilitator for firms. • Firms should utilise modern and innovative methods of communication – for example get the message out via Facebook or Twitter. • there should be an opportunity to signpost recruits to other organisations.

PROMOTION/ CRITERIA FOR MEASURING PERFORMANCE
<p>“My instinct is that if you’re of use to your firm then you are in a much stronger bargaining power or position.”</p> <p>“They are, at the end of the day, businesses, if you’re going to make a profit for them they’ll keep you on, regardless of your race, if you are going to make a profit for them that’s an incentive to keep you.”</p> <p>“I look at, what’s the criteria, what do I have to do to get to salaried partner, to get to equity partner? There’s no way you can know what do you have to do to get to a partner.”</p> <p>“If you don’t live in XXXX or XXXX and if you don’t play golf, you don’t stand a chance of partnership!”</p> <p>“There was a young lad who set up the IT system, he was made equity partner very quickly because he set up the IT system. If you’re never given that opportunity to do anything other than fee-earning, you’re never going to satisfy the criteria.”</p> <p>“I can see that there’s other solicitors who have qualified and moved through the firm, I’m not necessarily sure what the criteria are for that.”</p> <p>“A major criteria for becoming a partner is the amount of work you bring in and being able to service that work, regardless of gender, ethnicity, age, and those who are not bringing in any work or are not able to service it probably won’t make partner”.</p> <p>“I think within the legal profession there’s a habit of dangling carrots in front of you and I’ve experienced that in other firms and nothing actually materialises. I think you do need to see it in action, I personally do, for me to believe that, yes, there’s a chance for progression to take place.”</p>

Identified issues	Suggested solutions
<ul style="list-style-type: none"> • Importance of criteria for promotion to be linked to performance management. • The role networking with clients and other social networking can play in potential exclusion. • Importance of rigorous processes v ambiguity. 	<ul style="list-style-type: none"> • Promotion criteria should be linked to performance management. • Dissemination of information about promotion/progression should start from the beginning– even with newly qualified solicitors and be linked to performance management. • Solicitors should be informed and prepared for the promotion process ensuring consistency in approach and application of the process across all departments/ development centres. • Firms should provide feedback and coaching. • There should be no favouritism – the rules should be fair and transparent and then should be applied consistently – ‘rules are rules’. • There should be more transparency about the promotion criteria.

RECRUITMENT AND INTERVIEWING

“Partners are just recruiting miniature versions of themselves.”

“It’s through a course of interviews that you suddenly feel that you get on with someone, you’ve got similar views, you’ve got similar hobbies, you inevitably end up wanting to recruit someone like that if the only other benchmark is your academics.”

“It’s almost like box ticking, look what school did they go to, right, what university? What degree? And you’re immediately discriminating against so many people by doing that.”

“They said we should put our photo on the application forms so I said to them ‘is that so the black faces end up in the bin or what?’.”

“I’m the only Asian person in my firm and that makes me question, you know, I’m aware that I’m probably just the token Asian.”

“You hear stories of able, you know, Oxbridge black minority lawyers that were applying, some of them without particularly sounding ethnic names, and they’d go along for the interview and they’d have the same qualifications as someone who was white, but they were being turned down.”

“Just because you’ve got a first doesn’t mean you’ve got the adequate people skills to deal with clients.”

“I actually went to Cambridge... I think it was very clear to me that that in itself wasn't enough to guarantee that I was going to have a charmed life... I was still doing an awful lot of knocking on doors and people were still sceptical, I was a bit of a novelty,

but it wasn't a passport to an easier time at all and in some cases it was almost the opposite, you could get a bit of resentment from people who would look at your CV and go 'well, how come you've done that?'."

"You cannot tell who will do well in law firms merely from looking at the grades from high school."

"Why do we end up working for ethnic minority firms? It's because those guys hiring us are the ones who've pounded the streets and struggled to get to where they are, they might have a little bit of understanding and empathy with us, and that 's why, like you say, that's where you always end up."

"It seems to be minority firms for minority lawyers. I still do feel that there is, the Magic Circle has got a brick wall around it."

"It's much easier to downsize through a City or medium-sized law firm back into high street because, they've done the corporate thing, maybe had children and decided to cut their hours and it's much, much easier to go that way then it is to go up. I've seen that time and time again, and they find jobs. Why? Because of the kudos of where they've been.

"I was actually asked in my interview for the current job I'm in, 'well, the last two girls have left because they fell pregnant, you don't have any plans to have a baby soon do you?' I was actually asked that... There were so many things I could have done about that, but I thought 'you're giving me the job', you know? I'll take it and I'm going to pretend I didn't hear that.

Identified issues	Suggested solutions
<ul style="list-style-type: none"> • Perception of firms not being representative. • Importance of academic criteria. • Relevance of social/economic background in performance/ promotion. • Importance of extra curricular activities – how these can differ due to cultural differences and what's considered positive/negative? • Perception that firms recruit in their own 'image' – how can we go beyond this? 	<ul style="list-style-type: none"> • Cultural awareness training should be provided to relevant staff involved in shortlisting/interviewing and decision making. • Visible role models should be effectively used. • Recruitment panel's should be more diverse. • Mentoring programmes should be used. • There should be more partners on E&D Forums such as this form. • City Solicitors' Educational Trust and other similar programmes should be used for information as well as BPP recommendations