

Summary Note

**A roundtable to discuss ethnic diversity in the competition law industry**

**Friday 17 March 2023**

**What is the problem?**

**Across the profession**

- The perception of competition law as a 'specialist' area of law was flagged as an issue for diversity. This perception had the potential to discourage students from applying to the practice area, but it could also discourage those within the profession from identifying solutions to diversity issues.
- The competition practice area is particularly dependent on pre-existing networks, for advice, employment, representation and funding, amongst other things, meaning that access to those networks impact upon your ability to work in this practice area.

**Private practice**

- A number of attendees raised and discussed the issue of insufficient ethnic diversity at senior levels in the profession. Whilst ethnic diversity at the graduate recruitment level appears to be at a positive level, there is a significant drop after around 2-5 PQE, and a lack of diversity is particularly noticeable at senior associate and partner level.
- As an example of the above the following statistics from one firm were highlighted:
  - o 37.5% trainees in UK identified as Black, Asian or minority ethnic, but only 9.8% of partners in the UK identified as Black Asian or minority ethnic. Whereas,
  - o 60% trainees in UK identified as white, and 80% partners in UK identified as white.
- Many large private practices firms have significant diversity and inclusion (D&I) programmes that are delivered on a firm-wide basis. This often means that particular departments are unable to take their own D&I position or operate separately to this firm wide policy.
- One firm was cited as having a policy for the department that was separate from the firm's D&I policy and it was reported as being useful but also challenging to adhere to.

- One attendee questioned whether there is a problem with ethnic diversity particular to competition law, as opposed to other practice areas, and offered his own view that when compared to the other two practice areas in which he worked there were three particular issues which suggested there was a problem; the size of the practice area, the perception as a specialist practice area and the dependence on pre-existing networks.

### **The bar**

- A number of attendees discussed the available talent pool of barristers, highlighting that there are small number of chambers that attract most of the instructions and many of these are insufficiently diverse.
- The size of the competition bar was cited as a challenge for diversity by a number of attendees:
  - o Chambers often only recruit very small numbers each year, which makes creating diversity quotas difficult in a given year.
  - o Where the size of a particular group in question is small it can lead to apparently extreme or skewed data sets and make measurement and comparison difficult.
  - o At the point of instruction there is often only a small pool of barristers for solicitors to choose from. However, it was also noted that some chambers have more diversity – often where the set is e.g. more litigation focused than competition “specialist” set.

### **Students**

- There is a potentially high cost to candidates to choose competition law as often a masters is seen as a minimum requirement, there is particular level of CV building and networking required, and all of this is required for a relatively small market place of employers and positions. It may therefore be lower risk for students to aspire to other, broader, practice areas.
- Amongst students the awareness of what competition law involves is low.

## What could be done?

### Across the profession

- As a benchmark, gender diversity was cited as a particular success within the competition community and attendees wondered whether there was any lesson to be learnt from initiatives to improve this. It was suggested that gender diversity could have been caused by the prevalence of women studying languages in the past, when competition law was perceived as requiring languages and also considered a natural and 'safe' career progression from languages. It was further considered that it might be worth learning what subjects competition candidates were studying before joining the profession.
- The following successful considerations/approaches in seeking gender diversity in the wider profession were also considered:
  - o Stockholm's transport policy changes are a good example of policy changes that address specific challenges - Can we identify specific challenges and how they can be removed?
  - o Change is like compliance - it comes from the top - so, we should be asking; is this a board priority, and if not, why not?
  - o You cannot fish in an empty pond; a wider talent pool is required to enable talent to reach the top.
  - o Equity, not equality, should be considered.
  - o WomanAT has been very successful could be built upon.
- It was suggested by one participant that what can be achieved as a collective should be our focus, and that there were three things could be developed collectively;
  - o Data - you get what you measure.
  - o Quotas/Targets - could the Law Society identify targets that we could all aspire to?
  - o WomenAT - could firms collectively build on this success by creating the same for ethnicity?
- Targets and psychological support, for those who identify as diverse, should both be considered as important tools, according to one attendee.
- Education of the issues faced -for those not from a minority ethnic group - is important, according to another attendee. Reverse mentoring had been particularly useful.
- Conferences would benefit from panel diversity targets. Conference panels should also not be restricted to partners, but should be open to junior members of profession to widen the talent pool of choice.
- There are similar issues from an inhouse perspective ; their agency and buyer power were important considerations for the profession generally.
- Could the Law Society share the success stories from across the competition community to raise the profile of potential role models?

## Private practice

- Role models, mentors, sponsors and allies are all important tools to encourage diversity.
- Sponsorship should be distinguished from mentorship ; women have often been over mentored; a mentor talks to you, whereas a sponsor talks about you. We need both.
- The importance of work allocation to career advancement - consider whether work allocation could form part of the role of a sponsor; to make sure the right people were working on the right matters.
- One attendee suggested four particular areas of approach; culture, data, unconscious bias and accountability of leaders.
- One attendee highlighted that if you want partners' compliance with a particular course of action, accountability was key.

## The bar

- One attendee highlighted the work that was already taking place between the bar and the CMA, flagging particularly the networking events that had taken place in January 2023. The motivation for this was to encourage engagement with a more diverse range of barristers but also importantly to encourage engagement with simply a wider range of barristers.
- A number of attendees were in agreement that networking events for a wider diverse group of barristers with "competition" solicitors could be a positive course of action.
- The Law Society's competition conference could provide a good initial opportunity for networking between chambers and solicitors.
- In the competition bar it is typical for barristers to work in teams and it was suggested that not all members of those teams need to be competition barristers. Such an approach could create a wider pool of talent to choose from and also help to train more barristers in competition law. It was further pointed out that such an approach is not without its challenges, but remains possible.

## Existing Initiatives discussed

- [CMA Race Action Plan 2022 to 2023](#)
- [The Law Society's Race for Inclusion research](#)
  - o Looks at the barriers and experiences of Black, Asian, and minority ethnic solicitors.
  - o Identifies barriers to progression including:
    - lack of sponsorship and guidance
    - differential allocation of good work opportunities

- minority ethnic solicitors feeling that they do not fit in with the (predominately white) culture of the company
- a desire to raise issues around diversity and discrimination felt to be at odds with progressing to partnership
- Makes recommendations including to:
  - Monitor representation, retention and progression for different ethnic groups (and disaggregate the data)
  - Set targets for senior partners/leaders and for key points in the pipeline
  - Monitor work allocation to ensure a more equitable distribution of development opportunities
  - Put in place more systematic approach to partner selection
- [Aspiring solicitors](#)
- [Breaking barriers](#)
- [Womenat](#)
- [30% Club](#)
- [The 1% Study](#)
- **'Say Gap'** - to encourage individuals to become spokepeople and advocates.

In addition:

- [Law Society's Diversity and Inclusion Framework](#)
  - Provides a roadmap for law firms to take a strategic approach to their D&I activity, avoiding activity that is reactive, short-lived or not properly resourced.
  - Sets out a 3-step plan for organisations to work through whether just starting out or making good strides and want to check progress and identify areas for improvement.