

## **Balancing the scales**

*A study into the under-application by women for appointment as Queen's Counsel*



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## Executive Summary

Recent surveys by the Bar Standards Board (BSB) (2016) have explored the experience of women barristers in relation to the Equality Standards that were introduced to address gender inequality in the profession. Although surveys have found that there had been some improvements within the profession, institutional barriers were still widely experienced by women. The BSB Equality and Diversity Committee (2016) highlighted the rate of access and progression of women in the profession as a concern, with statistics indicating that currently only 13 per cent of Queen's Counsel (QC) are female (considerably lower than the proportion of women across the profession as a whole). Additionally, statistics from recent QC appointments indicate that even though women applicants are more likely to be successful in the competition, the number of female applicants remain proportionately low. A report by The Bar Council highlighted that if current trends continue, the proportion of women QCs is unlikely to ever mirror the number of women entering the profession.

### The study

The purpose of this study was to gain an in-depth understanding as to why this under-application of women exists, and what recommendations could be made as a response to mitigate it.

The study was focussed on two main questions:

1. Why are a far lower proportion of eligible women than eligible men applying for appointment as QC?
2. What options are open to the QCA and the professional bodies in response to this?

### Methodology

A total of 34 participants (5 female QCs, 4 male QCs, 22 women junior barristers and 3 male junior barristers) were interviewed for this study. Data was collected through semi-structured interviews with questions based around: views of the QC status, the application process, the barriers they may have experienced in their career affecting their decision to become a QC, and recommendations for the QCA to help encourage more women to apply. A roundtable was also conducted with a range of relevant stakeholders to explore the validity and feasibility of the data-driven recommendations for the QCA.

## Results

### *Views on the QC status*

Although participants mentioned that the QC system had changed for the better, there were thoughts that further changes in the system could make it fairer for women and other minority groups. Views on the QC status differed among participants dependent on what stage of the process they were in (QCs reporting the prestigious status and the ability to undertake high profile in comparison to those who had made the decision to not apply voicing their disillusionment with the structure). There were mixed views regarding whether becoming a QC would help with both an individual's work-life balance and financial status.

### **The Application Process**

A number of barriers were identified as to how the application process was a barrier to achieving QC status. The requirement to have **12 cases of substance** which demonstrate the competencies needed to become a QC as a barrier for applying with the **two year boundary** was especially difficult for women who had to take time out of the profession for caring responsibilities. Obtaining **judicial references** was a distinct barrier for women, who often mentioned anxiety or low confidence to approach the judges for supporting statements. Participants reported that the number of judicial references also unfairly outweighed the number of references from clients or solicitors. The **selection panel** was discussed predominantly by QCs, suggesting that the panel should be more representative of the QC applicant pool, reducing a cloning effect bias. The **lengthy application process** was a perceived barrier for many participants. A number of participants reported taking time off work in order to complete the form (having financial implications), whereas others reported having to fit filling in the form around childcare commitments, making an already difficult process more stressful and challenging, creating a bias against women who may experience 'time poverty'. The **financial cost** of applying was also discussed, not only in relation to the application fee, but consultancy costs that some participants used to help their application. Additionally, many women highlighted additional costs as a result of having to arrange childcare so they had time to complete the application form. Participants did still perceive a **lack of transparency** in the process, remarking clarity regarding what made a 'good applicant' was still necessary.

### **Wider Barriers**

The data reported barriers which occurred before the application process that should be considered when discussing the under-application of women to QC status. The **role of chambers** was discussed in reference to the support that participants received (e.g. provision of role models/mentors), and how progressive certain chambers were with regards to their equality, fairness and maternity policies. **Clerks** were reported as an influencing factor, both through work allocation and the level of support that barristers received, as they often provided 'the nudge' to encourage more women to apply for the QC status. The **nature of the profession** provided challenges as to women applying, for example the self-employed nature of the profession leads to a lack of any performance structures or feedback. Women (especially with children) found important networking events difficult to attend, as evening sessions clashed with childcare responsibilities. Participants also discussed that certain practice areas, especially family law, had both financial and case-type implications affecting decisions to apply for QC status. There was an underlying notion that **confidence** was a factor as women were viewed as being more self-critical and underestimated their performance capabilities. Women discussed that **career-breaks and maternity leave** often meant having to make decisions regarding how to pursue their career in combination with childcare; the nature of the profession meaning that doing both could be difficult. There was some evidence to suggest that women still perceived **discrimination**, and in some cases harassment, throughout their career but it was now demonstrated in more subtle forms.

### **Discussion**

Although women who apply for QC status now have an increased likelihood of achieving it, the gender disparity at this level of the profession is likely to continue for the foreseeable future. Although there was recognition that the most recent changes in the application

system (making it increasingly merit based) had been effective, there were calls for further changes to be made to make the system fairer still. However, it is clear that further system wide changes also need to be considered in conjunction with the relevant stakeholders to help reduce the level of attrition that occurs before individuals reach the application stage.

A number of recommendations have consequently been made with an aim to improve the proportion of women applying for QC status.

## **Recommendations**

### ***Review the eligibility and selection process***

There are a number of areas to take into consideration including to: reduce or remove the number of cases required for QC status; extend the two year boundary for case work; amend the guidelines to include other forms of advocacy; improve the transparency of the process (e.g. including the weighting of assessment methods); reduce the number of judicial references and to encourage judges to express their willingness to support applications; and, improve the diversity of the selection panel.

### ***Develop an equality and diversity strategy***

The QCA, with assistance from other stakeholders including the Bar Standards Board, the Law Society, the Bar Council and individual chambers, to develop and adopt an Equality and Diversity Strategy which sets clear aspirations for improving diversity.

### ***Amplify female QC role models***

The QCA, alongside other stakeholders, to amplify a pool of women QC role models from a range of backgrounds and develop a targeted outreach and marketing programme to drive an increase in applications from women.

### ***Developing existing mentoring schemes***

The QCA, providing assistance to the, relevant stakeholders, should promote, develop and help to evaluate existing mentoring schemes and networking opportunities for women.

### ***The QCA to develop application tools and resources on its website***

The QCA should allocate resources to improve the visibility and transparency of the application process on its website, with the aim to promote the QCA's drive to encourage a higher number of applications from women.

### ***Systems change***

The QCA to work with other stakeholders to increase the pool of women junior barristers in the pipeline to reach the senior levels to qualify for QC status.

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## 1. Introduction

There is an increasing body of evidence to show that having a workforce that has equality and diversity representation and is inclusive can increase organisational effectiveness, innovation and lead to improved wellbeing and satisfaction. It is therefore important for all professions to seek to ensure that equal opportunities exist. However, discrimination and unfair treatment does still exist in the legal sector, and there is recent evidence to suggest that this can pose a number of challenges.

### 1.1. Women at the Bar

A recent survey by the Bar Standards Board (BSB)<sup>1</sup> was undertaken to explore the experience of women at the Bar, as there had been concerns regarding the extent to which women were represented in the profession. The BSB introduced the Equality Rules in 2012<sup>2</sup> with an aim to improve the progression and retention of women at the Bar, and address the issue of gender inequality at the Bar. The requirements in the handbook, which apply to self-employed barristers in multi-tenant chambers, include: producing an equality policy action plan; ensuring that chambers selection panels are trained in fair recruitment; conducting diversity monitoring and data analysis; appointing an equality and diversity office; and, producing a range of reasonable adjustment and anti-harassment policies. The results of the survey found that although there had been some progression and improvements within the profession (e.g. 19% of chambers were fully compliant and 31% of chambers were compliant with the rules although needed some improvement) there was still evidence of institutional barriers that were widely experienced that affected the retention and progression of women in the profession, and that further action was needed in this area.

In 2014, a report was commissioned by the Bar Council's Equality, Diversity and Social Mobility Committee to gain an understanding of when the profession might reflect the population profile of England and Wales. The resulting *Momentum Measures*<sup>3</sup> report looked at datasets over a historic period to establish when we could expect parity between different groups (this report focussing specifically on gender and ethnicity). The report highlighted some striking key findings including:

- The number of working-age barristers is approximately three times the number of barristers with a current or recent practising certificate.
- There had been a clear movement towards establishing gender equality at Call to the Bar, with an approximate 50:50 balance being achieved in 2000, and this having been maintained ever since.
- There is no evidence that women are under-represented in the attainment of pupillage.
- Current trends suggest that with the present model of practice at the Bar, a 50:50 gender balance among all practising barristers is unlikely ever to be achieved.

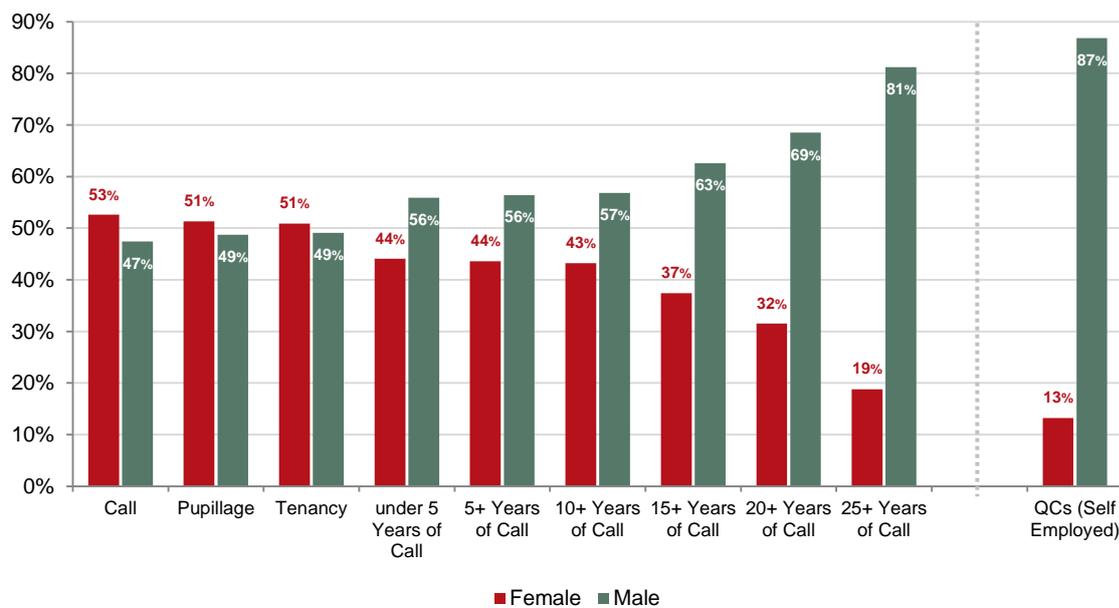
<sup>1</sup> BSB (2016). *Women at the Bar*. Available at: [https://www.barstandardsboard.org.uk/media/1773934/women\\_at\\_the\\_bar\\_-\\_full\\_report\\_-\\_final\\_12\\_07\\_16.pdf](https://www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf) (accessed May 2017).

<sup>2</sup> See: <https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-and-diversity-rules-of-the-bsb-handbook/> (accessed May 2017).

<sup>3</sup> The Bar Council (2014). *Momentum Measures: Creating a diverse profession. Summary of Findings*. Available at: [http://www.barcouncil.org.uk/media/378213/bar\\_council\\_momentum\\_measures\\_creating\\_a\\_diverse\\_profession\\_summary\\_report\\_july\\_2015.pdf](http://www.barcouncil.org.uk/media/378213/bar_council_momentum_measures_creating_a_diverse_profession_summary_report_july_2015.pdf) (accessed May 2017).

The reasons provided for these findings included women being less likely to move from Call to practice, and that there was a higher attrition rate when in practice. In fact, the report continued to argue that with the rate of attrition, the Bar would require a significant imbalance towards women at Call to achieve a greater balance of women in practice. With the current rate, it was suggested that a 60:40 split in favour of women at Call would be needed to establish improved gender quality in practice.

**Figure 1: Gender composition of the Bar by length of Call**



Source: Bar Standards Board data (1 December 2016)

A report for the Bar Council<sup>4</sup> provided some explanation as to why this attrition occurs. The most significant challenges reported by the women included being pushed into certain types of work, a point also noted by Vaughan<sup>5</sup> who discussed how women barristers were segregated into certain areas of practice, most notably being more likely to specialise in Family Law and far less likely to specialise in Corporate Law (which is also highly remunerative). Legal aid cuts in these areas have also decreased the income of women who practice in them and have made their practices less sustainable.

The Bar Council report also highlighted the struggle that women had within individual chambers with the difficulties in power and gender struggles, especially in relation to policies regarding rent arrangements and their flexibility with childcare arrangements. The lack of flexible working hours which prevented some women from working longer hours, making childcare less affordable and inaccessible was also cited as a barrier. This last issue was thought to have a significant impact on the level of attrition as women left the Bar to have children and would not return. The report also mentioned a number of instances where women were subject to inappropriate comments from men, an issue not helped by a reported lack of confidence in situations where there were remnants of a male-led culture. Other factors that led to barriers in progression included: a women's lack of confidence in

<sup>4</sup> The Bar Council. (2015). *Snapshot: The Experience of Self-Employed Women at the Bar*. Available at: [http://www.barcouncil.org.uk/media/379529/snapshot\\_-\\_the\\_experience\\_of\\_self-employed\\_women\\_at\\_the\\_bar.pdf](http://www.barcouncil.org.uk/media/379529/snapshot_-_the_experience_of_self-employed_women_at_the_bar.pdf) (accessed May 2017).

<sup>5</sup> Vaughan, S. (2016). 'Prefer not to say': diversity and diversity reporting at the bar of England & Wales. *International Journal of the Legal Profession*. Available at: <http://www.tandfonline.com/doi/abs/10.1080/09695958.2016.1181076> (accessed May 2017).

applying for more senior roles (e.g. QC or judicial); challenging clerks and other senior colleagues in practice development and work allocation; the lack of female role models to encourage and support other women and to demonstrate women can be successful at the Bar; and finally, the problem of networking, which was becoming more important with a larger number of barristers competing for the same work.

## 1.2. Progression to QC

The high level of attrition and concerns about lack of progression for women at the Bar, have become a topic of much debate. In her article *'Raising the Bar'*<sup>6</sup>, Stevens-Hoare QC noted the reasons that Lord Neuberger provided for why this challenge is important and why there is a duty for all stakeholders in the profession to ensure equality and diversity at all levels. The arguments included:

- A lack of equality and diversity can result in a reduction of excellence as there is a failure in selecting from the whole talent pool;
- If groups in society see themselves as being unrepresented in key sectors and professions, then this may reduce their trust, confidence and fairness in the public system. As Barristers and solicitors occupy critical leadership positions and are the feeder professions for QCs and the judiciary, it is therefore important equality and diversity is maintained to ensure fairness and confidence in the legal sector is perceived.

Vaughan reported that progression at the Bar appeared in two main forms: Barristers can take silk and become known as QC's, or join the judiciary. Becoming a QC is seen as a marker of professional excellence, as to become a QC a barrister must go through a rigorous selection process. Consequently, the QC mark is seen as recognition in the profession that a barrister has reached the highest standard of an advocate.<sup>7</sup>

However, the process has not always been perceived as rigorous or meritocratic. Vaughan noted that there had been a change in the system to becoming a QC, from what was seen as the 'nods and winks of an informal old boys club', to a more independent process, through an application process to the QC Appointments. Blackwell<sup>8</sup> charted the changes in the process through which barristers were appointed to the rank of QC. The article discussed that in 2004, there was a change to the appointments process as a result of the much criticised previous system, where information provided by applicants was minimal (usually limited to biographical details and earnings) and appointments were made on the advice of the Lord Chancellor, who undertook what has been termed as 'secret soundings' from other judges and senior barristers or civil servants.

A number of criticisms and concerns were placed upon the system, including how the process discriminated against women, ethnic minorities and those not well connected with the judiciary. Additionally, the process was considered to be opaque with regards to the criteria needed to become a QC, as recommendations for appointment were predominantly based on strength of support received through the secret soundings and private

<sup>6</sup> Stevens-Hoare QC, B. (2014). *Raising the Bar*. Available at: <https://www.newlawjournal.co.uk/content/raising-bar-0> (accessed May 2017).

<sup>7</sup> The Bar Council (2012). *Barristers in the international legal market*. Available at: [http://www.barcouncil.org.uk/media/168701/barristers\\_in\\_the\\_international\\_legal\\_market\\_2012.pdf](http://www.barcouncil.org.uk/media/168701/barristers_in_the_international_legal_market_2012.pdf) (accessed May 2017)

<sup>8</sup> Blackwell, M. (2015). Taking Silk: An Empirical Study of the Award of Queen's Counsel Status 1981-2015. *The Modern Law Review*, 78, 971-1003.

consultations. Thus, the application process was criticised for inhibiting diversity, as the system was at risk of producing a cloning effect, in which white male applicants from a specific background were at an advantage through the selection bias of those involved in the secret soundings, appointing those like themselves.

However, since 2004, the appointments process has changed, as it was announced that the Lord Chancellor would no longer be involved in the assessment and selection of QCs, but QCs would be selected through a new system developed by the Law Society and the Bar Council, applying modern selection methods to ensure women, solicitors and ethnic minorities are assessed equally. The system now appoints QCs through an independent and self-funding panel, who operate a competency-based selection process, and recommendations are made on how the evidence provided by applicants perform against the relevant competencies.

### **The assessment and selection system<sup>9</sup>**

Applicants are assessed against five core competencies (A-E). These include:

- A. Understanding and using the law;
- B. Advocacy;
- C. Working with Others;
- D. Diversity; and,
- E. Integrity.

To demonstrate these competencies, the Panel looks for about 12 cases of substance from the past two years. If an applicant cannot provide 12 cases of substance they must provide some justification, however they may be allowed to go back to an additional year of practice, for example if they have taken career breaks. Applicants are also expected to list at least eight judicial assessors, six practitioner assessors, and four client assessors to support their application for evidence of excellent advocacy skills and in support of evidence of the various competencies in the framework. Allowances can be made if an applicant is unable to provide the number of references required, if there is a good reason for the shortfall provided. The competition is overseen by a Selection Panel and the Secretariat, which are independent of the General Council of the Bar, Law Society, and Government.

Two members of the Panel (one lay person and one legally qualified) review each application form and the assessments from judicial, practitioner and client references in order to create a preliminary selection of the applicant pool based on the evidence supplied. Only those applicants that were deemed by the Panel to be potentially appointable are invited to interview (again by one lay and one legally qualified member). The remaining applicants are notified that they were unsuccessful. The outcomes of the interviews and the decision of who should be appointed as a Queen's Counsel are made by the entire Panel. At this stage, unsuccessful applicants are given personal feedback on their performance. The final selection of candidates that were successful is then passed on to the Lord Chancellor.

In 2017, the mandatory application fees were set at £1,800 (+ VAT) and an additional £3,000 (+ VAT) in fees for those that are appointed. The application process opens in February for approximately two months and the outcomes are usually announced in December.

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<sup>9</sup> Accurate as per the 2016 competition

Despite this independent selection process being introduced in 2006, recent statistics have suggested that the problem of under-representation of women continues, and the rate at which women are becoming QCs is still a matter of concern. Blackwell undertook research with the aim to assess whether the changes to the QC appointments system had improved the prospects of specific groups in the profession that were disadvantaged by the previous system (e.g. women and ethnic minorities). The analysis of data used in the study, comprising of 11,453 barristers working in 138 chambers (or sets) between 1981 and 2011, found little change in the situation for women appointments. Female barristers with an Oxbridge education, working in certain small, London-based chambers were more likely to be appointed as a QC than female barristers without those characteristics, but the models found that any male barrister was more likely than a woman to be appointed. The findings were presented in the context of a discussion of lower rates of application in women; however, no material was presented to explain why women are less likely to apply.

The BSB provided recent statistics regarding women in the profession. The report highlighted that in 2015:

- 33.5% of the self-employed profession were women (although this had increased from 32% in 2010);
- 45.8% of the employed Bar were women;
- Only 15% of heads of chambers were women; and,
- Only 13% of QCs were women (noted to be considerably lower than the proportion of women across the profession as a whole).

The report commented that access to and progression in the profession was a concern. In addition to this, recent statistical evidence from QC Appointments indicate that although women applicants are more likely to be successful in the competition (in the latest round, the figures were 52.1% of women versus 43.4% of men), the number of women applying remains proportionally low (only 20.3% of all applicants were women in 2016, in comparison with a professional baseline of at least 30%). The Bar Council, in the Momentum Measures report, also provided the sobering statistic that based on current levels of Call to practice and the consequent attrition rates – in respect of practising barristers of more than 15 years of Call and of Queen’s Counsel – the profession will not achieve gender balance in the foreseeable future.

### 1.3. This study

As a result of these findings, the purpose of this study was to gain an in-depth understanding as to why this under-application of women exists, and what recommendations could be made as a response to mitigate it. The study was focussed on two main questions:

1. Why are a far lower proportion of eligible women than eligible men applying for appointment as QC?
2. What options are open to the QCA and the professional bodies in response to this?

## 2. Methodology

The main objectives of the research included: to identify the factors that influence women's decisions to apply as QC, including the potential drivers of and barriers to female participation, and to engage directly with applicants to understand their own personal journey and experiences of the application process, including any motivations, fears and personal perceptions. The project aimed to develop a set of recommendations for the QCA to help encourage more women to apply for QC status.

To achieve these aims, a qualitative approach was necessary to gain an in-depth understanding of the factors and the process that individuals must undertake to become QC, and a 360° sample was required with individuals at various stages of their career, and of both genders to form a fuller perspective of the decision making process. A roundtable was also held, to discuss the viability and feasibility of the data driven recommendations.

### 2.1. Sample

A total of 34 participants were interviewed for this study using a purposive sampling approach, the breakdown of which can be seen in the table below:

	Female	Male
Queen's Counsel	5	4
Junior Barrister	22	3

All the female QCs were white British or white other; amongst the female junior barristers, there were 18 white British participants, 2 white other participants and 2 BME participants. Among the males, all 4 QCs were white British, 2 of the male junior barristers were BME and 1 was white other. There was no filter for age or ethnicity, but participants were stratified by disciplinary area. Participants were recruited through a Bar Standards Board data set of registered barristers who had indicated willingness to participate in research.

The sample attempted to capture the views of three groups to form a '360 degree' view of the application process, including the decision-making processes of the participants and their reasons for them. Thus the sample included:

- Those approaching the 'prime time' for applying (between 10-15 years of Call);
- Recent appointments as QC; and,
- Non-applicants (those who had decided not to apply).

### 2.2. Data Collection and analysis

Data was collected through semi-structured interviews that were conducted either face-to-face or over the telephone (to the convenience of the participant). Interviews were recorded with the participants consent to aid transcription so a full and accurate record of the interview could be held. Where possible, two researchers were present at the interview to ensure reliability across all the interviews undertaken. Interviews lasted on average around 60 minutes. The interview questions were based around the participant's views of the QC status, their thoughts regarding the application process (the realities of the process for those who had been through it, and the perceptions or understanding of the process from those who were considering becoming a QC, or had considered it in the past in the case of non-applicants), what barriers they may have experienced in their career affecting their decision

to become a QC, and what in their opinion the QCA could do to help encourage more women to apply (see appendix for full interview schedules). The interviews were transcribed and analysed thematically using NVivo software. The coding was reviewed to ensure the consistency. The research was approved by the University of Lancaster Research Ethics Committee.

### **2.3. Roundtable**

After the data had been analysed, a roundtable was conducted with a range of relevant stakeholders to discuss the data-driven recommendations for the QCA. The stakeholders' feedback from the roundtable assisted the research team in developing robust recommendations in this final report. It would be remiss not to mention that our findings looked at the wider legal system, and barriers were also discussed at chambers and at societal levels. Due to time constraints, it was beyond the scope to discuss these recommendations at the roundtable. However, they have been included in the final report.

### 3. Views on the QC status

In general, views regarding the QC status differed among the participants interviewed for the study, dependent on what stage of the process they were in. With regards to how the QC status was viewed, a number of key themes emerged, which will be discussed in further detail below:

- The QC title
- Work-life balance of a QC
- Financial implications of becoming a QC
- Diversity of QCs

#### 3.1. The QC title

The QCs that were interviewed were positive about the status of becoming a QC, highlighting that it was something that they had worked hard to achieve. Thus, they felt they deserved the title, and it meant that they were able to work on more prestigious cases that involved more challenges and an in-depth understanding of specific legal issues.

*“The work is more high profile, more interesting, more challenging.” (QC)*

For the QCs, having the status was an opportunity to show that they were accredited in the profession. It was, in many cases, the first method of appraisal that they would have received as a barrister, and consequently, achieving the QC status was seen as a way to measure performance, gain recognition for themselves and from their peers and clients. This view was often re-emphasised by junior barristers who had made the decision to apply to become a QC and reported the role of the status as a performance indicator as a motivator to undertake the application process:

*“I think that the QC status is great and really important. You need a way of differentiating between those who are really capable at their job. Although, I am not saying that all QCs are great, but you know that when you hire a QC, their strategy and preparation will be out of this world. The public needs to know that they are getting someone who really knows their stuff, and who are passionate about the job that they are doing.” (Junior Barrister)*

Those voicing a positive view of the QC title did so in reference to the recent changes that had been made in relation to QC selection. A number of participants noted how the QC title was moving away from what had been referred to as an ‘old boys’ network’ to a system that was now based on thorough criteria and more rigorous in its approach.

*“When I started at the Bar, I was critical of the status, thinking it was the old boys’ club and very non-transparent. On the whole now, this has changed and I have decided to apply and I am impressed how thorough the criteria are. It is now a very rigorous and objective system.” (Junior Barrister)*

Respondents expressed that the new system (although still flawed, which will be discussed in the next section) still held its prestige and was moving in a more positive direction. Thus, although the system was not perfect, for some, it was viewed as almost necessary for career progression:

*“I regard it as an important hurdle that you have to cross if you want to stay in the game...it’s a process that you have to get through to be seen as the gold standard. You have to get on with it.” (Junior Barrister)*

However, for those who had decided not to apply, the view of the QC status, whether there had been any changes in the fairness of the system, and whether becoming a QC was actually a mark of quality was still debatable. For some, there was disillusionment with the social structure and the hierarchy of the system, with individuals still alluding to the process selecting those with ‘male-type qualities’ in the profession, and others perceiving there were remnants of a ‘it’s not what you know, but who you know’ system.

*“I think the process is still recruiting qualities that are inherently male...The system is still a taboo system which is illogically giving people a way to get paid twice as much. The whole concept comes out of a hierarchal system when people are given titles, and we have to respect them.” (Junior Barrister)*

Others also questioned whether becoming a QC was actually a mark of quality, with participants reporting cases where non-QCs had provided better counsel in cases, and some questioning why certain individuals had successfully made it through the process in comparison to others who in their opinion were of better quality and were excellent advocates. For these participants the system was considered to be opaque in the selection criteria, and not a true mark of excellence.

*“There is still a perception that becoming QC is not merit-based and there is a disconnect in those applying and those succeeding...Nobody knows why those that succeed do and those that don’t. People are questioning if it’s merit-based. Some clarity would help. It’s not just a perception. There is a reality that some people get it who do not deserve it.” (Junior Barrister)*

A number of participants had made the decision not to apply for QC. There were a number of factors that led to this decision being made, be that confidence both in the system and their ability; whether the status would enhance their practice; and for some it was just not an element of their personal ambition (especially if they wanted a family). However, for a minority of participants, there was a concern that the system was still unfairly balanced against women:

*“The odds are stacked against me and I feel I am in a more secure position doing what I am doing now. It is not a fair competition. The risks are too high of me losing my dignity. It is framed as a competition. I don’t believe that I have equal opportunities as a woman. It’s not a fair competition. Women are in a worse position than our male peers.” (Junior Barrister)*

### **3.2. Work-life balance of a QC**

A constant comment that was made throughout data collection was that those who worked in the legal profession worked long hours, and there was little opportunity for obtaining a successful work-life balance. For some QCs, becoming a QC meant that their work-life balance had improved, as there was greater choice in the cases they would accept, and they could work their cases around other commitments (most notably family or childcare).

*“I now choose to work in certain areas so that I can work around the children. I try not to work at the weekends and I took a month off over the summer holidays, and that was fine.” (QC)*

One of the reasons for the improvement in work-life balance was as a result of taking on a more supervisory role, and being able to employ junior barristers to help in their cases. Thus, some QCs noted that they still had a lot of work to do, but the nature of the work had differed which allowed for better flexibility.

*“It hasn’t changed life-balance that much, it is just as a silk we can use juniors a lot more. So I work more now in a supervisory role. This is one of the major benefits and I am very lucky I am able to work from home.” (QC)*

A small number of QCs also reported that there had been little change in their work-life balance, as they were still working on many cases (and more challenging cases), and since becoming a QC they had to re-market themselves to new clients. Additionally a number of QC commented that as they had only recently achieved QC status, it was too early to determine the full extent of becoming a QC for work-life balance.

For those considering applying for QC, there was a perception that becoming a QC would improve their work-life balance and this was viewed as a positive reason for undertaking the application process. This was especially evident for those who had childcare or other caring responsibilities. Although there was recognition that the work would be still be challenging and the nature of the role required high level advocacy, having choice and flexibility over what you did was an important factor.

*“I would see a lot more of my family if I became silk. I would have less work and so it is making me consider applying.” (Junior Barrister)*

### **3.3. Financial implications of becoming a QC**

Both those recently appointed to QC status and those considering applying discussed the financial implications of becoming a QC. As with work-life balance QCs often reported difficulties in providing a true assessment that taking silk has had financially as they had not been a QC for long enough. Some QCs anticipated a short-fall in their first few years as a result of having to re-market themselves to new clients to develop a client portfolio, and as a result they could have large gaps between cases where they were not earning at all.

*“With silk there are more gaps and bigger cases. If you have the contacts that see you as someone to instruct with silk, hopefully there would be a good level of work, and you will maintain income or increase it. If your contacts don’t see you as silk material then that is where there are problems.” (QC)*

However, some QCs mentioned that even if they did have a reduction in cases at the beginning, they were not concerned that this would be usual in their future, as they became well established, and that as they had become a QC they would be able to charge more for the services that they provide.

*“There can be financial pluses and minuses when becoming a QC...but my hourly income quadrupled overnight, so even if you do work less, you get paid a lot more.” (QC)*

However, those considering applying for QC status often discussed the concerns they had with regards to income. A number of participants mentioned that becoming a QC would be financially risky, as they perceived due to the increase in charges they would effectively be priced out the market. This was particularly relevant for participants who worked in predominantly legal aid work (e.g. family and crime). For interviewees who worked in more lucrative areas, such as the commercial bar, their concerns regarding financial implications were limited as they knew they would always be in the market and have positive returns.

*“There is a real risk that your workload might diminish, and your normal client base may not be willing to pay. You may have to compromise your fees to get the workload.” (Junior Barrister)*

Another factor related to income was whether there was a need for further QCs in certain specialisms, and whether this would just increase the level of competition which could have a negative impact on their income. In some cases, this was a high level of risk, both in terms of their progression in the field, and their income.

*“The difficulty that I see is that there is not an enormous amount of work for skills in this area, and so I would not get the work. I’ve been through enough changes of income after having children, and this is just another barrier. I am just not keen to run a practice where there would be some financial pay cuts.” (Junior Barrister)*

### 3.4. Diversity of QCs

Many participants discussed the level of diversity among QCs, not just in terms of gender, but in relation to ethnicity and sexuality. QCs expressed concern that not having gender equality among QCs was disappointing, and although there were signs that the system was improving, there was still a long way to go to reach the level playing field.

*“Things are improving for women becoming QCs, but it is still really, really off the mark...it is not good enough. Things still really need to be done to encourage women to apply.” (QC)*

Many participants were not aware of the statistics highlighting the gender diversity gap, however for those who were, there was an understanding that in the previous few years there had been an increase in the proportion of women applying achieving QC status, but there was still a need to focus on improving the levels of women applying. However, there was still the underlying notion that there was unfair competition and limited equal opportunities.

Some participants also described the level of gender disparity in conjunction with other minority groups. For example, although it was recognised that the gender diversity was improving, this was not the case for homosexuals, who were reportedly under-represented within the profession, with little focus regarding how this would be improved. Some participants mentioned that there was still a socio-economic disparity, and the QCA have to look more closely at education backgrounds, to ensure that those who went to a state school and were not Oxbridge educated were not at a disadvantage.

*“It is going really badly for those who went to state schools in comparison to those who did not. QCs who went to state schools are still in really low numbers.” (QC)*

Finally, a number of participants noted that specific BAME groups had not reached equal status among QCs, although those who had an awareness of current statistics acknowledged that the proportion of BAME people who applied and were successful had improved, and was more positive than the outcomes related to gender.

*“I still don’t think that it is a level playing field. There is a need for more BME people. We are really bad in the UK in comparison to the USA.” (Junior Barrister)*

### **3.5. Summary**

Although there was acknowledgement that the changes in the QCA system had led to some improvements, both in terms of how the QC status was viewed and the move to reduce the gender disparity, it was clear that those considering applying to become a QC still believed that improvements to the system should and could be made. Becoming a QC was generally associated with being viewed as competent and capable within the profession, however participants voiced concerns in their perceptions of the decision making process. The implications of becoming a QC for an individual’s work-life balance was unclear, however there were more underlying concerns about perceived financial risks. Participants acknowledged that there was still a need to improve gender diversity at QC level, however those interviewed also mentioned that other minority groups are also currently under-represented and should have some focussed attention.

## 4. The Application Process

It was clear that a factor leading to the under-application of women was the nature of the application process itself. It is important to highlight that both male QCs and junior barristers also mentioned how the application process poses a number of difficulties to them, however the results in this section will highlight the barriers that were perceived by the interviewees disproportionately affecting women barristers within the QC application process. These are discussed below.

### 4.1. Twelve cases of substance

Participants often discussed the requirement to provide twelve cases of substance which demonstrate the competencies needed to become a QC as a barrier for applying. This was of particular concern for women who had taken time away from the profession for health or family-related career breaks or other caring purposes. Having a break in practice was reported to negatively affect being able to show a track record in relevant cases, as some participants reported having to rebuild their clients on their return, and others reported that working mothers can miss out on getting the high level cases in their chambers if they have taken time out, thus adding to difficulties in achieving the number of cases necessary.

*“Here is the real problem for women in applying for silk – to apply for silk, you need something close to 12 cases...if you are a woman who has had a baby or worked part-time to look after children, [to] get 12 silk-type cases is very challenging. Women are still bearing the brunt of childcare on their career. A lot of women say, ‘I can’t apply because I only have 4 or 5 cases’...If you are a mother and work part-time, it is difficult to accumulate cases for a good application.” (QC)*

Some participants did mention that in the current QCA application form guidance, it does mention that if there are specific extenuating circumstances as to why twelve cases cannot be provided (i.e. maternity leave, caring responsibilities), then forms with fewer cases can be submitted, however explanations must be provided as to why this is the case. These participants recommended that this needs to be made clearer to reduce this barrier.

A number of interviewees commented that achieving twelve cases of substance may be difficult to achieve in certain practices. For example, participants reported examples where they had been working in extensive cases, resulting in knock-on effects on the number of cases they were able to undertake. Once again, in this circumstance it was argued that there needs to be a reasonable amount of flexibility showed by the QCA when considering the number of cases reported. Respondents also noted that the system does not take into account advisory work that occurs out-of-court, and reported examples where women had used their skills in settling out-of-court instead of putting their client through the trauma of court, where in a similar circumstance their male peers had taken the case to court when this may not have been the appropriate course of action. Other participants noted that the specialisms that barristers worked in had an impact on being able to supply twelve cases of substance as they may not reach the technical levels required:

*“Women in certain specialities may be less likely to be on the big cases that don’t raise the technical issues for the higher court that you need to apply. For example, it is nigh impossible to make the requirements as a family practitioner as most of the work is done in front of a district judge and not the higher courts.” (Junior Barrister)*

Finally, many participants questioned the need for twelve cases, the number being seen as an arbitrary figure, and many individuals would be able to show the range of competencies needed for being a QC in eight-ten cases, thus putting forward an argument that if you have evidence of ten brilliant cases, would two more add any extra value. Many respondents discussed how reducing the number of cases needed may make the application form seem fairer (especially for those who have had a career break), and reduce the barriers that are perceived for QC application.

*“It’s not a good idea to have so many cases. Just why is the number so high? It seems such an arbitrary figure... You have to break down the barriers that female barristers face.” (Junior Barrister)*

## **4.2. Two year boundary**

A related barrier to the provision of twelve cases of substance was the two year boundary for the application window during which the twelve cases had to be completed in. Both male and female participants reported that this restriction would be very difficult for women who had taken time out for maternity leave and thus presented a logistical challenge, and led to questioning whether it was possible to show the competencies required in the two years.

*“This is a challenge for women. If you have a double work and home life, then this sucks out all the time that you have, and it really leads you to question whether you can dedicate your time to becoming a silk in the two year boundary that is necessary.” (Junior Barrister)*

A number of participants highlighted that in the current QCA guidelines for applications, there is a concession for barristers who have had to take an extended career break during their application period, and that the window from which cases are chosen can be extended to three years. However, a few participants (predominantly women with children) felt that this was almost a justification of their right to maternity leave, and even with the extended three year boundary, the time that it had taken some participants to rebuild their practice meant that this was still a barrier for applying to become a QC.

*“You ought to, as a right, be able to choose cases from further back than two years. If you were a woman who took time off work for childcare, it really makes you justify this position.” (Junior Barrister)*

Extending the two year boundary was proposed by a number of those interviewed (both male and female) for this research and although it was argued that this could encourage more women to apply, there were associated challenges with this solution. The dominant challenge was related to obtaining the various references needed to support the cases provided, and whether referees would be able to remember the case, and the way in which the advocacy was presented. With the knowledge that references carry a substantial weight in the application process, being able to approach referees with the confidence that they will be remembered or able to support them (i.e. if they were already supporting other candidates) was an area of concern.

*“Now, extending it to be flexible for 3 years is a bit unreal. If you take one year out, then where does that leave you with both judicial and practitioner assessors?... If you are out of action for a year, then how will they remember you? If you have been out*

*for a year, the chances are that practitioner assessors are already supporting other candidates.” (Junior Barrister)*

There is actually no limit to the number of applicants assessors can provide references for, but this highlights that the perceived competition in the process can be a barrier to some women when applying.

### 4.3. Judicial references

Having to obtain judicial references was seen as a distinct barrier for women. Some of the women QCs who had been through the process did describe anxiety when approaching potential judicial referees, with major concerns that they would not be remembered, or for fear that the judge would refuse to provide the reference required. Participants understood the heavy weighting that judicial references had in the application process, and thus reported approaching judges with dread, and using a degree of advocacy with how they approached them.

*“Having to approach twelve judicial assessors is very difficult and very stressful. I felt like I was having to parade naked in front of the judiciary. You know, you send them an email to ask them to be a referee and sometimes you wait ages for a response. It is very stressful.” (QC)*

The male QCs interviewed did not voice the same hesitation or anxiety for approaching judges for their references. In these cases, it appeared that they had support from their chambers in both approaching judges informally before their application, during networking events, and in their formal approach during the application process. However, the fear of receiving a poor reference was expressed, as with their female peers.

Some participants recognised the purpose of seeking judicial references with the application form, so that potential applicants can demonstrate, from a variety of sources, that they have the skills and competencies to the required standard. The references would also give evidence to show they are a good leader, advocate, and peer. However, the fear of approaching judges was mentioned by those who were considering applying for the QC status as a barrier, highlighting that unless you had a good rapport with the judiciary, then being able to approach judges confidently was extremely difficult.

*“I have put off applying because of the nervousness of asking the judges for references. There is no system in place for going to judges formally, and so it can be very cringe-ful asking for references and personal recommendations if there are not formal methods of doing so.” (Junior Barrister)*

A further barrier in obtaining judicial references was related to the culture of the QC system itself and the perceived differences in how the ‘old boys’ system was in place. Respondents discussed concerns about the predominantly male judiciary and the feeling (from some) that there was still an unconscious bias by the judiciary in choosing like-for-like candidates and producing a cloning effect. Thus, some respondents felt that judicial references may not be evidence-based and fully support the skills they have displayed in court and there was an element of ‘distrust’ as to whether fair references would be made. A number of respondents perceived that ‘unfair’ references had been given of other barristers that had applied for the QC status in the past, which added to their concerns about applying and if the references

were indeed evidence-based or fair<sup>10</sup>. As a result, approaching judges was often viewed as presenting more difficulties than those from clients and solicitors who were also required as referees.

*“Approaching the judges is stressful. All the judges I had to approach were men, and that is why I found it difficult. Approaching the white men in power is intimidating, and having to approach them can be a barrier. I don’t know what it would be like if I were to approach a woman.” (Junior Barrister)*

An interviewee also alleged that informal power networks existed when approaching judges for references. They perceived that the current application process was not seen to eliminate those connections and allowed for nepotism to continue in the QCA system. Judges can consult other judges for “Broader Views” to comment on a QC applicant, including people who had not seen the applicant in court, but their views were still considered to be relevant. Assessments could be altered afterwards as a result. For this participant, this changed the view of the judicial assessments being merit-based and fair.

#### **4.4. The selection panel**

The QCA selection panel is responsible for reviewing and deciding on the list of appointees. Two panel members (one legal and one lay representative) at a time conduct the interviews with candidates who pass the first round of the application process. How the panel is selected, and whether the panel is fully representative of the Bar and those applying, was a topic that was discussed predominantly by the QCs who had been through the process. Some of the QCs highlighted the lack of diversity on the panel and that this could lead to an unconscious bias when selecting suitable candidates.

*“Diversity is one of my concerns at the Bar. There is a distinct lack of women on the panel, and in my interview I had two, white middle-class men who did not understand my perspective. There is nobody openly gay on the panel, one Asian panel member, and no-one else from other ethnic minorities....The QCA needs to sort out its panel.” (QC)*

There were also concerns about the suitability of the panel members and their ability to have a thorough understanding of the areas of law that the individual may specialise in. This was an issue that was also discussed at the roundtable, as participants there had experiences of inappropriate questions that were not relevant to their area of law.

*“It took someone I know 6 or 7 years to get silk because he was given a panel that did not understand his area of work. The work we do can be very technical, and maybe too technical for lay people to understand. I am worried about the lay panel member’s understanding of my area.” (Junior Barrister)*

Other participants who had just undertaken the application process also mentioned some inappropriate questioning they had from their panel, and consequently expressed their concerns about the fairness of the system.

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<sup>10</sup> It is important to highlight however the confidential nature of the information collected throughout the assessment process, including references.

*“In my panel interview, I was asked a question about my work-life balance. There were no women on this panel and I just feel that if I was a man in this situation, I would not have been asked this question.” (Junior Barrister)*

It would be remiss not to mention that other participants noted that they perceived the panel to be more diverse than it had been previously, with others discussing the positive experience of their interview, including a wide range of questions, and having a good understanding about the need for diversity throughout the system.

#### **4.5. Lengthy application process**

Participants spoke about the length of the application process in two different ways:

- How long the whole process from submitting the application to the final outcome was; and,
- How long it could take applicants to complete the actual application form.

##### **4.5.1. The length of the whole QC application process**

A dominant theme from individuals in the research who had experienced the whole process often described it as stressful, lengthy in duration, and was dubbed by some as the ‘world’s longest job interview’. As a result, participants discussed experiencing anxiety when waiting for the results of the various stages in the process and the fear of having to pick themselves up again at the end of the process if they were unsuccessful. They argued that this could be viewed as a barrier to potential candidates as it was off-putting, tiring and a daunting process.

*“The application process in itself was awful...it is a very long and drawn out process and you have it hanging over your head from April to February the year later. It’s nearly a year long process.” (QC)*

Some participants understood that the time taken to cross-reference the information provided in the application form, is a major factor as to why the process does take such a long time, however even with this understanding, they also argued that the process needed to be sped up to remove this barrier.

##### **4.5.2. The application form**

Completing the application form was overwhelmingly perceived by all participants as incredibly time-consuming and difficult to fill in, and in many ways was a potential barrier for women considering becoming a QC. Participants described having to fill the application form around their work and other commitments (for women this was predominantly childcare), resulting in an already difficult process being even more stressful and challenging.

*“For me, the process of becoming a QC is not about having the skill to be a silk, but getting through the process. At the moment, I am just congratulating myself at completing the application process. You know, filling out the 60 page application form...preparing for the interview...I am just saying ‘well done’ for getting through it. For a woman, it can be particularly challenging.” (Junior Barrister)*

Participants reported a range of times for how long it took to complete the form (from one week until a month), and there were a number of factors that led to these differences. Some respondents discussed taking a week off work specifically to spend time on the form which

although it meant the process was shorter, they did lose their income due to the self-employed nature of the profession. One participant highlighted that the only benefit of being on maternity leave for their career was that they had the time to complete the application form, although this did mean that they still had to fit it around childcare commitments. In this way some participants viewed the process as being biased against women who may be experiencing a 'time poverty' through trying to maintain their practice, continue with their childcare responsibilities as well as attempting to complete the form.

*"It is just unbelievably time-consuming. You just have to find a way to fit it into your work and time commitments. I didn't have time to sleep. And at the moment I don't know what the solution to this is." (QC)*

One female participant did mention that for them, the nature of the application form and the time that it took to complete was a key factor in their decision not apply even though they thought they had the skills to apply, highlighting the issue that this could be barrier for the under-application of women.

*"It has become a situation that the form is so difficult to complete that people are not applying, not because they don't want to take silk but because they cannot complete form. If I had a year to complete the form then I would apply. I will apply when we can, but this has nothing to do about when I am ready, but for me it is just about the time to fill in the form." (Junior Barrister)*

Another difficulty discussed by some participants was that there were no examples of what a successful form looked like and also how to succinctly display the characteristics of the competencies required in the limited character responses the form allows. A few participants described needing a 'special skill' just to understand how concisely to express their skills in a form that is completely unrelated to what they actually do in their day-to-day practice.

*"The problem of the competency-based form is that it is unlike anything that you do in practice and you cannot really work out what a good form looks like...The form demands a very high investment in both time and energy, but you never get an example of a good application form." (Junior Barrister)*

#### **4.6. Financial cost**

The financial costs of applying to become a QC were often discussed as a barrier. Some participants, who predominantly worked in legally-aided specialisms, noted how the application fee in itself can appear to be prohibitive in comparison with other specialisms, such as the Commercial Bar. Geographical location was also a factor in regards to how expensive the application fee was perceived to be.

Many interviewees discussed that the application process was expensive as a result of the consultancy costs that they used to help them with both the completion of the application form and for interview practice. The consultancies were viewed as beneficial as they had an understanding of what a successful form included and how to describe the necessary competencies succinctly and positively. Although there were some concerns that consultancies can remove a lot of the individuality of responses, their experience in honing in on positive examples of skill use was seen to outweigh this concern.

*“I did use independent services to help, as they have amassed a lot of experience. They were useful in filling out the form, as they did help hone in on examples, and providing concrete examples of skills.” (Junior Barrister)*

Other participants mentioned that consultancies were more beneficial for interview coaching and practice, as this would have been the first time in at least 15 years that the participants would have undertaken a competency-based interview. These participants believed that they would benefit from the feedback about the structure of the interview and the information they needed to portray to the panel. Although recognised as being helpful, the consultancies were also described as very expensive. Consequently, this could be portrayed as a barrier.

*“I did use paid services. I think these are really important to support women. I met the consultancy firm at a mentoring event and after I was selected for interview, I had help from the careers coach. They did give me some excellent services, but it did also cost a lot of money.” (Junior Barrister)*

However, many participants also discussed how consultancies are not necessary and it is an individual's choice regarding whether or not their services are used. Alternative approaches to securing application advice were offered, including the role that chambers have in providing the necessary advice. They believed that this could make the system fairer, as this would reduce any financial barriers. Some participants argued that consultancy services should be abolished, as they were an unnecessary complication in the application process.

*“As there is still a lot of mystery around the process, we have set up an internal support system for both the application form and interview. It is in-house support, and this is the direction that other chambers are also going in. Consultancies are amassing experience, but chambers should be amassing this experience. Agencies do cost thousands and thousands...I believe that we should get rid of this consultancy industry, it is a waste of money and adds an extra layer of complexity that should not be there.” (QC)*

Costs throughout the application period were also amassed by participants who needed to arrange additional childcare so that they had time to complete the application form. These participants highlighted the additional hidden costs to the application process that may not be obvious, but could create an added barrier for women with childcare responsibilities. Taking time off work to complete the form was often mentioned as another hidden cost in the application process, as this resulted in a loss of income while still having to pay rent fees.

*“I spent a week and a half out of work filling in the form. I didn't earn any money during this time. I lost a lot of income when investing in this process.” (Junior Barrister)*

#### **4.7. Lack of transparency**

Participants in this study recognised that the process for becoming a QC has improved over recent years and has moved away from the 'tap-on-the-shoulder' approach to a more merit-based and rigorous system. However, it was recognised that further changes are necessary, as there was still a lack of transparency in what made a 'good applicant'. It seemed that there was greater need for clearer information in the guidance in describing the competencies required.

*“What they say they want and what they actually want is very different. The whole thing seems to be written in code, and that makes the whole system unfair.” (Junior Barrister)*

Other participants discussed that for some, there is a lingering perception that the new system is still not merit-based, as there is perceived disconnect between the proficiency of the candidates who apply and the the proficiency of those who are successful and there is no clarity as to what the ‘tipping-point’ characteristics are for being successful. In this way, the system was reported to be opaque. Participants recognised the need for a rigorous system so only those with the relevant skills and abilities are successful in the process. There was also a strong theme that standards should not be lowered to positively discriminate in favour of women and not to introduce a quota system to increase the number of women applicants, but further transparency would instead be welcomed.

*“I still feel the system is opaque...there needs to be some more support and guidance. There is still some way to go. It is not about having a quota system or lowering standards, but about a clearer system.” (Junior Barrister)*

#### **4.8. Summary**

As evidenced in our findings above, the results highlighted that the nature of the application process could be viewed as a barrier for the under-application of women. The majority of participants discussed how it can be very difficult for women with children to complete the application form with the required twelve cases of substance in the two year boundary, as a result of taking time out of work for caring responsibilities, and then having to rebuild their practice upon their return to work after a career break. Thus, they would not have the opportunity to work on the relevant cases of substance. Approaching judges for references was a distinct barrier for women, not only related to their limited confidence, but the perceived unconscious bias of male judges supporting ‘like-for-like’ candidates and women not always having the networking opportunities to facilitate connections with judges for a good reference. The length of the application process, both as a whole and the arduous and time-consuming nature of the form were mentioned by the majority of participants. This could have distinct negative implications for women, especially those with children, who may experience time poverty preventing them from completing the process amidst continuing their practise full-time and managing childcare responsibilities. Some argued that this was why consultancies could be useful, but their associated costs were also a distinct barrier. Finally, although the move towards a more merit-based, rigorous system was welcomed, there was still a call for more transparency in the application system and the skills and competencies guidelines, in terms of how they were measured and assessed.

## 5. Barriers in the wider systems

The research up to this point has highlighted the barriers that occur when barristers have reached the appropriate stage of their career (between 10-15 years after being called to the Bar) when they begin to make the decision to apply to become a QC. However, the interview data from both QCs and the junior barristers that participated in the research indicated that there were many other factors that influenced or created barriers to becoming a QC. They recognised that these factors must be considered in an attempt to understand the under-application of women for QC status and that they predominantly occurred before the QC application stage.

### 5.1. The role of chambers

Participants often discussed the role that their chambers had, both in the support that chambers could provide and the flexibility that they can offer to women who are considering a career break or returning from maternity leave.

#### 5.1.1. Culture of support

The majority of QCs spoke positively about their chambers, the role that being in a specific set could have for one's career development and also of the opportunities available that could aid the path to a QC application. The culture of chambers was very important, with QCs mentioning that their chambers were progressive in their equality and parental leave policies, and the atmosphere was one of acceptance and fairness where people were respectful to the needs of others:

*“I have a very supportive chambers – unusually so. And it is important to have this. It is enlightening and forward-looking chambers that do this.” (QC)*

The QCs also spoke about the level of support that they received from their chambers, and the support that they can now give to other women in their chambers. For example, the QCs discussed the informal mentoring they received in-house, and how they now felt they had the responsibility to organise seminars for women in their chambers, to serve as a role model, or to give advice about the practicalities of undertaking the role of a QC combined with family life.

The participants who were considering applying for the QC status also discussed the role that chambers had in their decision-making process. For some, there were very positive reviews where chambers provided formal practice reviews twice a year and barristers had discussions about the kind of cases they should be aiming for if they wished to achieve QC status. These sets of chambers provided the ‘nudge’ that was often needed to encourage women to apply.

*“I had good support within my chambers. The Chambers Director is very pro-active in encouraging women silk applications. At the moment, there aren't any women silks, and so she is very keen to push and support women to apply.” (Junior Barrister)*

The role that chambers provided in mentoring was also often discussed. The majority of male and female barristers welcomed having mentors (both formal and informal) to provide support and guidance. Although some barristers did mention that mentor provision in their chambers was not effective at times, especially when women had caring responsibilities at

home (e.g. children) or if there was a lack of an open door culture, which precluded people to seek out mentorship. Barristers who were based in chambers with female QCs present often found the mentorship support valuable. It is important to note that men, both at the QC level and at the junior barrister level, also reported that support from chambers was crucial, both in support for the cases needed and recognising when barristers were ready to make an initial step to begin the application process.

Interview data also provided evidence of where more support could be given to support women in their roles and act as role models. One participant mentioned that their chambers had developed a women's committee to discuss the issue of under-application of women, but the conversations were 'one step behind' and failed to consider the barriers currently affecting women and so the committee failed. This meant that there was still a void, as these issues were not being discussed. Another participant, after highlighting a lack of support, provided some advice as to what chambers should be providing to those considering applying for QC:

*“Chambers should be there to support you, to help with the application, to look through your forms, to help suggest referees, to consider the type of work that they are giving you. They should almost be providing practice reviews.” (Junior Barrister)*

The nature of sets of chambers could be an important factor in encouraging female applicants, in terms of the level of support given to women junior barristers. Some participants spoke about changing the chambers they were based in so they could receive the opportunities they needed. The size of chambers was seen to have an influence on the amount of support that was provided (independent of gender):

*“I am not in chambers with a culture where you can discuss this [QC application]... my chambers is very small and I don't have the support I need. I don't have the number of QCs that you need to support the application. The elite chambers have that, they naturally support you, but I don't have that support.” (Junior Barrister)*

### **5.1.2. Retention**

A common theme among all respondents was the high attrition rate of women at the Bar and this theme yielded comments that many women leave the profession earlier in their careers. This high attrition rate affects the pool of candidates who have the eligibility to apply for the QC status, which is not equal to men. Thus, how chambers can retain women, particularly after they have taken time off for maternity leave or for caring responsibilities, was often discussed.

QCs did discuss the role that chambers have in relation to retention, basing this opinion on the level of support that women received when on maternity leave and after returning from a career break, the social contact within the chambers, and the maternity leave and career break policies sets of chambers had in place:

*“Retention is the biggest issue. You need to talk about these issues in chambers, and this makes a big difference between retention and loss. Women leave when they have a baby, and men don't. Is this a lifestyle choice or are we doing something very wrong?” (QC)*

QCs mentioned that at the chambers they were based in, methods that worked to encourage women to remain in the profession included: having access to support schemes especially for those about to go on maternity leave (such as mentoring); having someone to remain in contact with whilst on maternity leave; and, chambers being flexible with working practices upon return to work while managing caring responsibilities. The overall perception by QCs regarding retention was that women needed to feel like they were welcomed back to work after taking a career break.

Interestingly, male QCs also highlighted the theme of retention post-maternity leave, not just in terms of the flexibility and maternity policies, but how women may need help psychosocially:

*“There is anecdotal evidence that returning to work from maternity leave can be a barrier. They may not be as confident in their professional life coming back to work in this professional context. And this can undoubtedly affect the applications for silk.”*  
(QC)

Interestingly, one male QC spoke about his experience of taking a career break for an illness and made a comparison of his time out of work with maternity. In this circumstance, a lengthy career break was needed for recovery and his chambers made it feasible for him to return to work by providing the flexible accommodation he needed. He compared this to women returning from maternity leave, noting that many women did not always get this support (even though women have had a similar length of time out of work), and having the extra difficulty of managing childcare responsibilities.

Barristers also spoke passionately about the role that chambers have in retaining women. Many either spoke from personal experience, or from the experience of those in their chambers. They discussed the need for improved methods for accommodating a fairer work-life balance to encourage women to return to work after having children, as this was where a large drop off rate was seen:

*“Many of my contemporaries have left after having children. I would say about 90% have left the Bar regarding not being given proper arrangements for childcare and having to leave to look after the family. Chambers have to be willing to accommodate childcare arrangements...and this comes from a big push from management”* (Junior Barrister)

Barristers spoke of chambers having to be proactive about retaining women, although some women do make the personal decision to leave the Bar to look after their children. However, this decision is not applicable in some situations when chambers refuse to accommodate a women’s return to work (or listen to suggestions for support) if they hold the view that flexibility for childcare arrangements cannot be made. For some women, this was the stage that led them to consider whether they were in the right set of chambers and considered moving to a different set:

*“This is an issue for chambers, especially when women think that they are not heard anymore, and there are some women that treat women really badly and they shouldn’t. But women also need to know that they can move to other chambers.”*  
(Junior Barrister)

However, others called a chambers' refusal to acknowledge the retention of women as 'unnatural wastage', because the Bar is losing good women advocates who could become great QCs.

*“There will always be people who choose not to come back, but I was doing a trial and I had one of the best assistants I have seen for a long time, but she made an application to leave because the chambers could not offer the flexibility she needed. She knew she was good, and if we can't keep her, then who can we keep?” (Junior Barrister)*

The maternity leave policies and the level of communication that chambers had with women whilst on maternity leave were important factors in determining the retention of women. A number of maternity policies were discussed, including: not having to pay room rent when on leave; only paying rent when earning over a certain amount after returning from a career break; the provision of a loan to cover room rent when rebuilding one's practice post-maternity leave; and, the ability to share a room if returning part-time. Other areas of best practice for those returning post-maternity leave included: provision of flexible work practices; having the opportunity to work part-time; continued communication from chambers throughout maternity leave to ensure a smooth transition back into work; and, having an understanding of issues surrounding childcare.

*“During my maternity leave, I was in touch with my chambers, but I do understand that this is very chambers-dependent. They have been very helpful in providing me with the childcare options that I need, but I know that I am very fortunate in this respect.” (Junior Barrister)*

Others did not have as good of an experience and highlighted that, because of the self-employed nature of the profession, maternity leave can be risky because of the competitive nature in the market for work and the risk that you will have to re-build your profile. If chambers are to retain women post-maternity leave, women will need some re-assurance that they will be allocated work on their return:

*“In chambers, we are micro-businesses competing with one another. Your closest competitors are your colleagues in chambers. When you go on maternity leave, or part-time or any flexible time, these opportunities for work will get snapped up by other competitors. Therefore, you don't get the work. While in theory, it is flexible, what happens is, because the clients want people who are available and get quick responses, the women then get out-competed and there is no protection to stop that.” (Junior Barrister)*

## **5.2. The role of clerks**

Clerks were often described by participants as being an influencing factor in the way that work was allocated and also in the level of support that barristers in chambers received. Clerks were seen as important to help provide the 'nudge' that women needed to highlight that they were at the right level and had the appropriate experience and cases to make a strong application for the QC status.

*“The clerks do ask whether we are thinking of applying for silk, and they have a clear idea of when we should be applying. The clerks told me when they thought I was ready. They know what you want to achieve and what you are capable of doing, and*

*so they know what needs to be done in terms of juggling your roles and responsibilities.” (Junior Barrister)*

The individual relationships with clerks were deemed important so that this guidance in career progression could be achieved. Participants also highlighted the role clerks had in engaging with them to discuss the types of cases they would like to receive and the support that they needed. However, the overall clerking culture was also discussed, with clerks often being described as ‘having the power’ in chambers. Furthermore, if there was a perception of a strong male clerking culture, women often reported that it was difficult to establish relationships and discuss any alternative work patterns they may need to help their work-family flexibility.

*“My set is more progressive, and the senior clerk is young, and so he is more amenable. I have a good relationship with the clerks now, so I can tell them what to do. They book my half-terms off for me and they don’t complain.” (Junior Barrister)*

In chambers where progressive flexible working practices were not ‘the norm’ and where the clerk-barrister relationship was perceived to be more difficult, participants often mentioned the need for further clerk training, especially regarding maternity leave policies in terms of what can be offered and what is practical. There were many examples of women barristers who had been able to negotiate new methods of flexible working practices, but suggested it would be easier if clerks had a greater understanding of equality and diversity training:

*“Clerks could be improved. Clerks have training. I am not sure if they have training about how to cope with changes in work practices after maternity leave, but [they] should have some training for those experiences. Most clerks don’t mean to be nasty. They just don’t know how to go about it.” (Junior Barrister)*

Clerks were seen to have an impact on women barristers applying for silk, in terms of work allocation, the types of cases that women received, and how this was perceived to differ in comparison to male barristers. Participants discussed how work allocation monitoring should have made the system less discriminatory and reduce favouritism:

*“They help by the clerking system being transparent. They are assessed on ensuring that they put forward everyone for work. They get bonuses for putting outside their team for work. Not just for gender bias, but preventing favouritism. They have a system of preventing that from happening.” (Junior Barrister)*

However, there was evidence to suggest that this system was not working as well as it should be and that more needs to be done to ensure that the monitoring process is evaluated and working properly. A few participants provided examples of when they perceived discriminatory practices occurring – for example, one participant had received good feedback from the cases they had handled previously, and yet key cases at the level required for a QC application were not allocated to them despite that previous good performance. They believed that this was a determining factor for their slower career progression. Others discussed how in the early stages of a junior barrister’s career, the clerks made assumptions regarding what cases were appropriate for males and females, which can then have a knock-on effect on the specialisms that barristers develop. On these occasions, it was usually the persistence of the individual and their personal ambition that led to changes in work allocation:

*“In early formative years, clerks are much more likely to give big and exciting cases to a man than to a woman. It is very difficult to address that because it isn’t open sexism, they just have a picture in their mind of who should do that job, and that is a man. You do just see that the guy’s tend to build better practises more quickly. There is the thing about clerks having an idea about what kind of cases are suitable for a woman. I had to fight that, the idea I should be doing injury cases, or cases involving children or families. I had to say, no, I want to be doing other stuff. Some women drift towards subject matters, that don’t lead to appearances in High Court. They are doing important and difficult work, but not in areas where there are new points of law, complex legal issues, usually where lawyers settle, or complex factual evidence.”*  
(Junior Barrister)

There was a mixed response into how well this monitoring was working in practice, and whether the results were evaluated and discussed in chambers. Some participants reported having a dedicated member of staff, whose responsibility it was to ensure that work allocation monitoring data was up-to-date and reported in-house. Others mentioned that work allocation was monitored, but not reported on in any structured or formal way, and analysis was more ad-hoc. Finally, some participants noted that monitoring was very difficult to do, especially when comparing how unallocated work was distributed across various specialisms. It was thought that tighter regulation surrounding work allocation would be appreciated, especially if there was a perceived disparity in the way that cases are distributed among chambers:

*“The clerks allocate who is put forward [for] the case. They keep the e-mails, but there is not analysis done to show the results of that to show if there [is] any bias. I am pushing this in chambers to have this addressed. I think that tighter regulation would help, as clerks are fundamental in addressing this issue. Some clerks are terrible.”* (Junior Barrister)

### **5.3. The role of the profession**

The nature of the profession (with barristers predominantly being self-employed) also led to a number of challenges as to why women may not have considered applying for QC status.

#### **5.3.1. Feedback**

One of the distinct challenges of being self-employed was the lack of any performance management structures or feedback for the work undertaken, apart from being hired again by clients or solicitors. Consequently, individuals failed to develop insights regarding areas of their performance that needed improvement. There was an underlying feeling that women are less confident about applying for the QC status and that women are more critical about their performance, so this limited opportunity for feedback can be seen as a barrier to QC applications.

*“You do need to get feedback. You don’t apply for silk until you are about 20 years into practice. Getting good feedback would be a really big thing. When you work in other roles, you get appraisals every year and that is very helpful.”* (QC)

Barristers who were currently considering applying for the QC status echoed this statement as well. Receiving feedback – especially constructive feedback – was seen to be critical to taking the next step to apply for the QC status. The underlying notion was that this feedback

will help them to develop the skills needed and build the competencies that are required (both by the form and in practice) to have a successful QC application and also become a successful QC. To be ‘nudged’ by a respected figure who could tell a barrister that they are of the requisite standard for the QC status, was often reported as being enough to encourage women participants to consider applying.

*“There is nowhere where you can get constructive feedback. There is no feedback system and you do need to get some feedback before you get to the application stage. The feedback helps you develop your skills. No feedback creates difficulties with confidence issues.” (Junior Barrister)*

### 5.3.2. Networking

It was clear that social networking was important in the profession – both before and after becoming a QC. Although the perception of an ‘old boy’s network’ in the profession was fading – there was still some evidence that it remained and that a distinction between the sexes existed in terms of social networking:

*“I can’t go out unless I am a guest of a male, and then I can get into the men’s clubs. Without this, you are pretty much excluded from events. Events usually focus around football, golf or cricket. You can really stand out [as a woman].” (QC)*

Women often reported that they experienced difficulties in the social networking and the self-marketing that they perceived to be necessary to be noticed by clerks and judges, as well as the marketing that needed to be done after achieving QC status. Confidence was offered as a reason for limited social networking among women, time poverty (having to split time between both work and childcare) was also highlighted as compounding the issue especially if events were held in the evening.

*“Social contact is very important. It’s women who are leaving. Women eat at their desks; we don’t eat with other people. We don’t have drinks together and we don’t do social events. Men don’t have quite the same difficulty. As women, we need more prompting to do this.” (QC)*

Some women argued that networking was possible, but this was very personality-dependent and those participants who felt more confident in their ability, their work, and their role in the profession, were more likely to engage in social networks. The other factor that was important in enabling networking amongst women who had children was having a supportive partner or a nanny who could undertake the childcare responsibilities while they attended the necessary networking events. A few participants recognised that many networking events could be seen as discriminatory towards women, but also against those who do not drink. The accessibility of some events was also chambers-dependent.

*“I do all the social things. I can be out a lot, sometimes 2-3 nights a week. It is necessary for your career, but does discriminate against women and those that don’t drink, for example, some Muslims. People do get drunk with solicitors, it happens at every chambers, although some chambers are more disadvantaged than others.” (Junior Barrister)*

### 5.3.3. Specialism

The participants in this study were stratified by specialism, and this was seen to have an important effect on the type and level of cases that barristers worked on. This in turn has an impact on whether they have the required number of cases of substance to apply for QC status. When entering the profession, women often spoke of there being a certain emphasis for them to undertake family law or being pushed into certain areas of law, especially in cases regarding children, as it was considered that women were more empathetic and had better competencies for dealing with the sensitive issues that this work involved:

*“There was a certain pressure to do family law work, with the perception that it would be easier to get work, especially in comparison to crime. This was gender related.” (Junior Barrister)*

The other issue involved in working in such areas included the changes that are occurring in the system as a whole, especially those being made within the legal aid budget and cuts in the legal aid. There was consensus from the participants that working in this area could ‘work against you’, because the legal aid agencies were not willing to pay for leaders in these cases, and as a result, a barrister would be excluded from certain proportions of work, and this would have a negative impact on their income. This indirectly had an impact on the decision to apply for QC because some women found the application fees more difficult to afford than those who worked in higher paid areas, such as a commercial practice.

*“So many women are involved in family law, but it doesn’t pay very well.” (Junior Barrister)*

As a result, there is a status issue, as women could be seen as less capable of practicing in certain areas of law and less able to advocate in court. Certain specialisms were also involved in many cases where there was a lot of out-of-court advocacy, tribunal cases and specifically, planning inquiries; it was perceived to be more challenging to apply for the QC status if involved in these specific practice areas. Some participants reported occasions where it was better for the client to solve their case out-of-court, but they had witnessed male barristers taking their cases to court solely for the purpose of being able to have the case for their QC application. This competition for cases was seen as unethical, as a client’s best interest may not have been considered. However, the largest barrier appeared to be the perception of cases that women ‘should’ and ‘shouldn’t’ be undertaking:

*“People routinely agree that women do certain cases and think that only women should be defending sex cases. There is the perception that women are better able to deal with them and you should only instruct a woman to defend a rape case. In my experience, there has been no difference between men and women doing those cases.” (QC)*

### 5.4. Confidence and support

A common response from all participants when discussing the under application from women for QC status was related to the overall level of confidence that women had in comparison to men. There was an underlying theme that women were more self-critical, underestimated their performance capabilities, and were generally negative about the opportunity to become a silk. The participants noted that men will ‘take a punt’ with their applications, while women would wait until they were almost over-qualified:

*“It’s a universal issue for women. This self-deprecation and self-critical nature is an issue for women. Women underestimate their performance and men overestimate their performance. Women seem to have this self-doubt that men don’t seem to have...Emotional impact of low-level, self-confidence is irrevocably a problem.”*  
(Junior Barrister)

Although some of our male participants also reported feeling under-confident throughout some stages of their career, women who had taken a career-break, especially those who had time out of the profession for children, often mentioned having confidence issues when returning to work. These women spoke about having to rebuild client relationships, having to negotiate flexible working hours with their chambers, and having to juggle the needs of their children while progressing their career; factors that had a cumulative negative effect on their confidence levels.

*“Confidence issues are similar. With time away, your confidence evaporates. Women’s confidence does take a knock from any job and having children. Each time I came back from maternity, I thought, gosh, can I really do this? But after I’m back, I know it will come back after each time.”* (Junior Barrister)

Therefore, it would be helpful to have some support available to assist women in developing their confidence levels throughout their career and to provide some career advice to women in their chambers, especially regarding how to manage both a family and a career at the Bar. The female QCs we interviewed understood that they had a role in promoting and supporting women in chambers and the need to create an atmosphere of solidarity and reassurance, in an attempt to retain women to increase the application pool of women QCs. Often, the QCs reported that having the space and the time to talk about these issues made the difference between retention and loss.

*“I applied for QC to show that if I can do it, others can do it, too! It can send a message to other women...I also felt like it was my duty as a woman.”* (QC)

The female barristers often mentioned that there were limited positive female role models, either within their chambers or in their practice areas. They highlighted a need for more diverse role models in terms of ethnicity, specialism, and those who had diverse career paths (i.e. family breaks/career breaks/changes in specialisms) to show that if these issues occurred throughout their careers, then becoming a QC would still be possible. One participant reported that the selection of role models needed to be done strategically, as they would not want the perception that women had to adopt a ‘more male way of working’ to succeed, and that a woman can still become a QC if they worked part-time and took full maternity leave. The data suggested that the development of role models in high positions would be beneficial.

*“It is more difficult for women and it is really partly because we don’t have that role model or many examples of women who have done it before from a not-so-clear pathway, from junior barristers to getting to the top of their profession. There are very few senior women with high-flying practices. So, we really do have a role model issue.”* (Junior Barrister)

Aligned to this, having a mentor was seen by a large proportion of participants as an important factor for retaining women at the Bar and for encouraging women to apply for the

QC status. The QCs who participated in the study often spoke of the importance of having someone they respected, akin to a mentor, who provided a nudge and that final tap-on-the-shoulder to encourage them to apply. Also, having an open discussion with a mentor regarding what is necessary to apply and the how to adequately complete the competencies and skills required for the QC application form was viewed as very beneficial.

*“I am not the most confident person. I can be backwards in coming forward. I need a lot more encouragement. The old system of tapping people on the shoulder would actually encourage me to do it [becoming QC]. I need someone to tell me I am good enough.” (Junior Barrister)*

There was acknowledgement that some mentoring schemes were available for women who wanted encouragement and advice in their careers, but more needed to be done to promote the schemes that currently existed. The need for forums and open dialogue about issues such as career progression, becoming a QC and form completion, without having pressure to apply for QC, was often suggested. Interviewees often preferred a less formal situation so more in-depth discussions could be had. One of the comments regarding current mentoring schemes was that meetings would be held in the evenings, which often clashed with childcare responsibilities.

However, some participants were unsure whether mentoring would be beneficial for them and whether they would participate in the scheme. One participant cautioned over the type of people who became mentors and that mentors should be selected according to their personalities as well as their level of experience, having had a previous bad experience with a mentorship programme pilot in the past. Others questioned what the tone of the mentoring schemes would be, and how schemes would be moderated, or whether discussions should be had in chambers only.

*“I would resist mentoring. This can get touchy feely and women do not really like this. In actual fact, you should just get on with it and apply yourself to the process. Some women do like having mentors, but there does not need to be a specific mentoring scheme. This is something that the chambers should be doing.” (Junior Barrister)*

## **5.5. Career breaks**

Another of the wider barriers to the application process resulted from women taking maternity leave and career breaks to care for their children. Many women in our sample described having to make the choice of either pursuing their career at the Bar or having children and the nature of the profession meant that these events were mutually not always exclusive (e.g. unpredictable hours, lengthy cases, time away from home, etc.). Managing both was described as a ‘juggling act’. One participant described the situation as a ‘jigsaw’, where women often had to find ways for their job and family life pieces to fit together.

*“Having a child is a major issue and childcare and work are not complimentary and you do become torn. You have previously put in 100% to your profession and then a child becomes your priority and your career – which was your ‘first love’ – then does become a back seat.” (Junior Barrister)*

For many women, the decision to return to work part-time was one that allowed them to continue with their work in some capacity and to develop a work-life balance. However, they did understand that this would have implications on their practice, in terms of the level and

types of cases they were allocated to, and having to rebuild client relationships. Those women who had had children recognised that they were a few years behind their peer group as far as applying for silk and were having to compete more for the high-profile work needed for the application. These women were beginning to question whether a silk application would be worth it at all if they could not afford to put the hours into it.

*“Working mums can’t do a lot of things – especially in the evenings – and so you can miss out on a lot of opportunities to get into high profile work which is more demanding and can be unpredictable, and you really cannot do it as a working mum.”*  
(Junior Barrister)

Women also discussed the societal expectation that they would be the primary caregiver and take on the larger share of the domestic responsibilities. Those who had been able to continue with their career often had a very supportive husband or partner who was willing to takeover or help with childcare responsibilities (which was often viewed as an atypical gender role). Alternatively they hired nannies to provide the help they needed, especially in the after-work hours, although this use of hired help was a financial barrier for some. Paternity leave, or joint parental leave in the profession, was thought to still be very rare and the participants argued that there would be need to be a paradigm shift and change in the professional and societal culture for this to become more acceptable and to establish real social change in this area.

*“Paternity leave among my co-workers? I don’t know anyone who has taken this. It is quite rare.”* (Junior Barrister)

It is for these reasons why that having women serve and act as positive role models and professional mentors were seen as helpful. However, some women argued that the choice that some women felt faced with, in terms of deciding about their careers at the Bar and the QC status, in conjunction with childcare, was something that the QCA could not do anything about and that it would take a wider systems and societal approach for change to happen. Although that may occur in time, it would not occur in this generation.

## 5.6. Discrimination

Although there was recognition that the profession was moving positively forward, and that there was an understanding for the need for diversity at the Bar, some of our participants mentioned that they had been subject to discrimination and harassment throughout their careers. These experiences had made them think about whether the profession was one they wanted to stay in, or had an impact in the type of work they undertook.

Some participants argued that there was still not a level playing field in the opportunities given to men and women at the Bar. Although, some discussed the reduction in ‘overt discrimination’, a number of participants mentioned that there were more sophisticated ways through which discrimination still occurred, including through case allocation, who chambers choose to attend conferences (or other external opportunities for development), or through networking opportunities and introductions to other clients.

*“Discrimination has moved on from overt manifestations – it’s more sophisticated. The motive is important. Sometimes, people are not trying to discriminate, but they choose to select others like themselves, sometimes they just like choosing other men.”* (Junior Barrister)

Again, this elevates the importance of undertaking monitoring of unallocated work in chambers to ensure that cases are being fairly distributed and that there are equal opportunities given between genders and ethnicities.

However, some other interviewees did report experiences of direct discrimination, either to themselves or witnessed it occurring to other people; this happened at both the QC and junior barrister levels. One of our QCs mentioned that they still had to endure sexist remarks regarding their appearance or what they were wearing. Although they recognised it was wrong and 'pathetic', complaints were not made because of the perception that nothing would be done about it. Another QC witnessed bullying behaviour in their chambers and felt strongly that it was their role to combat this poor behaviour:

*"Some men in chambers are bullies. I experienced seeing a young woman in my chambers being bullied by men. The young woman left crying from a meeting and I got in a row with the men saying that was completely unacceptable." (QC)*

A number of participants acknowledged that discrimination may not necessarily arise from chambers, but from specific clients. One participant discussed how they were removed from a client case after they returned from maternity leave and the client specifically asked for a male barrister who would not be distracted with children. The participant highlighted how the male barrister that replaced her had three children, but that was not as important for men. Thus, the societal perception of gender roles in childcare was a factor in this case. Another participant highlighted how in certain specialisms, the client had specific perceptions regarding who was suitable to take a case:

*"I have experienced discrimination occasionally in relation to allocation of work. There have been occasions where I have not got cases or I have had the client change counsel. I do feel that was because I am a woman. You get quite macho clients in commercial cases." (Junior Barrister)*

Some participants also argued that although there is an under-application for the QC status by women, across the profession, there is still work to be done to help those who are subject to discrimination as a result of their ethnicity, disability or sexuality (participants from both genders discussed this). A number of participants argued that more training needs to be provided in these areas. Specifically, that boards and the QCA panel needs to be more representative of diversity at the Bar and that the diversity competency of the application needs to be more explicit, rather than a mere tick box.

*"Being a female and a BME does feel like being a double-whammy. I do feel like I have to prove myself, and others don't have to do that." (Junior Barrister)*

Another way through which discrimination manifested itself was at the very beginning of an individual's career in recruitment to pupillage and tenancy at sets of chambers. This was related to educational background, and whether or not they had been an Oxbridge candidate. The majority of the participants in this study had attended Oxford or Cambridge University, and often mentioned that there is still a disproportionate number of who are called to the Bar from these universities, which does create a bottleneck for pupillage. Interviewees not only reported how the quality of education is still perceived to be the best at these institutions, but that attending one of these institutions also opened other networking

opportunities, sponsorships and networking. One participant who had not been to Oxbridge said:

*“I am the only one in chambers that is not from Oxbridge and it has been commented upon a number of times by other people that I was incredibly lucky and this is unusual.” (Junior Barrister)*

Although this is not specifically a gender issue, it does bring into question the wider aspects of discrimination that need to be addressed throughout the wider system, which can have an early effect on the chambers that individuals gain pupillage at, the way their intelligence is perceived by their peers, and therefore, the cases that they are ultimately given.

## 5.7. Summary

As can be seen above, the data revealed a number of barriers in the wider legal system that could lead to a gender imbalance at the QC application stage. The role of chambers and clerks were frequently mentioned in regards to the support they can provide women and also in relation to the allocation of cases. Although monitoring of unallocated work should occur, there was evidence to suggest that this was not as transparent as it could be, and indirect discrimination can still occur. The nature of the profession is also a barrier. A profession that is unpredictable, in both hours and locations, one where it is difficult (although not impossible) to receive an assessment on the quality of one's work and areas that need improvement, and a profession where networking in unsociable hours is perceived as important to build one's client base, has a negative impact on women. When this is partnered with the evidence suggesting that women often lack confidence in comparison to men regarding their skills and whether they have the appropriate level of experience to apply for the QC status, it highlights the importance of support and the need to develop a role model system and improve the provision of mentoring. There is still the notion in the profession (and arguably in society) that women are the main childcare providers. The female participants in our research often spoke about having to make a choice between their career or caring responsibilities for their children. For some women, their chambers were supportive and had developed maternity policies to help retain them in the profession and had flexible working practices for managing family life, however, it became clear that other chambers were not as progressive and there were barriers when returning to work after career breaks. Finally, discrimination in practice was still evident in our data, both in terms of perceived education and gender discrimination, which some participants felt led to difficulties in career progression.

## 6. Discussion

The review highlighted that, at present, women who apply for QC status now have an increased likelihood of achieving it, and yet, there is still an under-application of women. Consequently, the gender disparity at this level of the profession is likely to continue for the foreseeable future. Although there was recognition that the most recent changes in the application system (making it increasingly merit-based) had been effective, there were calls for further changes to be made to make the system fairer.

The results from the interviews indicated that amendments to the application process are needed to remove some of the current barriers that all perceive, but have an added potential to impede women progressing to QC levels. The main barriers included having to provide 12 cases of substance in a two year time boundary. This was reported as particularly difficult for women who have had career breaks (e.g. maternity leave), as they needed time to rebuild their client base and case load after returning to practice, often leaving them between two and five years behind males colleagues who were in the same practice area and year of Call as them. In relation to this, women in particular found it very difficult – as a result of their lack of confidence – to approach judges for the references needed for the application and they would delay doing so until they were certain their case had been substantial enough. It was often mentioned that the length of the process (both the time, and stress burden, it took to fill in the application form and the time from submitting the form until the final outcome) was too long and made it difficult for re-application, if necessary. The financial cost of the application process was often discussed, alongside the implications for taking time out of practice to complete the form and, in particular specialisms, the risks income if one became a QC, which was often cited as a major consideration in the decision-making process to apply.

However, what also became clear is that are a number of barriers in the wider system that can have an impact on the retention of women, even before they reach the QC application stage, which reduces the pool of women who are eligible to apply. Although some of these barriers may appear out of the remit of the QCA, there are a number of actions that the QCA can consider, in collaboration with other stakeholders, to help improve the retention of women and encourage applications to the Queen's Counsel. The role that chambers and clerks have is of particular note, in terms of encouraging women to return to work after maternity leave by developing and improving their maternity leave and flexible working policies, providing mentoring support and role models for women barristers, and demonstrating the possibilities for continuing in the profession with childcare responsibilities. This highlighted the importance of improved diversity policies and ensuring that systems already in place, such as the monitoring of unallocated cases, are properly implemented and evaluated. Having an improved mentoring scheme 'in-house' would not only help develop the confidence often expressed by women as a barrier to considering applying, but could also remove the need for expensive consultancy agencies used when completing the application form. If such systems were in place, then women would have greater opportunities for feedback and development, will have a greater understanding of when they are ready to apply, and have that friendly nudge that was often a catalyst to consider becoming a QC. Finally, it was clear from the data that participants recognised that the system was slowly improving for women, but further actions were required to support women and other minority groups who were also considered to be under-represented to reach the levels of parity in the QC system.

## 6.1. Study limitations and opportunities for future research

The participants in this research chose of their own volition to take part. Therefore, their views may be correlated with traits that affect the study, making the participants a non-representative sample. For example, participants who had experiences of gendered discrimination or difficulties with the application process may have been more willing to participate and volunteer to be interviewed, in comparison to barristers or QCs who had not been affected, or saw no difficulties within the system. Senior male barristers and QCs were hard to reach and the response rate was very low. Although we sought to capture specific differences in the attitudes of men and women towards the decision to apply and the perceived barriers on their journey to becoming QC, it was particularly difficult to recruit men with interest in taking part in a gender-related study within the time frame. The response rate to requests was very low and we interviewed all those who agreed to participate. This limits our data for comparisons across gender. Finally, the research parameters meant that participants in the study were solely from the self-employed Bar, and thus the research does not account for the views of those in the employed Bar who may also experience gender related barriers that may not have been captured in this data.

There are also opportunities for further research to address these limitations. It will be interesting to have a more in-depth analysis regarding male views of the process, to gauge an understanding of their opinion of changes in the system and what, if any barriers they perceive. Likewise, including the employed Bar may provide further barriers or validate the barriers already discussed. Finally, it would be beneficial to undertake a stakeholder study, to further understand the role that these stakeholders do have in terms of gender and application to QC status and what could be further recommended to improve opportunities for women at the Bar.

A number of recommendations have consequently been made with an aim to improve the proportion of women applying for QC status.

## 7. Recommendations

### 7.1. Review the eligibility and selection process

The specific areas for review should take into account the following areas:

- a) Remove or reduce the minimum number of cases required
- b) Extend the two year boundary for casework
- c) Amend the guidelines to clarify advocacy in other courts, tribunals and incorporate out-of-court advocacy work
- d) Develop greater transparency in weighting of assessment methods
- e) Reduce the number of judicial references required
- f) Improve the diversity of the selection panel.

#### 7.1.1. a) Remove or reduce the minimum number of cases required

##### **Context**

Reducing the number of cases required could provide greater flexibility for those who have taken career breaks (e.g. parental leave and health reasons), or for those who work flexibly or part-time. Additionally, improving the clarity with regards to what constitute cases of substance would help applicants interpret the current flexibility for the number of cases required.

##### **Future Actions**

- Reduce or remove the minimum/maximum number of cases. This could be done by requiring applicants to list all cases they have worked on.
- Improve the clarity in the QCA guidance regarding the number of quality cases required.

#### 7.1.2. b) Extend the two year boundary for casework

##### **Context**

In the QCA selection process the two year boundary for casework was perceived to be restrictive for women who had necessitated time out of the profession for caring responsibilities. Although there is a further one year allowance for career breaks, participants reported that it could take 6 months to two years to rebuild a practise after returning from a career break and then a further two years to gain the demonstrable number of cases to meet the application requirements. However, concerns were raised regarding the longer the window is extended the less likely judges will remember or be willing to provide references.

##### **Future Actions**

- Extend the time limitation boundary for casework to 4-5 years in cases in circumstances of career breaks.
- Produce guidance on best practice (see 7.5 for more details) to encourage applicants to think about the QC process earlier in their careers and minimise the risks of not remembering cases. For example, encourage the maintenance of case notes and proactive approaches to judicial referees shortly after cases rather than waiting a number of years. These would act as *aide-mémoires* for both the applicant and their referees for when the application is finally completed.

### 7.1.3. c) Amend the guidelines to clarify advocacy in other courts, tribunals and incorporate out-of-court advocacy work

#### **Context**

The current guidance explains the thresholds in a way which rules out (or gives an impression to rule out) many practitioners who conduct a lot of their work outside the Higher Courts. Further research is needed to verify if women are negatively affected by allocation to tribunals or the lower courts as this would have an impact on their eligibility for QC status.

The current guidance notes provide an element of confusion regarding the level of cases that qualify for QC status, implying that cases should be those seen in the Higher Courts. However, a number of participants commented that a lot of cases now included out-of-court advocacy, and changes in the legal system will mean that a number of cases which would have been litigated in the Higher Courts will now be seen in lower courts. We understand that it is possible to become a QC, for example, while only practising in tribunals or planning inquiries, however the guidance should be clarified to show that practising in other courts or some form of tribunals are not absolute barriers to becoming a QC.

Although the existing application process does try to broaden the competencies, it is also unclear what is meant in practice for advisory work, written work, and other out-of-court advocacy, etc., and how that is assessed.

#### **Future Actions**

- Conduct research verifying if women are negatively affected by case allocation to tribunal or lower courts having an impact on their QC eligibility status.
- The QCA to provide clearer guidelines on how the QCA assesses advisory work, written work and other out-of-court advocacy in the application process.

### 7.1.4. d) Develop greater transparency in weighting of assessment methods

#### **Context**

Although there was recognition that the system had become more rigorous, concerns were raised regarding the transparency of the process, and what weight the various competencies had within the selection process, and what a 'good form' looked like. During the roundtable discussion, the QCA indicated that judicial references carried the largest weighting in the application and the main purpose of the interview was to validate the evidence provided by applicants and discuss any gaps in evidence perceived by the selection panel. Participants noted that agencies were used to help complete the application form (often at great expense), thus greater transparency will provide applicants with the confidence to complete the form successfully.

#### **Future Actions**

- The QCA should develop a more transparent system that clearly demonstrates the assessment weighting given to each of the various elements of application form (e.g. competencies, references, the interview). Information about the weightings should be made easily accessible online via the QCA website.
- The guidance should provide greater clarity as to what it required in the various competencies. The general elements of this should be published in the guidance notes and the website.

- Feedback to individual applicants who have been rejected should report these scores to improve the transparency in selection.

#### **7.1.5. e) Reduce the number of judicial references required**

##### ***Context***

Approaching the judiciary for statements of support was noted as a distinct barrier for women, often because they had not had the relevant networking opportunities or because they felt less confident in approaching a predominantly male cohort of judges. The lack of a formal system to approach the judiciary was also a perceived barrier.

##### ***Future Actions***

- Balance the assessment weighting to take into account and give weighting to peer references, such as other barristers, solicitors, and clients.
- Base references solely on direct observation and to discourage consultation from other judges in forming opinions. This is to avoid perceptions of judicial collusion. This could be done by removing 'Part 6: Views of Others' section on the assessor form that allows for broader consultation.
- The QCA to work with the Judicial Appointments Commission (JAC) to ensure that judicial training and guidelines to judges includes the following:
  - The expectation of providing references to barristers for the QC application, clarifying that this is a formal part of their role.
  - Encourage judges to provide verbal feedback to barristers where they feel it was merited and encourage junior barristers to apply for silk.
  - Discourage broader consultation from other judges in forming opinions on QC applicants.
- The QCA to include information regarding approaching judges for references in the application guidance and in the frequently asked questions of the website.

#### **7.1.6. f) Improve the diversity of the selection panel**

##### ***Context***

Participants who had experienced the Queen's Counsel application process commented that the panel was not sufficiently representative in terms of gender in comparison to the pool of applicants, and thus applicants may be subject to a selection panel interview bias. In the research interviews and the roundtable, concerns were also expressed related to the line of questioning in the selection panel interviews being either unrelated to the role or displaying a limited awareness of the specialist area.

##### ***Future Actions***

- The QCA should improve the diversity of the selection panel. There should always be a gender and, wherever possible, disabled, BAME, and LGBTQ mix.
- Positive Action is to be included in the Equality and Diversity Strategy (see 7.2) to ensure representation of the panel represents best standards.
- Women applicants to be interviewed by a panel including at least one female member.
- The QCA to provide the panel with relevant training for conducting selection interviews that addresses how to identify and value properly transferable skills to the QC status, especially in different practice areas, and also to ensure that the panel is aware of any potential issues regarding their unconscious bias.

## 7.2. Develop an equality and diversity strategy

*The QCA, with assistance from other stakeholders including the Bar Standards Board, the Law Society, the Bar Council and individual chambers, to develop and adopt an Equality and Diversity Strategy which sets clear aspirations for improving diversity.*

### **Context**

The QCA has recognised that the number of women applicants for QC status is still lower than men and needs to take further action to ensure that a sustainable increase in women applications is realised. However, this will only be achieved in conjunction with other stakeholders.

### **Suggested Strategy**

A strategy to achieve equality and diversity could include:

- *Signposting:* Articulating and demonstrating the desire for more female applications.
- *Inspiring:* Setting aspirations for women to aim for QC status early in their careers.
- *Motivating:* Actively encouraging women to apply.
- *Reviewing:* Developing the application process and providing clear support to women.
- *Positive Action:* Reducing shortages identified across sub-identities and demographics.

### **Future Actions**

- The QCA should develop a role in the organisation to implement the Equality and Diversity Strategy, either by forming a new position for an EDI officer or incorporating it within the role and responsibilities of existing staff. The roles and responsibilities will include advising, checking and challenging the QCA's commitment to Equality and Diversity and engaging with relevant individuals in stakeholder bodies.
- An independent Equality Impact Assessment should be applied to the profession to address the systemic and cultural issues faced to increase gender diversity.

## 7.3. Amplify female QC role models

*The QCA, alongside other stakeholders, to amplify a pool of female QC role models from a range of backgrounds and develop a targeted outreach and marketing programme to drive an increase in applications from women.*

### **Context**

The results highlighted that women would appreciate more female QC role models to highlight how women can progress in the profession and the routes that women QCs have taken. Having this could aid both retention and progression to the QC status for women. As part of the joint-stakeholder Equality and Diversity Strategy, the QCA could help to develop, promote and run targeted events/webinars with women QCs that serve as positive role models raising awareness of the QC status for women. These events should consist of outreach programmes targeting women and other under-represented groups through Specialist Bar Associations, circuits and in individual chambers. The QCA could also more readily publish case studies from women QCs highlighting the pathways and enablers to progression they used in their career paths, providing practical advice to those considering a QC application.

It is recognised that there is a relatively small pool of women QCs, many of which already give up much of their free time voluntarily to participate in other equality and diversity events. Therefore, it is recommended that this outreach is combined, as far as possible, with existing professional workshops.

### **Future Actions**

- The QCA alongside relevant stakeholders to select a diverse range of women QC role models (e.g. mothers, BAME, disabled and LGBTQ women).
- Outreach events to include practical advice given by role models to help other women considering QC application. Case studies can also be developed and published on the QCA and other stakeholder websites.
- QCA to work with other stakeholders to combine outreach events with other existing professional workshops.
- Feedback should be taken from participants following outreach events and assessed by the leader of the Equality and Diversity Strategy to develop best practice.

## **7.4. Developing existing mentoring schemes**

*The QCA, providing assistance to the relevant stakeholders, should promote, develop and help to evaluate existing mentoring schemes and networking opportunities for women.*

### **Context**

Participants often reported that receiving feedback and advice regarding career progression would help their development and the provision of a 'nudge' would encourage consideration of QC application. Additionally, having a mentor would help to offer advice on day-to-day challenges, support on key decisions and even encouragement to return to the profession after a career break. Early access to mentoring could then aid both retention and application statistics.

There are already a number of mentoring schemes that exist that could be enhanced by the QCA and associated stakeholders. The QCA could be involved in the promotion, support, accreditation and development these schemes to ensure greater outreach to under-represented groups. Existing mentoring schemes should also be evaluated to ensure that they are effective in the support provided.

### **Suggested Strategy**

It is proposed that:

- Each woman member of the Bar under 10 years Call will automatically be allocated to a mentor of over ten years Call – ideally in the same geographical and practice area. For this to happen a number of stakeholders (including the Bar Council, BSB, Chambers and the QCA) will have to work together.
- Mentees can request to opt-out after being automatically allocated a mentor.
- Mentors and mentees are free to reject a match and ask for another.
- Mentees should be able to request a male or a female mentor.
- Mentees should disclose which areas they would like help and then matched, if possible, to mentors with appropriate experience. Ensuring that confidentiality is maintained throughout the process is crucial.

Some existing mentoring schemes have found that defining a time period (e.g. one year) for the mentoring relationship is best practice. It is also helpful to develop a mentoring schedule

(e.g. a phone meeting or face-to-face meeting once a month). This defined time period allows the mentoring relationship to focus on their specific outcomes and it also grants the mentee the option to either progress with the current mentor, move to a new mentor, or leave the mentorship programme.

A 'no-fault divorce clause' is an essential part of a successful mentoring scheme. Both the mentor and mentee may end the mentoring relationship for whatever reason if it does not work out and should not require a showing of wrongdoing by either party. In this case, it would be best to allocate a new mentor.

### **Future Actions**

- The QCA should scope, review and publicly support existing mentoring schemes (e.g. the Bar Council's Silk Mentoring Scheme and Maternity Mentoring Scheme, the Western Circuit Women's Forum, the Chancery Bar Association Mentoring Scheme, individual chambers' schemes, etc.).
- The QCA to work with and promote existing mentoring schemes, e.g. publicising mentoring schemes on their website, and developing mentoring packages aimed at helping women to start thinking about applying to become a QC. The QCA could also publish examples of successful mentoring relationships.
- Alongside other stakeholders, review and evaluate practices of existing mentoring schemes to understand how mentoring at later stages for women with over 10 years Call have aided applications to QC and how they can be developed.
- The QCA should ensure existing mentors/schemes have up-to-date information about the QC application process and are comfortable discussing the opportunities with their mentees.

## **7.5. The QCA to develop the application tools and resources on its website**

### **Context**

Although there was recognition that the application system had improved, participants often discussed the lengthy and arduous application process, and participants also discussed wanting further information and transparency regarding what is required for each stage of the process. The QCA should allocate resources for a public makeover of its current website and of its online resources with the aim to:

1. Publicise up-to-date statistics regarding the diversity of the profession, so that all stakeholders are aware of where under-representation of specific groups stands.
2. Offer webinars/workshops/update the FAQs to provide further clarity for the requirements of the application form, approaching referees, and interview tips.
3. Signpost useful initiatives, events and resources on the website and of the QCA's own advisory support to applicants.
4. Develop case studies from individuals at various stages of the profession and from diverse backgrounds, highlighting opportunities and enablers that have helped them advance their careers and provide practical advice.

### **Suggested Strategy**

The QCA is to create a centralised team with relevant stakeholders to coordinate and manage the online resource projects. This centralised team will also be responsible for

developing the content of the new functional website, with the aim to promote and participate in the QCA's drive to encourage higher applications from women.

The development of tools for the website should draw from best practice and lessons learned from the various social media and online resource projects developed by other stakeholder organisations, who have undergone similar drives to enhance diversity. The QCA should measure and evaluate the use of the online resources to be updated when necessary. Stakeholders with the relevant resources and specialties for the specific tools to be developed will be given priority with the projects' involvement, content, and promotion.

### **Future Actions**

- The QCA to annually update diversity statistics on their website.
- The QCA and associated stakeholders to produce a series of online tools to aid applicants understand what is necessary for the content of the application form and the interview, including discussing what is meant by specific competencies.
- The QCA to provide clearer guidelines, samples of well-presented application forms, and examples of good and bad responses to questions and also highlighting common mistakes.
- Provide clear guidance on how the QC application is assessed, in terms of weighting given to referees, form and interviews.
- The QCA to produce a series of videos, on YouTube and other platforms, such as 'Are you Ready for Silk?' and a 'How will Silk Affect my Practice?' by women QCs from various practice areas providing both an honest perspective and practical advice.
- The QCA should upgrade its website to include a knowledge bank of information for prospective silks, including interviews with, and articles written by, current women QCs, FAQs specifically about the application form, the application process, and the selection process.
- The QCA, and relevant stakeholders, could compile a quarterly newsletter that barristers can subscribe to where relevant material and information is published, including advice and techniques to encourage early preparation of the application.
- Further publicise the advisory helpline already on offer to ensure all potential applicants know that they can speak directly to the QCA regarding application queries. Monitor and record the questions and feedback from the helpline to support the development of resources.
- Change the general wording describing the application process to remove reference to it being a 'competition'.

## **7.6. Systems change**

*The QCA to work with other stakeholders to increase the pool of women junior barristers in the pipeline to reach the senior levels to qualify for the QC status.*

### **Context**

The QCA differs substantially from other organisations in the legal community in that there is a focus on the QC appointments, not women barristers' careers. This has meant that efforts to increase gender diversity have tended to focus at the QC selection process in order to affect individual QC appointments, rather than developing policies and processes to support gender diversity and the retention of women throughout women barristers' careers, from the

time a woman may first consider becoming a barrister to progression to the most senior levels to the Queen's Counsel.

### **Future Actions**

- *Work with others:* to build a consortium of stakeholders, such as the Judicial Appointments Committee, Bar Council, Bar Standards Board, Specialist Bar Associations, Circuits, Institute of Barristers' Clerks and sets of chambers to amplify the QCA's efforts for systems change.  
Stakeholders should emphasise the importance of silk for all of the barristers they represent as a tool to aim for true meritocratic values at the Bar.
- *Act:* on realistic points of leverage in the pipeline where it is feasible to make changes to the system. Address the issues identified in this report by acting with the other relevant stakeholders for systems change. Without actions, change will not happen.
- *Learn:* from other stakeholders and from their previous experiences and use that knowledge to adapt the QCA system to what works. Foster a learning culture at the QCA and be open to what others are doing externally in the gender diversity space and build upon what they are doing. This method is less expensive and easier than having the QCA re-invent the wheel themselves. Adapt the QCA's approach in response.

## Appendix 1 – Interview Schedules

### QC [Male and Female]

*The interview schedule was informed by current state of the art thinking pertaining to women in the legal profession.*

*Due to the semi-structured nature of our interviews we will be able to conduct the discussions flexibly around issues specifically related to the application process.*

#### **1. Background**

- What is your age, ethnicity
- What year were you called to the Bar?
- Which area/s do you practise?
- Are you employed or self-employed?
- Do you have childcare responsibilities?
- Have you taken maternity/paternity leave during practice and how long did you take?
- Education – did you go to state or private school and which university?
- Tell us about your career development and work history in brief

#### **2. Since receiving QC status, how has this changed:**

- Your income?
- Your work/life balance?
- Your job role?
- Your personal aspirations and career development?

#### **3. We will now discuss your views on the QC application process?**

- At what stage did you first seriously consider applying and why was this?
- Had you applied before you were successful and when?
- What/who encouraged you to apply when you did? If more than one application/what encouraged you to re-apply?
  - e.g. did you have a mentor or somebody that you seek advice from?
- What other help did you receive to support you through the process and in your opinion did it make a difference?
- How did you find the application process experience overall?
- Were there any parts of the application process that you felt may have been particularly challenging for a female applicant?
- Are there aspects of the process that you feel need to be changed especially regarding how support for candidates going through the application process can be improved?
- What, if any were your concerns/fears around the decision to apply? What were the main barriers that you faced in your decision to apply for silk and engaging with the process?
- Do you think there is a gender imbalance with help/mentoring during the application process

**4. What are your perceived barriers/or actual barriers you have experienced on the journey to becoming a QC?**

*Interviewer guide notes for this section to include:*

***With yourself, personal issues***

- *Is it an issue of confidence?*
- *Level of skills or qualifications?*
- *Experience?*

***With support system (at home and work)***

- *e.g. issues around parenthood, financial concerns, difficult for women to balance the pressures and demands of maternity leave, child-rearing, care-giving and running a household*
- *Returning after years of maternity leave*
- *Issues around work allocation*
- *Long-term sickness absence*

***With profession more generally***

- *Exploring issues of perceptions of women, stereotypes, dominant masculinity / maleness for leadership*
- *Pregnancy penalty after becoming a mother*
- *Old men don't want anything to do with younger women?*
- *So competitive, dog eat dog, need to shout the loudest*

- 5. In what way do you think law 'specialisms'/areas of practise have different barriers associated with them, if at all? What about barriers in your particular area of practise? Do you think these barriers are heightened by gender?**
- 6. Have you ever experienced discrimination during practice, and did this in anyway affect your career decisions and/or career progression?**
- 7. Are the barriers you have mentioned the same for male and female barristers? In your opinion, therefore does it matter if you are male or female when approaching the QC and why?**
- 8. In your personal experience, how did these barriers influence your own decision to apply (or not apply) for QC? Were there any other factors that were more important in influencing your decision to apply to QC?**

**Opportunities for support and development**

- 9. What do you think might need to change to encourage more female barristers to apply for QC appointment?**

*Explore views on support available to barristers, and what can be done to improve situation of female barristers to get them to overcome capability, capacity and credibility barriers*

***At a personal level***

- *e.g. personal support, coaching, role models, encouragement, advice/mentoring*
- *Parental support issues, childcare, eldercare issues*

***At the organisation level***

- *better educational opportunities, fairer appointment processes, and more parenting-friendly working arrangements*
- *informal networks, mystery around application process, transparent appointment process*
- *more flexible and parenting friendly hours*
- *work allocation*

***At the professional/cultural level***

- *Influence of unconscious gender bias within legal profession*
- *Fair recruitment processes/objectives*
- *Equality policies?*

- 10. In your opinion, have there been any improvements in the opportunities over the past few years, and what have these been?**
- 11. Are there any other issues that you feel have been missed regarding the decision-making process that have not been covered in this interview that you think the QCA should know about in order for it to address concerns?**

## Junior barristers [Male and Female]

*The interview schedule was informed by current state of the art thinking pertaining to women in the legal profession.*

*Due to the semi-structured nature of our interviews we will be able to conduct the discussions flexibly around issues specifically related to the application process.*

### 1. Background

- What is your age, ethnicity
- What year were you called to the Bar?
- Which area/s do you practise?
- Are you employed or self-employed?
- Do you have childcare responsibilities? Other caring responsibilities?
- Have you taken maternity/paternity leave during practice and how long did you take?
- Education – did you go to state or private school and which university?
- Tell us about your career development and work history in brief

### 2. What are your views on the QC status:

- In general?
- For your personal aspirations or career development *[This will not be shared with QCA but is helpful for the researchers to understand the point of view of the interview participants and any judgements at the outset]*  
*Interviewee may indicate one of the following:*
  - *I would like to become QC one day*
  - *I don't think I will ever be a QC*
  - *I haven't thought about it*

### 3. What is your opinion of how barristers are selected for appointment to QC and the application process?

*Answers could include: 1. Yes I've applied before; 2. Yes but I haven't applied yet; 3. No but I want to apply in future; 4. No and I'm not interested in applying [Interviewer to tick but not articulate this]*

#### Have you applied?

*If "yes I've applied before":*

- What/who encouraged you to apply when you did?
- How did you find the application process?
- Are there aspects of the process that you feel need to be changed?
- Were there any parts of the application process that you felt may have been particularly challenging? For female add: particularly as a female applicant?
- Do you have any suggestions regarding how support for candidates going through the application process can be improved?
- Since you have previously applied to the QC, would you apply again? If so, what changes to your application would you make?

*If "yes but I haven't applied yet":*

- At what stage do you think you would seriously consider applying?
- Do you have a mentor or somebody that you seek advice from?
- What concerns/fears do you have around the decision to apply?
- What are the main barriers for you applying to the QC and engaging with the process?

*If “no I have not yet applied”:*

- What are the main barriers for you applying to the QC and engaging with the process?
- What help or support do you think you would need/want to encourage you to apply and get through the process?

**4. What do you perceive as the barriers/or barriers you have experienced on the journey towards becoming a QC?**

*Interviewer guide notes for this section to include:*

***With yourself, personal issues***

- *Is it an issue of confidence?*
- *Level of skills or qualifications?*
- *Experience?*

***With support system (at home and work)***

- *e.g. issues around parenthood, financial concerns, difficult for women to balance the pressures and demands of maternity leave, child-rearing, care-giving and running a household*
- *Returning after years of maternity leave*
- *Issues around work allocation*

***With profession more generally***

- *Exploring issues of perceptions of women, stereotypes, dominant masculinity / maleness for leadership*
- *Pregnancy penalty after becoming a mother*
- *Old men don't want anything to do with younger women?*
- *So competitive, dog eat dog, need to shout the loudest*

***With QC system***

- *Is the requirement for 12 cases/eight judicial assessors off-putting?*
- *Do assessors treat women applicants fairly?*
- *Does the Selection Panel recognise the problems women barristers face?*
- *Does the Selection Panel treat women applicants fairly?*

**5. Do you think law ‘specialisms’/areas of practise have different barriers associated with them? What about barriers in your particular area of practise?**

**6. Have you ever experienced discrimination during practice, and did this in anyway affect your career decisions and/or career progression?**

7. Are the barriers you have mentioned the same for male and female barristers? In your opinion, therefore does it matter if you are male or female when approaching the QC and why?
8. In your personal experience, how did these barriers influence your own decision to apply (or not apply) for QC? Were there any other factors that were more important in influencing your decision to apply to QC?

### Opportunities for support and development

9. What do you think might need to change to encourage more female barristers to apply for QC appointment?

*Explore views on support available to barristers, and what can be done to improve situation of female barristers to get them to overcome capability, capacity and credibility barriers*

#### **At a personal level**

- *e.g. personal support, coaching, role models, encouragement, advice/mentoring*
- *Parental support issues, childcare, eldercare issues*

#### **At the organisation level**

- *better educational opportunities, fairer appointment processes, and more parenting-friendly working arrangements*
- *informal networks, mystery around application process, transparent appointment process*
- *more flexible and parenting friendly hours*
- *work allocation*

#### **At the professional/cultural level**

- *Influence of unconscious gender bias within legal profession*
- *Fair recruitment processes/objectives*
- *Equality policies?*

10. In your opinion, have there been any improvements in the opportunities for women over the past few years, and what have these been?
11. Are there any other issues that you feel have been missed regarding the decision-making process that has not been covered in this interview that you think the QCA should know about in order for it to address concerns?

