NOTICED

UK's first Law Firm Diversity Network with focus on Multiculturalism

BEST PRACTICES REPORT

FIRST EDITION – APRIL 2019

CONTENTS

Foreword 4
Executive Summary 5
Best Practices Report 5
Appendix 1 – Parker Review final report on ethnic diversity on boards 12
Appendix 2 – The McGregor-Smith Review: Steps each employer should take 13
Appendix 3 – Race Disparity Audit Review 14
Appendix 4 – Why is the Contextual Recruitment System important? 15
Appendix 5 – You Can't Change What You Can't See – Gender and Racial Bias In The Legal Industry 16
Appendix 6 – Judiciary's Report on Progress and Diversity Action Plan 18
Authors and Steering Committee 19

Current member firms include:

ADDLESHAW GODDARD
ALLEN & OVERY
ashurst
Baker McKenzie.
EVERSHEDS SUTHERLAND
HERBERT SMITH FREEHILLS
Hogan Lovells
MAYER | BROWN
Ogletree Deakins
ReedSmith Driving progress through partnership
STEPHENSON HARWOOD
Simmons & Simmons

FOREWORD

Two years ago, I was invited to the launch of the McGregor-Smith Review which was held at the offices of the Department for Business, Energy and Industrial Strategy on an early winter morning.

The Review was released by Ruby McGregor-Smith (believed to be the first Asian woman CEO of a FTSE 250 company) and Margot James (Minister of State for Digital and Culture, and the then Parliamentary Under-Secretary of State for Small Business, Consumers and Corporate Responsibility), in the presence of a number of senior members from the government and a cross-section of industries. It was a packed house and there was a lot of energy in the room.
The Review was being compared with Lord Davies' report of 2011 on gender diversity which was a groundbreaking moment for the UK (and probably the world) and has resulted in significant consciousness around gender balance and diversity, with the UK leading from the front.

When I read the McGregor-Smith Review alongside the Parker Review (which had been released a few months prior to the McGregor-Smith Review and which looked into ethnic diversity of UK boards) there was no doubt in my mind that the government was determined to help make a change. However, neither of these reviews received the attention they should have, and seemingly there was little concerted follow-up in terms of action. This could be attributed to the UK remaining busy with other more pressing issues, including Brexit.

On the back of the McGregor-Smith Review and the Parker Review, and continuous dialogue amongst our member firms to help celebrate and improve diversity across the City, the NOTICED committee thought that it would be useful for all member firms to sit down and exchange ideas and good practices which could be distilled into a short report. The report would be a guiding force for, and give ideas to, our member firms as well as firms across the legal profession in the City and the rest of the UK (and beyond) as to what some of the top City firms felt are the best practices.

When the proposal to publish this report was made at a NOTICED committee meeting, at least a couple of members questioned the need for such a report and the additional work, as they thought that "all firms know what they need to achieve". I, along with a number of other committee members, had a different view at that time: we thought that most of the firms did not really know how to tackle issues around multiculturalism (including race, ethnicity, religion and regional diversity) which become even more complex when considered alongside gender, LGBT and mental health issues.

This was truly the genesis of this report as we all unanimously endorsed the view:

"Every person, regardless of their ethnicity or background, should be able to fulfil their potential at work. That is the business case as well as the moral case. Diverse organisations that attract and develop individuals from the widest pool of talent consistently perform better."

McGregor-Smith Review

NOTICED: Remarkable work by member firms and various individuals

NOTICED, which was established in 2013, has faced many challenges before arriving at this point. This is not because of a lack of passion or resolve amongst its individual members, but instead because of a number of practical impediments it has faced (and which it continues to face) including: limited time available beyond the busy day job, natural attrition within member firms, lack of monetary rewards, and limited resources.

The network has, in a short period, started a number of great initiatives, committed errors and learned from them, worked through common issues, and organised wonderful events celebrating multiculturalism with celebrated personalities like Chuka Umunna (politician), Henry Olonga (cricketer), Rageh Omaar (journalist), Baroness Benjamin (presenter, actress) and Dame Linda Dobbs (judge). In doing this, we have helped to raise the bar in the diversity and multiculturalism space.

Each of our member firms is very active today. And there are a number of lawyers and business services professionals in our member firms who spend a significant amount of their time keeping the legal profession ahead in the race, not just through NOTICED, but also through the work within their firms. Their work, with the support of their respective firm's management, has resulted in some great initiatives and ideas and a better work environment.

I do want to take this opportunity to thank all such individuals, including in particular the authors of this report (Faria Ali and Nic Patmore) and our other present and previous committee members (Bhavesh Patel, Rashida Abdulai, Divya Selvaraj, Naveen Kler, Jerry Garvey, Ramesh Pani, Tony Di Angelo, Nicolle Odutoye, Justin Tarka, Ramyaa Veerabathran, Shachi Nathdwarawala, John Oladeji, Justine Thompson and Paula Waite). Most of them work beyond their day jobs which many a times goes unnoticed (or is otherwise not monetarily rewarded). I would like all readers of this report to join me in thanking the relentless hard work they (and others around you) have put in.

Whilst I often hear people saying to me that "there is much more that we all need to do to help improve diversity" (and that is probably right), I do strongly think that we do not pause often enough and celebrate the achievements of our profession. In my view, the profession has achieved a lot for the better in the last decade and we have strong foundations to continue to improve.

With that, I hope you find this report useful.

Siddhartha Shukla
Co-Chair, NOTICED
(2013-present)

EXECUTIVE SUMMARY

- Efforts taken by firms relating to the recruitment, retention and development of an ethnically diverse workforce vary significantly.
- There is a general consensus that efforts focused on recruitment specifically are more developed than they have been in the past and could lead to medium-term progress.
- However, targeted efforts focused on the retention and development of an ethnically diverse workforce are currently limited.
- As a starting point, further investigation into the issues affecting retention and development of an ethnically diverse workforce is required to better understand the factors which are affecting promotion and the career progression of existing employees from ethnic minority backgrounds.
- An improvement in the quality of data collected by firms in relation to retention and development should form a key part of internal reflections on the approach taken towards diversity.
- There are a number of other steps firms can take to improve their respective approaches to retention and development, many of which require participation from senior and executive employees.
- **NOTICED's Top Recommendation for 2019-20:** Firms should adopt or develop more robust and comprehensive strategies to gather data in relation to BAME employees, in particular at the more senior levels.

INTRODUCTION

NOTICED recently hosted a best practice discussion session which was attended by representatives of member firms.

Representatives included partners, associates, trainees and heads of diversity and inclusion, who participated in an open discussion focused on multiculturalism and diversity in the legal sector. In particular, the discussion explored their experiences of tackling the challenges which have come with efforts to promote diversity at their respective firms.

The discussion session was predicated on the recommendations of a number of recent initiatives, including the following:

- The publication by the government-backed Parker Review Committee of its final report on the ethnic diversity of UK boards. This set out the following key recommendations:
  - the ethnic diversity of UK boards should be increased;
  - a pipeline of candidates from ethnic minorities should be developed through mentoring and sponsorship; and
  - transparency and disclosure to record and track progress against these objectives should be enhanced.
- The McGregor-Smith Review which highlighted the business and moral case for BAME (Black, Asian and Minority Ethnic) inclusion and progression in the workplace and which encouraged businesses to:
  - collate diversity statistics and publish their data with aspirational targets;
  - take responsibility and embed diversity as a key performance indicator of the business, and ensure executive sponsorship for key targets;
  - raise awareness and provide sponsorship and mentorship; and
  - examine and change their recruitment processes, as appropriate, to encourage greater diversity.

In light of these recommendations, the best practice discussion session was organised with a view to shedding light on current practice amongst City law firms and identifying areas for improvement.

This report is prepared on the basis of the best practice discussion session which took place last year at the offices of Herbert Smith Freehills involving the NOTICED member firms. A long list of topics and questions were prepared by the committee in advance of that session which was eventually reduced to a short list of questions/agenda items that the committee thought needs to be addressed 'now'.

The responses to, and the discussions about, those questions/agenda items, along with all the work completed by NOTICED and its member firms over the last five years or so, resulted in crystallising these responses and discussions into this short report and NOTICED's Top Recommendation for 2019-20. These recommendations may apply equally to other professional services and industries.

This is the first edition of the NOTCED Best Practices Report, and the network intends to release this report once every year or two years, subject to feedback received on this first edition, with the aim to identify top priorities for the year. What actions have been taken to promote diversity and multiculturalism?

What steps have been taken to gather data in relation to the BAME population at your firm and to report such data? What is the scope of the data available in relation to the BAME population and what statistics are available in relation to individuals at different levels within your firm?

All practices regulated by the Solicitors Regulation Authority are required to collect, report and publish diversity data every two years. Often such data, relating to gender and ethnic origin, is captured by firms through their HR systems.

A number of member firms have sought to build on the quantity and quality of diversity data available by requesting that employees complete diversity questionnaires which seek to build not only on quantitative data but also to elicit responses in relation to questions around firm culture and career prospects.

However, a key difference in the approach taken by firms in relation to these questionnaires relates to their territorial scope. Whilst certain firms have invited employees, globally, to complete such surveys, others have limited the survey to certain jurisdictions. The primary reason for this is the difficulty of ascertaining which groups constitute a minority in a particular area. Nonetheless, there is a clear desire to move towards more comprehensive data collection exercises and a number of firms are already undertaking efforts to achieve this.

Two particular challenges, relating to effective data collection, were discussed in some detail. The first of these was the difficulty of obtaining a complete set of responses to questions relating to diversity and, in particular, ethnic origin. It was noted that this makes it particularly difficult to definitively ascertain the precise number of individuals, from a BAME background, who are employed by a firm.

The second key challenge related to gathering data pertaining to more senior employees. There was a general consensus among member firms that the quantity and quality of data available in relation to more junior employees, in particular trainees and junior associates, was better than that available for more senior employees. This was considered to be a direct result of a relatively recent drive by firms to gather data in relation to an individual at the point of their entry into the firm. It was noted that the discrepancy was particularly problematic given that the challenge around retention of BAME employees was more pronounced in relation to employees at a more senior level.

Methods to address each of these challenges were discussed and the following were identified as ways to improve participation in data collection exercises, such as:

- enlisting the support of diversity champions;
- enlisting the support of heads of department;
- utilising staff networks; and
- incentivising the completion of surveys for example through offering donations to charity for every survey completed.

It was noted that there was much to be gained, in terms of identifying problem areas and enabling remedial action, through a thorough analysis of data available to firm HR departments.

What specific initiatives have firms been using to target recruitment of BAME students? Which of these initiatives have proved most effective?

Most of the member firms noted that they had adopted a variety of strategies to support recruitment of individuals from a BAME background. These included:

- partnering with external organisations such as Rare Recruitment, Sponsors for Educational Opportunity, Aspiring Solicitors and the BLD Foundation.
- It was noted that a number of undergraduates, introduced to the firms through these organisations, had subsequently been recruited;
- organising events, often in conjunction with internal diversity networks, with a focus on discussing issues relevant to individuals from a BAME background. The aim of such events has been to demonstrate that promoting diversity is an issue which the relevant firm takes seriously;

Sakil Suleman, Partner and Deputy of Diversity & Inclusion (EMEA) at Reed Smith commented *"The extension of all of our business inclusion groups, including our Multicultural Network, to all non-legal employees as well as fee earning employees globally has helped tremendously in creating a more inclusive culture, irrespective of title. It means that the leadership of these groups receive a more varied and diverse set of ideas on the potential improvements that could be made towards the recruitment and retention of BAME employees."*

Nicolle Odutoye, Trainee Solicitor and Co-Chair of the Reed Smith Multicultural Network commented *"Since we have introduced more frequent internal celebrations of the various cultural events that take place throughout the year, employees at the firm have fed back that they have gained a better understanding of the different cultures that exist in the firm and it has helped in the building of confidence to have more conversations concerning different cultures."*

Leigh Ribbens, Senior HR Manager at Mayer Brown commented *"Having internal networks to cover different areas of diversity are an important way of helping to drive forward the overall diversity programmes within each firm; they provide the business with valuable insights and feedback from employees, which in turn promotes diversity awareness and informs recruitment, development and wider people strategies. Employees should be encouraged to participate with these networks in some form."*

[1]Please see Appendix 1 for further details. [2]Please see Appendix 2 for further details. [3]Please see Appendix 3 for further details. [4]Please see Appendix 4 for further details.

- sponsoring external societies such as Afro-Caribbean societies at various universities;

- ensuring that employees from a BAME background are present at graduate recruitment events. It was noted that an effective way to do this was through creating lists of individuals interested in supporting BAME recruitment and inviting such individuals to relevant events;

- incorporating contextual data into the recruitment process. This has enabled firms to compare applicants fairly by measuring relative disadvantage along with performance. A number of contextual data points, such as postcode, examination grades, whether the applicant was looked after or was the first in their immediate household to go to university, and their educational history are used to put a candidate's grades into context. For example, a candidate's A-level grades could indicate that they overachieved compared to the average student at their school or to someone with the same grades from a better resourced school in a more economically advantaged area;

Lloyd Stephenson, Head of Resourcing at Ashurst commented *"The tool is an excellent way of helping you focus on the right measures – too much emphasis has been put on grades alone without context which means that high potential has been overlooked."*

- using blind CVs i.e. CVs from which details such as names, photos and educational background are removed before providing these to the individuals responsible for making recruitment decisions;

- restructuring the recruitment process to incorporate an associate interview panel, allowing a more diverse group of individuals to make recruitment decisions;

Faria Ali, Associate at Herbert Smith Freehills commented *"The benefit of involving a more diverse group of individuals in the recruitment process should not be underestimated – not only do such steps help to counter factors such as unconscious bias, they also help to reassure candidates that diversity and inclusiveness are more than mere buzzwords for a firm."*

- ensuring that individuals involved in making recruitment decisions complete unconscious bias training;

- relaxing minimum grade requirements; and

- attending recruitment events at a broader range of universities.

There was a consensus that the most impactful of these approaches were the ones which resulted in changes to the recruitment process such as the use of contextual data and anonymising CVs.

Justine Delroy, Partner at Addleshaw Goddard commented *"What's key is that individuals from all backgrounds, walks of life and perspectives feel totally free (feel empowered) to go on to make the kind of diverse and individual contributions which allows them to thrive in the workplace environment and for their talents to shine, so they progress to have even greater influence."*

Have firms identified that internal progression amongst BAME employees is an issue? If so, what initiatives have firms put in place to support BAME progression?

It was generally agreed that internal progression of employees from a BAME background has been a challenge.

Tania Arora, Senior Associate at Baker & McKenzie commented *"The ability to attract a diverse workforce is important but it's a greater challenge entirely to be able to retain that wide pool of people, and it requires a different set of objectives and strategies."*

It was also recognised that member firms were at different stages in terms of addressing this issue. A number of member firms had recently come to recognise that retention was a problem and were only beginning to consider strategies for tackling these issues. Others had already initiated efforts, with varying levels of success.

There was a consensus that the most effective way to boost retention rates was through a broader change in firm culture rather than through targeted interventions. As such, efforts to level the playing field and general promotion and celebration of multiculturalism and diversity were seen to be the most effective and organic methods of supporting internal progression.

It was noted that internal diversity networks, particularly when headed by a senior partner or member of the firm's board, were key to driving cultural change and supporting the professional development of lawyers. This is particularly the case where such networks engage with, and support, individuals (for example through implementing initiatives designed to help develop specific skills such as pitching, management of people and personal branding). The more active networks amongst these make an even greater difference by providing platforms through which to discuss and pursue business development opportunities and to discuss opportunities for mentorship and sponsorship within the firm.

Sunny Mann, Partner at Baker & McKenzie commented *"...one of the biggest challenges that I've encountered is having the confidence to go out there and pursue opportunities. This is a challenge faced by all talent but one that can be more acute for BAME individuals and something we need to support them with."*

Other initiatives to support progression include availability of unconscious bias training and more general diversity training, the purpose of which is to make individuals aware of the prejudices they harbour and to provide techniques for overcoming these. Reverse mentoring schemes have similarly been introduced by a number of firms to help raise awareness and educate employees.

Another technique to raise awareness and promote inclusivity, again with positive ramifications for retention rates, is to encourage employees to attend or participate in a minimum number of diversity related initiatives over a set period of time.

Whilst it was agreed that much remained to be done in order to better understand BAME attrition rates, a particular challenge identified in this regard related to a lack of engagement from BAME individuals already in senior positions. The result of this is a shortage of visible role models and sponsors for more junior employees.

In addition to initiatives outlined elsewhere in this report, are there any other initiatives which have been implemented by member firms with a view to creating a culture more conducive to BAME recruitment and progression?

The initiatives in place, to drive cultural change, other than those mentioned

elsewhere in this report varied from firm to firm. Examples include the following:

- discrete events to celebrate particular cultural festivals such as Diwali and Chinese New Year;

- written communications focused on raising awareness about and celebrating significant dates such as Ramadan and Black History Month;

- running campaigns such as the Colour Brave campaign with a focus on the experiences of BAME employees;

- video communications in which BAME staff shared their experiences and stories;

- devising and implementing a diversity and inclusion action plan focused on areas such as:

  - advancing diversity within the legal profession;

  - recruiting diverse talent; and

  - experiencing diversity,

with each lawyer being asked to commit to completing 5-7 diversity related activities over a set period of time. Such activities range from reading articles that relate to diversity and inclusion to watching suggested webinars and videos on the topic and attending and participating in seminars that focus on diversity and inclusion.

Neil Mirchandani, Partner and Chair of the Hogan Lovells Multicultural Network commented: *"Great progress has undoubtedly been made in recruiting BAME talent into the firm. That is a good start. Momentum now needs to be maintained to ensure that that talent is retained, nurtured and progressed to the very top. That will take time, but certainly the will is there."*

Initiatives to drive cultural change were also discussed more generally, with the following observations being made:

- there are a number of valuable lessons to be drawn from efforts made to promote gender equality. Emulating techniques adopted by firms for this purpose could constitute an effective strategy to drive cultural change in relation to diversity and inclusion; and

- the importance of individuals championing the cause of diversity, at the senior most levels within a firm, was emphasised. It was noted that efforts to drive cultural change are often most effective when they enjoy the support of such individuals.

Tony Ramos, Diversity Manager at Eversheds Sutherland commented *"Visible Leadership from Senior Partners is a key factor in success and helping others role model the behaviours required."*

Simon McMenemy, London Office Managing Partner, Ogletree Deakins International LLP commented *"As the Managing Partner of Ogletree Deakins in London, I fully recognise that our firm's success depends on reflecting our culturally diverse society. We understand that such individuals bring unique skills/life experience which enhances the service we can provide to clients. This is part of the reason why we have dedicated diversity ambassadors in each office."*

Pervinder Kaur, Partner at Addleshaw Goddard commented *"Sharing experiences and acting as positive role models and mentors is key to the success of our BAME talent – starting from a position where contributions from different walks of life are valued, respected and go on to play a significant role in the professional community."*

What support networks are available to BAME employees? How are such networks performing internally?

A number of firms have overarching diversity networks, a specific sub-set of which is specifically targeted at BAME employees. Often these more specific groups are established with the objective of supporting graduate recruitment activities but have the potential to develop into more robust support networks.

Do firms offer BAME specific mentoring and, if so, how has this functioned?

A number of the member firms operate mentoring schemes. However, it was again noted that one of the challenges with effectively running such schemes is the lack of availability and visibility of senior BAME role models. Reverse mentoring schemes are becoming increasingly popular.

Whilst very few of the member firms currently have specific initiatives in place to promote sponsorship of BAME employees, it was considered that encouragement of such initiatives was critical to supporting advancement of individuals from BAME backgrounds into senior leadership positions.

Tania Arora, Senior Associate at Baker & McKenzie commented *"I think firms should promote the benefit of informal mentoring arrangements within their organisation, so that people find it easier to reach out to others when there are particular challenges or difficulties. It could be as simple as a casual chat over coffee. It can do wonders!"*

Do firms set aspirational targets relating to BAME recruitment or progression? If so, do firms feel that these have functioned well? If not, would firms consider adopting such targets?

There was a general consensus that member firms had not yet reached a stage where aspirational targets were being set in relation to recruitment or progression of individuals from a BAME background, although since the session one member firm recently published a target for its BAME workforce makeup (announced in its gender pay gap report).

It was agreed that effective and comprehensive data collection and analysis is a pre-requisite to setting realistic and achievable aspirational targets.

The pros and cons of setting aspirational targets were discussed at length with a strong concern being voiced that such targets could undermine the notion that promotion of BAME individuals following the setting of such targets was based on merit. However, it was also considered that aspirational targets had the advantage of focusing attention on the matters to which they relate and could act as a catalyst for driving change.

It was also noted that there was some difficulty around determining what the appropriate target should be such that the target could be considered realistic without attracting negative publicity for being too low. Given the progress made by one member firm since the session in setting and publishing a target, it is possible that other member firms may follow suit.

What steps have been taken by firms to understand the rate at which, and reasons for, exits by individuals from a BAME background?

It was noted that there is a limited amount of data available in relation to the reasons for which employees from BAME backgrounds were leaving member firms.

Various strategies for addressing this were discussed, including incorporation of a diversity related question in the exit interview. Inviting BAME leavers to return for a one-to-one discussion to share their experiences of working at the firm was also discussed.

To what extent do firms consider business services functions in BAME related reporting, targets and initiatives? Do firms distinguish between BAME initiatives for fee-earners and those for business services?

Most firms reported that their BAME figures for the business service functions were generally much better than those for fee-earners and that BAME initiatives were open to those employed in the business service functions, with certain firms reporting that concerted efforts had been made to ensure that internal diversity networks felt welcoming and relevant to business services staff too.

Focus areas - what particular areas of focus do firms have for BAME initiatives in 2019 and beyond?

Whilst each of the member firms had slightly different areas of focus for BAME initiatives this year, the key themes common to each were: (i) continuing with the drive to attract individuals from diverse backgrounds through their recruitment process; (ii) progression and retention of BAME individuals; and (iii) improvements to data collection and analysis.

Harold Brako, Partner at Addleshaw Goddard commented *"The legal sector's continued success depends on the people we attract, their talent, ambition, creativity and drive. Law firms must step up their efforts to seek out and support talented individuals with the potential to help their firms thrive – regardless of colour, background, beliefs and social circumstance."*

Jerry Garvey, Equality and Diversity Executive at The Law Society commented *"The Law Society is fully committed to supporting a profession that is diverse and inclusive and is happy to work with stakeholders such as NOTICED to raise awareness of the challenges relating to BAME recruitment and progression."*

Recommendations – what learnings can firms, generally, take from the discussions to enhance BAME related recruitment, progression and engagement?

It is recommended that firms take the steps outlined below.

1. Adopt or develop more robust and comprehensive strategies to gather data in relation to BAME employees, in particular at the more senior levels.
2. Continue to evaluate recruitment processes to eliminate any obstacles to recruitment from the widest pool of talent.
3. Develop an action plan to better understand whether retention of employees from a BAME background is an issue.
4. Develop an action plan to counter attrition of employees from a BAME background to the extent that this is identified as an issue.
5. Adopt aspirational targets in relation to the recruitment and retention of employees from a BAME background.

APPENDIX 1

Parker Review final report on ethnic diversity on boards

The government-backed Parker Review Committee published its final report on the ethnic diversity of UK boards on 12 October 2017, which contains the following key recommendations:

1. Increase the ethnic diversity of UK boards:

- There should be at least one director of colour on each FTSE 100 board by 2021 and each FTSE 250 board by 2024.
- Qualified people of colour should be represented for vacancies when they occur.
- Principles applied to ensure equality in gender-based recruitment should be extended to apply to recruiting minority ethnic candidates.

2. Develop candidates for the pipeline and plan for succession:

- FTSE 100 and FTSE 250 companies must develop and implement plans to identify and promote people of colour within their organisations. This can include sponsoring and mentoring programmes to ensure that they gain experience and the skills necessary to assume managerial roles.

3. Enhance transparency and disclosure:

- Companies should explain in their annual report the board's policy on diversity.
- If a company does not meet board composition requirements by the specified date, they must explain the reasons for this.

The Parker Review Committee will remain in place until 2021 at the earliest and will meet at least annually to assess the progress made in relation to its recommendations. Whilst the recommendations are currently voluntary, the Committee has noted that they may become mandatory if there is insufficient progress made towards the goals.

NOTICED's Co-Chair Siddhartha Shukla commented *"This is quite an important report and whilst it primarily focusses on FTSE 100 and FTSE 250 companies, I am confident that other companies and organisations in the UK would also be encouraged to implement these recommendations. It is another step in the right direction."*

APPENDIX 2

The McGregor-Smith Review: Steps each employer should take

Following the Davies Review for gender diversity and the Parker Review for BAME representation in the boardroom, the McGregor-Smith Review which was launched earlier this year highlights the business, and moral, case for BAME inclusion and progression in the workplace.

The Review notes that one in eight of UK's working population identify as being from a BAME background. However, these individuals represent only 10% of the workforce and 6% of top management positions. By 2051, it is expected that 21% of the working population will identify as BAME. In particular, it was noted that the potential benefit to the UK economy from full representation of BAME individuals across the labour market, through improved participation and progression, is estimated to be £24 billion a year (representing 1.3% of GDP). This is a significant amount.

The report encourages businesses to take the following steps:

- gather their diversity statistics and publish their data with aspirational targets;
- take responsibility and embed diversity as a key performance indicator of the business, and ensure executive sponsorship for key targets;
- raise awareness and provide sponsorship and mentorship;
- examine recruitment processes; and
- change processes to encourage greater diversity.

To assist this, the government will review progress over this year to consider whether legislating on any of the report's recommendations will be required. Furthermore, Business in the Community is launching a top 100 BAME employers list next year which businesses across the country will be applying for.

Business Minister Margot James has written to the chief executives of all FTSE 350 companies urging them to improve diversity and inclusion in the workplace. She called on the UK's largest companies to take up key recommendations from the Review, including:

- publishing a breakdown of their workforce by race and pay;
- setting aspirational targets; and
- nominating a board member to deliver on those targets.

APPENDIX 3

Race Disparity Audit Review

Prime Minister Theresa May published the Race Disparity Audit and launched a new permanent 'Ethnicity Facts and Figures' website on 10 October 2017.

The Race Disparity Audit was initially announced in August 2016, with the intention of highlighting how people of different ethnicities are treated across public services. The website contains thousands of statistics covering more than 130 topics in areas including health, education, employment and the criminal justice system.

In a speech given on the day of the launch, the Prime Minister also challenged society to "explain or change" disparities in how people from different backgrounds are treated.

NOTICED Committee member Tony Di Angelo commented *"The requirement to publish data not only highlights where disparities occur, it also enables remedial action to be implemented and benchmarked. A recent study by The Resolution Foundation analysed the link between education, employment and pay over the past two decades. Although there was a substantial increase in BAME individuals obtaining degrees, they had lower employment rates and when in work were more likely to be in lower paid occupations than their white counterparts."*

APPENDIX 4

Why is the Contextual Recruitment System important?

Access to the legal profession must be open and fair, and the barriers that may deter talented individuals through our social mobility initiatives should be broken down. The wider legal community must ensure that prospective students are not deterred from studying law or pursuing a career in law if they are not from wealthy or privileged backgrounds.

The graduate recruitment teams in law firms across the City are on the frontline when it comes to tackling any firm's aim to promote social inclusion and fairness. This is where a tool such as the Contextual Recruitment System **(CRS)** could make a difference.

Our member firms are working with Rare Recruitment **(Rare)** to implement the use of Rare's CRS within the graduate recruitment process. In fact our member firms **Ashurst, Hogan Lovells, Baker McKenzie** and **Herbert Smith Freehills** were some of the first official Social Mobility Pioneer firms.

Raph Mokades, Managing Director, Rare Recruitment commented *"Their joining is a sign that the legal industry is taking a lead on addressing diversity and social mobility in the City and the UK."*

CRS enables the recruitment team to compare applicants fairly by measuring relative disadvantage along with performance. A number of contextual data points are picked up and shared with Rare through CRS, such as postcode, examination grades, whether the applicant was looked after or was the first in their immediate household to go to university, and their education history. By using this information, the team can put a candidate's grades into context. For example, their A-Level grades could indicate they actually overachieved compared to the average student at their school or to someone with the same grades from a better resourced school in a less economically disadvantaged location.

Sunny Mann, Partner, Baker & McKenzie commented *"We have been committed to opening our doors to talented individuals from all backgrounds for many years. The introduction of Rare's CRS system enables us to take a variety of complex social factors in to account, and we're beginning to reap the awards. Many talented young individuals who may not have made it through our recruitment process previously are now receiving training contract offers and are joining us as trainees. These efforts have particularly allowed us to also increase the BAME talent coming into our pipeline."*

Currently, 32 legal, banking and professional services firms use CRS and it is hoped that more will sign up over time. However, getting candidates from a socially disadvantaged background to apply in the first place is something that is being worked on continuously.

Mark Bardell, Herbert Smith Freehills' Lead Graduate Recruitment Partner commented *"Herbert Smith Freehills is proud to have been involved in the Rare Contextual Recruitment Working Group from the very beginning and having fully integrated the system with our ATS we have really seen it prove its value. We are keen to level the playing field for candidates and ensure that we are hiring the very best talent in the market, irrespective of background."*

In addition to CRS, our member firms are undertaking a number of other initiatives (such as the provision of bursaries) to ensure that everyone has access to the legal profession.

Louise Lamb, Hogan Lovells' Graduate Recruitment Partner commented *"Bursaries are the wings that let excellence take flight and we are pleased to be supporting promising law students who, without additional financial support, may find the prospect of studying law daunting."*

As more work is dedicated to the programmes each year, the talent pipeline will continue to grow.

APPENDIX 5

You Can't Change What You Can't See – Gender and Racial Bias In The Legal Industry

Released on 6 September 2018, the You Can't Change What You Can't See study, corroborates what many have known for years, that extensive gender and racial bias pervades the hiring, promotion, assignments and compensation processes in the legal industry.

Conducted by the Center for WorkLife Law at the University of California, Hastings College of the Law on behalf of The Minority Corporate Counsel Association (MCCA) and the American Bar Association's Commission on Women in the Profession, the report examines implicit gender and racial bias in legal workplaces and offers new (to some) and a refresher of (for others) solutions and tools for interrupting bias across the legal profession.

The survey of 2,827 in-house and private practice lawyers was conducted from April-June 2016 (525 respondents included comments). Questions were based on social science studies documenting implicit bias in the workplace.

Some of the highlights are summarised below.

In general:

- Women and people of colour reported higher levels of bias than white men regarding equal opportunities in all seven basic workplace processes – with women of colour reporting the highest level of bias in almost every process. Those processes are:
  - Hiring
  - Fair performance evaluations
  - Mentoring
  - High-quality assignments
  - Having access to networking opportunities
  - Fair and equal compensation
  - Promotions
- Women lawyers of colour were eight times more likely than white men to report that they had been mistaken for janitorial staff, administrative staff, or court personnel.
- 80% of white men, but only 63% of white women, 59% of men of colour, and 53% of women of colour reported that they had equal opportunities for high-quality assignments.
- Around half of all women lawyers (49% of white women, 51% of women of colour) reported that credit for their contributions was stolen by somebody else.
- 53% of women of colour report that they had equal access to high-quality assignments compared to 81% of white men.
- Three-fourths of white men believed they have been given fair opportunities for promotion, but just over half of women of colour (52%) believed the same.

Prove-It-Again Bias – the need for women and people of colour to work harder to prove themselves:

- 63% of women of colour report having to go "above and beyond" to get the same recognition as their colleagues.
- Men of colour and white women experience "prove-it-again" bias at a higher percentage (nearly 25% higher) than white men. In comparison, women of colour experience "prove-it-again" bias at a higher percentage than any other group – 35% higher than white men and 10% higher than men of colour and white women.
- Two-thirds of women of colour (67%) report being held to higher standards than their colleagues. Men of colour and white women also feel like they are held to higher standards considerably more often (58% and 52% respectively) than white men.

Tightrope Bias – the pressure for women to behave in feminine ways, including backlash for masculine behaviours and higher loads of non-career enhancing "office housework":

- White women reported doing more administrative tasks (such as taking notes) than their colleagues at a level 21% higher than white men, and women of colour reported doing more of this type of office housework at a level 18% higher than white men.

Maternal Wall – significant bias against mothers, and against fathers who take parental leave, was reported:

- Women of all races reported that they were treated worse after they had children; that is, they were passed over for promotions, given "mommy track" low-quality assignments, demoted or paid less, and/or unfairly disadvantaged for working part-time or with a flexible schedule. Women also observed a double standard between male and female parents.
- White women reported that their commitment or competence was questioned after they had kids at a level 36% higher than white men. Women of colour reported this at a level 29% higher than white men.
- About half of people of colour (47% of men of colour and 50% of women of colour) and 57% of white women agreed that taking family leave would have a negative impact on their career. 42% of white men also agreed, indicating that the flexibility stigma surrounding leave affects all groups, including majority men.

Bias in Compensation Systems:

- Large amounts of bias were reported by both white women and women of colour, and these were some of the widest gaps in experience described in the report.
- Women of colour agreed that their pay is comparable to their colleagues of similar experience and seniority at a level 31% lower than white men; white women agreed at a level 24% lower than white men.
- Similarly, when respondents were asked if they get paid less than their colleagues of similar experience and skill level, women of colour agreed at a level 31% higher than white men, while white women agreed at a level 24% higher than white men.

Bias Interrupter Toolkits

The researchers also put together Bias Interrupter Toolkits (to change systems not people) that provide suggestions for easily implementable and measurable tweaks to existing workplace systems to interrupt racial and gender bias in law firms and in-house departments. Many of the bias interrupters can be implemented in any legal workplace and will help to level the playing field for individuals with disabilities, professionals from non-professional families, LGBT people and introverted men, in addition to women and ethnic minority lawyers.

The toolkits take a three-step approach:

1. **Use Metrics:** businesses use metrics to assess their progress toward any strategic goal. Metrics can help you pinpoint where bias exists and assess the effectiveness of the measures you've taken.
2. **Implement Bias Interrupters:** bias interrupters are small adjustments to existing business systems. They should not require current systems to be abandoned:
   a. **Empower and Appoint**: empower people involved in the hiring process to spot and interrupt bias and appoint bias interrupters.
   b. **Assemble a diverse pool:**
      i. Limit referral hiring ("friends of friends").
      ii. Tap diverse networks.
      iii. Consider candidates from a wider range of schools.
      iv. Get the word out. If diverse candidates are not applying for your jobs, get the word out that your firm is a great place to work for women and people of colour.
      v. Change the wording of your job postings.
      vi. Insist on a diverse pool. If you use a search firm, tell them you expect a diverse pool, not just one or two diverse candidates.
   c. **CV Review:**
      i. Distribute the "Identifying Bias in Hiring Worksheet" (available at biasinterrupters.org).
      ii. Commit, in writing, to identifying qualifications that are important – and require accountability.
      iii. Ensure CVs are graded on the same scale.
      iv. Remove extracurricular activities from CVs.
      v. Avoid inferring family obligations.
      vi. Try using "blind auditions".
   d. **Interviews:**
      i. Use structured interviews.
      ii. Ask performance-based questions.
      iii. Try behavioural interviewing.
      iv. Do work-sample screening.
      v. Develop a consistent rating scale and discount outliers.
      vi. If "culture fit" is a criterion for hiring, provide a specific work-relevant definition.
      vii. "Gaps in a CV" should not mean automatic disqualification.
      viii. Provide candidates and interviewers with a handout detailing expectations.
      ix. When hiring, don't ask candidates about prior salary.
3. **Repeat as needed:** After implementing bias interrupters, return to the metrics. If they have not improved, you will need to ratchet up to stronger bias interrupters.

Justin Tarka, Of Counsel at NOTICED member firm Ogletree Deakins commented *"While many are already taking steps to tackle this issue, the study highlights that the profession still has a long way to go. Nevertheless many of the recommendations provided are helpful and practical steps that all law firms and legal departments should embrace and implement."*

The You Can't Change What You Can't See study follows the release of similar findings, closer to home, of the results of the largest international survey of women in law, published by the Law Society of England and Wales in March 2018.

Of the 7,781 respondents to that survey, the main barrier to career progressions was identified as unconscious bias by 52% of respondents; however, only 11% of respondents said unconscious bias training is consistently carried out in their organisation.

APPENDIX 6

Judiciary's Report on Progress and Diversity Action Plan

The Judicial Diversity Committee of the Judge's Council previously published its Report on Progress for April 2016 – March 2017 and revealed its first Diversity Action Plan for the coming year.

Last year saw some great initiatives, aimed at achieving greater diversity within the ranks of the judiciary, being undertaken by the Committee. These included launching a new Judicial Careers Portal, hosting several outreach events including a roundtable discussion with BAME lawyers, providing opportunities to qualified legal practitioners to partake in the Judicial Work Shadowing Scheme, utilising its pool of Judicial Role Model Judges, Diversity & Community Relation Judges and many more.

The Diversity Action Plan envisages building on the above by continuing the judiciary's dialogue with BAME lawyers to understand the barriers they face, working with existing organisations to reach the broadest range of talent, encouraging more networking, running more workshops, and improving the evaluation of the Committee's initiatives.

Faria Ali, Associate at Herbert Smith Freehills commented *"Both the Report and Action Plan make for a very encouraging read. It is exciting to see that the judiciary is taking the issues of diversity and inclusiveness so seriously and I am hopeful that we will see this being translated into a more representative judiciary in the coming years."*

AUTHORS

Faria Ali, Associate
Herbert Smith Freehills LLP

Nic Patmore, Associate
Herbert Smith Freehills LLP

NOTICED Steering Committee

Siddhartha Shukla, Senior Associate, Herbert Smith Freehills LLP
Co-Chair, NOTICED

Nicolle Odutoye, Trainee Solicitor, Reed Smith LLP
Committee Secretary, NOTICED

Ramesh Pani, Associate Ashurst LLP
Co-Chair and Treasurer, NOTICED

Antonio Di Angelo, Paralegal, Reed Smith LLP
Steering Committee Member and Website Manager, NOTICED

* This report is the work product of NOTICED rather than a particular member firm and does not, for the avoidance of doubt, represent the independent views of a particular member firm.