MINORITY ENTRY TO THE LEGAL PROFESSION: A DISCUSSION PAPER

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Preface

This paper is offered for comments and responses from within and without the Minority Access to the Legal Profession Project. Your comments, criticisms and queries will make a valuable contribution to the Project's consideration of the issues presented within the paper and assist the Project in its development of a coherent and effective strategy. The views expressed are the author's and do not necessarily reflect those held by my colleagues within the Project.

I would like to thank my colleagues Kwabena Owusu and Adeline O'Keeffe for assisting me in formulating the ideas and gathering the information on which this paper is based.

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1 THE BACKGOUND TO DISCRIMINATION IN EMPLOYMENT

Increasing concern has been expressed over the past few years regarding the existence and effects of racial discrimination within the legal profession. Clearly discrimination on grounds of race is not a new phenomenon but its effects have been highlighted by the fact that a significant number of ethnic minority graduates have for the first time in the past few years attempted to enter the legal profession. Traditionally, because of the economic rationale of labour migration into Britain it was assumed by the host community that the immigrant population would be willing to and ought to accept the lowest paid and least socially attractive employment.[1] Very little attention was paid to the perceptions or aspirations of those who were born or brought up in Britain who now far outnumber the immigrant population.[2] Despite the well documented disadvantages[3] encountered in the education system a small percentage of this group are successful in attaining qualifications which make them eligible for typical middle class employment including the legal profession. However, the obstacles encountered in striving to enter such employment are a major deterrent. A comparative study undertaken by Ballard et al[4] of the experiences of 1974 graduates seeking employment concluded that the career prospects of non-white job seekers look bleak and that it is "the quiet preference for white over coloured (sic) expressed in a multitude of situations which perpetuates and reinforces the fundamental racism of British society."

2 DISCRIMINATION IN THE LEGAL PROFESSION

Although these findings do not relate directly to the legal profession there is sufficient evidence to indicate that the career prospects of ethnic minority entrants to the legal profession are, if anything, more greatly affected by racial discrimination than in the job market generally. An important consideration is the increased competitiveness of entry to the profession created by the economic crisis; more students now opt for marketable skills at a time when the business of both branches of the profession has contracted.

In the case of the Bar, earnings have fallen appreciably in recent years particularly for those starting off in practice.[5] With regard to the solicitor's profession, the loss of the conveyancing monopoly has made many firms reluctant to expand or to provide opportunities for trainee solicitors.[6] As a result of pressure for places, both branches of the profession have imposed restrictions on entry: in the case of admission to the Bar finals course the minimum qualification is a lower second law degree; in the case of the solicitors finals very exacting standards are required to qualify for a pass (45% of the candidates failed in July 1985).[7] There is no evidence to indicate that academic

qualifications bear any relevance to good professional standards. Such restrictions tend to affect those who are disadvantaged through the education system disproportionately.

The high level of competition forces students into choices very early in their undergraduate years and therefore disadvantages those who because of both unfamiliarity with the system and also lack of financial support are unable to plan beyond the academic stage. The majority of students intending to do the solicitors finals examination register at one of the branches of the Law Society's College of Law as early as the beginning of their second undergraduate year. This pressure results not so much from the lack of places as from a mistaken belief that those who attend the College of Law have a greater chance of success than those who attend other institutions. Those who fail to obtain places at the College of Law because of late registration therefore begin the course with a psychological disadvantage. The local authority grants system also creates unnecessary problems for those who are dependent on them. Some local authorities do not provide grants for vocational training whilst others provide discretionary grants. Some students are therefore unable to take decisions early enough and are being forced to take up employment or depend on family support.

In addition to these disadvantages, which result from considerations which are not specifically attributable to racial discrimination, ethnic minority law graduates seeking to enter the legal profession encounter difficulties due to direct and indirect discrimination in the recruitment process. Racial discrimination continues despite the provisions of the Race Relations Act 1976 which covers both direct and indirect discrimination.

(i) Direct Discrimination

Direct discrimination consists of treating a person on grounds of race less favourably than other persons would be in the same circumstances. Inevitably evidence of direct discrimination is largely anecdotal but from our informal interviews with practitioners it has become clear that many firms and chambers will not recruit ethnic minority candidates. Applicants with non-English sounding names and those born outside the United Kingdom are quickly identified for the purpose of being excluded regardless of their qualifications. Evidence from ethnic minority candidates discloses that very few are asked to attend interviews. Those who pass this hurdle and get interviews often describe the interview as a sham. In many instances the candidates state that the manner in which the interviews were conducted made it clear that they were not being treated as serious candidates. In other instances candidates were informed at the interview that the firm was no longer interested in offering articles and in one case the interviewer informed the candidate that he was only conducting the interview to 'do his

bit'. One interviewee reported that having received six invitations for interviews after making three hundred and fifty applications all turned out to be a sham. In one instance the partner who was conducting the interviews spent a considerable time with the five other candidates but refused to interview our respondent who was summoned to the office and told to ring up the following Thursday to discover the outcome. Such experiences are to say the least very demoralising and humiliating.

In many instances, the candidate has placed all his hopes on the interview having received no other invitations for an interview. Although our research is still at a very early age, the evidence gathered to date indicates that ethnic minority candidates receive very few invitations for an interview in relation to the number of applications. The number of applications for ethnic minority aspirants varied from 350 to 40 whereas in the case of other candidates 40 applications tend to be the maximum.[8]

In none of the instances recorded did the applicant feel in a position to make a formal complaint because although it was clear to him/her the interview had not been properly conducted; because of the general vagueness of the interviewing process it was very difficult to formulate a precise or concrete case. Moreover, there was always a fear that complaint would spoil his/her chances of entering the profession.

All the ethnic minority candidates who have responded to our survey questionnaire make it clear that they are aware that other factors such as institution of graduation, academic record, sex etc have influenced their chances of success but they nevertheless feel that racial discrimination has been an important and sometimes decisive factor influencing their chances of success.

As regards direct discrimination it is not necessary to show that race is the sole reason for the employer's conduct. It is sufficient if race was a substantial reason: (Owen & Briggs v James (1982) IRLR 502). Very often firms and chambers may argue that there were other reasons for the decision such as academic qualifications even though such criteria appear to have little relevance in other cases. Generally, practitioners claim that they are not personally prejudiced but that they take business decisions. Such business decisions involve asking the question whether the individual will 'get on with clients and with other members of the firm or chambers. These considerations because of the employers' own subjectivity lead to the assumption that if a candidate is of a different racial origin the client will be put off'. Firms are therefore reluctant to recruit ethnic minority applicants except in cases where the firm depends on work from the ethnic minority community. These practices lead to segregation especially as ethnic minority candidates are constantly urged to apply for places in firms/chambers in areas

where their racial origins and language may be a "positive advantage". These attitudes also result in an assumption that ethnic minority candidates do better in special types of work, for example, immigration, welfare and crime than in commerce, copyright etc. Such beliefs are self-fulfilling in that ethnic minority candidates, rather than face disappointment opt for firms and chambers specializing in certain types of work, in areas with a high ethnic minority concentration or in firms and chambers of predominantly ethnic minority composition.

In most instances where racial discrimination has substantially influenced the decision on recruitment the candidate may not have any concrete evidence. However, an inference of discrimination can be drawn from the facts where on a balance no other reasonable explanation for the unfavourable treatment is put forward: (Khanna v Ministry of Defence (1981) IRLR 331). This applies equally where the firm or chambers give no explanation for rejection as where the decision is attributed to other factors.

(ii) Indirect Discrimination

The Race Relations Act also makes indirect discrimination unlawful. Indirect discrimination consists of treatment which is fair in form but discriminatory in operation and effect - i.e. it occurs where a requirement or condition is applied, intentionally or otherwise, which adversely affects a considerably larger proportion of one racial group than another and is not justifiable on non-racial grounds. (Section i(i)b). (See Watches of Switzerland v Savell (1983) IRLR 141 and Perea v Civil Service Commission (1982) IRLR).

As regards recruitment to the legal profession, indirect discrimination is much more pernicious than direct discrimination. It is a product of and integral aspect of a general pattern of bad employment practices. Surveys conducted by the Association of Graduate Careers Advisory Services (AGCAS) of the procedures for obtaining articles and the career patterns of young barristers have indicated that the processes in both branches of the profession result in much unnecessary waste of resources and frustration for both those entering the professions and those responsible for recruitment. Some of the issues raised by these surveys and by practitioners in our informal interviews with them will be examined later but at this stage an examination of the recruitment processes in each branch of the profession will be undertaken to investigage the ways in which indirect discrimination enters into the recruitment processes.

(a) The Solicitors' Profession

Prior to the mid-1970's it was fairly unusual for ethnic minority applicants to become solicitors. The reasons for this were two-fold. First, until 1974, entry was restricted to British subjects. More importantly, however, overseas students, predominantly from Commonwealth countries, trained for the Bar since it was the qualification which gave them the option to practice in their home countries. The trend nationally in recent years has been for law graduates generally to opt increasingly for the solicitors profession because of the problems encountered at the Bar.[9] Surveys undertaken by AGCAS[10] have shown tht the prospects of a career at the Bar are very daunting in view of the difficulties in earning a living wage in the first few years. Furthermore, even a successful barrister who has taken silk may be in a worse position financially than a moderately successful solicitor. The general preference for the solicitors profession inevitably influences the choices of ethnic minority graduates. The result of the increased pressure for access to the solicitors profession has been to expose its conservatism.

In recent years the examination system for the solicitors finals has undergone significant changes in response to the recommendations of the Omerod committee[11] and criticisms of the system of learning by rote. However, the provision of professional training continues to be archaic and illogical. Every candidate has to pursue an individual path to obtain articles despite the fact that completion of articles is an essential qualification for entry for the profession. Although the Law Society is entrusted both with the regulation of entry to the profession and the provision of training, the success of individual applicants for articles is determined entirely by individuals within the profession. The young aspirant to the profession is confronted in his/her undergraduate years with the crucial decisions as to where, when and how to apply for articles almost unaided. A 1984 survey by Brian Read of AGCAS provides ample evidence of the uncertainties facing most applicants.[12]

A brief summary of ways in which individuals get articled will serve to illuminate the illogicallity of both the recruitment process and the criteria for selection.

The Procedures for Obtaining Articles

A few encounter no difficulties because their family or other connections assist them to secure articles through the "old boy" network. Much depends on the initiative of firms. The large firms, who are able to plan two years ahead, in their determination to "cream off" those who they consider to be

the strongest candidates, do presentations at selected university campuses to entice graduates to apply. Others actually conduct preliminary interviews on University (and less commonly Polytechnic) campuses through careers offices. At this level all potential candidates stand some chance of success because of their association with the institution[13] though, as will be described later, the criteria applied may negative the openness of the process. Where there is a process of pre-selection followed by interviews on the firms' premises the evidence is that the ethnic minority candidate's chances of success are substantially diminished.

As a result of these recruitment procedures many law students would have fixed their articles long before graduation. The smaller firms are rarely able to plan so far ahead and articles tend to become available quite haphazardly depending on the needs of individual firms. Information as to articles is made available through various channels - advertisements in the professional journals, the Law Society's Registry, local law societies, careers officers, word of mouth etc. Very often candidates who have failed after successive applications through "regular" channels describe chance encounters which lead to success in obtaining articles. One candidate travelling home after an unsuccessful interview for articles despairingly told his story to a stranger on the train. The stranger turned out to be a clergyman who was able through his personal contacts to fix articles, within a week, for the aspirant. In another case a candidate, who six months after successful completion of the Law Society's final examination was unable to get articles, on a social occasion got involved in a conversation with an individual whose relative is employed in a firm of solicitors which happened to be looking for an articled clerk.

Since 1983 the Register of Solicitors Employing Trainees (Roset) has been a valuable source of information for applicants. Roset was initiated by AGCAS and is now composed and published by the Law Society. Although this is an important step forward, it is still entirely dependent on the co-operation of firms and is by no means comprehensive.

The criteria applied in selecting candidates for articles

The criteria applied in the selection process are equally illogical. In the case of the large firms the ideal candidate is usually conceived of in terms of good public school background, high academic achievement throughout school, certain preferred University degrees, or first and upper second class

degrees, high achievement at school and University including prefectships, sports and other extra curricula activities - in other words their definition of a 'high flier'. Very little thought is given to the individual's achievements in relation to their experiences nor to the suitability of the candidate for legal practice.

Another important consideration is whether the applicant has had any experience of legal practice. This criterion again disadvantages those who, because of lack of contacts or financial constraints would not have been able to get placements during vacation periods. Many students have to take up employment which provides a living wage during vacations.

Generally, the criteria are dependent entirely on personal choice which enable the cultural and class assumptions of the individual to be the decisive factor in entry to the profession. In the case of small firms individual prejudices are even more likely to have a decisive effect.

Although no comprehensive evidence of racial discrimination is available by analogy with other work experiences, it can be assumed that the general pattern of bad employment practices and the fragmentation of decision making shields and fosters discriminatory practices.[14] Additionally, the fact that firms have no duty to respond to applications - and very often fail to do so - or to give reasons for their decisions, exacerbates the problem.

The evidence which we have gathered to date indicates clearly that the ethnic minority candidate who is unable to obtain articles through chance contacts or in areas of ethnic minority concentration, and is therefore thrown on the market is unlikely to obtain articles until he/she has passed the Law Society's finals. Many state that their contemporaries are well settled in articles long before the outcome of the examinations is known and are kept on by the firms even if they are unsuccessful in the examinations. Ethnic minority candidates who are determined to compete for articles in areas of specialisation of their choice often find themselves hanging about two years after successful completion of the examination. Eventually, in despair, they accept whatever becomes available regardless of location.

(b) The Bar

The problems of entry to the Bar take on different forms depending on the circuit. In London, candidates encounter fewer difficulties obtaining pupillages both

because of the input of the pupillage committees and the fact that chambers are less reticent to get involved in the training processes since it involves no financial or other commitment on their part. Although after many years of struggle by the Trainee Solicitor's Group, the Law Society has brought into force regulations to control salaries and minimum training facilities none of this obtains at the Bar. The Senate has, however, issued guidelines to chambers covering the functions of the pupil master. The real test therefore arises at the stage when individuals seek to obtain a tenancy.

The main consideration is whether the prospective tenant will bring in sufficient work. At the same time, the distribution of work within chambers depends very much on the barristers' clerk. There is ample evidence that the clerk's authority is often oppressive and that the distribution of work is determined by the clerk's personal preferences and prejudices.[15] It is assumed that a non-white barrister will not be acceptable to a white client or that the non-white barrister will not understand the position of the client. It is, therefore, a foregone conclusion that an ethnic minority candidate will have difficulty obtaining a tenancy. Even during pupillage ethnic minority aspirants to the profession find that the clerk may ignore them for days. The result in recent years has been the de facto segregation of ethnic minority pupils and barristers in all black or predominantly black chambers.[16]

In Manchester, on the other hand, the problems created by racial discrimination are encountered at the pupillage stage[17] since acceptance as a pupil guarantees a tenancy in chambers. As a result very few pupillages become available in any year and aspirants to the profession are very often forced to seek pupillages in London. The criteria for acceptance as a pupil are very similar to those for acceptance for articles in the case of solicitors profession.

The traditional division in the profession results in barristers being wholly dependent on solicitors and their clerks for work. Racial discrimination which clearly permeates the solicitors profession is a major influence in the solicitors choice of chambers. Recently, allegations by ethnic minority barristers of discrimination by solicitors has led to the formation of a joint working party of the Bar and the Law Society to investigate complaints.[18]

It is clear, therefore, that, although a high per cent of the practising Bar is of ethnic minority origin, racial discrimination continues to be a major cause for concern.

3 THE RESPONSE OF THE PROFESSION

The Background

The Royal Commission on Legal Services under the Chairmanship of Sir Henry Benson was established to consider

> "whether any, and, if so what, changes are desirable in the public interest in the structure, organization, training, regulation of and entry to the legal profession, including the arrangements for determining its remuneration...."

In its report in 1979 (Cmnd 7648) the Commission found that

> "the evidence shows clearly that barristers from ethnic minorities are less successful than others in finding seats in chambers...
>
> we were made aware of the fact that there are a number of sets of chambers whose members are drawn exclusively from ethnic minorities. The Commission was particularly concerned that, with the increase in the number of qualified solicitors from ethnic minorities "if the present pattern of events were repeated the results would be that firms of solicitors composed exclusively of members of ethnic minorities would set up in practices in areas with a substantial minority population....there would be a clear division on racial lines in the practice of the law and, to some observers, in the administration of justice itself."
> (para. 35. 37)

The report stated that:

> "A failure to remove even the appearance of discrimination from the legal profession reduces the confidence of every sector of the public in the fair administration of justice." (para 35.2).

The Commission placed the responsibility squarely on the governing bodies of both branches of the profession to achieve full racial integration within the legal profession. Its recommendations include:

> i) The setting up of standing committees of both the senate and the Law Society to be responsible for promoting equality of opportunity. The functions of the committee would be inter alia
>
> (a) With the assistance of the CRE paper "Monitoring an Equal Opportunity Policy", to set up procedures for keeping ethnic records. These records would provide a sound basis on which to decide future policies.
> (b) To be prepared to deal with problems fo individual placements, making use, where appropriate, of local law societies.

(c) To monitor, in consultation with those responsible for education and training in the profession, the process of professional education and training with particular care in order to detect any points at which the needs of students from ethnic minorities require particular consideration.

ii) That there should be a voluntary commitment by the profession as a whole to ensure that all racial groups enter and practice on equal terms.

iii) That guidance should be issued in written form by the professional bodies to all firms concerning equality of opportunity.

iv) That the Annual Reports of the Council of the Law Society should include information concerning policies to promote integration and the implementation of these policies.

The recommendations were very far reaching in view of the scant attention which had been paid to racial discrimination within the legal profession. The Report is commendable for its recognition of the public interest in entry to the legal profession being open to persons of all classes and all races. However, perhaps because of a paucity of evidence, the Report failed to determine precisely what barriers face members of ethnic minorities in entering the legal profession. As will be argued later a survey involving questionnaires and interviews to disclose the problems faced by ethnic minority applicants is essential for an equal opportunities policy.

In addition the report failed to stress the responsibility of individuals, firms and chambers to take measures to ensure equality of opportunity.

The Bar

Acting on the recommendations of the Commission, and under pressure from black groups and barristers, the Senate of the Four Inns of Court established a working party consisting of seven white and seven black barristers under the chairmanship of Lord Justice Browne-Wilkinson to receive complaints of racial discrimination suffered by black barristers at the Bar and to consider to what extent black barristers are at a disadvantage in practising at the Bar and to make recommendations for counteracting any types of disadvantage which were found to exist. The working party which became the Race Relations Committee of the Senate reported in August 1984[19] and although it received no formal complaints of racial discrimination concluded on the basis of evidence before it:

> "Overall we were satisfied that these black barristers had encountered substantially greater difficulties in obtaining tenancies in established white chambers than would their white counterparts. Everyone starting at the Bar at the present day faces formidable problems in getting a tenancy. In our judgement a black barrister faces one further problem: an unwillingness in chambers to treat him as a serious contender for a vacancy."
> (emphasis ours)

The Committee were particularly concerned about the de facto segregation of chambers - out of 210 black barristers, 164 were tenants in 14 sets of chambers which have 5 or more black tenants. Only 34 sets of chambers (excluding the fourteen which have more than five black tenants) have a black tenant.

The lack of representation of black barristers in the larger established sets of chambers also affects the type of work available to them. The committee recommended that although no concrete proposals could be formulated at this stage

> "what is needed is to heighten the awareness of the Bar as a whole not only of the existence of the problem but also of the fact that the remedy lies in the hands of established white chambers."

and that

> "the Senate should seek to bring to the attention of chambers the need to ensure equality of treatment in dealing with applications for pupillages and, in particular, tenancies."

The committee was at pains to stress that what was needed was equality of opportunity and that the recruitment processes led to the exclusion of a large number of suitable candidates and the deterioration of the standards of the profession through segregation.

The recommendations of the committee go further than those of the Royal Commission in stressing the responsibility of chambers to subscribe to equal opportunity policies. However, the implication that the fall in standards arises from the concentration of ethnic minority barristers in Chambers must be queried. There is no evidence that the professional standards of all black chambers are necessarily lower than the average sets of chambers. Provided ethnic minority candidates are given opportunities to join whatever sets they are suited to there is no inherent disadvantage in all black sets of chambers. The problems are created by the racial prejudices of solicitors, barristers' clerks and barristers themselves.

The recommendations of the committee were adopted by the Bar at the Annual General Meeting in July 1984. The following resolutions were passed:

1. That the Race Relations Committee of the Senate take the following minimum steps towards ensuring that black barristers receive equal treatment to their white colleagues:

   a) to monitor the award of scholarships and financial assistance by the Inns of Court and by sets of chambers;

   b) to continue discussions with the Law Society, the Barristers' Clerks' Association and prosecuting authorities about means of eliminating direct and indirect discrimination against black barristers;

   c) to obtain from all chambers an annual report as to the numbers of white and black barristers who have been granted pupillages and tenancies, and to consider ways of obtaining similar statistics in relation to applicants for pupillages or tenancies;

   d) to consider appropriate means of implementing the proposals set out in the letter of the Commission for Racial Equality to the Senate dated 21 June 1984.

   e) to report its findings to the next Annual General Meeting of the Senate:

2. That members of the Bar co-operate with the Race Relations Committee in its task.

3. That effective procedures are required to discipline those who are responsible for racial discrimination against black barristers seeking places in chambers. The meeting therefore called on the Bar Council to formulate and introduce a specific amendment to the Code of Conduct providing that it is professional misconduct for a barrister to cause or permit racial discrimination in relation to pupils or tenants or applicants for pupillages or tenancies.

The Race Relations Committee has already set in motion procedures to implement some of these resolutions. A meeting of heads of chambers was called and a questionnaire was subsequently sent to all chambers to gather information regarding numbers of black pupils and tenants. A joint working party has also been set up with the Law Society to investigate complaints of discrimination by solicitors in the handing of briefs to barristers.

The Solicitors Profession

The Law Society has been very reluctant to recognise that there is racial discrimination within the profession. A working party of Professional and Public Relations Committee in a confidential report in 1983 stated that it had not been able to find any evidence of

racial discrimination and that no remedial action was necessary. The report specifically concluded that ethnic monitoring should not be undertaken. These conclusions clearly go against the weight of the evidence. The lack of formal complaints of discrimination was taken as conclusive to the issue of existence of racial discrimination.

Various excuses have been given by officials of the Law Society for its failure to implement the recommendations of the Royal Commission on Legal Services which clearly addressed itself to both branches of the profession. It has been argued, for example, that setting up a complaints procedure would stir up problems where there are none. Yet the Law Society seeks to establish its case for lack of evidence on the absence of formal complaints. The arguments against monitoring appear, curiously, to be that such an exercise would enhance racism in that it would identify persons of ethnic minority origin.[20] Yet it asserted that a person's racial origins have no bearing on his chances of success in the profession.

In the past year the Law Society has been heavily pressured by adverse publicity in the press - Legal Action, the Guardian, New Statesman etc - and by various groups - the Trainee Solicitors group, the Minority Access Project etc - to take minimal steps to show commitment to investigating racial discrimination in the profession. As a result another working party has been appointed to take up the task. The Law Society it urged to give careful consideration to its composition and terms of reference in order to avoid another failure to carry out the task. At present the working party includes two white and two ethnic minority solicitors and is chaired by David Jefferson who is the chairperson of the Law Society's Professional and Public Purposes Committee.

4 THE NEED FOR AN EQUAL OPPORTUNITIES POLICY IN THE LEGAL PROFESSION

Although the initiatives taken by the professional bodies mark an important step towards attacking racial discrimination in the profession very little will be achieved unless there is an individual commitment on the part of all practitioners to the elimination of racial discrimination. The general attitude is one of disbelief when the issue of racial discrimination in the legal profession is raised. This lack of awareness may well be due to the perception of ethnic minorities as immigrants. More profoundly however, it stems from the strong sense of individualism which prevails in the legal profession. There is a strong resistance to any 'interference' in the right of the individual practitioner to conduct his business to achieve financial success. The tendency is therefore to fall in

line and accept whatever are the prevailing practices in the legal profession uncritically provided the individual can be successful.

When pressured into thinking about the issue of racial discrimination lawyers become immediately defensive. They argue that with the competitiveness of the profession and the pressure of work they are not in a position to change the system. Thus, for example, although they complain that the recruitment process leads to much waste of time and resources they refuse to think about alternatives. Rather, a practitioner faced with one hundred applications for one pupillage or one articled clerk would be happier to throw them all in the waste paper basket and fill the vacancy through informal contacts. An additional disincentive to change the recruitment procedures is the cost that such change would involve. As a crucial first step towards eliminating racial discrimination these entrenched and unchallenged attitudes have to be exposed and changed. Despite the existence of race relations legislation since 1965 in Britain, members of the legal profession continue to argue that legislation will not change individuals. Clearly racist attitudes will not change unless individuals are forced into perceiving the need to change. However, an attempt has to be made to institute procedures within the recruitment processes in the profession which will minimise the effect of personal prejudices. At present the recruitment processes are such as to encourage the exercise of individual prejudices.

It is often argued too that the problems encountered by ethnic minority aspirants to the legal profession are temporary - that many of the difficulties encountered in the past have resulted from language difficulties, inappropriate qualifications and lack of familiarity with British culture. Consequently it is assumed that British graduates of ethnic minority origin who have good qualifications will not encounter problems. Such arguments seek to deny the existence of racial discrimination without any investigation of the issues. Experience in Britain in recent years and in the United States over a much longer period indicates that the situation as regards racial discrimination will not improve merely by ignoring it or even passing of legislation. What is needed, first, is an awareness of racial discrimination and a genuine commitment to its eradication and secondly, an equal opportunities policy.

To quote from Baroness Seear[21]

> "Obedience to the legal requirements though necessary is not sufficient for the creation of equal opportunity. The law provides the essential foundation; only positive action designed to suit the needs of each particular enterprise, can put flesh and blood on the legal bones."

In the case of the legal profession not only has no equal opportunities policy been defined but the recruitment processes very often lead to a blatant defiance of the law.

A primary consideration for the legal profession is that the adoption of an equal opportunities policy would lessen the risk of firms and chambers being in breach of the Race Relations Act 1976. In addition, it would ensure that the most suitable candidates would be selected for entry to the legal profession. Another crucial consideration for both the professional bodies and individual firms and sets of chambers is the public trust which is bestowed on them in the administration of justice. The Royal Commission on Legal Services was, as has been pointed out earlier, particularly concerned that the growing segregation in the profession would reflect itself in the administration of justice.

5 STEPS TOWARDS EQUAL OPPORTUNITY IN THE LEGAL PROFESSION

The first step towards equality of opportunity in the legal profession is a commitment by all firms and chambers to the process of change. In order to get such a commitment an overall assessment of the facts needs to be made to discover the nature and extent of racial discrimination.

The Commission for Racial Equality gives useful guidance in its document "Equal Opportunity in Employment - A Guide for Employers" for the development of an equal opportunities policy. The Commission has also issued a Code of Practice for the elimination of racial discrimination and the promotion of equality of opportunity in employment. The Code has received the approval of Parliament in accordance with the provisions of Section 47 of the Race Relations Act and became operative on April 1, 1984. The Code does not impose any legal obligations itself but if employers take steps set out in the Code to prevent unlawful discrimination they may avoid liability for discriminating acts by their employees.

We examine below some of the steps which may be taken by both branches of the legal profession to bring about equality of opportunity in the profession. It will be seen that these proposals for action follow very closely the recommendations of the Royal Commission on Legal Services.

1. Standing Committees

The Law Society should establish a Race Relations subcommittee under the aegis of the Professional Purposes Committee. The functions of the Race Relations Committee of the Senate and the Race Relations Sub-committee of the Council of the Law Society would include the following:

A. Ethnic Monitoring

(i) The case for monitoring

The need for monitoring on race arises principally from the lack of information on the ethnic composition of the profession. Unless this can be ascertained it is impossible to identify the extent of racial discrimination. Ethnic monitoring is also essential for the implementation of an equal opportunities policy. Information obtained from monitoring will provide answers, for example, to the following questions which are useful guidelines in implementing equal opportunities policies in the profession:

a) Is there evidence that individuals from minority groups do not apply for articles/pupillages or fewer apply than may be expected?

b) Is there evidence that ethnic minority applicants do not get articles/pupillages in firms sets of chambers specializing in any particular areas of work?

c) Is there evidence that individuals from ethnic minorities do not apply for entry into the profession or fewer apply than may be expected?

d) Is there evidence that qualified solicitors/barristers are concentrated in a few firms/sets of chambers?

e) Is there evidence that qualified solicitors/barristers of ethnic minority origin specialize only in certain areas/types of work?

(ii) Implementation of Monitoring

Monitoring can be conducted by the Standing Committees at varius stages without any additional expense by using existing procedures. We would suggest the following stages:

a) All entrants

Solicitors' Profession:

All graduates intending to sit the Law Society's Final Examinations are required to fill in an Application for Enrolment as a Student with the Society. Monitoring at this stage would provide information concerning the number of ethnic minority students intending to join the profession.

The Bar:

Monitoring can be conducted at a preliminary stage when graduates register at the Inns of Court School of Law.

b) Applicants for Articles/Pupillages

Articles:

The Law Society Appointments Registry issues a form to be filled in by persons wishing to be articled. This form could be used as the basis for comprehensive information regarding applicants for articles. However, this form would not provide evidence of the succcess rate in obtaining articles. The procedures followed by graduates in obtaining articles are extremely complex making monitoring at this stage a very difficult exercise. The only way in which complete information could be collected is with the co-operation of all firms employing articled clerks. It would be necessary, therefore, to require firms to adopt a standard procedure for applications whereby candidates would submit along with the firm's own application form (if thought necessary) and the candidate's curriculum vitae a standard Law Society form. This form would include the candidate's personal details and would be completed by the firm providing information as to whether the application was successful. The firms would be required to return the Law Society Standard Form to the Law Society for monitoring purposes.

There is at present no system for registration of pupillages at the Bar. In order to monitor pupillages some form of registration would have to be undertaken at various stages:

first: application for pupillage
second: when pupillages are obtained
third: when pupillages are completed
fourth: on obtaining a tenancy.

The pupillage committee of the Inns should look into ways in which registration can be assured at each stage. In this regard the Regulations of the Senate will have to be amended to include provisions for registration as outlined above.

In all instances to assist with monitoring the forms would contain in addition to questions relating to the individual's personal details an ethnic question which could be devised as follows:

> "To assist in monitoring our equal opportunities policy, and for that purpose only, you are asked to provide details of your ethnic origin, I would describe my ethnic origin as ...

BLACK	WHITE
Afro-Caribbean origin	European origin
African origin	(including UK origin)
Asian origin	
Other: please specify	Other: please specify

(please tick as appropriate)

(Classification suggested by the Commission for Racial Equality.)

c) Present Employment

Solicitors:

In order to ensure equal opprtunities in the solicitors profession it is necessary to get an overall picture of the present number of ethnic minority solicitors in practice and articled clerks employed by firms. This can be achieved by conducting a survey. In order to save costs a questionnaire could be circulated to all firms at the same time as questionnaires are distributed for the compilation of the annual Roset. The additional questionnaire would request information regarding the ethnic origins of partners, assistant solicitors and articled clerks.

The Bar:

A survey is at present being conducted by the Race Relations Committee of the Senate.

Both stages (b) and (c) of monitoring would require the active co-operation of firms and chambers. In this regard guidelines (as detailed below) issued by the professional bodies to all firms and sets of chambers would assist them to perceive the need for monitoring.

B. Complaints

The Standing Committees would hear complaints of racial discrimination in the profession and report the matter to the Professional Conduct Committees of the profession.

C. In cases where hardship was being experienced as a result of racial discrimination the standing committees would assist candidates seeking pupillages or articles.

2. Guidelines

Guidelines need to be issued by both professional bodies to firms and chambers to avoid both direct and indirect discrimination. The guidelines should provide firms with

assistance on the following matters:

(i) In advertising places in firms and chambers methods which encourage discrimination should be avoided. These include word of mouth, chance letters of application. Firms and chambers should advertise through regular channels e.g. pupillage committees, the Law Society's Registry, the Roset, professional journals, newspapers etc. which would be accessible to all potential applicants.

(ii) The advertisements should include a declaration of commitment to equal opportunities. This would serve two purposes: it would force firms/chambers to make a public commitment and it would give applicants confidence in applying.

(iii) Firms and chambers should give a senior member the responsibility for recruitment but all decisions should be taken openly by as broad a cross-section of the members in order to avoid individual bias.

(iv) The criteria for shortlisting and selection of candidates should be examined in order to eliminate criteria which have no relevance to the requirements of practice and tend to exclude certain groups.

(v) The criteria should be determined and applied uniformly to all candidates.

(vi) Candidates should be informed of the outcome of the selection process.

(vii) In the case of barristers' chambers opportunities for work must be provided for all tenants and pupils. Heads of chambers and senior members must exercise effective control over the clerk and ensure equal distribution of work.

(viii) Decisions with regard to promotion should be taken openly and all potential candidates should have access to all the information available regarding the firm's/chamber's requirements.

(ix) Monitoring: The responsibility for monitoring would rest mainly with the standing committees since an overall picture is required and the professional bodies have a duty to oversee the standards of the profession. However, larger firms or sets of chambers should carry out their own monitoring to ensure compliance with equal opportunities policies. All firms and chambers should be encouraged to co-operate with the standing committees in the monitoring exercise to avoid racial discrimination in their recruitment practices.

The circumstances of individual firms/chambers differ in size, location and potential number of ethnic minority applicants. However, firms and chambers can adapt the guidelines to their needs.

Once the facts have been established through monitoring a more effective policy including positive action can be adopted. An example has been set in this regard by the Law centres through the black articled clerks scheme which was initiated following a

report on Race and the Law centres which established the need for more legally qualified ethnic minority workers in Law centres.

Monitoring will also assist in establishing at what stages in the training and recruitment procedures racial discrimination excludes ethnic minority aspirants to the legal profession. It may become necessary to review the system of legal education both at the academic and vocational stages to ensure equality of opportunity. The system of recruitment may also have to be standardized since, as has been argued, fragmentation of decision making and the arbitrariness of critiera applied nurture discrimination in the recruitment processes. It has been suggested by some practitioners that the system of entry which is in operation for Universities may be a useful model to follow although it would involve a tremendous financial input by the profession to get it established.

Finally the Law Society should amend its Code of Conduct to incorporate a provision to make it a disciplinary offence for a solicitor to discriminate in considering applications for articles or places in firms on the basis of race, colour, ethnic or national origins.

The process of investigation which will be set in motion by the adoption of an equal opportunities policy will also serve to disclose weaknesses in the organization of the legal profession.[22] The professional bodies may have to be reconstituted so that their training, admission and disciplinary functions can be separated. At present it is very difficult for the professional bodies to exercise disciplinary functions effectively since they are dependant on individual firms and chambers to provide vocational training. In addition, all the decision making committees of both branches of the profession are constituted of practitioners.

6 THE MINORITY ACCESS TO THE LEGAL PROFESSION PROJECT

The Project has been and will continue to function as a pressure group to bring about change in the legal profession to ensure equality of opportunity. In addition the Project has established links with the professional bodies and sets of chambers, firms and practitioners in various locations in London and outside. The broad spectrum of representation of organizations and groups on the Advisory Committee of the Project has assisted the Project to widen the scope of its work both within and outside the legal profession. The project has therefore established itself as an important liaison group between various groups and organizations and the legal profession.

The Project originated from initiatives taken by law lecturers at the Polytechnic of the South Bank who, as members of the Executive Committee of the Project, have a crucial role in furthering the work of the Project. This input has ensured a very close involvement with minority entry to legal education which is an integral aspect of entry to the profession.

The Project has a major function in establishing the need for and furthering equal opportunities policies throughout the processes of legal education, training and recruitment to the profession. The national campaign, which has been set in motion through the work of the Project, to establish equality of opportunity in the legal profession must continue. To ensure that the work goes on the professional bodies, individual firms and sets of chambers and individuals must make a commitment to its continuation. This includes financial assistance.

In order to get an overall picture of the barriers to minority entry to the legal profession a survey will be conducted by the Project of all institutions offering law degree courses and courses for the vocational examinations. In addition interviews will be conducted with candidates at various stages of entry to find out the manner in which direct and indirect discrimination manifests itself. Such information together with regular monitoring would lay the basis for an equal opportunities policy for the legal profession.

FOOTNOTES

1. Fifth Report from the Home Affairs Committee of the House of Commons Session 1980-81 on Racial Disadvantage, London: HMSO, 1981.

2. Brown, Colin, Black and White Britain: The Third PSI Survey, London: Heinemann, 1984.

3. 'Education for All' Report of the Swann Commission, Cmnd 9453, London: HMSO, 1985.

4. Ballard, Roger and Holden, Brian "The Employment of Coloured Graduates in Britain" in P. Braham, et.al. (eds.) Discrimination and Disadvantage in Employment, London: Harper and Row, 1981.

5. Lloyd, Norman, 'The Careers of Graduates of 1978, 1979, 1980 and 1981 at the Bar', University of Manchester Careers Services, 1983.

6. Informal interviews with firms and careers officers.

7. Figures of results from other years were not available.

8. Read, Brian D. 'Becoming a Trainee Solicitior 1983' AGCAS, University of Sheffield Printing Services.

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11. 'Legal Education': Report of the Omerod Committee Cmnd 4595, London: HMSO 1971.

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13. Ballard, R. et al 'Coloured Graduates Survey', 1979, mimeograph.

14. Smith, David. "Racial Discrimination - Policy and Practice" in P. Braham, et al. (eds.) Discrimination and Disadvantage in Employment op. cit.

15. Report of the Royal Commission on Legal Services, Cmnd 7648, London: HMSO 1979.

16. Ibid., paras 35.33-34.

17. Information gathered from a meeting of barristers and solicitors organized by the Haldane Society at the Manchester Polytechnic on May 30, 1985.

18. Guardian, May 24 1985.

19. Annual Statement of the Four Inns of Court, op cit.

20. Similar arguments were put forward by Enoch Powell in a recent speech given to the Cambridge University Association, Guardian March 11 1985.

21. Baroness Searr, "The Management of Equal Opportunity" in P. Braham, et al., (eds.) Discrimination and Disadvantage in Employment op cit. p.274.

22. A recent study by Michael King and Colin May of the recruitment of black magistrates led to the disclosure of very fundamental problems in the system of recruitment of magistrates generally. King, Michael and May, Colin Black Magistrates London: Cobden Trust, 1985.