Continuity and Change: the professional lives and culture of self-employed barristers in England and Wales

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Declaration

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ABSTRACT
This thesis explores how self-employed barristers responded to the reforms that have reshaped the profession in the last 25 years, to assess if and how their professional lives and perceptions of Bar identity and culture have changed as a result. The loss of its advocacy monopoly, cuts to legal aid, the liberalisation of the rules governing the Bar's working structures and external regulation go to the core of the reforms. It is a qualitative study, based on semi-structured interviews with barristers and chambers staff, together with observation in chambers, at court and at informal and formal Bar events over a period of 18 months, triangulated by in-depth reading of the trade press, the national media, social media and official pronouncements from the profession's representative and regulatory bodies for the same period.

The study takes into account the literature on the sociology of the professions and tests its applicability to the Bar's distinct and idiosyncratic structures and ways of working. It considers Abbott's (1988) professional development thesis, which focuses on jurisdictional battles between professions for control over tasks and the attendant changes that emerge as a result of such conflicts. It further considers a range of studies on the concept of professionalism and, with reference to the legal profession, how it has been developed in the light of commercial, regulatory and managerial reform. It concludes that much of that literature focuses either on other professions or on the solicitor branch of the legal profession, which are different in structure, governance and professional culture and is thus not always applicable.

The findings develop existing research on the Bar or create new knowledge and point to a more commercially oriented and management driven Bar. The chambers model has evolved significantly, as have practitioners' views and methods of seeking work, in an effort to be more customer-centred and competitive. Regulatory reforms have reshaped chambers' organisation and accountability, as well as entry, selection and training processes. Pupillage numbers are down, obliging prospective new entrants to be even more highly qualified, motivated and entrepreneurial to get in. The dramatic reduction in legal aid, together with a decrease in work has resulted in a two-tier profession, with something of a winner/loser dichotomy. Although interviewees share a strong sense of professional identity and culture, there are those that feel the profession has fragmented.

KEY

Abbreviations:

ABS	Alternative Business Structures
Bar Council	General Council of the Bar
BPTC	Bar Professional Training Course
BSB	Bar Standards Board
CAB	Citizens Advice Bureaux
CBA	Criminal Bar Association
CFA	Conditional Fee Agreements
DBA	Damages Based Agreements
GDL	Graduate Diploma in Law
LETR	Legal Education and Training Review
LSB	Legal Services Board
MOJ	Ministry of Justice
SRA	Solicitors Regulation Authority
VHCC	Very High Cost Case

Statutes:

AJA	Access to Justice Act 1999
CLSA	Courts and Legal Services Act 1990
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LSA	Legal Services Act 2007

Continuity and Change: The Professional Lives and Culture of Self-Employed Barristers in England and Wales

Introduction

This thesis explores the working and organisational lives of self-employed barristers in England and Wales, with particular emphasis on how they have adapted to the radical changes the independent Bar (the 'Bar') has undergone in the last 25 years. It considers the impact of such changes and practitioners' perceptions of their effect on their professional lives and the Bar's traditional culture and identity. It identifies, first, what market, state and regulatory pressures have driven the reforms, before considering how the profession adjusted its own internal organisation, structure and outlook in response. It is the first comprehensive empirical overview of the effect of the reforms on the profession. The focus of this research is not to review arguments for or against the application of competition, independent regulation or the withdrawal or reduction in public funding in certain areas of practice, which go to the heart of the changes. Instead it seeks to understand the dynamics of the reform process, from the perspective of different barristers and how they have and are negotiating their new working landscape.

This is a qualitative study, based on in-depth interviews with barristers, clerks and chambers' staff and observation in chambers, at court and at various informal and formal Bar events over a period of 18 months, from March 2013 to September 2014. Just as the empirical aspect of the study began, the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (LASPO) came into force, reducing the scope and amount of public funding for a wide range of civil, family and tribunal cases, and the fieldwork took place during the heated dispute between the Bar and the Ministry of Justice, over the proposed reforms to legal aid in criminal and public law cases, introduced in a consultation paper *Transforming Legal Aid,* in April 2013. Although this study is broader in scope, the reduction in public funding has necessarily impacted on many practitioners' views and practices, and is inextricably linked to how some of them organise themselves, seek to get and keep work. Despite its strong professional identity, the Bar is very diverse and this study is based on interviews and observation of a range of practitioners and chambers, both in London and on three different circuits to give a more nuanced and textured view of the profession.

There have been only a few qualitative empirical studies on the Bar, some of which predate the implementation of all or most of the reforms (Abel-Smith and Stevens, 1968; Zander, 1968; Hazell, 1978a; Flood, 1983; Morison and Leith, 1992), whilst others focus on marketing (Harris and Piercy, 1998; Harris and O'Malley, 2000; Harris et al, 2003), direct access (Flood and Whyte, 2008) or the emergence of solicitor-advocacy in the higher courts (Boon and Flood, 1999) in their early application and are in need of updating. Harris (2002) theorised the emotional labour of barristers and Maclean and Eekelaar (2009) observed the lawyering tasks of family law counsel. Two recent doctoral researchers have focused on the early stages of a career at the Bar: Roger's (2011) ethnographic account of pupillage yields rich data on early professional identity formation, as well as details of chambers life and structure. Freer's thesis (2016) considers the Pegasus Access scheme innovated by the Honourable Society of the Inner Temple (Inner Temple) for non-traditional entrants to undertake mini pupillages. In the last decade, the profession's own institutions, the General Council of the Bar (Bar Council) and the Bar Standards Board (BSB) have for the first time developed a research agenda, which includes regular surveys and qualitative enquiries. Nonetheless, compared to the solicitor's branch and other professions, the Bar remains under-researched.

Whether this paucity of research is due to a lack of interest or, more likely, issues of gaining access to what has been described as a 'closed and close community' (Rogers, 2011, p.4), this study seeks to remedy this lack of detailed data on the working and organisational lives of barristers. It reviews and expands upon some of the findings gathered in the research above and updates it to cover the impact of the changes in the last 25 years. The public image of the Bar has long been associated with advocacy and despite this aspect of a barrister's work being largely carried out in the public arena of an open court, there is a general lack of knowledge about the profession, with misconceived notions of what barristers do, how they work and their professional interaction with the solicitor branch and the public. The purpose of this study is not to paint this profession in any particular light, but to build on the small body of knowledge that exists and give, with rich description and analysis, a more contextualised account of how practitioners get their work, organise themselves and make sense of their professional role in today's market. Through interviews and observation, it seeks to throw light upon the values of the individuals concerned, amass relevant factual detail of their working lives and create a rounded picture, which can convey the mainspring of their conduct (Moyser and Wagstaffe, 1987; Medhurst and Moyser, 1987).

Being one of the original status professions, dating back to the 13th century, self-employed barristers operated within the four Inns of Court in a manner largely unchanged since the 19th century before the changes under review took place. A prestigious and elite profession, members enjoyed high social and professional status, which is now being challenged on a number of fronts, rendering them a vulnerable elite group (Rogers, 2011). There have been ideological challenges to the level of state spending on legal services and to the desirability and utility of lawyers more generally, evidenced, for example, by a growth in non-lawyer led dispute resolution (eg. mediation) and recent proposals that civil claims worth up to £25,000 be decided without lawyer involvement in online courts, via an inquisitorial process, (Maclean, 2015; Briggs, 2015; 2016). Barristers now have to compete with new legal service providers for work that was traditionally done by them. The Bar has been obliged to become more competitive and rethink the original chambers model and how practitioners get work, which has resulted in a wide variety of organisational adjustments.

This study further seeks to explore how the statutory imposition of an independent regulator, the Bar Standards Board ('BSB'), for the first time in the profession's 700 year history, has impacted on the profession, and how practitioners perceive the introduction of managerial reforms on how they recruit and train new members and administrate their chambers. Barristers are not passive victims of change and the empirical aspects of this study seek to expose the extent to which they are dynamic and adaptive - to what degree they have created new strategies and expansionary tactics in response to new threats and opportunities.

Despite being shaped around the reforms that have transformed the profession, the research design was initially exploratory, in that the open-ended interview questions acted as guides, which developed and altered organically as the project unfolded and issues and patterns emerged. Nonetheless, the overarching theoretical framework that influenced the inquiry was drawn from the sociological literature on professions generally. It considers and tests the applicability of Andrew Abbott's *The System of Professions* (1988), which advances a framework for analysing professional development. It further draws on the literature that defines professionalism and the debates that have arisen in recent years as to whether this concept can still exist in the light of the changing nature of professional life under the reforms in question (Paterson, 1996; Freidson, 2001; Ackroyd and Muzio, 2007; Boon, 2010, Evetts, 2015). Abel's multiple analyses of the Bar in the last 25 years exemplify the

professionalization project thesis with reference to the Bar. His work is referenced not just as a source of data on the profession, but also because he is the only person to theorise the Bar as a whole and provide one (albeit contested) view of the profession's ideology (Abel 1986; 1987; 1988; 2004a; 2004b). Organizational studies literature, which examines how other professions and solicitors have adapted to or resisted change, the literature on the managerialization of public services and professions and the wider literature on neoliberalism gave the analysis further ideological, political and economic context.

As stated, the central question of this thesis asks what impact the reforms have had on the professional lives of self-employed barristers in England and Wales. In order to answer this, the study has considered: the new chambers' model and organisational structures, how and from where barristers source their work, specialisation, recruitment, training, the roles of the specialist Bar Associations, conditional fee agreements, customer service, accessibility and the impact of legal aid reductions, and aims to answer the following ancillary questions:

1. Has the organizational structure of the traditional chambers model changed? If so, why and in what ways does this impact on its members?
2. How do new entrants and practitioners perceive their regulator and the reforms it has implemented with regard to entry selection, training and chambers' organisation?
3. How are barristers competing for and getting work?
4. What are their views on the new competitive environment and marketing?
5. Do practitioners think the reforms/changes have impacted on and altered the traditional characteristics and professional culture of Bar?
6. Do they perceive the Bar to be a unified profession?

The thesis has been divided into two parts, the first concerned with the background, literature review, conceptual framework and methodology. The second contains the empirical findings and the concluding discussion. The outline is as follows: the first chapter provides a brief history of the Bar's origins and evolution, to illustrate how and why certain organisational and working practices arose and how advocacy was at the core of the profession's professional identity. It provides a summary of the reforms of the last 25 years in order to give the empirical chapters and analysis context. Chapter 2 identifies the existing empirical research on the profession and how it has been conceptualised. It highlights some of the relevant findings for

comparison with this study. It further sets out the conceptual influences of this thesis, and examines the theoretical perspectives on professional development and the concept of professionalism, testing their applicability to the Bar. The third chapter sets out the methodology and research methods, how the data was analysed and includes consideration of the author's positioning within the study, having practiced at the Bar for 8 years, between 1985 and 1993. Part II, containing the empirical findings and conclusions, opens with Chapter 4 and a consideration of barristers' chambers, perhaps the most important site in terms of professional socialisation, where members spend much of their time and from where their clerks and staff operate. It considers how the chambers model has evolved in response to the increased commercial and managerial outlook across the profession. In Chapter 5 the processes of selection and entry into the profession are examined, setting out practitioners' views on the new regulatory structure that frames them. It further explores what attributes an aspiring entrant needs to get a pupillage. Chapter 6 considers how barristers seek work and their views on the efficacy of marketing. Chapter 7 reviews conceptualisations of professional legal culture before exploring practitioners' views on how the reforms and changes have impacted on their perception of their professional identity and ideology. Chapter 8 ends the findings section by probing practitioners' views on the Bar community. It considers the impact of the reforms on the Bar's traditionally small number of geographically contained practitioners and the increasing differentiation and stratification across the Bar due to workload and earning disparities, as a result of the 'public/private', divide. The final discussion and conclusions, and recommendations for further research, are set out in Chapter 9.

PART I

Chapter 1 – Research Context: Reforming the Bar

The purpose of this opening chapter is twofold: first, to give this study some historical context, to explain the origins and growth of the independent Bar and its professional culture and show how and why its traditional areas of work and methods of working developed. Second, this chapter will summarise the key reforms and changes the profession has undergone in the 25 years preceding this research, so as to frame the empirical chapters, which look at how barristers have responded and adapted to those changes. The Bar, as an institution, has a strong sense of identity and distinct professional culture and it is only by having some understanding of the profession's development that one can begin to grasp in what context members were, and to a significant degree still are, socialised into its traditional, idiosyncratic ways of working and to understand how they perceive and react to the dramatic changes the profession has undergone in recent times.

Many of the Bar's traditional characteristics pre-date the first significant reconfiguration of the profession, which took place in the second half of the 19th century. Those changes created a new division of labour that arose between barristers and solicitors, which remained in place till the onset of reforms from the late 1980's onwards. Despite the various shifts the profession has undergone, a constant and central aspect of barristers' identity is their role as independent advocates and the sections below seek to highlight that this distinct function appeared from their first emergence, even before they were recognised as a professional group. The social status attached to this role, together with the demographic make-up of the early Bar, go some way to explaining how, as the profession developed almost unaltered during a period of vast social and economic change from the late 18th century onwards, barristers sought not to expand their markets, nor take advantage of new areas of work, but instead fought with the solicitor/attorney branch to maintain their independence and role as specialist advocates, giving rise to disputes about work jurisdictions and restrictive practices (Burrage, 2006; cf. Abel-Smith and Stevens, 1967; 1968; Abel,1988).

Origins and development of the profession

1.1. Emergence of the Bar

The common law, shaped by earlier customary law, emerged after the royal courts were established and continued to develop and expand through decisions and

precedents made by judges. As oral proceedings became more technical and since they were conducted in French, it became necessary for expert advocacy. From the earliest appearance of legal professionals in the non-clerical courts, there was a division of labour, based on the separation of functions of advocacy on the one hand and representation on the other, so the split evident in today's two branches was not the result of a schism, as the division of labour predates professional formation. The 'advocatus' stood by a litigant and spoke for him, whereas the 'procurator' or representative stood in for a litigant who was absent (Baker, 2000). These advocates (also called pleaders or narrators) became known as Serjeants-at-Law (serjeants) during the 13th century, when they acquired a monopoly of advocacy in the Court of Common Pleas, the court most often used for civil litigation. The serjeants were selected by the King, wore a distinctive coif and were perceived to be a professional group (Prest, 1986; Burrage, 2006). It was not just a professional qualification, but a public honour, with status on a par with knighthood. By the 15th century they were the natural leaders of the Bar and it was from this group that the common law judges were chosen (Baker, 2000; Boon and Levin, 2008).

Apprentices to the serjeants, later known as barristers, were in evidence by the late 13th century, attached to the court where they were installed in galleries or 'pecunes', specially built for them. Although not all became serjeants, more senior ones became the junior branch of the Bar, with rights of audience in the King's Bench, Chancery, the lesser courts and on circuit. The term 'utter' or 'outer' barrister first appears in mid-15th century records of Lincoln's Inn. 'Inner' barristers were students. Barristers only emerged as fully-fledged advocates during the 16th century when the volume of litigation increased and the serjeants could not meet the demand (Prest, 1986; Burrage, 2006). Further, the King's Bench court, which travelled around the country, developed a group of lawyers of its own and that it was these peripatetic lawyers, who were senior apprentices to the serjeants, that evolved into modern barristers (Abel-Smith and Stevens, 1967). Unlike serjeants, barristers were not appointed by the Crown. A third category of counsel, the King's Counsel, was created under the Stuarts. These were barristers upon whose services the King had a prior claim and they were obliged to assist the Attorney General and Solicitor General if called upon. Their rights of advocacy for each group were not conferred by statute but by judicial discretion.

By 1300, the second group, attorneys or procurators, appeared so often in the Common Bench, they too had become an occupation. They spoke in court on behalf

of non-attending litigants, set the procedures in motion, managed suits and could challenge what a serjeant has said on behalf of his client. They were selected by judges and sworn to do their duty as officers of the court. In the 15th century, the work of attorneys was paralleled by solicitors in the Chancery Court, and a campaign by judges to exclude them, so that young barristers could carry out their work, failed as the latter were too busy with court appearances, advisory and drafting work.

There were no less than 7 classes of legal practitioner in the common law courts by the end of the 17th century. The senior branch comprised of serjeants, the most senior advocates, King's Counsel and utter or outer barristers (juniors). The junior branch was made up of solicitors, attorneys, conveyancers (or scriveners) and pleaders, who drafted the documents to initiate litigation. In the ecclesiastical and admiralty courts a parallel group of lawyers had evolved, with proctors carrying out a similar task to that of attorneys/solicitors and a group of advocates in Doctors' Commons, or College of Civilians, who had a monopoly on the court work. In due course, pleaders were to be absorbed by barristers, scriveners by solicitors, and under the *Judicature Act 1873* solicitors and attorneys merged and serjeants were abolished, leaving the two-branch division of barrister and solicitor that exists today (Zander, 1968; Warren, 1978).

What is clear from the brief outline above is that from the outset there was a difference in function between the two branches, with advocacy being the defining feature of a barrister. This specialist status was reinforced by the common law judges, who themselves came from that branch of the profession, at whose discretion rights of advocacy were conferred.

1.2 The Inns of Court: Influence, education and training

Initially there were about twenty Inns around the Holborn and Fleet Street areas, housing mainly apprentices and clerks. By the middle of the 15th century, barrister apprentices were based in the four Inns of Court, which were founded in the 14th century, initially established as lodging houses for those attending the Westminster Courts (Lemmings, 2004). Serjeants had their own Inns, in which they remained after appointment to the bench and attorneys gathered in the Inns of Chancery (Baker, 2000). A fairly long and elaborate apprenticeship was the sole form of legal education, as common law was not regarded as an academic subject that could be learned at the universities. By the Tudor period the Inns of Court had developed into educational centres, providing a chapel, a library and a dining hall, which hosted

mock trials (moots), debates and readings, which were extended lectures delivered by senior practitioners. Aspiring lawyers had to spend 8 years there before being called, and 5 further years before being fully qualified (Warren, 1978). The Inns were also the centre of social, political and cultural life, with an elaborate hierarchy and much symbolic ritual, which promoted solidarity, collegiality and an established order of ranks within the profession, within which a young lawyer would be socialised into the profession's ways and ethos and could locate his standing and progress (Boon, 2014).

As more cases reached the courts, the Bar was opened to junior members of the Inns and numbers swelled as it further transformed itself into communities of masters and pupils, united by institutional loyalty and divided from the solicitor/attorney branch by inequalities of wealth and rank (Lemmings, 2004). However, the Inns went into rapid decline in the late 17th century, around the same time as the confrontation between the municipal and chartered bodies within the City of London and Charles II and then, James II, who sought to limit the power of these 'little commonwealths' or 'republics' and have royal control over them. The Bar, whose autonomy rested not on charter but on custom, fiercely resisted and the incoming William of Orange restored the liberties and privileges of the chartered bodies, including those of the Bar, which remained an institution of self-government, controlling admission, training and certification and the right to defend and regulate its work jurisdictions, a situation that remained largely unchallenged and unchanged till the late 20th century (Burrage, 1997, p.149). This long history of independence and self-governance is ingrained in Bar culture and contrasts sharply with the new regime of external regulation and oversight.

The programmes of education at the Inns were gradually abandoned and benchers focused their efforts on the organization of dinners, building maintenance and rent collection. The general view is that until the 19th century the Inns failed to have much influence over entry or professional life, though minutes of the Inns show that the internal control exercised over those who challenged the status quo remained constant. Although practitioners may have been insulated from the influence of patronage, private corruption or state coercion, their freedom was very much curtailed by the internal powers of the Inns, who proactively policed all who were admitted, disciplining those affiliated with political radicals or showing any signs of cultural unorthodoxy (Wesley Pue, 1997). There have been many critics during the history of the Bar of barristers' training, entry requirements and self-government, but

as Burrage states 'the absence of criticism of their honesty and integrity stands in sharp relief' (2006, p.517). High levels of compliance with the rules of etiquette are attributable to the informal, collegial disciplinary authority within the profession itself and the oversight of judges within the courtroom (Burrage, 2006; Abel-Smith and Stevens, 1967).

1.3 Status and distinction

Although there had been a decline in recruitment of aristocratic students since the Glorious Revolution, the Bar remained an effective route into the aristocracy. Its status gradually became associated less with social associations and more on the performance of a specific task. It became important therefore for practitioners to reinforce their difference, to separate themselves and their work from attorneys, who dealt with clients and client money and were thus considered to be engaged in trade. The latter group were excluded from the Inns, distancing the Bar from their consumers (Lemmings, 2004). Collective life at the 18th century Bar was something of a gentleman's club, an exclusive preserve of the rich, who from 1798 were obliged to dine a minimum amount of times in hall. Circuit messes sprung up for those moving around the provinces. In the 18th century and under pressure of too much work, barristers began to delegate the preparation of briefs and evidence gathering to solicitors and attorneys (a move that was widely viewed at the time as a lowering of standards). Formal regulation of solicitors and attorneys was enacted in 1729, controlling the costs they charged, formalising training and giving them a monopoly on initiating litigation and a decade later their first professional association was formed ('The Society of Gentleman Practisers in the Courts of Law and Equity'). Although there were no sanctions on breaking this monopoly, solicitors and attorneys, supported by their professional association, extended the scope of their work, bringing in barristers only when they wished and reducing the latters contact with clients, seeking to keep advisory and pleading work for themselves. Barristers were, at this stage, still permitted to be briefed directly the lay client. Nonetheless, this system of 'referral' for much work began and barristers were complicit in distancing themselves from the original sources of work. To avoid unprofessional touting, barristers were discouraged from currying favour with attorneys and solicitors, except at arm's length, and from socialising with them (including travelling on public transport with them). This function was left to the clerk, who acted as intermediary, and in developing this role barristers surrendered control over their own working lives and the fees they charged (Abel-Smith and Stevens, 1967). The introduction of the barrister's clerk, was not therefore, driven by business innovation,

but more by a professional logic, a desire to maintain status, difference and distance (Burrage, 2006).

Rules of etiquette governed the way the two branches interacted: until the 1990s they could only meet in a barrister's chambers, barristers' court dress code affiliated them with the bench, excluding solicitors, who had to sit behind them and were referred to as 'my friend', not 'my learned friend', the way in which fellow barristers called one another (Burrage, 2006). By the mid 19th century, the separation of status between the two branches was complete, with solicitors using the tradesmen's entrance when calling at barristers' homes (Burrage, 2006).

1.4. Lawyer Monopolies and jurisdictional disputes

Armed with a monopoly on the initiation of proceedings, attorneys sought to take over the monopoly of conveyancing in the City of London from the scriveners, succeeding in 1760 and acquiring a national monopoly in 1804. Towards the middle of the 19th century solicitors increased their advocacy work. The creation of the county courts (about 500 nationwide) under the County Courts Act 1846, forbade lay clients from instructing barristers directly in cases in that jurisdiction and enabled solicitors to do much of the advocacy work there, taking much of the junior Bar's work away. At the same time the numbers at the Bar had doubled and losing much of their work in the superior courts to the county courts, and in turn to solicitors, gave cause for concern. In language reminiscent of today's anxieties, the Law Times reported the gloomy prospects of the Bar, concluding that the common law Bar's days were numbered: 'one fiftieth part of the present race of Barristers will suffice for all the work for which, in a few years, Barristers will be required' (Law Times, 11th August, 1849 p.438, cited in Abel-Smith and Stevens, 1967 p.55).

In response the Bar sought, unsuccessfully, to exclude solicitors from acting as advocates in courts they were traditionally allowed to appear in: Compensation courts, Bankruptcy courts, Magistrates and Quarter Sessions. Without the support of a representative body, the Bar failed to mobilise any collective protest or action. However, the Bar achieved some success and the County Courts Act was amended in 1852, permitting direct lay access to barristers and whilst retaining the audience rights of attorneys, forbade them from instructing other attorneys to appear as advocates, where they themselves chose not to, obliging them to instruct the Bar in those cases (which were common as it was more profitable). It remained the custom that in all other courts a client could instruct a barrister direct, but this was altered in

1888 by the new representative body, the Bar Committee (later the Bar Council). Thereafter, in contentious matters a barrister could not see a lay client without the intervention of a solicitor and even in non-contentious matters direct contact became restricted, causing one newspaper to wonder if the Bar Council had 'entered into a conspiracy with the solicitors to compass its own destruction' (Saturday Review, 6th May, 1905, cited in Abel-Smith and Stevens, 1967, p222).

In fact, during this period barristers showed remarkable indifference to existing and potential markets, losing opportunities for work under the Arbitration Act 1889 to newly formed arbitrators and leaving accountants to do bankruptcy and insolvency work, even though there was much less work available, particularly for the junior Bar (Abel-Smith and Stevens, 1968). Muzio and Flood's historical account (2012) of lawyers' intrinsic commercialism and entrepreneurship, charts their involvement in industrial and commercial enterprise from the mid-19th century. Yet, their examples focus mainly on the behaviour of solicitors and attorneys, rather than barristers. Whilst Abel-Smith and Stevens (1967) and Abel (1988; 2004a; 2004b) assert that the Bar was only driven by market concerns and the desire to defend its economic self-interest, Burrage offers an alternative explanation: that the Bar was never in the least market-oriented, but more concerned 'to define and defend a principled division of labour between the two professions. It was a matter of honour and status rather than of money and markets' (Burrage, 2006, p.484-5). In his view, this is the only plausible reason why barristers voluntarily surrendered tasks such as conveyancing and why they agreed to referral. It was an attempted exchange for what they believed was their function – a monopoly of advocacy in all courts. So whilst numbers at the Bar increased by 50% from 1835 to 1885, reflecting the demographic changes (redistribution of the population to the manufacturing cities) that swept across the country, little else within professional organisation was transformed. Newer forms of business structure did not seem to affect the profession, which remained largely centralized in London and by 1900 only 6% of practitioners worked full time in the provinces (Burrage, 2006).

Despite these inroads into the Bar's work in the late 19th century, solicitors and attorneys themselves faced steep competition from the growing profession of accountants, who began drawing up documents required in bankruptcy cases, auctioneers who drafted leases and agreements for sale, debt collectors and unqualified people posing as lawyers (Abel-Smith and Stevens, 1967).

Thus, the interprofessional push and pull for control over certain types of work is nothing new, although the jurisdictional status quo remained relatively unchanged for the next hundred years. It is these core monopolies across both professions that have been broken in the last 25 years. This removal of market protection, together with the imposition of independent regulation, drastic cuts to legal aid funding and the liberalisation of the rules governing how legal services can be provided have triggered many of the internal reforms and the reconfiguration of the Bar. It is the effects of such changes that form the background of this study's investigations.

1.5. Representation and Regulation

Barristers did not form a professional association until 1883. Until then, admission, discipline and dismissal were controlled by 'self perpetuating oligarchies of benchers' in each Inn and the Attorney-General (as leader of the Bar), rather than a representative or elected body (Abel-Smith and Stevens, 1968, p.47). The four Inns consolidated their regulations regarding admission and 'keeping terms' (eating dinners in hall) in 1863. Following significant reforms in a series of Judicature Acts in the 1870s, which changed the structure of the profession and deprived the junior bar of much of its work, a Bar Committee was established in 1883, initially as consultative body, but transforming into the Bar Council in 1894, when it acquired powers of representation, discipline and etiquette from the Inns. The Bar's distinctive, traditional and professional characteristics remained virtually unchanged for the next hundred years and it emerged after the Second World War as a 'pre-modern profession' – small, homogeneous and in the main geographically concentrated within the four Inns of Court around the Royal Courts of Justice, whose governance, together with that of the circuits and the Bar Council's, was largely informal and invisible (Abel, 1986, p.38). The Bar's structure of governance changed in 1966 with the creation of the Senate, which centralised the disciplinary powers previously held by the Inns. Laypersons were appointed on some of the committees but this did little to satisfy outsiders that the Senate continued to protect practitioners from criticism, and until 1987 the Bar Council and the Senate shared the responsibility of the Inns and of the Bar Council. This reverted to the Bar Council alone in 1987 till January 2006, when the representative and regulatory functions were split, the Bar Council retaining the former and a separate and independent body under its umbrella, the BSB becoming the regulator. Thus after more than 700 years of independent, self-regulation, the profession became subject to external governance.

1.6 Legal Aid and the growth of the profession

The two most significant changes in the post WWII years were linked – the growth of the profession and its increasing dependence on public funds. With an increased demand for services, particularly in the fields of criminal and matrimonial work, funded largely under the new legal aid provisions, the Bar attracted a larger and more diverse membership in terms of race and gender, as a result of a larger and broader university graduate demographic. At the same time, a measure of its independence was lost, as large numbers of practitioners became dependant on state funding for significant portions of their practice.

Fees, which had remained stagnant, were doubled or tripled between 1957 and 1962 and there was a sharp revival of work. It was during this prosperous period that the Bar shed some of its restrictive practices: kite briefs, extra fees for practising on a different circuit and an erosion of the two-thirds rule, whereby a junior barrister on a case automatically received that ratio of the leading silk's fee. At the same time surplus work was given to pupils (Abel-Smith and Stevens, 1968). Numbers at the Bar swelled to cope with the increase in legal aid work. In 1960 there were 1,919 practitioners, by 1979 there were 4,263 and in 1987, 5,642 barristers were in self-employed practice (Zander, 1988). However, the work was unevenly distributed by the clerks (and solicitors clerks in more junior cases), which led to some practitioners being overloaded with work, whilst others were under-employed (Abel-Smith and Stevens, 1968). Added to this insecurity was the fact that there was no holiday or sick pay or pension scheme as would be in place in an employed structure. The dependence on state funding was not initially seen as a challenge to a barrister's professional independence and duty to the client and court, which was considered more a matter of professional values and conduct and, as Hazell stated, 'the independence of the Bar will last just as long as its capacity to withstand improper pressures, from whatever source' (Hazell, 1978b, p.169). Indeed, the most recent cuts in or removal of legal aid in many areas of work pose a much greater threat to barristers than undermining their independence. In some cases their very survival is in issue.

Reforming the Bar

1.7 Early critiques

Early analysis of the professions rested on structural functional assumptions, rooted in Durkheim, where social order was of critical importance and the professions were seen to act as an antidote to the unconstrained self-interest of individuals.

Professionals, motivated by altruism, provided mastery in a specialised field and maintained high standards through self-regulation, with high client trust and respect of professional expertise in a relationship that was necessarily uneven (Carr-Saunders and Wilson, 1933; Parsons, 1939). From the 1960's onwards, new theorists, influenced by Marx and Weber, rejected this work for uncritically adopting professional ideologies and claimed that the structures of professionalism were solely concerned with economic monopoly. Professional associations were accused of being unrepresentative, biased (or at any rate, ineffective) regulators and admission criteria were simply a method of social closure, evidencing no link between the extensive and expensive education and credentials received and the actual work done (Johnson, 1972; Larson, 1977; Abel, 1986, 1988).

The first critical studies on the Bar, emerged in the late 1960's and challenged its structure, governance and restrictive practices (Abel-Smith and Stevens, 1967, 1968; Zander, 1968; Hazell, 1978a). Although these studies conceded that 'there is little essentially wrong with the standards of competence or integrity' (Zander, 1968, p.8) and that lawyers in England probably had more integrity than anywhere else in the world (Abel Smith and Stevens, 1968), their critique of the profession was part of a wider concern about the provision of legal services generally, evidenced by three reports by the Monopolies Commission and a report on legal aid within a 15 year period, culminating in a Royal Commission in 1979 (Zander, 1988).

The Bar's monopoly on advocacy in the higher courts was deemed anti-competitive and potentially exploitative in terms of fees; the governing bodies (the Senate, Bar Council and Inns of Court) were almost entirely made up of members of the profession and were unaccountable to anyone despite having control over entry, laying down the ethical codes and enforcing them; the split professional structure precluded direct access to barristers and led to problems of continuity in cases, where clients were often meeting their counsel for the first time outside the doors of the court. The profession was peppered with restrictive practices, which were based on antiquated rules and clearly not in the public interest. As one MP commented in the Daily Mirror in 1966, these practices were so 'lucrative and so effectively enforced that they would make the most passionate demarcationists in the trade unions turn green with envy' (cited in Zander, 1968 p.9). The Bar Council rigorously defended these practices to the Monopolies Commission asserting that they were necessary to maintain the highest standards, but critics remained unconvinced that

there was a link between the two. As Zander observed 'A chastity belt is not the only way of preserving a wife's virtue' (1968, p.12).

In 1976 a Royal Commission (the 'Benson Commission') was asked to review all aspects of the legal profession and examine, in particular, three issues: the Bar's monopoly over rights of audience in the higher courts; solicitors' monopoly over conveyancing work and, lastly, the division of the profession. In 1979 the Benson Commission decided to maintain the status quo on all three fronts and Margaret Thatcher, the incoming Prime Minister, accepted these findings. It was something of a shock, therefore, when at the end of 1983, a private members Bill, backed by the Consumers' Association was introduced to abolish solicitors' conveyancing monopoly and received unexpected support in the House of Commons at its second reading. By agreement the private bill was withdrawn and the government introduced its own Bill in the same terms, which later formed the basis of the Administration of Justice Act 1985, permitting licenced conveyancers to compete with solicitors from early 1987 (Zander, 1988; 1990).

1.8 Loss of conveyancing monopoly: internal reforms

The loss of the conveyancing monopoly would initiate a whole raft of legislative and internal reforms of both branches of the profession, the effects of which form the basis of this enquiry in relation to the Bar. In anticipation of competition for and loss of this work, the Law Society had already relaxed the ban on individual solicitors advertising (excluding television), and reduced the level of conveyancing fees. In early 1984 solicitors directly challenged the Bar's monopoly of advocacy in the higher courts, even though they had not exercised their rights in the lower courts as much as they might have, as it was not economic to do so (Flood et al, 1998; Boon and Flood, 1999). The Legal Aid Efficiency Scrutiny Committee reported in June 1986, that there was no reason why solicitors should not have rights of audience in the Crown Courts where a guilty plea was being entered, as it would save £1 million in legal aid. A Joint Committee (the 'Marre Committee) was set up in 1986 to again consider the Bar's advocacy monopoly, made up of five barristers, five solicitors and five independents. They failed to reach agreement.

In 1986, the state decoupled the market rate for legal services and legal aid costs and in 1988 the legal aid budget was removed from the Law Society's control and given to the newly formed Legal Aid Board, under the *Legal Aid Act 1988* (Zander, 1988; Hanlon, 2001). The Bar's Chairman, Robert Alexander QC, brought an action

against the Lord Chancellor over the low levels of criminal legal aid fees. The Bar further responded by introducing a number of internal reforms. First, it created the General Council of the Bar in January 1987 ('Bar Council'), an elected body which replaced the Senate and reduced the powers of the Inns and made membership compulsory so as to fund it. Second, it lifted its own professional ban on advertising, permitting barristers to list their qualifications and specialisations in a Bar directory and chambers to publish and distribute their own brochures. It further changed its policy of chambers having to be within the Inns of Court, to alleviate the shortage of space and provide more comfortable premises for clients (Zander, 1988; 1990).

Barristers were now part of a wider shake up of professional services across the public sector. The Department of Trade and Industry published the 'Review of Restrictive Trade Practices Policy (CM No. 311) in 1988, revealing the government's clear intention to end such practices enjoyed by professions. Thatcher's government believed that a competitive economy needed to be unregulated and open, with limited government spending, ending the social democratic consensus that had been in place since the end of the war (Crouch, 2011). The 'public interest' was redefined as the market allocation of resources, not access to services based on citizenship, and professional ideology did not sit well with this, as it was deemed to be self-interested and parasitic, especially in areas of practice that relied on the public purse (Hanlon and Jackson, 1999; Lane et al, 2002). The social and cultural assumptions surrounding a professional as someone to trust and respect, to safeguard a client's well-being in the application of his or her professional judgment, were being questioned by the instrumental logic of the market (Dent and Whitehead, 2002). The notions of entrepreneurship and competition on the one hand and accountability and new managerialism on the other were to form the basis of widespread reforms across the implementation of social policy, the teaching, medical and accountancy professions as well as within the civil service itself, irrespective of whether or not they undermined the ideal of a professional dedicated to client and indifference to financial gain (Clarke et al, 1994; Newman and Clarke, 1994; Abel, 2004a).

1.9 The Green Papers of 1989 and the *Courts and Legal Services Act* 1990

In October 1987 Lord Mackay of Clashfern was appointed Lord Chancellor and actively sought to divide the professions on the issue of audience rights (Abel, 2004a). In October 1988, without warning, he announced three new Green Papers

on the legal profession[1] and published them in January 1989, giving a three-month consultation period. His stated overall intention was to provide the public with the most efficient and cost effective network of legal services, subject to assurances of quality and competence. The key proposals that affected the Bar were: to end its monopoly on higher court advocacy rights, to permit advertising, to re-introduce direct access to the Bar, to let barristers work from anywhere and not tied to a set of chambers, to allow partnerships, corporate structures and multi-disciplinary partnerships, to consider contingency fees and to set up a Legal Ombudsman to handle complaints. Moreover, the government sought the right to oversee, through an Advisory Body, who had the rights to grant advocacy licences, to establish professional codes of practice, to recognise specialisms and to determine education and training of the profession.

The reaction of the Bar and judiciary was predictably negative and forceful and caused some to note the apparent contradiction between the government's stated laissez-faire ideology and the proposed heavy state control in the actual proposals (Zander, 1990; Abel, 2004a). Solicitors were supportive in the main, as were the press and the consumer lobby. The Bar raised a £1 million 'fighting fund' and began a long campaign that was to be somewhat successful in the short term, in that the proposals were watered down in the White Papers released in July 1989 (Zander, 1990). However, solicitors (but not employed barristers or Crown Prosecution lawyers) *could* take up advocacy rights in the higher courts, if they had satisfied the training requirements and this loss of the Bar's monopoly, in place since the profession's inception, was enacted in the *Courts and Legal Services Act 1990* ('CLSA').

The impact of the CLSA was relatively gentle for much of the 1990s, but, at the time of writing, all of the initial proposals in the Green Papers have come about, many of them initiated internally by the Bar itself, under the powers awarded it in that Act, the later *Access to Justice Act* 1999 ('AJA') and *Legal Services Act* 2007 ('LSA'). This loss of monopoly on advocacy was the trigger, soon to be followed by three further areas of externally imposed reforms that were to reconfigure the landscape of the provision of legal services: cuts to or withdrawal of legal aid in many areas of work, the liberalisation of the rules governing legal services provision and the Bar's internal structure and, lastly, the imposition of an external regulator. It is the cumulative

[1] *The work and organization of the Legal Profession* 1989, CM 570; *Contingency Fees* 1989, CM 571; *Conveyancing by Authorized Practitioners* 1989, CM 572

effect of these four imposed changes that have transformed the traditional areas of work and organisation, forcing the Bar to effect its own internal reforms and barristers to proactively market themselves and compete in a no longer sheltered market. The empirical chapters consider the impact and reaction of the profession to these changes.

1.10 Solicitor Advocates

By June 1996 there were 409 qualified Solicitor Advocates, 338 of whom had become so by exemption, out of a total of over 66,000 solicitors in the jurisdiction. In a qualitative study, Flood et al (1998) explored what factors influenced solicitors to take up this right and found that it was artificial to view the market for advocacy as a single one, but rather a series of markets related to particular areas of work. Although there were differences in attitude, overall this study felt that it was unlikely that solicitors would develop their in-house advocacy services in the near future, but it did find that solicitors were keeping more and more drafting and advisory work to themselves (Flood et al, 1998; Boon and Flood, 1999). Since this study there has been a drastic reduction in the scope and extent of legal aid funds and those figures have increased significantly, it no longer being viable for a solicitor to instruct counsel in certain areas of work. Irrespective of ability, training or experience, many criminal law solicitors now have a financial incentive to keep work in-house (Fitzgibbon, 2015). Boon (2016) reports that in August 2015, there were 1769 solicitors with 'elite advocacy' rights, 3,350 in the criminal courts and 1,532 with both, totalling 6,651 solicitor advocates and amounting to the equivalent of over half the numbers at the independent Bar. In a five year period, the percentage of cases done by solicitor advocates in the crown courts rose by 24% in contested trials and by 40% in guilty pleas (Jeffrey, 2014), making a real impact on the amount and type of criminal work that is coming to the Bar. In 2015 the Solicitors' Association of Higher Court Advocates launched 'The Court Advocacy Network', possibly in response to the Bar's online public access portal, an online platform through which solicitors can refer advocacy work to each other, rather than instruct the Bar (Counsel, 2015).

1.11 Legal Aid

The introduction of legal aid franchising in the 1990's reduced and concentrated the number of legal aid providers and by 1997, of the 12,000 legal aid firms, only 1,740 were franchised (Hanlon, 2001; Hynes, 2012). Further, the scope of civil legal aid was reduced, removing probate and property advice from its remit, and rates were reduced generally. The new Lord Chancellor under New Labour, Derry Irvine, began

removing other civil work from the legal aid scheme. Under the, some would say misnamed, *Access to Justice Act* 1990, personal injury cases (aside from medical negligence) were no longer eligible for legal aid and 'no win, no fee' conditional fee agreements ('CFA') were introduced. Whereas legal aid had been a loan, underwritten by the state and recoverable, the new system was market driven and led to inflated costs and questionable behaviour by claims management companies (Hynes, 2012) and has been subject to further reform.

Criminal legal aid expenditure (not fee rates) rose between 2000 and 2005, prompting the next Lord Chancellor, Lord Falconer, to blame the lawyers, under a supplier induced demand thesis, though evidence suggests the increase was attributable to changes in the system, the costs of which had not been properly accounted for (Cape and Moorhead, 2005). Lord Carter of Coles, was charged with reviewing the procurement of legal aid and his report, *Legal Aid: A market-based approach to reform* 2006 ('the Carter Review'), proposed that fixed and graduated fees replace hourly rates. Despite strong reservations expressed by the Constitutional Affairs Select committee and opposition from the profession to the scope of the reforms and their likely effect on the quality of work, they were unilaterally imposed on existing contract holders (Boon and Levin, 2008).

1.11.1 Civil Legal Aid

Further cuts to the eligibility for and levels of civil legal aid payments were introduced by LASPO and took effect on 1st April 2013. Underpinned by neo-liberal principles, the government's view was that it no longer had the responsibility to fund litigation through legal aid, arguing that this only led to speculative and meritless disputes (Fitzgibbon, 2013). With some exceptions, public funds were removed from many areas of civil law, leaving an estimated 650,000 people without legal advice, as Citizens Advice Bureaux (CAB) and law centres also lost funding (Baksi, 2014a). The Justice Select Committee inquired into the impact of LASPO and the Law Society and the Bar Council reported in April 2014 that this latest batch of cuts had had a highly detrimental impact on access to justice in terms of people's ability to find and access legal advice and representation (Law Society, 2014; Bar Council, 2014). In July 2014, the CAB reported that they were unable to refer 92% of people who came to them to the appropriate specialist legal advice they needed because of the cuts and that there had been a 62% rise in those seeking help (CAB, 2014). The most recent figures suggest that since LASPO there has been an overall reduction in civil legal aid workload to one third of the pre Act levels (MOJ, 2016, p.20). Further, it is

thought that over half the costs saved from the civil legal aid budget have simply moved to other public bodies as a result of the cuts. A dramatic increase of litigants in person, especially in private family law cases, is placing a great strain on the civil justice system, with hearings taking longer, increased delays and uncertainty around court listing. Mediation, rather than attracting more people in the first year after the cuts, dropped by almost 40%, mainly as there were no lawyers directing parties to it. Levels continue to fall, the most recent figures indicating a drop of 14% in the year 2015-16 (MOJ, 2016). The Bar Pro Bono unit reported an increase in 47.2% in applications for assistance in areas where funding had been cut. There was a 74% drop in volume of civil legal aid cases initiated in the first 8 months, far greater than predicted by the government, largely due to the smaller numbers of solicitors offering legally aided services and the public perception that now no civil cases were eligible for funding (Legal Action Group, 2013). The dramatic increases in court fees, causing some to note that that the government seeks to make a profit from litigants (Rose, 2014; Gibb, 2014b) has further reduced the instigation of civil cases, particularly in employment tribunals, leading to significantly less work.

1.11.2 Further cuts: '*Transforming Legal Aid*'[2]

In April 2013, six months ahead of schedule, and a week after the implementation of LASPO, the Coalition government launched its consultation on a further shake-up of legal aid, this time targeting mainly criminal, prison and public law work. Its aim was to cut the legal aid budget by a further £2.2m. Critics were drawn predictably from the legal profession and judiciary, but also from a wide variety of organisations, groups and individuals, even gathering support from large parts of the media as time went on (Bowcott, 2013; Bentham, 2013). Little financial information was provided to justify the cuts and there was suspicion that the figures were 'massaged' and the statistics on barristers' fees were misleading. Many felt that the cuts had nothing to do with austerity but were ideologically driven. Chris Grayling, the Justice Minister and Lord Chancellor, was publicly reprimanded by the UK Statistics Authority over the misleading statistics the Ministry of Justice had produced on criminal barristers' earnings (Baksi, 2014b; BBC News, 2014).

There were concerns about the public not being able to access legal advice or representation and that diversity at the publicly funded Bar would diminish as it would be so hard to earn a decent living (Peacock, 2014). Lawyers gathered in protest

[2] '*Transforming Legal Aid: Delivering a more credible and efficient system'* CP 14/2013, published 9th April, 2013

outside Parliament on 22nd May 2013, outside the Ministry of Justice on June 4th 2013 and the criminal Bar, for the first time in its 700 year history, mobilized and effectively went on strike all over England and Wales, for a half day on 7th January 2014. Despite the government dropping certain proposals, by the end of February 2014 it indicated that cuts to fees would go ahead. The criminal Bar's response was to go organize a whole day of strike action on 7th March 2014, whilst at the same time embarking on a month long refusal to accept 'returns', both of which received an enormous amount of media coverage. No doubt prompted by the cumulative effect of the above, the Ministry of Justice negotiated a deal with the representatives of the CBA and Bar Council at the end of March 2014, whereby there would be a suspension of cuts to barristers' fees till after the 2015 election, but the first half of the 15% cuts to solicitors' fees was made (Baksi, 2014c). On 8th July 2014, the Bar negotiated a temporary truce with the Ministry of Justice, with regard to Very High Cost Cases (VHCC) (Bowcott, 2014a). The second tranche of cuts to solicitors' fees was effected in July 2015, but later suspended in April 2016, under Michael Gove, the new Justice Minister.

Although public awareness and media coverage of the cuts to prison and public law cases were overshadowed by the robust campaign of the CBA, critics of these cuts were no less vociferous (Wagner, 2014), and the High Court ruled that the proposed residence test for legal aid was discriminatory and unlawful (Bowcott, 2014b), later upheld by the Supreme Court[3].

1.12 Liberalisation of the legal services market, independent regulation and *The Legal Services Act* 2007 ('LSA')

In 2001 an Office of Fair Trading report recommended that unjustified restriction on competition in the legal profession should be removed (Vickers, 2001). The government responded with a report into competition and regulation in the legal services market. It's report[4] concluded that 'the current framework is out-dated, inflexible, over-complex and insufficiently accountable or transparent' and an independent investigation was commissioned. David Clementi reported in 2004[5], and the government broadly accepted his recommendations and published a White

[3] R v Lord Chancellor (2016) UKSC 39

[4] *Competition and regulation in the legal services market. A report following the consultation "In the public interest?"* July 2003

[5] D. Clementi (2004) 'Review of the Regulatory Framework for Legal Services in England and Wales

Paper in October 2005[6], setting out three planks upon which reforms were to be built: a new, independent oversight regulator, the Legal Services Board ('LSB'); the single complaints-handling and consumer redress body, the Office for Legal Complaints and the facilitation of the innovative Alternative Business Structures, helping the legal sector to become more responsive to consumer needs, by permitting non-lawyers and lawyers to form legal partnerships and companies as vehicles for the provision of reserved legal services. This was subsequently enacted in the Legal Services Act 2007 (LSA). Its claim was to enshrine the key elements of professionalism in a market model. The legal profession was to be both a business and a profession (Boon, 2010), competitive, accountable and transparent.

The Bar Council had, in 2006, already separated the functions of regulation and representation, creating a new, but separate arm, the BSB, which is now under the overarching control and supervision of the new LSB. Since January 2014, the BSB has adopted a risk assessment approach to the supervision of the profession. Regulatory supervision obliges chambers, entities and individuals to manage risk so as to prevent non-compliance from materialising or prevent recurrence where it has occurred. Those deemed to be in the higher risk category attract closer supervision than others. The BSB has relaxed the provisions of the Bar's Code of Conduct, permitting barristers to, inter alia: work in dual capacity as self employed and employed practitioners; investigate and collect evidence and witness statements, attend police stations and conduct correspondence, and since January 2014, conduct litigation; expand public/direct access; set up alternative business structures from October 2011 (though the BSB only became eligible to grant licenses for barrister-led entities in October 2016).

This was a major departure from the traditional model of the provision of legal services, with the force of the market sweeping through both limbs of the profession and imposing great competitive pressure on them (Susskind, 2013). On the other hand it represented the interests of state and market forces controlling professional work, causing some to wonder if this will ultimately undermine the very essence of professionalism as traditionally conceptualised (Boon, 2010; Sommerlad, 2011). The reforms seek to eradicate distinctions between legal professionals in order to open up competition between lawyers, introduce new providers and capital to the legal services market and promote the merging of different professionals within

[6] *The Future of Legal Services: Putting Consumers First*

organisations (Boon, 2010). The first ABS licences were granted in October 2012, but until the Autumn of 2016 all were granted by the SRA and during this study this author was only aware of two with barrister involvement. Survey research indicates a low level of intention to set them up, though some practitioners indicated interest in joining barrister-only managed/owned structures, particularly those doing criminal and family work, who are struggling to survive as a result of legal aid cuts (Bar Council, 2014).

Finally, whereas at one time professional services were delivered on a local basis, developments in information and communication technology have significantly changed the nature of the corporate sector of the legal profession, with firms developing a global presence to cater for the increasingly sophisticated corporate clients. With greater competition and less secure employment structures, law firms are having to rethink how they work and the traditional system of referral to the Bar in many areas can no longer be relied upon. Susskind identifies three drivers of change affecting the legal profession, and though the bulk of his analysis relates to the solicitor branch, he predicts a knock on effect at the Bar, resulting in a smaller profession, providing bespoke advocacy and advisory services for highly specialist and complex areas of work only. The first driver of change is the 'more for less challenge', whereby firms are requiring lawyers to increase their workload yet reduced their budgets in order to be profitable; the second driver is the ongoing liberalization of the legal services market to provide more choice for the consumer and greater competition, and the last is the impact of information technology which has and will continue to radically change how legal services are provided (Susskind, 2000, 2010, 2013; Susskind and Susskind, 2015). He envisages a very different landscape of legal services providers, which will include legal services traditionally provided by the Bar and solicitors being done by, inter alia, global accounting firms, legal 'know-how' providers, legal process outsourcers, high street retailers, legal leasing agencies, online legal services and legal management consultants. Furthermore, in the name of efficiency and competition, there has been an increasing shift from traditional court hearings to mediation, collaborative lawyering, alternative dispute resolution and dispute containment and avoidance. Together with the development of online dispute resolution and virtual hearings, regulator advocates are being displaced (Moorhead, 1998; Susskind, 2013).

The above, selective, summary of the history of the profession and of the recent

reforms that have reconfigured it, seeks to set the stage for the rest of this study. Whereas thirty years ago the publicly funded Bar was thriving and busy, the volume of work and the levels of pay have since decreased significantly, even though numbers at the Bar have not. Even in private practice the challenges are great: increasingly specialised solicitors are undertaking much of the work that they used to send to the Bar, including advocacy; many cases are settled out of court, often via alternative dispute resolution, without the need for barristers; some areas of work are being kept in-house or given to those that have the size and capacity to block-bid and undercut self-employed practitioners. External regulation has imposed new obligations on practitioners and chambers' administrators. At the same time the liberalising rules under the LSA 2007, in theory have thrown up opportunities and new, flexible ways of working for barristers. It is how the profession has responded and adapted to these challenges that is explored in the rest of this study.

Chapter 2 – Researching the Bar: themes and perspectives

The previous chapter gave a selective history of the profession and of the recent reforms, with the purpose of contextualising this study and identifying the drivers of change. This chapter opens with an overview of Richard Abel's theoretical analysis of the Bar (Abel, 1986, 1987, 1988, 2004a, 2004b), based primarily on research using secondary sources, and of the relatively few empirical studies on the profession. It then considers the diverse theoretical perspectives on the sociology of the professions and during the rest of the thesis assesses how, if at all, they apply to barristers. Although professions as a group have been subject to considerable theoretical analysis, with some exceptions, little of it has been applied to the few empirical research projects on the Bar. Further, barristers' self-employed status and unique organisational arrangements are quite distinct from other professions (consultants, GPs, accountants, teachers) and from the solicitor branch. Drawing parallels with some of the theoretical work on those professions is not always possible. There is, therefore, a striking disconnect between the theoretical knowledge produced by the general professions literature on the one hand and the empirical studies on the Bar on the other. This study seeks to contribute a perspective to the sociology of the professions, based on the Bar's different and distinctive organisational structure and professional culture.

The Bar itself is an under-researched profession, possibly due to the difficulty of accessing an elite group and the small body of work that does exist is, to some extent, a collection of ad hoc, unrelated studies which fail to develop a consistent theoretical approach. Early investigations, conducted in the 1960's and 1970's, focus on the profession's history and structure, and are critical of its monopolies, restrictive practices and governance, an approach that was fully developed in Abel's large corpus of work (1986, 1987,1988, 2004a, 2004b), based on the professionalization 'market closure' thesis taken from Larson (1977). Later studies are mostly investigations into specific aspects of the Bar, one making the point that no theoretical framework was possible due to the paucity of factual information about what family law barristers actually do (Maclean and Eekelaar, 2009). In any event, given the pace of the reforms in the last 25 years, much of earlier empirical research is now out of date, in that the structures and restrictive practices have been dismantled. The last overview of the whole profession was Morison and Leith's (1992) qualitative study, which was carried out just as the first reforms and changes were coming in, but before they had really had any significant effect. More recent studies, notably Roger's ethnography on pupillage, based on her observations in

2007, provide some material on certain aspects of chambers organisation and the new challenges practitioners face (Rogers, 2011). Other studies, outlined later in this chapter, focus on particular reforms in their early application, such as marketing, solicitor advocacy and direct access, all of which yield a good baseline from which comparisons with the findings in this study can be made (Harris and Piercy, 1998; Boon and Flood, 1999; Flood and Whyte, 2008). Some of the literature on the legal profession in Commonwealth countries has been useful, as they share a common-law based system and similarity of reform agendas, even though the professional structures are different. Many have had regulatory overhauls (Mortensen and Haller, 2004, in Australia; Devlin and Hefferman, 2007-8, in Canada; Buckingham, 2012, in New Zealand) and have had to adapt to the principles of competition and accountability (Farmer, 1994; Parker, 1997, Australia). However, this is not a comparative study.

2.1 Theorising the Bar: Abel's 'professionalization project'

The literature on the process of professionalization is not of central concern to this research, but is addressed here because Richard Abel, the only person to have theorised the Bar as a whole, rather than particular aspects of it, uses the concept to frame his analysis of the profession's structure and practices and his large corpus of work reflects one view on the Bar's professional ideology and culture (Abel, 1986, 1987, 1988, 2004a, 2004b). Abel's painstaking account of the dispute between the Bar and the state (2004a) is drawn from official documents, parliamentary reports and the press and this total reliance on secondary sources has its drawbacks. As Muzio (2004) points out the rhetoric of a profession, via its representative bodies, whilst hotly contesting proposed government reforms of its basic structures and monopoly, is not a true reflection of what is happening on the ground, exaggerating change over continuity and failing to present a balanced picture of actual trends and professional development. Nonetheless, Abel's application of Larson's (1977) 'professionalization project' thesis was a significant theoretical development, positing that the process of achieving professional status was developed and maintained by the market and membership closure of the occupational group, who in this way preserved its power, status and financial reward. The 'professionalization project' thesis was popular in the 1970s and 1980s, but has declined in recent studies save in the analysis of emerging professions (Evetts, 2012), proving to be somewhat 'historically specific' (Francis, 2011, p.16). More recently the focus has been on the organizational, commercial and managerial logics that are changing the nature of these occupational groups and previously held conceptualisations of professionalism,

which are discussed later in this chapter (Ackroyd, 1996; Cooper et al, 1996; Hanlon, 1998; Muzio, 2004; Faulconbridge and Muzio, 2008; Evetts, 2015).

Abel's analysis falls within a neo-Weberian framework, positioning the legal profession, in America and in England and Wales, in a category of horizontal division of labour with the market as its central concern. He focuses on, in his words, 'the profession's construction of a cartel and the extraction of monopoly rents' (Abel, 2004b, p.131). In England and Wales, he asserts, both branches had constructed their services as a professional commodity that only they could provide; through social closure lawyers had restricted entry; they acquired a monopoly on certain functions and elevated their status by requiring lengthy educational qualifications. Throughout his work, Abel organized his interpretation of barristers' restrictive practices around this professional project of market control (control over the production of producers and the production by producers), developing Larson's (1977) earlier analysis. From the 19th century on, he states, the Bar reformed training, admission and regulation to limit numbers and the extent of overt competition between members, acquiring monopolies to increase its advantage and yielding to the very nature of modern capitalism (Abel, 1988).

Abel's analysis has not been universally accepted and is arguably too one-dimensional and now out of date. The market control perspective may account for the legal profession's development from the 19th century till the 1970s or even earlier, but since then its ability to control the 'production of producers' has been lost to universities and other fora of higher education and numbers have increased to create strong pressures for internal competition, a matter which Abel himself concedes. Further, solicitors have lost their monopoly on conveyancing, and the Bar its own on advocacy. Nonetheless, data from this study and analysis of processes used to select pupils would indicate that the Bar continues to practice some elements of social closure in terms of who is accepted into the profession, a matter which is considered in depth in Chapter 5.

Kritzer (1991) offers an alternative view, by distinguishing between Abel's motivational basis of the professional project, based on economic self-interest of individual practitioners, and that of institutional long-term self-interest, which comprises establishing clear jurisdictional boundaries and rationalizing the internal form and operation accordingly. Kritzer suggests that the internal differentiation among legal tasks and who can perform them is more complex and a recognition of

the importance of alternative practice settings and the role of a multiple players, such as legal executives and barristers' clerks, as well as being the product of a historically divergent set of groups performing them (serjeants, King's Counsel, barristers, attorneys, solicitors, scriveners etc). Professions are now part of a project with institutional imperatives. Like market control, institutionalization seeks clear boundaries between practitioners and outsiders and what constitutes and does not constitute the practice of the profession, but in Kritzer's broader framework it is not 'control of the producers' and of 'production by producers' to maintain market control that is central, but rather the emphasis on institutional rationalization regarding entry and day to day functioning of the profession (Kritzer, 1991). Defining the legal profession as a 'quasi institution', he includes the growth of internal complexity and differentiation and the establishment of universal principles of operation as part of its rationalization process and essential for it to be able to compete within a pluralistic market: to be able to mobilise resources and expertise, maintain legitimacy and competitiveness.

Abel's analysis fails to take into consideration key aspects of the Bar's professional culture. It dismisses the profession's assertion that practitioners' exercise complex judgement and advocacy in the interests of their client, stating that this is an ideological smokescreen, disguising their desire for market control. As outlined in the historical section in Chapter 1, barristers voluntarily gave up the right to have direct contact with clients and their conveyancing practices to solicitors in the 19th century. If Abel's market control thesis were correct, why would barristers not seek to expand their market as broadly as possible? (Osiel, 1989/90). Abel's 'morally impoverished' view of barristers' motivation fails to consider that their desire for social status, (which Abel links to their pursuit of wealth), is traditionally associated with the profession's public service ideal and a factor that may have tempered monopolistic impulses at maximising income, particularly so at the Bar in England in Wales (Osiel, 1989/90, p.2015). Osiel also distinguishes the English Bar from the development of the profession in America, where lawyers' interests were wholeheartedly in the service of commercial activity and where they have a complete monopoly on the provision of legal services. By contrast, the anti-commercial impulses of European lawyers was motivated by wanting to avoid association with 'trade' and instead serve the aristocratic ideal (*noblesse oblige*) of pursuit of 'the common good'. Respectability was derived independently from the world of commerce, as English lawyers focused on particular kinds of work associated with wealth and taxes (property transfer) and ceded much tax and corporate work to accountants (Osiel, 1989/90; Kritzer, 1999).

Finally, Abel's universal application of his market control theory lacks sensitivity to the different powers given to lawyers and legal institutions across Europe, which affects their roles and to the fact that the expertise they deploy varies hugely. In common law jurisdictions, such as England and Wales, there is greater tolerance than in civil jurisdictions for doctrinal ambiguity, where technical expertise is not enough to constitute satisfactory performance, which also requires the exercise of individual imaginative and complex judgement, which can only be developed gradually and by continued observation of more skilled practitioners. Amongst their peers, the combination of these skills is what practitioners esteem most. The organization of work in a profession reflects this, arranged in a relatively non-bureaucratic manner to provide space for personal autonomy to develop this expertise (Osiel, 1989/90). Despite the limitations in the applicability of Abel's work outlined above and the removal of overt restrictive practices and monopolies, this research nonetheless probes and examines in Part II what elements of his analyses remain relevant.

2.2 Empirical research on the Bar

Although some of these studies have already been referred to, this section broadly outlines them all. First to identify what, if any, conceptual framework underpinned them, on the whole revealing a disjunction between them and the broader theoretical work on the professions. Second, it bookmarks some of the significant findings of fact, from which comparisons with this study can be made in later chapters. Given that this study focuses on continuity as well as change, earlier empirical work provides a critical baseline and timeline.

2.2.1 Early critical studies: restrictive practices, monopolies and structures

Until the mid 1960s, an interest in legal history was confined to the legal academy, which focused almost exclusively on the profession's early medieval period. One publication in 1940 (Jackson, 1940/1989) lamented the lack of enquiry into the profession's more recent history, a matter which was remedied by Abel-Smith and Steven's ground-breaking *Lawyers in the Courts* (1967) and *In Search of Justice* (1968), the first sociological study of the profession, co-authored by a social policy researcher and lawyer/legal academic. Shunning the traditional focus on legal analysis and doctrine, they explored (through archival research and over 400 hundred interviews with legal professionals and academics), why the profession had developed as it had, seeking a historical understanding in the first volume, before then calling for reform in the second. Their research focused on the central question

of whether the legal system and profession served the public interest. For the first time the relationship between lawyers, legal institutions and society was examined (Sugarman, 2009). Together with Zander's research (1968), these studies focused particularly on the restrictive practices and monopolies across both branches of the profession and called for reforms, most, if not all of which have come about (save fusion of the two branches).

A decade later a group of eight young barristers, most of them in practice, wrote a collection on different aspects of the Bar they felt were in need of reform (Hazell (ed), 1978). There is no mention of how they gathered or processed their information or whether they simply wrote from their own knowledge of the profession. Collectively, they paint a picture of an old-fashioned, conservative Bar, where entry was influenced by family connections, overseen by the Inns of Court, which operated in secretive, unaccountable ways. Pupillage was a random, hit and miss, exploitative affair, for which a pupil had only recently stopped paying 100 guineas, yet suffered many indignities. Clerks exercised arbitrary power over the distribution of work and received 10% of all fees in chambers. Women were discriminated against in tenancy selection and work dispersal, railroaded into areas of practice deemed most appropriate (crime and family) and were generally considered a liability as they would marry, have children and leave the profession. Concerns were (it turns out rightly) raised about legal aid practitioners' increasing dependence on government policy. The final chapter predicts the loss of the Bar's monopoly on higher audience rights and semi-fusion with the solicitor branch, leaving a small specialist Bar to provide select and expert advisory and advocacy services, a prediction that may well prove to be largely prescient. There is no theoretical analysis.

2.2.2 A different, 'in the field', approach

Flood's ground-breaking ethnographic study (1983) illuminated for the first time the working life of barristers' clerks. As a participant observer, his focus centres on the activities in the clerks' room of a number of sets of chambers, yet he nonetheless provides rich information about some aspects of life at the Bar in the late 1970's: the structure of chambers, how the clerks' room operated, the ways in which work was obtained and distributed and the complex relationship between clerks and barristers and clerks and solicitors, the Bar's then only source of work.

A quarter of a century passed before the next ethnographic study - Maclean and Eekelaar's research (2009) also included telephone interviews and a small survey,

but was primarily based on observation of family barristers at work and focuses on the actual job of lawyering - how family practitioners work, what they do, with what skills and how this contributes to the management or resolution of family disputes. The study has no theoretical framework, being exploratory only, the authors stating that since nothing is known about this area of the Bar, factual information had to be gathered in the first instance.

The most recent ethnography of the Bar is on pupillage, based on fieldwork carried out in 2007, where the author spent three months in three sets of chambers (doing crime, family and commercial work respectively) observing pupils and the chambers in which they were based (Rogers, 2011). It takes an anthropological approach and seeks to unravel the 'reproduction of the barristers' profession', the making of its members and how they understand what it means to be part of the Bar (p.2). Rogers' theoretical framework is based on anthropological concepts, with pupillage and socialisation into the profession viewed through the notions of 'rites of passage' p.23) where a pupil will develop a 'cloak of competence' (p.26). Although its focus is charting the path of pupils in their year-long training period, this ethnography provides rich material of the Bar during some of the processes of change as well as exposing much of its culture, examining the role of chambers in shaping a practitioner's identity and noting that the profession is not homogeneous, but varied according to area of practice. Rogers further weaves in the effects of managerial reforms on the training and selection processes and commercialism, which have put pressure on the Bar to be more efficient and competitive and challenge its traditional ways of operating. She concludes that barristers, despite their skills, education and status are an insecure and complex group, perhaps as a result of the reforms, the managerial trends and the Bar's commercialisation, which have challenged their hitherto secure elite status.

Rogers (2012) further analysed how the profession seeks to sell itself to students, with a view to attracting entrants. She found that great emphasis was placed on the Bar's traditional community, its standards of excellence and sense of inclusion, whilst the challenges the profession faces were alluded to but largely downplayed. The Bar faces stiff competition from solicitors in attracting the best students, as the latter are able to provide financial security by way of salary and, in the case of large City firms, the attractions of the corporatist environment (Rogers, 2012). Drawing on the same fieldwork, Pirie and Rogers (2013) examine whether the new managerial ethos and commercial pressures have undermined barristers' identity and status. Framing the

enquiry within the professionalism debate, they conclude that a managerial ethos pervades the Bar, which superficially has decreased the amount of control of practitioners and their chambers collective over recruitment and training. However, they point to the way in which barristers, despite this, continue to train newcomers as elite, specialist advocates, where 'a sense of status, exclusivity, specialist knowledge and community are fostered' (p.159), and their professionalism, status and self-identity remain intact.

2.2.3 Morison and Leith (1992) – the Bar on the cusp of change

Morison and Leith, legal academics from Northern Ireland, took a comparative look, by way of interviews, at the whole of the Bar in the United Kingdom and adopted what they termed 'an anthropological approach' (1992, p.157). Less concerned with reform, they sought to get behind the profession's façade and ideology and give a more accurate picture of the behaviour, organisational set up and activities of barristers in each jurisdiction. Barristers are, perhaps for the first time, shown to be fully 'social' individuals seeking to earn their livelihoods in a demanding and sometimes hostile environment. Their core function is advocacy. This account provides comparative detail about barristers' career paths, the structures that frame them and their relationship with their clerks and solicitors. Because the research was carried out just after both branches had lost their monopolies, this study is the last, comprehensive account of 'how things used to be', providing an empirical baseline for some aspects of this study.

The authors chart a barrister's progress, paying particularly attention on how practices developed (or did not) and what key stages a career aimed to go through. Pupillage was 'bewildering', though older members of chambers would help younger ones with their case preparation or legal points. Maintaining the right levels of work and pay was a challenge, which not all could sustain, and specialists were very much in the minority. 'Getting on' (p.42) was achieved if a practitioner was doing harder, more complex cases and charging higher fees, although income itself was less prestigious than a busy practice. Criminal, publicly funded practitioners had to have a higher volume of work than other practices to earn their living, which resulted in court-hopping, double bookings, returns and, sometimes, poorly prepared cases. Practice management in chambers was a recent notion and the practice of paying clerks 10% of all chambers fee income was declining, as new structures of organisation were emerging. Chambers brochures had just appeared, but did little more than list their members. Solicitors were beginning to undertake work that the

junior Bar traditionally did, but no one was particularly worried about solicitors' new rights of audience, as it was wholly uneconomic for them to exercise them. The barrister-solicitor relationship was central and the authors found the barristers strangely detached from the lay clients. The most important aspect of a case for a solicitor was client satisfaction – more important than any research, technical skill or case success even. These authors described barristers as independent consultants who advised solicitors, rather than the lay client. It was from solicitors that they hoped to get repeat custom, yet some were contemptuous of their ability, regarding them as business people, not legal specialists as they viewed themselves. The significance of this study is that although reforms had taken place, and small innovations were emerging, not much had altered 'on the ground' at the Bar in England and Wales.

2.2.4 Specific studies: solicitor advocates, marketing, emotional labour, direct access and access to the profession

The last group of studies are topic specific, researching particular aspects of the profession. The first, already referred to in Chapter 1, investigated what factors solicitors considered when deciding whether or not to exercise their new higher advocacy rights and included a small sample of barristers (Flood et al, 1996; Boon and Flood, 1999). The study draws on Abbott (1988) in examining professional development caused by changes to its task jurisdictions by encroachment from another profession. As indicated earlier, at that stage neither Bar nor the solicitor branch felt that solicitor advocacy would be significantly developed: it was uneconomic, too specialist or took them away from attending to clients, depending on the area of practice. Although the focus was on higher advocacy rights, the study highlights the cultural significance of barristers' self image as specialist advocates and the tensions created by the loss of monopoly. It also notes that marketing and chambers' commercialisation had begun, with specialist groups emerging within sets, the early signs of structural organisational change, that are explored further in Chapter 4.

Four studies emerged from Cardiff Business School between 1998 and 2002. Three on marketing and the Bar's relationship with solicitors and one based on the theoretical framework of the emotional labour of barristers (Harris and Piercy, 1998; Harris and O'Malley, 2000; Harris et al, 2003; Harris, 2002). The methodologies (interviews and observation) are similar in size and breakdown of sample in the first three studies cited and it is possible that these papers emerged from one research

project. The first of these studies looks at marketing at the Bar in its very early application and is based on interviews with 21 barristers and 5 clerks (Harris and Piercy, 1998). It explores the barriers to marketing development at the Bar, citing barristers' traditional culture and resistance to adapting to the commercial realities as major factors. The study provides an interesting comparison to the findings in this study, fifteen years later, on the marketing attitudes and methods of barristers now, which are fully explored in Chapters 4 and 6.

The second and third studies examine the complex relationship between barristers and solicitors and break down the components necessary for developing and maintaining them. The second study considers the barrister-solicitor relationship in the context of marketing, getting and keeping work and theorises that this interaction is a combination of professional and social exchanges (Harris and O'Malley, 2000). It analyses how relationships are maintained and identifies their fragility. One single failure, whether it be a lack of respect or effort on the part of the barrister can result in no more work from a solicitor. The role of the clerk is pivotal in maintaining the relationship, as are personal bonds that develop between the two legal professionals. This research predates the expansion of licenced access and development of public access to the Bar, which to some degree has complicated that relationship further, and is explored in the empirical section of this paper as is the changing role of the clerk. The third study (Harris et al, 2003) develops the previous one by exploring the role of attraction in the initiation, development and maintenance of relationships between barristers and solicitors. Framed by social exchange theory the study finds that familiarity (degree of contact) is a necessary condition for attraction to occur, influenced by mutual socialisation processes in their professional education, training and culture as well as complementary skills in the work domain.

Harris' solo study on the emotional labour of barristers is larger and is both interview based (42 barristers and pupils, 9 solicitors and 5 clerks) and ethnographic, with five days of observation, shadowing five barristers, each for a day, and a further five days of observation in court (Harris, 2002). It examines the sources, content and consequences of emotional labour by barristers and is relevant to this study in that it notes the growing sense of concern and panic among the junior Bar, who were losing work to the growing ranks of solicitor advocates in the lower courts and how this is manifested in their professional lives. Anxiety about the flow of work and income, over conditional fee agreements and legal aid cuts were found to be central to the driving force behind their customer-oriented emotional labour. In addition the nature

of their work, their occupational acculturation and self-image and audience expectations resulted in barristers engaging in both 'surface acting' and 'deep emotional labour', utilized to target solicitors, clients, court staff and clerks in the performance of their roles, whilst at the same time concealing the more negative consequences of tiredness and stress. In many ways, although using a different theoretical framework, there are similarities between this analysis and Rogers' 'cloak of competence' thesis, which describes how all practitioners assume a 'professional face' to inspire confidence, cope with stress, detach from or empathise with clients, the latter with varying degrees of sincerity (Rogers, 2011, p141).

The only study on direct access from the Bar's point of view, which included interviews with barristers and chambers staff, was undertaken after the LSA 2007 was enacted, but before taking effect (Flood and Whyte, 2008). At a time when many solicitors feared that they would soon be out of business, due to the liberalisation of the legal services market, this study found that direct access to the Bar offered potential for market expansion, when traditional sources of work might diminish. The authors note the caution expressed by barristers' clerks and practitioners in undertaking direct access work, because they feared it would alienate existing instructing solicitors, who would perceive that they were taking away their work. Moreover, half of the corporate clients surveyed preferred using solicitors as intermediaries and were confused by the organisational structure of chambers. Professional clients, by contrast, considered licensed access to be more economic if dealing with the Bar directly, but many had little knowledge of the scheme. Familiarity of direct access for the public was equally limited. The development of direct access is further explored in the empirical section on getting work in Chapter 6.

Finally, the most recent research on the Bar is a doctoral study on how and why the Inner Temple can alter the profession's history of social closure, by introducing a mini-pupillage access scheme to non-traditional entrants (Freer, 2016). At a time when access to the profession is a highly debated topic, Freer (via questionnaires, 12 interviews and focus groups), concludes that whilst the scheme offers a few individuals the opportunity to sample and perhaps enter the profession, it is unlikely to have any significant long-term effect on the demographics of new entrants generally, in part because the scheme is too small. Relying on Bourdieu's concept of social capital, Freer notes that non-traditional aspirant entrants are still expected to conform to the Bar's elite norms and accept its traditional values, which, for many, merely confirms their outsider status. The profession, its traditions, culture and

ideology remain unaltered – and thus no radical change in membership is likely. Issues of social, economic and cultural capital are explored in detail in Chapter 5, which considers social closure and accessibility to the profession.

2.2.5 Legacy of previous empirical research

As can be seen from the above summaries, the empirical work on the Bar is, on the whole, a disparate collection of enquiries into the profession, drawing (or not) on a variety of theoretical perspectives and methodologies. To some extent, this is not surprising as the profession has multiple aspects and different practice areas, and is not a homogeneous entity. Indeed, this study explores a range of perspectives from the sociology of the professions and tests their applicability to the Bar. It further draws on a diverse collection of literatures when looking at specific features of the profession, each of which are analysed at the start of the relevant 'findings' chapters.

The early concerns about the structure of the whole profession are now largely out of date. Questions raised in Abel-Smith and Steven's second study (1968), however, remain pertinent. To what degree does the Bar serve the public interest? Is the profession affordable and accessible? Has the removal of restrictive practices and monopolies improved the provision of legal services? These questions are outside the remit of this study, but continue to vex academics (eg Paterson, 2011) and policy makers. The post-1990 specific studies provide good material with which to compare the findings of this study in areas such as chambers' organisation, entry and training, marketing, direct access and to explore how these areas have developed and to what effect. The more textured accounts provided by Morison and Leith (1992) before the reforms and Rogers (2011) after many of them, provide rich descriptions of barristers' professional culture, ideology and working lives, areas upon which this project hopes to build.

2.2.6 Internal perspectives

With the development of information technology, the Bar has been able, in recent years, to shape and represent its own image, whether through its representative and governing bodies (the Bar Council and BSB, specialist Bar Associations), through chambers or as individual practitioners. Official websites, blogs, newsletters and Twitter accounts provide a vast array of material about chambers, legal developments, changes in governance and thoughts about the ever-changing professional world in which barristers work. Perhaps mindful of earlier criticisms of elitism and opacity and aware of the growing need for more transparency and

accountability about its entry, selection, training and disciplinary processes, the profession has whole-heartedly engaged in making its world public. In the course of its disputes with the government about legal aid cuts, the Bar used these platforms to further its cause and promote its services and survival. Twitter was a particularly prominent tool, used to garner support from within and outside the profession during the *Transforming Legal Aid* consultation in 2013 and 2014, as petitions, viewpoints and real-life 'stories' of legal aid practitioners were circulated to a much wider audience than practitioners had previously ever imagined.

The official Bar Council website highlights the profession's key narratives, brandishing the words '*Integrity. Excellence. Justice'* across its homepage banner, forming the core of what it terms its Mission Statement – values it wishes to project. Members of the public can navigate their way round sections on the Bar's history, read about its important role in society, its annual report and be guided on how to find a barrister or how to represent themselves if they cannot afford one. The Bar, its seems, has engaged in 'rhetorical strategies of legitimacy' to counter perceived propaganda from the government and the media, not to legitimise itself as an emerging group, as Suddaby and Greenwood (2005, p.35) explore the term, but perhaps to recapture some of its lost legitimacy and ensure its survival. The Bar's ideology, its sense of uniqueness, history, tradition, excellence, high moral objectives and ethics, together with a strong sense of public service are scattered across the pages of its website.

Equally significant as this obviously promotional material, is the emergence of the first research section at the Bar Council/BSB, which commissions studies on the profession. At the time of writing the Bar Council have undertaken two biennial surveys, *Barristers' Working Lives* (2011, 2013 - covering practice areas, working hours and earnings, career aspirations and views about the profession) and three annual *Bar Barometer* reports (2011, 2012, 2014 - demographic profile of the Bar, new entrants and law students on the BPTC course). The BSB has similarly commissioned mixed methods research on, inter alia, *Perceptions of Criminal Advocacy* (2012), *Barristers' Changing Practice Status* (2011), *Business Structures Survey* (2010) and pupillage (2012), *Snapshot: the experience of self-employed women at the Bar* (2015) and *Wellbeing at the Bar report* (2015). Although these studies on the whole lack theoretical underpinning and analysis, where relevant some of their findings complement, reinforce or contrast with those in this study and are referred to in that context. Significant however, is the fact that the profession's

official bodies are generating and disseminating data on the Bar and contributing for the first time to the building of a body of knowledge about the profession.

2.3 Theoretical perspectives from the sociology of the professions

2.3.1 Overview

The purpose of the fieldwork for this thesis was to identify the processes of change within the profession, in response to outside reforms and to explore how barristers made sense of the changes and perceived their effects on the Bar's culture and their professional identity. The study was influenced by existing theory about how professions develop and evolve, how professional culture develops and how neoliberal practices have reshaped professional life. It draws mainly from the Anglo-American centred literature on the professions because of the very different nature of Continental professional development, which involved far greater state involvement and lacked the relative independence of professionals from market and hierarchical pressures, a feature prominent in Anglo-American modes of professionalism (Kritzer, 1999; Muzio and Kirkpatrick, 2011). Abel's professionalisation project thesis has been considered early on in this chapter, a theoretical framework, which he applied to the whole Bar (and legal profession). The rest of the chapter sets out other conceptual approaches, which have been applied to the professions more generally or to the solicitor branch of the legal profession and seeks, through the findings' section and discussion at the end, to test the applicability and relevance of these perspectives to the Bar.

With regard to theorising the changes that have affected the Bar, this study's analysis draws, inter alia, on Andrew Abbott (1988), whose focus is on the jurisdictional battles between professions over control of particular areas of work, which he sees as central to understanding professional development and organisational change. The empirical findings in this study, regarding the reconfiguration of the traditional methods of working at the Bar, support Abbott's theoretical framework and show that the Bar has developed, adapted and in some areas declined, as a direct result of jurisdictional shifts that have taken place: its loss of monopoly of advocacy in the higher courts since 1990, drastic cuts to legal aid, heightening competition between both branches of the profession, the imposition of an independent regulator and the liberalisation of the legal services market, with competition at its core. It is the Bar's loss of control over and loss of traditional areas of work, for the reasons just given, that have impacted on the profession's development and reorganisation. As stated, Abbott focuses on inter-professional

jurisdictional battles, and although his theory goes some way to framing the changes in the barristers' profession, it necessarily neglects the intra-professional struggles and challenges, though his thesis certainly could explain the triggers that might have caused them.

The Bar, therefore, has to be seen in the wider political and economic world in which lawyers operate and in the light of technological advances that have reshaped their working lives. Thus, a broader literature and set of perspectives has also been considered to test its applicability and relevance to the Bar. There has been much debate on the general causes and effects of neoliberal practices (Miller and Rose, 1990; Arthurs and Kreklewich, 1996; Rose, 1999; Clarke, 2004; Peck, 2008, 2010; Gane, 2012) and this thesis draws mainly on such literature that concerns the professions, and the legal profession in particular, and that which considers the changing nature of professionalism. This chapter considers how professionalism has been conceptualised generally and how it has been reconceptualised given the changes that have taken place across the professions in the last few decades (Abel, 1986, 1987, 1988; Paterson, 1996; Freidson, 2001; Dent and Whitehead, 2002; Boon et al, 2005; Ackroyd and Muzio, 2007; Boon, 2010; Evetts, 2011, 2012, 2013; 2015; Saks, 2012). These different perspectives, drawn from the sociology of the professions, are developed in more detail later in this chapter. First, the origins of Abbott's thesis and early debates about professionalism are considered briefly to better understand their theoretical underpinnings.

Two main theoretical approaches developed when conceptualisations about the professions were first articulated in the first part of the twentieth century. Carr-Saunders and Wilson (1933) and Parsons (1939), inspired by Durkheim, took a structural functionalist approach, linking the professions with social structure and the division of labour, highlighting the traits and positive functions and achievements of occupational groups. Professions were organised groups of experts, who had undertaken elaborate training to acquire esoteric knowledge, which they applied in a manner that was shaped and guided by codes of behaviour to ensure ethical practice. Critical studies from the 1960s onwards debunked this approach, claiming it unquestioningly followed professionals' ideology, which presented an altruistic, public service image. Instead these later studies focused on professions' exercise of power to gain market monopolies and control over who entered their ranks (Johnson, 1972; Larson, 1977; Abel, 1986, 1987,1988). This later 'power literature' was less

interested in what professionals actually did and the expertise they used to do it and more focused on structures used to control and extort rents (Abbott, 1988).

The second approach arose from the Chicago School of sociology's teachings, under the inspiration of Everett Hughes, and adopted a quasi-anthropological approach, rooted in observation and first-hand experience of the professions. It paid more attention to the organisational features and 'the outcome of everyday battles over the use of resources, the limits of task ownership…' and the interdependence and cooperation between professional groups, who divided work up into tasks, which changed in an evolutionary process that depended on competing others (Dingwall, 1983/2014, p.5). Hughes observed that professions sought monopolies, but at the same time deliberately limited their areas of work and responsibilities, delegating associated tasks to other occupations or groups. He felt that competition between groups was less concerned with financial gain, but driven more by characteristics of status (Hughes, 1994; Dingwall, 1983), supporting Burrage's (2006) later interpretation of professional development. Abbott (1988) attributed his own conceptualisation of professional development to the Hughes tradition (1988, p.112; p.326). He adopted and developed it, extending his model to include not just the workplace but also the wider public and legal environments.

With the implementation of neoliberal economic policies, there has been a shift away from concerns about the market closure and control evident in the critical studies of Johnson (1972), Larson (1977) and Abel (1986, 1987, 1988), largely because the many professions have lost their monopolies and control over entry and regulation. A more recent body of literature considers how aspects of professional life, structure, organisation and culture have changed because of new policies of competition and managerial reform and what this means in terms of understanding professionalism (Dent and Whitehead, 2002; Evetts, 2011, 2013, 2015). That which concerns lawyers addresses features such as self-regulation, independence and autonomy, organisational structure, discretion and professional culture, even if little of it touches on barristers specifically (except Abel, 1986; 2004a) and is more concerned with the solicitor branch (eg. Stanley, 1991; Paterson, 1996; Flood, 1996; Ackroyd, 1996; Hanlon, 1998; Flood, 2011). Research has variously noted that professional services have become more specialist and more global and that lawyers are sometimes constrained by the entrepreneurial demands of their employers. Firms are restructuring, or branching out into multi-disciplinary practices, breaking the previously established boundaries of the tasks undertaken. The professional/client

relationship has radically changed, with the latter becoming more demanding and powerful (Kritzer, 1999; Hanlon 2001; Webb, 2004; Ackroyd and Muzio, 2007). The liberalisation of and the injection of competition into the legal services market, globalisation of legal services and the effects of managerial reforms have reshaped professionalism, creating debate about whether or not it truly exists as previously conceptualised (Paterson, 1996; Faulconbridge and Muzio, 2008; Boon, 2010).

2.3.2 Professional development - Jurisdictional disputes triggering change

Abbott (1988) rejected the application of one general theory in his sociological analysis of the professions, noting that it pays little attention to the actual work done and expertise used to do it and the great diversity within professional development. Instead of looking at the processes of professionalization, emphasising how economic advantage is obtained by restricting the supply of practitioners and having market control (Larson, 1977; Abel, 1988), he pays more attention to the concept of professional development. His general thesis can be outlined as follows: control of work brings professions into conflict with each other, making their histories interdependent; each profession is bound to a set of tasks by ties of jurisdiction, which are never absolute or permanent; within this interactive system, or ecology, professions compete and from time to time tasks are created, abolished or reshaped by external forces; the attendant readjustments, create disturbances that filter through the system, thereby linking structure with professional tasks.

The first step in professional development is for a professional group to construct work or a particular task into a known professional problem and then ask society to recognise that group's (preferably exclusive) right to solve it (Abbott, 1988, pp.59-60). This right can be acknowledged formally, by legislation or by custom but must amount to a legitimate claim to control particular tasks/work. A good example with reference to the Bar dates back to the profession's earliest manifestation, when it acquired a monopoly on higher audience rights, a claim established by judicial custom rather than legislation. This claim was deeply established and durable and shifting it had eluded solicitors (and attorneys) for centuries, until its displacement in 1990. A claim's robustness depends on the organisation of the professional group and its ability to mobilise members, influence media support and public opinion (Abbott, 1988, p.82). As Abel (2004a) so thoroughly showed in his analysis of the Bar's fight to preserve its monopoly in the late 1980s, the profession failed to muster support for its cause either in the press or from the public and was ultimately unsuccessful. For an earlier example, Burrage (1997; 2006) and Osiel (1989/1990)

both illustrate how the Bar failed to exclude solicitors and attorneys from being advocates in the county courts in the mid-19th century, in some respects because at that stage and, unlike solicitors, the profession had no representative body to assist in that particular jurisdictional fight.

For Abbott, the development of professions is dependent on a mass of contingent forces, which can 'unsettle', previously agreed jurisdictional claims. Challenges to jurisdiction can come from other professions - for instance, solicitors challenged the Bar's advocacy monopoly. Or external forces can unsettle the system. The withdrawal of state funding for much of the legal work done by the Bar, as well as the more recent liberalization of the legal services market, have triggered the disturbances within the system that Abbot envisages, sparking new boundaries shifts between the two branches and other professions. The knock-on effects are still unfolding, in terms of the Bar's internal organizational structures and modes of working. In addition, new knowledge, areas of expertise and tasks are being sought, identified and developed in an attempt to extend its jurisdiction in other ways and directions, to compensate for work lost. These attempts to create new, distinct and self-contained areas of knowledge, that in turn are translated into new areas of practice, have been central to the creation of the professions (Fournier, 2000). For Abbott, these strategies involve professionals' 'abstracting ability to define old problems in a new way' or seizing new problems so as to survive (Abbott, 1988, p.30). Within this framework, professionalism is a dynamic that results from conflict (Boon and Flood, 1999). Many of the findings herein and expanded upon in later chapters support Abbott's system of claims, unsettlement, disturbances, adaptation and development or loss of jurisdiction.[7]

2.3.3 Professionalism reshaped – neoliberal forms of government

Consideration of the broader forces at play is also required, so as to identify what has triggered the jurisdictional disputes Abbott refers to and to consider their long-term effect. Freidson (2001) shares Abbott's scepticism about the value of multiple analytical frameworks in the literature on the professions, claiming that it has only led to a scattered conceptualization and confusion, and stresses that a profession's

[7] Although this study embraces Abbott's approach, it is worth noting that Bourdieu similarly places lawyers in a social universe, which he terms the 'juridical field' and argues that the social practices of law are a product of its functioning, by which he means the power relations within it, which determine its structure and which order the competitive struggles within it. His juridical field, like Abbott's jurisdictions are sites of struggle, where actors compete for monopolies or control over certain tasks and acquire or preserve their social, cultural and economic capital (Bourdieu, 1986/87).

survival and development is contingent upon state support. Developing Abbott's thesis, Freidson argues that the state has the power to officially recognise, define and classify particular kinds of work in the labour force and permit or support the division of labour and jurisdictional disputes. With neo-liberalisation, policies have been unrolled that reduce constraints on commercialism, break open restrictive practices and promote consumerism, factors which all oppose ideal-type professionalism. This ideal type, which he proposes as a base-line for empirical studies, comprises an occupation involved in specialised work, grounded in theoretical-based knowledge/skill and imparts superior status on the professional, who enjoys a sheltered market for that particular skill. Credentials attesting to such specialist knowledge, are accredited by the profession itself and its ideology asserts a vocational calling to do good work over economic gain and to provide quality and expertise, rather than efficiency. Friedson's ideal type draws on the 'hagiographic style' (Muzio and Flood, 2012, p.371) of the functionalists (Carr-Saunders and Wilson, 1933; Parsons, 1939), where the features associated with professionalism – collegiality, autonomy, expertise, self-regulation and public interest service – contrast sharply with notions of market competition and bureaucracy commonly associated with commercial life. Lamenting the assaults on professions, which frame monopoly and social closure as modes of domination and exploitation, Freidson draws attention to the fact that they are, instead, mechanisms for supporting growth and refinement of disciplines and the quality of their application (Freidson, 2001).

Others have also charted the state-lawyer relationship in England and Wales, in the wider context of the rise of neo-liberalism. Legal aid, introduced in 1949, enlarged lawyers' client pool, necessitating a growth of the profession, but as a result of an increasing unwillingness on the part of the government to fund it, many are now unable to maintain levels of work. The effects are multiple. For example, the once unthinkable conditional fee agreements were adopted by the profession in the late 1990's as a way of partially lifting the burden on the public purse (Kritzer, 1999). Almost the entire sphere of private family law now falls outside the remit of legal aid, leaving many parties to represent themselves, without using lawyers at all. Hanlon (2001) notes the emergence of two 'hemispheres' or markets within the legal profession, a concept taken from Heinz and Laumann's study (1982/1994) on Chicago lawyers, creating a weak community at the Bar because of their differentiation in work security and income (Abel, 1986). The publicly funded one, to which the state is hostile, evidenced by successive governments' reduction in legal aid, and the more 'efficient', commercial branch, which Hanlon nonetheless

perceives to also be in peril, due to increased consumer power and commercialization. Both hemispheres, he predicts will be de-professionalized and less autonomous. Ackroyd and Muzio (2007), writing about the solicitor branch also note the ideological and economic hostility towards lawyers, manifested in the deregulation of their monopolies, and their commercialization and managerialization.

Traditional forms of collegial governance within the professions are being displaced by a more commercial approach (Muzio and Kirkpatrick, 2011). Customer services, generating new work and efficiency reign supreme, monitored by the ongoing measuring of performance (Ackroyd and Muzio, 2007; Sommerlad, 2011). Whether or not professionalism has been undermined or even exists in pure form any more, as a result of its commercialization and managerial influence, has been the subject of some theoretical debate, leading some to posit that professionalism is at an end or has at least been reconfigured in a new hybrid form, where the principles of professionalism, enterprise and managerialism have blurred (Abel, 1986; Dent and Whitehead, 2002; Ackroyd and Muzio, 2007; Evetts, 2012, 2013, 2015). Others assert that professionalism is simply evolving (Paterson, 1996), accommodating these new developments without letting them undermine core professional values (Faulconbridge and Muzio, 2008). For Freidson (2001), the critics of professionalism have succeeded in:

> 'increasing public suspicion of professionalism and weakening credibility of its claim to have more than a material interest in its work. This has strengthened the power and increased the legitimacy of ideologies of consumerism and managerialism that underlie the activities of both capital and the state. It has also liberated many individual professions from the ideology of service, freeing them up to devote themselves to single-minded efforts to maximize their own incomes' (p.208)

This assault on the professions comes not just from government policy, but reflects a wider shift in attitudes. Professionals no longer attract the trust and unquestioning faith of clients, can no more claim to have exclusive stock of specialised knowledge, as their monopolies and markets have opened up to competition from others, and the once respected educational, training and socialisation processes are now no longer sufficient qualifications to guarantee a professional's legitimacy. Professionals must now increasingly adapt and learn, with continuing professional development (CPD) becoming the norm. A professional's claims of altruism and working for the common good at best fall on deaf ears, at worst are seen as self-interested political strategies. Self-regulation is being replaced by external oversight and supervision. In essence,

there has been an 'erosion of normative superiority' within the professional classes, a shift from the trusting, if asymmetric, relationship of the modern professional to a very different kind of alliance between 'a reflexive and insecure expertise producer and a self-confident and critical expertise consumer' (Pfadenhauer, 2006, p.565, p.571; Evetts, 2013). Abbott (1988) noted that changing social values can recast the legitimation of professions, even if nothing else had changed (p.177), so professions need to constantly revise their legitimation systems. Whereas barristers used to be legitimised by, for example, their 'gentlemanliness' (p.191), different attributes are now sought and promoted to invite acceptance and respect. The findings of this study show that increased openness and transparency, customer-centred service and a representative body that creates an image of a modern, expert and merit-based profession are all designed to legitimate the Bar in the new economic and regulatory climate. Further, this new professionalism, or 'post-professionalism' recognizes a professional's loss of exclusivity, the increasing segmentation, through specialisation, in the application of abstract knowledge and the growing use of technology to access information resources, so that services previously provided by professionals can now be given by others (Kritzer, 1999).

Professionalism thus has adopted two different forms, one with organizational features (control by managers, standardized procedures, hierarchical structures, managerialism and accountability in the form of external regulation) and occupational professionalism, which emphasises the traditional features (collegial authority, discretion and control over work, practitioner trust, professional ethics and internal control) (Evetts, 2013). However, as Muzio and Flood (2012) point out, these distinctions or categorisations fail 'to capture the messiness, elusiveness and contested character of empirical reality' (p.372). Rather than running parallel, they often overlap depending on the work setting and employment of those involved. Employed, as opposed to barristers' self-employed status, is relevant to the degree that it shapes the extent of managerial control and assessment. To what extent the Bar's traditional characteristics have been reshaped by commercial and organizational logic is explored in later chapters, though it is the only profession that hitherto resembled anything like its original occupational form (Ackroyd, 1996) and Freidson's ideal type, possibly because of the self-employed status, and therefore relative independence, of its practitioners.

Thus apparently competing but intersecting forces have emerged in the last few decades, which seek to radically alter the legal profession. On the one hand its

marketization, with the liberalisation of rules regarding working structures and practices, to promote competition and entrepreneurship. Such liberalisation is framed in terms of market 'freedoms'. On the other hand, there is increased state control and constraint via imposed outside regulation and managerial measures. Gane (2012) posits that it is precisely this combination that Foucault had in mind when speaking of neoliberal forms of governmentality. Using Peck's terms (2010, p.22), it is both 'roll back' and 'roll out' – market freedom and increased surveillance and regulation, with competition at its core. According to Peck, neoliberalism was never about the state completely deferring to the market, but more 'associated with rolling programs of market-oriented reform, a kind of permanent revolution…an open-ended and contradictory process of regulatory restructuring' (Peck 2010, p.7). So the marketization of the Bar, its structures and the liberalising rules that free the profession to work in any number of different ways or combinations is framed as emancipating barristers from rigid, traditional and constraining rules about how to work, permitting them to compete in a no longer sheltered market. On the other hand, the profession now faces increased constraints, imposed on it by outside regulation, which demand a new accountability and efficiency and managerial reforms, in terms of chambers organisation, recruitment, training and case management, costs and court procedures. Peck's 'restructuring projects' typically focus on dismantling institutions, upsetting centres of power and attacking systems by, for example, funding cuts (p.22) and are examples of Abbott's (1988) disruptions of jurisdictional settlements, all of which can be seen in the recent reforms to the Bar and which will be exemplified in later chapters.

Moreover, a new form of individual autonomy lies at the heart of disciplinary control, exercised through responsible self-management (Miller and Rose, 1990, 2008; McNay, 2009). Miller and Rose call it 'government of the internal world', where behaviours are shaped and normalised by malleable, self-regulating subjects (Miller and Rose, 1990, p.2). How new entrants succeed in getting into the profession and how practitioners compete for work is considered in the empirical chapters in the light of this new, entrepreneurial and responsibilised professional, who is 'an individual actively seeking to shape and manage his or her own life in order to maximise its returns in terms of success and achievement' (Miller and Rose, 1990, p.26). These indirect mechanisms of (self)-government, with an insistence on a neoliberal citizen who makes rational personal choices to seek self-fulfilment, disguise the fact that social and structural inequalities can be the cause of lack of success, factors that are considered further in the empirical chapters.

This study, therefore, considers the relevance and applicability of Abbott's concept of professional development, when looking at the causes and processes of change. It further draws on the shifting analyses of professionalism, using Freidson's ideal type (2001) as a starting point, but also the literature on the sociology of the professions, which analyses the intersecting effects of neoliberal forms of governance - marketization, managerialization and responsiblization – on the occupations in question. Part II of this thesis, and the final discussion chapter in particular, interrogate the applicability of any of the above to the Bar, most theorising contained therein relating to professions, legal or otherwise, which are structured and operate in a quite different way, guided by quite different ideologies and cultural references.

Chapter 3 – Methodology

Previous researchers of the Bar have been surprisingly coy about how they went about their investigations. Some are completely silent about their research methods (eg. Zander, 1968; Hazell (ed), 1978; Abel, 1988), but most reveal the techniques used without further elaboration. For example, Abel Smith & Stevens (1968) say they 'interviewed hundreds of lawyers', nothing more. Morison and Leith's study (1992) was similarly based on interviews with barristers in Northern Ireland, England and Scotland, but there is no information about the sample size, distribution, practice area or experience. Moreover, with two exceptions, all the research studies on the profession are notable for the lack of reflexivity on the part of the researchers. It is only in the writings (and musings) of John Flood (1981; 2005) and Justine Rogers (2010), both ethnographers of the Bar, that one can find richer and more detailed accounts about the choices made and the challenges they faced and a consideration of the influence of their own role might have had on their research subjects and their analyses.

Bourdieu expressed a loathing of the 'self-fascinated observation of the observer's writings and feelings' of some American anthropologists, who 'have turned to talking about themselves rather than about their object of research' (Bourdieu and Wacquant 1992, p.72), yet research findings that are not accompanied by any reflexivity risk having their validity undermined (Morse, 2015). Harris and Piercy's study (1998) on marketing at the Bar had a 'discovery oriented exploratory design' - 'to explore and clarify the opportunities for applying marketing and the barriers to marketing development at the Bar' (p.22). Their sample was 21 barristers, including pupils and more established practitioners, though no breakdown is given and nor are any details about where and what practices they had. The following sentence opens the Discussion section of the paper:

> 'It would be difficult to review the interviews and observations summarised above without concluding that barristers represent a pocket of self-righteousness, arrogance, smugness and professional isolationism of the most extreme type,' (Harris and Piercy, 1998, p.32)

Whilst their findings indicate that the 21 barristers interviewed were generally reluctant to market themselves and ignorant as to how to go about it, the strength of feeling expressed by the researchers against the whole profession is somewhat surprising. What else, one wonders, was going on to produce such a violent reaction, that develops in this vein throughout the section ('the profession in question offers

little more than hired advocacy as its distinctive competency' and operates in a 'snouts in the trough' scenario', p.32)? How could the authors justify these generalisations when they had earlier stated that 'no claims to general representativeness are made' (p.22). How had they accessed the barristers? Had they any prior views or experience of the profession? The individual interviews were 'supplemented by informal group discussions' (p.22) – what happened during these? How ethical and reliable are these assertions, given that the authors give so little information about their positioning in this study? Mindful of Bourdieu's comments on the tedious self-absorption of some reflexive writing, this chapter does nonetheless locate this researcher within the study, so as to avoid the bewildering state of affairs produced by Harris and Piercy's paper and to contextualise the author's place within it. As a former barrister, who was in general common law practice for 8 years (1985-1993), based in the Temple and on circuit, she necessarily brings to this study her previous knowledge and experiences as well as her assumptions, prejudices and limitations. In the spirit of reflexivity, the rest of this chapter is in the first person. After a brief overview, I will set out how the research was designed, with what intent and how it was carried out, before moving to a more reflective section about my role as an insider and how that might have impacted the process and the analysis.

3.1 Overview

This research combined two qualitative empirical approaches and additionally relied on analysis of other, extensive data sources. It consisted of one to one, in depth, semi-structured interviews with barristers, clerks and other chambers administrative, marketing and business staff, as well as interviews with two solicitors, an employee of the Bar Council and a legal blogger. The sample is fully broken down in due course, but appears as a complete list (anonymised) in Appendix 1, with gender, practice area and level of experience indicated, by giving year of call. Interviews were complemented by observation in chambers and at court, at formal and informal Bar events and one week of shadowing a criminal barrister on circuit. I further attended a number of Bar and lawyer related policy meetings, seminars and conferences, set out in the Appendix 2.

I read all relevant Ministry of Justice and policy documents, select committee reports, Green Papers, legislation and statutory instruments, government reports on the profession or aspects of it, as well as select Bar Council/BSB and other bar association reports and documents. Twitter has been an excellent research tool for sourcing much of the above. Throughout the research period I followed many legal

Tweeters, mainly professionals, academics and legal journalists, who provide links to all the source materials (official government documents, legal press, national media, Criminal Bar Association, Bar Council and BSB material, legal blogs and commentary and court judgments), charting the many changes that the profession was undergoing during that time. Much of this material has been printed out to form ongoing diary-style hard copy notebooks and has been used to provide background to and up-to-date context for my findings. Analysis of some of the official versions of the profession, mediated through its professional bodies is useful, as this 'is a key arena within which claims for professional jurisdiction are made' (Francis, 2011, p10; Abbott, 1988), revealing the rhetoric and discursive transformation of the Bar and facilitating a wider understanding of the changes in the field beyond the immediate dataset.

Although there is the profession's commissioned quantitative survey research on barristers, their working lives and opinions, qualitative research is in my view a far better way to probe deeper into the details of their everyday experience, organizational arrangements and personal viewpoints. That is not to say the survey findings (sometimes complemented by small qualitative elements) produced by the Bar Council's own research centre lack insight or detail. On the contrary, *Wellbeing at the Bar,* 2015; *Barristers Working Lives,* 2011 and 2013; *Bar Barometer* 2011 and 2014, to name just a few such studies, are rich sources of information about the Bar. Yet by speaking to barristers at length, observing them in court, in chambers and at informal and formal Bar functions and by reading all the aforementioned secondary data, this triangulated approach is able to witness and explore the effect of the reforms, probe into barristers' actions and reactions and offer longer and more nuanced accounts of how practitioners are making sense of and adapting to the changes that are transforming their daily working lives and professional identity. Further, by being sensitive to their world, it is possible to understand it on their terms and from their perspective (Machin, 2002). Furthermore, following Hughes' tradition, a general characteristic of the sociology of the professions was that it is rooted in qualitative methods, the ethnographic model in particular. Workplace interactions, career trajectories, organizational arrangements and professionals' understandings of the above, are better investigated on the ground and in person (Liu, 2014). The Bar is not a homogeneous block of practitioners, with identical professional lives and the methods chosen are likely to throw up a much richer set of data about these differences, even if its findings lack generality. Qualitative research is better suited to identifying 'the linkages between events and activities and to explore people's

interpretations of factors which produce such connections', an aspect that is critical to the purpose of this study that seeks to connect the reform process and the response of the profession (Bryman, 1988, p.102). The choices made about data collection, its triangulation and analysis, expanded upon below, were designed to give the study methodological coherence and hence validity and reliability. Efforts were made include verification strategies during the whole research process, not something that was considered at the end, so that they incrementally contributed to ensure rigour (Morse et al, 2002).

3.2 Research Design

This research arose out of three exploratory interviews in March and April 2013, held with barristers whilst investigating a different topic, 'Transparency and Openness in the Justice System', which included the Bar as one of its three research sites[8]. Interviews began with barristers, whilst I waited for Ministry of Justice approval to interview actors in the other two sites, the crown courts and those involved in the cameras in court initiative that was due to begin in the Court of Appeal. Permission to interview staff at two crown court centres and judges, both there and in the Court of Appeal, had been obtained 'on the ground' as it were, but was declined by the Ministry in April 2013, who asserted that I could look at their transparency statistics to answer my questions and that, in their view, it was too soon to research the issue of cameras in courts. In a process that seemed rather opaque and perfunctory, there was no appeal against this decision, so I had to reconsider my research topic.

My interviews at that stage had been with barristers who operated in slightly different capacities and locations: a London-based, general civil practitioner, who was also the Chair of his chambers' General Management Committee, another general civil practitioner, who practiced on circuit, and a criminal practitioner. These interviews were long and entirely open, and not driven by the topic I was then researching but by a desire to know what had changed at the Bar since I had ceased to practice in 1993, so that I could gather a thorough overview before formulating my topic-related interview questions. They covered quite a broad area and were very much led by the participants following some general questions from me ('How has the Legal Services Act 2007 affected you?', 'What changes have there been to chambers administration?', 'How has technology changed how you work?', 'How do you get work?', 'How are chambers decisions made?'). I was already reading the legal press

[8] Ethical approval to interview barristers was obtained from the University of Southampton, on 5th March 2013 under Ethics no 5372, where this researcher began her PhD studies – see Appendix 3.

and lawyer blogs and had some idea of the new landscape in theory, but little knowledge of its impact on daily life, and did not want to predetermine issues, but let them emerge during the process of interviewing so that I could get an overview of what life at the Bar was now like. I was immediately impressed by the dramatic changes that had taken place: the Bar's organizational structure, the competitiveness of the market, the new commercial, entrepreneurial spirit, direct access, the dramatic loss of income and work due to legal aid cuts, conditional fee agreements and a range of new concerns that had arisen. Having lost the ability to research my original topic, I began to conceive of a new research project on the Bar alone, with a focus on the changes to the profession from the perspective of the practitioners. Almost simultaneously, the provisions of LASPO came into force on 1st April 2013 and the new legal aid consultation was unveiled a week later. What I thought was an already changed profession was about to change even more dramatically.

This research therefore began as an open-ended qualitative enquiry into practitioners' working lives at the independent Bar, with continuity and change as its underlying themes and foregrounding practitioners' experiences and viewpoints. It was without hypotheses and initial exploratory interviews were, as already outlined, general in nature. Although I had a good knowledge of the 'transparency' literature, I had to read the literature on the professions, generally and specifically the legal sector, and any previous research studies on the Bar whilst embarking on the early stages of my fieldwork. The timing was thus unusual and prohibited me from hypothesizing within any particular framework or holding preconceived conceptual approaches to the study before I began interviewing.

My interviews included attitudinal questions about what respondents thought about these changes, why they had come about, how they had affected how they worked and felt about their work. Similar to an iterative approach, in these early stages my questions shifted and adapted as I gathered more information (Kvale and Brinkmann, 2009). As I undertook more interviews, both the interview questions and my research questions developed and continued to be refined throughout the data collection period. I attempted to work towards my topic by confronting and questioning the data again and again to manage and make sense of it. Once analysis began there was further re-conception of my research questions, whilst remaining within the same framework (Silverman, 2013).

I opted for semi-structured interviews, to give them some direction and avoid the

stream of consciousness approach (and was wholly unsuccessful in one particularly long and one-sided interview). By having similar interview questions to guide the exchange, I sought to elicit material that could be comparable, but because of the flexibility afforded by their semi-structured nature I was able to give participants a chance to introduce and develop their own topics or views (Medhurst and Moyser, 1987; Sanger, 1996). My inquiry sought both objective and subjective information from barristers and I have attempted to be methodical to enable a separation of the two and give my analysis coherence (Pridham, 1987). Although my interviews were all slightly different as they were tailored for practice, years' call, location of the practitioner, they were similar in that as time went on and specific themes emerged, they covered same areas of reform or change and sought opinions on them: how chambers are organized/structured and why, how decisions are made, how they promote themselves, where their work comes from, how legal aid reforms have affected them, how they are regulated and represented, ongoing training and, additionally, what they think about all this. Appendix 4 includes samples of interview guides that were sent out to three different types of practitioner/participants, which show both the unified approach and the divergent questions relevant to their practice. Every interview guide was personalized according to the barrister being interviewed. Before composing it, I would read their chambers and individual online web profile and tailor questions accordingly. Their length of call would also determine the nature of questions about chambers governance. Being semi-structured, there were obviously other, additional questions that arose and topics explored and to some extent the process was interactive as I attempted to be sensitive to their own language and conceptualisations (Britten, 1995).

Mine was an interpretive process that analysed 'the actual production of meanings and concepts used by social actors in real settings' (Rynes and Gephart, 2004, p.457) and was appropriate as there has been relatively little research on the Bar and almost none specifically looking at the dramatic changes to organizational structures and professional culture since the deregulation and re-regulation processes of the last 25 years (Moghaddam, 2006). That is not to say that existing theory about the profession was ignored. Rather, as my reading progressed in the early stages of the fieldwork, my research took shape around existing theory about how professions develop, evolve and why and how this is understood by practitioners and what effect it might have on their sense of professional identity. Yet, it did not seek to test any hypothesis based on such theories (Becker, 1993; Suddaby, 2006). It was more akin to a calculated decision to select a sample from a specific group

(barristers) according to a preconceived initial set of dimensions (change and continuity at the Bar), identified at the start of the project, rather than not knowing what I was choosing my sample for (Glaser and Strauss, 1967; Glaser, 1978; Coyne, 1997).

3.3 My sample

I started interviewing people I knew, in long exploratory interviews, lasting up to two hours, where although I had identified key changes and legislation, much emerged. I refined questions or inserted new areas. Using a snowballing technique, I then asked them to see if other members of their chambers or colleagues would participate and I sought out new participants from different practice and geographical areas. I asked for help in finding younger members as most of my contacts were my age, with a clear memory of the pre-reform era in the profession. I wanted to gauge how new members, who had no experience of a previous regime behaved and felt. I knew practitioners in different areas, so I exploited that to reach participants on different circuits. As can be seen I utilized by insider status to make contacts, gain access and trust (Wilkinson and Kitzinger, 2013). My sample includes a number of heads of chambers, who were useful in giving an overview of chambers' structure, management and decision making, as well as a few clerks. Some practitioners came my way more randomly, as a result of telling people about my research.

If participants agreed to take part in advance, I emailed them the Participant Information Sheet and Consent Forms, explaining what they contained and that I would be inviting them to sign the latter when we met. I also told them that I would be seeking to tape our interview as it would be a more accurate account of it and that it would probably save time. In this way I gave them the opportunity to read the documents without feeling rushed, the opportunity to change their minds if they so wished and time to consider my request about taping the interview. In the instances where I had recruited participants whilst in situ in their chambers, I gave them a copy of both documents to read when we first met and asked permission to record before we started. Copies of both documents can be found in Appendices 5 and 6, in which it clearly sets out that their contribution will be anonymised.

In all, I interviewed 62 people, which comprised 50 barristers, 5 clerks, 2 office managers/administrators, one marketing consultant, two solicitors, a Bar Council employee and a legal blogger. Of the 62 interviewed, I personally knew 22 and of the barristers, 17 were women, 33 men, drawn from 20 sets of chambers, of which four

were on circuit. The geographical range covered three of the six different circuits and London. One barrister was a sole practitioner and not attached to chambers. In terms of seniority and experience, 15 were under ten years' call, the remainder more senior, 10 of which were QCs. Their practice areas can be divided up as follows:

- 13 criminal practitioners
- 13 general civil practitioners
- 13 specialist civil or commercial practitioners
- 9 family practitioners
- 1 criminal/family mix
- 1 general common law practitioner, who covered both civil and criminal law

My sample size is small, and can in no way be representative in terms of all practitioners' opinions or experiences. In any event, that was not its purpose, though arguably enough common material or patterns emerged to form a picture of what effect the reforms have had and the ways in which some chambers and barristers have responded. My aim was to understand the professional lives of some barristers from their viewpoint, how they assign meaning to their working world, within the context of the reforms. There are, necessarily multiple personal perspectives or realities, so this knowledge alone is significant in its own right (Myers, 2000) and is largely missing from past investigations on the Bar and entirely new in relation to the recent changes the profession has undergone. Across the publicly funded practitioners I interviewed, there was, however, little variation in what they told me, and how they felt about their professional lives.

I generally requested participants to give me 40 minutes of their time, knowing that many of them were busy. Even so, the interviews usually lasted an hour, sometimes longer. I interviewed two participants twice, many months apart, when I sought an update on their views on the unfolding legal aid dispute as well as other matters. Interviews were almost all one to one, in person, taped and later transcribed by me. On one occasion the barrister preferred that I make notes, which were written up that same day. On another occasion I interviewed three barristers together as they preferred to do it that way and since I did not know them, I did not push for individual contact. The format was necessarily more of a discussion/focus group at times, though I was able to ask them all to comment on the same questions. One interview, with a Bar Council employee, was conducted over the telephone, during which I made notes, which were then immediately written up whilst the conversation was

fresh in my mind. Sometimes, but not always, I also made more general notes after an interview, about the physical surroundings of chambers and any other impressions that I had noticed, thought significant and wanted to remember.

3.4 Observation

Ethnographic observation was a useful method used to complement the interviews. Whilst interviews elicited how barristers demonstrated their perceptions of reality, periods of observation gave me insight into some of their workplace realities and the ability to compare the two. My periods of observation were varied and included: one week shadowing a criminal barrister, tours of different sets of chambers, dining in hall in the Inns, attendance at the 2013 Bar Conference, attendance at an Advocacy training of the trainers session in the Inner Temple, repeated marshalling in the crown court and general court visits, attendance at a University Law Fair and attendance at both 'strike action' days and legal aid consultation and protest meetings. In addition there were multiple more social, informal occasions with barristers in the Inns (eg a book launch, chambers party, funeral, lunch with former colleagues).

The most sustained was a week on circuit in one set of chambers in March 2014, shadowing a criminal barrister. I stayed with him and his family, commuted to court and to chambers with him, inhabited his workspace and watched him work at home in the evenings and early mornings. I accompanied him to court, in the robing rooms as well as in the courtrooms. At all work locations, he introduced me and explained briefly what I was doing: to the other barristers and solicitors in the robing rooms, to the court staff, to the CPS representatives, for whom he prosecuted and to his fellow members of chambers. When he had a longer trial, he took me behind the scenes at court to introduce me to the judge to explain what I was doing and why I was there. In a sense, my presence was not dissimilar to that of a pupil or junior – I read the briefs, followed him around, listened to him talk about his case, sat behind him in court and had to make a conscious effort not to make notes of the evidence as if I were his junior.

Although this period of intense observation was relatively short, I felt that it was enough, given my experience and familiarity with the court experience and of being a barrister and given that I was less concerned with the actual job of lawyering and more concerned with organizational issues, structures, marketing and impressions, which I felt were best illuminated in interviews. Nonetheless, all my periods of

observation added an extra dimension of understanding, as I was able to witness the more dynamic interactions of barristers' daily lives (Mulhall, 2003). A large number of barristers interviewed have given me physical tours of their chambers – the clerks' rooms, support staff rooms and meeting/conference/seminar rooms as well as their rooms and on four occasions I spent an entire day in a different set, interviewing and observing, as well as informally chatting to members. Sometimes I returned more than once to a particular set to interview different people. After some time I had the impression that I myself was back at the Bar because of the amount of time I spent in the Inns, on circuit, in court and with barristers. This 're-immersion' into the daily workplaces of different barristers, whether at court or in chambers, allowed me to observe my participants whilst at work, giving me a more recent, updated direct experience of their working lives (Van Maanen, 1998; Murchison, 2010). I was also able to observe things that I was being told about in interviews and see them in action. The corporatization of the public areas in chambers, with conference spaces for workshops and multi-use rooms, contrasted sharply with the 'back spaces' of small, cramped, overcrowded rooms in which some practitioners worked. Similarly, the hot-desking arrangements in chambers varied enormously in terms of space and comfort. The expansion of the clerks' room and presence of new staff were notable, as were some of the sophisticated IT systems in place. In one set, there were two full-time IT staff and multiple designated IT rooms in case someone was far from their own office and needed to use a computer. I was also able to listen to the conversations of practitioners when in chambers – their concerns, worries, stresses, but also their humour and collegial interaction or lack thereof. Observation facilitates the production of rich accounts or a version of Geertz' thick description, enabling the researcher to 'sort winks from twitches and real winks from mimicked ones' (Geertz, 1994, p.222). It further improves the prospect of interpreting and creating valid meaning of things, since 'the aim is to draw large conclusions from small, but very densely textured facts', which are better discovered using ethnographic methods (Geertz, 1994, p.229; Cresswell and Miller, 2000).

I further attended the 2013 Bar Conference, where I was able to get an overview of what concerns the profession addressed, thought important, held sessions about, as well as witness first hand, in a session hosted by the BSB, the hostility some members directed towards their regulator. Whilst I was being told about the relatively new advocacy training sessions juniors were receiving, I had no direct experience of this. In June 2014 I was invited to observe a 'Training of the Trainers' advocacy workshop at the Inner Temple, hosted and undertaken by Hampel, the Australian

pioneer of the method taught, during which senior members of the Bar and judiciary themselves received training on how to undertake the advocacy training of junior members of the profession. In addition, I sat, or unofficially marshalled, a few times each year during this period with a crown court judge, as his guest observer and intermittently went to the High Court or the Old Bailey as a member of the public, as a good way of keeping up with what kinds of challenges work at court involves and observing first hand what solicitor advocates are like in court.

My research period coincided with the tumultuous rejection of and protest at the governments cuts and proposed cuts to legal aid. I obtained permission to attend a Ministry of Justice consultation meeting around the proposed reforms to legal aid in 2013. I also attended the first half-day strike outside Westminster Magistrates' Court and the Old Bailey on 6th January 2014, a protest meeting to call for a second strike and industrial action in Lincoln's Inn, in February 2014 and the second, whole day strike action protest and march outside Westminster and the Ministry of Justice on 7 March 2014. Whilst I was on circuit shadowing a barrister, the Bar's 'industrial' action, whereby barristers refused to accept returns in criminal cases, was underway and causing much disruption, a certain amount of confusion and was the source of some dissent. Being a witness to these different events was very useful in bringing alive much of what I was being told in interviews: the anxieties associated with the loss of work and income and the perceived unfairness of the government's actions. It also enabled me to compare the unified rhetoric of the profession with the more nuanced individual views. Although all were unhappy about the cuts, not all shared the same strident views emanating from the rhetoric of some of the professional associations or the more vocal individuals blogging, tweeting and writing letters about the issue. Even within chambers there were divergent opinions as to how best to respond in protest. I was able to see the 'stresses' in action, as it were. On a number of occasions in the crown courts I attended, I witnessed solicitor advocates arriving late or not at all on a case, sometimes claiming that they had been double booked and had been in another court. The irritation and disapproval of the judge and barristers was obvious. Cases that were listed were not heard because representatives of the CPS had failed to turn up or papers were not in order. There was much evidence of a criminal justice system that was under strain.

My field notes during the shadowing week and other periods of observation were jotted down at the time, or sometimes later that day, in notebooks, and included descriptions of chambers' physical set-up, how the courtrooms had changed (eg.

secure docks; partitions to screen witnesses from the Defendant's view), practitioners' moods. Given the amount of interviews I was transcribing I did not type these notes up, as it was simply not practicable.

3.5 Accessing Elites

Researching elite groups is often one of the greatest challenges a researcher faces, but in this instance getting access was not an issue. Lawyers are self-employed, so I only need their permission and having been a member of the Bar I had plenty of contacts to start the process. There was, especially amongst those that I knew, an ongoing sense of collegiality forged many years ago through shared experiences. Even participants, whom I had never met, welcomed the chance to speak to me, saying they wanted to 'let off steam' or someone to moan at, even though they sometimes did neither. Furthermore, none, save one who expressed surprise that my research topic was worthy of a PhD, were patronizing or in any way critical and the imbalance of power that is often remarked upon in the elite interviewing literature was not apparent (Ostrander, 1993; Richards 1996; Welch et al, 2002). It is hard to know if this was because of my insider status or because the literature is too simplistic, assuming first, that all elites have power and second, that they will utilize it in an interview setting. Power dynamics are more complex and shifting and depend largely on the context and nature of the matters being discussed (Smith, 2006).

After a number of interviews, some said that they enjoyed the experience of reflecting on their working lives and the issues that arose. As I progressed and learned more about different attitudes and arrangements in chambers, I realized that many participants had not thought about certain things I was asking and began asking me things eg. 'Did I think they should try direct access?', 'What kind of marketing did others do?', 'Did I think social media was an effective way of raising their profile?' Some were so situated in their own micro-worlds that they were interested in what was happening in other parts of the Bar, in sets that did the same or different kinds of work, in the variety of clerking methods that were in place, the level of support staff other chambers used. Questions that I thought were commonplace – 'Do you or your chambers have a Twitter account?' were considered as if put to them for the first time and met with responses like 'We really should be doing that'. It seemed that these interviews were not simply serving my purposes, but those of the participants, as 'a means of illuminating the institution they served' in their own minds (Medhurst and Moyser, 1987, p.92). Furthermore, many were pleased that someone they perceived to be 'not hostile' to the Bar would write about

them. This perceived lack of hostility was not based on anything I had said but rather on the fact that I was considered by most to be 'one of them'.

My 'insider' status nonetheless required examination and thought. Was I truly 'one of them', as one participant described me in an email effecting an introduction to other members of his chambers? There had been huge changes at the Bar and some aspects were unrecognizable to me as the project began. I concluded that I was neither a true insider nor a total outsider, but instead considered myself to be 'an insider, but an out of dater'. As Wilkinson and Kitzinger point out (2013, p.251) 'similarity and difference are neither unitary nor fixed categories: they can be partial…'

The literature on elite interviewing emphasizes the importance of the relationship struck between the respondent and interviewer, which is key for drawing out the former's responses more openly and fully (Pridham, 1987; Harvey, 2011; Mikecz, 2012). Having been in practice at the Bar for 8 years, the challenge of developing a rapport was not difficult to overcome, but my 'insider, out of dater' status had both advantages and disadvantages. Access was fairly easy and participants were all, without exception friendly, helpful, obliging. They were not defensive, arrogant or posturing and nor was there any indication that they felt obliged to impress me or justify their profession, as noted by some researchers (Rogers, 2010). My role was unambiguous - I was one of them, albeit a very out of date one, and did not seek nor need legitimation or trust as I already had it. It was easy to blend in and not be daunted by researching this elite group. The Inns of Court, chambers' environment and various courts I went to during the research were all familiar territories, which required no preparation and caused no anxiety as is often the case for outsiders (Flood, 1981; 1983). Apart from one participant, none objected to being taped during the interview, releasing me from endless note-taking and giving interviews an easy and conversational flavour. Often, because they were aware that I knew about and had experienced the profession, and therefore understood more than an outsider, they were more open and went into more detail. My pre-existing knowledge meant that interviews elicited, in my view, richer material, beyond stock answers and window dressing and I was able, in some instances, to challenge answers that seemed too glib or superficial (Brannick and Coghlan, 2007).

However, there were challenges. There is an inherent contradiction in my position as an insider of sorts, with knowledge and experience that enables access and

enhances connections with the participants, yet at the same time constrains the detachment required of a researcher (Kanuha, 2000; Asselin, 2003). I had to guard against a tendency to be over sympathetic and had to constantly resist being drawn in by what they were telling me, as if it affected me too. Over-empathy was an issue. It was sometimes difficult to keep my distance during the legal aid dispute and I found that I bristled at 'fat cat' portrayals in the press. As Flood noted during his ethnographic inquiry into barristers' clerks, 'research is not just a mechanical activity, it has consequences for oneself' (1983, p.400). His total immersion, to the point that he actually worked as a clerk during his research, led him to take a break from both, but he further noted, citing Madge (1965):

> 'When the heart of the observer is made to beat as the heart of any member of the group under observation, rather than as a detached emissary from some distant laboratory, then he has earned the title of participant-observer' (Flood, 1981, p.401)

My situation was not comparable as my observation period was much shorter, though by the end of my fieldwork, I felt that I was almost back at the Bar having spent so many hours in sets of chambers, at Bar events, in court, in robing rooms, chatting to practitioners and staff. Nonetheless, my own experience and emotions could in some ways be a good thing. My research sought to investigate how barristers have anticipated or responded to reforms in terms of changing their organizational and working habits and how they feel this impacted on their identities. Perhaps by having a sympathetic understanding of what this actually means, as a lived experience, made the interview process more intuitive, and data interpretation more sensitive? Certainly, there can be no ethical issues of faking friendships or sympathy with participants (Holland, 2007). Furthermore, the processes involved in research – accessing, listening, looking, viewing the familiar differently, making or suspending judgments, being creative, selecting, interpreting and drawing conclusions - are all personal processes, connected to perception and deeply emotional. Rather than dismiss my feelings as invalid, I have tried to recognize them, be more vigilant in challenging assumptions I make and resist temptation to distort material that does not fit with them (McLaughlin, 2003). What was unexpected and required me to be very aware of my own feelings and reactions was just how socialised I had *remained*, despite having left the profession 20 years earlier. It seems once a barrister, always a barrister. Here was evidence of the strength of the profession's identity formation processes. Nonetheless, insider status is fluid. Some changes were so great they were completely beyond my knowledge and there was

an ongoing dynamic of re-familiarisation, de-familarisation and reassessment of what I thought I knew.

When transcribing, sometimes I noted that I had taken certain answers during interviews for granted, because I accepted them as self explanatory, whereas if I had less knowledge of the Bar I might have explored something more or challenged it (Medhurst and Moyser, 1987; Kanuha, 2000). Below are a couple of examples of this (and there were more):

Interview extract 1:

> *Participant: I've not had a brief from chambers this century and probably ten years before that. I mean I've always made my own work*. (…)
>
> *AG: Do most people, after a certain level, generate their own work?*
>
> *P: I would say so, if they're being successful*
>
> *AG: So your new work is coming from your connections and relationships with solicitors, rather than the clerks drumming up new business for you?*
>
> *P: Yes, absolutely*

Later on in the interview I discovered she has generated work from publishing a book, going to conferences, chairing a specialist committee on the Bar Council, speaking on panels, breakfasting and lunching with solicitors. Ways of getting work are far more varied than in my time. My leading question is not just bad interviewing technique, but also reveals assumptions on my part. In a subsequent interview I got it right.

> *P: I get all my own work*
>
> *AG: How do you get your work?*

Interview extract 2:

> *Participant: well, its really run by the management committee, which the head of chambers is on, he has to be on that.*
> *…*
> *AG: do you have general chambers meetings ever?*
> *P: yes, regularly*
> *…*
> *AG: so the management committee does the daily stuff?*
>
> *P: yes*

AG: but the big decisions you'll have a chambers meeting?

P: yes... (Talks about what big decisions the whole of chambers will decide)

From my own knowledge I assume I know the division of labour between the committees. Even though I am correct, I do not ask her to tell me what the 'daily stuff' comprises. I assume I know. It is possible/likely that the 'daily stuff' has changed considerably since I was in practice. I transcribed interviews soon after, and although this was time consuming there was usually enough time between interviews or batches of them, not just to filter constantly as themes or gaps emerged, but also to identify assumptions I had made, such as the ones set out above, by being too familiar with the topic or thinking I was and try not to repeat this mistake in the next interview. Insider status does not necessarily mean I have the 'knowledge of the particular and situated experiences' of any other barrister, especially after so many years of being away from the Bar (Kanuha, 2000, p.444; Asselin, 2003).

On a more prosaic level I also misjudged more superficial matters. Wanting to fit whilst in the Inns and chambers, I dressed in black trousers and jacket for my interviews, thinking I would blend perfectly. Most barristers now wear casual clothes in chambers, if they are not in court. Some turned up to interviews in sports wear, one in tennis whites. Dress codes had obviously relaxed since my departure. Further, whilst I was at the Bar it was almost unheard of to give interviews about the profession and I thought practitioners might not want their clerks to know they were taking part in my research and offered to meet them elsewhere. Aside from one, all invited me to their chambers and many introduced me to the clerks and fellow practitioners and told them about my study. No one seemed remotely put out that I was carrying out research on the Bar, in contrast to the suspicions noted by Flood (1981) and, more recently, Rogers (2010).

3.6 Ethical Issues

3.6.1 Clerks and chambers staff

Clerks and chambers' staff were in a potentially awkward situation as employees of the barristers. In addition to gaining their consent, I sought permission from the heads of chambers before interviewing any member of staff and was careful not to ask them about specific members of chambers, concentrating more on what they do, how chambers was organized and how they had responded to particular changes. None exhibited any problems answering questions.

3.6.2 A period of 'crisis' in the profession

Interviews took place during what was perceived to be a time of unprecedented crisis in the profession and in some cases it was clear that interviewees were upset, angry or gloomy about their situation and the general state of the Bar as they saw it. This was especially so in the case of publicly funded practitioners. Part of this elite group was vulnerable and emotional (Neal and McLaughlin, 2009), their status having been challenged and threatened by reform (Rogers, 2011). It was also a period of flux. During the research period, some participants moved chambers, one chambers dissolved completely, with members of one practice area merging with another set and the larger remaining group in turn merging elsewhere. A couple of participants left the Bar and one became ill and subsequently died. These were obviously very stressful times for some and I was grateful that they were still willing to talk to me and moreover to talk about these dramatic changes in their professional lives. Yet they shared more than their professional lives, as the ramifications of these changes are deeply personal. This sometimes became even more apparent to me during transcription, when I had time to re-listen to what they had said and how they had said it. Although, to some degree, I was familiar with a barrister's working life, this kind of uncertainty had not been part of my experience and was relatively uncommon when I was in practice. I knew 'ways of operating' had changed, but was not expecting the working lives of some practitioners to be so precarious or stressful. Some participants spoke fondly of the era when I had been in practice and told me I was very lucky to have got out when I did.

Does this raise potential ethical issues? My interviews did not seek to elicit secrets of any sort. My inquiry did not facilitate a confessional situation. In the main I was asking factual questions ('How do you get your work?', 'What kind of marketing do you do?', 'Are you clerked in practice teams?', 'How have legal aid cuts affected your practice?', 'How are decisions made in chambers?'), but I also sought opinions ('What do you think about having to market yourself and do you think it works?', 'Does chambers still have a collegial feel?', 'What do you think of the new regulatory framework?', Or after a number of questions, simply 'Why do you think that is?'). Some of these inquiries are fairly open ended and longer discussions would follow, perhaps beyond the list of original questions emailed to them in advance. It is possible that having an intense discussion about their working lives did focus the minds of some participants on areas of concern and anxiety. However, I am fairly certain that my interviews did not cause or exacerbate the already difficult situation that some barristers are in. On the whole almost all publicly funded practitioners are

very troubled about the future of their practices, their personal future and what they perceive to be an inevitable decline in access to good quality legal representation if the legal aid rates are further reduced. This anxiety was noted at some length in the Jeffrey Review on independent criminal advocacy (Jeffrey, 2014). Yet, during interviews, some of these practitioners were keen to tell me how they planned and hoped to improve their situation, what new directions chambers intended to expand into, regarding practice areas, and how. At the end of every single interview, participants told me to contact them if I needed clarification or follow-up information. I thanked all interviewees by email soon after meeting with them and almost all replied, saying variously, that it had been a pleasure, that they enjoyed talking to me, that it had been interesting for them, that it was good to let off steam and good luck with my study.

3.7 Data analysis

Given the number and length of interviews, I opted for some software support, more as means of managing and retrieving the data than analyzing it. I transcribed all the interviews very soon after the event onto time-coded software. When my fieldwork was completely finished I then transposed the transcripts onto MAXqda, compatible specialist software for coding qualitative data. From the outset I elected to divide up the data according to the participants practice area or job. As a result I was working with four datasets: one each for criminal practitioners, family practitioners, civil practitioners (divided up into general and specialist) and chambers staff and solicitors together, given that there were relatively few in this last category. I was thereafter able, when going back over the data again and again, to get an overall impression of differences and similarities between the practice areas and of how the support staff or non-barristers accounted for things from their different standpoint.

Analysis was thematic and coding was at the heart of the process, in keeping with a grounded theory approach (Strauss and Corbin, 2015; Moghaddam, 2006; King and Horrocks, 2010). The processes of coding was identical across the four datasets in terms of approach, although the actual coding varied a little because of the different nature of their work and therefore the way they conducted their working lives. The family and criminal law practitioners for example, had much more to say than some commercial practitioners about legal aid reforms, which prompted more detailed labeling and categorisation.

The open coding stage consisted of naming and categorizing the data, and again,

given the nature of the enquiry and volume of data, it was more useful to identify key points and categories, rather than words. To a significant degree, analysis had already begun when I first transcribed the interviews and prepared the next one(s). I could not ignore recurring themes that were beginning to emerge, so by the time I was formally coding, I was already on the lookout for certain categories. But the more detailed examination of the data and the fact that I was looking at it repeatedly, threw up new categories and themes or revealed that one theme had to be broken down in multiple units (Richards, 2005). So, for example, although I had identified marketing as a new development at the Bar early on during the fieldwork, I had not broken it down into units or labels, as I later did. The general concept of marketing acquired many layers during the open coding stage, ranging from categories of what marketing was being done to branding, marketing management and staff, training, relationship with solicitors, direct access, views held about marketing generally and each aspect of it, how it was funded and so on. Similarly, it was clear early on that the way chambers were structured and run had changed considerably, but during the open coding stage this general category was broken down into multiple units, which included: size of membership, decision making structure, clerking and staffing structure, physical space and its use and atmosphere, development and use of IT. These units included 'factual' accounts of what was happening and subjective accounts of what people thought about them.

The next stage was to recognize that although I had initially loosely coded matters under generic headings eg 'Chambers' or 'marketing', on repeated re-reading and comparison of the data, individual units within or across codes began to create patterns - underlying uniformity about certain matters, albeit with variations (King and Horrocks, 2010). More abstract categories, such as 'commercialisation', 'managerialisation', 'competition', 'regulation', 'innovation', 'collegiality' and 'specialism' to name a few also emerged from these patterns. This stage enabled me to reduce the codes for the purposes of creating clusters of meaning - bigger categories or concepts (Richards, 2005; Holton, 2007). This was at times a messy process, with different coded units overlapping across the clusters or conceptual categories. Moreover, there were instances when I re-read interviews some months after last looking at them and found that I was coding data that I had missed or not felt relevant beforehand. There was, undoubtedly, a subjective element in this process. Aside from my own status as a researcher, and the pitfalls associated with that as discussed earlier in this chapter, my observations during fieldwork were also influencing and feeding into the choices I was making about coding and

interpretation, not rendering it less valid necessarily, but making analysis more complex and layered (Grbich, 2013). This was not an issue if a particular area, topic or theme was relatively uncontested, largely factual, with most participants giving the same information about it. But the Bar is not a homogeneous group and across practice areas and years of experience, across and within chambers, in London or on circuit, there were more nuanced variations, making it harder to create meaning or 'one truth' about some particular aspects.

The final stage came later, initially whilst writing notes on my findings, and then during more formal writing and re-writing, where I sought to consider the properties of these larger clusters or concepts and their meaning, generally and in the context of the literature I had read. The purpose was to move from description and comparison to a wider analysis of the actualities of the professional lives of independent barristers, what those might mean and why it was significant. What were the consequences, for example, of the commercialization of chambers in terms of professional identity? What effect was regulation having on traditional understandings of professionalism? Had old exclusionary practices been regulated out only to be replaced by new ones as a consequence of liberalizing the legal services market? Were barristers still distinct, specialist advocates or had they acquired very similar working practices to solicitors? What did this mean, more broadly, and why did any of it matter? This process of theoretical thinking and development had been occurring throughout on some level, but it was at this stage that ideas were refined, whilst all the time making sure that the participants' version of reality was accurately represented and that my inferences from the data were well founded (Morse et al, 2002; Morse, 2015).

A couple of comments should be made about the choices I have made about how to present the empirical chapters. First, the chapter layouts vary slightly. Some contain a formal discussion section at the end, where the implications and analysis of the findings in the chapter are set out. Others contain such analysis within the body of the chapter as the findings unfold. This discrepancy was largely based on the length and complexity of the chapter and determined by how many themes or categories emerged from it. My choices were made in the hope of making reading and understanding clearer. Further, some of the interview extracts are fairly long – perhaps longer than one might hope in a few instances – and again, this choice was deliberate, in the main to provide a strong sense of narrative, not of my own thoughts and interpretations, but of the participant in question. If I had reduced these

quotations, I felt that I would lose not just a sense of flow of what that person was saying, but some of the nuances and meaning. As Richardson (1997, p.29) noted:

> ‘Narrative is unavoidable: human values, sensibilities and ambiguities continuously reassert themselves in ‘plain’ social science writing. Narrative cannot be suppressed within sociology because it is ineluctably tied to human experience; trying to suppress it undermines the very foundation of the sociological enterprise’.

The level of detail that emerges from participants’ own words, helps to locate the reader right inside a particular event or impression, bringing alive the speaker’s reaction or feelings about it and it is this kind of thick description that gives the research findings credibility and reliability (Cresswell and Miller, 2000; Morse, 2015).

Part II – Findings, Discussion and Conclusions

Part II sets out the empirical findings of this study over five chapters. It is structured thematically, in the hope that each chapter builds on the previous one to create a rich and textured account of barristers' organizational lives and professional identity. The first three consider the organisation of barristers' chambers, how practitioners recruit and train newcomers and how they get work. The last two chapters explore how barristers perceive Bar culture, their professional identity and the Bar community. All are interrogated in the context of change. The concluding chapter summarises the key findings and their significance within the broader theoretical debates surrounding professionalism.

Chapter 4 - Chambers

The research findings begin by considering what changes the traditional chambers model has undergone, why and to what effect. Chambers play a central role in most barristers' working lives, contributing to their professional socialisation and providing the organisational structure within which practitioners work. Of the 12,757 barristers in independent practice in 2015, only 529 were sole practitioners, unattached to a set (BSB website, 2017). Although self-employed, most barristers thus operate under organisational collectives known as chambers, each of which is free, subject to overarching BSB regulation, to arrange its affairs as it wishes. No two chambers' structures or staffing are identical, although there are strong similarities in how many are organised. Further no individual barrister can be compelled to take part in chambers' administration, decision-making or committee work. Other than pay her/his dues (how these are calculated and what is payable vary from set to set) and abide by agreed chambers rules, a practitioner is relatively free to work when and how s/he wishes. Nonetheless, for many barristers, chambers is their professional 'home' and their fellow members and clerking teams are their regular, often daily colleagues, sometimes for the entirety of their careers, all working in the same building(s) under the same collective identity, even though they are individual, self-employed units. It is customary to share rooms with other members, as well as the decision-making processes about how they are clerked, organised and promoted, all matters that are critical to practice and professional identity development (Morison and Leith, 1992). The purpose of this chapter, therefore, is to explore how this important and idiosyncratic professional collective – chambers - has changed in the last 25 years and why. The key findings point to a more commercial oriented and customer centred approach, a more management driven structure and governance and a significant increase in the size of chamber membership. The development of Alternative Business Structures (ABS) had been minimal at the time of this study, which found only two such barrister-involved entities.

There has been no recent research on the chambers model, yet, as outlined in Chapter 2, the prominence of the new commercial and managerial logic, evident in the restructuring of City and other law firms since the mid 1990s, has provoked a substantial debate around how this might have affected legal professionalism and whether its professional service ethos has been undermined, giving way to enterprise and market concerns, and whether the two are incompatible (Muzio, 2004; Ackroyd and Muzio, 2007; Faulconbridge and Muzio, 2008; Boon, 2010; Somerlad, 2011, Evetts, 2015). Muzio and Kirkpatrick (2011) noted how organizational and market

logics could turn law firms into 'managerial professional businesses' and the appearance of performance appraisals, mentoring and management from above amounted to new disciplinary technologies, whereby professional identities are formed or shaped by and behaviour monitored according to new management objectives. However, they also noted that professionals were not passive victims of these changes, but dynamic and adaptive. Collegial professions were 'actively colonizing new organizational spaces, structures, practices and systems' and 'deploying these to sustain traditional occupational objectives and rewards' (p.296). So rather than these changes marking an end to professionalism, they can be viewed as a layering or evolution of it, a renegotiation whereby structures and processes may change, but traditional values and practices continue (Cooper et al, 1996; Paterson, 1996, Evetts, 2015).

This chapter analyses the new chambers model, which is driven by commercial and managerial concerns. The evolution of the chambers model is inextricably tied up with the Bar's reaction to (or less commonly, anticipation of) wider changes within the profession, set out in Chapter 1: in particular, competition and the increased uncertainty of getting work, the need to consolidate by growing in number, necessary specialisation and adoption of a much more market oriented approach to doing business. As Abbott noted (1988) professions adapt when external and/or internal changes occur, and the Bar's loss of monopoly of higher court advocacy, increased competition, cuts to legal aid and regulatory changes have resulted in the profession having to adjust its organizational features in order to support its efforts to develop new expertise, compete for or maintain work and comply with new regulatory requirements.

4.1 The old chambers model

Until the end of the 19th century it was common for barristers to practice alone, renting rooms in one of the Inns of Court (Abel, 1986). Thereafter most practitioners in London and on circuit grouped together in small sets of chambers, sharing the cost of the overheads and the services of the clerk. From the end of the 19th century until the end of the 20th century the Bar ceased to receive direct instructions from clients. As a referral profession, work came in from solicitors via the clerks, who negotiated fees (barristers being forbidden from discussing payment) and distributed briefs. They received a percentage of each brief fee by way of remuneration (Flood, 1983). The running of chambers was a largely informal affair, with no official oversight, leaving each Head of Chambers and Senior Clerk to determine how things were

organised and how work was distributed. By the 1950s this arrangement gave cause for concern. One newspaper asserted that 'the office inefficiency of many barristers' chambers is a disgrace to the profession…this is because they are run not by barristers but by their clerks, who are wholly untrained in modern business methods' (The Times, 1959, 19 December, cited in Hazell, 1978b). By the mid 1960s most sets were still fairly small, with between 6 to 12 members, but nonetheless, few had accounting systems or annual audits and neither practitioners, the Senate nor the Bar Council were particularly concerned about this lack of accountability and organisational inefficiency, perhaps taking the view that as self-employed practitioners, it was up to the barristers to decide how to run their chambers (Hazell, 1978b). Abel noted that in 1984 in London the average membership of chambers was between 7 and 16 barristers, but that in the Temple 65% of sets had at least 20 people (Abel, 1988). By 1986 only 2 sets had more than thirty members and the largest had forty-five (Abel, 1986). As numbers grew, chambers acquired support staff in the form of junior clerks, a receptionist, a part-time fees clerk (dedicated to billing solicitors and chasing up payment), typing services and sometimes an administrator, who did chambers accounts and organised the upkeep of the physical spaces, but there was still no official oversight of chambers' management or uniform method of running a set.

A deeply individualistic profession, these groupings of self-employed practitioners were largely driven by practical considerations of cost sharing and no more. Chambers as a group often had no particularly brand or identity and many sets were comprised of practitioners with diverse practices, often in unrelated areas of law or with wide general common law practices. Nonetheless, it was rare for practitioners to move and many remained in one set of chambers for their entire career. All sets on circuit were general common law practices and in London all such chambers were housed within the Temple. Only a few sets were truly specialists, situated mainly in Lincoln's or Gray's Inn (Morison and Leith, 1992). Hazell noted that in 1978 the main specialist chambers comprised about six sets apiece, specialising in tax, shipping, patent and planning law, and two in libel and admiralty work (Hazell, 1978b). Chambers were identified by their geographic address (eg. 13 King's Bench Walk) and if there was more than one set in the building, also by the name of the head of chambers. Obliged to practice from an address within one of the four Inns of Court and to be a member of chambers with a clerk, barristers in London were confined a narrow, geographical area in mostly Grade II listed buildings which were old fashioned, inflexible and largely unsuited as modern office spaces. Designed around

a medieval, collegiate model, the Inns are enclosed complexes, catering to collective needs with a chapel, hall and library and offering more private spaces in terraced houses around squares (Hazell, 1978b). Overcrowding was (and remains) a perennial problem, with practitioners often sharing rooms and basic facilities. Critics pointed out that by deliberately obliging practitioners to practice in chambers within the Inns, the profession forcibly kept numbers of new entrants down, effecting one example of market closure (Abel, 1988; 2004a). Since barristers were not allowed to attend solicitors' offices, client conferences were always held in these cramped, if historic, surroundings.

The head of Chambers was usually the most senior member, almost always a QC, and remained at the helm until retirement or death (Hazell, 1978b). How decisions were made depended largely on his (till recently it was almost always a man) personality or tradition within that set. More often than not, most important matters were discussed at a General Chambers Meeting, where a vote might be taken, though the head often had the final say. Some sets were less democratic than others, but governance was largely collegial in form. As membership increased, small and informal committees arose on a rather ad hoc basis to deal with discrete issues. The clerk and other staff, not normally involved in strategic or management decisions, would be kept abreast of any key developments. The distribution of work and fees, were, however, very much the domain of the clerk, upon whose good will a junior's practice was very much contingent (Flood, 1983). Barristers volunteered to carry out many of the administrative tasks, such as negotiating rents or refurbishment of chambers with the Inn. Such matters were done in their spare time and in a manner of their own choosing. Little was centralised and organisational practices varied across and within chambers.

Thus, a barrister usually spent her/his entire career based in one set of chambers, with relatively few fellow practitioners. Everyone knew one another well, shared rooms and contributed in varying degrees to the rather haphazard administration. It was in this small environment that new practitioners were trained not just in law and legal practice, but also in the ethical behaviour of the profession. The degree and methods of professional socialisation are discussed further in Chapter 8, on the Bar community, but its relevance here is that the structure and hierarchy of chambers was such that they facilitated a community that shaped and controlled its members.

4.2 The growth of chambers and the rise of specialist teams

In 2015 there were 409 sets of chambers in England and Wales (BSB website, Chambers Statistics, 2016). The most obvious, visible, change since the 1990s is the increased size of chambers, in terms of membership. The average set size had grown from 16 in 1986 to about 60 in 2011 (Pike and Robinson, 2011). The profession's own research statistics have neglected to include more updated figures in subsequent surveys. To some extent this increase was precipitated when the Inns started charging commercial rents:

> *It's been necessary because...rents were very, very low, but once they started doing up the premises and charging huge commercial rents these places became completely, you know, the small chambers just became unviable.*
>
> (B36, chancery set)

Further, the bigger the membership the lower the shared costs of IT packages, law report subscriptions and staff wages. Many chambers are much larger and some, known as 'mega sets', often in the provinces, with offices in more than one location, have 200+ members.

> *Generally speaking, in the provinces, what you've seen happening has been the growth of large sets, which are increasingly multi-centre sets, where they have so many people that they can run viable specialist teams…which will have anything from, say 200 to 500 members and, because of the sheer size and scale, will be able to buy in services at affordable rates.*
>
> (B27, civil circuit practitioner)

Most barristers on circuit used to be generalists. With the drop in work and increased competition from solicitors, the smaller circuit sets were no longer financially viable. By joining forces, they have been able to create large specialist teams. Specialism is considered to be the only way to survive and, indeed, flourish across the whole of the Bar, not just on circuit. In order to secure enough work in any particular area, it is better if there is a significant group within chambers who share a specialism to attract the work, return it within chambers if necessary, build a reputation as a group and offer a wide range of experience and expertise to cover all levels of complexity:

> *I wouldn't say we're big. 80 odd practitioners is not large given the range of specialisations we cover…To be really specialist you need critical mass in an area, so for example, if you're a set of 25 and you've got 8 or 9 family, you've got 6 or 7 who do PI, Insurance and some who do a bit of crime and a bit of this and a bit of that, they're not really big enough to be a magnet for work - 7, 8 or 9 people.*
>
> (B13, commercial set)

Some of the larger chambers run a number of different specialist teams, almost like mini-sets within a set: '*120, I think. That's big, not abnormal, but it's big. It's very flourishing. People keep wanting to join…we're specialists within groups. Effectively, we run 5 or 6 separate outfits within chambers'* (B2, multi-practice set). Some of the general common law sets have grown in this way, and whereas in the past solicitors routinely instructed chambers that offered services across a wide range of practice areas, marketing a generalist set is now seen as problematic as professional and lay clients prefer to go to narrowly specialised experts. As a result many chambers have had to recruit to increase the number in each of their specialist teams and create viable sub groups that can be marketed on their own. There are, however, disadvantages to being in a set with a large membership:

> *I think some practitioners in those sets feel that they are either being ignored, their practice isn't being developed, they don't get an opportunity to have a reasonable voice…those are some of the feelings that I felt when I left x chambers as we were not that mega large at the time.*
>
> (B18, criminal barrister, 21 years' call)

One of the Chambers Directors agreed:

> *…just like ordering a Chinese takeaway, because its just a matter of numbers and how anyone in the world can actually manage that many people?...There are different hurdles in regards to managing an individual practice and its my role to ensure that I can spend enough time with each individual to make sure that each of those hurdles in their career is gained.*
>
> (A8, Chambers Director, multi practice set)

Moreover, not all are simply able to expand their membership, as a higher number of barristers in chambers calls for a proportionate increase in clerks and support staff and not all sets can afford this and are operationally under strain, with too many members and not enough staff. One chambers director feels that clients prefer smaller outfits that offer a more personal service:

> *Clients now actually want to deal with more boutique-y organisations. They don't want one of the big organisations…we're finding that if the person you have a relationship with is contactable and you can build a relationship with them, then they much prefer that, rather than just ringing up a massive mega set.*
>
> (A8, Chambers Director, multi practice set)

There is a tension therefore between the need for some chambers to expand, in order to keep costs down and to build and consolidate specialist teams of sufficient number and weight, and the undesirability of being in a set so large that practitioners

fail to get sufficient individual clerking attention and clients feel they are not getting a personalised service. Further the trend to specialise, sometimes very early on if the set joined has a narrow focus, can be limiting. Some practitioners could spend their entire junior careers being led by a QC and will have never cross-examined a witness themselves (Singh, 2013). Thirty years ago much of the very junior work in the Magistrates and county courts was done by newly qualified barristers, who were often in court every day, gaining negotiating, court and advocacy experience (Morison and Leith, 1992). Even the few specialist sets had access to such work. Most of this work is now done by solicitors, leaving many at the junior Bar struggling to get meaningful advocacy experience. Further, some areas of practice, such as public law, have grown immeasurably in one generation, with many specialisms within them, each having its own law reports and journals. Practitioners of one specialism are often unaware of case law in another that is relevant across disciplines (Singh, 2013). However, since solicitors have become more specialist themselves and have undertaken much more advocacy in the lower courts and at interlocutory stages, the Bar has had to become even more niche and expert in order to distinguish its services. There are two aspects to consider here: first, how an area of law might become a recognised specialist area and second, how an individual, previously known as a generalist becomes a known expert in one area. The latter is considered more fully in Chapter 6 in which how barristers go about 'getting work' is examined. Recognition as a specialist area requires mobilisation on the part of those in the practice area:

> *We have some people who specialise in costs law and they are extremely successful but they actually went, I believe, to the Directories, and they said 'Costs law is a new area, you need to have a section rating costs lawyers' and they went and made a pitch to the publishers and they persuaded them to kind of invent Costs Law and then of course they themselves (laughing) appeared, because they are very good at costs law.*
>
> B28, specialist civil silk, x years' call

As the specialism becomes more established and increasing numbers practice within it, practitioners create a specialist Bar Association to represent their interests, provide educational training, perhaps a journal and conferences. Most specialist practice teams within a set of chambers will therefore also belong to a specialist Bar-wide association, which will give their practice area more gravitas and support. So these practice teams are recognised not just within chambers, but as part of a wider group across the profession. This process of identifying and creating an area of work and then seeking formal acknowledgment of its existence and the right to do it from a

professional association is a critical part of professional development, where a jurisdictional claim is made and established (Abbott, 1988; Fournier, 2000).

4.3 Location, front stage, backstage and virtual space

Significant changes have occurred in terms of the physical space within chambers and how it is used. With an increase in membership, more room is needed, yet even chambers with large turnovers cannot always expand as space in the Inns is scarce. A set seeking to grow is unlikely to find new premises adjacent to it and many prefer not to have annexes too far away:

> *We're at capacity. We do have one small room available but that's only because somebody has moved and we have got very, very limited possibility of people now shifting round and moving and sharing rooms, so that when we took on the last two pupils there was quite a bit of shifting and negotiation with members of chambers…I'm always looking for more space but its is very difficult…We don't want to leave the Inner Temple, we really don't want to have to move. There isn't anyone nearby that is likely to move.*
>
> (A2, Administrative Manager, civil set)

This reluctance by some to move outside their Inn is in some ways a practical concern. Three of the four Inns are within very easy reach of the Royal Courts of Justice, with only Gray's Inn being slightly further away. All have dining facilities in Hall, libraries and some parking facilities. But the attachment goes deeper – the Inns are the customary home of chambers and barristers and some still think the picturesque, historical settings are attractive to lay clients and in keeping with the Bar's traditional identity and image.

In all cases, whether within or outside the Inns, the interior of chambers have changed, with more emphasis being placed on the appearance of reception, waiting and conference areas in a bid to make them more professional looking and user friendly to clients. The focus is on client service and satisfaction, rather than barrister use, in keeping with the more commercial spirit that has emerged at the Bar in the last couple of decades. Many chambers have been refurbished extensively, with partitions that can fold away, creating larger spaces for seminars and with video conferencing facilities. There is a more corporate feel in these 'front' spaces. Behind the scenes, however, it is not uncommon for barristers to be in much smaller rooms, mostly shared, with piles of boxes containing case files stacked in their rooms and the corridors:

> *We are now having to sell ourselves to the public and to solicitors in a way that we didn't have to before. And we're having to use marketing tricks and tools of mainstream commercial life which professionals didn't really have to do many years ago…But chambers will not be a series of rather nice panelled Georgian offices with pedestal desks and bookcases, lined with rather impressive books. It will be, front of house will be sleek, smart and swanky, and out the back you will have rabbit hutches for the lawyers…you wouldn't show the clients out back, you'd show them the smart, swanky stuff out front.*
>
> (B1, common law set)

Although some barristers interviewed revealed an attachment to the physical notion of chambers, others are more pragmatic and feel that the historic premises must give way to a more economic model. IT has liberated barristers from working in chambers:

> *I believe the future is in just providing a service. I mean I can go to a solicitor's office and have a conference. What people want from me are the pleadings or the advice or me to turn up in court, don't they? So they don't need this any more* (indicating the room in chambers).
>
> (B6, circuit annexe of London common law set)

Whereas previously practitioners were expected to come into chambers every day, and indeed had to in order to collect their briefs, now more work from home, unless in court or conference, and it is common for them not to have an allocated desk in chambers:

> *I do much more at home than I used to…Nobody has their own rooms in chambers any more. It's all hot-desking. We've got about twice as many barristers as we've got space to seat them.*
>
> (B5, circuit set)

One circuit chambers visited during this research had no individual barrister rooms at all, just one large 'library room', where they all worked and a few smaller conference rooms for when they met clients. Some chambers have configured the shared use of desks/rooms according to practice area: '*On the third and fourth floor we have a touch down area, which would be like hot-desking, and on our third floor, its mainly family and immigration practitioners.'* (B45, mixed disciplinary set). Other chambers allow practitioners to choose whether they want their own desk, to share an allocated one or just to hot-desk and pay accordingly. Further, since barristers are now permitted to attend solicitors' offices for conferences, chambers have ceased to be the only place they can meet. With the development of IT face-to-face conferences happen less frequently (*'I mean half the time they don't even come to chambers. It's email, all email, telephone and quite often you have conferences elsewhere.'* B38, civil set).

Since 1987, barristers have been allowed to set up chambers outside the four Inns of Court (Zander, 1988). Although most have remained in chambers within the Inns, during the last 20 years more sets have moved out and some are purchasing their premises, giving whichever members want or can the chance to invest in them:

> *For me, it's a real bonus in terms of the building…you can design and build a proper barristers' set of chambers, which has been done, so you can expand if you want to, with a hot desk-room, or not, whereas in the Temple, its all Grade II listed. The rents in the Temple are the same as the rents outside…people have been moving out in the last 15, 20 years. People looked around and thought "well, our clients would much prefer air conditioning and nice lifts and lovely windows, rather than these creaky old places with dusty staircases." So people began to move out and you borrowed the money.*
>
> (B44, Head of Chambers, multi disciplinary set)

> *It's open to everyone to buy into the building and most people use it as a pension fund.*
>
> (B43, mixed practice set)

A significant 'change of use' has thus occurred regarding the physical premises of chambers. The focus (and expense) is now on the 'showroom' common parts, catering to visiting clients, with financial and spatial constraints and IT developments making barrister use of secondary importance. Nonetheless many continue to work in chambers regularly. Some sets still have daily tea for all to attend or host a Friday night drink after work. In larger sets, where many hot desk, practitioners admitted to not knowing all of the members, though the touch down areas were large and sociable and they knew everyone in their team(s). One commercial barrister noted that in his set everyone had their own room and it was a '*bit like monks in cells*'. He did not know everybody's name but he knew most by sight. In larger sets barristers have set up mentoring schemes, giving new members a link with and chance to meet more senior ones. Despite these developments, most interviewed insisted that there was a collegial atmosphere in chambers, and that the 'open door' practice, whereby barristers go into each other's rooms to discuss a case or a point of law and bounce ideas off each other, remained very much alive. The nature and extent of collegiality at the Bar is examined more fully in Chapter 8, yet those interviewed for this study were keen to stress that it remains strong despite the growth in chambers membership.

4.4 The new commercialism - business and management

Almost all of the 50 barristers interviewed came from sets that now employ staff over and above the traditional employees. This is not simply in response to the increased membership, but also to adapt to the dual development of the managerial requirements and commercialism that has pervaded the administration of chambers in the last 25 years. Morison and Leith (1992) noted the recent appearance of practice managers in their 1992 study, but research on marketing at the Bar in 1998 found that it was still unusual to find specially appointed business managers in the sets they visited (Harris and Piercy, 1998). A new transparency and accountability, largely driven by regulation and commercial awareness, has transformed how chambers are run and who is involved in running them. Although the roles and job titles vary across sets, it is now common to find Administration Managers, Chief Operating Officers, Practice Development Managers, Business Directors, Marketing Managers, Chambers Directors and Chief Executives, or any combination thereof, in chambers. There are those who are concerned with administration and regulatory compliance and those with business strategy and practice development. In sets where such personnel do not exist, the clerks have undergone some form of management training and adopted a more commercial approach to the running of chambers.

Chambers managers or administrators on the whole have no legal training but have come from the business management sector. One interviewee spoke of his chambers' experience in the mid 1990s, when an administrative manager was brought in. Although now the norm, at the time her actions were innovative, creating a whole new structure around which chambers was organised and run:

> *She set up a whole series of committees…she had interest groups so that each practice area…would have its interest group…and they would have meetings and discuss what initiatives they wanted to pursue…then she set up Call groups…if you had issues about inadequate work for juniors, as opposed to silks, or senior juniors or something, we do have groups which meet and address those issues. Then there's the Financial and General Purpose Committee…we have a Business Development Committee, we have a Marketing Committee, we have a Budget Committee.*
>
> (B36, Chancery set)

A whole series of divisions of labour within chambers have been re-negotiated in the last twenty years, creating a quite different professional dynamic. Decision-making is almost always made by committee or, in very important matters, chambers vote. A

head of chambers will rarely impose her/his will. These new managers have duties that are more developed than the early administrators, who might have done some accounting, VAT returns, banking, salaries and rental matters. Now a manager can do everything aside from barristers' practice development, including: organizing marketing events, collating and updating Bar directory entries, practising certificates and professional insurance (Bar Mutual) applications, building maintenance, recruitment and training of staff, absence control, staff appraisals and salary reviews, initial collation and sifting of mini pupillage and full pupillage applications, compliance issues and any other operational procedures in chambers. Some are also involved in wider strategy: '*She has an input into our overall strategy, including our business strategy and she is very much responsible for keeping us abreast of things, what we should be doing or might want to do in terms of quality assurance.'* (B48, Joint head of chambers, mixed civil/commercial set). The Legal Practice Management Association was set up in 1996 and now has a membership of over 130 people:

> *Some people are members of both the Institute of Barristers' Clerks and the Legal Practice Management Association, so we do have some clerks who are part of the LPMA and there tend to be also chambers directors. CEOs also tend to be members of the LPMA.*
>
> (A2, Administrative Manager, civil set)

The organisation runs workshops (on '*the Jackson reforms or whatever. They will hold sessions on the various aspects of that'*) and holds events to update its members on relevant developments within the legal sector ('*If anything controversial is going on that we need to know about, like…the pupillage gateway changed across to a different provider*'). These new managers have liberated the clerks, the heads of chambers and other barrister volunteers from undertaking a number of tasks in a rather piecemeal fashion, when they had the time:

> *One barrister was looking after the leases on the building, and would liaise with the Inner Temple about the problems with refurbishments and things like that. Another barrister would look after leases on photocopiers. Someone else would be on an IT committee and a lot of the HR issues used to go to the head of chambers and so all that was taken away and put into my remit.*
>
> (A2, Administrative Manager, civil set)

These changes have happened gradually, in conjunction with a growing commercial awareness at the Bar and it has taken some time for them to be streamlined and rationalised. There were a number of tales of disastrous first attempts to incorporate such managers into chambers, sometimes due to the hostility of the clerks' room,

sometimes because it took time and experimentation for managers and barristers to find a way of working with and around the idiosyncratic ways of the profession. One chambers' manager was very proud to assert that all chambers information is now centralised, accessible on one computer system, coherent and uniformly branded:

> *There was a woeful lack of central electronic filing…all staff were filing things individually on their C drives. No one made any use of the server…so there was no sharing of information or very little sharing of information…a lot of money had been spent on branding, which was excellent, but there was no one at staff management level, making sure things went out with a corporate identity…the right fonts and the same fonts we use on letters, the same kind of styles and templates for a word document, a power point presentation, things like that. And it might sound trivial but in actual fact it does go a long way in making things look much more professional.*
>
> (A2, Administration Manager, civil set)

A key task for the administrators is ensuring chambers' compliance with regulatory requirements. The latest BSB approach to regulation of chambers management is one of risk-based supervision, placing the onus on chambers to comply, with only those identified as being 'risky' in performance in some way being under close inspection by the regulator. Nonetheless, many of the administrative protocols were already in place prior to the BSB taking over independent regulation, in the form of the optional, but widely adhered to Bar Mark: '*They had Bar Mark here anyway, which is was the, its slightly different, but it's like a starting block for making sure that your company is compliant'* (A8, Chambers Director, inter disciplinary set). That in itself was fairly comprehensive:

> *We have a Chamber manual and appendices that need keeping up to date. Its our bible of what we do, everything - chambers' management, recruitment policy. A huge, house book, which we, when we applied for quality mark, had to get everything in order. That appeared in 2003.*
>
> (A1, Chambers Administrator)

Chambers are now, for example, obliged to have policies on discrimination and fair selection processes in recruitment, maternity policies, complaints procedures which are brought to the attention to a client at the outset of the relationship and so on. The increase in regulation has led to an increase in the work needed to be done to comply. For chambers that do not have the staffing capacity to do it, this aspect of administration is sub-contracted out. One chambers director took the view that total compliance was unrealistic:

> *I can tell you wholeheartedly that they can regulate and regulate and regulate as they do, the reality is, 90% of chambers are just not up to be able to comply. They can't. Its impossible, they just haven't got the manpower. With everything that you have in regards to are you doing that, can you do this, can you do that, do you have your videos in a locked safe and that locked safe is monitored on a weekly basis and all of that sort of rubbish, its just rubbish…The regulator said they are going to do spot-checks, but they just knew they were coming in on the Tuesday, so on the Monday they just fill in the book telling them they did it in May.*
>
> (A8, Chambers Director, mixed disciplinary set)

The increased size and complexity of chambers administration has necessitated the employment of management staff. The organizational aspects seek to be more centralized and are considered by most of those interviewed to be more efficient. Barristers no longer have to carry out many of the discrete tasks they used to, but new responsibilities have emerged, manifested in the numerous committees that have sprung up: recruitment, financial, management, marketing, to name but a few, are all manned by barristers in conjunction with management and business staff. The practitioners fund all additional costs of such staff from their contributions to chambers. Critically, chambers have no outside investors or shareholders. On the one hand this can result in underinvestment, since the cost of any innovation must be met by the members. Chambers dues are calculated in different ways according to the set, but in essence all pay a percentage of their income towards the running expenses (rent, staff etc). A very successful commercial set will have a lower percentage (‘*It ranges from about 8,9% to about 28% if you're a crime set. The average at the Bar would be between 15 and 18%’,* Former officer of the Bar Council). However, not having to account to investors means that change is driven and shaped by the barristers and their objectives.

4.5. The new clerk

> *The clerking role at all levels has changed beyond recognition…the clerking role back when I first started was basically to sit at the desk and wait for the phone to ring and then distribute work out to the membership.*
>
> (A8, Chambers Director, mixed disciplinary set)

Although traditional clerking remains, a new breed of clerk has emerged at the top of the clerking hierarchy. The ‘Chambers’ or ‘Business’ Directors have duties that go beyond the traditional ones of senior clerk:

> *He’s like a super clerk. He is a super, super senior clerk. Business development directors who are below him, they are the senior clerks…He oversees practice development, overseeing the clerking as a whole from a*

very senior level and inputting into business development.
(B48, Joint head of chambers, mixed civil/commercial set)

These 'super clerks' have taken a step back from day to day clerking and concern themselves with overall practice development for individuals or practice groups/teams. They attend meetings with existing instructing solicitors or potential new ones and are involved in general chambers' strategy and development, which might include the setting up of an ABS or forging new alliances with lawyers abroad. The most senior clerks' role therefore has been transformed from untrained, idiosyncratic controller of work distribution to a modern, efficient and commercial overseer and strategist: '*The whole ethos of clerking has changed. Mainly brought on by the advent of technology. Also there was, or there is a view now, that the old style of clerking has its place but its not an overriding thing in a set of chambers'* (A5, Senior Clerk, common law circuit set). The clerks below these super senior clerks are also much more commercially driven and all will now undergo some kind of formal training, whether it be in relation to the IT clerking systems or management courses. Gone are the days of quirky, individual practices in the clerks' room, where the head clerk ran a private fiefdom:

> *…when I was a junior clerk, I was required by my senior clerk to sit on a wall for forty five minutes with an aerial in my hand whilst he watched TV and watched a football game - a TV aerial, so that he could get reception. I had to sit there for forty-five minutes so he could watch the game and then I went into the window to do my DX and came back for the second half. That is an absolutely true story. That would never, ever, ever, ever happen in today's world.*
>
> (A8, Chambers Director, clerking for 25 years)

The Institute of Barristers' Clerks (IBC) offers, inter alia, two year clerking courses ('*which is a B Tech course for junior clerks'*), which they attend for one day every fortnight as well as evening classes and diplomas in business administration. It also runs shorter, seminar evening sessions on eg. Chancery Division listing. There has been a concerted push across the Bar, to transform and modernise chambers' administration and governance, to:

> *…make us much more corporate as an organisation and therefore much more attractive to bigger firms…we are a business, we monitor as if we were a business, we report as if we were a business, we're a business…we provide extra value to certain clients…we provide them with 24 hour contact…its not "I'll go home at 5 o'clock and then you can't ring me at the weekend". Its like we have to be more professional about it.*
>
> (A8, Chambers Director, multi-practice set)

Even the language used has changed: referring to chambers as a 'business' is in itself a startling development to those raised on the traditional professional model. Clerks frequently referred to barristers in chambers as 'the membership' as if they were elements of a corporate body and the websites of a number of sets no longer use the old terminology of 'clerks' or 'pupils', preferring practice managers and trainees instead. It is generally accepted that sets of chambers need an overall management and business plan in order to target, get and maintain work and to provide a modern, efficient and customer-centred professional service. Yet some chambers have not brought in commercial expertise, preferring to run things as before, either due to a lack of understanding of what they might achieve or because they feel threatened by such changes:

> *There isn't any centralized strategic thinking and that I think is a source of some potential discomfort amongst members of these chambers. We did actually have a sort of one off strategy meeting recently…and it was perceived to be actually rather ill-tempered…there were some rather big questions raised by people about how do we respond, for example, to the new business environment, and whether or not we should be going to work with or employing solicitors and becoming Tesco's plc business structure and that sort of thing, but this was taken by some people as criticism of the way in which chambers was currently managed.*
>
> (B15, specialist silk, civil set)

Evident from the interviews was the fact that not all barristers welcome the new commercial approach and this was not necessarily dependent on seniority and the ability to remember 'how things were'. Indeed there were some very forward-looking participants who were senior members or heads of chambers. Interviewees generally accepted the new management and clerking initiatives as positive developments, but there were those who resolutely resisted notions of dramatic change, such as new business structures. Moreover, not all senior clerks agreed with the new management and business 'turn', preferring to acquire a more commercial outlook themselves. For them these new 'outside' experts lack the essential knowledge of the Bar and barristers and thus fail to integrate new methods of working successfully:

> *I'm an old fashioned clerk, always will be…I'm not a lover of practice managers…(they) mainly sit and cause trouble to be honest…I was brought in because they had a practice manager and he failed, because, this sounds sort of protectionist but its not – its forty years' worth of knowledge. It's knowing how barristers react, how they feel. You know, they tell you things that you wouldn't dream of really. I've been told so many things being a clerk. You're a father confessor, you're a psychologist, you're a psychiatrist, you're*

> *a theatrical agent. You've got to be all these things to be able to do the job and they tend to bring people in from the commercial world, who are no doubt extremely good at what they do, you can't deny that fact, but there's a gap in knowledge, which is very, very important – the barristers and the way barristers' think, the way they behave, their attitudes, their concerns, their worries…it has to be run like a business but running alongside that is the whole ethos that has always got to be there. The integrity, the honesty, all these different things.*
>
> (A5, Senior clerk, circuit set)

The above extract reveals a complex view of the new developments. On the one hand, a clerk might feel threatened by the new management regime or be caught up in a nostalgic ideal about the clerking role. On the other, there is a palpable sense of pride about a job well done. A job that is nuanced, delicate, complicated and not simply concerned with market logics. Above all, there is a sense of deep affection for the clerking role and the barristers 'within the fold'. A few of the clerks and practitioners interviewed were barely able to conceal their glee when recounting how their chambers employed a manager and it was a complete disaster, so they had to get rid of them and revert to the traditional staffing structure.

On the whole however, old methods of clerking have been updated and displaced by market and management logics. Clerks are expected to have more skills and a business acumen and have to be much more proactive in getting work. The common view amongst interviewees was that chambers are run much more efficiently, more professionally and more commercially than before and that barristers and their support professionals are much more conscious of the need to provide a good service to their clients. This contrasts sharply with Harris and Piercy's findings (1998) that, despite their developed communication skills, barristers showed little if any interest in customer relations and that there was a distinct division between the barristers, who did the 'thinking' in chambers and the clerks, who simply enacted what had been decided. Relations between barrister and clerk and client are now much more equal, respectful and collaborative and, as Faulconbridge and Muzio (2008) found in relation to law firms, barristers have put in place new organizational and management structures to support, rather than displace, professional values. Their self-employed status protects them from managerial subjugation. However, there is wide differentiation across the Bar in how organizational and commercial matters have developed, largely because of the relative independence of the practitioners and of chambers as collective units and due to very varied levels of confidence, interest and know-how.

4.6 Chambers' branding

In step with the developments to 'corporatise' chambers, as outlined above, the branding of sets has become commonplace ('*We went for complete brand awareness. Last year we were at every event there was to be at. We had our brand everywhere.')* Chambers now hire website designers and professional photographers to create an online presence that reflects their identity:

> *I think its all about a recognition by chambers, that in addition to the old structure of all of us being a collection of individuals, that in the modern world we need to have some sort of brand identity as a group as well.*
>
> (B20, specialist civil barrister, 38 years' call)

Some chambers have abandoned the traditional address title eg. 8 Crown Office Row for a name of a famous judge or barrister that was once in the set: Hailsham, Atkin, Wilberforce, Henderson and so on. Others have converted it into a more modern, catchy abbreviation - 1 Crown Office Row is now 1 COR. All have logos that adorn their web pages, notepaper, emails, Twitter accounts (*'…you're trying to design a website that reflects the ethos of its practitioners…things are changing and I do think that specialism is the way forward.')*. For the more general common law sets, it is harder to brand successfully, as they must first identify which area of work they do as a collective and want to be known for:

> *It won't work for (name of chambers) because they are a generalist set. They can't do PI or employment, because they've had to be fighting against people who are established at doing just PI or just employment.*
>
> (A7, Chambers marketing consultant)

As indicated earlier in this chapter, in the past it was common and considered beneficial to offer services across a wide range of practice areas within one set of chambers. This is now no longer considered viable for their survival. Sets of chambers will only attract work if they are considered to be *the* experts in any particular area, or more commonly sub-area within a specialism: *'I don't think our chambers at the moment are particularly known in any one area as being excellent, so consequently its really very much a common law set that is trying to react to massive change'* (B4, common law set). Even so, some common law sets have successfully rebranded as 'multi disciplinary sets', cross-selling barristers from different teams to provide a complete service for clients or putting forward members of the family, immigration and housing teams, for example, to provide different units of specialist advice in one case. In some cases, chambers have actively recruited barristers who specialise in particular areas to bolster existing practice groups. In

others they have brought in whole teams, expert in a new area, to complement another group already within the set. Getting into one of the established Bar Directories is now an all-important marketing target and the entries for chambers serve as a good example of the promotion of chambers as a collective, rather than a random group of self employed practitioners sharing office space and staff:

> *Its become a rather two tier Bar now. The sets that are doing well are the specialists and the commercial sets, who genuinely specialise and have brand reputations in their area of practice, and that is usually signified by them being able to get into the legal directories, which are Chambers and Legal 500. Those two. That is the Holy Grail of marketing actually.*
>
> (B1, Chair of chambers management committee, common law set)

4.7 ABS and going 'global'

As indicated in Chapter 1, under the LSA 2007, the rules concerning the structuring and financing of legal service providers were liberalised. In relation to the Bar, a number of momentous changes were made, including permitting barristers to set up an ABS, liberating them from the traditional chambers structure, or allowing them to create new or ancillary 'add on' units, such as LLPs or companies for example. Barristers could be part of legal disciplinary practices or litigation and advocacy entities, they could work in dual capacity as self-employed and employed practitioners (not on the same case) or share premises with other, non-barristers. The Solicitors Regulation Authority (SRA) started licensing ABS entities from October 2011, but the BSB only became authorised to do so in October 2016. Thus, any barristers engaging in these developments have done so under SRA approval. At the time of this research, and possibly as a result of this delay in BSB authorisation, there had been little innovation in this regard ('*I think its fair to say that since the Act was passed, quite a lot of time has been spent trying to work through what that means.*'). Even so, in interviews many barristers displayed a remarkable lack of knowledge or interest in developing any new structures in order to deliver their services more effectively, competitively or commercially.

> *Q: Do you have any ABS or ProcureCos or…*
> *A: (interrupting) No.*
> *Q: Do you have any need for anything like that?*
> *A: No, I don't foresee it happening.*
> *Q: Is it something your chambers have even talked about?*
> *A: No, no.*
>
> (Specialist civil set)

> *In terms of ABS and things…I don't think we'd ever thought of it. I think there was some idea of setting up a ProcureCo…I have to admit (to)…not being particularly entrepreneurial or interested in these kinds of things.*
>
> (B19, common law set, 15 years' call)

A handful of interviewees said that their chambers were actively looking into setting up some form of ABS, even if they had not yet quite worked out what to do with it, but this and other structural innovation, whilst the subject of some discussion, had rarely been acted upon at the time of the fieldwork: *'I know that it's been under discussion for ages. I'm sure we're not alone in contemplating going into, if not partnerships, alliances, maybe ad hoc ones with solicitor's firms on a particular contract or job'* (B2, mixed practice set). Even such contemplation was contingent on at least one member of chambers having some sort of commercial outlook and understanding:

> *Most members of chambers are, I think, absolutely ignorant about ABS or what they do or what they could do. (Name of barrister), who is dealing with it, is very, very up on it and is setting it all up, which I'm very grateful him doing it, he's put a lot of work into it, and I think when it is set up, we're then all going to see how we can use it and whether its going to benefit chambers and how we deal with it.*
>
> (B44, head of chambers, mixed disciplinary set)

At the Bar conference in 2015, one practitioner speaker noted that flexibility was key to a successful career – the modern barrister had to be an advocate, a businessperson and an entrepreneur. Practitioners needed to diversify and reinvent themselves to survive (Hill, 2015). Yet not all are entrepreneurial or business minded, and nothing in their training has prepared them for these challenges and transformations. A strong sense of uncertainty about what setting up an ABS would achieve was evident in many interviews ('*Its difficult to see what it will do')*, and was coupled with a suspicion that anything they did set up might fail, jeopardizing the reputation of chambers:

> *Its something I wanted to set up in advance, because I said 'This could be interesting, it could be potentially very useful'. Lets set it up and the idea of the ABS here, we haven't called it (name of set), we've called it by a completely different name, because if its succeeds it doesn't matter what its called, and if it doesn't succeed then it won't have (name of set) written all over it and we can just drop it.*
>
> (B44, head of chambers, multi practice set)

Some perceived a true ABS to be an inter-professional affair, bring barristers and solicitors together ('…*a classic ABS has got a…solicitor in it…I can't actually see that*

happening here, frankly.') This research included an interview with one barrister who had set up an ABS, as an LLP, which is regulated by the SRA. It employs barristers (who remain regulated by the BSB), solicitors and paralegals. Their actual operations were more akin to those of solicitors, having given up all court advocacy. However, using their title, qualification and experience as barristers, in their view gives them more credibility and cachet than if they were simply solicitors. This interviewee was aware of only one other barrister-led ABS, which was extremely and rather obscurely 'niche' in its expertise. Nonetheless, some of the more innovative and commercially minded barristers do envisage creating companies, when the rules permit, and putting them to profitable use:

> *The new rules come in under which the company could create a SupplyCo. In other words, the company could supply the legal service and it would then allocate work to a barrister who would still be...for example, if IBM goes to (name of chambers) or Barclays Bank more likely, goes to (name of chambers) and says "We've got this work, we want you to do it. This is a case worth £5m in fees, its a billion dollar claim. 5 million in fees, litigation will take 18 months to 2 years, can you do it for 5 million?" "Of course", the clerks rub their hands and say "Absolutely delighted". Our SupplyCo, under this model would have employed paralegals, an accountant, some solicitors and then the SupplyCo, (name) Chambers Ltd would instruct the barristers*.
>
> (B13, head of commercial chambers)

Those that are engaging, albeit slowly, with these new opportunities see new ways of working and of re-structuring their chambers as essential to survival ('*Its about to change dramatically and if you don't think about it and look at the options you're going to die, so you have to and you can't just live in the past*.') More prosaically, there are chambers that have taken advantage of a limited company structure through which to channel chambers' finances, giving them various tax advantages. A number of (mainly) commercial chambers have opened annexes or acquired office space or have created alliances with lawyers abroad in places like America, the Gulf or Russia, largely to draw in work for the barristers in London or provide a working base in a location where they already have some work. Although nothing like the presence of large global law firms, this is nonetheless a significant development in the Bar's international presence, represented by the Bar Council's International Committee, with a small yet significant group of barristers engaging in business opportunities and attending conferences abroad (Pinto, 2015).

4.8 Discussion

These findings point to an evolution of the chambers model, which in turn marks an evolution in barristers' professionalism. A shift in priorities is reflected in the new

chambers reorganization and staffing, with a focus on customer care/service, efficiency, compliance and commerce. The profession appears to be looking outwards, customer facing, for the first time. The re-conception of what kind of clerking and management staff are needed is further shaped to support larger numbers of practitioners, divided up into specialist teams. Within sets therefore, there can be quite distinct groups, sometimes overlapping, self-contained sub-sets within a set.

Elements of the essence of traditional life in chambers remain nonetheless: the collegial room-sharing; the barrister-led decision making about chambers' strategy, albeit now in collaboration with business and management experts; the essentially unchanged financial structure, whereby a percentage of each member's income pays for chambers administration; the presence of clerks and clerking duties, that although modernized, remain the same in the sense that work always passes through them and they agree the fees. Typical features of ideal type professionalism also prevail, evidenced by barristers retaining or developing new areas of specialisation, honing their expertise even more narrowly so as to give them exclusive jurisdiction or at least an edge in these micro markets. Knowledge, skill, discretionary judgment and status remain features of professional life at the Bar and although hyper-specialisation to some degree creates splinter groups, established professions have always had highly differentiated sub-communities, but remain held together by common training and a broader shared jurisdiction (Freidson, 2001). Most of the interviewees felt that the new chambers model had not undermined core professional values, but that instead the new organizational structure and commercial focus have been absorbed into professional life without compromising it, supporting Faulconbridge and Muzio's research into law firms (2008) that found 'organizational tactics and mechanisms are ultimately defined and influenced by professional interests' (p.20). Unless and until barristers develop more radical ABS and fundamentally change the way they do business, acquire investors or more practitioners adopt hybrid status (self-employed and part-time in-house) it is likely that the revised, modernized, commercialized, but fundamentally recognizable chambers model will remain. From the reactions noted above, it seems likely that most barristers are reluctant to let go of it and would prefer to continue to work within this structure and will resist more dramatic change for as long as possible, many perceiving that to work within an ABS would essentially make them like solicitors. One of the first BSB licensed entities in September 2016 was created by a criminal law set, which intended to use it as a corporate vehicle to bid for legal aid contracts.

When the two-tier contract proposal was abandoned, the head noted that they no longer had any use for it and that, in his view, the traditional structures and ways of working in contentious matters remained unchanged and would continue to do so (Rose, 2016).

Yet, if one were to step back and compare the empirical data on the running of a set of chambers today with how things were done in, say, 1990, the changes are significant. The increasingly monitored and regulated administration of sets, together with rules and guidance on how to attract, interview, recruit and train new members (examined in detail in Chapter 5) have gradually eroded the freedom barristers once had to decide how to run their collectives. The new commercial outlook has obliged them to think and behave differently, ever mindful of the insecure nature of their practices and of the competition they face from other members of the Bar and solicitors. These changes are reflected in the discursive practices that have arisen. Practitioners, clerks and chambers staff spoke in interviews of being more professional, more efficient and uniform in their organizational arrangements. A number of interviewees described chambers as a business, having a business plan and a business manager or director. Many of the chambers web home pages lay great emphasis on being client-friendly. ‘Efficiency’, ‘uniformity’, ‘business oriented’ and ‘client-friendly’ are notions that were entirely absent, or at lease unarticulated, 30 years ago at the Bar. This linguistic turn, evident in many of the answers given during interviews, reflects a significant shift not just in outlook, but also reflecting what is happening on the ground. For some commercial and specialist practitioners, failure to innovate, whether by setting up alliances or annexes abroad or by exploring how new structures might benefit their chambers, is a ‘head in the sand’ approach that spells professional death. They see no future at the modern Bar for a historic model that has outlived its purpose and for those that are frightened to change or unable to adapt.

Chapter 5 - Getting in, fitting in and playing by the new rules

The previous chapter was concerned with the organisational structure within which barristers work once they have joined a set of chambers. This next chapter takes a step back, in a sense, to consider how a law student seeks to enter the profession, how barristers perceive the selection processes and the training involved. The transition process from law student to pupil barrister has changed considerably in the last 25 years, both in terms of the regulatory framework that shapes it and the increasingly competitive conditions under which law students seek to enter the profession. This study has found three main areas of significant change:

1. Securing a pupillage 25 years ago required no extra qualifications beyond a 2.2 undergraduate degree, a conversion course for non-law graduates and successful completion of the Bar vocational course. Now, applicants are expected to have more and top end educational qualifications and extensive work experience and even then only a small percentage are successful each year.
2. New regulatory and managerial procedures have affected selection processes. Whether or not they are more transparent and fairer as a result is explored in this chapter.
3. Pupillage is now regulated with a view to making it a more uniform, thorough and a better experience both in professional and personal terms for the pupils and more prescribed from the supervisors' point of view. Fairly onerous record keeping and feedback is now a regulatory requirement, seeking to make the apprenticeship more transparent and those responsible more accountable for their supervision and the pupil's progress. Nonetheless, pupillage remains an uncertain and stressful experience for most.

These developments are considered in the context of ongoing reviews, by the Bar's professional bodies and the state, of access to the profession and diversity within it. The last twenty years have witnessed changes in how entry is handled, initially under Bar Council recommendations, latterly by BSB regulation. During this period, efforts have been made to make the processes of entry into the profession more transparent, equitable and meritocratic. This chapter draws on an additional theoretical framework to evaluate whether and to what degree they have succeeded, in the main focusing on Bourdieu's concept of cultural, social and economic capital and its application to entry processes in the legal profession (Bourdieu, 1990; Sommerlad, 2011; 2015). Professionalism is viewed by some as a dual project of

occupational control and status gain, which is maintained by how a profession determines how many and what kind of people enter it (Larson, 1977; Abel, 2004a; Francis and Sommerlad, 2009). Becoming a barrister used to be a matter of connections, social standing and means. In 1872 a not very challenging Bar exam was introduced, but the demographic remained the same, with new entrants getting informal pupillages via family networks (Abel, 1988). Throughout much of the 20th century, critics noted that not much had changed, with pupillage fees (abolished only in 1975) and the cost of dining in Hall, both prerequisites to being able to practice, a deterrent for most people (Abel-Smith and Stevens, 1968; Hazell, 1978b; Abel, 1988).

These forms of social and professional closure or exclusion are no longer overtly tolerated. Legislation and calls for increased accountability have obliged the profession to be more transparent about and fairer in its recruitment processes (Rogers, 2011; Pirie and Rogers, 2013). Yet inequalities remain, evidenced by the many investigations and reports of the last decade, outlined below, and by recent research studies on entry into law firms. Bourdieu's concept of having or acquiring different forms of capital to enhance one's professional or social advancement and how this necessarily disadvantages applicants from lower socio economic backgrounds, has been used to shape a number of research studies on recruitment in solicitors' firms. All conclude that the ability to acquire the necessary qualifications and work experience is very much shaped by an applicant's financial position, social connections and self-assurance and that access to the profession remains unequal and unfair (Nicolson, 2005; Francis and Sommerlad, 2009; Cook et al, 2012; Gorman, 2015; Sommerlad, 2015). Further, embarking on different strategies to acquire such capital has been conceptualised as engaging in Foucauldian technologies of self- improvement and assessment, where success or failure is deemed to be the responsibility of the individual seeking entry, rather than caused by any structural or social barriers or personal bias on the part of those recruiting (Nicolson, 2005; Sommerlad, 2011). This chapter first outlines a brief history of pupillage and what it entails, followed by a short summary of the reviews and the issues they raise, before addressing the developments outlined above. The implications of the findings are discussed at the end of each section in the context of the literature on employability, capital and the responsibilisation of the self.

5.1 Pupillage: how it evolved and what it entails

Pupillage is a 12-month obligatory apprenticeship after Call, before a practitioner is entitled to hold a full practising certificate. The first six months is a non-practising period during which time the pupil cannot accept instructions, save for noting briefs. When successfully completed, a pupil enters the second six months, during which time s/he can supply legal services and exercise rights of audience, certified by a Provisional Practising Certificate. At the end of the year, if pupillage has been satisfactorily completed (together with the required Advocacy Training and the Practice Management Course), a pupil can apply for a Full Qualification Certificate and commence practice (BSB, 2015a). Although there are some 448 sole practitioners, upon completion most pupils seek to gain acceptance as tenants in the chambers in which they have trained and become full members of the set. Entry into the profession is now regulated and monitored by the BSB, although some of the reforms outlined below predate its formation and had already been implemented by the Bar Council.

A twelve-month pupillage became mandatory in 1959, though since the mid 19th century it was customary to spend one year as an apprentice with a conveyancer or equity draftsman, and a further year divided between a special pleader or common law barrister, a solicitor and a barrister (Wood, 2010). Since Tudor times, although there was no formal structure, students were required to participate in learning exercises such as moots and pleading and sometimes shared chambers with senior members who acted as mentors and patrons, even if this apprenticeship was not official (Warren, 1978). Thus there has been a long-standing tradition at the Bar of older members undertaking much of the training of new entrants. A Bar exam was introduced in 1872, but it was not until 1971 that an undergraduate degree became a requirement (Baker, 2000; Burrage, 2006; Boon, 2014). For a non-law graduate, a year long 'conversion' course, the Graduate Diploma in Law (GDL), is obligatory before taking the Bar Professional Training Course (BPTC).

Until 1975 pupils had to pay 100 guineas a year to their pupil masters. Thereafter, for a period of just over 25 years, pupillage was unpaid. Since 2003 the Bar Council have obliged all pupillages to be funded by chambers, initially in the sum no less than £10,000 pa, increased in September 2011 to £1,000 per month, the first six months by way of award, the second either paid by way of an award or from guaranteed receipts (Boon, 2014). All pupillage awards in commercial/chancery chambers in the years 2009-11 were in excess of £30,000, with some as high as £60,000, whereas in

criminal sets about 60% were less than £20,000 (BSB, 2012; Boon, 2014). In 2015 a planning set offered £72,500, marking the highest pupillage award and giving a clear indication of the earning differential across the privately and publicly funded Bar (Aldridge, 2015).

The BSB now recommends that pupils should be taken on for a whole twelve months in one set of chambers. Whereas before a pupil might commonly have spent six months in one set and then six months in another, witnessing and gaining experience of different areas of law, this rarely happens now and many are in fairly specialist chambers from the start, in effect obliging them to embark on a particular practice area pathway without really having any experience of what it entails, even if they have completed a number of mini pupillages.

So far as the experience of pupillage is concerned, there is now a pupillage 'checklist' in place, a specialist checklist, prescribed training and the progress of each pupil is evaluated informally and formally throughout the pupillage period. Pupils must achieve a standard of conduct and ethics and acquire advocacy, conference, negotiation, drafting and research skills that will render a valuable service to the client (BSB, 2015a).

5.2 Regulation of the Pupillage Selection Process

Since 2003 chambers are obliged to advertise all pupillages offered, in accordance with Equality and Diversity Code, on the designated Bar Council website, the Pupillage Gateway (BSB, 2015a). Pupillage came under the regulation of the BSB on its formation in 2006 and in 2011 a Pupillage Handbook, with guidance, was introduced and updated as recently as 2015 (BSB, 2015a). There is now a voluntary system, via the Pupillage Gateway, for online pupillage applications, though many chambers continue to administrate their own system. The BSB recommends that this latter group:

> *…uses an application form which draws out the ways in which candidates fulfil the criteria for selection, rather than asking for a submission of a curriculum vitae alone. Good practice includes the use of written exercise(s) which can draw out analytical skills and written communication. Such exercises should however be equally accessible to those who may not yet have undertaken a law degree, or those at various stages of their legal studies if such candidates are to be considered.*
>
> (BSB, 2015a, p.20)

Since 2013 all those involved in selection processes have to be trained in fair recruitment, using objective criteria, and all supervisors also have to undergo supervision training before accepting pupils.

6.3 Recent reviews of pupillage and entry to the Bar

Overt discriminatory practices have been made more difficult by legislation and regulatory guidelines, yet entry into the profession, selection processes, fair access to the profession and the experience of pupillage itself, continue to be under constant review, both by the profession, its regulator and the state. Proclaiming that 'the Bar can only flourish and retain public confidence if it is a diverse and inclusive profession' and that 'Diversity and inclusivity are essential if a modern profession is to maximise its credibility and to contribute towards a fairer and more effective society', Lord Neuberger (the Neuberger Report) conducted the first in a recent spate of investigations into pupillage, charged with 'identifying and reducing barriers to entry for minority and socially and economically disadvantaged students' (Bar Council, 2007, p.5). The report proposed, inter alia, more outreach programmes in schools, more pupillages with funding drawn from outside agencies and sponsors, training for those recruiting and selection based on merit and non-discrimination. Pupillage was further investigated in the *Review of Pupillage Report of the Working Group* (the Wood Review), where it was noted that between 2004 and 2009 over 60% of pupils taken on had been to Oxbridge or Russell Group Universities (Wood, 2010). Zimdars' (2010) asserted from her survey research that disproportionate numbers of pupils are from higher socioeconomic backgrounds, which is reflected in their educational credentials. The government commissioned an investigation into fair access to the professions, including the Bar, (the Milburn Report), which reported back that professions needed to be more transparent and accountable about what they were doing to improve social mobility and that best practices were needed to ensure that internships (or mini pupillages) were fairly and equally allocated. Chambers were urged to adopt diversity measures in their recruitment and selection policies, not merely as an ethical issue but as good business practice, using it as a way of enlarging the range of their work (Cabinet Office, 2009). Yet diversity at the Bar remains a real problem (Sommerlad, 2015) and was acknowledged thus in the regulators' most recent press release for its BPTC Key Statistics report (BSB, 2016).

The Bar Council's *Momentum Measures* report (Bar Council, 2015a) and the last two Bar Barometer reports Bar Council, 2012; 2014) indicate that there is gender equality at time of Call with roughly a 50/50 balance. The *Momentum Measures* report claims

that ‘there is no evidence that women are underrepresented in the attainment of pupillage’ (Bar Council, 2015a, p.1), yet, figures for the 2013/14 pupillage intake indicate that of the 397 pupils taken on for a first six, 55% were men and 45% were women (Bar Council, 2014), which was attributed to the fact that ‘women have a lower propensity to move from Call to practice’ (Bar Council, 2015a, p.2). What factors come into play in explaining this propensity are not explored, suggesting the possibility, at least, that women are that much less likely to get pupillage than men. More recently the regulator has conceded that there appears to be an (unconscious) gender bias in pupillage selection (BSB, 2016). In the same year 40% of BPTC students were from BME backgrounds, the latter figure exceeding the proportion of those in the general population (Bar Council, 2015a), yet only 15% of pupils were from those communities. The increase in women coming to the Bar has compounded the entry barriers for other non-traditional entrants, as although there is a high attrition rate of female practitioners at a later stage, competition is even greater at initial entry level (Nicolson, 2005).

The issue of diversity cannot be viewed in statistical form alone, but must be situated in the context of new trends that have been identified across the legal sector. The Legal Education and Training Review (LETR), (IPS, BSB, SRA, 2013), a collaborative research project between the regulatory bodies for barristers, solicitors and legal executives, made a number of findings that specifically concerned diversity at and access to the Bar:

- Costs: the rising costs of post-graduate legal education (including the GDL and the BPTC) and the inevitable increase in student debt were alarming.
- ‘Massification’ of legal education: the disparity between the numbers of students studying for the Bar and the pupillage places offered was equally alarming. There were concerns that the BPTC providers were making profits ‘…by giving false hopes to many students. This must be stopped’ (para 6.11).
- Work experience/internships: The significance of work experience in the recruitment process across the whole legal profession rendered those without the necessary social and economic capital at a disadvantage.

5.4 Costs and massification of legal education

Since Inns of Court relinquished control over the BPTC and this was opened up to outside providers, the numbers of students studying for the Bar has increased and

the costs of qualifying have gone up. Fees for the GDL course, for non-law graduates, are between £5,000 and almost £9,500 for home and EU students. The BPTC costs between £12,000 - £18,000 (BSB website). Student debt is as high as £50,000 - 60,000. One recent Chair of the Bar asserted that if a student took the longest route to qualification in London, the costs could be up to £127,000 (Bowcott, 2016). There are now 8 validated providers of the BPTC, based in 12 locations, and many more students pass than there are pupillages available (IPS, BSB, SRA, 2013; BSB, 2016). In 1990, 900 students sat the Bar exams (Abel, 2004). In 2011/12 that number had risen to 1732 (Bar Council, 2014). That figure decreased slightly the following years to around 1500 in 2015 (BSB, 2016). When the requirement came in that pupillages had to be funded, the number of pupillages offered declined and has continued to do so. In the first year, pupil spaces fell from 812 to 518 (Boon, 2014). The Review of the Bar Vocational Course (later BPTC) in 2008 was so alarmed at the increasing gap between student numbers and pupillage places that it recommended:

> *...that the Inns of Court and the BVC providers develop a short joint document which will warn prospective students in the most explicit terms, as soon as they apply for admission to an Inn or to the course, of the shortage of pupillages compared with the number of BVC students. The document should publish aggregate figures, comparing calls to the Bar with numbers of pupillages, for the preceding 3 years.*
>
> (BSB, 2008, p.7)

This has been duly done, with the Bar Council, the BSB, the Inns of Court and all the BPTC providers issuing a joint statement setting out the grim statistics to prospective students. Chambers Student, the student limb of the directory Chambers and Partners has its own 'Preliminary Warning' on its website, issuing the same information. In 2011/12 there were 438 first six-month registered pupillages and by 2013/14 that figure had dropped further to 397, meaning that in the first decade of making pupillage funding obligatory, there has been a 51% decrease in pupillages offered (Bar Council, 2014; BSB, 2015b). The Wood Review estimated that in any given year there were about 3000 students competing for pupillage spaces, because they are allowed to keep on trying for 5 years after passing the BPTC (Wood, 2010), meaning that only 13% of applicants got a pupillage in 2013/4. The 'massification' of legal education has highlighted the problems relating to the numbers of law students and actual pupillages available, the costs of legal education, employability and access to the profession (Webb, 2015). The Bar Council's Criminal Justice Reform

Group, established in 2014, reported in its *Criminal Justice, Advocacy and the Bar* (the Rivlin Report) that:

> *Whilst we recognise that the BSB does not wish to cap numbers on the BPTC, we fear that commercial providers are using the system to make money from people with no realistic prospect of pupillage. This should not happen. A solution could be achieved by raising the standards of entry on to the course, to prevent those with no realistic chance of a career at the Bar from undertaking it.*
>
> (Bar Council, 2015b, p.50)

It is not clear, whether this report is advocating that there should be a cap on numbers or whether it is implying that if a better class of student takes the BPTC, there will be a pupillage at the end of it for all. If the latter, it is hard to see how that would be the case, with pupillage numbers on a permanent downward trend and no suggestion that spaces are limited due to the quality of those applying. Lawyers are no longer able to control the production of producers (Abel, 1988), so how are they reacting to this mass influx of law students seeking work? Research into solicitors' firms has found that, unable to control the numbers coming in, partners have found new ways to maintain their status and financial position by exercising control over the employment conditions they impose. Firms employ more associates, who generate business well beyond their cost but restrict their access to equity partnership, and the rewards this brings, either expecting them to leave or by making them salaried partners only (Ackroyd and Muzio, 2007). Barristers have no such hierarchical control over the development of other practitioners' practices, but may well have an interest in not taking on pupils, whom they have to pay, if there is not enough work within chambers to offer them a tenancy at the end (Abel, 1988; 2004). Control remains at entry level and at present, given the numbers of those qualifying and the numbers of pupillages being offered, many chambers need make no effort to attract applicants and can enforce high standards, making entry ultra competitive (Rogers, 2011). Some criminal law chambers no longer offer pupillages, due to paucity of work, yet criminal law remains the main practice area for pupils, amounting to 24.4% in 2011/2, though that figure has decreased from 28.6% in the previous year (Bar Council, 2014; 2012): '*We haven't had a criminal pupil here for three years. We always used to have one and various of our junior members were pupils…but its either three or four years since we had a pupil here'* (B18, criminal circuit barrister). Even chambers relying on legally aided work and with not enough of it to justify taking on a pupil, continue to receive high numbers of applications:

> *We do say on the website 'Don't apply'. We still get over 100 applications every year. We do take mini pupils for a week at a time still for experience, although I'm not sure there is any point. We've taken the view we ought to keep on doing it.*
>
> (B32, family and criminal practitioner, circuit set)

Some students do not apply to criminal chambers for financial reasons, a trend that has been noted across the whole legal sector, where the disproportionate rewards of commercial legal practice, together with the increased costs of legal education, are discouraging students from doing so (Webb, 2015). One junior barrister commented that this decision was made early on, during a mini pupillage:

> *I saw a week's rape trial and that was great, but I knew from the outset that I wouldn't want to do crime just because I knew that I would not earn any money and I'd never be able to move out and whilst I'm not in this for the mega bucks, you need to survive.*
>
> (B17, civil barrister, 3 years' call)

The commercial Bar, by contrast, seems to be expanding and actively seeking to recruit:

> *We took on 7 pupils this year, which is unheard of. We've increased the number of pupils and that's because there is more and more work. I'm a strong believer in the fact that the specialist Bar will just get stronger and stronger because we have two characteristics which should be absolutely unbeatable in any harsh market, which is very high quality with very low cost compared to solicitors.*
>
> (B13, Head of Chambers, commercial set)

The scarcity of pupillage places compared to numbers qualifying as barristers is therefore a recognised problem, as is the fact that the Bar, although more diverse than it was 25 years ago, remains nonetheless a profession for the middle classes (Freer, 2016). What has been considered less is how students are seeking to compete in this environment and how they are being selected, and what is going on in the selection processes that produces this state of affairs.

5.5 The 'special CV'

Supporting the official statistics and reports, this study confirms that competition for pupillage across the board has become '*piranha like',* as one interviewee phrased it:

> *180 applicants for two spaces.* (Civil set)
>
> *You have a stack of about 800 applications a year…we select six.* (Mixed disciplinary set)

400 odd applicants...to a final five. (Commercial set)

In come 400 letters asking for pupillage and there are probably two or three places. (Mixed disciplinary set)

How do students compete for these spaces? There is some evidence to suggest that commercial sets like to recruit students immediately after their studies are complete, whilst other, more mixed-practice sets expect them to have acquired other skills and experience before applying. Bar research indicates that although many students apply for pupillage during their last year at University or whilst on the GDL course, only about 30% of students secure one at this stage and the rest have to reapply during the BPTC or if still unsuccessful, after completing it (Bar Council, 2014). Many feel that they must build up their CVs, particularly where they have failed to get a pupillage first time round, to improve their prospects. As one head of chambers indicated:

We're not looking for a normal CV, we want something special about the CV
(B44, Head of mixed practice set)

The findings of this study suggest building a 'special CV' and enhancing employability is done in 3 general ways, none of which were the norm 25 years ago:

- By undertaking unpaid mini-pupillages in different sets of chambers
- By acquiring a graduate Masters degree or, less commonly, a PhD
- By acquiring other work experience, paid or unpaid, that is relevant or linked to some area of legal practice

One interviewee felt that people were starting pupillage later as a result:

I don't think many early twenty year olds make it to pupillage and tenancy. Certainly in this set…there were six of us, just off of memory, I was 31, so two were 33/34, two were 30/31, one was 26 and one was 24/25...Out of my friendship group, the ones that got plucked straight out, so they're still in their undergraduate year of law, to just do the BPTC and go all the way through straight, without taking a break from education, is commercial sets, commercial and construction sets, when they want them fresh out of university.
(B47, common law practice, 2 years' call)

The mechanisms of advancement, outlined below, reveal that students are now aware of how opportunity structures operate within this sector: '*Because its so*

competitive now, in terms of getting pupillage, you really do have to, I certainly felt personally I had to go and demonstrate something else' (B46, family practitioner, 6 years' call). Like many entering other turbulent labour markets in an employment culture of insecurity, the focus is on 'identity work', (honing presentation skills and conforming to a particular organizational culture), improving one's competencies and actively cultivating cultural and social capital to make oneself more employable (Smith, 2010). Employability is an individual's responsibility, where the risks and opportunities appear to be of one's own choosing and making, yet this notion ignores that the resources needed to acquire employability are less available to many, excluding those who lack the means, the connections and the cultural know-how from competing on a level playing field (Smith, 2010; Sommerlad, 2011).

5.5.1 Mini Pupillages

Formal vacation schemes in solicitors' firms play an increasingly important role as a gateway to that branch of the profession (Shiner and Newburn, 1995; Shiner, 2000; Francis and Sommerlad, 2009; Sommerlad, 2011). The same holds true of mini pupillages at the Bar, usually undertaken by students whilst at university, during the GDL and BPTC (Freer, 2016). Of the junior practitioners and pupils interviewed, all, save two (who had come into the profession from solicitor jobs) had done at least two mini pupillages, some as many as seven. All undertake this unpaid work experience to build up their CVs and are advised to do it by their tutors on the BPTC, but it also allows them to 'get a feel' for chambers and what the profession is like, and to help them decide which practice areas they might be interested in:

> *I'd done quite a few mini pupillages…not as many as some people do, some people go all out on the mini pupillage front. I think I'd done maybe something like 6 or 7 overall… I didn't know what I wanted to do until I graduated and then I had a year off when I worked a bit, I thought about careers and I did a couple of mini pupillages then that were very helpful. I didn't learn anything from a legal point of view, but it was a very good starting point and then I did more in the year that I was doing the GDL… I think mini pupillages are probably the only way that you can get a feel for the atmosphere in a set of chambers. I don't think that that comes across from the website, the interviews. I don't think so…when I started the GDL, the ones I did then were more focused. By that point I had an idea of the kind of practice that I'd like.*
>
> (B17, civil practitioner, 3 years' call)

> *I saw crime...the case itself I found quite traumatic. A historic paedophilia case and made me think perhaps crime isn't something I can necessarily embrace.*
>
> (B21, specialist civil practitioner, 3 years' call)

Another junior had a similar experience with a sexual offences case, '*It was just awful, really grimy and I thought 'OK, this is really not for me*''. He also ruled out family law work during another mini-pupillage:

> *I had seen some family work and quite liked it, but knew that it was not likely to pay very well and worried that it would be grinding, that it would grind you down doing it on a daily basis.*
>
> (B23, specialist civil practitioner, 7 years' call)

Mini-pupillages therefore provide students with important glimpses and experience of the profession: a chance to see what a barrister's work entails; to assimilate some of the professions' norms and practices; to sample different practice areas; to get a flavour of chambers life and a barrister's working day.

How do students get these mini pupillages? Unlike full pupillages, they are not regulated by the BSB, unless they are 'assessed' with a view to obtaining one. The regulatory body encourages chambers to make them available to groups that are under-represented at the Bar (BSB, 2015a), though there is evidence that talented people are deterred from coming into the profession as they are intimidated by the social practices associated with it – dining in Hall, the modes of dress, address, the historic location. Many non-traditional aspirant entrants often do not meet the traditional requirements of 'merit' on paper, including having sufficient work experience (Freer, 2016). Chambers generally advertise mini pupillages on their websites and have an online application process and many now only accept official mini pupils via this route. Yet students continue to secure them via more unofficial and informal connections. One interviewee got two mini pupillages through chance meetings at law fairs:

> *I did one at X chambers...and that was just because I met a nice woman when I went back to University for the Law Fair…and then the other one was at Y chambers…and again that was because I met someone at a careers fair*
>
> (B17, civil practitioner, 3 years' call)

Another interviewee explained that some of her mini pupillages were 'unofficial', obtained through contacts of her mother, who was a solicitor, when she was still at school and which she considered more like 'work experience', supporting critiques that this more invisible route to obtaining work experience, thereby acquiring a 'special CV', is achieved far more easily by those with more social and economic capital, possibly at the expense of less well connected students. (Bathmaker et al, 2013). Relevant work experience is now a prerequisite to get on one of the BPTC

courses (IPS, BSB, SRA, 2013) and many chambers' websites indicate that they are a necessary requirement for pupillage applications. Although chambers as an organisation can be discouraged (or should the BSB see fit, prohibited) from taking mini pupils via non selective routes, no regulation can prohibit a self-employed practitioner from informally allowing a student to shadow her/him and thus selection for mini pupillage retains an arbitrary element, favouring those with social connections and the ability to undertake unpaid work experience (Freer, 2016).

5.5.2 Further educational qualifications

> *All ours, say they're all Oxbridge, they're not, about 50/50 Russell group and Oxbridge but then almost all of them will either then be Cambridge LLM, Oxford BCL or about third have done the Harvard Masters. Its very odd, about a third have done Harvard and then this year, about 40% have got PhDs.*
>
> (B13, Head of commercial chambers)

Immediately apparent from this extract is that non Oxbridge/Russell Group applicants are unlikely to even be considered for pupillage in a commercial set of chambers. Further, it has become much more common for prospective pupils to have graduate degrees, something that was relatively rare in the past:

> *What I would say is a big change even in my time, is a lot of people now seem to have multiple degrees, post grads and things and all I had was a simple BA Oxon, that's all you needed then…now when you look at the CVs of people at some of these big sets, quite a lot have post grads, don't they?*
>
> (B19, mixed civil practitioner, 15 years' call)

One pupil interviewed had done a non-law degree, a two-year graduate law degree and then a Masters in law at Oxford University ('*It was a long and expensive route'*). Another interviewee had done two Masters degrees before applying for pupillage: '*I think the choice to do two was just something I was really interested in. But then I knew it would probably be a good idea to apply for pupillage having done a Masters'* (B45, family practitioner, 7 years' call). This trend was almost universal amongst the young practitioners interviewed: '*I did an undergraduate law degree…I did it as a dual French and English law degree and then I did a Masters in France, specialising in EU law.'* (B47, common law practice, 2 years' call). Another had done a Masters because he felt that his first degree was not from a sufficiently elite university, so the decision was entirely strategic:

> *Some people had suggested it to me, my undergraduate degree is from Sheffield, and there was a suggestion that it was possible sets were a bit snooty about that and that I could polish my academic credentials, so I did a Masters at UCL.*
>
> (B23, specialist civil practitioner, 7 years' call)

This perceived or real need to continue education to Masters level (either before or after the BPTC) is a route only open to those with sufficient funds or those who are prepared to take on further debt, creating a further and less discussed economic and social barrier to entry into the profession, largely affecting students from disadvantaged backgrounds, who are considered to be more risk and debt averse (IPS, BSB, SRA, 2013). For those that do not get scholarships, acquiring a graduate qualification is not viable.

5.5.3 Other work experience

Even top academic achievement is often not enough. Many sets look for added value, in the form of pro bono work, placements in solicitors' offices, working at the International Criminal Court or similar. All the junior practitioners interviewed had acquired such work experience: ('*I did a Judicial Assistantship at the Court of Appeal for four months'; 'I went to the International Criminal Court and I think that helped'; 'I worked as an outdoor clerk'; '…working at a children's charity')*. Those involved in the selection processes confirmed that this is what they were looking for:

> *If they can demonstrate that they are committed to pro bono, before pupillage…demonstrate that you've done that or doing some work at the Citizens' Advice Bureau or running some advice surgeries or setting up your own… its the ones that set them up that get the pupillages…that always impresses.*
>
> (B46, family practitioner, pupillage committee member, 6 years' call)

When referring to one particular set, well known for doing human rights work, a law student commented, only half-jokingly: '*You need to run an NGO in Gaza to get in*'. A few interviewees came to the Bar slightly later, having gained experience in related work and impressing chambers with their knowledge and contacts. One had been a policeman and then an outdoor clerk for a solicitors firm. Another had worked as a commercial solicitor. A third indicated that because she did not attend a 'top' university, entering the barrister profession via her work history was the only way in:

> *I worked as paralegal in a solicitors doing PI and then in an insurance company doing the same. I think it helped me get pupillage...I was quite conscious that I didn't go to a top university and I didn't get a first and so I*

> *kind of had to do that…I didn't go to very good university…and they pushed you down the solicitor route so the only things we ever really got talks about were the LPC and vacation schemes.*
>
> (B22, pupil barrister, specialist civil set)

University careers advisors or teaching staff seem to think that unless their institution falls within the top section of the league tables, they should not encourage their students to apply for a career at the Bar. It is clear from this research that it is no longer enough to secure a good degree and then pass the BPTC to get a pupillage. Whereas 25 years ago, further educational qualifications were rare, mini pupillages almost unheard of and other work experience not required, aspirant entrants are now expected to have all three. Students are aware of this and have to strategise: building on their qualifications by undertaking extensive work experience or acquiring post-graduate qualifications, or both, just to get an interview. Many of the senior practitioners remarked that they would not get into the profession now largely because most, if not all, simply had a degree, a conversion course where needed, the Bar Finals exam and nothing more.

5.5.4 The implications of these new trends

A new kind of entrepreneurial and responsibilised aspiring barrister has emerged. Acquiring more educational qualifications, undertaking numerous mini pupillages and engaging in diverse extra curricular activities and extensive work experience have become the norm, which students themselves regard as fundamental to produce added value. They recognise the need to build up their CVs, they formulate how to do so and they take the initiative to take the necessary action. These forms of self-improvement help them acquire the capital they need to get into the profession over and above the traditional qualifications and it is their responsibility to acquire it. This form of self-government is their ticket to employability and central to neoliberal discourses and practices (McNay, 2009; Smith, 2010; Gane, 2012). The problem, therefore, of intense competition in getting a pupillage is not a problem for the BPTC providers, the profession, its regulator or even the state, but remains something to be managed by the entrepreneurial student, caught up in an 'assemblage of a learning apparatus' to achieve employability (Simons and Masschelein, 2008, p.391), amounting to Foucauldian technologies of self-improvement and self-assessment (Sommerlad, 2011). However, having the necessary entrepreneurial spirit to become employable raises clear issues of equality. This strategizing, self-reliant student mobilises social connections and uses cultural and economic capital to enhance opportunities to get unpaid work experience, secure mini pupillages or study for an

additional degree. S/he has a 'feel for the game' (Bourdieu, 1990, p.66). One study interviewed 81 undergraduate students over a period of two years, focusing on how they sought to acquire different forms of capital to respond to this challenge. It found that working class students focused more on getting good academic results, lacking the capacity to 'play the game': they did not have family or social contacts to secure the same kind of work experience as their middle class counterparts, who often displayed an internalised understanding of the game, 'pulled strings' without actively recognising that these were the mechanisms that allowed them to 'get in' (Bathmaker et al, 2013). So the playing field, rather than being levelled by an increase in access to higher education, remains uneven after graduation and is shaped by socio-economic factors. Similar findings have emerged from research into law firm vacation schemes (Sommerlad, 2011), recruitment in elite City law firms (Ashley, 2010; Cook et al, 2012), in accounting firms (Jacobs, 2003) and work placements in other industries (eg. creative industries sector, see Allen et al, 2013).

5.6 Pupillage selection processes

Barristers taking part in the selection of pupils are now obliged to undertake training in equality and diversity. The BSB issued Equality and Diversity Rules in 2012 and further extensive Guidance booklets since (eg. *Fair Recruitment Guide, Subconscious Bias, Pupil Equality Monitoring Toolkit).* However, chambers retain the discretion to set their own entry criteria. The transparency and consistency in communicating these to applicants varies hugely across the Bar, with some chambers giving specific information, from which a student can make an informed decision as to whether or not it is worthwhile applying, whilst others give no information at all. If chambers have elected to use the standardized pupillage Gateway scheme, then applicants fill out the same application form for participating sets, but are limited to 12 applications in any given year. The information given by chambers is crucial therefore in helping a student decide which 12 to apply for. Students complain that many sets are simply too opaque or silent about their selection criteria (see comments, Cordrey, 2016). Many chambers have opted out of this scheme and run their own application and interview processes. In general terms the selection processes are broadly the same: applications and then first, sometimes second, interviews, which include problem solving and advocacy tests:

> *180 applicants for two spaces…that goes down to 30, so we'd have 30 on first interview. Then its sifted further and we would have 12 for the second interview…the second interview is just an interview, but they would be given a case or a scenario to talk about, to prepare in advance.*
>
> (A2, Administration Manager, civil set)

The whole process is extremely long and onerous due to the sheer volume of applicants and the intense competition:

> *We have an immensely time consuming recruitment…400 odd applicants say, interview maybe 150 - 200. 70 say, 60,70,80 come for a week…We tend to concentrate it at various times… So then now out of that 60 or 70, by which time we've got a file on them, because we've got interview notes, we've got the week notes, in which they do a bit of assessed work for us, and we choose, lets say, 15 or 16 for a final weekend of interviews and then the final weekend, we pay all the expenses so they come to London, we pay to put them all up and so on and then we will be down to our final 5 and by that time, you just have to look at the CVs of these youngsters.*
>
> (B13, Head of Chambers, commercial set)

5.6.1 The sifting stage

As indicated in the above extract, the first stage is sifting through the paper applications and deciding who will be invited for an interview. A time consuming and unenviable task, this is sometimes done by a very junior member of chambers or by administrative staff (Freer, 2016). By contrast, some sets oblige every member of chambers to participate in the sifting process (in pairs) applying a pre-calculated marking scheme, designed to be as fair and non-discriminatory as possible and to fit chambers' entry criteria, whatever they may be. The following extracts come from a group interview with three members of one such chambers:

> *We do the marking and selecting for interview over a period of about a month…we have a compulsory system in chamber, which means that everybody has to do it, the marking.*
>
> *You do it in a team…you have a pile of applications and you each have the same, and then you have your criteria …and you have to mark them in each category...and then you compare it with your partner, so you do your individual assessment and you discuss it…and the pairs select 6.*
>
> *… and then there's this meeting, so all the pairs come together and if there's any disagreement about who has been put forward for interview then its discussed.*
>
> (B43,B45, B46, Family law practitioners, multi-disciplinary set)

Yet even this meticulous system necessarily has a subjective element, since each set of chambers has its own entry criteria and the BSB, although providing guidance, permits chambers considerable discretion. A member of the same set continued:

> *We comply with equality and diversity policies and also BSB requirements, and their requirements aren't really detailed - its just things like anonymising applications. Its general, they leave it to your discretion. We have a marking*

criteria. Education and a sort of fit with chambers' ethos, probably to demonstrate people's commitment to our ethos.

This particular set of chambers had very clearly spelt out its 'ethos' on its web pages and the demographic in the set was very diverse, but the fact remains that being the right 'fit' will always contain an unknowable and arbitrary element. Many chambers actively market themselves to try and attract the 'right kind' of applicants':

> *We do Uni stuff - Oxford University Law Fair, we do the main law fair at Lincoln's Inn, we do law student drinks in chambers which we've started in the last year… someone looks after law fairs with me, someone does the GDL drinks…That's the City University and so they would be invited into chambers for champagne and sushi - we've done three of those this year…we approach people and we've got drinks in chambers and that seems to go quite a long way in attracting the kind of people we should encourage to apply.*
>
> (A2, Administration Manager, civil set)

Who, one wonders, are the ideal applicants in this case and, perhaps more tellingly, what kind of student is likely to be intimidated by or uncomfortable at this kind of reception? What image is this chambers trying to project? The following extract was echoed in many answers, where barristers assert a great degree of transparency, whilst at the same time showing that selection retains a clearly subjective aspect:

> *Its very transparent, I mean, we have, in come 400 letters asking for pupillage and there are probably two or three places…We have a committee who does that, who spend two full weekends, sifting through all these letters and coming out with maybe forty…they do it by the rules…I think they are more open about the process. I think people choose for what they think is going to be good for chambers. They choose the best…we don't choose because we think we ought to have someone who's 'green' in chambers, we choose what we think is the best...*
>
> B44, Head of mixed practice set

How is 'what is good for chambers' or 'the best' defined? How is merit assessed? To what degree do people recruit in the image of themselves or enact unconscious bias? These selection criteria remain nebulous, despite increased accountability and openness. A more obvious bias in the initial sifting process is a reluctance on the part of recruitment committees to consider applicants who did not go to Oxbridge or a Russell Group university, only 'occasionally' drawing from a wider pool:

> *We certainly do Oxbridge every year, because its a regrettable fact that we're still heavily Oxbridge oriented, not wholly but still quite heavily. But we've reversed it so we have open days now, where we send invites out all over the country to all the Russell Group universities and others, and they come to us and we pay for anybody and they come from all over the country…so they*

> *have a day in chambers and actually because we get so many, we do a hundred at a time now, so we're getting two to three hundred people coming here…Its a charm offensive and we do that across the country, so we're very anxious that we're not just getting Oxbridge, because occasionally you pick up an absolute gem from somewhere else, absolute superstar.*
>
> (B13, Head of Chambers, commercial set)

The last phrase is particularly revealing. Despite assertions that chambers seek to recruit from a wider pool, this interviewee indicates that it remains exceptional to recruit someone who does not hold an Oxbridge degree. Figures of the 2011/12 pupil intake show that 28.4% of pupils had Oxbridge degrees and a further 35.8% were from Russell Group universities (Bar Council, 2014), a vast improvement in terms of educational diversity from the previous year, where Oxbridge students amounted to 35% and Russell Group universities some 64% (Bar Council, 2012). One interviewee was told that where she went and what grade she got for her degree were 'converted' into points during her application's assessment:

> *Its terrible when you spend all that time doing application forms and then you don't even get an interview, and you know why that's happened. It's because maybe you didn't score very highly in where you attended university. In fact that was the feedback that I got from a few sets the first time that I applied. It was 'Oh you just didn't score highly enough' and I said 'Well how are you grading these things?' 'Oh well, if you get a first you get 10 points, if you get a 2.1 you might get 8 points, but it depends how high your 2.1 was. If you went to Oxford and you got a 2.1 you're going to get a higher grade than if you went to Leeds and got a 2.1'…so I needed somewhere that was going to look beyond that …so there were only a few places where I could've realistically applied to*.
>
> (B22, pupil, specialist civil set)

How common is this method of assessing applicants? The relatively small sample of this study makes it hard to know, yet, this particular chambers clearly used where an applicant went to university and what degree she got as either a first filter in the selection process, or at least as one measure in determining how many 'points' the applicant received in that filtering process. In keeping with the findings of the LETR, parts of the profession display a strong preference for and belief in the reliability of academic results and credentials (IPS, BSB, SRA, 2013). As indicated earlier, research into how elite law firms select formal vacation scheme students has found that this focus on elite education is manifestly unfair, privileging middle-class students who attend Oxbridge and Russell Group universities, having often attended fee paying schools before that, thus disadvantaging students from lower socio-economic backgrounds (Sommerlad, 2011). Moreover, many large firms offer training contracts to students in their second year of undergraduate studies in an attempt to

recruit the best students before they are offered jobs elsewhere. At this stage they have no degree results, so A levels are the only indicator of academic capability and which university they are attending (Boon, 2014). There are no data showing the breakdown of each pupil in each set of chambers, but the most recent overall statistics indicate that 55.4% of first six month pupils in 2011/12 went to state schools, 35.2% went to fee paying ones and the remaining 9.4% did not disclose (Bar Council, 2014). Compared to population percentages, there is a high intake of privately educated students. Certain sets of chambers are strongly influenced by a student's educational background. One participant commented:

> *Its all very well to say 'yes, we should be equal opportunities'…its meaningless because if you don't have the work that traditionally people from state educated, non-lawyer families did when they got to the Bar, you won't get those people going to the Bar…Legal aid, publicly funded work. Unless you've been to Oxford or Cambridge, you're not going to get into one of these big sets offering their own pupillages at £60,000 a year are you?..,The big mistake they made was to cut unfunded pupillages…it was a chance for someone to have a go, and lots of times that person was taken on.*
>
> (B41, mixed common law set, 31 years' call)

One of the unintended consequences of funded pupillages therefore, is rather than make the Bar more accessible, it has reduced the opportunity for many to get in, as some chambers cannot afford to offer as many pupillages as they used to and are more cautious about whom they do offer them to, often using academic credentials as an indicator of suitability. The recent proposals to limit entry to the GDL to students who have a 2.1 degree (as opposed to a 2:2) has been described as a further discriminatory step in excluding BAME students, who for a mixture of socio-economic reasons achieve lower grades and in any event is based on the assumption that all degrees are comparable and will assess intellectual abilities in the same way (Vaughan, 2015). Some chambers, in order to compete with the top solicitors' firms, offer students pupillages before they have even taken either the GDL or the BPTC, the assessment of their potential ability necessarily being based on A level results and university attended and showing strong bias to Oxbridge and Russell Group students (Boon, 2014). Apart from discriminating against non-traditional entrants, as discussed earlier, this focus on academic excellence raises vexed questions that continue to challenge the Bar's professional bodies and academics. Aside from issues of fair access and diversity, is this focus too narrow? Are other skills and attributes being sidelined as a result? If advocacy is part of the core of the profession's skill base, does it follow that those with top academic achievements make the best advocates? Not all are convinced:

We certainly are not the sort of set that only takes people with first class degrees in the top quarter of the Russell Group…and also I'm not convinced that the people who excel as academic lawyers or academics in general, necessarily make the best barristers. They may be clever but…(laughing)

(B24, head of mixed circuit set)

The answer depends somewhat on what kind of practice a student seeks to acquire. Commercial and chancery barristers regard academic excellence and an intellectual approach as vital to that kind of practice, and rightly or wrongly, other areas of law are perceived by some as needing lesser rigour in this respect. Commercial and chancery practice can be largely document based and some practitioners in this area commented that their working lives had more in common with solicitors working in commercial law firms than barristers at the publicly funded bar. Advocacy skills are more often deployed, for example, in skeleton arguments or during round table meetings than in court, but even then some feel that a purely academic approach has its disadvantages, evidenced by the poor quality of some courtroom advocacy and drafting decisions:

Judging by some of the more junior people I have seen…they don't seem to have any idea of how it works in court, except theoretically...What they don't learn is not being overdramatic and as if you are addressing a jury. I see that mistake quite often. Keeping it on a sort of conversational tone…they are too formal, they exaggerate…they could have been at it for five or six years and they still haven't got a clue about how to gauge your court and gauge the situation and they produce absurd skeleton arguments…nearly always you notice just regurgitating the notes in the White Book…they're just playing safe...It makes things too long, like the book type skeleton arguments and I think it is increasing the expense of litigation.'

(B14, commercial practitioner, 39 years' call)

5.6.2 The interview stage

After the initial sifting comes the interview stage. The numbers involved and the style of interview vary, but the ideal type process would consist of interviews that contain exercises or questions that all candidates address, so that they can display legal reasoning, argument, critical thinking and advocacy skills or potential. This is the approach recommended by the regulator, reasoning that judgments will be based on objective merit:

Twenty minutes is about a problem that is common to all of them and its quite illuminating actually how they approach that. I think that is important, to have that kind of objective standard and they all have it…then its kind of a structured 'Where do you see yourself going at the Bar? What are your interests? How would you be self promoting, what marketing would you do'? Bit about their interests…They're different depending on the CV, to an extent.

(B19, mixed practice set)

> *Its based on the question that you answered, based on the advice that you've given. There's a little bit of CV stuff…And then there was a bit of a debate where they gave me a question, I think it was something like 'should NHS treatment be available to smokers?' and I had to answer yes or no and then they made me argue the opposite point.*
>
> (B22, pupil, specialist civil set)

As can be seen from the above extracts, applicants are still asked about their CVs and themselves and some participants indicated that in some chambers that was all they were asked about, despite the regulators recommendations:

> *Some, they would give you a problem in advance, some they would give you a problem on the day. Here it was just an interview, finding out about you and that was the case with probably about half of the chambers.*
>
> (B40, pupil, family law set)

Even sets that have 'objective' processes, still include indefinable criteria when making their final decisions:

> *They get the forty…Interview them all and then they make their choice…they set them tasks, they interview them, they are looking for people who are bright, have got something extra, a bit of value added on top of the normal stuff, who are personable...I'm not going to have a positive discrimination.*
>
> (B44, Head of Chambers, mixed set)

These last extract merits closer analysis. Whilst it is clear that efforts are being made to make selection and interviews more transparent, objective and meritocratic, there are still certain invisible processes at play. How does one assess that an applicant has 'something extra' or 'a bit of added value'? What makes someone 'personable'? In a profession where self-presentation is all important and used daily, whether during advocacy in court, during negotiations or in conference, a high premium is placed on a person's demeanour, erudition, eloquence and social confidence. Aside from educational and technical ability, cultural proficiency is essential. Given that potential ability as a barrister is hard to assess during an interview, mastery of cultural norms and values, evidenced by self presentation during that exchange translates into cultural 'fit', promoting attraction to recruiters, facilitating 'smooth communication' and conveying competence and credibility (Gorman, 2015, p.126). As discussed earlier, acquiring such mastery is often dependent on the social and cultural capital an applicant has, which in turn is shaped by their socioeconomic background.

It's hard to evaluate the extent of any conscious and unconscious bias that comes into play in these selection processes and whether recruiters are unwittingly seeking to reproduce themselves, choosing applicants who share their educational and socio-economic background because these factors make them a better fit or 'good for chambers' (Nicolson, 2005; Gorman, 2015). Certain practice areas seems to call for different attributes and, for some chambers, top academic ability and achievement are paramount. Given the numbers of applications, it is unrealistic to expect all students to get an interview and some filtering criteria are necessary. In any event, for barristers, funding pupillage awards is a risky business, for not all pupils are later deemed good enough to be offered tenancies so more caution is now exercised in selection. Abel (2004a) would argue that the construction of 'merit', based on academic credentials, is simply a means by which barristers protect their interests and restrict entry and that there is nothing to stop chambers acquiring more physical space and let the market decide how many lawyers are needed. Barristers routinely respond to this charge by emphasising that high quality academic skills and intellectual rigour are, and have always been, essential to providing a high quality service. Furthermore, in the current climate of competition, like law firms, there is even more pressure on chambers to recruit the 'best' people, traditionally judged in the main on academic credentials (Garth, 2013). Not all are convinced. This 'fetishization' of merit has been described a seemingly legitimate step in appearing to make entry criteria equal, but as Sommerlad says, citing Aristotle, although 'everyone agrees that justice in distributions ought to be according to merit in some sense, they do not call merit the same thing' (Sommerlad, 2015, p.123).

5.7 Pupillage

The findings and discussion below consider pupillage in the context set out at the start of this chapter, namely if and how the new regulatory framework has altered the pupillage experience, as perceived by barristers and pupils alike. The informal socialisation processes into the culture and norms of the profession, which begin during pupillage, are considered in Chapter 7, which explores perceptions of how the recent changes have affected the Bar community.

5.7.1 Structure and supervision

Many of the changes to pupillage outlined at the start of this chapter were implemented as a result of critiques that the pupillage experience was a 'hit and miss affair', largely dependent on the good will of the pupil master/mistress, with uneven and uncertain results that did not guarantee the kind of preparation pupils needed for

practice. As Zander (1968, p.28) noted it was often more a case of 'learning by watching Nellie', than any structured teaching, correction and supervision. A couple of older interviewees likened it to learning by osmosis. The experience could sometimes be very narrow, with pupils not spending enough time with different members of chambers, or crucially with younger members, whose practice was more likely to reflect the sort of work a pupil might do in the second six months. Further, pupillage was potentially exploitative and some pupils suffered daily indignities, often relegated to making coffee or photocopying, and receiving only erratic training and no meaningful guidance (Hazell, 1978b). In 1995, the Bar Council adopted the Equality and Diversity Code and now all chambers also have a policy about harassment and grievance procedures. There is also a dedicated, confidential Pupil Advice Line, manned by specially trained barristers of at least five years' call (Sokol and McArdle, 2013). Under the LSA 2007, barristers' specialist knowledge, expertise and skills must be shown to serve the public interest and pupillage, like other aspects of the Bar, is now subject to external audit and chambers have been obliged 'to adopt a culture of performativity, to comply with objective assessment systems of accountability and measurement'. The content and structure of pupillage has thus become formalised and monitored in order to acquire legitimacy (Pirie and Rogers, 2013, p.142).

The final consultation stage of the LETR, Future Bar Training (BSB, 2015b), commenced in February 2015, with a view to implementing changes to legal education and training in September 2017. So far as pupillage is concerned there are indications that the BSB is considering something of a U-turn, advocating a less structured regulation of pupillage, placing 'more emphasis on a barrister's knowledge and skills upon authorisation', via a Professional Statement, that will establish the standards to be achieved during pupillage (p.16). Whether this is in keeping with the BSB's new 'hands-off', risk-based approach in regulation and/or due to the issue of the costs of regulation is hard to know. At present pupillage remains structured and prescribed, with chambers as a whole responsible for it, but the main, time consuming obligations rest with the pupil and supervisors:

> *At the end of your pupillage, a pupil has to submit to the BSB a form, well a pupillage diary in effect, which chronicles everything you've done, cross referenced to these check lists…There's one general check list that you have to get, every pupil has to do. That contains a good deal of professional ethics and professional conduct and then general things like advocacy and applications, things like that. And then, you do a specific check list depending*

> *on the type of chambers you're in, so I did the common-law check list and that contains things like drafting, counterclaims, every type of pleading basically, all the main pleadings, applications, appeals…The other thing is there's a kind of interim appraisal system that I think the BSB imposed, which pupil masters adhere to, to a greater or lesser extent I expect. So X, when he was my pupil ma*ster produced this form which he stuck to rigidly, so that was an assessment basically.
>
> (B11, civil practitioner, 18 months' call)

The very existence of these new rules marks a significant change in what pupillage must entail. Learning how to draft papers, about conduct and ethics, observing advocacy in different contexts is no longer left to chance, at the discretion of a pupil supervisor. The new rules seek to ensure that all pupils must see and learn all of these things. Compliance with the BSB rules is important as pupils rely on having complete records for their tenancy applications and in order to get a Full Practising Certificate.

> *When we apply for tenancy, we compile a folder with our advocacy feedback, our pupil masters feedback. We have three advocacy exercises in chambers, that are conducted by a senior member who sits as the judge and a more junior member who does all the organisation and also provides their feedback…We put in our folder a week in advance, there's four sections to the folder - the advocacy feedback, feedback from our pupil supervisors, the feedback from other members of chambers for whom we've worked and the fourth bit is slightly more informal, its just a photo print out of our diary to see what cases we've done over the course of our second six.*
>
> (B16, civil barrister, 18 months' call)

This requires a considerable allocation of time and effort, on the part of the pupils and supervisors alike. One purpose of these requirements is to ensure that pupils get a more complete apprenticeship, covering all aspects the BSB has deemed necessary and have a more uniform, standardised experience, whoever their pupil supervisor is:

> *It's certainly a better system than...Where I was before…depended on who your pupil master was. Here it doesn't depend on who your pupil master is, obviously it depends to a certain extent who your pupil master is, but it's run by the pupillage committee rather than by the pupil master as such. They will ensure that and should ensure that you're getting the right amount of work.*
>
> (B26, common law circuit set)

In some chambers pupils are invited to select a qualified supervisor ('*You can choose your supervisor…if they're available…they'll give us a list of supervisors that are available for that year and ask us to express a preference'* B46, common law set, 6 years' call).

Before compulsory pupillage funding, it was common practice for pupils to move chambers after six months, enabling them to sample different kinds of work and chambers, before electing what kind of practice they wished to develop. This is almost unheard of now, with funding tying a pupil to a particular set for the entire 12 months. Within that time period, most pupils spend three or four months with different supervisors in the same set and at the end of each 'stint' get formal feedback, in addition to the informal daily feedback they have already received. The managerial element of pupillage, under the new rules, is on one level administrative. However tiresome and time consuming that is, all who had completed pupillage under the new regime considered the process worthwhile, largely because the structure provides reassurance in the form of progress reports and feedback:

> *Its seen as an administrative task but its the feedback you're getting from your three months that is important.*
>
> (B40, pupil, family set)

> *With the pupil supervisor feedback its only given at the very end of your stint with them and its a relatively short form. You get a grade and then a comment (laughing) and each supervisor does it very differently. My first supervisor did it very formally, wrote the form and then gave me the opportunity to read it and then we could discuss it, whereas my second supervisor took me through the form and what his thoughts were as we were doing it.*
>
> (B16, civil practitioner, 18 months' call)

Supervisors approach their obligations under the rules in different ways, but all have to take it seriously. Most indicated that much of what they have to officially do was what they did in any event, before the new regulations came in. The 'box ticking', managerial element is acknowledged by most, but so is the recognition that the exercise is important in that it ensures that no one falls through the cracks. Heads of chambers have to 'sign off' each pupil at the end of the twelve months:

> *It's absolute box ticking. I mean I had to do it as head of chambers and the pupil comes to me and there's a great ream of stuff, have you done this, this, this and this? I said 'have you done these things?' and they say 'yes', and we tick them…I think its not the sort of thing that you would take on lightly now, whereas in the past you might have.*
>
> (B24, Head of Chambers, circuit set)

Pirie and Rogers (2013) found that whilst the BSB's requirements of pupillage 'attracted formal compliance', many were 'ignored or derided' or 'treated with contempt' (p.144-5) and that pupils felt that the checklists were 'infantile and embarrassing' (p.153). This study's findings did not reveal such hostility or derision. The passage of time may have normalised the obligations (their fieldwork was

carried out in 2007) or the sample may have produced different results, but the checklists and pupillage files are considered to be helpful and necessary by those interviewed. The regulations have succeeded in ensuring that in the first six months of pupillage pupils see a wider range of court hearings, negotiations, conferences and round-table meetings. Nonetheless, it is the informal feedback, that pre-dates guidelines and regulations, that pupils value the most:

> *In the first six months, I was doing work my supervisors' had already done, and then I did my own version of it and they had theirs to compare mine to and we had a real process of going through the work and looking at where I had done things well and where I had not done things well.*
>
> B23, specialist civil barrister, 7 years' call)

Whether or not pupil supervisors are more diligent in giving this informal feedback, as a result of the new regulations, is hard to assess. Much time and effort is spent on improving pupils' drafting and written advisory skills, with informal feedback on every piece of work they do. The impression given across the interviews was that basic compliance with the regulations meant that all pupils were getting regular feedback, often with detailed guidance:

> *It depends hugely on the supervisor. Some supervisors take it very, very seriously and you'll do a piece of work and you'll sit down with them, they'll go through, they'll have, say five points that they always like to have for each piece of work for you, to build on or work with, and I think that possibly is the most useful.*
>
> (B21, specialist civil practitioner, 3 years' call)

Whilst the relationship with the supervisor will drive the degree of detail and care devoted to making supervision valuable, even the simple practice of making sure a pupil sees the final draft of a piece of work s/he has worked on, can be very informative:

> *Chambers is really good on feedback, I say chambers, it completely falls to your supervisor and so much of your experience of pupillage is dependent on that one person. Its such an intense relationship that a lot hangs on it and I can imagine that if you have a supervisor that you don't get on with, that must make things very difficult as well. But, mine were always very good about giving feedback and what I found the most helpful actually was just being provided with their finalised piece of work that they'd send out to the solicitor or lodge with court when I'd worked on it. So if I did a first draft and then they worked on it, so I could see exactly, because that's a kind of very, they can't lie about that or try to be nice about it, you can see if they've scrapped everything that you've done or if they've used a lot of it. It was quite a concrete way of, whilst a lot of it will be stylistic and people have different*

styles and will approach things differently, if someone's used something that you've done then you know you're ok (laughing).

(B17, civil barrister, 3 years' call)

Pupillage was always dependent on the quality of supervision and it is unlikely that regulation has really changed the detailed care, attention and value of dedicated oversight. What regulation has more likely done is diminish the chances of poor, incomplete and neglectful pupil supervision.

5.7.2 Training courses during pupillage

Pupils are now obliged to undertake advocacy, practice management and forensic accounting training provided by the Inns or the circuits and many chambers also have their own internal advocacy exercises. In the past it was thought that advocacy skills could not be taught and indeed no barristers ever received such training, simply 'picking it up' by watching more senior practitioners as pupils, watching opponents and learning by trial and error. Advocacy training began informally through an initiative of the South Eastern Circuit around 20 years ago, but in the past 12 years structured training, organised by the Inns of Court College of Advocacy is now compulsory during pupillage and the first three years of practice. Advocacy training is also obligatory on the BPTC. All interviewees who had undergone training found the Inns' advocacy training of a far superior quality than that offered on the BPTC:

The advocacy one was useful. I went to a Gray's Inn one for a weekend, which was a completely different experience…but in the same way as the circuit one, they were saying 'Everything you've learned on the Bar course - completely useless. This is how you need to do it in practice.'

(B32, criminal and family practitioner, 13 years' call)

Clearly time constraints limit the usefulness of the BPTC training and of that offered in chambers:

I think we had one hour of advocacy classes a week and the rest of the time they said 'Go and use the video rooms downstairs, launch yourself'...I think pupillage really taught me, pupillage classes that we did before getting on our feet. That training, that was more helpful than on the BVC…the weekend course that we went on. But I think for most pupils, no matter what chambers they were from, that was probably the first time we had actually gone through a mock trial from start to finish and had feedback at each stage. I think that's why again it was different from doing on the BVC or even within chambers, where you just wouldn't have, you'd always have time constraints.

(B45, family practitioner, 7 years' call)

Whether or not this is just another example of the profession responding to external calls for quality control or legitimising its status as specialist advocates, all the

younger practitioners who had experienced it had positive things to say ('It was very helpful actually, extraordinarily so'). Though the experience may be daunting, whether in chambers or on a course run by the Inns, the feedback is valued: *However much you hate it at the time, when you start in the second six and you're thrown out into the big bad world, I think you're probably quite reassured that at least you've had some feedback on your advocacy'* (B21, specialist civil practitioner, 3 years' call). None interviewed resented having to undergo the training. The courses are largely run by experienced practitioners or judges, who themselves have been trained in the preferred method taught, which was developed in Australia:

> *The teaching uses what is known as the Hampel method, and the idea is someone does whatever little exercise they have to do, you know, plea in mitigation or whatever it is, and then the trainer, no matter how bad someone is, only picks up on one point at a time, the most screamingly bad point and then just demonstrates it themselves and says, 'Well you know, have you thought about trying it this way?' and then it goes back to the original person who does it again.*
>
> (B12, civil practitioner, 4 years' call)

For those that have more paper-based practices and do not consider themselves to be natural advocates, this training is very reassuring and helps to build confidence:

> *My real problem when I started was I was a terribly stilted advocate. I've always been quite formal and I thought you had to be terribly formal in court and so I would only talk in quite fully formed sentences and I'd want to have everything written down that I was going to say, word for word and I credit that course from beating that out of me and making me a much more fluid advocate and it works so much better just having a normal conversation with a judge. I think that comes to some people naturally but it didn't come to me naturally… so it was just really, really interesting and useful and so much better than the Bar Course, because the standard was much higher…There is now a consensus that advocacy can and should be taught. I still think there is a degree to which you can either do it or you can't, but it can be improved.*
>
> (B12, civil practitioner, 4 years' call)

The forensic accounting course received less glowing reports and provoked mixed reactions:

> *The first day is just looking at accounts, making sure you understand what accounts look like, taking you through them…I do have a better understanding and the second day was more useful. It was looking at how we might need to use these in our jobs and in this chambers we do things like personal injury and clinical negligence, which you may well have someone who was self employed and they then can't continue with their business.*
>
> (B21, 3 years' call, specialist civil practitioner)

> *There's also some kind of forensic accountancy course that you have to do when you are a pupil, which is incredibly dull. Essentially, how to look at*

some accounts and decide if they're dodgy and really it was a giant advert for the people running the course saying, 'You barristers are probably not up to this, its all a bit complicated, why don't you hire one of us?'

(B12, civil practitioner, 4 years' call)

5.7.3 The pupillage experience

What about the experiential aspect of pupillage? Rogers (2011; 2014), frames her study of pupillage within anthropological concepts of rites of passage and ordeals, during which pupils are deliberately 'ground down in order to be built anew' (2014, p.36) and in her latter paper, focuses on the negative feelings of pupils, induced as part of the professional socialization process integral to the Bar's 'unified consciousness and mutual interests' (2014, p.51). This study's focus is different, seeking, so far as pupillage is concerned, to explore only the effects of the new regulation. The more recently called participants did expand on their general experience of pupillage, yet it is hard to know whether any amount of regulation could ever remove the basic anxiety of not knowing if one has a job at the end of the apprenticeship year.

It's a very difficult year and its very stressful. Putting the work aside, because obviously it goes without saying the work is going to be complex and difficult and demanding, but its a limbo year and a year long interview and you're thinking the whole time 'Are they going to take me on at the end or am I going to then have a further six months' limbo at another chambers?' So its quite stressful.

(B21, specialist civil barrister, 3 years' call)

Barristers seem to make much effort to ensure that pupils are better and more equally treated, within a much more supportive and less random framework, and to that extent, the new regulations seem to work:

I think generally, most pupils would tell you, compared to other pupils at different chambers, they have a good experience here and I think its because there's lots of policies in place to ensure that frankly, that pupils are not abused, down to photocopying.

(B45, family barrister, 7 years' call)

Nonetheless, anxiety and uncertainty are common feelings, as well as the awareness of being constantly watched and assessed:

I think we are lucky in this set of chambers that everyone is very friendly and personable…I think everyone was, certainly all my supervisors made a huge effort with me…its obviously an ordeal (laughing). I think it is a fairly horrendous year. More than anything I think the psychological feeling of being consistently under a watchful eye of someone, somewhere is just horrendous really.

(B16, civil barrister, 18 months' call)

> *Just feeling like everything, feeling like its a year long interview, which it is, but you can never quite shake the feeling that you're being observed. I feel that I was given about as easy a ride as I could've been given here. I think that* (name of chambers) *do generally make it quite a painless experience. I'm not just saying that because I have to.*
>
> (B17, civil barrister, 3 years' call)

A pupil's performance during this year long 'interview' is critical. Rogers noted that during her first week of shadowing pupils during her ethnographic research, there was palpable resistance to her being there, such was their fear that her following them around might affect their prospects. She found that first six month pupils try hard to blend in, work in their supervisor's room almost invisibly, as they are encouraged to be quiet and out of the way. Pupils spend their time worrying about how they are coming across (Rogers, 2011). Interviewees in this study recalled that they were very conscious of their uncertain status during pupillage, being temporarily part of chambers without being a fully-fledged member. Pirie and Rogers (2013) note that one of the functions of pupillage is to integrate pupils into the hierarchy of chambers and of the Bar as a whole, a socialisation process that unites the profession. There are certainly unwritten and often, destabilising rules, from a pupil's point of view, as to how to behave and react in different situations. Supervisors varied in their approach on how to treat a pupil:

> *There are some members of chambers who don't treat you as if you are an equal and you feel very conscious of the fact you are a pupil, and you have to behave maybe in a certain way, but there's other members who you can get on with very well and I just kind of forget that they are my supervisors.*
>
> (B22, pupil, specialist civil set)

> *I think you should be formal but friendly formalism. I think you should remember that you are, in a sense, the boss. I don't think you should be unduly pally but no, I don't think its too bureaucratic, no. I hope I do it with quite a light touch.*
>
> (B19, pupil supervisor, mixed set, 15 years' call)

Certain chambers hold regular, informal drinks after work, to which pupils are invited Yet for some pupils these social occasions can be tricky to navigate, due to their uncertain status, requiring pupils to make complex and subtle social decisions about how to behave:

> *I liked pupillage here… it can be an anxious experience. I particularly didn't like social settings because I think it's even harder if you're at a drinks event or something like that as a pupil. You don't know how to behave. The line suddenly becomes so grey. People are allowed to make a joke at your expense, but should you do it back? Probably not! And those sorts of things,*

> *I think I found those very hard…and people expect you both to be memorable but not to stand out too much, so do what you're told but not to be a weakling, to have your own opinion.*
>
> (B23, specialist civil practitioner, 7 years' call)

> *I felt very well supported. I think there is always an underlying paranoia as a pupil, wherever you are and not because of the way that you're treated but because you do feel like you're constantly being assessed…and you don't know what the expectations are of you all the time, like even in social settings. But you know, it stopped me from getting really pissed (laughing) at parties.*
>
> (B46, family barrister, 6 years' call)

Further, changing pupil supervisors at least three times during the pupillage period requires constant adjustment and is unsettling, presenting pupils with new challenges just as they are finding their feet: '*Everyone here has been very friendly…I've had some wonderful supervisors. Very different…It takes about a month I think to get to know someone and then just as you're getting comfortable you're thrown back into the fire'* (B40, family set, pupil). Some of those interviewed took great comfort from their co-pupils, finding support from their shared experiences and their shared status, rather than competing against one another. As Pirie and Rogers (2013) note 'pupillage is a shared war story' (p.157):

> *I think I was very, very lucky. Both me and my co-pupil got on extremely well. We're very similar and we had a very similar approach to the year that was "I don't really see the point of being extremely competitive when we've been told that we are not in competition"…They were saying, subject to you being good enough, we can take you if you are good enough. Obviously you start to doubt that, but I think we just took the view that there was really no point in making it a harder year than it already was and we both got on very well…I have friends now that are doing pupillage, that don't see their co-pupil, don't necessarily have any interaction with their co-pupil and I have to say I would have found this year a lot more difficult if I hadn't had X and I think she would say the same, because its nice to have someone undergoing the same experience as you in the same set that you can talk to about the whole situation.*
>
> (B16, civil practitioner, 18 months' call)

Some chambers seem keen, therefore, to assure pupils that they are not competing against each other for a tenancy. Rather, they should focus on making sure they are themselves good enough to be taken on. Whereas in the past, pupils were pitted against each other, there being far more pupils than tenancies available, now it seems that pupils only have to prove themselves rather than compete. Although the quality of their performance remains critical, the scarcity of pupillages together with

their cost means that all pupils have a chance of a tenancy. This perhaps allows them to build a better rapport with fellow-pupils who are in the same boat:

> *I think I would have found it a very lonely difficult year if I'd been by myself, or if I hadn't got on with him (co-pupil)…X and I both had the same sort of attitude that if we're both good enough, we'll both get taken on and there was no back stabbing and no secretiveness as well I think. If we'd had a rotten day, we'd had a piece of work back from the supervisor that basically the supervisor wasn't that impressed with, we'd go for lunch and we'd have a moan about it and I think that was quite important to be able to let off steam.*
>
> (B21, 3 years' call, specialist civil practitioner)

Many commented that as pupils they also received support and encouragement from the most junior tenants, who perhaps remembered the relatively recent experience of their own pupillage all too well.

The regulation of pupillage, latterly under the BSB, but in many respects already in place under the Bar Council's auspices, has provided pupils with a more uniform and consistent year of training. Whilst more senior practitioners interviewed noted that much of what happens during pupillage happened before, they also felt that the formalised requirements have ensured that supervision is less random, more consciously attended to and that the whole process is more transparent. The experience of pupillage nonetheless remains a stressful one, no amount of regulation being able to remove the uncertainly of a pupil's position. The introduction of advocacy training was particularly valued by those interviewed. Whilst the Bar has always been committed to taking on, training and shaping pupils, this study did not find that regulation in this regard was resented or that pupils found the managerial aspects (feedback forms, checklists) to be a source of shame or indignity, referred to above and found in earlier research (Rogers, 2011; Pirie and Rogers, 2013), though is has certainly made pupillage and its supervision more onerous. A handful of interviewees indicated that fewer members of chambers were willing to take on pupils as a result of the extra training and regulatory requirements. It was only those with a strong sense of continuing the tradition of teaching new entrants, who had sufficient dedication and enough work, that were inclined to put themselves forward as supervisors. One of two participants who were struggling to maintain levels of work felt that it would be unfair for them to take on a pupil, as they would not have enough to do.

Chapter 6 - Getting Work

Once a pupil barrister completes the apprenticeship period of pupillage, as set out in the previous chapter, and gets a tenancy in chambers, the biggest challenge is to attract work at the right level and of sufficient interest and pay. A barrister's aim is to gradually build a practice of increasing complexity and challenge, acquire a good reputation across the Bar, judiciary and amongst solicitors or lay clients. This challenge is shared with her/his clerk(s), who until very recently were responsible alone for overtly persuading solicitors to brief a particular practitioner. This chapter opens with a brief account of how barristers, via their clerks, used to get work and then explores, in the light of outside reform and internal changes, how barristers are now deemed to be equally, if not more responsible for getting work and improving their practices.

From the end of the 19th till the late 20th century, the Bar ceased to receive direct instructions from clients and work came in from solicitors, via the clerks. As set out in the opening chapter on the development of the Bar, advertising for work was strictly prohibited, likened to being involved in trade and wholly unbefitting for a 'gentleman's profession'. As the primary consumers of the Bar's services, solicitors knew their market and advertising was deemed unnecessary (Abel, 1988). The relationship between barrister and solicitor, mediated by the clerk, was therefore at the heart of getting new and maintaining old sources of work (Harris and O'Malley, 2000). A common (mis)representation of the relationship, often used to explain the difference between the two branches, likened the solicitor to a GP and the barrister to a consultant, specialist in advocacy and complex advisory work. This analogy belies the 'complex social interaction surrounding the getting and keeping of work' and the delicate balance needed to keep both parties happy (Morison and Leith, 1992, p. 27). Whilst sometimes regarding their instructing solicitors as intellectually (and socially) inferior, often producing inadequate instructions in the brief, most barristers were (and remain) reluctant to undermine their sources of work. Exposing weaknesses in any advice a solicitor might have given a lay client was potentially professional death, in terms of getting more work. Instances of late or non-payment by solicitors rarely resulted in reporting or, more recently, suing them. Whereas pleasing the lay client was essential, this could be achieved by getting a good result, rather than by indulging in extensive 'bedside manners' or good customer service skills, which was left to the solicitors. Solicitors, after all, were the repeat 'client', if not the actual client and it was their repeat custom that was sought (Morison and Leith, 1992). This did not detract from the barrister's professional duties to the lay client, shared only by

her/his duty to the Court, but in terms of cultivating relationships, it was the professional client who was all important (Harris and O'Malley, 2000). Even so, some members of the profession were seen as patronising to and dismissive of solicitors, regarding them as mere conduits between them and the lay client (Morision and Leith, 1992; Harris and Piercy, 1998; Harris and O'Malley, 2000). One interviewee confessed as much:

> *When I think of the way that I treated solicitors when they first instructed me as a junior barrister, aged 24, and how I sort of looked down my nose at them…I liked them but I felt this sense of...superiority.*
>
> B15, specialist civil silk, 28 years' call

Given that barristers were not permitted to socialise with solicitors, in case this was construed as touting for work, developing an ongoing professional relationship was often a slow process and in the early years a young barrister was especially dependent on the clerk directing work her/his way and introducing different solicitors. The general view was that solicitors had their preferred chambers and practitioners and that there was no need to advertise. It was felt that if a practitioner was not very good, s/he would get little work (Zander, 1968). The process was more complex however: barristers often complained that solicitors would suddenly and inexplicably stop instructing them; work was often unevenly/unfairly distributed within chambers, with, for example, women being pushed to do certain kinds of work (family and criminal law); the clerks were largely unaccountable for their choices of brief allocation (Kennedy, 1978); a chance 'return' could set a career on a new path; solicitors would sometimes select a less able barrister, if their client manner was better than that of the other choices. Further, as practitioners became more experienced, the clerk would start repelling work deemed too junior and try diverting more complex and better paid briefs their way, so the process of getting the right kind of work would begin anew (Morison and Leith, 1992).

6.1 The new entrepreneurial barrister

Whilst solicitors remain the main source of work for the Bar and their impulses to start or stop sending work remain an enigma to many barristers, two key developments have taken place since the early 1990's. Facilitated by the dual triggers of regulation changes and the development of IT, the landscape for getting work has been transformed by:

- the lifting of the advertising ban and development of marketing at the Bar

- the introduction of Direct Access work, permitting barristers to be instructed by the lay client in appropriate cases, to advise and act for them in court without the services of a solicitor and more recently, if qualified, to conduct litigation on their behalf.

Marketing has proved challenging for many and antithetical to their traditional ways of thinking and working. O'Malley and Harris (1999) found the legal profession particularly resistant to it ('Marketing represents an abomination to legal professionals' and that 'attitudes are likely to preclude greater marketing applications in the future' (p.874). Certainly, till very recently, practitioners had no training in business or marketing matters and the older generation are culturally averse to any forms of self-promotion:

> *I don't like it…its just not in my blood to blow my own trumpet. You were brought up not doing it, weren't you? An absolute anathema*.
>
> B14, 38 years' call

Osiel (1989/90) and Burrage (1996; 2006) both note how in the 19th century, when solicitors and the new accountants were taking advantage of the commercial, trade and industrial growth that swept across Britain, the Bar actively shunned new opportunities or areas of work to preserve their status as specialist advocates, market concerns being of secondary importance. Muzio and Flood (2012) also note that entrepreneurs abounded in the solicitor profession during the same period, with lawyers taking advantage of industrial enterprise, supporting and investing in their clients' new businesses and creating legal infrastructures to accommodate their clients' interests. On the whole the Bar did not engage in such activities to the same extent. An entirely referral-based profession in the past, whereby the barrister (and often the clerk) adopted a somewhat passive role in securing work, might have been sustainable when work was plentiful. However, as set out in Chapter 1, the cuts to/withdrawal of legal aid, loss of work to solicitors or in house barristers, increased use of mediation and settlement, decline in cases being brought and the growing numbers at the Bar mean that barristers no longer have the luxury of waiting for work to come to them. If Lord Justice Briggs' proposals for online courts come to fruition, where all civil claims up to £25,000 will be dealt with in a more inquisitorial style and without the use of lawyers, a further chunk of junior work stands to be lost (Briggs, 2016).

Contrary to O'Malley and Harris' predictions (1999), there has been a dramatic shift in the attitude and actions of practitioners to advertising and promoting their services and in how they seek and maintain work levels, with a variety of marketing models being utilised. The Bar's professional jurisdictional boundaries were encroached upon when solicitors obtained audience rights in the higher courts and began doing more of the advisory, pleading and advocacy work themselves. Yet, there is evidence, in keeping with Abbott's theory of adaptation and reorganisation in such instances, that barristers have devised new ways of getting work and found new markets to penetrate to compensate for work lost as a result (Abbott, 1988). As noted in Chapter 4, chambers, as collectives, are much more market oriented, with relationship marketing models in place, where the interaction between the supplier and customer is central and their relationship more equal and collaborative (Gummesson, 1997; Woo and Leelapanyalert, 2014). Aside from management led marketing, which forms an integral part of a chambers' business plan in many sets, individual practitioners are now expected to proactively market their services and be self-motivated in getting work. The rhetoric at the Bar Conference in 2015 revealed that being flexible, diverse and able to re-invent oneself are considered essential attributes, and that barristers can no longer be just advocates, but must also be business people and entrepreneurs (Hill, 2015). This attitude was reflected in some interviews:

> *I think if you're not prepared to self-market as a barrister then you're not going to succeed…now its absolutely essential. It really, really is. There are people who are a bit more old school about it.*
>
> A4, Deputy senior clerk, circuit set

Now that market competition is of great importance, some barristers' continuing dislike of self-promotion may have less to do with the snobbish avoidance of involving themselves in trade and more to do with low levels of confidence in this area. Many have never had to actively market their services and despite the new commercialism and expectations that barristers will market themselves, BPTC students are given no training in such matters and many do not realise the need for marketing until in practice.

> *I think in a very naive manner I just assumed, especially somewhere like (name of) chambers, I just thought 'Ah, big chambers, they must just have work constantly pouring in'…but obviously as soon as you actually get thrown into this you realise that's not good enough nowadays, because there are some great chambers out there and some great individual barristers and if you want this work you have to really fight for it now.*
>
> B21, Civil barrister, 3 years' call

This research found a wide range of reactions to this entrepreneurial turn, together with a noticeable differentiation across the Bar in the degrees to which barristers have adapted and adopted new ways of getting work. Approaches can be broadly divided as follows: Online self-branding and high internet visibility, including the use of social media; marketing themselves in groups /teams; individual marketing; diversifying their practices and flexible working; actively cultivating solicitor relationships and undertaking direct access work. All, except the very new, participate in seminars to solicitors. All have web profiles and most have business cards. Thereafter, the degree to which individuals participate in marketing endeavours varies enormously across practice areas, years of call and chambers.

6.2 Online branding, high visibility and social media

All chambers have a website and each barrister has a web profile. Sets have employed designers, hired professional photographers and put together branded websites, corporate and internally consistent in look and message. If a practitioner has been involved in any notable case or received accolades from one of the directories, this is instantly transformed into a bite size branded puff:

> *I think people set store in the fact that they have been ranked or mentioned in the directories and certainly all our barristers use it…they use the icons in their CVs and in their emails. They use the quotes in their CVs and on their web profile, so it's very much something that is wanted and valued.*
>
> A2, Administrative Manager, civil set

Barristers are much more visible than before. Whereas the profession's governance and activities were once opaque and individual practitioners rarely known to people outside the legal world, now they strive for visibility and the net is flooded with competing listings and promotional material of those struggling to find a place in the market (Thompson, 2005). This new visibility permits both professional and lay clients to scrutinise a barrister's professional practice history:

> *Clients are increasingly sophisticated. You can find out anything you want about anybody by just going on a website now, so there's a very, very high degree of transparency. You have all these booklets, Chambers and the Lawyer who provide these ratings, so you can work out who's who, you can get recommendations and if you want you just, you know, a point of contact is always on the website, you can ring up a clerk and find out if its works for you*.
>
> B13, Head of commercial chambers

Some chambers have done web analytics and tailor their sites accordingly. One design agency took the view that barristers' websites are too complicated ('They say "We've looked at a lot of barristers' websites and…the big thing is they just have far too many words" B27, head of marketing committee, circuit chambers). Another senior practitioner agreed:

> *We've done a lot of research on who clicks on what, and you know what you want to develop. I mean the figures are absolutely stark. People are really disinterested in background information, they want to see the CVs of the barristers and that's probably 90% of the clicks*.
>
> B13, Head of commercial chambers

One set sent out a questionnaire to all their instructing solicitors and concluded that it was the lay clients rather than the solicitors who looked at the barristers' CVs. As one personal injury barrister commented, having a web profile can have its practical uses: '*They've been on the website and stuff, if only to find out what you look like so they can find you at Court'*, but conceded that *'at higher levels there's much more scrutiny and decision'*. The professional and lay clients have more information and thus more control when choosing which barrister to instruct. Styles vary from set to set, but often the CVs are extensive, listing prizes, awards, articles, books, part time judicial positions and any reported or high profile cases a practitioner has been involved in. Solicitors do look at these profiles, often to clarify their background and experience. The amount of years call is not always representative of experience, for example:

> *I look at their bumf. I always am obviously quite interested to see when they're called, because you can't go on age, can you, because…I remember when I first moved up here I wanted someone to do a family case. I rang X who'd been here forever and said 'Who do you use, this is the nature of the case?' and she suggested someone to me and when I looked at what his call was, he was something like two years call, but he'd been a solicitor for thirty years prior to that and in fact he's brilliant.*
>
> S1, family circuit solicitor

Raising one's professional profile can also be achieved by using social media. Many of the barristers interviewed are on LinkedIn, but few seem to actively use it other than to have an account and collect contacts. New practitioners seem much more comfortable with these networking sites, yet innovation in this regard is not always encouraged:

> *I was absolutely gobsmacked that chambers didn't have a Linkedin page so I created one while I was a pupil and I got hauled in front of (name of barrister)*

> *who was 'Why on earth have you done this?' (laughing). I certainly see her point, it was a very - it was not my place.*
>
> B12, common law set, 4 years' call

There are more ambitious LinkedIn users, who participate in international exchange chats, in which they share legal analysis or news with other lawyers or academics. Even fewer barristers use Twitter, but those that do, consider it to be an effective marketing tool and will often use it to promote a blog they might have written, comment on a case they have been involved in or link followers in to any number of articles on legal developments and news. For those that have engaged in social media, it is an easy way to write about law, whilst also raising their profile ("*Google juice. Get my name out there. People mostly very positively link my work in other places and they get interesting comments…it gives me more clout, people take more notice of me.*") Twitter is regarded as an efficient, fast and easy way to keep abreast of legal updates, network or rebut inaccurate media reports. However, many interviewees displayed a real lack of knowledge about Twitter and whether or not chambers had an account ('*I don't know. I don't think so. Do you think Twitter is a good thing for chambers?*). A few were openly hostile to the idea of it and the prospect of embracing any social media as a marketing tool seems unlikely:

> *I'm wilfully anti these kinds of things. I can't see myself doing Twitter and blogs… I'm head of the commercial team, so I am, I'm going to have a meeting funnily enough this week, in which I have a number of topics and one of them is going to be things like blogs, Twitter.*
>
> B19, civil practitioner, 15 years' call

Some spoke about it in a way that revealed that they did not understand it (*'I'm not interested in what Phillip Schofield's doing this morning and stuff like that'*), an impression that was confirmed by a Bar marketing consultant:

> *Barristers don't understand how it works…and generally I think its because they are scared because its new, its a new world…I think barristers are perhaps resistant to learning new skills outside the law… Law itself isn't enough to build a practice as a barrister any more*.

Administration of a chambers' Twitter account is sometimes done by the clerks or administrative staff, who post information fed to them by practitioners: *'Some are very good and are constantly sending press links and things which go straight onto the news page*'. Or specific barristers are chosen to be in charge: '*He does Twitter for the simple reason that he doesn't drink. There is no danger at all of inappropriate late night tweeting*.'

For sole practitioners, creating a web profile is essential. Without a clerk to mediate, this kind of barrister has to attract all her/his work unassisted, relying on word of mouth recommendations, but also taking full advantage of different kinds of social media. The more online platforms a barrister appears on, the better, not just in terms of wider exposure, but as a form of reassurance to a browsing potential customer:

> *When I've got time I blog…LinkedIn yes, I make quite a bit of use of that…it doesn't bring any business directly, but it does help me keep in touch with people. Its a good way to remind someone that you exist…I encounter someone and I connect with them via LinkedIn and that adds an extra reinforcement to the 'I gave you my card' or they gave me their card…I get lots of emails from LinkedIn because people want to connect to me… It's another way for people to have heard about me and generally if people have heard from several different ways, they're more comfortable with it. The blogs, I've had a couple of bits of business out of them.*
>
> B9, specialist sole practitioner, 8 years' call

Blogging practitioners feel their time is better spent writing than giving seminars ('*You're better off if you've written something that's online because then people can find it and its a wider audience and it stays there forever*.') Despite a large number of criminal barristers using Twitter to follow developments in the highly contested legal aid consultation, few seem interested in using it regularly as a marketing tool.

The development of acquiring and, in varying degrees, developing an online presence, marks a significant new development at the Bar. A generation ago, aside from the occasional criminal practitioner, most barristers were unseen, unknown figures, mere names on chambers lists in the perfunctory directories and in the doorways of their buildings and culturally represented by the likes of *Rumpole*. A relaxation of the rules banning advertising coincided with the internet boom and barristers are now highly visible professionals, whom members of the public, professional clients or other barristers can look up, see photographs of and whose academic and work history is available at a click of a button. Many have individual entries and appraisals in the Bar directories. Shaped and guided by professional web designers, photographers and marketing consultants, barristers have engaged in sophisticated forms of professional identity and self-presentation work.

6.3 Marketing in groups/teams

All barristers interviewed were members of one or more practice teams or groups within chambers. Together with the chambers marketing committee, these specialist teams prepare events, such as seminars, lectures or conferences on specific areas

of law, targeted at specific solicitors who already do, or might in the future, instruct them. Accredited for CPD, the seminars attract solicitors who come to get their points, listen and have a drink. Some are breakfast seminars, but most take place after work. They do not necessarily take place in chambers. Law firms will invite specific barristers, perhaps fresh out of an interesting case, to go in-house and present to the solicitors there. Seminars vary in style and form, but can comprise a small group of practitioners, from mixed levels of call, presenting on different aspects of one topic or on different topics ('*Three of us and then, for the first time ever, we've got an external speaker, a medic, talking about peripheral nerve injuries*'). Given that solicitors now rarely sit behind barristers at court hearings, many junior barristers remarked that if they did not have seminars, they might not actually meet any solicitors. Whether these seminars achieve their intended purpose or bringing in new work or cementing relationships is hard to gauge. Family lawyers expressed different opinions:

> *If somebody speaks well and they're knowledgeable on their subject, obviously its a good starting point…but none of that really helps as to how good somebody is in court or how prepped they are on the day.*
> S1, Family law solicitor, 20 years' qualified

> *We have a constant, constant continuing education programme, so in any one month, we will have three or four junior members of the Bar coming to talk…it will definitely influence us.*
> S2, Family law solicitor, 24 years' qualified

> *I've done market research for a couple of different chambers and when I say 'How do you instruct new barristers?'…and its always, well predominantly, 'I have to see them on their feet, and its often when they're on the other side in court.*
> A7, Bar marketing consultant

> *Do you know what the solicitors tell me? They tell me that the marketing that works for them is the one to one relationships.*
> B39, Family barrister, 24 years' call

Some barristers take part rather begrudgingly, unconvinced that it does their practices any good at all and resent the amount of time is takes to prepare these presentations: '*I don't think I've ever had a piece of work come, a new piece of work, come as a result of a talk that I've given to a firm of solicitors. I really don't think so and it's perfectly possible that solicitors have actually stopped instructing me*' (B15, specialist civil silk). Others find the social interaction in a marketing context awkward: '*I attend a lot of marketing events when clients come here or we go to them. If I'm completely honest, I hate it. I hate it. I hate the idea of selling myself. I hate the small*

talk' (B17, civil practitioner, 3 years' call).

Grouping together into practice teams is a further development of the last 20 years. It marks a shift from the totally individual approach to getting work to a group effort, whereby barristers market themselves as individual practitioners *within* specialist groups, offering expert advice at all levels of seniority and/or in different sub specialist areas. Barristers will now group together and target new work as a team. It is the most enterprising that will innovate in this way:

> *…principally as a result of the individual activities of about four or five able and ambitious people…You have to have people, individuals who bring the work in, that remains the case. You can develop, and in these chambers we have developed, some sport law work…about five or six people do a lot of sport law work and that has involved active marketing.*
>
> B49, Specialist civil/commercial silk, 29 years' call

Many practice teams produce regular newsletters or 'alerters', which they send out to solicitors in hard or e-copy or display in the waiting areas of chambers. These cover new developments in their area of specialism: '*you're normally asked to digest a case and put some comment*' or '*It's a review of recent cases over the last month and also legislation and also just general developments in PI'*. Whilst some claim these cement relationships ('*We do get, quite regularly, quite good feedback…most people who receive them are people who instruct chambers anyway'*), others concede that given that so many chambers produce them, it is likely that many go unread, but remain important (*Its not really the fact that they read them, its the fact that you are sending them out, because you're reminding them that 'we are here and we know what we're talking about'*). Chambers also host annual larger parties or arrange social outings, to which they invite solicitors.

6.4 Individual initiatives: specialism, new practice areas and diversification

Although many chambers have one or more professional marketing managers working full-time, much of their time is taken up preparing Directory entries and seminars or other marketing events. Practitioners are expected to motivate themselves to proactively market themselves as individuals:

> *Our marketing department probably isn't the most sort of proactive maybe. I don't think we get very many suggestions to do things. It tends to be more me looking at my website page, thinking 'Oh, I might need to update that.*
>
> B21, specialist civil set, 3 years' call

Barristers can no longer rely on many types of work that used to be considered staple. As set out in Chapter 1, there are a number of reasons for this: solicitors are doing it themselves or instructing in house counsel; cuts to or the withdrawal of legal aid having reduced the number of cases in those areas being instigated or using counsel; the increase in settlement as a way of case resolution. Whatever the reason, many barristers have already or seek to branch out into new areas of work or become known for a specific specialism. Whereas, 25 years ago, a barrister might have said that s/he was a specialist family law practitioner, that would now be considered far too generalist:

> *What you tend to notice is that different family barristers have different recognised areas of expertise. For example,* (Name)*, in* (chambers) *- he has developed an absolute expertise in, for example, international relocation of children. He's a person to use there.* (Name)*, up at* (chambers)*, again I would go to him, for example, if there were Schedule 1 applications - Financial provision for a child born out of marriage…I think most senior lawyers in London kind of know the strengths and weaknesses of members of the Bar in terms of what they're very good at.*
>
> S2, family law solicitor, 24 years' call

One interviewee, for example, who did public family law work, specialised in non-accidental injuries to children in care proceedings, with a particular expertise in salt poisoning. If one already had a general area of specialism, zoning in on one niche part might be feasible. For more general common law practitioners however, re-inventing themselves as experts in one area can be hard. Criminal law barristers, largely dependent on legal aid work, seek, with varying degrees of success, to branch out into totally new areas in order to survive. For them, private prosecution or regulatory or any privately paid work, are good sources of income ('*Whereas work at the criminal bar has gone down, regulatory and compliance issues for solicitors firms and accountants has gone right up, so they need more people'*). A number of medical negligence practitioners noted that they now faced increased competition from criminal law barristers, who had started appearing in the Nursing and Midwifery Council or the General Medical Council Tribunals, fora traditionally the preserve of specialist civil practitioners. One family and criminal law barrister found educational appeals work to be a new source of work:

> *Its quite seasonal, that's the problem. As soon as the secondary school places come out you get a flood of parents enquiring… In this case there are 24 other parents in the same situation, so I've had three of them in together, written an advice…we advertised in the Primary Times school magazine saying we're cheaper than solicitors (laughs).*
>
> B32, family and criminal circuit barrister, 13 years' call

Other barristers have developed expertise in new, niche areas, which has given rise of new specialisms, such as costs, sports or financial services law. Moving into these new areas is not easy, with many generalists or practitioners of legally aided work seeking to supplement their workload and competition is steep, requiring an entrepreneurial spirit, marketing skills and confidence, which they may not have:

> *Some think its, and this always amazes me, think its beneath a barrister to try and go and get their own work…and you just think we're not in the eighteenth century anymore and others are scared. Others are scared of trying to move into new areas. They've got no confidence in themselves that they'll be able to do it.*
>
> B33, criminal circuit barrister, 6 years' call

Some practitioners readily admit that self-promotion does not come easily to them: '*I'm just not really interested, no. I can't really explain, I'm a bit like (name of barrister) - he's considerably awkward'* (B19, civil barrister, 15 years' call). Barristers have worked within a strictly controlled, sheltered framework for so long that many do not have the skills, experience or commercial imagination to take advantage of the sudden freedom to innovate. One criminal silk noted:

> *The real thing actually is that most criminal practitioners have certainly not had another job outside being a criminal barrister, but the vast majority have only ever been in one set. They don't even know what another set looks like. They don't have another way of understanding how things might operate. One of the talks I give quite regularly is 'How do you develop an international practice?' and you'd be amazed. The criminal Bar don't think they've got any international part in their work at all. I would say 90% of criminal cases, probably a bit less than that, 70%, have got an international element. You take a drug importation, money laundering…*
>
> B37, Criminal silk, 30 years' call

Newer members of the profession are generally more adventurous and blog tactically in the hope of developing new work:

> *I wouldn't blog about personal injury for example, because although I do a certain amount of it, I don't really want to. I want to do more commercial and property stuff, so I try and blog about anything that's of interest in those areas in the hope that they would lead to work.*
>
> B11, civil barrister, 18 months' call

A recent trend is for younger members of chambers to spend periods of up to a year on secondment in law firms. The perks are considerable – hired on a fixed and regular salary to work in house, they return to chambers at the end of the period with

solid ties with the firm in question. Solicitors prefer using barristers to locum solicitors from agencies, whom they think produce low quality work. Barristers are also seconded out to the CPS or other in house positions, giving them a chance to develop new skills in new areas of law:

> *I did a secondment to the Nurse and Midwifery Council…for four months…in house, and presented their cases and that gave you the avenue to then move into other areas and then I started defending there.*
>
> B33, Criminal circuit barrister , 6 years' call

Members of chambers see this as potentially beneficial to everyone in the set as more work is likely to follow once the secondment is over, perhaps spilling over to other practitioners. Some barristers have acquired hybrid status, whereby they work a contracted period of hours for a firm on a fixed retainer, whilst continuing with their own practices in chambers the rest of the time. The number of barristers working in this dual capacity in 2014 was 211 (BSB website). Some are slightly pressurized into doing so. If much of their work comes from one source (solicitor), there have been cases where they are offered a fixed hours/fixed pay contract or the prospect of the solicitor hiring someone else to do it. For others, the prospect of guaranteed work/income provides security when in certain practice areas there is none. A few of those interviewed intended to do this, but none had actually done it at the time of the fieldwork. One imagined the arrangements thus:

> *I'm like a consultant, so he will, instead of my hourly rate - now at the moment the clerks aim for £250. If I say I'll do it for £175, he'll bill his clients about £230 or something and instead of giving it to the clerks, he'll keep it and I'll get £175. I'll have to give a bit of it to my clerks, probably because it might be imprudent not to.*
>
> B5, civil circuit practitioner, 28 years' call

Although he will get less per hour and will give his clerk some of his fee, this practitioner envisages getting a guaranteed amount of work each month. The solicitor meanwhile can charge the client less and make a profit.

6.5 Relationship building

Of all the individual marketing endeavours, cultivating relationships with solicitors was considered to be by far the most important and effective, and the one most interviewees felt comfortable with:

> *You know its basically all about cementing your solicitor relationships and you do that by getting on with them personally and trying to convince them that you are expert in your field, and that's the most difficult thing.*
>
> B1, civil barrister, 24 years' call

After the advertising ban was lifted, barristers slowly started to realise that they no longer needed to be so reliant on the clerks:

> *My main marketing strategy is to be nice to my solicitors and ring them up a lot…I used to leave it to the clerks, rather sort of respectfully. I didn't really think about particularly developing a relationship with solicitors and now I do have relationships with solicitors and clerks really don't come in to it so much*.
>
> B5, civil circuit barrister, 28 years' call

Practitioners are much more solicitous and considerate to what used to be regarded as the 'lower' branch and relations are much more respectful and mutual ('*Its less snotty, its much more respectful, barristers are making themselves much, much, much more available in terms of mobiles…it's more collaborative, much more explanation…so its changed a lot*' S2, family law solicitor, 24 years' experience). Solicitors shop around for the Bar's services much more overtly than before. A potential new solicitor might ask for a free trial or a 'beauty pageant', as one practitioner called it, whereby they phone up, express an interest and request a free introductory chat, come into Chambers and assess the barrister for half an hour. Barristers are much more accommodating in this regard than they might have once been. Whereas socialising with solicitors was till the early 1990s prohibited, now it forms a central part of marketing. There is:

> *…lots of schmoozing events, drinks parties and things like that. I take old chum solicitors out to lunch and just remind them I'm there and still firing and they find out what I'm up to these days and that sort of thing…I've had to cultivate the younger ones a bit and certainly keep the older ones warm, so you do have to put yourself about quite a bit more than you used to…I don't like it. I don't mind having lunch with the ones I know, who I've become friendly with.*
>
> B14, commercial barrister, 41 years' call

Practitioners have to instigate this contact: *'You have to be proactive, you have to go and chat. You have to go and spend a lot of time talking to solicitors who have that sort of work.'* (B44, criminal silk) and some are extremely strategic and tactical in approach:

> *If I had to target, its the 'freshies', the ones that are just out of training*

contracts. What I offer them is 'You can call me any time in respect of any case. If you don't feel confident going to your supervisor, come to me.
(B46, family practitioner, 6 years' call)

Whether they are aware of it or not, barristers are deploying key aspects of the relationship marketing and market oriented models to attract work, evidenced by the much more client centred approach, more equal power balance in their relationships with them and by their willingness to be flexible, cooperative, collaborative and available. Some display innovative and expansive ambitions, diversifying and renewing their practices to compensate for work lost elsewhere. Abbott talks of jurisdictional shifts, when competing professions lose or gain control over certain areas of work. This results in professional development, where new knowledge and areas of work are created as a result (Abbott, 1988). There is much evidence in support of this, with barristers compensating for the loss of their advocacy monopoly and loss of work more generally to solicitors, by creating new work areas or straying into areas of practice normally done by other types of chambers. The difference within and across chambers in how vigorously or successfully efforts to get work are explored and executed is dependent on the attitude of the individual barrister and of the most influential members of chambers, who as a group, can effect change.

6.6 Attitudes to marketing

Some chambers and individuals are clearly ahead of the curve when it comes to proactively marketing their services, but many are not and struggle to know what to do, how to adapt and grapple with the new possibilities, without really developing them: '*If you look at (name) or (name) Chambers, they are modern, forward thinking, progressive and they are already blogging and tweeting. However, most chambers are not.*' (B1, mixed set). This study found very contrasting approaches to getting work and marketing, ranging from members of chambers '*writing articles, getting on the radio, getting on TV. We had media training a few years ago.'* (B48, commercial set) to interviewees, who were not even sure if their set had a marketing committee. One barrister found himself in charge of chambers marketing by default because no one else wanted to do it. Finding volunteers for these tasks is not always easy. After all, none of these administrative posts offer remuneration, so chambers very much rely on the good will and interest of practitioners to take on these extra responsibilities. All the clerks and staff were positive about marketing, insistent that practitioners should make active efforts to self-promote, but many of the barristers interviewed were ambivalent. Regarding marketing as something outside the normal

scope of work and time consuming, echoes earlier findings that legal professionals are resistant to it (Vickerstaff, 2000; Harris, 2000). But attitudes are more complex and contradictory than this, exhibiting a mix of dismissiveness of and defensiveness about marketing and a lack of confidence about how to do it, whilst at the same time conceding it was necessary and effective:

> *That's a change over my time, its all marketing now, its really quite boring… I have to say there are people who are very good at marketing and they've got good practices. I think it is important and I'm terrible at it, I've never done it. I've always thought you can just rely upon doing work quite well.*
>
> B19, civil practitioner, 15 years' call

A handful of practitioners insisted that they carried out no marketing at all, but when questioned more specifically revealed that they participated in the development of their web profiles, prepared directory entries, obtained new work as a result of a team effort, spoke in public, gave seminars. One specialist civil QC claimed to have a purely instrumental view of it ('*I've given talks. It's the most convenient way to do 10 hours of CPD, so I speak at conferences - once or twice a year. I get some odd little, quite good little cases out of that.')* There are many sceptics:

> *I'm open to it as a concept but I sometimes wonder, do we get value for money and how do you demonstrate that this works or is it just slightly emperor's new clothes? You know, everyone seems to say you have to do this but are you wasting money?*
>
> B24, Head of common law circuit set

And finally, there are those that are utterly convinced that marketing does not bring in work and are uncomfortable with the thought that it might:

> *When I worked on the solicitor side of things, I wasn't at all influenced by blurb…I don't think there is anything wrong with self advertising, but I don't think it works. I'm in a number of books, directories, I'm in two or three of those but I've not had any work from it, the top 500 and whatever else. I'd know straight away if someone new instructed me from that. I'd be very suspect of a person who briefed me because I gave him a good time at a rugby match. That wouldn't be a very nice way. I don't know. I don't do it.*
>
> B4, barrister 24 years' call, former solicitor's clerk

For many of the more senior practitioners, the only way to market themselves is by performing well in court in front of other lawyers, often on the other side. Technical excellence is what matters in terms of getting work, a view that is supported by

research in Scotland and New Zealand (Palihawadana and Barnes, 2004; Thomas et al, 2001).

> *I'm quite old fashioned. I take the view that if you're any good, the solicitors will ask for you and you don't really need to do a lot of this stuff, but you prove your, you market yourself in court as it were.*
>
> B7, criminal barrister, 29 years' call

> *I'm extremely old fashioned. I think marketing is grossly overrated at silk level, because the only way to keep, to build and keep a practice as a silk is to get repeat work and to get work from people you've been against. You do it by impressing people.*
>
> B49, specialist civil silk, 29 years' call

The assertion that this stance is old fashioned is indicative of just how central marketing has become at the Bar, as a concept if not a full-blown reality. People feel that they should be doing it, even if they do not really believe it works, because that is what they are being told by the marketing, management and business staff in chambers, by the Bar Council and the specialist Bar Associations and at the annual Bar conference. Nonetheless, a recommendation remains, for many, the only important way of getting new work and it might not necessarily come from the solicitor client:

> *I don't think there is evidence to say that you get new work. I think you get new work through all manner of different means and the most likely way is by some kind of recommendation…I get work from people who are serving prison sentences at Bullingdon because they speak to their cellmate.*
>
> (B18, criminal practitioner, 21 years' call)

Senior practitioners displayed more reluctance to self promote and the general view was that '*the bottom end of chambers is in some ways the most dynamic bit of it in terms of chambers strategy and that sort of thing. We all tend to be quite turned on about marketing* (B12, civil barrister, 4 years' call). This may be because many older practitioners have established practices and enough work. However, despite protestations that they did not like it, that it took up too much time ('*you should be a half day a week marketing. That's the aim'*) and were hopeless at it, many of the more senior barristers nonetheless (begrudgingly) engaged in marketing. Some actively embraced it, whilst conceding what hard work it was:

> *I would say I work very, very hard at marketing…I go to conferences, I speak on panels, I make sure I'm going out to breakfast or lunch with solicitors…I'm very proactive but I'm very unusual…I wrote the book*

> *because I thought there was a hole in the market and I thought it was quite an interesting subject… But to be honest with you, it's all a serious, serious slog and its very, very time consuming… the book's been an amazing marketing tool. I have actually got one case I know directly from the book, because I saw the email that preceded me getting the instruction*.
>
> B37, criminal silk, 30 years' call

Only one barrister spoke of marketing to other members of the Bar, '…*which I've always said is as important as marketing to solicitors, you need your peers to know that you are in the game and that you are good. That's critical. People forget that*.' It is impossible to generalise why some are better or more interested in marketing than others, but factors that tend to influence this are: whether or not they have enough work, though few are complacent; how senior they are; what their views about marketing are; how confident and entrepreneurial they are; whether or not they belong to a specialist set or specialist team within it; how innovative those within their team are and whether or not chambers as a whole provide marketing support, guidance and innovation.

6.7 Direct access

In 1990 Direct Professional Access (later known as Licensed Access) was introduced, permitting professionals, such as accountants, to instruct the Bar directly, without going via solicitors. In 2004 a truly public access scheme was reintroduced, for the first time in over a century, and has slowly expanded to cover almost all kinds of work (Flood and Whyte, 2008). Since January 2014, barristers, if they complete the appropriate training, are now allowed to conduct litigation, removing the last significant difference between them and solicitors. Despite these developments, the profession's own promotional rhetoric and recent Direct Access Portal set up by the Bar Council, solicitor referrals remain the main source of work for the Bar. In a 2013 survey of about 2,700 barristers, 77% of them did no direct access work. Of those that did, 9% said that it accounted for less than 5% of their gross fees and the remaining 14% reported that it reflected over 5%. Most direct access cases related to family and civil law work and were done, in the main, by younger practitioners (Bar Council, 2014).

This study supports these findings. Nearly half of those interviewed had done no such cases. Some had not properly thought about it ('*Its probably something I ought to look at',* B36, chancery barrister). Most of the remainder had done very few. One administrator revealed it amounted to 2.5% of the chamber's annual turnover. Only

the sole practitioner participant relied heavily on public access, but his 'niche' practice was very specialist and he had worked in that sector before coming to the Bar and had many contacts. Further most direct instructions come from individuals. Despite the somewhat slow levels of engagement with direct access work, many barristers see it as a potential area of significant growth, supporting Flood and Whyte's findings (2008). In appropriate cases, barristers can provide much cheaper services than solicitors, and the liberalizing rules under the LSA 2007 permit them to team up with administrative, paralegal, other legal professional or accounting players and to get the necessary support they might need when a direct access client brings a case to them. This study discovered different attitudes to direct access work. On the one hand, some cases were deemed unsuitable; direct, unmediated contact with clients was often perceived as problematic; clerks and practitioners worried that solicitors, their main source of work, would feel threatened by direct access work and stop instructing barristers that appeared to be 'stealing' work from them and, finally, for many direct access meant they were becoming like solicitors, which they did not want. On the other hand, large corporations and foreign governments have started going to the Bar directly, because their services are considered expert and their fees very competitive. An ongoing challenge for the Bar is finding effective ways of letting the public know that it can instruct a barrister directly, without going via a solicitor.

6.7.1 Advantages

One of the main advantages of direct access, from a client's point of view, is that it is much cheaper to instruct a barrister than a solicitor: '*That is what our USP is for direct access, definitely…they could borrow 3, 4 or £5,000 and then they can have their case conducted, whereas if they're using a solicitor it's going to cost them £25,000. The saving is huge*' (B39, family finance barrister, 24 years' call). This is the case across practice areas:

> *We ought to do direct access, you just ought to do it. I mean, there is no reason not to do it…Relative to the bill that would be put in by Freshfields for preliminary appraisal, you know, £40,000, the Bar is much cheaper. The Bar is good value.*
>
> B49, specialist civil silk, 29 years' call

> *We're much, much cheaper. I've done cases where…all the legal things I drafted - witness statements, all the pleadings I did. I did the advices, everything…We had a trial and as I recall, I think my fees were in total about £15,000 - £20,000. His (*the solicitor's*) were in excess of £60,000.*
>
> B26, civil barrister, 25 years' call

Solicitor's overheads and profit margins are such that their fees are significantly higher and in all areas of work, the savings can be enormous. More clients are becoming aware of this and have started instructing the Bar directly:

> *Everyone was worried in the beginning of the '90s that the likes of Herbert Smith would come in, set up advocacy units and take away our business. In fact, the reverse happened. Their clients were fed up with the fact that they were trying to have hoisted upon them in house advocates who knew nothing, had no experience and were just there to generate fees for the firm… the Bar is still half the price or less of comparable solicitors, who have such high overheads. So your marketing position is what I used to call, Brain on a Stick economics.*
>
> B13, commercial silk

For some, the direct contact with the client and lack of commercial experience makes them awkward about charging and reluctant to bill for the full amount of work done: '*I'm very bad, I don't know how you are supposed to deal with it. I suppose one view is you ruthlessly charge for every minute you spend on it, but I don't.'* (B5, civil circuit practitioner, 28 years' call). Others think that some clients regard direct access as some kind of pro bono service or because of lack of funds, think it will be a cheap deal ('*People think that direct access is virtually free, that's one of the big problems with it. 'Do I have to pay for it?'* (B19, civil work) or *'A lot of the direct access clients we get don't want to pay very much'* (B43, family law). One barrister felt that she was more likely than a solicitor to tell the lay clients what she thought the outcome of their case would be, which would not just keep costs down as decisions could be made earlier about settlement, but is also reassuring for the client:

> *I've had two direct access clients…and both of them said to me that what they don't get from the solicitor is the answer. So they've used a solicitor and they've found that what they get is a lot of preparatory stuff - how much money have you got, give me all the bank statements and lets have a look at it and what they can't get for them, is 'This is what is likely to happen' and so I've sat with the same client who has already spent £8,000 on a solicitor and I've said 'This is a schedule and this is what I think is going to happen' and they came to me specifically for that reason.*
>
> B39, family barrister, finance disputes, 24 years' call

6.7.2 Unsuitability

Not all cases are suitable for direct access, even if they satisfy the regulatory criteria. A planning appeal for a surveyor, tax or intellectual property advice and some aspects of private family law (finance) advice are examples of cases where it was deemed wholly suitable (*Finance is probably the best area for it…I think probably with finance its easier, because you can give them a list and say 'These are the*

documents we need, bring them all in and I will sort out the rest of it for you.') One public family lawyer felt direct access was suitable for grandparents or other relatives wishing to intervene in care proceedings, and found that solicitors or local authorities often recommended it to such people. The nature of the case and the type of client often determines whether or not the arrangement will work. Although barristers can help a client draft a letter, direct access does not permit them to conduct litigation, unless, since January 2014, they are specifically qualified, so the client will have to instigate or respond to proceedings, write the letters and so forth, as well as do much of the preparation and document collation, tasks usually done by a solicitor. Many clients find it stressful and confusing and demand a lot of support, requiring barristers to engage in a much closer relationship with the client than they are used to and to spend much more time on a case than they might have. For the only sole practitioner interviewed, direct access was his main method of getting work and for him it was the repeat custom that mattered:

> *I want someone who will ring me up every month or every six months, but who will keep on sending me their work. And I have a number of clients now, for whom I am the go to person…almost identical to being a solicitor*.
>
> B9, sole specialist civil practitioner, 8 years' call

However, as a sole practitioner, without the support of chambers, he actively turned away court work, so in a sense his role was more akin to the old solicitor model: '*I rebuff anyone who asks me to help them with litigation. A lot of barristers do direct access advocacy… I don't feel, me on my own, that I can cope with the stresses, strains.'* Ironically, most barristers, who had chambers administrative support, felt that they didn't have the ability to take on direct access clients in cases that went beyond advocacy or advice. They could not envisage undertaking witness statements or document preparation of any substance:

> *One of the problems for public access is …you wouldn't have the resources to be able to do it as an individual member of a set of chambers… For my practice I can't see the advantages of it particularly, because I work for claimants who suffer personal injuries either in the clinical negligence field or otherwise and I wouldn't want necessarily to represent them without the filter of a solicitor, because I haven't got the support staff, I don't want to start taking witness statements, I don't want to, you know I just really don't want to go there.*
>
> B15, specialist silk, 28 years' call

There was also a sense that existing structures in some areas of work did not lend themselves to direct access instruction. Much defence personal injury work, for example, comes via the Medical Defence Union, which has its own in house solicitors. Other organisations, such as the police force, also use in house lawyers, and they themselves often instruct solicitors first. A client is unlikely to bypass these in house legal facilities and go straight to a barrister for advice. In criminal defence work, especially in cases of serious crimes, the framework discourages direct access:

> *…They're normally in prison for a start and its simply doesn't work. They will be seen by solicitors when they are first arrested. They will see them in the police station, normally will keep the same solicitors, so they will not come a time when they'll think 'Oh, I know, I'll go to a barrister direct'.*
>
> B3, criminal circuit barrister, 33 years' call

For those barristers that do a lot of court work, their daily schedules do not always allow them to be available for the client:

> *I have done two (direct access) family cases. They were both horrific …constantly on the phone and demanding answers…residence, both of them and people would phone up at 10am, when you'd just gone to court and then would be harassing the clerks throughout the day, 'Well she hasn't got back to me'. 'No, she's in a trial' (laughing)*
>
> B32, family and criminal law circuit barrister, 13 years' call

Before the cuts to legal aid, most solicitors routinely instructed counsel for precisely this reason. Even if they had wished to do their own advocacy work, solicitors needed to be available for clients and spending all day in court kept them away from their offices too long and was not good for business:

> *You've got to bear in mind that at any point during the day we might end up having a couple of hours completely unsolicited with one of our clients. You know, its not in the diary. If you were in the middle of a trial you couldn't do that.*
>
> S1, family law solicitor, 22 years in practice

Direct access works well, therefore, where the structural framework does not direct a potential client to an in-house legal facility first; where the client is not in prison; where a self contained piece of advice is sought; where extensive administration or preparation is not required; where the client is aware that the barrister might not be available for a whole working day, when in court. Any or all of the above are examples of what can work well within the existing chambers' model. However, once the work includes what would traditionally have been seen as solicitors' work,

adjustments have to be made in terms of securing administrative, legal or other expert support. Some chambers have created alliances with paralegals or small solicitor firms, to whom they delegate some of the document or evidence gathering work. One commercial chambers was directly instructed by large corporations and a foreign government – huge clients who came to them as their first port of call. In those circumstances, the barristers decide what support is required, whether from solicitors or other experts and within the agreed budget they divide up the work – a reversal of the traditional arrangement. For the client this is much cheaper than having a law firm distributing the work.

In the case of the sole practitioner, the barrister ceased to do advocacy work and took on a role more akin to that of a solicitor precisely because he did not have sufficient support to do both. The only participant who operated an ABS, had also given up court advocacy work, so as to be available for the clients full time. This raises one of the critical points about direct access work – that of client contact and whether barristers want or have the time to provide the kind of complete service some direct access work demands, which solicitors have been doing for years.

6.7.3 Client contact: '*I don't want to be a solicitor'*

In the context of direct access, many interviewees referred to solicitors as 'buffers' – shields, cushions, barriers, safeguards or defences from the lay clients: '*you don't have the protection of a solicitor'* or '*I quite like having that nice insulating blanket of a solicitor between me and the client*'. What they are being buffered from depends: for many, their job is legal problem solving, cerebral, working alone and advocacy. For those who do chancery work, for example, even advocacy will not feature highly, so interpersonal communication skills may not be particularly good or necessary: *'We're not used to explaining things to clients or dealing with clients without the solicitor mediating and so it does require different skills.'* (B1, civil practitioner) Many barristers do not like the idea of close client contact. Even newly qualified practitioners choose to enter this branch of the profession on the assumption that client contact will be limited.

> *I don't mind it in principle. I have to say, obviously I went into this profession - I don't have any desire to be in a client faced thing, so I wouldn't say that I don't like contact with clients, but I would rather have less of it, I think, than more.*
>
> B17, civil practitioner, 3 years' call

Few barristers interviewed intended to qualify to conduct litigation, stating that they would have become solicitors had they wanted to do that kind of work: '*Even this direct access lite is enough client contact'*. One argument for retaining some distance from the lay client is that the barrister maintains independence of thought and judgment and can give better, dispassionate advice without feeling the need to give them the advice they necessarily want to hear. In fact solicitors often rely on barristers to deliver more difficult messages to clients. Further, if the case does not go the way a solicitor had hoped or predicted, s/he can blame the barrister, whilst preserving good client trust and satisfaction with their services *(*Morison and Leith, 1992). Others like having solicitors as 'sounding boards' with whom they can discuss aspects of the case. Solicitors also 'buffer' the Bar from the more difficult clients or vexatious litigants. Having professional direct access clients or in house HR send work are considered ideal ways to conduct cases 'directly': '*not necessarily professional clients, but sort of, switched on, educated clients.'* (B26, civil barrister). Many of those interviewed commented that many direct access clients were 'nutters':

> *You do get quite a few nutters, which I think having solicitors in between filters out. One suddenly understands why its such a nice idea having solicitors in between* (laughing).
>
> B5, civil circuit barrister, 28 years' call

> *A lot of its absolutely time wasting, you know. People with a plastic bag full of papers and they basically want you to take over as solicitor for six months. I mean I had one horror story with a man, I thought I was just doing this one application…then it just got, you know, besieging me with stuff even though I'd been retained to do one thing*
>
> B19, civil barrister, 15 years' call

> *I'm certainly keen to try and avoid taking on sort of litigants in person, who are loonies basically, of whom there are plenty about.*
>
> B11, civil barrister,18 months' call

However, barristers can turn such work away:

> *I've had maybe 30 a year. 15 are clearly lunatics, so I say 'I'm sorry, I can't help you'...Once you've got rid of the lunatics, its absolutely fine.*
>
> B49, specialist silk, 29 years' call

> *I never took them… most of these cases, they're, you know, fruitcakes.*
>
> B6, personal injury barrister, 22 years' call

> *We do get quite a lot of direct access, potential instructions that come in that is turned away.*
>
> B17, civil barrister, 3 years' call

The Code of Conduct permits barristers operating under Direct Access to break with the long established cab rank principle, whereby a barrister is obliged to accept instructions, irrespective of the nature of the case or the party. For most this is practically a new skill: '*You also need to develop the ability, which of course you never had to do before, of saying no to people, and say 'No, I'm not going to do this, I don't want this case, go away*.' (B24, head of circuit chambers). Whether or not direct access attracts a certain kind of litigant for whom no firm of solicitors will act is hard to assess, but the high number of similar responses seems to support the idea that some direct access clients are especially difficult. However, not all agreed:

> *They're not all nutters, that's not correct…my experience of direct access so far has been surprisingly, that in fact, that they've been rational, intelligent. They actually know their case quite well.*
>
> B15, personal injury silk, 28 years' call

Whoever the client is, all agreed that doing public or direct access work is much more demanding and intensive. Another way in which solicitors act as buffers, is in terms of making sure that all aspects of the case are in order. Between barrister and solicitor in a conventional instruction arrangement, there is a great deal of trust between the two lawyers and although both are likely to keep attendance notes of telephone or face to face discussions, the professionals know how it works, speak the same language and misunderstandings are less likely to arise than when dealing with a lay client:

> *You've got to keep files and make attendance notes for every discussion… ethically it is very awkward and I see how hard solicitors, that's where some of their bills come from…you've got to have it all in apple pie order*
>
> B14, commercial barrister, 41 years' call

One practitioner felt that the high level of complaints from direct access clients had made him reluctant to do much work of that nature:

> *You have to be more careful. I'm also on the Professional Conduct committee of the Bar Standards Board. I sit on that committee and we investigate, for want of a better word, or at least we receive complaints of misconduct, which we analyse and either dismiss or recommend should go before a disciplinary tribunal… and there are certain areas of work that tend to generate complaints of professional misconduct and Direct Access is one of them…My experience of sitting on that committee means that I'm very wary about dealing with public access cases, direct access cases.*
>
> B1, civil barrister, 25 years' call

6.7.4 Solicitors' and Direct Access

One repeatedly expressed fear is that by doing direct access work, a barrister will upset her/his existing instructing solicitors by appearing to take work away from them. As Flood and Whyte (2008) found, there was a notion that it would lead to a reduction of work from solicitors, as barristers would be biting the hand that fed them:

> *It is a double-edged thing as I said earlier, because some solicitors that I've been out to see and spoken to… They're not keen on the fact that barristers will have direct access to clients and they're not very happy about it and so that may have an impact on our referral work.*
>
> A4, deputy head clerk, circuit set

Even so, in the current shortage of work, practitioners are prepared to take the risk:

> *We spent a lot of time debating what we were going to do about direct access and whether we were going to rub it in solicitors' faces or not. There is a separate section on the website for direct access and it is pretty clearly there, its not hidden away.*
>
> B32, family and criminal circuit practitioner, 13 years' call

Some family law practitioners felt that in private family work, which lost all legal aid support under LASPO (except in cases where there was evidence of domestic violence), there was great scope for developing direct access work. Many people now find themselves unable to get legal aid for any divorce matter, yet have enough money to pay something for legal representation, so some barristers hope to charge a lower fee than normal, but one that will undercut solicitors and attract the clients directly. One family law solicitor was not convinced that direct access would ever develop significantly and did not perceive it as a threat to her work levels at all:

> *I don't think in reality any barrister who is busy (which they are if they're good), is going to have the time to deal with the day to day minutiae of it… I think that the people that we're instructing are so busy doing their normal, everyday work, I truly don't see that they would find time to deal with - and also, well I don't know how many barristers are going to take it up but most people go to the Bar 'cos actually they don't like the client access (laughing).*
>
> S1, family law solicitor, 22 years' experience

Further, in her experience, clients going through a divorce were reluctant or unable to do even basic document preparation or form filling: '*People are phased by it and what we take for granted as being something we can do very easily, Joe Blogs actually finds it quite tough.'* In any event, quite often, when any kind of case is turned away from chambers as being unsuitable for direct access, the client is nearly always redirected to one of their instructing solicitors. The Bar has become, therefore, a source of work to solicitors. In turn, solicitors send clients who do not have much money directly to the Bar, because they know it will be cheaper:

> *In some ways its been quite good because if a case comes to us that isn't for a barrister, direct access, needs a solicitor in this case, we can then send it to them and likewise, when they get a client, who hasn't got that much money, they can't be bothered with it, they say 'Listen why don't you go and see a barrister direct, I know a chambers I can introduce you to', and they come.*
>
> A3, head clerk, common law chambers

6.7.5 Public awareness of Direct Access

Making the public aware that direct access to a barrister is possible is a challenging task. Many people know little about the Bar and less of its structural machinery. Nonetheless, chambers now have dedicated Direct Access websites, linked to their normal ones but also designed in the hope that they show up early on Google searches. Some have dedicated direct access clerks, who process online enquiries and decide how to distribute the work. But practitioners find that even their instructing solicitors are not always aware of different practice areas within the same chambers or that they do direct access work:

> *I frequently meet solicitors in other areas of work, so immigration for example, and they say "I didn't know you did family work, your chambers…I didn't know you had a direct access team, because I sometimes I am able to refer and I just want to refer clients because we don't do family at our firm and we have something straightforward that wouldn't require a solicitor"…so that's when you know marketing isn't working. Just to have it as a link on the website is not enough.*
>
> *B45, family practitioner, 7 years' call*

Some practice groups also invite in house Human Resources officers or consultants to their seminars, hoping for direct instruction. This works especially well in employment work, for example: '*I've been really, really impressed, you know. When you have a good HR person, they're more help to you than any solicitor is, because they know that much more*' (B17, civil practitioner, 3 years' call). Two of the circuit sets in this study advertise their services in the local paper and one offered free surgeries: '*That brought work but out of probably 6, 7, 8 appointments you might get one fee paying case. It is good publicity*' (A1, Administrator, mixed set). One circuit clerk planned to target large local companies and invite the relevant officers to Health and Safety seminars, set up via the local chamber of commerce and featuring several members of chambers. Certain practitioners and many commercial chambers target overseas work for direct access. Some of the promotional work is done via the Bar Council's relatively new International Committee:

> *The International Committee's remit is to promote the Bar overseas…Whenever I meet someone at a conference, whether here or elsewhere, but a foreign lawyer for example, and I say 'Did you know that you can instruct the Bar directly?'. 'No? really?'. I say 'Did you know that you can cut out the middleman, so its cheaper and quicker for the client? And did you know that we're not a competitor to you, so we won't steal your client?' 'Really?' And so that message is a really important message for the Bar.*
>
> B37, criminal silk, 30 years' call

Barristers can offer cheaper prices, expertise and pose no threat, as a solicitors' firm might, of luring clients away. They wish to be instructed for discrete pieces of work rather than on a client retainer. However, international clients can find certain things about the Bar strange - the idea of an independent, self-employed barrister handling a case against another such barrister who is from the same chambers, but who acts for the other side, is problematic for some:

> *The Bar has to look at conflict in a way that it hasn't in the past anyway, because our international (*name of client*) in New York just don't understand the way we work and two days before I had a massive hearing…they suddenly worked out that my opponent was in my chambers…(it was a) massive problem and American clients have a real difficulty with all of that and we at the Bar have to…we explained what the position was and they've come to understand it. Ish.*
>
> (B48, head of commercial/civil set)

International clients also have difficulties accepting that a barrister, sitting as an arbitrator might have members of her/his chambers appearing in the case. Some have set up separate arbitration companies to try and get over that difficulty: *'They won't have, you know X sitting as an arbitrator and two of my colleagues in chambers appearing in front of me, whereas I sit as a High Court judge over there and members of chambers can appear in front of me and no one minds*' (B47, commercial silk and part time deputy High Court Judge).

6.8 Discussion

Direct access is likely to develop significantly in the near future, for the simple reason that barristers have two strong selling points: they are expert advocates and advisers in their areas of specialism and they are significantly cheaper than solicitors. In 2016 the Bar Council set up a Direct Access Portal for members of the public to use to find a barrister and had trained over 1500 barristers, clerks and staff in direct access (there are no exact figures on its website). For many practitioners, who can no longer rely on traditional sources of work, it provides opportunities. However, like marketing for referral work, seeking direct access instructions requires barristers to be entrepreneurial and to develop good customer care skills. At present not all are

particularly accomplished at either and although many chambers and the Bar Council now offer various types of marketing training, it remains optional. Barristers are seeking more administrative and legal support in direct access work or are giving up court advocacy so as to be able to service their clients' needs. A few have started to conduct litigation. If and when more practitioners take up direct access work and begin conducting litigation, it is likely that structural changes in their organisation will take place or their distinctive roles as primarily advocates will diminish to such a degree that the distinction between barristers and solicitors will cease to exist. Many interviewees predicted that the Bar will shrink considerably as a result, leaving only a much smaller group of specialist advocates who will work in a recognizable chambers model.

Those that resist such enterprising ventures in self-promotion claim that things are very much as they used to be, with work coming in on the basis of technical performance and attendant reputation. But for new and young members of the profession, things are very different than they were for incoming barristers 25 years ago. They are expected to market themselves if they want to succeed; to devote much time and effort into raising their profiles, by undertaking some or all of the marketing initiatives examined in this chapter. It is difficult to conclude, therefore, that things are as they used to be and that these developments have not reshaped what is required, in terms of not just skills, but also attitude. There is much evidence to reveal a significant shift in first, how barristers get work and second, how they view their role in that process. The traditional, at-a-distance, passive approach has been displaced by a more commercially imaginative and aggressive entrepreneurial spirit. Some practitioners are proactively expanding their practice areas, creating new specialisms and encroaching on each other's traditional jurisdictions, in order to acquire a reputation in new areas. Many engage in a number of promotional and marketing activities to further their reputations and brand. Whether seeking to survive in a publicly funded practice or taking advantage of the liberalising rules in how to attract work, this new self-motivating and self-promoting barrister is required to be flexible and resourceful, savvy and highly visible as s/he seeks to compete in the rapidly evolving markets for legal services.

Chapter 7 – Bar Culture

> '*The values of the Bar are Integrity, Excellence and Independence. They are immutable and must be jealously guarded and preserved. They are what makes us what we are'*.
>
> Maura McGowan QC, Chairman of the Bar, 2013 Bar Conference

With reference to the Bar, this chapter focuses on what Friedman (1975) identifies as 'internal' legal culture, and in particular that which refers to ideas and practices of barristers, their way of professional life, their traditions, institutions, symbols and rituals, rather than the 'external' legal culture of wider groups outside the profession or popular legal culture. It reviews some of the accounts of general legal culture and that of the Bar and reveals, from this research's findings, how barristers themselves view their professional culture and identity and whether they think there have been any cultural shifts in the profession as a result of the reforms of the last 25 years.

Culture as a concept is complex and hard to pin down, with multiple definitions emerging within and across disciplines. Even in sociological or socio-legal research, there are different approaches to organisational, professional and occupational culture, which are further fractured when considering professional legal culture. Further, the history and geography of lawyers play a role – does research identifying law firm culture in the US reflect that of lawyers in England and Wales or elsewhere? And what of global law firm culture? Do corporate lawyers share the same ideology and culture as those who represent individuals? (Heinz and Laumann, 1982/1994; Newman, 1995; Weeks, 2004; Nelken, 2004; Kurkchiyan, 2005; Chambliss, 2010; Boon, 2014). Legal culture is neither uniform across different branches of law, nor necessarily across nation states, common law jurisdictions or continental models, though certain aspects of it can be, or are imagined to be (Nelken, 2004; Chambliss, 2010).

Even if one overcame definitional issues, what purpose is served by identifying aspects of professional legal culture? The purpose of understanding the profession's internal culture is that it identifies aspects of social interaction, which are rooted in the ways barristers reflect on their work, consider their institutions and identity and how and why they respond to change the way they do (Nelken, 2004). Webber (2004) calls researching legal culture 'a process of institutional feedback', often articulating what legal professionals may themselves not be able to, leaving the researcher to seek explanations for conduct, views, justifications and institutional

structures. Nelken (2004) regards an interpretive approach to culture as revealing 'a flow of meaning', thick descriptions which act as evidence of legal behaviour or attitudes and how they fit together and resonate. Professional or internal legal culture is subtle and complex, situational and context specific, whereby attention should be paid to the knowledge, motivations and actual practices of lawyers. Culture emerges across multiple arenas of professional life, highlighting the interplay between professional ideology and the changes that are reshaping professional practice and situated choices (Nelson and Trubek, 1992). Culture is dynamic, where meanings are contested, and reshaped or entrenched in response to wider pressures and ideological shifts, and central to cultural evolution is power, which ensures its dominance and reproduction (Newman, 1995; Larson, 1977).

Boon (2014) traces the historical development of the barristers' profession to explain how a distinct ideology emerged with regard to independence, neutrality, community and identity. In fact, participants in this research constantly referred to the strong 'ethos' or 'culture' of the Bar, often not articulating what it comprised, almost as if it were self-evident, yet relying on it as an explanation for a particular course of action or reaction. Its possible that in part, this particular researcher's background as a former barrister provoked this, but it is also possible that the norms and ethics of the profession are so ingrained that they have been unconsciously absorbed, taken for granted and seemingly need no clarification. Nelken (2004) says that 'legal culture is about who we are not just what we do' (p.1), highlighting the link between lawyers' self-perception and sense of professional identity and their actions, organisation and customs. Larson (1977) notes that something more than economic interest maintains an overall solidarity within a profession. Her focus is on how through socialisation processes, new entrants to a profession are shaped to comply with norms and standards, effectively absorbing the culture to such a degree that it is internalised and becomes part of their subjectivity.

When examining the Bar's professional, internal legal culture, therefore, one must consider whether barristers themselves think there is a Bar culture and if yes, what it is and how it manifests itself – what does it mean to 'be a barrister'? This chapter then considers how and in what ways this culture has been affected by the reforms of the last 25 years. The following chapter considers the Bar community and the mechanisms by which barristers are socialised into the Bar's professional culture and whether they are still effective in the context of great change.

7.1 Independence, autonomy and public service

The basis of legal culture in England and Wales emerged from the notion of a 'balanced constitution'. Citizens have core rights and freedoms, guaranteed by law and overseen by a judiciary that is independent of the state. Lawyers are similarly independent of outside influence and maintain control over their work. Whilst owing primary duties to their clients and to the courts in which they appear, lawyers use their expertise and autonomy to carry out their work, free from a client's assessment of a case, with legalism and procedure prevailing over wider theories of justice (Boon, 2014). From the mid 17th century, the Bar's ethical rules laid out the profession's ethos of public service, stating that barristers would accept all briefs that came their way, representing all comers rather than touting for particular cases from specific solicitors, giving rise to what is known as the 'cab rank rule' (Burrage, 2006; Boon, 2014). This duty to accept clients irrespective of what they might have done, dates back from the medieval period, and reflects the principle of neutrality, one of three notions that together comprise the standard conception of the lawyer's role. The other two principles are that of partisanship, 'using all legal means in representing' the client and lastly, of non-accountability, 'not being morally responsible for the consequences'. At the core of the advocate's role and duties owed to the client and to the court therefore, was the idea of independence: independence from moral judgments to represent anyone who asked and independence to decide how to do so, within the limits of the law and due process, in the knowledge that there would be no ramifications thereafter (Boon, 2016, p.2).

From the end of the 19th century till the late 20th century, as indicated in the previous chapter, the Bar ceased to receive direct instructions from clients, and unlike solicitors had no day-to-day or financial dealings with them, making their independent exercise of judgment and discretion easier to maintain. It was not until the growth of the provision of legal aid in the 1950s, that a sense of public service became more prevalent in Bar ideology, as lawyers entered the 'welfare' arena, providing services on the basis of citizenship, as a universal right, in areas such as housing, divorce and crime to all, subsidized by the public coffers (Hanlon and Jackson, 1999; Hanlon, 2001). From a functionalist standpoint, therefore, lawyers served the key social values of rationality and justice, promoting democracy and acted as an important counterbalance to state and market domination and antidote to selfish materialism. Key to carrying out these tasks and duties were admission to the profession based on competence, mastery in a specialised field and self-governance to maintain high standards (Abel, 1988; Abbott, 1988, Boon, 2014).

Critical approaches, as set out in Chapter 2, debunked this picture of public service, stating that this ideology was merely an instrument used to achieve market control. Lawyers used their technical expertise and notion of altruistic 'calling' to acquire public trust and legitimise their self-governance and to justify their monopolies and sheltered markets. Excellence, credentialism and public service were merely ideological tools, used to exclude and control (Larson, 1997; Abel, 1988). With regard to the Bar, this interpretation has been challenged as historically incorrect, pointing to instances where barristers actively shunned market opportunities in order to preserve their status as gentlemen specialist advocates, distinct from trade-oriented solicitors, who were quick to exploit the commercial opportunities that arose from unparalleled growth in trade and industry in 19th century Britain (Osiel, 1989/90; Burrage, 2006; Muzio and Flood, 2012).

Whatever their motivations, in the minds of many practitioners, independence is a strong feature of professional identity – independence of thought, in how work is carried out and in how they choose to organise themselves. The strength of this belief is such that it is almost self-fulfilling. The structure of the Bar, with self-employed practitioners forming a loosely connected collective within chambers, is traditionally believed to provide a framework of independence ('*What I like about the job is being in chambers and the independence'*, B32, Family/criminal practitioner, 13 years' call). A few of the interviewees used independence as a reason not to set up some form of ABS, feeling that it would threatened by such action:

> *I feel quite strongly that the sense that barristers have, that they are sole practitioners with flexi-time…wouldn't lend itself well to a partnership structure in which they could be directed what to do…or any kind of corporate structure, whether there was a company which could, or some person to whom they were accountable for hours, or something like that.*
>
> B36, Chancery barrister, 38 years' call

Despite more management and organizational features appearing in the chambers model, all barristers interviewed felt that that organisational changes, prompted by an increasing commercialism of the Bar, have not impinged on their essential autonomy:

> *A lot of people came to the Bar because they wanted a financially remunerative job which is interesting, without being really in kind of management. Not having line managers, not getting into endless corporate meetings and to some extent the Bar hasn't. Does one really want to go and have these endless meetings and acronyms and line managers. It's still got its advantages, I think.*
>
> B19, Civil practitioner, 15 years' call

For other practitioners the new liberalising rules under the LSA 2007 give them the freedom to determine what structures and ways of operating suit them best, permitting them to adapt without losing control:

> *Our aim was to make the Bar much more flexible, modern and accessible and then leave it to the Bar to find their own way. You give them the freedom, you know…all the new rules which have come in in the last 4 or 5 years have been liberalising rules, so you give chambers much greater flexibility to find their own way of trading with their own client base. So for some, it can be a Procure Co, or Supply Co… Doing slightly related commercial activity, operating in different ways and that way the Bar has flexibility to evolve and grow as the market changes around it.*
>
> B13, Commercial barrister, former Bar Council officer

Yet how independent are barristers and to what degree is self-employed status in itself indicative of independence?

> *I think self-employed status and independence aren't quite the same thing… I can conceive of giving up self employed status without losing the independence that makes the Bar special…if, as in my chambers, if I'm paying a percentage of the overheads running the place, if I just go in there and put my feet up and use the stationary…if I'm not pulling my weight, people are entitled to say to me 'Why are you only earning x and not y?'...I think that's a fair question because other people are subsidising me…so my point is that to that extent one's independence as a self-employed person is not total… so the Bar vaunts its independence but when you look at it, it is independent in important ways. It's independent in its thought.*
>
> B2, criminal silk, 28 years' call

One interviewee had eschewed the traditional chambers life and created an ABS agreed with this sentiment. Although maintaining barrister status, he has given up advocacy in court and spends his time negotiating, drafting documents and advising. Given that his role has more in common with that of a solicitor's, it was perhaps less surprising that he did not regard self-employed independence as a necessary attribute to doing a good job:

> *We're very much wedded to this, you know, 'You must be independent' and that this is the touchstone to everything and that actually the justice system cannot operate without people in a set of chambers being independent. I'm not actually sure that stands up…I don't think it stands up because you now see solicitors' firms doing it, you know, there are solicitor advocates doing it, they are employed within firms of solicitors…so it works in a different system. I always think the Bar is, for the reasons I've said, I think its very cost effective, I think there will always be an independent Bar…I think it will shrink.*
>
> B50, criminal barrister, director of an ABS

Yet for many the mere fact of being employed necessarily impinges on independence, if not of thought, of how they choose to allocate their time. As

indicated in Chapter 6, some practitioners are adopting 'hybrid' status, contracting their services out to solicitors firms for a fixed amount of hours per week or month, whilst still maintaining their self-employed practice. One thought that common law practitioners would soon all be employed by firms of solicitors, with only specialists operating within the traditional self employed model:

> *There's scope for people in chambers being attached to different firms of solicitors and still being one chambers, but I just think people need to work out what they want and, honest opinion, chambers of this type that are around, normal set of chambers, they won't be here in ten years' time.*
>
> B33, mixed circuit practitioner, 6 years' call

Many barristers feel constrained by the mere thought of external organisational control – how those who have opted to go in-house reflect upon this has yet to be researched and none of this project's participants were actually yet in hybrid practice. Nonetheless, many barristers regard going 'in-house' full-time for solicitors or the CPS as potentially a great threat to their independence and, ultimately, a state of affairs that would lead to a lowering of standards – their discretion as to how and when they went about their work would be eroded and they would be obliged to undertake too many other duties. So even if they retained 'independence in thought', they would not be free to organise their time and work as they would wish:

> *I think it would clash with the way that I work and with the effort that I like to put into things…if they are going to the crown court and they've this number of cases and they haven't had the time to prepare them because they are also in the police station and they are also in the office, then they are not going to have the time to sit with a brief for hours and have a conference…and do everything that they need to. And if I was in that situation, I don't think I could work like that.*
>
> B31, criminal practitioner, 6 years' call

Of course, this idea of independence is to some extent a fiction – barristers owe a certain allegiance to other members of chambers, as pointed out in one of the above extracts and are constrained by court listings, pre-arranged conferences, round table meetings, procedural deadlines and so on. Nonetheless, the rest of the time they can work when and where they wish, take days off if the diary permits, without needing permission or having to count days. Furthermore, the handling of a case is at their discretion, even if it includes consultation or collaboration with a solicitor. They have no 'boss' or 'line manager' as such from whom approval is needed.

With regard to publicly funded work, the independence of the 'social service professionalism' of such practitioners was always inevitably precarious, since for

many their survival and prosperity was contingent on state funding, the withdrawal of which is now challenging their continuing existence (Hanlon, 2001). Most publicly funded barristers already feel that their independence, in the sense of their ability to carry out their work as they would wish, is compromised by the cuts to legal aid and it is only the ethos of commitment to represent their clients that compels them to work for ever-diminishing rewards:

> *The legal aid cuts threaten the independence of the Bar because people, on the money that they're providing, can no longer afford to give a) a quality service and b) they are increasingly forced into the situation with a conflict between their personal financial interest and what would be in the best interests of their client. I think that they (the government) don't understand the psychology of a lot of criminal barristers, which is that we're not in it for the money (laughing). They don't understand that. We need money to live on, yes. That's the bottom line.*'
>
> B25, Criminal barrister, 20 years' call

Such barristers have no corporate loyalty or targets imposed from above. Theirs is a vocation, yet their remuneration must be sufficient for if it is not, financial concerns begin to impinge on their professional work and discretion. Although this stance is regularly derided in the media and more recently by Ministry of Justice statements, for those that do legal aid work, their earnings are of secondary importance: '*I think that most barristers who do publicly funded work are more concerned about justice than fees. People who choose to do that work don't go to the Bar for the money. A public service ethos must exist'* (C1, Bar Council communications officer). Others find that although their own discretion and judgment are not directly hampered, tighter controls on expenditure has discouraged barristers from making applications in a case, seeking, for example, an expert report, when they think one is needed:

> *Sometimes you would need to make an application to the court, and you would make your argument but you were not fettered in the way that you are now…it doesn't change how you exercise your professional judgment, because you might still argue that you need to do this, but you know that you've not got a chance in hell of being able to get what you think is necessary in order to best represent…I would still do it (the work), but that's me, but I'm not sure whether everyone would still do it, because another person might look at it and say 'There's no chance, there's no point making this application', whereas I would say, 'I think this is necessary, I think its worth doing it.'*
>
> B43, family practitioner, 27 years' call

Some publicly funded practitioners have already gone, or are being forced to consider going, into employed practice as they do not have enough work at the

independent Bar. Many find it too competitive and the rewards too uncertain and are becoming employed barristers soon after Call:

> *In truth there are probably more barristers than there is work and I think that if you are going to go in-house, it will be run like a factory. A good barrister wouldn't go there through choice. And also a lot of these firms come at it from another point of view, 'If I can get a good barrister, who is a young bloke and I can get him for thruppence, I'm not going to pay an experienced bloke a tenner, because I don't need a tenner chap'. Once you've got this block contract, provided that you're doing it for the money you said you would, there is no incentive…The in-house barristers are going to be salaried and they are going to get a set wage and a holiday. Difficult cases – I imagine you're going to get a lot of illness.*
>
> B4, 24 years' call, civil practice

Employing inexperienced barristers to go in house and do criminal advocacy is, it seems, common practice. As firms struggle to make legally aided work profitable, their priorities are to make savings wherever possible. Senior criminal practitioners at the Bar think that this necessarily results in a lowering of standards, which is evidenced in courtrooms across the country:

> *Firms of solicitors who have expanded into the crown court, are taking people on much, much more cheaply, so they are getting less experienced people in. They are getting people in who aren't as good, who haven't got much of practice themselves and they are doing advocacy work in the crown court. There is a noticeable difference in crown court advocacy now and what it was 10 years ago, partly because of that.*
>
> B3, criminal practitioner, 33 years' call

For this barrister, therefore, it is not the fact of employment that is a problem, it is the quality of those employed that is making the difference. Yet both the above extracts indicate that many barristers do not think that *good* people are going to choose to go in-house. As these findings show, for many publicly funded and public law practitioners, the public service ethos remains central. Rogers (2012) notes 'something moralistic about the Bar's brand of ethics', which believes in 'giving to society', recognizing that for some it remains truly meaningful (p.215). The latest removal of or cuts to legal aid, therefore, represent a threat not just to their existence, but to their role in the provision of universal justice and the counterbalance to state power:

> *At the risk of appearing paranoid, I think that that represents an ideological desire to limit the ways in which the government can be held to account for its decisions. And I think you have to look at all this business in context of judicial review cuts, use of secret courts, massive increases in court fees…they say that the civil service has been hostile to the concept of an independent Bar for a very long time because its not something that is readily*

controlled and quantified and box-tickable, and they want more control over it. They don't like it.'

B2, criminal silk, 28 years' call

The above extract represents what many barristers believe the legal aid cuts to judicial review applications mean. No less than 90 QCs signed a letter to the Daily Telegraph newspaper asserting how such cuts '*will immunise Government and other public authorities from effective legal challenge'* (Arden et al, 2013). Barristers see being independent of state power as essential to the rule of law and see themselves as necessary players when articulating a challenge to such power. Cuts to legal aid display government disregard for any overreaching of its power and a disdain and dislike for the lawyers that seek redress on behalf of those that have suffered as a result of it. This emphasis on self-employment and distance from corporate financial incentives or government control, explains practitioners' negative views about working as in-house counsel. Even the self-employed barristers who are instructed by the CPS find the ethos different and difficult:

I feel constrained by the CPS, which is why I'm stopping working for them…because they just allocate hours, its hopeless…the thing I'm doing…they've said 'We'll give you one hour'. I was on to them three days ago saying 'It's a 74 page of close knit typing and numbers. I need at least 3.5 hours, as does my junior'…The CPS are more about making sure their budgets are okay than winning more cases.

B44, criminal silk, 36 years' call

What about barristers with privately paying or corporate clients, where budgetary cuts are not an issue? The independence of corporate lawyers in the US has been questioned in research, where lawyers sometimes defer to powerful clients about the nature of the work they do (Heinz and Laumann, 1982/1994). Increasingly large corporate or government clients, via their in house counsel, are instructing the Bar directly, rather than going via solicitors:

Its now quite common that the first point of contact for a client is the Bar and there will be a discussion as to whether this can be done between the firm and the barrister or a barrister team or whether or not a solicitors firm is brought in and then, quite often, its Counsel who are asked for recommendations which solicitors we'd bring in.

B13, Head of commercial chambers

None of the participants doing this kind of work indicated any kind of influence or interference from such clients, though it is possible that if and when they have more direct contact with powerful corporate clients, this might change. Recent research

notes the shift in the balance of power between corporate and financial institutions and their lawyers, highlighting how some corporate solicitors have an undeveloped or no sense of their independence from the client and how corporate clients seek to increase their control over their lawyers (Coe and Vaughan, 2015). Barristers have to keep clients happy and the more direct contact they have with them, the more direct demands will be made of them. One commercial practitioner noted that with the development of email, clients often contact them directly and want immediate advice even if he had not yet seen all the documents in a case, obliging him to devise techniques that appear to satisfy the demand without compromising his position:

> *You haven't really time…you've got to give a response…because they want one and will go somewhere else if you don't…you get clients, clients start emailing you as well. You guard yourself by saying 'I haven't seen the documents; its much to early to form any sort of concluded view; there are clearly risks involved in this, although on the face of it looks good.'*
>
> B14, commercial barrister, 41 years' call

7.2 Accountability, Regulation and Managerial reforms

Has the new independent regulator's managerial control over chambers' organisation, recruitment and training impinged on barristers' traditional, discretionary organisational control and on the way practitioners work? To a certain extent, the answer is inevitably 'yes'. As set out in Chapter 6, recruitment and pupillage are heavily regulated and under the BSB Rules 2014, the regulator has imposed more obligations regarding recruitment, training, handling complaints and chambers' organisation and it has the ability to place those deemed 'at risk' under BSB supervision. Complying with these rules involves much work, though most had procedures in place under the new defunct Barmark quality scheme.

> *We have a Chambers manual and appendicies that need keeping up to date…its our bible of what we do, everything. Chambers' management, recruitment policy…a huge, house book, which we, when we apply for quality mark, had to get everything in order. That appeared in 2003.*
>
> A1, Chambers Administrator, common law set

For many however, compliance with the BSB rules is viewed as onerous and expensive, placing great stress on manpower and time:

> *I think the BSB have gone crazy, regulatory crazy to be fair… we had Barmark, they had Barmark here anyway, which was the, its slightly different, but it's like a starting block for making sure that your company is compliant…I can tell you wholeheartedly that they can regulate and regulate and regulate as they do, the reality is, 90% of chambers are just not up to being able to*

> *comply. They can't. It's impossible, they just haven't got the manpower …we've subcontracted that out.*
>
> A8, Chambers Director, multi-practice set

Training courses covering management, diversity, equality, pupil supervision and such like abound and many barristers and staff go on them to ensure they have satisfied the necessary criteria under the rules and protected themselves against possible complaints: '*Anybody who's on a committee - selection for instance, must have gone on various courses, equality and diversity courses, so that there is no comeback if someone puts in a complaint about the way they're treated*.' (A3, Senior Clerk, common law set). Barrister accountability has never been greater, with obligatory customer complaint procedures and independent disciplinary mechanisms in place at the Legal Ombudsman or the BSB itself:

> *We only get 5 or 6 complaints a year here, I would say. Last year, for example, they were all groundless…Normally, it is found and you know, its not looking after each other's back, its normally found that the complaint is groundless. More often than not its because lay clients don't understand the procedure.*
>
> A5, senior clerk, common law circuit set

Many believe that the new regulatory framework has actively contributed to creating a culture of groundless complaints, which take very long to process and can be stressful for practitioners. Some lay clients are perceived to be motivated by their unwillingness to pay the costs when they have lost a case.

> *Its a massive culture of complaint at the moment…you have to show your complaints procedure…you have to write it on every case that comes in, you have to point out to the solicitors that the lay client has the right to complain and here's our complaint regulations, which just caused a culture…I have to ensure that our policy is being adhered to and therefore in the initial stages, I would write to whoever the complainant is and say that the policy is x and therefore you will hear back from us in 20 days. Then I would ask the individual member who the complaint is made against to give an explanation…I deal with it in the initial stages. The appeal process is to the head of chambers…it was very rare but now you would get one a month…I think there is this culture, external culture where they think that if they complain they can get some money back…and you say to them 'This is nonsense' and they say 'Well I want to appeal that' and the Head of chambers says 'This is nonsense, and by the way if you want to, you have to go up to the Legal Ombudsman who will confirm its nonsense'. And they go up to the Legal Ombudsman, he confirms its nonsense, but in the meantime you've been back, forward, back, forward …you create a system that can literally go on for months and months and months and months.*
>
> A8, Chambers Director, multi-practice set

For many, this culture of complaint, is directly attributable not just to the fact of

outside regulation, but also to the fact that the regulator is seen to be unable to distinguish between patently false and genuine claims. The negative consequences are that some barristers feel that they have to constantly 'watch their backs' for fear of unwarranted complaints and that compliance with all the 'red tape' involved in the complaints procedure is expensive and mostly unnecessary:

> *Everyone's too careful in a way and its making litigation more expensive and trials are much longer…I was on the conduct committee… people actually complain about you being nasty to them by saying nasty things about them in a case…and its a way of trying to put pressure, bullying people to back off, making their lawyers nervous. Solicitors are getting it all the time…I fear that the culture is wrong and I think that's the culture 'Oh its a complaint, we've got to take it seriously'. I mean it takes hours and hours to do reports on these things. You've got to go through a completely shambolic wodge of stuff and try and make some sense of it, so I think that there's the wrong 'Oh, its a complaint, we've got to take it seriously, we've got to deal with it, we've got to go through all the motions'…If they lose a case and you are pushing them for fees and things like that they complain, 'Oh we don't like that, we don't think counsel cross examined for long enough', things like that…Its all got too serious and too much red tape.*
>
> B14, Commercial barrister, 41 years' call

Views about the independent regulator, the BSB, were largely negative. Many had little to do with it, although most read the emails sent out to them and relied on management staff or the clerks for updates on any particular matter. A few thought that the BSB did a good job and that the profession was better regulated and more accountable under its auspices. Some had fairly negative views about it because they perceived the regulator to be actively hostile to the profession:

> *I don't think they are a particular friend of the Bar.*
> *AG: why should they be, if they are your independent regulator?*
> *I don't think they should be hostile.*
>
> B43, family practitioner, 27 years' call

> *It's not terribly supportive of the Bar. I don't know why.*
>
> B44, Head of chambers, multi-practice set

> *I think there is a feeling that it's not very efficient and not very friendly.*
>
> B49, specialist civil silk, 29 years' call

A common complaint was that the BSB had no real understanding of or interest in the profession, undermining its values:

> *I don't think that they have got any interest whatsoever in the Bar. They say they are promoting the Bar. I mean frankly X (member of the BSB) took a lifetime to actually say anything in favour of the Bar…they ought to be*

> *understanding of what a barrister does and how they are...I don't understand at all the way in which they think they are doing a good job. I mean its all very well regulating something, but if you're actually regulating out of existence, you don't understand what does and doesn't make a barrister a good barrister or what is or is not a disciplinary offence.*
>
> B37, criminal silk, 30 years' call

Every member of the profession has to pay for the regulator and many complained of the excessive costs that entailed and how their annual subscription for their practicing certificate had gone up after its creation. The notion of having to pay for a licence to practice a profession one is already qualified to practice, rankles:

> *It costs me £1500 as a silk, to buy my piece of paper which tells me I'm allowed to practice law, which is a bit mad. That goes into the Bar Council coffers and pays for the BSB as well. They put it up because the Bar Council discovered that its pension fund of its own staff was running at a loss, so they upped our fees to help pay off, pay their staff. I mean if you want a career in the law, the secure place to do it is in the Regulator.*
>
> B2, criminal silk, 28 years' call

A few were extremely hostile to the BSB, a sentiment that this researcher observed in person at a BSB event at the Bar Conference 2013:

> *The Bar Standards Board is a regulator and regulators make their money by regulating and so its a self perpetuating autocracy. The Bar Standards Board has no reason to exist other than to regulate (laughing) and if you put in place a complicated QASA machinery, you have to have people to administer it…the Bar Standard Board, whatever its genesis, it has become a monster of its own creation… it is just another one of the trends in all kinds of service industry…public accountability, to have quality marks, you know, you've got them for plumbers and gas fitters and everything else, so why shouldn't there be one for lawyers as well? We don't have a problem with having a quality assurance scheme as long as it does what it says on the tin…I'm paying £1000 a year to have people tell me how to do the job I know how to do…to pay for all the f***ing bureaucrats and technocrats to administer stuff like QASA.*
>
> B35, criminal barrister, 28 years' call

It is hard to assign one reason for this widespread antipathy to the regulator. Whilst all were clear that they had no issue with quality control checks in principle, many felt that parts of the quality accreditation scheme proposed by the regulators (QASA) were badly thought through, would be onerous and expensive to implement and contained elements that were misguided. All acknowledged that more accountability was no bad thing, but many did not rate the quality of the regulation they were getting and resented the cost of it. The period of research covered a turbulent time for the Bar, with publicly funded practitioners feeling beleaguered and under attack from the

government and parts of the media and many expressed discontent that the profession's own regulator was hostile at such a time. No one suggested that their disgruntlement with the BSB was because they resented external regulation per se. Most barristers were not particularly complimentary about the Bar Council either. Underlying their responses was the impression that they just wanted to be left to get on with their work, and regarded the ever-increasing rules, protocols and procedures as time-wasting and largely unnecessary, expensive and often imposed by people who either did not understand the profession or did not care for it.

Other factors that have impinged on barristers' unfettered discretion in case handling are the civil procedure, costs forecasting and case management rules, introduced from the late 1990s onwards, which have asserted a control over and supervision of case conduct that is radically new. Many who work in any area of civil law feel that this managerialisation of the court system is excessive, sometimes unnecessary, time wasting and expensive and imposes endless work on barristers in the name of efficiency, interfering with how they would handle cases:

> *There's a chancery modernisation review at the moment. I hate the word modernisation. Some of the things they are doing are good, for example having docketed judges managing a case from an earlier stage. I think that's a good development, but they're now having pilot tests for fixed term trials, so the trial has to have a fixed period and can't overrun whatever happens…the barristers mustn't give an inaccurate reading estimate for the judge, which is very difficult sometimes, and they mustn't inaccurately estimate the time, although sometimes things change. If a barrister gives an inaccurate estimate and the time taken is longer, the judge will now reduce the amount available to the parties or that particular party at the trial. There are all these silly things…these are actually proposals, pilot tested at this stage. It's rather like the new sanctions rule. Instead of the old rule whereby you couldn't cut out evidence in practice, but nowadays the courts will be ruthless and say 'The new rule is if you're late with such and such, its out, you're not allowed it'. I mean that's, its bad law, its bad justice, its bad for the reputation of the courts…its all silly and I think they're really at risk of throwing the baby out with the bathwater, which is the great reputation that London still has as a legal centre, is being prejudiced by rather petty minded bureaucrats.*
>
> B36, chancery practitioner, 38 years' call

Many of the courts are overrun with cases and despite case management systems in place are simply not able to cope with the workload, sometimes because there are not enough judges.

> *The Commercial court is very full of itself about case management and how efficient it is and how cases only run when they're meant to, but they can't always provide judges. The Chancery Division is also, it's very interesting, its*

> *a massive Division, swamped. It dwarves the Commercial court, because its got all this other business ...and that's the problem. Its a very broad church*.
>
> B48, commercial barrister, 28 years' call

In different fields, barristers have to satisfy different managerial requirements, but many find that compliance is so time consuming as to be time wasting:

> *We have all these new, I was going to bring you a copy, we have all these new ways that we have to do things, the PLO (Public Law Outline) in family proceedings, stupid orders, and they are a complete nightmare, all these hoops that you have to go through, they are a nightmare…Its supposed to make things more efficient and I'll tell you what happens, you look at them and you think 'None of this is relevant' and you miss things that are relevant because you have to go through reams, pages of nonsense, of these new orders and everything that you have to do at each hearing and are not allowed to have the number of hearings that you might need. So you're only supposed to have your initial hearing, your CMC hearing, your IRH and your final hearing and sometimes you need more…you have a fifteen page order and you have to tick all these boxes.*
>
> B43, family practitioner, 27 years' call

For practitioners who think that they are already underpaid, this additional work, often administrative, is deeply resented and burdensome. Those in charge of the civil procedure and costs rules have embarked on a seemingly endless managerial tinkering, in a bid to make civil litigation cheaper, faster and more efficient. With a technological revolution promised in Lord Justice Briggs' latest proposals, it may well be that barristers will be removed from these administrative protocols and the small case value proceedings altogether (Briggs, 2016).

7.3 Conditional Fee Agreements and their impact on independence

In certain areas of civil practice, such as personal injury or employment law, the removal of legal aid gave rise to claimant barristers working under 'no win, no fee' conditional fee agreements (CFA). This gave practitioners, for the first time, a direct financial incentive to settle cases, as only then would they guarantee being paid, potentially undermining their independent judgment of how a case should proceed:

> *I didn't like it and to be honest I still don't like it. I still don't like the fact that you have a financial stake in the outcome of the litigation. Because I think it just gives an extra element of pressure that you shouldn't have to have, because if you were advising a claimant whether or not to accept an offer from a defendant, you have to try to put out of your mind the fact that if you accept the offer then you're going to get paid and you're not only going to get paid, you're going to get paid plus your uplift by the Defendant…the way I do it is to be completely up front with the client, the claimant, about it. I say 'I'm*

giving you this advice but I want you to understand that I am not, because I am required not to do so, taking into account the fact that I'm going to get paid, plus the uplift.

B15, specialist civil silk, 28 years' call

I would prefer, I think, not to do CFA work if the market allowed it…because it makes you less independent, automatically.

B23, specialist civil practitioner, 7 years' call

Under the original CFA agreements, the costs risks for a Defendant were hugely increased. Liability for costs if a Defendant lost included not just the basic costs of the opposing side, but, as indicated in the first extract above, also the winning legal team's 'uplift' fees and the costs of the insurance premium they had taken out to bring the action: '*It was an overloaded burden on the Defendants. It made cases impossible to defend in a way that was economically sensible because Defendants were paying basically treble the costs liability'* (B49, specialist civil silk, 29 years' call). The controversial 'Jackson Reforms', introduced in 2013 attempted to re-balance this, introducing damages based agreements (DBA), obliging lawyers who win a case to take the balance of their fees out of their clients' damages, rather than recover them from the losing party. The principle of taking fees out of one's clients award is considered to be an import from the American model and highly distasteful: '*You can have costs being provided for out of the award, which is totally American and basically abhorrent'* (B5, civil practitioner, 28 years' call). Aside from being abhorrent, the regulations are widely regarded as being unworkable:

That is the pathetic response of Jackson to taking away the old CFA arrangement. They said 'Oh well, what we will allow is lawyers to take a cut of damages', like they do in America, that's a DBA, contingency fee arrangement in America it would be called, here its called a DBA, 'because we can see that we need to allow people access to court'…outrageously, the government, I think it was sort of an insurance set up, they enacted DBA regulations, which are almost impossible to understand and almost impossible to comply with, so everyone's complaining about it.

B49, specialist civil silk, 29 years' call

Damages awards have been increased by 10% to partially cover these costs, but lawyers are not permitted to take more than 25% of any award, irrespective of their fees. In this new scenario, both clients and lawyers on the winning side of a case stand to lose out. Some instructing solicitors have told barristers that they will not send them work if counsel seeks to recover the balance of their fees from the clients' damages award:

I do a lot of work for a trade union firm. They've said 'Well, you're not to take

the money from the damages, you're not to take the success fee from damages'. So now the effect of that is we will get no success fee. We'll get our base costs but we won't get our success fee, but the claimant will end up getting 10% more.

B6, personal injury practitioner, 22 years' call

Further, unless the claim is very high, it is thought lawyers will not take a case on because they will not recover all their fees, even if they win. Thus, access to justice may well been reduced, as clients with good and deserving cases will not bring actions. At the time of interviewing no new DBA cases had yet filtered through the system, so views expressed were speculative:

I think that most firms will, particularly in the small cases, will have to enforce the payment of the success fee from damages, because there are a lot of cases where it may not be really viable for them to run it unless they get something out of the damages…the chances are the claim won't be run. This is really what it's coming to. The Government, they think too many people are bringing claims…solicitors will say, 'Well I'm sorry, you've probably got a claim, its not worth it'. I suppose they might say…well they probably wouldn't say this, but the option then might be, 'Well just do it yourself, go to a barrister, get him to draft the pleadings for you and come in for a hearing'. There may be some work there I don't know. But I suspect most people will say 'Well, I can't be bloody arsed with this'. But this is all new stuff, who knows what's going to happen.

B6, personal injury barrister, 22 years' call

I would be very surprised if in the present climate anyone can find a solicitor to represent them on a claim that's worth less than £50,000 damages…just not worth it. Some solicitors' cut off is £100,000.

B20, specialist civil practitioner, 38 years' call

Thus, although independence remains a core feature of the culture at the Bar, the managerial reforms in the court system and of the regulator, together with cost-cutting in legally aided work and CFA/DBA have begun to impinge on some aspects of professional discretion. Although all would assert that their independence of thought remains unfettered, one cannot ignore the gradual erosion of discretion and control practitioners have over the way they run their chambers and their cases. Some seemed palpably worn down by these developments, weary and nostalgic for earlier times. A recent survey of employed and self-employed barristers found that those in employment '…noted the lack of autonomy and reduced sense of status relative to those in the self-employed Bar as being particular challenges. Both status and autonomy - a perceived sense of control, are correlated to psychological health and performance (Positive, 2015, p.3). There has been a shift in control at the Bar and although self-employed barristers may retain more autonomy than employed ones, the same study found over half the sample of those at the independent Bar

reported disengagement with their professional performance - 'the results are notable and a cause for concern' (p.3).

7.4 Excellence, commitment and trust

'Excellence' is a word the Bar Council uses on the banner of its website's homepage, together with 'Integrity' and 'Justice' as the trilogy of ideals the profession prides itself in advancing. Rogers noted during her observational research that 'professional excellence' was one of the characteristics promoted by the Inns on an open day for law students, who were still undecided as to which branch of the profession to go into (Rogers, 2012). Few, if any, barristers, will use this vocabulary when describing the ethos of the Bar, but much of what they say points to the same thing when trying to pinpoint certain qualities that most believe is part of their professional approach. Excellence refers, in part, to the academic qualifications or extra curricular experience that students need to enter the profession, achievements which commentators have noted, are mostly only available to those with socio economic backgrounds that have given them educational opportunities and advantages, connections and a certain cultural capital (Sommerlad, 2007; Rogers, 2012). It is a given that barristers will apply their technical expertise or knowledge to their work. 'Excellence' encapsulates more however. It is an approach to or ethos about their work – a commitment to work as hard as they can and to represent their client as best they can, with full integrity, in return for the trust the client is placing in them by instructing them, irrespective of their remuneration. Image management, in the form of websites and client care within chambers have been developed to further the notions of excellence and trust, even more so now that barristers are appealing directly to lay clients, many of whom will have no previous relationship with them:

> *I think if you're making a decision whether to go to a solicitor or a barrister, having some kind of information about the practice area helps you stay longer on the website. That helps you have trust - its written in a way that you like it, it speaks to you, it helps you trust that set, because that's what your trying to do with the website. Its all about getting people's trust and if somebody trusts you, they will hand over their wallet to you. That's basically what it is. Trust equals money. You want them to instruct you, you want them to trust you, so all these things become much more pivotal when you're looking at the relationship between the barrister and a direct client.*
>
> A7, Bar marketing consultant

Obviously successfully communicating these attributes improves barristers chances of getting work, but there is also a professional pride in doing their work well and the ever-present desire for this to be recognized not just by their clients, but also their peers – other barristers, solicitors and judges, who see them in action. Given the

public nature of advocacy work, even the most senior practitioners feel this pressure:

> *You never stop learning as a barrister. You never stop, in my view, you never stop being afraid of getting it wrong*.
>
> B18, criminal barrister, 21 years' call

> *When you speak to other people about what your job involves as a barrister, they find it very hard to believe that you could put yourself under that kind of pressure. They find it very hard to believe that you would go to court when you are really ill, because you know, 'that's the culture', that you should, unless you physically can't…I have these mixed feelings…and sometimes I play with the idea of not doing it properly, in my head as a fantasy, but when it comes to the crunch, I can't bring myself to do it. The point is that I became a barrister and I have a particular value system associated with what I think that means, what I think it means as a human being involved in the justice system that I want to believe in*.
>
> B25, circuit criminal barrister, 20 years' call

This ethos of giving each case all one's effort, irrespective of ill-health, is common at the Bar. The commitment to working long hours is feature of professional life and identity, dictated by client demands, deadlines and court appearances and a professional pride in being well prepared. Very junior barristers often get instructions just before a hearing, when the case has, in their view, not been prepared properly, or at all, by the solicitor, and they are used to having to work under extreme time pressures: '*I'm still very much used to getting briefs that have not been prepared and its just a luxury when I'm doing something for good solicitors or indeed devilling or being led'* (B17, civil practitioner, 3 years' call). More senior practitioners also get cases very late in the day, with little time to prepare them and feel very strongly that this is never an excuse not to do the work, an approach they feel some solicitors do not share:

> *I had…a burns case a couple of weeks ago that the solicitors held onto till the last minute, thinking it was going to resolve and they sent it out two days beforehand. Four experts to cross-examine. They took fright and decided they weren't going to do it themselves…I worked till 3am both nights in between, simply because, yes, you've got a client and you need to do a decent job for the client, but the idea of going to court not having read anything and not being prepared, as some solicitors would do now – its that ethic, its still there (laughing). You just wouldn't do it.*
>
> B32, family practitioner, 13 years' call

Getting instructions late significantly adds to an already stressful job. Work related stress is not something that is often talked about within the profession. Barristers are expected to cope with heavy workloads and much last minute work without fuss and

irrespective of any personal issues, a feature that has been noted in other professions (eg. Anderson-Gough et al, 2000). One junior practitioner was struck by the reluctance of some practitioners to talk about this openly, supporting Harris' assertion that, with regard to their emotional labour, practitioners are socialized into employing techniques to conceal any anxiety about their role as experts (Harris, 2002; Rogers, 2011):

> *Its quite a stressful case…I was open with them about how stressed out I'd been about this final hearing. I picked up the papers really late and there was a lot at stake…and I was quite open about how I was really, really nervous about it…She then became quite open, the local authority's counsel, became quite open about having these migraines, experiencing these migraines and relating it to stress and my opponent, she found it really uncomfortable just talking about the anxiety associated with the work and she just felt like 'Even if my boyfriend, who's another barrister, could hear me now'. It was a sign of weakness…she was very much of the school that we have to not show it…she found it quite uncomfortable to admit that and she felt very much that she had to preserve this facade and I found that to be quite old school.*
>
> B46, family law practitioners 6 years' call

After this fieldwork was completed, the Bar Council commissioned its first survey research on the wellbeing of its practitioners, with a sample of 2,456 barristers, 88% of whom were self-employed (Positive, 2015). It found that 'Rumination and self-critical perfectionism…are at notable levels' and that practitioners were under pressure, self imposed and external, to strive for 'continual excellence and perfection' which although could be a positive driver of performance was also 'strongly correlated to psychological ill-health and burnout' (p.3). This study supports the assertion that barristers impose high standards upon themselves, striving for excellence and 'going the extra mile' for the client. It is not uncommon for criminal barristers to do work that falls under the solicitors' litigation fee – drafting of affidavits, applications under the Proceeds of Crime Act, hearsay applications, bad character applications – and not get paid for it. The amount of work barristers put into their cases should not be underestimated and many feel resentful about government and press portrayals of 'fat cat' lawyers being overpaid for what is perceived to be an easy job:

> *I think that there are people in the Ministry of Justice, and have been people in the Ministry of Justice for a very long time, who think that being a criminal advocate is easy. It's an easy job. 'Oh, what's your problem? You just rock up at 10 o'clock in the morning, you hear a bit of evidence, you ask a few questions, you leave and go home at 4.30pm'…I'm married to a barrister. It is very, very rare that on a Sunday neither of us are working on our cases…I've known my husband to get up at 3am to work. I've known me to get up at 5am*

to work because its not just about attending court and asking a few questions.
B18, Criminal barrister, 21 years' call

To some degree practitioners are motivated to do the unpaid work in order to secure the brief at trial, or as a favour to the already stretched solicitors, whom they want to keep on good terms with. In the event that they are instructed at trial, it will reflect badly on them if it the case is not in order and fear of performing badly in a case is a key driver to work hard: '*I'm in the firing line and I know that the buck does stop with me in terms of being the front man. As soon as you remove that culture, you've f***** it. That is what drives most barristers.'* (B25, criminal practitioner, 20 years' call). At the time of this fieldwork, there was also a pressing need to remain united with criminal law solicitors in their joint efforts to resist government proposals to 'transform' the legal aid system:

> *Sometimes they send me stuff that really should be done by them…and very often counsel doesn't get paid for it…there is no way that they can get paid for drafting that sort of thing. Its part of the litigation fee for the solicitors and they might not have time to do it, but they pass it on to Counsel and you do it…you do it to get the substantial hearing, to get more work for them…it has been suggested lately that perhaps we ought to have a go at their litigation fee but that would be so divisive, between solicitors and barristers, that we would not be able to put forward any sort of common ground when looking at the latest proposals with regard to legal aid.*
> B3, criminal barrister, 33 years' call

This extra, unpaid effort does not necessarily result in more work however, as solicitors and the CPS keep as much of it as possible in house: *'We are getting fewer and fewer cases, because solicitors are keeping them. The CPS are doing them if you prosecute'* (B7, criminal barrister, 29 years' call). Many criminal practitioners feel that their 'good will' has been abused and that the criminal justice system only continues to survive largely because of the amount of unrecognized, unpaid work that they do in a bid to keep work as well as do a good job: I think everyone does pro bono work all the time (laughing) (B44, criminal silk, 36 years' call). One criminal practitioner felt that the cuts had pushed the system to its limits:

> *I think they rely on the pressure that those individuals are prepared to put themselves under and take it for granted, when the system is still just about working. It's like a machine. You take out all these cogs and you're got the thing that's keeping it going still there and then you say 'Right, it won't matter, we'll just take out the big cog' and they'll take it out and its going to fall apart.*
> B25, criminal practitioner, 20 years' call

In May 2016, the Committee of Public Accounts did indeed declare that the criminal

justice system was close to breaking point due to lack of resources and that the Ministry of Justice had 'exhausted the scope to make more cuts without further detriment to performance' (Public Accounts Committee, 2016, see Summary). Practitioners from other areas of practice also feel that they frequently work for no financial reward:

> *Some of us feel that we do a lot of pro bono work anyway, because we don't get paid for a lot of the work that we do in terms of our own caseload. So I have done pro bono work but I generally don't do anything for the Pro Bono Unit, because I think that so much of the work I do is not paid anyway. But lots of people do pro bono work.*
>
> B43, family practitioner, 27 years' call

A commonly held view across all practice areas is that the depletion of the publicly funded independent Bar will diminish the quality of representation available to those with low incomes. The service that employed lawyers will provide, whether they are public defenders, solicitor advocates, employed barristers or the new legal aid providers (who will operate on economies of scale), will not, in many barristers' view, be of the standard provided by the independent Bar (Jeffrey, 2014), and many were appalled that the Ministry of Justice's proposals in *Transforming Legal Aid* and the QASA scheme referred repeatedly to 'adequate' representation:

> *The difficulty is that the standards are being set both in QASA and in PCT (price competitive tendering) are really low. I mean PCT says that legal aid will be to provide an adequate level of representation. It doesn't say anything about a high quality or excellent one.*
>
> B2, criminal silk, 28 years' call

For a self-employed practitioner, this is anathema and contrary to the professional culture into which s/he has been socialised. Further, legal aid payments to criminal lawyers in the initial government proposals were structured so that there was a direct incentive for lawyers to get their clients to plead guilty, in order to promote 'early resolution' of cases. Conceptually, this was very difficult for practitioners to digest, offending the very basis of their ethics:

> *Lawyers, who from my experience in criminal courts have always operated with probity when it comes to things like operating within the rules of the profession, would not have been advising the client to plead guilty or not guilty on the basis of their fees…Criminal barristers often do themselves out of money, that's been my experience. But the express intention is to cut fees to the bone with the express intention of putting financial pressure on lawyers to make defendants plead guilty…its grotesque!*
>
> B8, common law practitioner, 21 years' call

Everyone interviewed agreed that the publicly funded Bar was on its last legs, with fewer practitioners doing that kind of work and fewer recruits coming into those areas. Practitioners in this field are very demoralized, not just because of the diminution in workload, but because they believe standards have and will continue to drop, as more and more work is done in-house by employed lawyers: *'The publicly funded Bar is a dead duck. It's going to be just civil servants basically, with legal qualifications'* (B14, commercial barrister, 41 years' call). For many this marks the loss of quality that will be hard to replace: '*You are going to get counsel and the bench mark is 'adequate' and that's all money driven and its very sad as a whole body of excellence is going to dissolve and nobody's going to be able to stay in it'* (B4, civil practice, 24 years' call). Even those that do not do criminal work, sympathise with those that do and recognize its symbolic importance for the Bar as a whole:

> *If you think you're in a job in which you've worked very hard and nobody's going to pay you anything and in fact the work has dried up, even though you are still very able and very experienced and you've got family commitments to meet, you can see why people have mid-life crises and this is what is, what is so tragic… the criminal Bar is the throbbing heart of the profession…a criminal justice system is absolutely fundamental to a healthy democracy and its having the pips squeezed out of it.*
>
> B13, Head of commercial chambers

Commitment and excellence remain very real ideals for some barristers, irrespective of whether or not these standards are always met. Unlike the solicitors' or accountancy professions, these ideals are not spelt out in terms of doing everything to 'keep the client happy' or clocking up billable hours (Anderson-Gough et al, 2000; Sommerlad, 2011). Whilst impression management and client-focused service are notions that have developed at the Bar since its increased marketization, the ethos of the profession is not dominated by a fear of offending the sacred client, even though barristers believe that their independent judgment is always exercised in their clients' best interests. There is a feeling that some solicitors often run or settle cases with other considerations in play:

> *That's what's going to happen once barristers all start going in-house, if they do, or work together. Its going to be much more about, its not about the client, its about 'I've got to pay the office space', 'I've got to pay the secretaries', 'We've got to pay that'.*
>
> A3, senior clerk, common law set

7.5 Discussion

A narrative of exceptionality runs through this cultural representation that the Bar collectively and its members individually project, with an oft-repeated and genuinely believed assertion, that the combination of independence, excellence and commitment is what distinguishes them from other, employed lawyers and in the service they provide. It is precisely because they are self-employed and autonomous that they can provide specialist, high quality advocacy and advisory services at a much lower cost than other lawyers, given the much lower overheads each individual has within the chambers model. Despite the incursions of managerial practices and regulatory demands, barristers feel that it is the relative freedom from corporate hierarchy, investors, target setting, cost meeting and business generating that allows them to spend the necessary time on cases to produce that quality. The fierce fight to preserve the independent Bar, to fight for legal aid to support sections of it and to prevent even more work being done by employed lawyers is motivated by the widely, and strongly held belief that self-employed barristers are better specialist advocates than other lawyers. At present, the majority are not prepared to accept that the current system is no longer affordable, the main argument put forward by the state, and assert that the cuts are ideological and that the state does not mind if those without means have a lower standard of representation.

Even if they are correct in this view, it is hard to ignore that litigation has become more complex and more expensive, more rule oriented and procedurally managed. At the same time there have been cuts to courts services and staffing, with many courts unable to keep up with the targets and time scales expected of them, evidenced by recent reports into the criminal justice system. A whole new vision for justice is being articulated, with more online courts, less lawyer involvement and a more inquisitorial approach in small civil claims (Briggs, 2016) and the current criminal justice system is under constant review, with a recent commitment by the government to invest £1billion in online courts, which would need fewer, if any, lawyers (Cross, 2016). In the field of private family law, non legal, and thus non lawyer, methods of dispute resolution are being promoted as state funding in almost all cases has been removed (Eekelaar, 2015). Nonetheless, most barristers interviewed remain steadfast in their view that they have a critical role to play, as independents, in any such vision.

This research indicates that in some respects there have been cultural shifts in the profession in the last 25 years. Although the ideals of independence and excellence

remain strong and shared, barristers have faced serious challenges in the last two decades. This once uncontested elite group has been compelled to become more 'modern' and efficient, more commercial and competitive, more accountable and transparent and more inclusive (Rogers, 2014). Barristers have had to adapt to outside regulation, with rules and monitoring systems affecting chambers' organisation, recruitment, training and education, complaints procedures and equality and diversity policies. Considerable extra time and effort is now spent on these matters and the profession is much more overtly accountable. The managerialisation of the court rules has further imposed constraints and demands on practitioners' way of running cases, perhaps to some degree interfering with how they might approach a case. For some these developments are unwelcome. Although none object to making the system more efficient or having disciplinary oversight and robust complaints procedures in place, many view the reforms targeting these as excessive, time-consuming, often time-wasting and nurturing an external culture of groundless complaint. Few are impressed by the BSB, not because it is an outside regulator, but because of its perceived overt hostility to the profession. The attempts to increase efficiency in the court system is in some cases thought in fact to decrease it and to result in injustices. The removal or diminution of the provision of legal aid threatens, in the minds of many, the quality of service barristers can provide, stretching their good will to its limits and the provisions of CFA/DBA are distasteful to a profession that prides itself in having no financial incentive to run a case in any particular way or to benefit from a clients' award.

Barristers' reactions to these developments are very much interlinked and better understood in the context of their professional culture and outlook. The persistent portrayals, by the Ministry of Justice and some of the media, of a profession driven by financial reward alone (or at all, in the publicly funded area) is, in their minds, at best a failure to understand what drives and motivates them, what they care about and why they work the way they do, or, at worst, propaganda intended to disguise a neoliberal ideology that wishes to withdraw state funding for certain sections of society or those accused of crimes, irrespective of quality and independence of representation. Many observed that the government has no issue with the commercial sector of the Bar that earns large amounts of money, contributing significantly to the state's coffers, evidenced by the 3 day Global Law Summit in February 2015, during which Grayling, the then Lord Chancellor, trumpeted the success of that part of the legal sector.

Friedman (1977) observed, with reference to the American Bar, that 'the profession has been exceptionally nimble in finding new jobs as old ones disappear or fill up' (p.25), an observation made about a fused profession, where there might be more scope to branch out and diversify. But his comments could well apply to the privately funded sector of the Bar, which has found new specialisms, diversified into new areas and found new ways of working. Even criminal practitioners, who have far fewer options, have made great efforts to branch out into more regulatory work as a means of surviving. An entrepreneurial and commercial spirit has emerged across sections of the Bar, driven by the new competitive environment and the liberalizing rules and no doubt underpinned by the anxiety practitioners feel in a fast changing market. In these circumstances, sections of the Bar have been able to maintain the quality they aspire to whilst remaining competitive and exceptionally good value compared to the solicitor branch. By contrast, much of the publicly funded Bar is in decline, with low or no recruitment in some chambers, less work and some practitioners leaving for in-house or other employment. The drop in quality in this area is for many inevitable, as more work is likely to be done by salaried lawyers who do not share the independent Bar's ethos. A considerable number of practitioners who undertake legally aided work are beleaguered and demoralized and many feel that their efforts are unrecognized.

Yet much of what it means to be a barrister remains intact. All still aspire to the ideals of excellence and independence of thought and independence from outside pressure in how they handle their cases, even if these ideals are not always completely realised in reality. To what degree the ideals and shared values of the Bar will be maintained depends on how students are trained for and socialized into the profession, how those in hybrid practice react to organizational control, how chambers are able to continue influencing junior members as sets increase in size and, lastly, whether those in hugely different practice areas pay attention to and are involved with those in other areas, without splintering off into entirely self-contained sub-occupational groups with only their own interests in mind. The following and final chapter considers this last point and explores to what degree practitioners think there is a true Bar community in the light of the changes the profession has undergone.

Chapter 8 – Community, identification and professional socialization

The ethos or professional culture of the Bar, identified and analysed in the previous chapter, was traditionally communicated and absorbed by members of the profession not just in the early years of practice but also throughout their careers, as practitioners spent large amounts of time grouped together within the Inns or their circuit community and in chambers. Unlike the solicitors profession, which was much larger and much more geographically spread out, the independent Bar was (and is) relatively small and, in London, till relatively recently, all of it located within the Inns of Court. This chapter considers to what degree the reforms of the last 25 years have affected the cohesiveness of the Bar community in the minds of practitioners, and whether, even if there is a shared professional outlook, the profession can really be perceived as unified in the light of its recent diversification and stratification.

8.1. Inns of Court

'Traditional community' was a feature Rogers (2012) noticed the profession used when selling itself to prospective members. This idea of a special community encompasses both the physical and psycho-social. The Inns of Courts 'elegant, historical spaces', with their 'chapels, libraries, coats of arms and dining halls attest to, and reiterate, their historical connection to the Crown', giving barristers a sense of their profession's history, forming part of its central narratives and 'constitute crucial dimensions to modern self-identity, contributing to the sustenance of ontological security' (Rogers, 2012, p.213). For some the physical space and history of the Inns can play a role in identity formation, in what it means to be a barrister:

> *Its cultural too and even the younger barristers can be…very influenced by the very senior members who have been doing it in the same way for a long time. Often I've found that they are the ones that are most seduced by their desk in a particular part of chambers, overlooking a particular view - that's part of the package, absolutely. It's the tradition. You know, the Bar is still overwhelmingly upper middle class. It's still overwhelmingly Oxbridge. These people don't come in to change things, they come in because they've been brought up with the idea of a barrister.*
>
> A7, Bar marketing consultant

Clearly, this notion of a united physical community within the four Inns fails to take into account that not all chambers are in London. In 2012 there were 461 sets of chambers outside London and of the 363 in London, some were outside the confines of the Inns. Further, there were, on last count, 498 sole practitioners (BSB website, Barrister Statistics, 2014). Far from wanting to be part of a traditional, physical

community, one barrister found it liberating to be outside the Inns:

> *I've only heard positive things about people moving here. People like it. I mean I love it, because you don't have to worry about being seen by Mr Justice Bloggins, wearing your jeans or anything like that and the area is fantastic. It's by St Paul's, full of restaurants.*
>
> B44, head of multi-practice set

For some of those in practice on circuit, the Inns of Court hold very little appeal. Whilst eating her qualifying dinners, one practitioner felt very alienated and had no sense of shared experience:

> *I used to hop on the train, run into Lincoln's Inn, eat the dinner, sign the form, jump back on the train and go to bed (laughing)…I found it very London centric…I mean Lincoln's Inn isn't something I'm particularly interested in. I remember having to meet, what is it, you have to have an interview to show that you are a person of integrity and the judge that I spoke to…when I said I was from X, was so surprised, 'Oh do they have chambers in X?' I told him there were two and he was very surprised (laughing), so it wasn't his fault, but I felt like I was an alien when I was there.*
>
> B31, circuit practitioner, 6 years' call

Another London-based barrister found the experience of dining at one of the Inns to be culturally narrow:

> *My experience was I just ploughed through the dinners with friends from the BVC (Bar Vocational Course) but my most memorable experience was when my parents came and we were sat next to a judge and my Dad is very humble, but very well educated at the same time (laughing), and I think this judge was just so culturally insensitive. But the good thing was my father really put him in his place and showed his knowledge of some African knowledge or the like and the judge was very humbled by it in the end…and my Dad was thinking, how did you manage your 12 dinners?*
>
> B45, family practitioner, 7 years' call

Traditionally, much professional socialization and education took place within the Inns, and at the peak of their influence, from the Tudor period till the late 17th century, all trainee barristers would eat, live and study there, attending regular moots, debates and readings (Warren, 1978b). Burrage likens collective life at the Bar in the 18th century to a gentleman's club, with obligatory dining in London or circuit messes in the provinces (Burrage, 2006). The collective ritual of dining within an Inn was designed to prepare incoming barristers for life at the Bar and acclimatize them to the practices and norms of the profession (Boon, 2014).

Many practitioners interviewed felt that the Circuits were less influential than they use to be in the identity-formation of new entrants or at all, with many who practice on circuit having little to do with their local Bar community or circuit activities. By contrast, as circuit influence may be diminishing for some, the Inns have, in recent years, become more prominent and have revived their educational role, running all manner of CPD and New Practitioner Programme qualifying courses, including advocacy and ethics training and forensic accounting. They also provide a significant amount of scholarships for the BPTC, some offering accommodation to students and funding to pay for the qualifying sessions/dinners. A number of older barristers were fairly cynical about the Inns' renewed interest in their members: '*They suddenly thought they might be abolished, so that's why. So they are now making themselves proactive…the advocacy stuff is very good*' (B44, criminal silk, 36 years' call). Dining has now become just one of the twelve activities that constitute obligatory qualifying sessions that a student has to complete before Call (Boon, 2014). Whether it is dining, training workshops or talks, the intention is that newcomers will have an opportunity to meet and mingle with older practitioners or judges and learn about the customs and traditions of the Bar:

> *I say qualifying sessions because I think that there has been a change from what I've heard. It used to be that these were just dinners and now there are activities that count. They're optional in the sense that you choose to do them but you have to do 12, minimum. For example they will have a mooting evening and that will count as one qualifying session…I think I probably learned the most, not that I knew exactly what it was going to be like at all, but I probably got the most out of those qualifying sessions just by mingling really.*
>
> B17, civil practitioner, 3 years' call

For some students, these events give them direct contact with other, older members of the profession before they have any real experience of the Bar:

> *You could sit on the Bar table with the judges if you'd taken part in things, so that was a great opportunity to have a chat with barristers, some of them quite senior, and some judges…I think it was more of a socialisation process…finding out what its like, dealing with the eccentricities of senior barristers.*
>
> B21, civil practitioner, 3 years' call

Further, opportunities they would not otherwise have come their way as a result of these events:

> *I think its (dining) quite nice, an old tradition… there were a number of*

> *occasions where I was able to chat to people that I can't imagine ever having had the opportunity to chat to. I was offered a marshalling at dining by (name of judge), which was really cool.*
>
> B16, civil practitioner, 18 months' call

Whilst students and new entrants are necessarily involved in their Inn, many practitioners have little to do with them, occasionally lunching there or using the library, but nothing more. A couple of the younger practitioners, who had received scholarships from their Inn during their training regret that they no longer have time to take part in Inn activities or even go there. Others are much more involved, using the Inns not just for social networking, but also for professional advancement:

> *I've always been very heavily involved with my Inn… once you're on a committee…you find yourself going to other Inn events…As to what I get out of it, it's some more cynical motives and some less cynical motives, as in most things. The more cynical motives are I think it really helps a great deal for people to see your name about and being on committees. Being involved in your Inn is a very good way of doing that…there are quite a lot of fringe benefits. You get asked back to the private dinners with incredibly prestigious speakers and whatever, the usual benefits of committee membership, that sort of thing. And just more generally, I really enjoy meeting people from other chambers because it's very easy to think that your chambers is the only way things could possibly be done, but it isn't. Its one of the reasons why I'm a bit more alive, because I know so many people who do, say, criminal law through Middle, its one of the reasons I am alive to all this legal aid stuff, which most of chambers are fairly oblivious about.*
>
> B12, civil practitioners, 4 years' call

For more experienced practitioners, involvement with their Inn is a stepping-stone to becoming a bencher there, for some a prestigious position and good for their CV if hoping to become a judge ('*If you want to become a bencher, you've got to get yourself involved in advocacy'* or '*I ought to become a bencher and I've been very lazy abou*t that. *If I become a bencher I will have to do something, I'll probably do something.*') Yet, for many practitioners, the Inns remain a mere geographical space in which they work and perhaps take lunch. The libraries are used far less with the development of online availability of all reports, textbooks, journals and practitioner handbooks. The current development of Inner Temple library, with more corporate use in mind and reduced reading and work desks is evidence of this (Ames, 2015). Nonetheless, a new entrant coming into the profession 25 years ago, could have had almost no dealings with her/his Inn save for dining there, so the extensive educational programmes and training now on offer, together with significant bursaries and an access scheme (Freer, 2016), make their contribution to a young barrister's professional socialisation significant.

8.2 Specialist Bar Associations

Aside from the Inns, the specialist Bar Associations have, over the last twenty years, become more numerous and more influential. These associations have an educational function and almost every barrister interviewed was a member of at least one, if only to attend their training events and get their CPD points. Many are members of multiple Bar-only associations, as well as broader specialist associations for the whole legal profession. It is seen as a good way of keeping up to date on legal developments in any particular area, networking and marketing. Many have provision for junior representation on their committees, broadening the range of voices. The associations also have a representational function and are consulted, by the Bar Council or government bodies, on issues directly affecting their practice area or those concerning the profession as a whole. Each association is represented on the Bar Council. Their role goes beyond representation however, as specialist associations play an important part in supporting and approving professional development. If a new area of specialism arises, a group of practitioners might lobby the Bar Directories to recognize it before later setting up an association to legitimize it further.

The Family Law Bar Association and Criminal Bar Association have in recent years become more militant and political in the face of endless cuts to legal aid funding, the latter taking on a more trade union style of leadership and representation. In January and March 2014 they mobilized large numbers of the profession to go on strike and to implement a 'no returns' policy, in protest to the legal aid reforms: *'Those are areas that are largely funded by the state and they are under massive, and one might feel rather unfair pressure, so they've got a really strong reason to get down to their bar association and start demonstrating.'* (B28, specialist Bar Association chair). This politicization of barristers and their professional associations is indicative of just how threatened parts of the profession feel by the legal aid cuts:

> *The Bar is a conservative profession…but people have become more radical in the last two years, because they have suffered constant pay cuts and finally the penny is dropping that there's no negotiating with the Lord Chancellor. He is an ideologue. He is a result merchant politician.*
>
> B35, criminal circuit practitioner, 28 years' call

In May 2015, after the appointment of Michael Gove, the new Justice Secretary/Lord Chancellor, the CBA voted to take further strike action if the second tranche of cuts and Dual Provider Scheme, reducing criminal legal aid franchises, went ahead (Bowcott, 2015; Fouzder, 2015; CBS press release, 2015). In the face of government

challenge, therefore, significant groups within the profession have collaborated to present a strong and united voice of resistance: '*I think in the past couple of years, I think that the CBA have been very assertive… I think that the publicity has helped…It might manipulate things one way or the other, a little.'* (B18, criminal practitioner, 21 years' call). In January 2016, to the great relief of the legal profession, Gove backed down on implementing those reforms (Bowcott, 2016).

Aside from acting on behalf of their own community, the professional associations also support and benefit the wider Bar community. For example, the CBA sought and received support and funding from other Bar associations to fund judicial review proceedings relating to legality of the QASA proposals. The Commercial Bar Association (Combar) has also worked to benefit the whole of the civil Bar and solicitors:

> *They were very active on an issue that is of importance to all civil law barristers, which is the standard terms on which barristers agree to be instructed by solicitors, contractual terms, and the Combar has had a negotiation with the City of London Law Society, and produced standard terms and that was a very important piece of work, which everyone else has used…they've actually drafted some terms and they've persuaded the City solicitors to use them and so everybody else is leapfrogging on that and using those terms, so that's an area that they've actually in some ways been more useful than the Bar Council itself, because the Bar Council's terms were too pro barrister so the solicitors refused to use them, but the Combar have managed to get a compromise that it seems solicitors are prepared to use. So that's an example of bringing something of real benefit, not just to their own members.*
>
> B28, specialist Bar association chair

These associations therefore, work to promote and educate their own specialist community, but also serve a broader function of taking an interest in and supporting concerns of the wider Bar community. Some, such as the Chancery Bar Association, offer the general public a service, via a specialist pro bono unit for those that attend the motions court without representation and need assistance. Many of the barristers interviewed had nothing or little to do with the overarching representative body, the Bar Council, and many had either no view about it or rather cynical negative views that it was ineffectual, pointless and lacked good leadership. Yet almost all were members of at least one specialist Bar association, bringing them into contact with practitioners in similar practice, where they collaborate on issues of continuing education and representation and the publication of regular newsletters to their members.

8.3 Chambers

Having opened the empirical sections with an account of chambers structure and governance, it is now opportune to return to that space, as chambers is perhaps the most influential site of professional socialization. Unlike Northern Ireland and Scotland, where there is no chambers system, most practitioners in England and Wales are part of a set (Morison and Leith, 1992). As discussed in Chapter 5, a new entrant will spend a year in pupillage in chambers, attached to a number of supervisors who are tasked with training them. Many aspects of this are prescribed by the BSB: *'There's this thing called the Pupillage Check List…the pupil masters will attempt to shepherd you through this list and they know that at the end you have to have done it all, so they try and do their bit'* (B11, civil practitioner, 18 months' call). Much of what the pupils observe and experience is less easily classified but no less influential in terms of professional identity formation. This 'shepherding' by supervisors will go well beyond satisfying the BSB's requirements, viewed by some as a mere box ticking exercise. Many supervisors will invite pupils to lunch or their homes to meet their families:

> *A nicer man you couldn't have met and welcoming and he invited me to his home for supper with his family and made a point of making sure I knew if ever needed help, he was always there for me. It was incredible. I've met people who I would never ever have met in other walks of life and I always find it quite strange now that if I go down to London to work, I pop into my old chambers and there are people there and we go for a drink and we catch up and there are people, when they come to the north east or the northern circuit, they ring me. You know, and I think that's great. I love that.*
>
> B33, criminal circuit practitioner, 6 years' call

Pupils will absorb what they see as normal standards of behavior, learn what is expected of them, how to present themselves and behave in chambers, to solicitors, clients and in court (Harris, 2002; Rogers, 2011). It is in chambers that the subtleties and complex interaction related to getting and keeping work takes place (Morison and Leith, 1992). It is in chambers that pupils see the mix of confidence and anxiety of practitioners as they navigate their professional lives (Rogers, 2011). It is also within (and across) chambers that professional and social friendships are formed, tales recounted, matters complained about. For a newcomer, this camaraderie can be very supportive: *'It is very personable and I feel very at home here, very at ease and even as a pupil I felt as much at ease as you can as a pupil'* (B17, civil practitioner, 3 years' call). The Bar commissioned research on wellbeing in the profession, which found that 'The deepest level of support within the self-employed Bar is reported as coming from others within Chambers…Often individuals form

close bonds when they share adverse or challenging situations or events – the challenge and emotions associated becoming the relationship glue' (Positive, 2015, p.3). In spite, or because of growing numbers in sets, efforts are made to maintain a sense of community: '*There is still sort of a collegiate atmosphere. We still have chambers' tea every day'* (B15, specialist civil silk, 28 years' call). Mentoring schemes in chambers are another new development designed to tackle the problem of increasing set sizes and maintain a community feeling, even if not all barristers are especially personable:

> *We've slightly over compensated. We've created mentoring systems in chambers, so they've always got people to talk to higher up…all the youngsters have a mentor, someone who's maybe two - one, two, three years above them and then senior members of chambers are told, there are some people you wouldn't send youngsters to because they would just depress them, but senior members of chambers are expected to make themselves available and it works. You start them off with a mentoring and a collegiate atmosphere and they gradually, they know the people they go to see. And it works and if you create that atmosphere and that expectation, it happens.*
>
> B13, head of commercial chambers

It continues to be common practice for barristers to go into each other's rooms and discuss legal points or other aspects of a case, exchange ideas or ask for help from their colleagues. This is not something they perceive to be as common in solicitors' firms, yet another example of how barristers perceive their particular organizational set up to be different (and better) to that of law firms':

> *I think its extraordinary given the fact that these are all self-employed people, who've got incredibly busy practices and if you talk to solicitors and junior solicitors and they say 'Oh the difficulty is I never know, I can never discuss anything with anyone and I really worry about my work' and you think 'Well that's ridiculous, you're presumably in a team, in a firm, where everyone is PAYE, so surely its in everyone's interest to assist you', when here I think its remarkable the time that people are prepared to give up and without any sort of sense of 'Ugggh (sigh) not you again'*.
>
> B21, civil practitioner, 3 years' call

However, not all are convinced that the atmosphere is really that cosy and take a more pragmatic view of barristers' self-employed status:

> *They are competing against each other. Even within the teams you are competing against each other. Some people are actually against each other on a day-to-day basis in court, aren't they? But that's why 'teams' is the wrong word I think, 'practice groups' is probably a better phrase, because you're not working as a team really…I think most people at the Bar are selfish. They only see themselves in terms of their own practice. They want what's best for*

them. They can say one thing in a meeting and then be completely different in the way they behave, in using resources and what they want to be done.

B41, family practitioner, mixed set, 30 years' call

The profession, its structure and practitioners' self-employed status necessarily make barristers individualistic and competitive and a number of interviewees were prepared to discuss this aspect more frankly. Some have had bad experiences within chambers, where there was no sense of fellowship when it was put to the test. One barrister recounted how his chambers dissolved and his 'team' found another set to join as a group of specialists. The receiving chambers would only agree on the condition that they did not bring along their junior members, as it would bring too much competition for their own juniors. His team had no issue with leaving them in the lurch:

Eventually the team found a 'buyer' in X chambers, but they didn't want anyone young, they didn't want any of the bottom three or four of us, which included me, because we were too junior, you see. The head of chambers said we had a long tail, 'We don't want lots of juniors'. That's the most anti-competitive element, because I was then in a position of having to be in sheltered practice, because you have to spend the first three years, post pupillage, you have to be in a practice with more senior members, so I had to find somewhere or I wouldn't be able to practice as a barrister.

B9, sole practitioner, 8 years' call

This particular barrister managed to find another set from which to practice until he was of sufficient call to leave the chambers system and set up on his own. Obviously, some sets have a friendlier atmosphere than others, but the chambers ideal of community and support is not always reflected in reality:

In a lot of barristers' chambers you have egomaniacs all trying to run the show and fighting and all that. We were, here, very fortunate. We had these people who…wanted chambers to work quietly, efficiently, be a nurturing place and not be a place where they acted out their own egotistical fantasies, which you do find, I think.

B36, chancery practitioner, 38 years' call

For some practitioners, the cosiness of the profession is too close for comfort, especially on circuit. The 'long-standing institutional intimacy' (Rogers, 2014, p.32) between the Bar and the judiciary supports a configuration of power that can seem inappropriate:

On circuit you know everybody and the trouble then is people from the circuit become judges and everybody knows the judges…I do prefer the anonymous

> *version and I find that - contempt is probably a bit too strong a word - but familiarity with judges and slack language on the circuit is a bit too - for me, I shudder. I was in chambers with a judge the other day with five counsel. All knew him at the Bar, all in the same chambers probably. You know everybody. And I was the only one calling him Judge and everyone else was calling him by his first name and I was shuddering…I just, I find it quite, not just for me as a barrister, but I find if I was a member of the public, I'd be sat listening to some exchanges thinking 'Oh, they're a bit pally'*.
>
> B33, circuit criminal practitioner, 6 years' call

Most barristers continue to work within the chambers model and, in London, most chambers have remained within the Inns of Court. This study supports the findings of the Wellbeing at the Bar research (Positive, 2015) that despite the changes to chambers structuring and staffing, despite the growth in membership and the introduction of hot-desking as more and more people work at home, chambers remains the most significant site for professional community, identity formation and socialisation. Most will have spent a year as a pupil in the set they end up joining; most will spend some time working there, even if they might not have a designated desk; many will sit on one of the committees and participate to some extent in the running of chambers; almost all will attend the annual meeting, chambers parties and be part of the marketing seminars; many will be pupil supervisors and all will be a member of at least one practice group. Chambers remains, in its modernised form, a critical site for the formation of collegial relations and the absorption of Bar culture.

8.4. A united bar? 'Imagined community'?

Much of the rhetoric emanating from the Bar Council on their website or at their 2013 annual conference, presents a united profession. In the opening speeches, the conference chairman referred to it as 'one Bar, with shared values' and the then Chairman, Maura McGowan QC, reiterated the point, 'We are One Bar, the whole is greater than the sum of its parts. Every section of the Bar works to support the others'. The Lord Chief Justice at the close of the day was perhaps more circumspect: 'The Bar of England and Wales is, or should be, one cohesive profession' (Cwmgiedd, 2013). He then highlighted two aspects that gave him cause for concern in relation to the profession's unity - the increased concentration of the legal profession in London, in specialist areas in particular, and the marked difference in income between those practitioners who are privately paid and those doing legally aided work.

Hunter (2003a) draws on Anderson's notion of an 'imagined community', sustained by Hobsbawm's idea of 'invented traditions', in her analysis of how the profession's

structure and culture in Australia necessarily excludes women from fitting in and advancing with their careers, challenging, in that context, the idea of a real community. This study applies the concept when considering whether, in the minds of practitioners, the 'One Bar' rhetoric holds up under examination. When talking of a given national group, Anderson recognizes that not everyone knows everyone else, yet 'in the minds of each lives the image of their communion' (Anderson, 1991, p.6). With reference to the Australian Bar community, Hunter asserts that 'acculturation processes' reinforce this notion (Hunter, 2003a, p.119). To what degree is the culture of the profession in England and Wales sufficiently strong and sufficiently relevant in barristers' minds to bind practitioners in different locations and in different practice areas together in a true community? Whilst most barristers seemed to identify with the shared values of independence, integrity and commitment, the idea of community, which necessarily implies unity of some sort, provoked a very different view from a number of interviewees, expressed thus by one: '*One of your questions is 'is the Bar unified?' Its obviously not…it's a complete fiction.*' (B49, specialist civil silk, 29 years' call).

8.4.1 The 'private/public divide'

Many practitioners highlighted the huge difference in the lived experience and the income of practitioners carrying out privately and publicly funded work:

> *Its quite a different market, I mean the Bar is split into two, you've got two almost identifiable different markets…The Bar is absolutely schismatic. You've got the privately funded Bar and specialist Bar, which are doing very well. You've got the publicly funded Bar which is under huge stress, because you've got a monopsony buyer, the state, who sets the rates, legal aid rates, and is determined to reduce the rates and now a barrister will do a case for less than they would have done 20 years ago…its very different now. You need to almost analyse these questions twice, once for the publicly funded Bar, once for the privately funded Bar.*
>
> B13, commercial barrister, former Bar Council officer

> *There are incredibly different Bars. No, I wouldn't say it was one Bar at all, no. It doesn't feel like a united Bar…the impression I get is that the commercial and civil bar, there's a lot of talking about how we understand the vulnerability of the criminal Bar and its an outrage but I'm not sure juniors at x chambers, say, and all those places, really have any idea what it must be like to be in Banbury Mags earning £26 or whatever they get.*
>
> B19, civil practitioner 15 years' call

Until about 25 years ago many more practitioners started their careers in general common law practice and specialised much later on, if at all (Morison and Leith,

1992). Most did some legally aided work in the early years. As discussed in Chapter 4, sets are so much more specialist, a junior will now rarely stray out of a particular area of work and will never have experienced broader practice. Those in specialist civil or commercial practice might never do publicly funded work, or very little if they do:

> *The Bar has completely fragmented, that was the point I was going to make and it really has become obvious…whereas we were all part of an overall club, and everybody did everything. Not everybody, but lots of people did everything. You know, I did jury trials, I did all that stuff… but its really interesting, I'm now on Combar, so I get to see quite a lot of what's going on behind the scenes over things like legal aid cuts and what the criminal bar want the rest of the Bar to do to support them and the conflict is quite difficult…they want us to go on strike, they want us to boycott the government's global law summit next year as a protest, whereas the commercial Bar doesn't want to do that…They're trying to impose means tested subscriptions to the Bar, so the commercial Bar will subsidise the criminal Bar. Personally, I don't care, that's fine as far as I'm concerned if that is one way of keeping everybody more or less together…when I said we're fragmented is not so much that there are political divisions, but what became clear to me - I had a meeting…with circuit leaders, criminal circuit leaders…it became obvious to me in that meeting, that I was the only person in that meeting who understood both sides of what everyone was doing, because I do commercial work and because I used to be a circuit practitioner and I know all these guys. The criminal bar have no idea what happens in commercial sets. The things they were saying about how this would affect the practices of young barristers in all sets, including commercial sets, were just nonsense. They're miles apart in terms of what people are doing now and they haven't a bloody clue what happens on circuit in the criminal sets or in the mixed law sets and I was really shocked at how little … a criminal silk, knew about what we were doing in the commercial sets. It was really shocking...in the old days we all knew what we were doing.*
>
> B48, commercial silk, 28 years' call

This extract highlights just how separate different groups of the Bar can be. Practitioners might share the ethos of excellence and independence, yet their practice development, their professional interests and relationships with solicitors and the outside world are markedly different, as well as their incomes and practice security. Clear from the extract above is a feeling that by acquiring specialist practices early on, some barristers simply do not have any experience or knowledge of other parts of the Bar or of what is important to those in a different type of practice. Whereas it was common for most barristers who were starting out to have elements of a common law practice, that included legally aided work in the criminal and family courts, often on circuit, this was no longer the case. Practitioners now liken specialist practice areas to different 'bubbles' of experience, with practitioners sheltered from the experience of those in other areas of work: '*I think there are bubbles. My area of*

work, which is (specialist civil area) - its a relatively small number of people who are doing a lot of the cases, its very nice to know those people and so on, but I don't have many dealings with people who do other areas of law' (B28, specialist silk, 25 years' call). For many, the only means of finding out what other areas of practice are like is by either reading media accounts of by learning second-hand from friends:

> *I think there are so many bubbles within the Bar and if you're in a specialist bubble, you don't really know what's going on outside it. I mean I only hear about the criminal bar very tangentially. I don't really know anyone who practices at the criminal Bar, but I hear about things from my roommate, because she's married to a circuit judge and he sits in (place) and does crime…And equally I don't know what's going on with the big boys in the commercial sets. That's a different world, you know. Unless you've got a specific friend there you don't know.*
>
> B20, specialist civil practitioner, 38 years' call

Others recognize the difference in lived experience, yet point out that many barristers care about the unity of the profession, the problems faced by particular groups of practitioners, and strive to assist and represent them, for example, via the Bar Council:

> *It's a profession of individuals. You'll get people in our chambers, for whom it's the most wonderful ivory tower and they're delighted to be there and they really don't want to look outside at the town. There are lots of people, if you look at the Bar Council for example, the leadership at the Bar Council, predominantly comes from the commercial and specialist Bars, year in, year out, people are really interested in what the Bar as a whole is doing and are prepared to give up an enormous amount of time because they feel they ought to and its the right thing to do. That's quite common across the Bar, you don't see that across the solicitors profession, there is still a strong collegiate atmosphere across the Bar that we're one Bar, even though everybody recognises the publicly funded Bar is almost been carved off to an entirely different economic market. Yes, there are lots of people who just go on gently, plodding away in their nice easy furrows and they don't think of what's going on elsewhere, but there are also lots of other people who are interested, and that's always been one of the nice things about the Bar Council. There are a very, very large number of people who do want to put something back and recognise the profession suddenly needs to be preserved.*
>
> B13, commercial barrister, former Bar Council officer

The professional bodies do therefore play a role in attempting to bring different strands of the Bar together and for some it would appear important to serve the Bar as a whole, by taking office in one of the professional associations. Certainly some criminal practitioners felt supported by other members of the Bar during the protracted dispute with the Ministry of Justice over legal aid reforms:

> *I don't think the Bar is fragmented but of course people deal with their own lives and their own world, and there must be swathes of barristers who don't really understand what's happening to publicly funded work, but I think there are many who are very engaged with it, through social media and are keeping up to date with it, or because they have friends who are criminal barristers or family practitioners or whatever, so I don't think that its fragmented in that sense…If you're a tax silk or if you are shipping silk, then you are not really going to be involved in it, but if you've got any involvement in any of the professional bodies then that would be a way, or if you were in a mixed set you would overlap…We were helped by our non publicly funded colleagues. They did sign our petitions, they did get behind us, they did spread it out to their friends.*
>
> B18, criminal practitioner, 21 years' call

> *I think latterly the non legal aid bits of the Bar or some of them at least, got the point that this was an attack on more than just criminal lawyers fees.*
>
> B2, criminal silk, 28 years' call

The commercial and specialist Bars continue to grow and prosper, and whilst the Lord Chief Justice commended those practitioners for doing pro bono work, he warned the profession that more is needed to maintain unity. Pro bono work is a start as it:

> *…assists the profession with two distinct halves…it begins to address the means of providing cohesion through an understanding on the part of the privately funded sector of the reality of the issues faced by the publicly funded sector. But it is only a small step. Much greater steps to assist those planning on or embarking on a career in the publicly funded sector of the Bar to ensure that that sector attracts those that can provide independent advocacy of a high quality…the privately funded sector has its part to play in the changed circumstances which now exist and must do so not only in ways I have mentioned but in many others if the Bar is to maintain its cohesion as one Bar.*
>
> Lord Thomas of Cwmgiedd (2013)

The current fear is that people will simply stop coming to the publicly funded Bar as they will be unable to make a reasonable living (or in the early years enough to survive). From the Bar's point of view, this is not just a matter of maintaining levels of income for those practitioners, it is a matter of keeping up standards and the quality of work it believes it supplies, both of which will reduce if other legal professionals take over (Jeffrey, 2014). The Lord Chief Justice is silent on what exactly he envisages the privately paid sector at the Bar can or will do to support the publicly funded practitioners and many barristers interviewed were despondent about that sector's continuing existence.

8.4.2 Changing chambers

It is not merely the 'private/public' Bar divide that can undermine the idea of

community. Whereas before practitioners would commonly spend their entire careers in one set of chambers, more and more move, sometimes multiple times, as sets have become more specialist, or struggled to maintain levels of work in a particular area ('*It's been like a revolving door'*). Many interviewees had moved chambers at least once, some more. The old sense of chambers being a second family seems to have gone:

> *I'm afraid, its less of a club now and its more of a business and people are leaving and coming all the time. That's a new thing, the extent of the movement, I think. There was always one or two but it was frowned upon, because I think chambers then and certainly these chambers, it was all a club.*
>
> B19, 15 years' call, common law set

People move for different reasons. Some because their own chambers are dissolving:

> *We've done reasonably well picking up people here and there from other sets of chambers that have been dissolving to make up for departures. Lots of chambers are (dissolving). People move and that will, I'm afraid, develop. I mean that will increase over the next five years.*
>
> B20, 38 years' call, specialist civil set

Others move because they are unhappy with the developments within their own chambers, which, for example, have become too large: '*We had merged with another set of chambers twice and so we had a completely new structure…At that time there was very much a move to mega sized sets'* (B18, criminal practitioner, 21 years' call). As sections of the Bar have become more specialist, practitioners move as they feel their career trajectory has better prospects in a set that only does their areas of work:

> *It was my idea to leave and x came with me, because we were both family specialists...there was no solidity to return things to. I just felt that x and I were the only ones. There wasn't any progression, career progression, so it wasn't as if there wasn't any work. It was just that I felt that we were stuck at a level of work.*
>
> B39, family practitioner, 24 years' call

The trade press' announcements indicate that chambers regularly 'acquire' new members not just at entry level, evidencing a fairly recent trend that being in one set 'for life' is a thing of the past, whereby individuals make decisions to move based on their own career path with little feeling of loyalty or attachment to any particular set.

8.5 Inclusion/exclusion and diversity

Chapter 5 examined the new regulations governing efforts to make the Bar more inclusive, meritocratic and diverse in its recruitment. When promoting itself, it asserts that it is a diverse profession (Rogers, 2011; 2012; Bar Council website). By placing such high standards on academic achievement however, the profession necessarily narrows its intake, the majority of entrants coming from Oxbridge or Russell Group universities, and private schools before that, as already indicated. Thus inequality and exclusion remain, though certain chambers, the Bar Council and the Inns have a number of schemes in an attempt to broaden access to the profession (Freer, 2016).

> *We are the primary funders of the annual mock trial competition, which is actually run by the Citizenship Foundation aimed at students across the UK, the circuits, Inns and NI, Scotland and Wales also contribute. It's mainly for CSR (corporate social responsibility), teaching young people about their rights and justice, and it's not a recruitment tool, but that is a by-product. It's more about citizenship…We run an annual placement scheme with the Social Mobility Foundation where we pluck students and take them for a week, where they are placed in Chambers, or have talks from the Bar and judiciary or go to court. Chambers help us run that. We have speakers go to schools – about 500 barristers a year volunteer to go to schools. We go to university career fairs. We have a new brochure, also online, called 'Your career as a Barrister', which we launched earlier this year informing people about a career at the Bar.*
>
> C1, Bar Council communications staff

The profession is undeniably more diverse than it used to be:

> *It was a very, very male dominated business. Also, I think a lot of the changes have come about because of the intake at that time. It still could be considered to be a rich man's hobby, quite a few of the people had their own income and when they weren't in court they were off shooting with the Duke of Norfolk etc etc etc. As times have changed and attitudes have changed, there's obviously a lot more ladies at the Bar now. Also the intake has changed in that it's no longer an area where only the rich would be involved and treat it, not as a hobby, but something they enjoyed doing. Now you get all classes and I think that brought with it a certain commercial acumen that wasn't there before.*
>
> A5, senior clerk

Hunter (2003b) exposes a common problem at the Bar in Australia, where although the intake of women had increased, many leave the profession after they start families and therefore are less likely to progress than men. Until recently the evidence shows that this problem was prevalent at the Bar in England and Wales as well: '*If you look at the profile (of chambers) at the top, its sort of, entirely misogynistic top, but out of our 7 entrants this year, 3 were women…'* (B13, head of commercial chambers) or '*There are many more women too, which is good…if you*

look at most chambers from the bottom up you'll find the proportion of women in the bottom half is quite high and that's the future isn't it?' (B36, Chancery practitioner, 38 years' call).

To what degree are these extracts representative? Since 2000 woman have qualified as barristers in equal numbers to men (Bar Council, 2015a). Nonetheless, many leave to have families and do not return, the structure and culture of the profession till recently making no provision either for maternity leave or for women to have a reasonable practice on return from having taken time off. Despite these developments, attrition rates remain high and whilst there is an equal gender split at BPTC and Call level, the percentage of women at the Bar steadily decreases to 45% in first six pupillages, 44% as new tenants, 35% in practice, 6% over 22 years' call, 12% silks (Bar Council, 2015c). The Association of Women Barristers, founded in 1991, declares any improvements for women at the Bar to be cosmetic on its website: '…*little has really changed for women at the Bar although misleading statistics indicate that there have been minor, cosmetic, advances which lull the unwary into a false sense of security.'* Older practitioners remembered how they felt that they were not expected to return when they left to have children:

> *I had about three months off…I was the first women in these chambers. I was the first woman to get married…first women to have one child, first women to have two children, first women to have three children… every single time they thought I would leave and what's more, they thought I ought to leave and there was no maternity policy at all.*
>
> B37, criminal silk, 30 years' call

When women did take time off, there was no concession in chambers regarding the payment of rent or chambers dues during that period. Another woman, who had three children noted distinct hostility from male members of chambers in terms of accommodating any time off:

> *I didn't negotiate anything. I got nothing… I was paying chambers dues on any fees I had in… (I was away) 3 months, 6 weeks, 3 months…but I remember it being suggested in (chambers) that we might have a three month break from chambers dues if we were having a baby and X hit the roof, absolutely hit the roof.*
>
> B39, family practitioner, 24 years' call

Some women converted to solicitor status, which gave them more flexibility, security of employment and benefits. Those that returned to the Bar found that their work had all but disappeared ('*There wasn't much of a practice at the other end...I'm sure its*

better, it couldn't really be worse, could it?' B37, Criminal silk, 30 years' call). Evidence from this study suggests that the profession has made some progress in this regard, with maternity policies in place and also far more accommodating attitudes in certain chambers to women having time off without totally sacrificing their careers:

> *In the old days (the clerk) probably didn't like having women at all because they all get pregnant at 30 and go away, but now we are very keen…they do (come back) and we're keen to get them in before the end of their maternity leave, not full time, but just try and get them back in to the swing of things and get them to meet their solicitors, because even if you have gone on maternity leave, whatever the statute and the laws are, you've been out of the loop for 12 months and solicitors tend to forget you, so its quite important you get them back in…we try and encourage that and then it was always take time to get your practice back, your practice is not going to be the same when you come back after 12 months.*
>
> B44, head of multi-practice set

Since chambers now invest heavily in their pupils and in many cases, therefore, future tenants, it is not in their interests to lose that investment when female practitioners leave to have children and fail to return:

> *We haven't lost a single one and very, very proud of the fact…we adopt the policy that if they want absolutely anything from us under the sun, they can have it… have a year off, and 'I don't want to pay my room rent', fine…There is a very, very strong set of instructions to the clerks that you look after the young women… we've had one woman who was very ill and took nearly 18 months off, and she came back part-time and you get people who say 'I want to take a year off and I want to work mainly for home' and 'I'm going to be very picky about my cases' and that's actually fine …generally the instructions to the centre is that 'You've got to look after these people, you've got to keep their practice going, you've got to bend over backwards, clerks. If it means you've got to go out to them, visit them in their homes and go through their practice with them every so often, get out there.' But when you think of the amount of effort we spend in recruiting these youngsters. Its hundreds and hundreds of thousands of pounds and if you then lose them ten years on because they go and have a baby, because they feel that chambers isn't looking after them, what a ridiculous…(tails off).*'
>
> B13, Head of commercial set

Nonetheless, focus group research indicates that one of the main challenges women face is finding the balance between childcare and work, and the success of this depends largely on the kind of chambers they are in and the attitudes of the clerks (Bar Council, 2015c). Chambers' management have been challenged by some women practitioners and there is evidence that some have acquired a much more flexible approach to them working on a more part-time basis, whether to accommodate raising children or other personal issues. Expectations from female

practitioners have changed considerably, making them more demanding. Clerks were not always very supportive in accommodating flexible working:

> *I'd had some time off with my first child and then I spoke to my clerk… and said I wanted to work part-time. So he looked at me (laughing) and said 'Well you know that never works, don't you?' And I said 'Well, I tell you what, that's what I'm going to do, if it doesn't work I'll just leave the Bar for a number of years and come back when I feel that I'm able to do the job that I want to do'.*
>
> B30, criminal circuit practitioner, 18 years' call

Despite initial reluctance, clerks appear to have become more co-operative and help women at the Bar to acquire more adaptable working patterns. The same women interviewee continues:

> *I was frequently being led in a number of fairly long cases…I did a lot of the prep quite flexibly and then I would take out chunks of a couple of months to go and do the trials and then have a rest. Have a number of months off, so it was rather nice and flexible…I mean was told quite straightforwardly…'It doesn't work, don't do it', but what was interesting is that of my cohort of pupils…three quarters of us were female and at least started by doing crime and I think all of us have gone on to have children and all of us did part-time…I was always contacted by the clerks who said, 'Would you like to do x? Would you like us to put your name forward?'… I have to say chambers have been always fabulous, so I had a second child and was thinking about mainly defending and then I had a third (laughing) but when I was pregnant with my third my Dad was diagnosed with terminal cancer, so in fact at that point, I then had a year off completely…so that was July 05 and I came back July 06…everyone was extremely welcoming.*
>
> B30, criminal circuit practitioner, 18 years' call

Younger and newer female practitioners are much more demanding and have higher expectations, contesting, as their solicitor counterparts have done, the traditional structures and cultures of the profession (Sommerlad, 2002). One interviewed was astonished that it was only in 2013 that the Bar Council opened a Bar nursery crèche. Hunter (2003a) took the view in her study of the Bar in Australia that the masculine cultures of the Bar are so embedded that women are not even conscious of any systemic discrimination. Women are at best either 'honorary blokes' or outsiders with a potential to disrupt hegemonic masculinity. This study did not focus on discrimination against women, either from within the profession nor from the clients, yet one interviewee noted that even her desire to do only criminal work was met with some derision from the clerk when she first started, but her persistence paid off:

> *I looked very young the first day that I walked in. The senior clerk…burst out laughing and said that there was no way that I was going to be briefed to do crime because of how I looked, but I maintained that position and there were a number of years early on where there wasn't a great deal of work…I just said 'I'm not doing family', which is essentially what the debate was about. 'We can sell you doing family'. So I then, as I got more senior, I began to do a bit more prosecuting and I think that was the saving grace really.*
>
> B30, criminal circuit practitioner, 18 years' call

Aside from this comment, together with views on the provision of maternity policies and the profession's greater flexibility, no interviewees volunteered any comments regarding discrimination, systemic or otherwise, against women, largely because they were not asked to. Only one criminal practitioner spontaneously reflected that she thought male barristers were able to market to male solicitors more easily because of their sex: '*Its easier for the men to do it because they can go out and play golf or they can go to the football and things like that*.' (B31, circuit criminal practitioner, 6 years' call), a view repeated in Bar Council focus group research (Bar Council, 2015c). Another reflected on her experience at certain criminal courts in early years of practice, where she felt pointedly ignored, not so much because she was a woman, but more because she was not a regular practitioner, either in criminal work, or at those particular courts: '*It was just very unpleasant, because I can remember going to places like the Bailey and not being a regular person there and then being ignored rather than bullied…ignored, ostracised in a really pointed way*' (B43, family practitioner, 27 years' call).

8.6 'Giving back' to the community – charity and pro bono

The Free Representation Unit (FRU) was set up in 1972 to provide legal representation for those appearing in social security and employment tribunals, who were not eligible for legal aid and could not afford lawyers. Students and young practitioners in the main volunteered their services and continue to do so. In 1996, the Bar Pro Bono Unit was established by a barrister and now shares premises alongside FRU and has in excess of 2,000 barristers on its books (including 250 silks). Many practitioners, especially in their early years of practice, do some pro bono work every year ('*We did lots as pupils. I did lots of pro bono'*). The Chancery Bar Association and Combar (Commercial Bar Association) also offer specialist pro bono services, in association with the Bar Pro Bono Unit. Some chambers have a stronger ethos of doing pro bono work than others and expect their members to do some:

> *People do a lot of pro bono work…I think our chambers has always done a lot of pro bono work and traditionally it was a lot of death row work in Jamaica and the West Indies, lots of it. Now, there is a huge amount of work from the Pro Bono unit with juniors. People are expected to do it, but not everyone does it…it is part of the culture of my set, so people do a lot of pro bono work.*
>
> B43, multi-disciplinary set

Other sets leave the decision of whether or not to do pro bono work to their members: '*There's not chambers policy about pro bono that I'm aware of. I think its left entirely to those who feel that they want to do it and there are at least three or four members of chambers who I know regularly do pro bono work'* (B15, mixed civil set). Demands for pro bono representation are ever increasing as the scope of legal aid funding has narrowed. However, commitment to pro bono work varies hugely across the Bar. Not all are willing to do this work, either because they cannot afford to work for free, or because they are too busy on paid cases:

> *Although I've done some pro bono work in the past myself, I haven't done it for a long while, because, frankly I find it difficult to afford it really at the moment as times have been harder. I encourage youngsters to do it, to get into court, but they just don't seem to have the time or inclination and the person who runs (specialist pro bono unit) is quite disappointed that our chambers haven't responded.*
>
> B36, chancery set

In addition to undertaking pro bono work, certain chambers have charitable foundations or 'cause funds', whereby the administration automatically takes a small % of every practitioners' earnings, which they then distribute: '*1%...its quite a lot now, well there's a lot more tenants…about £100,000…there were certain groups that we have historically always, you know, supported…and then people make applications to us for either one-off grants or for funding*' (B46, multi disciplinary set). Others leave it to individuals to contribute what they wish or hold discrete fund-raising events. A few sets have done this for many years, and have close alliances with certain charities or are open to bids for funding from others.

8.7 Discussion

The above accounts reveal complex, often contradictory views about the Bar's unity or community. Many of those interviewed think that the profession is fragmented and clearly not unified, with a distinct divide between the privately and publicly paid practitioners in terms of their professional markets and lived professional experience and a growing sense of a winners/losers dichotomy. With the increase in specialist areas, there are further divisions within the privately paid section of the Bar, as

specialist groups become more isolated from one another. As chambers move out of the Inns and practitioners move more frequently between sets, the traditional unity within the Inns and within chambers is being challenged. Diversity remains an issue, both at entry level (highlighted in Chapter 5) and in terms of women not returning after having children, though some interviewees felt that the profession has made some progress in this regard. Whether or not women and non-traditional entrants feel truly part of the Bar community is a matter for further specific research. Whilst the legal aid dispute garnered support from privately funded practitioners and some of the professional associations and was a source of bonding, there is a disconnect between the interests of the criminal Bar and those of the commercial Bar, evidenced by the latters' reluctance to boycott the Global Law Summit, held in February 2015. In fact, outside the summit an alternative protest event was held, highlighting the division in the Bar community and their different interests. Even so, a number of speakers attending the official summit did speak in support of the legally aided Bar and against the cuts (Law Society Gazette, 2015).

Despite this picture of division and fragmentation, elements of professional community remain. Many new entrants continue to feel that they are part of a chambers family, despite the increase in numbers and competitive pressures. The Inns and specialist Bar associations have become more proactive and relevant in areas of training and continuing education, bringing together either students or groups of specialist with shared interests. Students and pupils continue to have contact with older practitioners and judges, through qualifying sessions, advocacy or other training, mooting events or dining. Pupil supervision, although more prescribed, continues to play a critical role in early profession identity formation and these socialization processes ensure a sense of belonging and the ongoing reproduction of the profession with many of its traditional characteristics (Rogers, 2011; Pirie and Rogers, 2013). A considerable number of barristers offer their services pro bono or as a collective put back into the community via charitable donations. Whilst most feel that the publicly funded section of the Bar will shrink considerably, all interviewed felt that there would continue to be an independent Bar and were confident that the skills and specialisms it offered would remain in demand, largely because of the quality it provides and the competitive rates it offers due to relatively low overheads. The profession's cultural ideals or distinguishing characteristics remain, in practitioners' own minds, similar and identifiable across the Bar and it could be that despite their varied daily lived experiences and incomes, 'what it means to be a barrister' is a remarkably constant and unifying notion. More

likely, however, is the schism or split that some interviewees spoke of (already identified when distinguishing the City law firms from solicitors offices across the country - Paterson, 1996; Flood, 1996; Ackroyd, 1996), giving rise to markedly different jobs and professional worlds, prospects, earnings and lived experience across the Bar, which will remain united by regulatory and representative bodies alone.

Chapter 9 – Conclusions: a new Bar?

The purpose of this research was to identify the processes of change within the profession, in response to outside reforms, and to explore how barristers made sense of the changes and perceived their effects on their professional identity and culture, the details of which are set in Part II of this study. This chapter considers why the findings of this study matter, given that the challenges to professional life have been documented, both in general and with regard to specific occupational groups. Neoliberal marketisation and managerial reform of the teaching, medical and accounting professions, for example, and the public sector have been investigated and their effects noted (McLaughlin and Muncie, 1994; McLaughlin, 2007; Anderson-Gough et al, 2000; Doolin, 2002; Dent and Whitehead (eds) 2002). Changing organisational structures and work patterns in the legal profession have been identified as a response to the removal of restrictive practices and the injection of market competition into professional life, together with the new performance and quality assessments and auditing (eg. Watkins et al, 1992; Sommerlad, 1995; Hanlon, 1997; van Hoy (ed) 2001; Ackroyd and Muzio, 2007). Yet, as indicated in the opening chapters, little research has focused on the Bar, which remains under-studied and none with the express intention of exploring the effects of and reactions to the neoliberalisation of the profession. Further none of the recent empirical studies are considered in the context of the literature on professionalism. Pirie and Rogers' analysis (2013) is perhaps the only piece, which considers the effects of the Bar's marketization and managerialisation, but does so exclusively through the lens of pupillage and the identity formation of new entrants. This study, adopting a qualitative approach of the Hughes' tradition, seeks to fill this gap, providing an analysis of how neoliberal policies and reforms have affected a profession that was hitherto deemed to be successfully resistant to change. Ethnographic and interviewing techniques have been used to generate rich and detailed, lived experience accounts from the barristers' perspectives.

This concluding chapter opens by revisiting the questions raised in the Introduction, with the purpose of considering how the findings and answers compare with previous research and existing knowledge of the Bar and what new contribution they can offer. The chapter then goes on to examine the larger picture, namely the cumulative effect of the changes and their wider significance, in the context of the theoretical perspectives emanating from the literature on the sociology of the professions. It interrogates to what degree that literature is applicable to the Bar and explores what new perspectives have emerged.

The first research question asked how the organizational structure of the traditional chambers model had changed and to what effect. There has been no research on the chambers model and the governance of sets since Morison and Leith's study (1992), which is now 25 years old and predates the significant changes the Bar has undergone. The research on the law firms' restructuring, managerialisation and globalisation concerns itself with a small section of the solicitor branch only, focusing mainly on the larger City law firms and occasionally on the smaller, traditional high street firms (eg. Sommerlad, 1995; Flood 1996; Hanlon, 1997; Muzio, 2005; Faulconbridge and Muzio, 2008). Whilst Rogers' ethnography (2011) examines the Bar, based on observation of three sets of chambers, her attention is on how pupils experience their year of apprenticeship and any data on chambers springs from that perspective. Thus, she notes how pupils might situate themselves with the hierarchy of chambers, where they might sit and work, the atmosphere and so on.

This study provides new data on the evolution of the chambers model in terms of structure, governance, division of labour and presentation/perception. Although there is considerable variation across the sets visited in London and on circuit, there are enough common features to be able to generalise as follows: all sets have a significantly larger membership; outside, non legal, management professionals are now employed, full time, part time or as occasional consultants; chambers are run collectively by the members and the management staff, via a number of committees, with heads of chambers acting more as figureheads. Whereas a set of chambers used to be viewed as primarily a collection of self-employed individuals, there is now much more emphasis on its corporate, branded identity and the service it can provide as a collective economic unit. Chambers are increasingly recognised as businesses, in need of the strategies, financial planning and organisational oversight that would previously have been associated with a commercial enterprise, not a group of self-employed barristers. The terminology used to describe chambers, clerks and barristers has, in many sets, changed to reflect this. The discursive practices within the profession have shifted to include a wholesale adoption of the vocabulary of commercial life, even if some do not like it.

Some chambers have acquired a new layout, with a shift in spatial function: the 'front of house' spaces, which are visible to visiting lay and professional clients, have been modernised, with more focus on client rather than barrister use. Meanwhile, in many sets the 'back spaces' remain more akin to what existed for the last couple of

centuries – charming and historic, yet impractical and overcrowded rooms, unable to properly accommodate the volume of people using them. Information technology has enabled many barristers to work from home when possible and the notion of having your own room or 'desk' is outdated, with many sets offering touchdown or 'hot-desk' areas to work. Nonetheless, there are noticeable differences across the Bar in the degree to which sets have adopted new management and business practices. Changes are contingent on a number of factors, including the innovation, vision and leadership of a few key members of chambers, the resources available and the degree to which a set can specialise or form specialist teams/units and brand itself as a collective.

How do new entrants and practitioners perceive the changes to entry selection, training and chambers' organisation? The barristers interviewed all felt that their recruitment processes are much more transparent and fairer. Freer's recent doctoral research (2016) concentrates on the barriers non-traditional entrants face on admission and this study builds on some of her findings and, despite the views of those interviewed, confirms Freer's argument that entry criteria remain exclusionary, favouring traditional backgrounds and educational routes, with mini pupillages, a prerequisite to pupillage, often obtained through connections, rather than merit. However, this thesis goes further, exploring aspects that have not been previously considered, by breaking down what specific steps need to be taken and what actual attributes an aspiring barrister might need to have or acquire to enter the profession: new entrants have to be much more proactive in building up their CVs, acquiring extra top end qualifications, mini pupillages and other work experience. They must mobilise considerable entrepreneurial and presentation skills and deploy any cultural, social and economic capital they have in order to improve their prospects, which have become considerably more precarious in the last 25 years. These new, onerous requirements have, ironically, been triggered by efforts to increase diversity at the Bar. The obligation to pay pupils, introduced to assist non traditional entrants to become barristers, has resulted in a dramatic drop in pupillages offered, making many chambers more cautious in their selection processes and placing enormous emphasis on qualifying criteria, which are outside the reach of many from less privileged backgrounds. Perhaps for different motivations and reasons, the profession has nonetheless effected exclusionary practices or forms of social closure identified by Abel (1988) and more recently by Freer (2016), whilst simultaneously shifting any blame for failure to get in firmly onto the shoulders of the aspiring entrant. Rogers (2011; 2014) explores the actual experience of pupillage and

socialization processes during that year of apprenticeship. Again, this study builds on some of her findings. Whilst almost all interviewed consider the pupillage experience to be more uniform, comprehensive and monitored, young practitioners and pupils continue to attest to the stress of the apprenticeship year. Advocacy training, a relatively recent skill required and offered by the Inns, was highly rated by the younger practitioners interviewed.

How are barristers competing for and getting work? Morison and Leith's study (1992), a comparative UK wide analysis, broke down the different processes barristers underwent to get work and their complex relationships with solicitors. Harris and O'Malley (2000) and Harris et al (2003) also looked at the interaction between barristers, their clerks and solicitors in the processes of getting work, whilst other studies looked at early marketing efforts (Harris and Piercy, 1998) and views on direct access (Flood and Whyte, 2008). This thesis updates those studies, finding considerable advancement and sophistication in marketing since those early research projects (and their dire predictions) and the growth in and views about direct access practice. Reservations remain that the wholesale adoption of direct access is unlikely within barristers' existing organisational structures, and for many changing those would make them just like solicitors, which on the whole, they do not want. This study adds to the previous research by noting two significant developments: barristers are much more visible and need to be much more innovative about raising their profiles and attracting work. This entrepreneurial approach has manifested in different ways. Since the 1990s barristers have grouped into 'practice groups' and though they continue to work as individual professionals, they now brand themselves both as individuals and a collective in order to attract work. There is a significant shift to increased specialism with many chambers narrowing their range of work and more junior practitioners focusing on a more targeted practice earlier than they would have done twenty-five years ago. The new ideal type barrister needs to be able to profile and market her/his skills, whether via social media, other publications, at seminars or conferences, deploying marketing and self-presentation skills hitherto not required.

What are barristers' views on the new competitive environment and marketing? Rogers (2012) noted, in her observations of a Bar marketing event targeting new entrants, that the profession underplayed the challenges it faced as a result of its loss of market shelter, increased competition and managerial reform. She found that barristers were more interested in promoting their professional culture of expertise,

excellence and tradition and were less comfortable with the rhetoric of customer service and client care. This study explores these findings further, by probing those interviewed specifically on these issues. The reactions to these new developments are very mixed and for some practitioners competing for diminishing amounts of work is very difficult. The publicly funded practitioners have been hardest hit, but some of those with private clients have also been affected by a reduction in work. Some barristers have proven adept at striking out into new areas of work or creating new markets (costs, sports, financial services or regulatory work, for example) where old ones have failed due to cuts in funding or have been lost to competitors. A few have chosen to work more flexibly, as hybrid practitioners or on secondment in-house. Many engage in an array of individual or group marketing initiatives and all barristers have visible online professional identities. Relationships with solicitors remain all important and are more collaborative, more respectful and less formal, with the Bar no longer adopting an air of superiority.

Do practitioners think the reforms/changes have impacted on and altered the traditional characteristics and professional culture of Bar? Core elements of Bar culture, identified in Chapter 7, are being challenged. The commitment to excellence remains strong, in the sense of working long and often unpaid hours to provide a thorough and professional service. Barristers maintain a belief that this work ethos is unique and perhaps superior to that of other, employed lawyers. Nonetheless, in the publicly funded sector practitioners feel beleaguered, unappreciated, underpaid and sometimes constrained by the cuts in how they handle a case. Until recently it has been uncommon for barristers to talk about any work related stress they suffer, yet recently the Bar Council has recognised this problem, reflected in its commissioned survey research and creation of a dedicated wellbeing website (Positive, 2015). Further, the commercialisation and new regulation of the Bar has obliged barristers to be more transparent and accountable about how they work, what they charge and how they treat their clients. The managerialisation of practice has overtaken not just organisational protocols/practices (chambers administration, recruitment, training, customer service, complaints, terms of business etc) but has also seeped across court business with case management (costs and time management rules), sentencing rules, the proposed QASA assessments. Chambers and court business have become increasingly bureaucratic, accountable and time consuming (some would say, time wasting), eroding the degree of independence the profession once enjoyed.

Lastly, do practitioners perceive the Bar to be a unified profession? This is an issue not tested in previous research on the Bar in this jurisdiction, much of which treats the Bar as a homogenous block of practitioners. Whilst Rogers (2014) notes the differences between the chambers she observes - commercial, family and criminal specialists – her interest is more in how the pupillage experience differs across them and how their identity is perceived, rather than in notions of unity they may or may not have with other practitioners. This study finds that to some degree the idea of a shared identity and some sites of professional socialisation remain significant. Much of the Bar seems to have retained a collegial atmosphere. Most junior barristers have strong links with their Inn, through the dining and qualifying sessions and the obligatory early training courses. Chambers also continues to be a key site of socialisation and community. Despite the increased size of chambers, most practitioners feel a certain kinship with their colleagues. They know all of them (or at least all the members of their practice teams), share rooms, exchange ideas and opinions and offer guidance to more junior members. Some sets have even retained daily chambers tea or weekly drinks after work, and most will have at least one non-marketing related annual chambers social event. By splitting up into practice teams and running chambers in committees, there is a more collaborative approach in how they run their working lives. Further, most barristers retain a strong sense of a professional identity, that is quite distinct from being a solicitor, in house lawyer or employed barrister. To this degree a sense of common culture remains.

However, barristers at the Bar remain self-employed, independent practitioners, essentially in competition with one another and the notion that collegiality or community is desirable within the profession is not universally embraced. There is evidence to suggest that some barristers feel that there is no longer a meaningful community and that, whilst identifying with the same professional characteristics, practitioners no longer share a common lived experience in their working lives. Many of those interviewed felt that the Bar was fragmented in this way and that the idea of a united Bar was a complete fiction. The rhetoric of the Bar Council's representatives, whether at annual Bar Conferences, in press releases or in response to the legal aid reforms, indicates a thoroughly united profession, a public stance that is both understandable and politic, if in reality more a case of wishful thinking. Interviewees noted that some parts of the Bar had no clear understanding or knowledge of other parts. When criminal practitioners sought behind the scenes, to persuade members of the commercial Bar to boycott the Minister of Justice's Magna Carta celebrations (the Global Law Summit) in February 2015, for example, it

became evident that there was little prospect of that happening, as the event was an unmissable international marketing opportunity for the latter group. Whether one considers it in terms of a public/private divide, or the 'haves' and the 'have-nots', the division between different practice groups is marked. Newcomers to the profession thirty years ago would, as a matter of course, almost always have spent their early years in practice covering a broad area of law, doing some legally aided work and some criminal work, even if just road traffic accidents in the Magistrates courts. Practitioners over a certain level of call clearly remember these early years and what the work entailed and can sympathise and identify with publicly funded barristers. For less senior members, however, and since chambers and practices have become more specialised, it is now not uncommon for someone to never do legally aided work and to have no experience of criminal or family work at all. The earning differential between the publicly and privately funded practitioners is significant, as is the difference in the facilities and support staff that are offered in their chambers. This schism was publicly noted by the Lord Chief Justice, in his address at the Bar Conference in November 2013, acknowledged by many of those interviewed, yet has not featured in any previous research.

Whilst providing updated and new empirical data as set out above, this research nonetheless has its limitations. The sample size is relatively small. Many of the topics considered in the findings chapters merit research projects of their own, this thesis having merely touched on them. In some ways the aim of the study's design necessarily makes the results general and precludes detailed exploration of, for example, how gender and race are affected by the changes considered. Although it has been possible to show some differences between commercial, specialist and publicly funded practice and chambers organisation, a more detailed comparative study on particular aspects has not been possible. This research is also fairly restrictive in its remit. There is little on the actual job of lawyering and how this has changed or on the developments of mediation and ADR, or a consideration of how advocacy skills are actually being deployed, court appearances having dropped considerably. Unfortunately, it was not possible at the time of the fieldwork to explore how barristers might set up ABS or seek outside investors to fund them, developments which would play a critical role in reshaping the current working model of the profession and its ethos. Nonetheless, despite these and other limitations, the intention of this research was to provide a more general analysis of how professional life at the Bar had been affected by the dramatic changes that have been imposed on it in the last 25 years and locate, where possible, such findings within broader

existing debates about professional development and professionalism or identify new areas of knowledge, where appropriate.

More broadly, how do the study's findings sit within or contribute to the existing work on the sociology of the professions, which on the whole is not concerned with the Bar? The loss of their respective monopolies, together with the liberalisation of the legal services market has certainly changed the traditional boundaries that delineated the tasks of barristers and solicitors and has undermined the former's status as specialist advocates. As Abbott's thesis on professional development (1988) describes, this 'unsettlement', triggered by outside forces, has resulted in the numerous internal adaptive strategies and attendant organisational changes, described in Part II of this study. Practitioners have specialised, re-grouped and re-branded. Some are restructuring and have carved out new jurisdictions of specialist knowledge and different ways of working and getting work. To that degree Abbott's framework remains relevant. What his thesis and existing research does not envisage however, are the internal battles for work within different groups at the Bar, such as criminal practitioners encroaching on medical disciplinary work, hitherto carried out by specialist civil sets or the growing divide between commercial barristers and, for example, those specialising in social welfare, employment or public family law. Nor indeed, and considered below, does Abbot address the deep-seated professional cultural values and ideology that steer many practitioners' ways of thinking and understanding during periods of upheaval and change.

As indicated in Chapter 2, both Abbott and Freidson found the concept of professionalism to be slippery and changeable and ultimately unhelpful. While Abbott (1988) instead focused on professional development arising out of inter-professionals fighting over task jurisdictions, Freidson (2001) set out his generic ideal type professionalism, so that studies might share the same analytic framework and allow findings to be comparable. His ideal type exhibits features common to the original functionalist typology: specialist skill requiring training and experience, control over work which cannot be standardized, giving that self-governing group the exclusive right to perform that work and a sheltered position in the market and an ideology that has a greater commitment to public service than financial gain and quality over efficiency. Clearly, elements of this ideal type no longer exist at the Bar or have been eroded, though barristers' working lives probably retain more features of ideal type professionalism than any other profession (Freidson, 2001). In the context of law firms' marketization and management, this erosion of traditional professionalism has

resulted in debates about whether or not it is ending or declining (Abel, 1988; Hanlon, 1997; Ackroyd and Muzio, 2007; Faulconbridge and Muzio, 2008). Yet, as Paterson (1996) argues this is not an indication that professionalism is declining or ending since '…professionalism is a socially constructed, contingent and dynamic concept and as such capable of evolution' (p.137).

The Bar has undoubtedly evolved and its evolution should perhaps be viewed on its own terms, within its own context, rather than be framed by literature that has hitherto focused either on the Bar as a monolithic block or on other professions that are structurally and culturally distinct and different. A narrative of exceptionality runs through the rhetoric that barristers use to describe their ethos or culture, and is a matter of great importance and a source of great pride to them. Dingwall (1983/2014) and Burrage (2006) both note that barristers' claims to professional task jurisdiction have always been more concerned with status than financial gain (cf. Abel, 1986; 1988). A consistent theme to emerge from this study's empirical findings is the importance barristers attach to their self-employed status, their independence from hierarchical control and their work ethos, which they repeatedly claim distinguishes them from solicitors and employed lawyers. Indeed, the Bar remains quite distinct from the solicitor branch or other professions due to one fundamental feature: the self-employment of its practitioners, who mostly still work within the chambers model. In an employed environment, such as a law firm, a market approach would manifest in performance measures, fundamentally affecting a solicitor's working life, as s/he would need to meet specific targets to keep their job (Ackroyd and Muzio, 2007; Sommerlad, 2011). At the Bar, a market approach relates more to organisational changes, which facilitate a more customer-oriented ethos. Practitioners are not ejected from chambers or prohibited from practice because they do not have much work. Lack of work remains an individual problem. Further, strategies and business plans are created as a collective, not within a hierarchical structure. In these respects, therefore, much of the existing literature on the professions is not comparable.

As a growing number of barristers acquire hybrid status, and work on fixed salary, fixed hour contracts with solicitors, it will be important to research if and how this stance of difference and distinction is affected. Most barristers do not like the idea of having a stake in the outcome of a case they are handling, as in CFA/DBA claims. Although they all assert that they can somehow separate the benefits that they personally reap when advising a claimant client to settle, it is hard to know if this is

always the case and if their independent judgment remains truly unaffected. Longitudinal research and analysis of how things continue to unfold would reveal to what degree this culture is maintained or eroded as profession evolves: how the next generation of barristers respond to the opportunities to do direct access work, conduct litigation, set up ABS or perceive their professional identity and the wider Bar community.

This study on the whole supports the idea that although the processes and structures that shape professionalism may evolve, its traditional ethos persists and the changes at the Bar amount more to an evolution, layering or modernisation of professionalism, rather than its decline (Cooper et al, 1996; Paterson, 1996; Evetts, 2015). Market strategies and managerial reforms have not yet undermined the core values of the Bar and in that regard its professional identity remains remarkably intact, as Pirie and Rogers (2013) concluded. Further, as Evetts (2015) notes, the entrepreneurial turn and traditional professionalism are not necessarily mutually exclusive, but can be complementary. Yet, professional development, in the sense that Abbott uses it, namely the jurisidictional push and pull between professions which results in gaining or losing control over work tasks, has to be viewed in the context of the profession in question's professional identity, ideology and culture. Legislation has paved the way for the Bar's representative bodies to authorise practitioners to work in new ways, within new structures and to conduct litigation and have direct contact with the client, yet many remain reluctant to do any of the above, largely because acculturation to such changes is slow, difficult or in some cases impossible, being so fundamentally at odds with their traditional and deeply ingrained existing professional ideology. The ongoing resistance of some members of the Bar to change, whether it be in relation to new ways of clerking, managing chambers or learning new entrepreneurial skills, together with their ability to create new pockets of specialist practice reflect aspects of closure and protectionism identified by Abel (1986; 1988). In the light of the above, asserting and acquiring a legal claim to carry out certain work/tasks is but the first process in professional development. The practitioners themselves have to culturally adapt to it, before adopting and undertaking it. What Abbott's thesis fails to allow for therefore, are the complex and deep-seated aspects of professional identity and culture that hinder or slow down professional development, as described above, and indicate just how ingrained and long-lasting the Bar's professional ideology remains, despite the attacks on and challenges faced by the profession.

Notwithstanding the strong sense of professional identity, one cannot ignore the apparent fragmentation of a group, whose lived professional experiences were once fairly uniform, even across practice areas. As the findings in Part II of this thesis show, there are multiple, new divisions across the Bar, in terms of size of chambers, professional staff employed, corporate ethos and strategy implemented, income and status differential and scattered 'bubbles' of specialisms, all of which have made the lived experiences in their professional lives profoundly different. Stratification and difference have been noted within the solicitor branch since the late 1990s. City law firms began to grow, merge, restructure and acquire a global presence (Flood, 1996; 2011; Ackroyd and Muzio, 2007). At the same time, with the changing rules concerning legal aid franchising and the dramatic cuts to legal aid funding, many small, regional high street firms either folded, merged, stopped instructing the Bar and undertook more advocacy or gave up legal aid work completely (Hanlon, 2001). Yet the effects of such divisions within the solicitor branch are less significant in terms of how they affect the whole profession. Solicitors have always been far greater in number, more diverse and far more widely geographically located, making the profession much less collegial and uniform than the Bar. These new divisions at the Bar do not simply fragment the profession, but have the potential to affect the levels of social control, compliance and professional socialisation hitherto experienced by a once homogeneous group.

Cumulatively, the changes at the Bar have created a new professional environment, with the emergence of a different language used to describe and explain it. This discursive shift seemingly embraces the new commercialism and managerial oversight that form the reality of a barrister's daily working life. Older practitioners retain a strong sense of memory of 'how things were'. Some lament the changes, others embrace them, energised by the possibilities they throw up. A certain melancholy permeates many of the interviewees' accounts, as if they are clinging to a nostalgic past, where practitioners' status was respected, legitimation not needed, work plentiful and remuneration in publicly funded work sufficient. Barristers are aware that things have irreversibly changed and will continue to do so, and there is a notable fin de siècle feeling across much of the publicly funded Bar, which many feel will inevitably shrink in the coming years, mostly due to lack of recruitment at the bottom end. How have these changes shaped the younger generation of barristers and those seeking to enter the profession? What skills does a barrister now need? The ideal neoliberal type barrister is a responsiblised, self-improving and self-promoting practitioner, who has a quite different understanding of what is needed to

succeed (Miller and Rose, 1990; Peck, 2010; Gane, 2012). The discursive shift is such that even those that do not like or subscribe to their profession's new marketization and managerialisation, nonetheless accept this new reality and apologise for being old-fashioned about their views. The level of competition to get into the profession and then to attract work calls for greater academic, social and entrepreneurial skills and the processes of entry are lengthy, expensive, arduous and not for the faint hearted. The new entrepreneurial barrister must fight for her/his work, explore new ways of getting it, be creative in carving out new specialisms and exploit IT, social media and marketing tools to do so.

The speed of change, in a profession that is noted for its resistance to change, and the multi-layered nature of the changes are striking and the Bar as a whole has proved to be flexible, resilient, adaptable and dynamic in its response, providing an example of Abbott's process of jurisdictional challenge, unsettlement, adaption and development. However, certain parts of the profession have been unable to adapt as successfully as they might wish and professional development, in the sense of claiming or developing new areas of expertise, has not been possible for many, resulting in considerable under-utilisation of their skills, lack of work and reduced income. In Abbott's ecosystem, these practitioners, drawn primarily, but not only, from the publicly funded sector, have suffered and recruitment is likely to diminish, if it has not already done so. Others are slow or reluctant to respond to the new tasks they are now permitted to engage in. Yet the professional values and ideology of the Bar are slowly and inevitably shifting, in line with new discourses of innovation and commercialism and are reflected in novel ways of competing for work, dealing directly with clients, instigating litigation, working within a new structure or with hybrid status. Evidence of this may vary across the profession and adaptation to this new professional landscape may be challenging, but for those wishing to survive and flourish, it would seem to be non-negotiable.

APPENDIX 1

LIST OF PARTICIPANTS

Barristers:

	Practice	Status	Where in practice	M/F	Call	Years of call at time of interview
2013 (Interviewed under University of Southampton ethical approval)						
B1	Civil mix	Junior	London	M	1988	24
B2	Crime	QC	London/NECircuit	M	1986	26
B3	Crime	J	Circuit	M	1979	33
B4	Civil mix	J	London	M	1988	24
B5	Civil mix	J	Circuit	M	1986	26
B6	Civil - PI	J	Circuit	M	1990	22
B7	Crime	J	Circuit	M	1984	28
B8	Mix	J	London	M	1991	21
B9	IP/Civil	J	London (sole)	M	2004	8
B10	Family	QC	London	M	1987	25
B11	Civil/Comm	J	London	M	2011	18 months
B12	Civil/Comm	J	London	F	2008	4
B13	Commercial	QC	London	M	1986	27
Nov 2013 – September 2014 (interviewed under City University, London ethical approval)						
B14	Commercial	J	London	M	1972	41
B15	Civil - PI	QC	London	M	1985	28
B16	Civil	J	London	F	2012	1
B17	Civil	J	London	F	2010	3
B18	Crime	J	Circuit/Lond	F	1992	21
B19	Civil/Comm	J	London	M	1998	15
B20	Civil Clin Neg	J	London	F	1975	38
B21	Civil Prof Neg	J	London	F	2010	3
B22	Civil	Pupil	London	F	2013	
B23	Civil Prof Neg	J	London	M	2006	7
B24	Civil/Fam	J	Circuit	M	1982	31
B25	Crime	J	Circuit	M	1993	20
B26	Civil	J	Circuit	M	1988	25
B27	Civil - Chanc	J	Circuit	M	1973	40

B28	Civil Prof Neg	QC	London		M	1988	25
B29	Crime	J	Circuit		M	1975	38
B30	Crime	J	Circuit		F	1995	18
B31	Crime	J	Circuit		F	2007	6
B32	Fam/Crime	J	Circuit		F	2000	13
B33	Crime/Reg	J	Circuit		M	2007	6
B34	Fam/Mix	J	Circuit		M	2010	3
B35	Crime	J	Circuit		M	1985	28
B36	Chancery	J	London		M	1975	38
B37	Crime	QC	London		F	1983	30
B38	Civil	J	London		M	1986	27
B39	Family	J	Circuit		F	1989	24
B40	Family	Pupil	Circuit		M	2013	
B41	Family	J	Circuit		M	1983	30 Bar:
B42	Family	J	London		F	2003	10
B43	Family	J	London		F	1986	27
B44	Crime	QC	London		M	1977	36
B45	Family	J	London		F	2006	7
B46	Family	J	London		F	2007	6
B47	Civil	J	London		F	2011	2
B48	Comm/Civil	QC	London		M	1985	28
B49	Civil Prof Neg	QC	London		M	1984	29
B50	Crime	J	ABS		M	1994	20

Non Barrister participants

C1	Bar Council communications officer	M
C2	Legal blogger	F

S1	Solicitor	F	Circuit	Family law	22 years' practice
S2	Solicitor(Partner)	M	London	Family Law	24 years' "

A1	Chambers Administrator	F	Circuit	Mixed set
A2	Chambers Manager	F	London	Civil
A3	Senior Clerk	M	London/Cir	Mixed set
A4	Deputy Senior Clerk	F	Circuit	Mixed set
A5	Senior Clerk	M	Circuit	Mixed set
A6	Second Clerk	F	Circuit	Criminal
A7	Marketing Consultant	F	Both	Family
A8	Chambers Director	M	London	Crime/Mixed set

APPENDIX 2

Legal Profession seminars and conferences attended during PhD research

2013

- Westminster Legal Policy Forum Keynote Seminar, 'Innovation in legal services - technology, skills and new business models'
- Cepler 1 day Conference, Birmingham, 'The futures of legal education and the legal profession'
- Hamlyn Seminar, IALS, 'Aspects of Law Reform' – Rt Hon Jack Straw
- Annual Bar Conference: 'Tomorrow's Bar: Engaged in the Future'

2014

- Annual Lord Uphjohn Lecture, City University, 'Legal Services: the rise of the consumer and the fall of professionalism'
- Prof. R. Moorhead, Inaugural Lecture, UCL, 'Precarious Professionalism - Some evidence on Market, State and Lawyer Utopias'
- Policy Exchange seminar, 'Privatising Justice: Myths, Threats and Opportunities'
- GovKnow forum on 'Reforming Legal Aid'

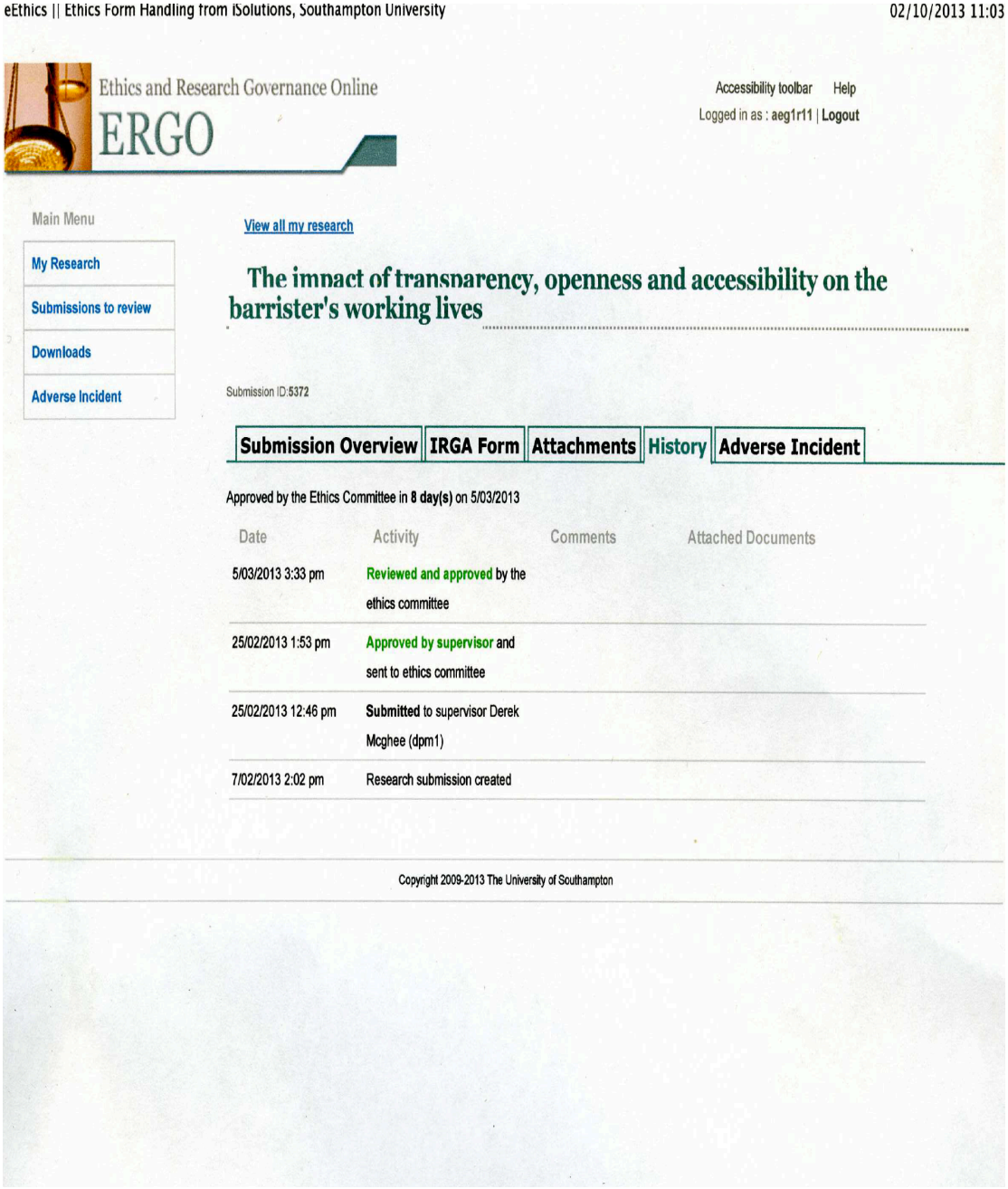
2015

- SLSA Post Graduate conference, Birmingham University
- SLSA conference, Warwick University (presented in and attended all the Lawyers and the Legal Profession stream)
- 'What will happen when artificial intelligence and the internet meet the professions?', UCL Laws, Richard and Daniel Susskind
- 'Are Barristers Human?' – chair of evening seminar at Inner Temple, part of the Being Human Festival, co-organised by the IALS

2016

- 'Do institutional clients threaten lawyer independence?' Dr S Vaughan, seminar at UCL Laws
- SLSA conference, Lancaster University (presented in and attended all of Lawyers and the Legal Profession stream)
- LCSS PhD Methodology conference (presented on elite/insider interviews)

APPENDIX 3 – Ethical approval
Southampton University



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View all my research

The impact of transparency, openness and accessibility on the barrister's working lives

Submission ID:5372

Submission Overview | IRGA Form | Attachments | History | Adverse Incident

Approved by the Ethics Committee in **8 day(s)** on 5/03/2013

Date	Activity	Comments	Attached Documents
5/03/2013 3:33 pm	**Reviewed and approved** by the ethics committee		
25/02/2013 1:53 pm	**Approved by supervisor** and sent to ethics committee		
25/02/2013 12:46 pm	**Submitted** to supervisor Derek Mcghee (dpm1)		
7/02/2013 2:02 pm	Research submission created		

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APPENDIX 4

Interview questions for **specialist civil practitioner**

Chambers:

1. Why did you move chambers?
2. When did it rebrand to (name) Chambers and why?
3. When did it get so large? Has it grown organically or sideways moves/recruitments? Have many people left since you joined?
4. Have practitioners become more specialised since you joined? Are there still people in what we would have called general practice or do they tend to specialise early on?
5. Is chambers run by committee(s) or by the Head of Chambers?
6. Do you still have general chambers meetings to which all can attend?
7. Are strategy decisions made by chambers as a whole, by a particular committee or by individual practice teams, or none of the above?
8. When did you get so many clerks? (6)
9. Do chambers have any ABS plans?
10. Does most work come in the old fashioned way (referral from solicitors)?
11. Do you, and do most of your colleagues, still work in chambers most days, when not in court?
12. Is it still cosy, collegial, friendly? Does everyone know everyone else?

Marketing:

1. You have Head of Marketing and Marketing Co-ordinator – both full time? When did you start employing marketing people?
2. What marketing does chambers do? Seminars, website, publications, social media, directories? Other?
3. Do you think it works? ie. Does it bring in new work or cement existing relationships?
4. How much time do you spend on marketing and what do you personally do? Eg Do you use any kind of social media to promote your practice? Writing or following blogs/twitter, LinkedIn etc
5. Do you mind doing marketing?
6. Do you still have the same kind of contact with solicitors as you used to? Eg lunch, sit behind you in court, attend conferences etc

Direct Access

1. Are you registered? If yes, what was training like?
2. Any views on DA?
3. In view of rule changes, are you likely to sign up for being able to conduct litigation?

General

1. Do you do CFA work? If yes, what do you think about it?
2. Have any of the legal aid changes (LAPSO) affected your work and if yes, how?
3. Are you in court less often? Is there a culture of settlement/mediation that didn't exist 20 years ago? Views?
4. Compared to 20 years ago, what are the most significant changes (if any) to your working life as a barrister?
5. Do you have any contact with the Bar Council, the BSB or any professional Bar Associations? Any views on the effectiveness of any or all?
6. Did you or chambers respond to the current Legal Aid proposals/consultation? Do you have any views on the plans and/or the Bar's response?

Interview questions for a **head of chambers** in a set that does primarily **criminal work**

Chambers:

1. As head, do you make decisions or is chambers ruled by committee?
2. If the latter eg management committee, what is its composition, are members elected and is there a democratic vote on issues? Are agendas/minutes distributed to all?
3. Do you also have general or extraordinary chambers meetings where all will attend?
4. Are most organisational matters taken care of by staff or are barristers still devoting much (unpaid) time to admin/marketing?
5. You have 58 or so members and a hot-desking library system – do most people stay at home when they are not in court?
6. Does chambers retain its collegial atmosphere that used to exist when sets were smaller? (eg open door policy, discussing cases with one another, chambers tea)
7. Would a new pupil/member be socialised in the way they might have been 30 years ago? (lunch, drinks) or is it much more formal/professional/monitored? Are the BSB requirements for pupil supervision/training onerous, box ticking exercises or are they helpful and good at ensuring pupillage is less of a random affair (or both)?
8. How long ago did chambers open and when did it get so big? Organic growth or lateral hires?
9. Is it common for people to change chambers? Why did you move?
10. Are you clerked in teams according to practice area or call or the old fashioned way, where all clerks clerk everyone? If the former, does it work well and why?
11. How many pupils do you take a year? Less or more than before? Will they do a general pupillage moving around between practice areas?
12. Are you interested in ABSs?
13. What key things have you changed or introduced since becoming head in 2003?

Marketing/getting work:

1. How often do you have marketing events? What kind of things do you do? (seminars, lectures, publications, parties etc)
2. How do you brand yourselves? Common law, mixed set or criminal/regulatory?
3. Do you think marketing cements relationships and/or bring in new work or neither?
4. Has junior work has been taken over by solicitor advocates or in house barristers?
5. Has it become much more competitive?
6. Is there a chambers Twitter account? If yes, who runs it?
7. Does chambers have a policy about social media?
8. Do you blog or tweet? Or follow blogs or tweets? Do you encourage people to do either?
9. Does anyone do direct access work, where appropriate? If yes, thoughts?
10. Do you worry that your instructing solicitors will mind you doing DA?
11. Is this an area that you want to develop?
12. Would you say your relationship with solicitors is any different to 20 years ago? Do you make more effort? Are you more collaborative?

Legal Aid:

1. Are your junior criminal practitioners finding it hard to get work and/or survive on earnings from criminal legal aid?
2. If yes, are they seeking to compensate by doing eg regulatory or other work?
3. Has anyone from your chambers left the Bar as a result of legal aid cuts/proposed cuts? If yes, are they going in house/CPS?
4. Do you do VHCC? If yes, are chambers accepting work under new rates?
5. What did you think of the CBA/MoJ 'deal' in terms of a) how it was handled b) the actual decision?
6. Any views on the public defender scheme and the likely quality of representation it will provide?
7. How do you think the CBA and BC have handled the Transforming Legal Aid consultation?

8. If cuts go ahead next year what is your plan?

Interview questions for **family law practitioner**

Chambers:

1. Organisation: clerking teams? Managed by committee or Head as old model? Practice teams? Constitution? Maternity policy etc
2. What does Chambers Director do? How long have you had one? Is this primarily for marketing?
3. Recruitment: are you still taking on pupils? Are you taking on laterally too? Is growth the strategy? How do you attract new intake – law fairs, Uni talks etc?
4. Branding: website says you do civil work, but are you primarily known/branded as a family set?
5. Has the atmosphere in chambers changed since increase in size or still collegiate, co-operative and cosy, with people chatting to each other about cases/law?

Getting work/Work:

1. Is it mostly still referral work from solicitors?
2. Direct access? Do you do any? Views? How do you advertise this?
3. How much work, traditionally done by the Bar, is now being done by solicitors and in particular, solicitor advocates? What kind of work will they not do?
4. How much marketing do you/Chambers do? Is it the usual seminars, publications, conferences etc or are you more proactive eg social media, blogs, parties, entertainment?
5. Do you think marketing works? Either by cementing relationships or getting new work in?
6. Is there less work? Or less court work for a) you b) junior end?
7. What kind of work do the junior end do? Is there enough?
8. How much of your work is mediation or ADR? What do you think of these non court based methods of disposal?
9. When did you specialise in eg only ancillary relief, pensions?
10. Is everyone encouraged to specialise?
11. How are you paid? Privately? Any legal aid at all now for your type of work? CFA suitable?
12. In privately paid work, on what basis do you charge? Time spent, fixed fees?
13. Since LASPO are there more litigants in person? Any other effects?
14. Do solicitors hold on to cases for longer and only send to you just before court hearings or are you brought in from the start?

General:

1. How influential is the Circuit; the Family Bar Association?
2. Do you have anything to do with or views on the Bar Council/BSB?
3. Did you/Chambers respond to the current criminal legal aid consultation/dispute? Views on proposals? Views on how Criminal Bar Assoc dealt with it (if any)?
4. Are family law solicitors struggling? Closures, mergers etc since legal aid cuts?
5. Unified Family Court – how will this affect you and your practice?
6. Why did you leave your old chambers?

APPENDIX 5

PARTICIPANT INFORMATION SHEET

Title of study Continuity and Change: The Professional Lives of Barristers
I would like to invite you to take part in a research study. Before you decide whether you would like to take part it is important that you understand why the research is being done and what it would involve for you. Please take time to read the following information carefully and discuss it with others if you wish. Ask me if there is anything that is not clear or if you would like more information.

What is the purpose of the study?
This research forms part of a post-graduate doctoral thesis. My study seeks to examine how the Bar has adapted to regulatory and market changes and the reduction in state funding in order to survive. Aspects I am exploring include: the structure of chambers and modifications to the traditional ways of working, direct access, marketing and the use of IT and social media, recruitment and training, fee structures, the impact of the Legal Services Act 2007, the role of the Bar Council and specialist Bar associations. I will explore how all the above have changed the working practices and culture of barristers, their Clerks and administrators and the service they provide to clients.

Why have I been invited?
I am interviewing about fifty practitioners and staff. As a practicing member of the Bar or a barrister's clerk/office administrator, you have direct knowledge and experience relating to my research topic.

Do I have to take part?
Your participation is voluntary and you may withdraw at any time or decline to answer any questions that you consider to be intrusive or personal. You can withdraw at any stage without being penalized or disadvantaged in any way. It is up to you to decide whether or not to take part. If you do decide to take part you will be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time and without giving a reason.

What will happen if I take part?
I will interview you. This will last up to approximately one hour. If you agree, I may email you with follow up questions to seek clarification but would not ask you to meet me again. If you have agreed to let me shadow you during the course of your work, you can change your mind at any time or exclude me from any part of that process. Interviews and shadowing will take place at your convenience and at a location of your choice. If you agree, I will tape record our interview, but if you prefer, I will make hand written notes. Only I will have access to either the tapes, any subsequent transcripts and the notes and they will be stored on a password locked computer. If I am shadowing you, I will make handwritten notes at the time.

What do I have to do? You will be invited to answer any questions that you wish to.

What are the possible disadvantages and risks of taking part?
There are no risks attached to this research or to the interviews. There will be no questions relating to the content of any individual cases or any confidential information you may have acquired during the course of your work

What are the possible benefits of taking part?
There are no benefits to you as an individual. However, there is little empirical research in this area and your participation would contribute to enriching sociological knowledge about the changes taking place in the working lives of those at the Bar.

What will happen when the research study stops?
When this research study and any related articles/books have been complete, I will destroy the data that I have collected.

Will my taking part in the study be kept confidential?
I will anonymise the data after collection so that only I am aware of your identity. If anything you say is used, either by direct quotation or otherwise, I will only identify you by nature of practice/year of call or, where relevant, by job description, but in such a way that you cannot be identified. All tapes, transcripts and interview notes will be kept on my password protected computer, to which only I have access.

What will happen to results of the research study?
The results of this study will form part of my final thesis. It is possible that they might also form part of any related articles or books that arise out of that.

What will happen if I don't want to carry on with the study? You are free to withdraw at any stage

What if there is a problem?
If you would like to complain about any aspect of the study, City University London has established a complaints procedure via the Secretary to the University's Senate Research Ethics Committee. To complain about the study, you need to phone 020 7040 3040. You can then ask to speak to the Secretary to Senate Research Ethics Committee and inform them that the name of the project is: Continuity and Change: The Professional Lives of Barristers
You could also write to the Secretary at:
Anna Ramberg
Secretary to Senate Research Ethics Committee
Research Office, E214
City University London
Northampton Square
London
EC1V 0HB Email: Anna.Ramberg.1@city.ac.uk

Who has reviewed the study? This study has been approved by City University London, School of Arts & School of Social Sciences Research Ethics Committee

Further information and contact details
If you would like further information about this study you can contact my supervisor:
Professor Eugene McLaughlin, [redacted] Tel: [redacted] E[redacted]

Thank you for taking the time to read this information sheet.

APPENDIX 6

CONSENT FORM

Title of Study: Continuity and Change: The Professional Lives of Barristers

Please initial box

1.	I agree to take part in the above City University London research project. I have had the project explained to me, and I have read the participant information sheet, which I may keep for my records. I understand this will involve • Being interviewed by the researcher • allowing the interview to be audiotaped • If agreed, permitting the researcher to observe me as I work	
2.	This information will be held and processed for the following purpose(s): • as part of the researchers doctoral thesis • possibly as part of any further related articles or books I understand that any information I provide is confidential, and that no information that could lead to the identification of any individual will be disclosed in any reports on the project, or to any other party. No identifiable personal data will be published. The identifiable data will not be shared with any other organisation.	
3.	I understand that my participation is voluntary, that I can choose not to participate in part or all of the project, and that I can withdraw at any stage of the project without being penalized or disadvantaged in any way.	
4.	I agree to City University London recording and processing this information about me. I understand that this information will be used only for the purpose(s) set out in this statement and my consent is conditional on the University complying with its duties and obligations under the Data Protection Act 1998.	
5.	I agree to take part in the above study.	

_____ _____ _____

Name of Participant Signature Date

APPENDIX 7 - Ethical approval - City University, London

CITY UNIVERSITY LONDON

School of Arts and Social Sciences

Northampton Square
London EC1V 0HB
www.city.ac.uk

21 October 2013

To whom it may concern

This is to confirm that the Ethics Committee of the Department of Sociology has approved the project 'Continuity and Change: The Professional Lives of Barristers' on the 15th October 2013. The principal investigator of this project is Ms Atalanta Goulandris, doctoral researcher at the Department of Sociology, City University.

Should you have any queries regarding the Department's process of ethical approval, please do not hesitate to contact me at [redacted]

Dr Lena Karamanidou
[redacted]

[redacted]

Email: [redacted]
Tel No.: [redacted]

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