



Lincoln's Inn Treasurer's Lecture

“The relevance of equality, diversity and inclusion for the legal sector and the Inns of Court”

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Introduction

1. Let me say first say, for the record, what an honour it has been for me to have been the 516th Treasurer of Lincoln's Inn this year. I have hugely enjoyed performing the role and making what is inevitably only an incremental contribution to the development of the Inn during my single year of office. The occasion of this lecture marks that that single year is now drawing to its conclusion.
2. Some of you may recall my inauguration, at which I said that the most important thing about diversity for an historic institution like Lincoln's Inn was to ensure that everyone, whatever their background, ethnicity, religion or other characteristics can feel comfortable in participating in our activities. It will not surprise you to hear that I still think that. I want to develop that theme at the end of my year as a bookmark for the future.
3. You will recall that, at the end of 2022, the Immediate Past Treasurer, Jonathan Crow KC, introduced the idea that the Inn's traditional Christian grace said before all meals in the Inn excluded many non-Christian members. The matter was discussed at Council and an almost unanimous view was expressed from benchers across the piece that we would be better to move towards the use of a non-religious or non-sectarian grace before meals, except after Chapel services and Chapel events.
4. The new grace, or giving of thanks, has been well received within the Inn by benchers of all faiths and none. Or at least that is what we thought until the silly season for news took hold this last August. At that point, some of our National newspapers got hold of it, and ran some rather ill-informed articles about how Lincoln's Inn was abandoning Christianity after 400 years of Chapel worship at the Inn. Nothing could have been further from reality, but reality is not always the basis for the best stories.
5. I was quoted in the coverage that followed as having said: “[i]t is a priority to continue to enhance the relevance of the Inn to all our members, and [to] build an increasingly inclusive environment”. I still wholeheartedly endorse that sentiment.
6. These newspapers also became aware that Council had decided this year formally to abandon the use of the term “Masters” of the Bench, and to adopt instead the universal use of the term “members” of the Bench or simply “Benchers”. That was hardly a revolution since Lincoln's Inn had been using the term “Benchers” in preferences to “Masters of the Bench” for years anyway. I have, for a long time, felt uncomfortable, when non-male benchers are addressed as “Master”, just as I am uncomfortable at the use of the term “Master” to mean “Judge” in the High Court.

7. That said, at least the term “Master” in the High Court has its origins in the 11th or 12th century, when there were 6 Masters of the Chancery of England, where writs were prepared and issued. The term “Master of the Rolls” dates from the same era, since the MR was, from the appointment of John de Langton in May 1286, deputy private secretary to the King in his Chancery assisting the Lord Chancellor. Interestingly, in much historic literature, the Master of the Rolls was first known as the “Keeper of the Rolls”. I have mooted a return to that title when we appoint the first non-male Master of the Rolls as I hope will happen sooner rather than later.
8. The third change we have made in the last year at Lincoln’s Inn is to make the process by which we appoint future Treasurers more transparent. It was previously a somewhat opaque procedure, which tended routinely to throw up Treasurers from similar demographics. The new process allows everyone to put themselves forward, and introduces wide and open consultation upon those most suitable to join the cursus for appointment as Keeper of the Walks, the first rung on that ladder.
9. Fourthly, we have reported in Lincoln’s Inn this year on our EDI Survey conducted across the Inn’s membership in 2022. The survey showed that amongst all the Inn’s members 12.4% had experienced or witnessed bullying harassment or discrimination. But sadly nearly a quarter of members from ethnic minority backgrounds have experienced these behaviours and 20% of disabled members and 16% of female members. Less than half of such incidents were reported. We are reinforcing steps to ensure compliance with our Code of Conduct published at the end of last year, setting up an anonymised reporting mechanism, and have established a programme of D&I training and awareness raising for Benchers and those volunteering to help the Inn. We are taking a series of other measures to tackle non-inclusive behaviours in general and bullying, harassment and discrimination in particular. I wholeheartedly welcome all these developments.
10. Leaving these local issues aside, I want to talk this evening about the most pressing problem of diversity in the legal sector, including the legal professions, the judiciary, and the Inns of Court.

Inclusion

11. I have been saying for some years that, in my view, one of the main issues is, the problem of inclusion. The legal professions, the Inns of Court and the judiciary are historically and, perhaps necessarily, hierarchical. In any hierarchical, and routinely busy and hard-pressed, environment, there is scope for exclusion. These factors make it all the more important that the more senior lawyers and judges in every work location lead by example.
12. But there is sometimes doubt, even misunderstanding, about what can and should be done to create a more inclusive environment and to provide legal communities and a judiciary that welcome and draw on the best from all sections of society.
13. I am not going to delve into the statistics. But both the legal professions and the judiciary have had some significant success in recent years in attracting, and even retaining, more women, more people from less privileged backgrounds and more people from some, but not all, minority backgrounds. But speaking generally, the retention bit has been the most challenging.
14. Why is it, I might ask rhetorically, that for some years now there has been a fairer gender and ethnic balance entering and starting to practice law, but a less good balance amongst the senior members of the legal profession and amongst KCs. Why is it that the same applies in the judiciary? In the judiciary, we have a reasonable number of women and diverse judges entering the junior ranks of the judiciary, but less at higher levels. In the High Court, for example, only 32% of judges are women, in the Court of Appeal, only 24% of judges are

women, and in the Supreme Court where the number of women has recently doubled from one to two (16.6%) and there is no one from a minority ethnic background.

The two answers

15. I want tonight to suggest two answers to these questions.
16. First, we have done less well in diversity terms at more senior levels because creating an inclusive environment requires us all to make active choices. It is no good assuming, as some do, that just because we want a more diverse senior legal community and senior judiciary, we will eventually get one. Without active steps being taken we will not. Retaining women and those from less privileged or minority backgrounds in the law comes down in many cases to how welcome and comfortable they are made to feel in their working environment. Nobody wants to stay for years in a pressurised job in which they feel less than appreciated, less than comfortable, and where they may even feel they do not truly belong.
17. Secondly, we have failed to maintain diversity at more senior levels partly because of the hierarchical environment that I have already mentioned. The legal profession is naturally competitive, particularly in the world of litigation, with the people at the top more powerful than those lower down. To create an inclusive environment, those at the top need to avoid centralising power. There is a need for checks and balances to control the power of the institution, and to open it up. If this is not done, women and those from diverse backgrounds will never succeed in sufficient numbers to change the status quo. Creation of an inclusive environment can probably only be achieved if there is conscious awareness of and control over the imbalance of power which I have mentioned.
18. It is worth noting that even where we have individual examples of women and diverse lawyers and judges breaking through into the higher echelons, the task is not necessarily complete. Because diverse lawyers and judges at lower levels will no more challenge diverse judges and lawyers than un-diverse ones **unless** power is actively distributed, allowing and encouraging a more inclusive environment to prevail. That is why we talk of empowerment in this context. Unless people at lower levels are empowered in the true sense of that word, those excluded will, with few exceptions, not stay around long enough to rise to the hierarchical peak. This is what we have seen happening in recent years.

Creating an inclusive environment

19. Let me start with the active choices we all need to make if we are to build an inclusive environment. This requires hard work. Everyone can do better. Nobody is exempt. Almost everyone, for example, makes thoughtless comments and adds a little to the discomfort of others, and does so more when they are under pressure than when they are not.
20. This is why I feel so strongly that inclusivity training is so important. My own experience bears this out. When I was a youngish barrister back in the 1980s, I thought that all the talk about diversity, which was then becoming fashionable, was much over-stated. I thought anyone able could get on if they stuck at it. Eventually, I was persuaded to do a one-day course on diversity. I found it literally life-changing. I realised for the first time that there was a real problem that needed to be tackled. More importantly, I realised that there was something that I personally could and should do to improve my own attitudes and actions in this area. I have tried to do so actively ever since. It is an ongoing process.
21. In the judiciary, I have supported initiatives and training to promote inclusive behaviours. We, the judiciary, have to confront bad practice and bad behaviour and not pretend that it does not exist. We have to do better in persuading those who are the victims of an exclusive

environment to report their experiences and we have to provide better and easier routes for that reporting to be effective without damaging the career progression of the people affected. This applies very much also within the Inn, as our survey shows.

22. I completely accept that things have improved in 40 years, but I believe that active steps are still required. Those of us who lead cannot properly now dismiss those who complain about the lack of diversity in the legal profession and the judiciary as campaigners or trouble-makers - any more than we could in the 1980s.
23. My message is to ask you not to leave it too late before you realise how important it is for everyone to contribute, whether at school, university or in the work-place to the creation of inclusive environments.
24. In the law particularly, much, but by no means all, of the bad practice creating exclusion is inadvertent and is caused by inaction; either ignorance or a failure really to consider and confront one's own behaviour. Most of us in the law believe that we behave well, and much of the time many of us probably do.
25. But the training that I think is most important is explaining to busy lawyers and judges the kinds of behaviours that can badly upset others in the work-place. It may be the way lawyers treat more junior staff. It may be the way more senior judges interact with more junior judges. It may be, and often is, the way judges treat the advocates that appear before them. It may just be the use of language, or simply being unaware of how others perceive us. We all have something to learn.
26. Of course, this is all about listening – lawyers and judges are naturally often on transmit. Listen to me tonight. But sometimes, it is valuable to be asked to stop and consider the unintended effects of conduct that those dishing it out probably regard as quite normal and acceptable.
27. These behavioural lessons need to start before qualification and continue until, perhaps beyond, retirement. Cultures change during the span of every career. The culture changes that I have observed since I began studying law in 1973 have been quite extraordinary – and , by the way, mostly very considerably for the better.
28. My point is that all of us from the first year student to the most senior judge need regularly and often to re-examine our normal behaviours and how we treat those with whom we interact. We all need help with that process, and that is where equality, diversity and inclusion training becomes so important.

Reducing the power imbalance

29. That brings me to my second and perhaps less comfortable answer to the question of how to create a more inclusive environment at the higher levels of the legal profession and the judiciary. We need to try to appreciate the reality of power and the imbalance of power in our most hierarchical of hierarchical environments.
30. This is an institutional problem. In many ways, the legal professions, the Inns of Court and the judiciary of England and Wales are victims of their own success. The very success of the institutions creates powerful leaders and hierarchical structures. The system itself provides clear lines of decision-making. The parties to cases need a certain outcome. The judge is the authority providing that outcome. But that authority should be worn lightly and should not negatively affect other aspects of judicial activity. Not everything we do is about resolving contested technical points. We should be careful to ensure that the way we discharge our administrative responsibilities, our wider powers, our management of people, and our leadership reflects a softer more inclusive approach.

31. To make the environment more inclusive, some of that power has, I have said already, to be spread around. The power has to some extent to be dissipated. Those without power in the legal sector and the judiciary are frequently women and those from less naturally competitive and privileged backgrounds. If the power is dissipated more widely, these groups are more likely to feel empowered to contribute fully to the system of which we wish them to be a functioning and valued part, and to continue equitably on their journey through the hierarchy. The system will benefit from their perspective.
32. The problem is, I think, exacerbated by the fact that those who reach the peak of the professions and the judiciary are, even if they are themselves diverse, sometimes unwilling to challenge the structure and governance of the institutions themselves. Some don't want to accept that the system within which they may have spent 30, 40 or more years is itself in need of attention.
33. The whole purpose of the justice system is to be fair and just. Lawyers and judges, and pre-eminently senior lawyers and judges assume that they are fair and just and, more importantly that the system that has created them is fair and just too.
34. In some ways they are right, but in others they are not. It takes intellectual courage to challenge the institution that has put you in your place. I believe that our senior lawyers and judges need the courage to challenge the over-centralisation of power. They need to consider the maintenance and introduction of checks and balances intra-institutionally not just inter-institutionally. They need to encourage ideas and contributions from within. If this is achieved, the justice environment will become more approachable, more inclusive and more welcoming to women and those from different backgrounds and communities. Those more diverse members will be empowered to stay within the system for longer, will know that it is also their system, they are valued by that system, and that their contribution matters. They will not feel excluded by the hierarchy itself.
35. As with the steps I have mentioned to create an inclusive environment, it is not sufficient to sit and do nothing. If the most senior people in the profession and the judiciary continue as if nothing is happening, those who have not reached those heights will not be able to challenge them.
36. Active steps are needed, then, to empower the women and minority lawyers and judges, who like all the rest of us began at the lower end of the pyramid. We can then keep them in the system long enough for them to know that their contribution is valid and valued, finally to emerge at the top of the legal environment – hopefully on a more inclusive plateau rather than on quite such an entirely pointy pinnacle.
37. Before concluding on this second point about empowerment, let me offer a little more granular detail. The judiciary is particularly pointy, but solicitors' firms, Inns of Court and chambers are too. In the judiciary, we have very few senior leaders and probably too few intermediate levels of leadership. This means that the District Judge, Deputy District Judge, Circuit Judge, Recorder or fee paid or salaried first tier tribunal judge will rarely encounter the senior judiciary at all. It is hard for them to feel truly valued if they never have the chance to talk to and engage with the people supposed to be valuing them. We really want our women judges and our judges from less privileged communities and backgrounds to feel empowered to progress within the judiciary. And we must all do more to make sure they feel highly valued, included and appreciated along the way.
38. So far as the profession is concerned, the Lady Chief Justice and I and the Heads of Division have recently made a statement encouraging all senior advocates to consider, in every case, allocating part of the argument to their juniors. This is but one example of how the pyramid can incrementally be flattened.

Conclusions

39. The consequence of not taking the need for an inclusive environment seriously is that the system loses some of the best women and minority lawyers and judges. Too many conclude, after encountering bad, or perhaps just inconsiderate, treatment, that legal practice or the judiciary is not for them. They vote with their feet. And we are all the poorer for that.
40. If we did more to create an inclusive working environment and empowerment within the justice system, these leavers would be more likely to stay. They would feel more comfortable, even happy, at work. We would not have to wait 50 years for things to change in the senior judiciary as one notable senior judge suggested we might have to do.
41. This is a challenge for all of us and all of you. I will end on a positive note. Things have definitely improved a lot since I started studying the law in 1973. But there is much still to do. I urge all of you to take diversity and good practice seriously. We all have something to learn. Don't leave it too late to make your contribution – and, by the way, you need to remember what you have learnt as you get older, because many young lawyers make all the points I have been making, only to forget the very same things as they move imperceptibly from junior lawyers into senior lawyers and then into the judiciary.
42. As one of my eminent female colleagues told me last week, diversity is having a seat at the table, inclusion is having a voice, and belonging is having that voice heard. Our objective must be to make everyone with the legal community and within the Inns and the judiciary feel that they belong. People naturally want to stay where they belong, and not where they are made to feel they do not belong.
43. I have deliberately avoided giving examples about exclusive behaviours and, even worse, about out and out bullying, harassment and discrimination. Examples sometimes cloud the message. The fact is that we all know we can do better. Let's set about it.
44. Many thanks for listening. I will happily answer any questions you may have.

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