

100 YEARS of WOMEN IN THE LAW

WOMEN IN THE JUDICIARY

1. It is particularly apt that I should speak about women in the judiciary as I have the honour of being the Vice President of the UK Association of Women Judges. Before turning to the judiciary itself, I am going to explore the topic of women at the Bar a little as, until recently, that was the only route to the senior judiciary.
2. My information, for the most part, comes from the “Women’s Legal Landmarks” which was published this year to celebrate the history of women in the law in England and Wales and was edited by Erika Rackley and Rosemary Auchmuty.
3. The obvious place to start is Helena Normanton. She was the first woman to be a member of an Inn, a prerequisite to being called to the Bar. She was admitted by Middle Temple on Christmas Eve 1919 the day after the Sex Disqualification (Removal) Act 1919 had received royal assent. She had joined the Committee for the Admission of Women to the Legal Profession which may well have been established in around 1904 by Christabel Pankhurst after her

application to join Lincoln's Inn had been rejected. Helena was called to the Bar with eight other women in November 1922 but had been pipped on the post by Ivy Williams who was called by Inner Temple in May of that year.

4. In England and Wales, the initial admissions to membership were followed in 1923 by the call of a further 10 women. In 1924, the number rose to 18 but fell back to 9 in 1925. These figures were typical until the mid 1940s with the result that by 1970 women accounted for only 8.2% of those called to the Bar. This increased to 37% by the mid 1980s and 42.7% by the early 1990s. In recent years they have exceeded 50%. Although I had no idea about the statistics when I was called in 1984, I was aware that women were in a serious minority. When I took my tenancy in Lincoln's Inn in 1985, you could count the number of female practitioners in Chancery almost on one hand. Although I would say that over the span of my career, things have changed immeasurably, recent figures reveal that women make up only 36% of the practising Bar and 14% of QCs. Nevertheless, my feeling is that in Lincoln's Inn both the

atmosphere and the actual numbers has changed dramatically. Although it is a very small pool – about 1,200 of the 15,000 barristers in practice are in Chancery, the number of women in chambers has rocketed. Although retention is a problem, I think that the very nature of the work which is much more paper based and London centric actually helps women. Although the senior judiciary is no longer chosen solely from the Bar, the change of culture and the increasing number of women are obviously very helpful and it is feeding through to the judiciary.

5. As at April last year, the official statistics show that 29% of court judges and 46% of tribunal judges were female. In the Upper Tribunal 41% of judges were female. That's quite a statistic! Since 2014 there has been a 5-percentage point increase in female representation among court judges. 21% of the Court of Appeal are women and as of last October 25% of the Supreme Court. However, only 1 of 14 judges in the Chancery Division is female. You may know that that is Mrs Justice Falk. For a short period, there were three. I was one of them. It is salutary to note that when I was appointed in 2012, I was only the third woman **ever** to be a judge in

that Division, the first being Lady Arden in 1993 and the second Dame Sonia Proudman in 2008. Perhaps surprisingly just over a fifth of commercial court judges are women. There are 3 of 8 in TCC but of the 12 judges appointed from the Commercial Court and the Chancery Division to sit in the Financial List, not a single one is a woman. To be fair there have been in the past and it is probably just coincidence that there isn't one now. I was one as was Lady Justice Rose. It is inevitable that there is an ebb and flow.

6. To complete the picture, there are 17 women out of 62 judges in the Queen's Bench Division and 5 of 16 in the Family Division. 5 of the 14 presiding judges and both SPJ and her deputy are women. On a high note, you may have noticed that Dame Victoria Sharpe was appointed as the first female President of the Queen's Bench Division this summer.

7. To return to the past and to track the careers of the first few women, Helena Normanton was the first woman to be briefed both in the High Court and in the Central Criminal Court and was with Rose Heilbron appointed as one of the first two women King's Counsel

in England and Wales in 1949. Rose was the youngest Silk since 1783!

8. On 6 November 1956 it was announced that Rose Heilbron would be appointed as the Recorder of Burnley – the first woman to hold regular judicial office. She was also the second woman to be appointed as an HCJ in 1974. The first had been Elizabeth Lane in 1962.
9. In 1957, a year after Heilbron was appointed, there were only 68 women who were nominally at the Bar and only 45 who were actually practising. After Helena Normanton's death that year, Heilbron was the only QC amongst them.
10. Of the 122 women called to the Bar in the 1930s with Rose Heilbron, only **five** were still practising in the 1960s. Although more women joined the Bar in the the 1950s and 1960s only 20% were still in practice a decade later. By 1976 there were only 10 salaried women judges. I think if I had been aware of these statistics when I was thinking about reading Law in the late 1970s I might have paused

for thought. Given the impetuosity of youth – perhaps not! It is interesting to note, however, that it would seem that retention has always been a problem.

11. To return to progress within the judiciary, although Sybil Campbell had become the first female stipendiary magistrate as early as 1945, the higher courts remained 100% male until Elizabeth Lane was appointed to the High Court. As I have mentioned, that was in 1965. At that stage, the only female judges were Sybil Campbell, Dorothy Dix who was deputy Recorder of Deal (who became the first woman to preside over a jury trial in 1946) and Rose Heilbron, the Recorder of Burnley. Elizabeth Lane had been called to the Bar in 1940 and was the third woman in silk after Rose Heilbron and Helena Normanton, in 1960. Before being appointed to the High Court, she had been a county court judge. It would be a further nine years until Rose Heilbron joined her in the Family Division.

12. It is also interesting or disappointing to note that the first four women HCJs, Elizabeth Lane, Rose Heilbron, Margaret Booth and

Elizabeth Butler-Sloss were all appointed to the Probate, Divorce and Admiralty Division, now the Family Division, despite none of them having any expertise in that area of the law. One can only assume that it was considered the appropriate place for a woman. It was not until 1992 that the first woman was appointed to Queen's Bench Division. That was Ann Ebsworth and, as I have already mentioned, Mary Arden was appointed to the ChD in 1993. I can certainly remember the prejudice against her at the Chancery Bar.

13. How long did it take for women to be promoted further? Well, Elizabeth Butler-Sloss was the first female "Lord" Justice of Appeal in the Court of Appeal in 1988, having been a HCJ for nine years. That was almost forty years after the first women QCs were appointed. She was referred to a Lord Justice. She was the highest ranking female judge in the country until Baroness Brenda Hale's appointment to the Appellate Committee of the House of Lords in 2004. Brenda was the only woman ever to be appointed to that role. Dame Elizabeth became the first female president of the Family Division in 1998. It has taken until this year for there to be another female head of division. As I have mentioned, Victoria Sharpe was

appointed as the first female President of the Queen's Bench Division this summer, on the retirement of Sir Brian Leveson.

14. When Brenda Hale was appointed to the High Court in 1994, (also to the Family Division) she was only the tenth woman ever to do so. There had been so few women appointed that she inherited the robes of Margaret Booth, the third female judge in 1979, who had herself inherited Elizabeth Lane's.
15. What does all this tell us? You might conclude that the judiciary is very conservative and prejudiced towards women. I think not. Although progress from those first calls to the Bar in the early in the 1920s to the appointment of the first women HCJs in the mid 1960s and 1970s was painfully slow, so was the change in attitudes towards women in society in that period. It is true that those first women were stereotyped by being appointed to the Family Division but it seems to me that, in this regard too, the judiciary were only reflecting society as a whole. In the 1980s there were very few women in senior positions in business or other professions. It is true

that chambers and, in particular, clerks in chambers were renowned for pushing women towards what they considered to be suitable work such as family and possibly personal injury and away from commercial and chancery, but it was also true that it was difficult for women to obtain instructions in those areas, and businessmen (and they were men) were uncertain about taking their advice. I certainly recall it being difficult and on one occasion arrived at court to be greeted by my client who said "eeh - it's a woman!" My sponsor for Call also suggested that I abandon ideas of a commercial/Chancery practice and go into Family law. Women silks in Commercial/Chancery were few and far between in those days. In the 1990s I can only think of Barbara Dohmann and Liz Gloster in Commercial work. There are still relatively few.

16. We are now in a position that there are sufficient women in the High Court and above that the atmosphere has changed. There is no sense of merely being tolerated or it being a boy's club. There is no longer the hostility that Elizabeth Butler-Sloss felt when she came into the Court of Appeal. I have recently been involved with the most recent High Court Judges' competition and there are goodly number of

high calibre women coming through and the process is gender neutral.

17. It is interesting though that women are so much better represented in the tribunals, and at district judge and circuit judge level than in the senior judiciary. I think that may be because, more often than not, they were solicitors and there are so many more women in that pool. I don't think that we should blame the Bar for that, although there are many things about about being a barrister which are incompatible with other domestic responsibilities. It would be relatively easy to take some simple steps to make life at the Bar more predictable and doable if you also have children to take care of. Actually, there are many advantages to being a barrister mother than a solicitor. It is much easier to make the nativity play if you are self-employed. + Paradoxically, although there are probably the fewest women at the Chancery/Commercial bar, the stability that that kind of work brings, makes juggling a great deal easier.

18. This might sound as if I think that it is only women who should be doing the juggling. Far from it. If you want to succeed whether at

the Bar, as a solicitor or an academic and to move on to the Judiciary, you need a supportive and hands on life partner who wants you to be fulfilled and is willing to compromise in order to achieve it. It is society that needs to change.

19. I should also add that I am also not sure that we should have the aim of 50% women in the judiciary. We should be driven by merit alone and not by gender quotas. I am concerned that it belittles the woman herself and women in general if women are merely appointed as one of a kind. It opens up more scope for discrimination, especially in the light of the febrile atmosphere we have at the moment in relation to the judiciary and in general.

20. We are all moulded by our experience, whether we are male or female. I don't accept that women think differently. What we should be aiming at is appointing the best whoever they may be. Although I disagree with Baroness Hale's view that there should necessarily be equal numbers of men and women in the judiciary, I do agree with her motto - "Women are equal to everything".

