



Barristers' Chambers

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2022 – Some Observations on Financial Remedy Law and Practice in General

Entering 2022, I now approach my 48th year as a barrister on the Northern Circuit. I came to the Bar a year after the Matrimonial Causes Act 1973 hit the statute book and the year the UK had joined the Common Market. In that time, I have been struck, when mainly practising exclusively in what was then called “*ancillary relief*” and is now financial remedy work with the, yet incomplete, struggle for equal treatment - in what we would term our civilized society - which women have had upon divorce division.

Whilst momentarily - following the decision in **White v White** in 2000 UKHL 54 - women enjoyed a brief period of equal treatment in divorce financial division, subsequent reported decisions of the mainly male judiciary began, almost immediately on a case-by-case basis thereafter to chip away at the advances made by that radical House of Lords judgment - the same *modus operandi* happened again after the conjoined appeals decisions of the House of lords in **Miller/McFarlane** in 2006 UKHL 24.

I have no doubt that any sensible reading of the Court of Appeal’s judgment in **Waggott v Waggott** in 2018 EWCA Civ 727 will again recognize the same judicial traits excused under the banner of not wanting to open the “*flood gates*” to ongoing claims after divorce - when trying to explain away a judgment denying women in 20

and 30 year
in their male
earning capacity -
will have
much as the male for to establish.



marriages a share
spouse's future
which the female
sacrificed just as

The Legal Professions have, of course, been more progressive than most in accelerating gender equality. But I suggest that whilst the campaign is the responsibility of both men and women at the Bar as advocates for the cause - those women, in particular, who have gained higher office within the law must still do more to help their colleagues and women in general. Indeed, their own high office achievements as women stand on the shoulders of predecessor giants of their gender, who subjected themselves to violence and even death over the past 200 years to progress the very cause that they more than most have benefitted from. It simply is not good enough for women in the highest rankings today to suggest, as some have done and still do, that by passage of time eventually women's equality will be achieved. If men had been in the same position this conversation would not still be happening.

The equal position of women in society here and universally is of utmost importance to us all - one can only wonder whether for example our modern history of warfare would have seen the same conflicts or our planet have been in the same unhealthy condition - if women in our modern history and at the highest level had had an equal say in the decision making involved.

At a national and local level, also, the Professions and the Judiciary still need, for identical reasons, to recognize the continuing lack of representation of black, Asian

and other ethnic
within their
2021, the national
photograph taken



communities
ranks. In August
press published a
of the first all

women Court of Appeal sitting - yet all were white and I asked myself, if I were black, would I consider that image represented true progress.

I came as one of the first Red Brick university working-class entrants to the Northern Circuit in 1974. The first piece of advice I got from my then Head of Chambers was to lose my accent - which, thankfully, I ignored. Yet those who have ever read the first editions of the Book on the Northern Circuit from 1886 to 2004 compiled by HHJ Lynch (retired) will, no doubt, have been struck page by page by an apparent judicial gene, which appeared for years to have previously sustained appointments on this Circuit and no doubt others. Fortunately, in many - albeit not in all respects - opportunities for appointment now are more open to competition and it remains all our responsibility that that position remains and continues to improve. If we need to continue positive discrimination to accelerate this - then so be it.

There is no doubt in my mind that one of those improvements is the acknowledgment that the man and woman in the street forced to come to the law for assistance should no longer do so in a state of perpetual gratitude that, for example, a barrister has deigned to represent them. The legal profession and, indeed, the judiciary are nothing if they do not serve the interests of the litigant and the public at large. Intellect is nothing to boast of - since, it is a gift at birth and not earned and it's what we do with that gift for others that is the measure of who we are.



Innovation in the
is not the
practitioner or for
- litigants too

ideas of how the process can improve.- but they also need a communication platform to have that discussion. When I asked for this to be created in 2019, I was told by the FLBA nationally that the resources were not there - the Law Society did not even respond - nor did the local professional groups - yet within months Covid hit and showed the resources could be provided - proving the saying - "*where there is a will there is a way*".

litigation process
monopoly of the
that matter judges
have a voice and

For some, the Bar remains too conservative in outlook - still operating it may be thought under an outdated Chambers model, which continues to centralise too much influence through the senior clerks and operating from expensive city centre offices, when most of the members of Chambers do all their work from laptops and mobile phones - the Bar Council thankfully remains often far more progressive than its own membership - exemplified in recent years by the reluctance of most Chambers before the Rules were forced upon them from above to be more transparent with their fee charges.

As for the individual barrister practicing in financial remedy work - instructing solicitors should expect their counsel to be far more than just a jobbing advocate - the barrister is not above but part of the client's legal team and must be able to positively value add to the client's case management providing the lead strategy for his or her client's case and at every stage of involvement a written record of matters discussed

and advice given.
hard, its
involves long
not enough



Financial work is
demanding and
hours - there are
counsel locally

and I suspect nationally choosing this line of work and solicitors should be thinking of home grooming their own advocates in house in such circumstances.

Ultimately - costs in divorce cases are out of control and lack of reform in our legal structures only adds to this inflation. Women, as still the usually weaker financial party, should not need to borrow funds when these already exist in the marriage or for that matter be required to make a costs risk application for the same.

Some of these costs are obscene - and all levels of the law are to blame for this. The higher Courts for continually musing over the niceties of the academics of divorce law instead of making the law more certain and straight forward, local judges for not

getting a full grip over slippage of standards and obedience to the Rules which exist - the 350 page Bundle being one. The barrister for taking too many cases and not achieving the most for each client with the reduced pressure of time available and solicitors for sending now, in the digital world, an inexcusable *kitchen sink* of documentation to counsel to sort out - and, of course, ultimately Parliament for not getting on with reform and providing for a presumption of equality in financial remedy law - so that the man and woman in the street can go to the Act and have a very good idea what they will get on divorce division - so encouraging settlement at the earliest stage.

In all of this, we
profession realize
made by the
growing and the



must as a
that the demands
client are ever
stress on the

practitioner along with it. We need urgently to find ways as a profession to have intellectual humility. We need to be frank with one another when we are not coping and to take better care of each other and avoid by what we each do individually in our working day adding unduly to that stress burden by aggressive email exchanges or messages past 6 pm or making insensitive criticism - even small gestures can and do make a difference.

Finally, I want to say to anyone of a younger audience - as someone born in the mill streets of Bury - not speaking until almost 5 years of age and then with a stammer worse than the Kings Speech until I turned 19, but which is still there under pressure if I allow it - if I can have a decent career at the Bar or in the legal profession generally - then take heart, despite the above, you can too!

Wishing everyone a happy and healthy 2022.

Ashley Murray

January 2022

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