

Why female barristers are leaving the profession

Jane Croft *in London – The Financial Times - May 3, 2019*

Shortly before criminal barrister Nikki Alderson went on maternity leave with her third child, she was asked to lead the prosecution of a sex abuse criminal trial in England due to start the next day. She refused. “It was a bit of a tipping point for me,” she said. “The case had not been prepared well at all: there was no prosecution case summary, no indictment, no opening note. The trial was out of my local area. I was heavily pregnant, my husband was away, I had two young children at home. The case should have taken weeks to prepare let alone a few hours.”

The incident was one reason why Ms Alderson, who spent 19 years as a barrister, decided after her maternity leave ended to establish in her home town of Leeds a coaching business focused on helping female lawyers achieve their potential. “I had a very successful career at the Bar,” she said. “I had come back full-time after two maternity leaves but thought this is a ‘now or never’ moment. I thought: ‘Do I want to do this?’”

Ms Alderson, 45, is not alone. Increasing numbers of self-employed female barristers, particularly those working in publicly funded criminal and family law, are leaving mid-career. Since 2000, women have made up half of those qualifying as barristers. However, only 15 per cent of Queen’s Counsel are female and just 29 per cent of judges. The Western Circuit Women’s Forum, which represents barristers in the south and south-west of England, found in a recent study that two-thirds of those who left the profession over a six-year period were women. Almost all the men who left became judges or retired after long careers. By contrast, the vast majority of women dropped out mid-career and many cited the difficulty of balancing work and family life.

The Bar Council, which represents barristers, has highlighted female retention as a concern because the more women who drop out mid-career, the smaller the pool of future judges or QCs.

Ian Burnett, the Lord Chief Justice, said in February that the number of female silks and law firm partners “remains stubbornly low”. Brenda Hale, president of the Supreme Court, where a quarter of the bench is female, has called for women to make up half of the judiciary.

Criminal barristers, who are usually self-employed and are grouped together in chambers, face a unique set of challenges when they become primary carers. One factor is the unpredictability of the court listing system where trial dates can switch times or locations at the last minute. Criminal courts often operate a “warned list” system where cases can be listed to begin at any time during a two-week period so barristers wait around for hours for their case to start. Trials sit daily, making it difficult to work from home or part-time. A recent Twitter thread by Joanna Hardy, barrister at Red Lion Chambers, went viral after she suggested ways to retain more women including abolishing 9.30am trials “which helps with childcare and the care of elderly relatives” and scrapping warned lists.

Fees are another contentious issue. Criminal barristers have seen their income squeezed since the government cut legal aid funding in 2013, leading to protests by barristers in 2014 and last year. Criminal barristers who prosecute cases recently threatened to walk out of trials unless fees were increased. Chris Henley QC, chairman of the Criminal Bar Association, said prosecution fees had not risen for 20 years. Fees in an all-day sentencing hearing can be as little as £60 (about 70€), about £9 (10.50 €) an hour, he added.

Self-employed barristers must pay overheads including value added tax, rent and expenses for their chambers as well as travel to court and professional insurance and tax. They must also pay for full-time childcare during a trial. Well-paid criminal work such as fraud cases can involve spending weeks away from home at a court in a different city.

The situation is starting to change. The Bar Council has put in place support for women, including training and mentoring schemes, there are more women’s forums at circuit level and some barristers say clerks, who assign cases, are being more supportive. Women stressed that being a barrister was a rewarding career. “I am really keen that positive things are being done,” one female barrister said. “I love my job. The statistics tell us there are more women QCs and more women in the judiciary but change is painfully slow.”