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‘Survival of the fittest’? Perceptions of wellbeing at The Bar of Northern Ireland

Abstract

This article, based on a qualitative study conducted in June-July 2019, assesses how barristers at The Bar of Northern Ireland perceive wellbeing and mental ill-health within their profession. It will argue that the Bar can be a competitive and potentially hostile workplace environment, leading to detrimental impacts on wellbeing. It will also contend that being a barrister in Northern Ireland provides its own unique challenges for practitioners due to the self-employed independent nature of the role, where practitioners do not work in chambers or stables like their counterparts in England & Wales and Scotland. At the same time, barristers spoke positively about the flexibility of their roles, beneficial forms of collegiality, as well as an evolving culture which places greater emphasis on wellbeing. This article will argue, using the JD-R model, efforts should be made to decrease job demands and increase the job resources of barristers of The Bar of Northern Ireland to improve levels of wellbeing. This model could also be applied to the Bar in other jurisdictions to assess the impact of both shared and unique challenges and opportunities.

1. Introduction

You couldn't sustain a practice and have mental health problems. The profession... you wouldn't survive in it. It couldn't work (Barrister 6).

In recent years, the issue of wellbeing within the legal profession has become of increasing concern both internationally and within the United Kingdom, with a growing body of evidence that lawyers experience higher levels of mental health issues and lower levels of wellbeing than

the general population.¹ A range of factors relating to the legal workplace have been implicated as potential causes, often including structural and cultural issues. For example, the high billing targets set by law firms, resulting in cultures of long working hours,² or the need to appear continually productive, which may be attributed to neoliberal dogma which promotes productivity at all costs, and often ignores the psychological wellbeing of practitioners.³ Other issues identified include poor management or a lack of control over workload,⁴ or an inability to achieve an appropriate work-life balance.⁵

The growing academic discipline regarding lawyer wellbeing has seen a proliferation of publications in the field, as well as the establishment of an international research group ‘Advancing Wellness in Law’. Most academic research has been undertaken within the jurisdictions of the United States and Australia, with the wellbeing of legal professionals in the UK overlooked until recently. Work undertaken by Collier⁶ sought to explore issues of wellbeing, gender, and legal practice,⁷ and a recent book by Jones et al,⁸ based on a qualitative study of 30 practitioners, sought to establish perceptions of lawyer mental health and wellbeing

¹ Patrick R. Krill, Ryan Johnson and Linda Albert, 'The prevalence of substance use and other mental health concerns among American attorneys' (2016) 10 *Journal of Addiction Medicine* 1, 46; Norm Kelk, Georgina Luscombe, Sharon Medlow and Ian Hickie, *Courting the Blues* (2009) <<https://cald.asn.au/wp-content/uploads/2017/11/BMRI-Report-Courting-the-BluesLaw-Report-Website-version-4-May-091.pdf>> accessed 21 July 2020; Positive, *Wellbeing at the Bar. A Resilience Framework Assessment* (2015). <<https://www.barcouncil.org.uk/resource/wellbeing-at-the-bar-report.html>> accessed 21 July 2020.

² Adele J. Bergin and Nerina L. Jimmieson, 'Australian lawyer well-being: Workplace demands, resources and the impact of time-billing targets (2014)' 21 *Psychiatry, Psychology and Law* 3, 427.

³ Margaret Thornton, 'Squeezing the life out of lawyers: legal practice in the market embrace' (2016) 25 *Griffith Law Review* 471.

⁴ Colin James, 'Lawyers' wellbeing and professional legal education' (2008) 42 *The Law Teacher* 85

⁵ Margaret Thornton, 'Work/life or work/work? Corporate legal practice in the twenty-first century' (2016) 23 *International Journal of the Legal Profession* 13.

⁶ Richard Collier, 'Love law, love life': Neoliberalism, wellbeing and gender in the legal profession—The case of law school' (2014) 17 *Legal Ethics* 202; Richard Collier, 'Wellbeing in the legal profession: reflections on recent developments (or, what do we talk about, when we talk about wellbeing?)' (2016) 23 *International Journal of the Legal Profession* 41.

⁷ Collier, 'Love law, love life': Neoliberalism, wellbeing and gender in the legal profession—The case of law school' 17 *Legal Ethics* 20.

⁸ Emma Jones, Neil Graffin, Rajvinder Samra and Mathijs Lucassen, *Mental Health and Wellbeing in the Legal Profession* (Bristol, Bristol University Press, 2020).

from across the legal profession. Outside of academia, there has been striking media coverage of issues pertaining to lawyer wellbeing.⁹ In addition, regulatory bodies have recognised the importance of wellbeing,¹⁰ and studies have been conducted by the Junior Lawyer's Division of the Law Society in assessing wellbeing of members.¹¹ The International Bar Association,¹² and LawCare¹³ have also recently embarked on large-scale projects to assess lawyer wellbeing.

To date, much of the research focus has been on lawyers employed within areas of private practice, commonly within large law firms.¹⁴ However, the legal profession itself is not a homogeneous grouping and it is becoming increasingly apparent that wellbeing issues may manifest themselves in different ways and have differing causes and consequences within different populations.¹⁵ The role of a barrister is one that has previously been identified as having specific challenges in terms of wellbeing.¹⁶ It is a role unique to common law jurisdictions. Barristers form a body of regulated specialist legal advisers who are commonly self-employed and who provide a range of services, including 'advocacy and representation in

⁹ Elizabeth Rimmer, 'The harsh reality of a long hours culture – why Weil's April fool was no laughing matter' *Legal Week* (24 April 2015); Neil Graffin and others, 'The legal profession has a mental health problem – which is an issue for everyone' (*The Conversation*, 2019) <<http://theconversation.com/the-legal-profession-has-a-mental-health-problem-which-is-an-issue-for-everyone-113224>> accessed 5 December; The University of Law, 'How the legal world is changing its attitudes to mental health and wellbeing' *The Guardian* (London 14 October 2019) <<https://www.theguardian.com/partner-zone-university-of-law/2019/oct/14/how-the-legal-world-is-changing-its-attitudes-to-mental-health-and-wellbeing>> 1 February 2021 .

¹⁰ See:

<<https://www.sra.org.uk/solicitors/resources/your-health-your-career/>>;

<<https://www.lawscot.org.uk/members/wellbeing/>>;

<https://www.lawsociety.ie/Trainees/law-school-psychological-services/shrink-me/>

¹¹ The Law Society Junior Lawyer's Division, 'Resilience and wellbeing survey report 2019' 2019) <<https://communities.lawsociety.org.uk/Uploads/b/y/k/resilience-wellbeing-survey-report-2019.pdf>> accessed 5 December 2020.

¹² International Bar Association 'Mental wellbeing in the legal profession' [online] available at: <<https://www.ibanet.org/Mental-wellbeing-in-the-legal-profession.aspx>> accessed 1 February 2021.

¹³ LawCare 'Life in the law' [online] <<https://www.lawcare.org.uk/get-involved/life-in-the-law-research-study>> accessed 1 February 2021.

¹⁴ Vivien Holmes, Tony Foley, Stephen Tang and Margie Rowe 'Practising Professionalism: Observations from an Empirical Study of New Australian Lawyers' (2012) 15 *Legal Ethics* 1, 29.

¹⁵ Emma Jones, Neil Graffin, Rajvinder Samra and Mathijs Lucassen, *Mental Health and Wellbeing in the Legal Profession* (Bristol, Bristol University Press, 2020).

¹⁶ Positive (n 1); Lloyd C. Harris, 'The Emotional Labour of Barristers: An Exploration of Emotional Labour by Status Professionals' (2002) 39 *Journal of Management Studies* 4, 553.

court’ as well as offering ‘written advice, negotiation and mediation’.¹⁷ At the Bar in Northern Ireland, there are around 600 barristers in total,¹⁸ with only twenty graduates per year admitted to the Institute of Professional Legal Studies Bar training course (referred colloquially as the Institute and based at Queens University, Belfast),¹⁹ which is the local vocational prerequisite for joining The Bar of Northern Ireland (barristers can train elsewhere before being admitted).

The Bar in Northern Ireland is an almost century old institution created after the partition of Ireland, when the first Inn of Court for Northern Ireland was established.²⁰ The Honorable Society of the Inn of Court of Northern Ireland is the body which governs the education, training and admittance of barristers in Northern Ireland. There are different routes to becoming a barrister in Northern Ireland, dependent on where a candidate studies, qualifies, and completes training. For those studying in Northern Ireland, prospective candidates are required to complete a qualifying law degree, a Postgraduate Diploma in Professional Legal Studies at the Institute and receive a call to the Bar of Northern Ireland, where they then complete a 12-month pupillage.²¹

The Bar Council is responsible for the governance, regulation and representation of the profession. It is an elected body of 20 practising barristers, whose powers and functions are defined in the Constitution of the Bar of Northern Ireland and byelaws of the General Council of the Bar of Northern Ireland.²² The Bar Council regulates all practising barristers through the

¹⁷ The Bar of Northern Ireland, ‘What do Barristers do?’ (The Bar of Northern Ireland, 2020)

<<https://www.barofni.com/page/what-do-barristers-do>> accessed 21 July 2020.

¹⁸ The Bar of Northern Ireland, ‘The Bar of Northern Ireland (The Bar of Northern Ireland, 2020)

<<https://www.barofni.com/page/the-bar-of-northern-ireland>> accessed 21 July 2020.

¹⁹ Queen’s University Belfast Institute of Professional Legal Studies, Information Booklet for Applicants for commencement in September 2020 of: The Bar Course at the Institute of Professional Legal Studies and the Solicitor Course at the Institute of Professional Legal Studies (QUB, 2020)

<<https://www.qub.ac.uk/schools/InstituteofProfessionalLegalStudies/FileStore/Filetoupload.958940,en.pdf>> accessed 22 July 2020, 16.

²⁰ Ibid.

²¹ Ibid

²² The Bar Library of Northern Ireland ‘Governing bodies’ [online] available at:

Professional Conduct Committee. Each barrister is subject to the Code of Conduct of the Bar of Northern Ireland which sets out standards of professional conduct and practice required of barristers.

The Benchers of the Inn of Court are responsible for the admission of Barristers to practice at the Bar. This includes the application process for call to the Bar, whether that is on a permanent or temporary basis, or by a transferred call from another jurisdiction. Benchers are senior lawyers drawn from the Bench and the Bar and include Lord Chief Justice and Attorney General for Northern Ireland.²³

In general, every barrister in independent practice will be a member of the Bar Library in Northern Ireland, although temporary admission may be granted to barristers from England and Wales who meet the required criteria.²⁴ The Bar Library provides a physical working space, with desks and computers, conferencing rooms, and other facilities (although barristers may chose instead to work from home).

The position and role of barristers in Northern Ireland is distinct from that of barristers elsewhere. Unlike barristers practising elsewhere in the United Kingdom ('UK'), barristers at The Bar of Northern Ireland do not belong to chambers (common in England and Wales) or stables (common in Scotland). Instead, the majority conduct their work as self-employed sole traders with no administrative assistance from barrister's clerks. Clerks reside in chambers or stables in the other jurisdictions and undertake several tasks for barristers, such as keeping their diaries up to date, maintaining work arriving in, liaising between solicitors, clients and their

<<https://www.barofni.com/page/governing-bodies>> accessed 1 February 2021.

²³ Ibid.

²⁴ Section 20 of the Admission Rules of the Honorable Society of the Inn of Court of Northern Ireland.

barristers, collecting pay, maintaining and filing briefs and instructions, *inter alia*.²⁵ These tasks are all required to be undertaken by the vast majority of barristers in Northern Ireland.

Clerks can also provide a counselling role, in the sense that they can support barristers in guiding them to areas of work appropriate to their talents. As Flood suggests, ‘given the anxieties of barristers and their need for reassurance... [they can] adjust their expectations in subtle ways... [If] a barrister is not a robust advocate in court, the clerk can suggest a move towards advisory work’. This suggests that the role of the clerk can be one of career guide and advisor.²⁶ In addition, Flood discusses how clerks traditionally have provided a listening ear to barristers for their personal issues, including with issues such as career or marital problems.²⁷ This type of support is missing from the Northern Irish system.

Initial research undertaken by the authors on wellbeing across the legal profession in the UK and Republic of Ireland indicated that these distinct features could themselves potentially have an impact upon the wellbeing of barristers in Northern Ireland.²⁸ The 2015 Wellbeing at the Bar report for the Bar Council of England and Wales highlighted the level of support from others within Chambers as a positive factor in protecting and enhancing wellbeing.²⁹ 66% of respondents found that ‘Peers and clerks were sources of support most or all the time’.³⁰ Therefore, the lack of these positive resources at the Northern Ireland Bar is potentially

²⁵ Roger Bowles, ‘The structure of the legal profession in England and Wales’ (1994) 10 *Oxford Review of Economic Policy* 18.

²⁶ John Flood, ‘He’s Fucking Marvellous!’: The Fall and Rise of Barristers’ Clerks’ (2007) *The Fall and Rise of Barristers’ Clerks*, p. 5. (not published in a journal)

²⁷ John A Flood, *Barristers’ clerks: The Law’s middlemen* (Manchester University Press 1983), p. 55.

²⁸ Jones et al (n.8) 78.

²⁹ Positive (n.1).

³⁰ Positive (n.1) 9.

significant. Legal professionals also portrayed the Bar in Northern Ireland as a ‘highly competitive environment, with a glut of qualified and working barristers’.³¹

2. Aims and methodology

This study aims to fill a gap in the literature by assessing perceptions of wellbeing³² at the Northern Ireland Bar. Based on 10 semi-structured interviews and adopting an inductive thematic analysis of the data, this article will argue that working at the Northern Ireland Bar places a range of demands on individuals, potentially decreasing their engagement with their work and adversely impacting their wellbeing. These include difficulties in becoming established and developing a legal career, work/life balance issues, pay concerns, inter-relational demands, and structural inequalities. However, barristers also have positive experiences and motivators in their work beneficial to their wellbeing, including being able to engage in interesting and sometimes enjoyable work, collegiate working practices, and emerging initiatives aimed at better supporting practitioners.

In identifying demands and resources, the findings of this study correlate well to the approach of the Job Demands and Resources (‘JD-R’) Model.³³ This is a model for evaluating workplace wellbeing through the identification of job demands and job resources. Job demands are those ‘physical, psychological, social, or organisational aspects of the job that require

³¹ Ibid.

³² The definition of wellbeing adopted in this study (and provided to participants in the Project Information Sheet) is that of the World Health Organisation’s which refers to optimal psychological wellbeing as ‘...every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community.’ (World Health Organization. (2004). Promoting mental health: Concepts, emerging evidence, practice (Summary report). Geneva: World Health Organization).

³³ Evangelia Demerouti and others, ‘The job demands-resources model of burnout’ (2001) 86 *Journal of Applied Psychology* 499; Arnold B Bakker and Evangelia Demerouti, ‘The job demands-resources model: State of the art’ (2007) 22 *Journal of Managerial Psychology* 309.

sustained physical and/or psychological (cognitive and emotional) effort or skills'.³⁴ Such demands have physiological and psychological costs which can lead to burnout and exhaustion, as well as a lack of engagement and motivation.³⁵ In contrast, job resources are those aspects of work which are either 'functional in achieving work goals', 'stimulate personal growth, learning, and development' or 'reduce job demands and the associated physiological and psychological costs'.³⁶ The latter of these demonstrates that job resources can have a 'buffer' effect against high levels of job demands, ameliorating the potential consequences of these.³⁷ Overall, job resources will increase engagement and promote positive wellbeing and enhanced commitment and motivation.³⁸ The JD-R Model is commonly applied within professional contexts, including teaching and the police³⁹. It has also increasingly been applied to the legal profession in a range of jurisdictions, including the UK, Australia and South Africa.⁴⁰ In a longitudinal study of the model, it was found to provide a 'valuable heuristic tool' for promoting wellbeing at work.⁴¹ In this study, it was noted that one limitation of this Model was its tendency to focus upon workplace factors whereas it was found that 'home demands and

³⁴ Evangelia Demerouti and Arnold B Bakker, 'The job demands-resources model: Challenges for future research' (2011) 37 *SA Journal of Industrial Psychology* 1, 2.

³⁵ Demerouti et al 2001 (n 34), 502. Crawford et al distinguish between 'challenge demands' and 'hindrance demands' suggesting it is the latter which impact negatively on engagement and motivation (p. 843).

³⁶ Demerouti and Bakker 2011 (n 35), 2.

³⁷ Arnold B Bakker, Evangelia Demerouti and Martin C Euwema, 'Job resources buffer the impact of job demands on burnout' (2005) 10 *Journal of Occupational Health Psychology* 170; Bakker and Demerouti 2007 (n 34), 317; Bergin and Jimmeson 2014 (n 2), 438.

³⁸ Arnold Bakker, Evangelia Demerouti & Wilmar Schaufeli, 'Dual processes at work in a call centre: An application of the job demands-resources model (2003) 12 *European Journal of Work and Organizational Psychology* 4, 393.

³⁹ See, for example, Dicke, T., Stebner, F., Linninger, C., Kunter, M., & Leutner, D. (2018). A longitudinal study of teachers' occupational well-being: Applying the job demands-resources model (2018) 23 *Journal of Occupational Health Psychology* 2, 262. Dicke et al note that the JD-R Model is 'well established in occupational research.' Also note, Scheepers R, Silkens M, van den Berg J, et al. Associations between job demands, job resources and patient-related burnout among physicians: results from a multicentre observational study. *BMJ Open* 2020;10:e03846. Scheepers et al describe the Model as 'validated' (p.2).

⁴⁰ Jones et al 2020 (n.8) at Chapter 5; Bergin and Jimmieson 2014 (n 2); Elsie Rossouw, and Sebastiaan Rothmann, 'Job demands and job resources and well-being of judges in South Africa' (2020) 46 *SA Journal of Industrial Psychology/SA Tydskrif vir Bedryfsielkunde* 00, a1801.

⁴¹ Jari J. Hakanen, Wilmar B. Schaufeli and Kirsi Ahola, 'The Job Demands Resources model: A three-year cross-lagged study of burnout, depression, commitment, and work engagement' (2008) 22 *Work & Stress* 3, 224.

home resources' were also factors which should be considered.⁴² This is also illustrated by the themes that emerged without the current paper, in particular, that of 'work-life balance'. A further longitudinal study also supported the JD-R Model overall, but noted that job resources may not 'buffer' job resources to the extent originally suggested, meaning a greater focus on reducing job demands may be required.⁴³ Drawing upon this Model, this paper will suggest that key stakeholders in the Northern Ireland Bar, such as the Bar Library, should seek to reduce the levels of job demands upon barristers where possible. Where this is not possible, for example, because of the broad structural nature of the issues, the focus should be on maximising the resources available to barristers to ameliorate, at least to some extent, the potentially detrimental impacts on wellbeing of high levels of job demands.

The sample for this study consisted of all barristers currently eligible to practise in Northern Ireland. A snowball sampling technique was used to obtain participants, initially via invitations to existing contacts who then introduced additional potential invitees. Four participants had experience of between 1-5 years of call (experience since qualification) at the Bar Library, two participants had 5-10 years of experience, two participants had 10-15 years of experience, one participant had 15-20 years of experience, with one barrister with 35-40 years of experience. All participants, except for one, were enrolled with the Bar Library. This participant had stopped practising for the Northern Ireland Bar, but retained a practising certificate in their current employment. Two of the participants had previous legal experience – one participant had worked as a paralegal for one year, while another had experience working in the charitable sector in a legal role. Some of the participants disclosed working jobs additional to their

⁴² *Ibid*, 235.

⁴³ Anna-Carin Fagerlind, Christian Ståhl, and Peter Smith, 'Longitudinal association between psychological demands and burnout for employees experiencing a high versus a low degree of job resources' (2018) 18 *BMC Public Health* 1, 915.

barrister's role, not all of which were legal related. The participants had experience in a broad range of practice areas, including commercial law, children's order work, family law, criminal law, employment law, housing law, human rights, and immigration law.

All the interviews were conducted face-to-face in June and July 2019. Participants were invited to reflect on their perceptions of wellbeing. They were asked to discuss whether levels of emotional wellbeing at the Bar have changed, the key factors which influence wellbeing, and whether they have experienced hostile behaviours from clients, peers, or judges. They were also invited to raise other issues which might directly impact on their wellbeing. Questions included 'how would you describe the emotional wellbeing of those working in your sector of the legal profession?', 'do you find working as a self-employed barrister challenging? If so, why?', 'do you perceive inequalities in the profession?', 'have you always been motivated to work as a barrister?', 'do you think you can rely on other barristers for support?' and 'do you think working in chambers or joining a trade union would improve your working conditions?'. A semi-structured approach to interviewing was adopted to allow flexibility and comparability. It also allowed further investigation of points made by the interviewees to gain a more holistic view of their perceptions.

An inductive thematic analysis was adopted to analysing transcripts of the interviews, allowing for rich and compelling insights.⁴⁴ Both researchers jointly coded one interview, before individually coding the remaining transcripts. All coding was reviewed by both researchers. The researchers then jointly formulated themes and sub-themes from the coding using the qualitative data analysis software NVivo12. The key themes include 'establishing

⁴⁴ Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 3 *Qualitative Research in Psychology* 77; Virginia Braun and Victoria Clarke, 'What can "thematic analysis" offer health and wellbeing researchers?' (2014) 9 *International Journal of Qualitative Studies on Health and Well-Being* 1; Alan Bryman, *Social Research Methods* (Oxford University Press, 2016).

and developing a legal practice’, ‘work-life balance’, ‘financial issues’, ‘professional relationships’, ‘inequalities at the Bar’ and ‘the practices and cultures of the Bar Library’.

The use of a snowball technique to obtain participants can be viewed as a limitation of this study, given its status as a form of ‘convenience sampling’ rather than the arguably more representative sample obtained via more purposive techniques.⁴⁵ However, its value in obtaining participants from within ‘hard-to-reach’ populations, including elites, is well-established.⁴⁶ Given the small, close-knit, nature of the legal community in Northern Ireland, and the self-employed status of the participants, it was therefore viewed as appropriate. The relatively small number of participants could also be viewed as a potential limitation. However, participants with various levels of experience and differing practice areas were included within the sample, all of whom provided rich and insightful data, allowing for the emergence of important themes and consequently an important contribution to work in this area.

3. Establishing and developing a legal practice

3.1 Lack of preparedness

Participants in this study indicated that getting established and making an economically viable career from their work was one of the biggest challenges facing barristers in Northern Ireland. The early stages in the life of a barrister are crucial in terms of being able to establish a sustainable long-term career, yet barristers stated that they considered themselves unprepared

⁴⁵ Mark S. Handcock and Krista J. Gile, ‘Comment: On the Concept of Snowball Sampling’ (2011) *Sociological Methodology* 367, 368.

⁴⁶Rowland Atkinson and John Flint, ‘Accessing Hidden and Hard-to-Reach Populations: Snowball Research Strategies’ (2001) 33 *Social Research Update* 1, 1.

for life as a barrister, found themselves shocked at the reality of the experience, and struggled to forge a career within the profession.

One of the issues raised by several participants was a lack of preparation for the practical realities of practising as a barrister. The limitations of the academic and professional stages of qualification were particularly highlighted, with one participant reflecting that their professional training had prepared them well for advocacy, but not for other aspects of the role:

We never were told how to write an attendance note or about doing your fees, chasing your fees, dealing with legal aid, the real practicalities of things of how you actually survive those early times... You were just looking for tips from other people, how do you do this? I think that was the main thing that was probably lacking, which really could support you in the early days (Barrister 9).

Other participants raised similar points, highlighting ethics, accounting and bookkeeping, practice management, marketing and branding, and wellbeing, as topics with insufficient coverage. Some participants suggested that it would be difficult to incorporate an awareness of the issues into these stages, suggesting it was ‘just the kind of thing you have to learn as you go’ (Barrister 5). However, one participant who had taken a clinical legal education module during their undergraduate degree highlighted the value this could have in introducing students to real-life issues.

The experience of pupillage itself (the one year of on-the-job training, shadowing a pupil supervisor)⁴⁷ was also touched on by participants, with some viewing it as providing valuable experiential learning, but others suggesting that there remained a lack of tangible experience

⁴⁷ A pupil supervisor is referred to as a pupil master in Northern Ireland. A female master has sometimes been referred in England and Wales as a pupil mistress, but this does not appear to be a term which is commonly used in Northern Ireland where pupil master covers both genders.

because ‘you’re not getting it full-on’ (Barrister 2). Several participants referred to an absence of structure during pupillages, which could lead to a lack of feedback and skills progression, contributing to a sense of unpreparedness. One participant attributed this to the fact that ‘anyone over seven years call can be a pupil master, with the ‘checklists’ in place to structure the pupillage ‘not really being followed’ (Barrister 1). For those who had found it a positive experience, the emphasis seemed to be on the supportive personal relationships developed with, and through, the individual master in question, rather than on the experiential learning involved.

3.2 Practical demands

Alongside their lack of preparedness, the practical demands of the role were also emphasised by participants. One participant depicted the demands placed on them creating multiple roles which a barrister performs:

...[T]hat’s you, self-employed. And it takes you a long time to realise that you are a business, a one-man band business. And it’s not just being an advocate and going to court. You have to be a secretary, to do your paperwork; you have to be a receptionist, to take your phone calls; you have to be admin... you have to be like a social worker, you have to be a priest, you have to listen, you have to... (Barrister 2).

This reference to the self-employed nature of the role and lack of administrative support appears to, at least in part, reflect the distinct nature of the Northern Ireland Bar. In contrast, as stated above, in England, Wales and Scotland it is usual for chambers and stables to have barrister’s clerks, who are responsible for agreeing fees on behalf of barristers and scheduling work, relieving them of some of the administrative load.

3.3 Lack of job security

Another issue raised, which again relates to the self-employed nature of the role, was the lack of job security. The Northern Ireland Bar is a 'referral bar' meaning that the usual route for a barrister is to be instructed through a solicitor. Unlike in chambers or stables, there are no clerks acting as intermediaries - the relationship between barristers and solicitors is much more direct. The relationship that barristers have with practising solicitors is therefore crucial, but can be slow to develop with no roadmap for new entrants into the profession. This is one barrister's experience of the early stage of their career, and the shock of understanding that upon becoming a barrister they were not secure within their profession:

... It was a shock... you've gone through your law degree, you've done Institute exams, you've done the Institute, the whole way through you're going to be a barrister coming out of this, automatically your head goes to, secure for life, money and all this and status... There's the status things and the money can be there month to month, but we're not told about the real realities of [...] you can have a great month, but then you might have three months with no money coming in. You'll have months of just picking up scraps... just trying to build a practice. There'd be weeks where you might not have a case. How you deal with that definitely wasn't portrayed. You have people coming to you all the time and saying, "look, it's not as easy, it's not as glamorous". It was never really painted like that (Barrister 9).

Participants described how at the start they had to 'take everything, no matter what comes your way'. Several shared stories of having to go to the Bar Library in the hope that some work would become available, for example, if another barrister needed a hearing covered. However, several participants also described how they would turn up to the Bar Library and find that they had nothing to do.

We were coming in half seven, eight o'clock, to sit down there for the morning. Some mornings it's just nothing. You'd be sitting there watching TV shows on your laptop, you literally had no work

to do. Somebody would come down from the reception and say, “there's a case, can somebody cover it?” It's whoever puts their hand up first (Barrister 9).

3.4 Progression at the Bar

Individuals' progress within the Bar was described by the participants as a very uncertain process, involving part luck and possibly part nepotism. Unlike other roles within the legal profession, as one participant remarked, ‘there is no set progression... no career path as such’. One practitioner who had retired from the Northern Ireland Bar cited the lack of career progression as the reason for them leaving. This participant indicated that there was an unfairness in the system.

The Bar in Northern Ireland do not have statistics on how many enrol within a year and how many leave the Bar, however, participants reported seeing many of their peers leaving, often for financial reasons. The effect of individuals having to quit the Bar were discussed by some of the participants, who suggested it was associated with feelings of failure. Having to leave the Bar may be particularly emotionally difficult for some barristers to countenance, as becoming a barrister is a select profession which requires a long process in education and training. One of the participants spoke of a conversation she had with a friend within the Bar who was considering leaving, who explained they were feeling like a ‘failure’ and questioned, ‘What will my peers think of me? What will my family think of me?’ (Barrister 3).

At the same time, there was a consensus that at some point, if a barrister managed to stay in their role, they might become established in their careers, financially their practice would become viable, and they could start earning large sums of money. The first five years of practice were mentioned as being particularly important to barristers. Not only is this because it is the early part of their career, but within the first seven years barristers are able to pay a reduced

rate annually to the Bar Library for their services. Some participants reflected that, after seven years, barristers should have a sustainable practice operating. Therefore, there is a pressure on barristers within the first years of their practice to take work on regardless of the circumstances. It also means that there is pressure on barristers to perform in the cases that they are working on.

Every case that we do, especially in the first couple of years, seems to be massively important, because we don't know whether we're going to annoy or please our solicitor, we don't know, even in terms of writing letters to them, whether we're doing in the right form or not (Barrister 7).

Participants suggested that they may take on too much work and experience poor work-life balance as a result of this commitment. As one interviewee commented 'people do tend to kill themselves with just taking on as much as they can, whenever it's available' (Barrister 10).

Overall, this theme emphasises the high level of job demands placed on junior barristers as they seek to establish a financially viable career while navigating heavy practical demands. Such demands appear to be largely structural in nature, often generated by the self-employed nature of the profession and its competitive nature, characteristics which are not unique to Northern Ireland, but appear to be ubiquitous across jurisdictions in relation to the self-employed Bar.⁴⁸ However, applying the JD-R model, it is possible that these job demands are exacerbated by the specific lack of administrative support at the Northern Ireland Bar. There do appear to be opportunities to ameliorate these demands through an increase in relevant job resources. This could be, first, through a review of the vocational training and pupillage system, to ensure that they manage expectations and focus on equipping aspiring barristers with appropriate skills and coping mechanisms for dealing with structural issues. Second, through a

⁴⁸ Jones et al 2020 (n.4) Chapter 2; Positive 2015 (n.1) 24.

consideration of whether additional administrative support can be provided via the Bar Library to assist in alleviating some of the practical job demands.

4. Work-life balance

The term ‘work-life balance’ is commonly used but also contested and culturally and temporally situated.⁴⁹ In relation to the legal profession, it has been argued that the concept is problematic as the use of flexible working and technological advances can lead to a ‘work/work’ culture, dissolving work-life boundaries.⁵⁰ However, for the purposes of this theme it is used as a useful shorthand to refer to ‘the absence of work-life conflict - that is, work should not consume all of one's energies and there should be time for family life, socialising, rest and relaxation, as well as time to pursue interests in music, theatre, art or sport’.⁵¹

4.1 Work levels

The perceived necessity of taking on all available work discussed above was not exclusive to junior barristers, it was also shared by a few of the more senior barristers interviewed. Several participants reflected on how they might feel they are getting to a position where they are getting steady work over a stretch of time, only for that to be followed by a period where they have less work on. Although there was a recognition that some who are particularly well-established within the profession can slow down their pace of work, the uncertainty around the availability of work appears to mean that many barristers take on too much work, affecting their work-life balance and ultimately their wellbeing.

⁴⁹ See, for example, Suzan Lewis, Richenda Gambles & Rhona Rapoport (2007) The constraints of a ‘work-life balance’ approach: an international perspective, 18 *The International Journal of Human Resource Management* 3, 360-373.

⁵⁰ Margaret Thornton (2016) Work/life or work/work? Corporate legal practice in the twenty-first century, 23 *International Journal of the Legal Profession* 1, 13-39, 35.

⁵¹ Margaret Thornton, ‘The Flexible Cyborg: Work-Life Balance in Legal Practice’ (2016) 38 *Sydney Law Review* 1, 8.

[T]here's always a constant thing because... they call it feast and famine, but because you will suddenly get, even when you're fairly busy, got a good reputation [...] a sudden rush of work then it may dry up for a while. So, that's a constant, no matter how busy you are or not, that's a constant temptation to just take on work. Even if you're double booking, triple booking yourself, you take on work because it may not be there in a given month (Barrister 8).

The widespread perceived need to continually take on work to make practice a profitable enterprise appears to mean that, even when barristers are busy, they will still feel the need to take on further work. It was suggested that continually working, including on holidays and during unsociable hours, is common practice amongst most barristers. This appears to be partly to do with a fear of working drying up, although for others it may represent an ingrained habit, or a focus on increased financial rewards.

The participant below reflects that this has to do with the competition at the Bar, which places high demands on individuals - if you are not ready to do the work then solicitors may instruct someone else who can.

The demands on the profession are still quite high and there's still a culture of people emailing you late at night, early in the morning, expecting you to be ready to respond to that. And the other thing that I find is even when you're on holiday you're expected to be contactable and you're expected to be able to do things for people if they need them done. Because there is such competition at the bar that if you don't do those things, someone else will... and solicitors move on (Barrister 4).

Views on whether the expectation to be contactable on holidays is a profession wide phenomenon varied among participants. One female barrister reflected that it may be a gendered practice to feel unable to take breaks, noting that a male colleague explained they could go on holidays abroad each year without their laptop. However, some male participants

in the study indicated that they needed to be contactable when taking holidays. In a general sense, many of the participants felt unable to take proper restful breaks from work:

[I]t's very difficult to take breaks. It's always on to the next thing. You go into court, and you come out of court in the morning, maybe it was a great result or whatever. And the next, you're just straight back into it (Barrister 1).

It was clear from the interviews that barristers often work long and unsociable hours. For example, some of the barristers talked about sending and receiving emails at three o'clock in the morning to and from other barristers or instructing solicitors. Another participant stated:

[There are] intense periods of stress when a lot of the time we get stuff very last minute. So, I could be getting papers at ten o'clock, 11 o'clock in the evening emailed across to me and I'm expected to turn that around for the next morning (Barrister 4).

Although many participants spoke negatively of the inability to take breaks from work, others spoke positively of the flexibility of being a self-employed barrister.

I like being my own boss. I like being able to manage my own time, albeit I'm not very good at it. And it does lead to working at all hours of the night. But it means that if I want to take time off, I can take time off as well (Barrister 10).

Other barristers discussed the effect of 'technology creep' on their working lives, indicating that the use of telephone and email communications had eroded work-life boundaries. This is not only the case with regards to working in the evening, but when barristers are on their holidays.

The needing to be constantly available, the emails coming to your phone, and always on it, and there's no line... There's no line between working and not working. You're always on it (Barrister 3).

One of the barristers reflected on that fact that she had developed mechanisms to control her work-life balance, but gradually over time she had reverted to what she was previously doing. This indicates a danger in that even if individuals are conscious of the detrimental effects of having a poor work-life balance, and take steps to address it, that work still has the capacity to take a more central role in a person's life without continued effort to ensure that this does not happen.

4.2 Impacts of current working practices

Several of the participants referred to constantly ruminating on their work, even during times when they were not working, which was discussed by some as an inability to 'switch off'.

It's very difficult to switch off from cases. Especially if they're cases where I would say it's for a vulnerable person or it's a case that they care deeply about. And you feel the burden of their distress over it. It's all very well and one could say, "oh the court doesn't sit in July and August and over Easter". But what I'm really talking about is that that break doesn't reflect a break from the way of thinking about the problems that you've got (Barrister 1).

Many barristers found it hard to rest and relax, even when not working, meaning that they had no time to recover from the stresses and demands of work. Such an inability to recover can manifest itself, for example, in insomnia and subjective sleep complaints,⁵² which have an obvious connection to wellbeing. For those individuals with perfectionist tendencies, like many within the legal profession,⁵³ this inability to switch off is likely to be heightened.⁵⁴

⁵² Margareta Kristenson, Hege R Eriksen, Judith K Sluiter, Dagmar Starke, H. Ursin, 'Psychobiological mechanisms of socioeconomic differences in health' (2004) 58 *Social Science & Medicine* 8, 1511.

⁵³ Jones et al 2020 (n 8).

⁵⁴ Cecilie Schou Andreasse, Jørn Hetland, Helge Molde, and Ståle Pallesen, 'Workaholism' and potential outcomes in well-being and health in a cross-occupational sample' (2011) 27 *Stress and Health* 3, 209.

As well as the impact upon individuals, there was also a discussion regarding the impact of work levels on family life. One of the participants saw the in-built flexibility of being a barrister as family-friendly, although recognised that it is always tempting to take too much work on. This idea of the Bar being family friendly was also recognised in by a female advocate in Melville and Stephen's study of the Faculty of Advocates in Scotland.⁵⁵ Other barristers reflected on the adverse impacts that their working schedule had on members of their family.

[Y]ou have to give it your all. So, whenever something happens at home where, say, your husband takes sick, your child takes sick, it's really difficult... Or, even, you take sick yourself, to keep [...] all the balls in the air, you know. You know, because your family life does suffer (Barrister 3).

Long working hours and heavy demands upon time are a well-established theme within the wider literature on lawyer wellbeing, including within a previous application of the JD-R model and amongst barristers in the Australian context.⁵⁶ Although barristers are not subject to chargeable hours and billing targets, it is clear that the self-employed competitive nature of the Bar requires long unsociable hours, often exacerbated through technology creep. The impacts of this in terms of work-life balance and wellbeing are significant. The comment above also demonstrates that the workplace cannot be viewed as a wholly discrete domain, rather there is a need to consider wider demands and resources that impact upon, or are impacted by, practices at the Bar.

⁵⁵ Angela L. Melville and Frank H. Stephen, 'The more things change, the more they stay the same: explaining stratification within the Faculty of Advocates, Scotland' (2011) 18 *International Journal of the Legal Profession* 211, p. 217.

⁵⁶ Bergin and Jimmeson 2014 (n 2); Bernadette Healy, 'Towards a Relational Perspective - A Practical and Practice-Based Discussion on Health and Wellbeing Amongst a Sample of Barristers' (2014) 14 *QUT Law Review* 94.

5. Financial issues

As discussed above, for many barristers, particularly junior practitioners, it can be difficult to develop a financially sustainable practice. A central issue affecting barristers is being paid late, being paid small amounts, or not being paid at all. This disproportionately affects junior barristers because they are unlikely to work on as many high earning cases. They may also work for free on occasion, to establish relationships with a solicitor's firms and raise their professional profile. This can lead to exploitation, as one participant explained:

Doing work that I don't get paid for, there's two types of solicitors that that I've had that with, there've been solicitors who've been really upfront with me and said, look, I'm really sorry about this, I have to do this as a favour to my client, I wonder if you'll do as a favour to me? There are these other cases that will come your way, I do see more work from them, and they've developed into really good relationship with the solicitors. That I see as a loss leader, and I'm happy to do it. I'm happy to build that relationship with solicitors. Other solicitors just don't pay me and take advantage of the fact that they know I'm young and that's incredibly frustrating (Barrister 7).

Another participant reflected on the fact that, while they might get paid for work, they were getting paid small amounts of money and were having to travel significant distances for it. In this case, the participant is discussing travelling to Derry which is 1 hour 40 minutes by car from Belfast (70 miles).

I could get a mention up in Derry... I'd get the bus up there. But it could be, like, a £10 or £15 mention and you may never get paid (Barrister 8).

Several of the barristers, particularly those who were early career, discussed having part-time jobs to supplement the wages that they were getting from working at the Bar. Some of those jobs might have been legally related, although others were not.

... I was going to say, it's been relatively okay... But every year, when I do my accounts, I look back over my whole career and what I haven't been paid. And when I did that in January, I'm owed £30,000, which is a lot of money that I could do a lot with... The impact of not getting money in is that you then have to support yourself somehow else. And a lot of people have part time jobs for the first few years at least, until they have a steady stream of income. And in fact, I would suggest that probably most people, if not everybody, has some form of alternative stream of income, unless they're really wealthy, or their parents are really wealthy, and able to keep them (Barrister 10).

At the same time, it was acknowledged that being at the Bar could bring significant financial benefits, particularly once established:

You see, we're lucky in a way. Our legal aid system is about ten to 15 years behind England and Wales. We haven't had LASPO⁵⁷ or anything like that, so we're still relatively well remunerated (Barrister 4).

It is junior barristers who are particularly vulnerable to challenges with financial issues, making it a potentially significant job demand. Applying the JD-R model, whilst the promise of future financial stability could be a motivational job resource, it is questionable to what extent it is enough, given the additional pressures upon early practitioners discussed in 'Establishing and developing a legal practice'.

⁵⁷ Legal Aid, Sentencing and Punishment of Offenders Act 2012.

6. Professional relationships

6.1 Collegiality

The Bar Library seeks to encourage a culture of collegiality amongst its members to aid in the administration of justice. In a submission from the Bar Council in Northern Ireland to the Committee of Justice of the Northern Ireland Assembly, the Bar Library system and its culture of collegiality is explained, with specific reference to its benefits with respect to the conflict in Northern Ireland:

The consequences of all barristers working together from the same building using the same facilities and sharing the same ethos is that the religious and political differences that have so disfigured Northern Ireland have not been permitted to operate. It has facilitated unhindered access to legal representation for many unpopular causes throughout the troubled history of Northern Ireland. The cohesion and collegiality of the Bar has thus ensured a broad acceptance of the impartiality of the Northern Ireland legal system, thus aiding the administration of justice, a fact which has been acknowledged on many occasions by the judiciary and successive governments.⁵⁸

The Bar Library operates a ‘family system’ which begins from the appointment of a pupil master to a barrister during his or her Pupillage. The duties and responsibilities of the pupil master are laid out within the Code of Conduct of the Bar of Northern Ireland; however, the emergence of the pupil master’s family appears never to have been written down and is a cultural, rather than regulated, facet of the Bar. The following participant describes the structure of the Bar family and how it creates collegiality within the Bar Library environment,

⁵⁸ Submission from The Bar Council to the Committee for Justice (2009)
<http://archive.niassembly.gov.uk/justice/2007mandate/submissions/2009/bar_council_sub.htm> accessed 24 February 2020.

including connections to your pupil master's previous and subsequent pupils (brothers and sisters), and their master's own pupil masters (grandparents).

[You have] brothers and sisters, and [...] even grandparents. You'll find people will go back to their master's master and getting help about things. But having that network, that's the way that I think people get initiated into the collegiality. Because, through my Bar sisters who are younger than me, I know a huge number of other people in their year. And they come to me for help sometimes (Barrister 10).

This comment reflects the experience of several of the participants – that a barrister's master, or their bar family, is a place to turn to for support. Through these relationships, barristers can build wider relationships with other members of the profession. However, views among participants on the extent of collegiality varied. Many of the participants were very positive about their experience of collegiate ways of working. For example, one participant stated:

I think it is really a collegiate place [...] I think albeit everybody is self-employed, and what is my brief one day could be somebody else's another day, people will not hesitate to help each other out (Barrister 10).

However, the notion of collegiality was challenged by several of the participants who perceived the competition at the Bar as eroding collegiality:

...[T]here's certain people you go to. You wouldn't go to your direct competitors. You're all competing, at the end of the day. It's cut-throat, in terms of keeping cases. If you see somebody as a threat, you're never going to recommend them to your solicitor to cover something (Barrister 7).

The plaster that was put on it for a long time and still is thrown about, is this collegiate type notion. That barristers are a part of this Library system and the Library system and the Bar is this collegiate

body of people that look after and support each other. That is not my experience and it's not the experience of others. It is a plaster that's put on to a problem (Barrister 1).

6.2 Negative interactions with colleagues and judges

Hostility between colleagues, or from other members of the legal profession, was identified by participants as having the potential to adversely affect their wellbeing. Participants discussed a range of negative behaviours between individuals, ranging from discourteousness, to what might be described as bullying. Some participants reflected on the fact that the adversarial system has a bearing on how individuals within the profession treat one another, with one participant characterising confrontation as a cultural facet of the adversarial system.

Well, it can be reflected in just the day to day dealings that you have on the other side, because, it's an adversarial system. So, you do have run-ins with practitioners on the other side (Barrister 8).

Other participants discussed the 'style' of some barristers as being aggressive.

[There] would be certain people who I would be very reluctant to be on the other side of because of the way that they act. It's nothing against me. It's just the way that they act towards every single person. It's just their style. Certain people have a very aggressive style... (Barrister 5).

One participant referred to forms of 'territory marking' where barristers were deliberately being discourteous to prove their dominance or seniority, presumably to project a persona of professional superiority and attempt to destroy their adversary's confidence. These attitudes again appear to reflect the adversarial nature of the Bar.

[T]he very prospect of actually discussing a case with them, fills one with anxiety and distress because you know where it's going to end up with some sort of personal slight or nasty comment. It's not, "[my case has] value and is worth this because of this case. Then they respond back saying, well our point is this and we consider that, and we say your point's not good because of this logical

reason". We get [...] "well that's a load of crap" and then they walk off [...] there's this sort of territory marking thing where "I'm older than you [...] I'm better. I've been at this a long time and your case is the worst case I've ever seen. This is disgraceful" (Barrister 1).

As well as the impact upon wellbeing of interactions with other barristers, a common theme in interviews was the impact of interactions with members of the judiciary. Whilst it was recognised that judges challenging barristers on their knowledge of the applicable law, aspects of their cross-examinations, and their use of legal arguments, had a beneficial function (enhancing court proceedings and ultimately access to justice), a more pernicious form of challenge was described by some participants:

... I've seen a judge make a fool out of somebody, deliberately set out to embarrass them in court. That would be devastating for your self-esteem and your self-confidence (Barrister 5).

Several participants highlighted that younger members of the profession were more frequently challenged in a more disrespectful manner, with one participant remarking:

[Y]ou have some other judges who, I'll maybe not describe in any more detail, but who enjoy putting new faces through their paces. There's one thing to do that as a [...] learning practice, but my experience is that those who do that, do it just out of pleasure or enjoyment of seeing new people squirm. That can really put people off, especially in a full court room. I've developed a fairly thick skin and now something like that wouldn't bother me, but certainly in the first year out, to be publicly criticised in a room full of 20 of your colleagues who are all more senior makes you question why you're doing the job in the first place (Barrister 7).

One participant, an early career barrister, described how a judge who could 'be quite sexist towards young female counsel' had cut her off in the middle of a cross-examination and 'shot her down' on every point she had been trying to make to a witness. Describing how she felt afterwards, she stated:

I was in tears, and I was like, that was the worst day, you know, my worst day at the Bar. Because I just... I felt that I'd put a lot of effort into the case, I felt humiliated in front of the client, and obviously I had to hold it together, you know, for them, and just say "oh, you know, that's the way that judge is, you know, that's his style"... But I had a lot of justifying to the client and I just kind of felt if he had a male barrister representing him, he wouldn't have been treated in that way (Barrister 3).

None of the participants suggested that the Northern Ireland judiciary in its entirety was hostile or negative towards barristers. Instead, it was indicated that there were a minority of specific individuals whose behaviours were inappropriate. As one participant noted, 'They're not all like that, it's a small handful...the vast majority are very understanding, of course, they just want respect and people to be well prepared' (Barrister 9). Nonetheless, as several participants recognised, the behaviours of this minority can be detrimental to wellbeing, especially for early career barristers who are likely to be dealing with the myriad of other issues around establishing their career.

The Positive Report on the Bar of England and Wales noted that 73% of respondents 'endorsed that there was a sense of cooperation and collaboration in their work environment most or all the time' with 66% referring positively to peers and clerks.⁵⁹ Therefore, outside of the Northern Ireland jurisdiction there is a sense of collegiality amongst colleagues, but a sizeable minority corroborate with some of our findings that cooperation and collaboration are lacking. Collegiality within the workplace has a direct relationship to wellbeing.⁶⁰ For example, in a study of legal academics in the United States by Seigel and Miner-Rubino it was found that uncollegial behaviour can be harmful to the wellbeing of individual faculty

⁵⁹ Positive (n.1) 9.

⁶⁰ Jones et al (n.4) Chapter 3.

members,⁶¹ while there was a moderate positive correlation between collegiality and job satisfaction.⁶² Conversely, incivility in the workplace has a negative effect on wellbeing. Pearson and Porath, for example, surveyed 700 employees in different occupational settings and found that as employee's experiences of incivility increased, their level of job satisfaction decreased.⁶³ Applying the JD-R model, it is clear that the notion of a 'bar family' is a significant job resource to barristers in Northern Ireland, one which supports wellbeing through fostering collegiality. More widely, it may be that the promotion of collegiality also goes some way towards preventing the development of entrenched competition between members. However, again applying the JD-R model, it can be noted that the incivility identified in this study suggests that there remain job demands when dealing with both colleagues and the judiciary. Once again, this appears to manifest itself most clearly in relation to junior barristers, where there appears to be a quasi-form of 'initiation ceremony' involving being challenged by judges probably in order to test their credentials. This requires careful consideration to be given to ways in which resources such as the 'bar family' concept can be enhanced to buffer such demands as effectively as possible.

7. Inequalities at the Bar

7.1 Gender inequalities

Disability, age and gender, were all discussed as being areas of inequality at the Northern Ireland Bar. However, the dominant issue concerned gender inequality. Gender differences and

⁶¹ Michael L Seigel and Kathi Miner-Rubino, 'Measuring the value of collegiality among law professors' (2009) 1 *Faulkner Law Review* 257, 280.

⁶² *Ibid*, 279.

⁶³ Christine M Pearson and Christine L Porath, 'On the nature, consequences and remedies of workplace incivility: No time for "nice"? Think again' (2005) 19 *Academy of Management Perspectives* 7, 8.

inequality is entrenched at the Bar in other jurisdictions within the UK.⁶⁴ The Bar has traditionally been a male-dominated profession.⁶⁵ In the early 20th century women were not allowed to join the legal profession, and it was not until 1919 that Helena Normanton became the first woman to join the Middle Temple in England following the introduction of the Sex Disqualification (Removal) Act 1919.⁶⁶ In Ireland, Frances Kyle was the first female to be called to the Bar in November 1921, however, Averil Deverill was the first woman to practise as a barrister in Ireland (this was before the partition of Ireland).⁶⁷ The next barrister to follow her in Northern Ireland, was Sheelagh Murnaghan who was called in 1947, almost 30 years later.⁶⁸ Former President of Ireland, Mary McAleese, recalls that when she started studying law in 1969 there were no women practising at the bar in Northern Ireland and only about twenty percent of the law class was female.⁶⁹

Although the Bar is no longer such a male-dominated environment, the legacy of patriarchy in the Bar remains, with many of the participants reporting several gendering practices. In addition to specific issues, the Bar requires individuals to work unsociable hours, which can directly have an impact on family caring and childcare responsibilities, which – as Richard Collier argues – women carry most of the burden of.⁷⁰ The culture of the legal profession, as

⁶⁴ Suzanne McKie and Ruth Whittaker, *Statistics and Analyses Regarding the Slow Progression of Women in Professional Spheres* (Farore Law, 2019) < <https://www.farorelaw.co.uk/farore-law-report-may-2019> > accessed 21st July 2020, 11; The Bar Council, *Momentum Measures: Creating a Diverse Profession* (The Bar Council, 2015) < <https://www.barcouncil.org.uk/resource/momentum-measures.html> > accessed 21 July 2020.

⁶⁵ Patrick Polden, 'Portia's progress: women at the Bar in England, 1919–1939' (2005) 12 *International Journal of the Legal Profession* 293.

⁶⁶ *Ibid.*

⁶⁷ Erika Rackley and Rosemary Auchmuty, *Women's Legal Landmarks: Celebrating the history of women and law in the UK and Ireland* (Bloomsbury Publishing 2018).

⁶⁸ Mary McAleese, *Celebrating a centenary of women in law* (Celebrating a Century, 2019), 3.

⁶⁹ *Ibid.*

⁷⁰ Collier, 'Wellbeing in the legal profession: reflections on recent developments (or, what do we talk about, when we talk about wellbeing?)' 17 *Legal Ethics* 2.

argued by Collier and Sommerlad, is hyper-competitive and hyper-masculine.⁷¹ As has been separate research by the authors discusses, this leads to emphasis within legal culture on perceived ‘masculine’ conceptions of strength, the ability to continue work despite challenges, and work taking precedence over illness or emotional issues.⁷²

The need to show strength was something discussed by the participants in the study. This was explained as being linked to being able to run a financially viable practice and also to the perception that if solicitors thought a barrister could not perform, they would lose their business.

[Y]ou don’t want to be showing a sign of weakness. [...] it’s not just your colleagues at the bar. It also would be solicitors. You wouldn’t want to show any sign of weakness, for fear of not getting instructed (Barrister 2).

Another participant corroborated this, stating:

That’s the problem with being a barrister. You have to portray a very confident, assertive outlook. You have to act the part. If you drop that mask, or if you seem to be weak or not well, then the concern is that you might lose your practice. You might lose your trusted solicitors and things like that (Barrister 5).

The same practitioner also reflected that it could be difficult to seek help from people, for fear of appearing weak, ‘With your going and looking for help from someone, you’re exposing a bit of weakness’ (Barrister 5). If a barrister is unlikely to seek help with work from colleagues,

⁷¹ Ibid; Hilary Sommerlad, “A pit to put women in”: professionalism, work intensification, sexualisation and work–life balance in the legal profession in England and Wales’ (2016) 23 *International Journal of the Legal Profession* 61.

⁷² Jones et al (n 8), pp. 74-75.

it is additionally unlikely they will want to appear to be unable to cope with other demands of the profession by admitting to having difficulties with wellbeing or mental ill-health.

One of the central issues relating to gender inequality includes how barristers may find it difficult to practice and have a family life, including children. This has previously been observed in the literature with respect to solicitors,⁷³ but the pressures within a solicitor's firm are quite different, as it is managers placing demands on employees, whereas for barristers the demands are created by the need to be able to run a successful practice and/or stem from other colleagues or judges. One participant observed that the successful female barristers she knows often have no children, the implication being that they can dedicate more of their life to work.

Other participants referred to taking maternity leave as being problematic, because they would have to take time out of the profession, and this would affect their relationships with instructing solicitors:

When you come back after nine months of effectively not working, you have to almost start at the bottom again. There are some people who are lucky enough that they don't have to. They just maintain good enough connections that they don't have to. A lot of people would not do that. A lot of people would be available for work within a matter of weeks because the risk is that you lose the momentum (Barrister 5).

One participant compared this situation unfavourably with the system in England and Wales:

Presumably, if you took time off from chambers, your clerks would get you back up to speed with some work as soon as you came back. That doesn't happen here (Barrister 10).

⁷³ Sommerlad (n 72).

This same issue was recognised in Hunter's work concerning the Australian Bar. Here, Hunter describes how one of the participants raised her gender when discussing returning to work soon after having a child, and explained she tried to hide she was doing this in case she lost work as a result.⁷⁴ One participant reflected on the fact that the gender disparities at the Bar also led to similar inequalities within the judiciary (who are often appointed from practising barristers). They indicated that women were more likely to take salaried judicial positions in the lower courts, but overall 'there are fewer female QCs, and fewer female judges (Barrister 10)'.

One of the central issues discussed by many of the participants was how barristers are pigeon-holed into specific areas of practice based upon gender. The consensus amongst those interviewed was that female barristers were pigeon-holed into family law, whereas areas like criminal law and commercial law tend to have more men working in them. This was because these areas are perceived to be more 'masculine' in nature. This has been observed in other jurisdictions – in Melville and Stephen's study of Scottish advocates, female advocates were far more likely to be found to specialise in family, child, education and personal injury law, where it was perceived that these types of legal work were more suited to supposedly female nurturing skills.⁷⁵

This appeared to be perpetuated, at least in part, by how practitioners are instructed. The participant's view was that instructing solicitors see family as the domain of women and other areas of law as the domain of men. One participant's reflection on this issue was that this is because the same gendered split occurs across the legal profession in Northern Ireland – female solicitors are also pigeon-holed into family law. It might therefore be the case that what is being

⁷⁴ Rosemary Hunter, 'Talking up equality: Women barristers and the denial of discrimination' (2002) 10 *Feminist Legal Studies* 113, p. 120.

⁷⁵ Melville and Stephen, (n 56), p. 218.

witnessed is solicitors instructing barristers of their own gender. Another participant commented that it may be due to gendering at a different level – where emotionally impactful family work is perceived as the domain of women, rather than men (the flip side of this being that men are able to handle criminal cases better because violent individuals are involved and women are supposedly deemed to have nurturing skills). As one participant commented:

The types of cases that I was instructed in was probably because they wanted a softer female approach. You know, but I wouldn't expect to get landed with, like, a murder brief, for example, because I know that would be going to a male colleague (Barrister 3)

The same participant highlighted that she felt that male judges could be patronising to female counsel in certain types of cases and this might affect why a male barrister might be appointed by a solicitor over a female barrister.

... And very much the attitude, of some of the judges, [is] “look at you like you're a silly wee girl and you know nothing about this, and what are you doing here? ...Could they not have briefed a male barrister?” And, I think there would be a preference of male solicitors that work in them kind of big criminal defence firms to brief male counsel over female counsel (Barrister 3).

What can be concluded from these discussions is that is apparent that practice at the Bar is performed, like its counterparts in England and Wales (noted above) and Ireland,⁷⁶ in a way which impedes the prospects of women. This suggests there is a need to use the JD-R Model to identify, and where possible resolve, specific job demands impacting upon female barristers

⁷⁶ Kolm Keena, 'Women in Law Still Face a Fight for Gender Equality' (The Irish Times, 29 January 2018) <<https://www.irishtimes.com/news/crime-and-law/women-in-law-still-face-a-fight-for-gender-equality-1.3371389>> accessed 21 July 2020.; Ivana Bacik, Cathryn Costello, and Eileen P. Drew. *Gender InJustice: Feminising the legal professions?* (Trinity College Dublin Law School, 2003).

and also actively seek to build resources to ameliorate such demands, for example, providing targeted training and support for females during and after periods of maternity leave.

7.2 Familial connections

Another inequality discussed by participants, which is also linked to the Bar's reliance on instructing solicitors, is the role of familial connections in enabling some barristers to obtain a pupillage and become more easily established in the earlier days of their career. Some of the participants likened this to a form of nepotism.

I mean there's the classic thing in law, and especially in the Bar, of people who have family connections, you know, people who are the sons of QCs, sons of barristers, sons of judges, inevitably have a big head start (Barrister 8).

In addition to having familial connections, having financial support from family members was also perceived as being advantageous. For some members of the Bar who did not have the benefit of financial support from their family, this could make a significant difference in whether they were able to get established. This is because, for early career barristers, there will be times when their practice is not financially sustainable and so financial support from elsewhere – either through family, savings, or additional employment – becomes very important. The importance of familial connections suggests that those from a low socio-economic background, who lack family ties within the legal profession, are, like women within the profession, also likely to be adversely affected. Given that this places additional demands upon specific populations, the application of the JD-R Model once again necessitates a consideration of the resources that could be provided to either ameliorate these or provide additional, targeted resources, for example, through enhanced bursary schemes which could help those with low socio-economic standing to avail of financial support when trying to develop a practice.

8. The practices and culture of the Bar Library

8.1 Institutional practices

Several specific institutional practices relating to the Bar Library were discussed by participants. A number of issues were raised, including the need to ‘hot desk’ until a permanent desk could be arranged (for which there is a waiting list), or sometimes there being nowhere to sit due to a lack of capacity. The growth of the Bar Library was also referred to, with one participant suggesting it had led to increased competition for work, while another viewed it as increasing diversity. One participant also commented critically on the Bar Library’s combined representative and regulatory function, meaning disciplinary proceedings were conducted by peers.

None of the participants considered that the Bar library system was not an appropriate system for them, with some participants directly referencing the benefits of the collegiate system, or the body of knowledge and experience the Bar Library holds within it. At the same time, some participants viewed potential benefits in aspects of having a chambers system. Participants’ perceived the main benefit of chambers as being increased administrative support, although one also felt this would be accompanied by increased pressure and scrutiny. Views of whether a chambers system would increase or decrease levels of collegiality also appeared to vary, meaning overall the arguments for and against reform appeared very finely balanced:

To be honest, there’s something I like about the Bar Library. It does have a bit of a collegial atmosphere. It’s perhaps not as tight as it would be in chambers, but you do find a lot of decent people. There are people that you could go to if you needed help with anything. So, I don’t think I would really like a chambers system, myself, that much. But then perhaps it would prevent you

from taking on too much work because, I think, with the chambers system, you know, the clerk assigns work to people... (Barrister 8).

8.2 Bar Library culture

The issue of collegiality, and how it might be eroded by competition in an adversarial system where the culture is one of competition between practitioners, was discussed above. Similarly, the discussion of long and unsociable working hours and the expectation of constant availability also appears to be not only structural, but also cultural. For example, one participant referred to there being an 'unwillingness' to take breaks, whether for half a day or a month, because of the 'stigma' involved in doing so (Barrister 1).

The stigma surrounding mental health and wellbeing issues was also referred to by several participants. Some indicated that the stigma had lessened, or even dissipated entirely, within recent years (citing the Bar Library's annual Wellness Weeks as an example). However, others suggested that it remained, at least to some extent, with two participants suggesting this was a broader societal issue within Northern Ireland. Several participants indicated that emotional wellbeing was not widely discussed at the Bar. They also indicated that there remained a need to project a strong persona or provide a confident performance to remain competitive and retain your reputation:

People struggle to accept that they may be struggling. And particularly for barristers that are, like, high flying, do you know what I mean, because they think to even admit to yourself that you may need support in terms of emotional wellbeing or mental issues, is nearly like a sign of weakness. (Barrister 1)

This also seemed to be linked to the idea of the Bar as a small community where gossip and rumour could quickly spread, with one participant indicating that they would be reluctant to

make even an anonymous complaint against aggressive behaviour from a fellow barrister because of their fear of being identified (Barrister 4). More broadly, this indicates cultural issues which have potentially detrimental impacts upon wellbeing. The remaining stigma around mental health and wellbeing may be a barrier to individuals' being able and willing to equip themselves with the emotional and psychological job resources to practice good self-care and reach out for help when required. The indications that such stigma has lessened is encouraging, but it is important that initiatives such as wellbeing weeks run alongside a sustained effort to embed wellbeing at the level of daily practice.

9. Discussion

The interviews discussed in this paper were conducted prior to the onset of COVID-19. The subsequent global pandemic has had a significant impact upon societal wellbeing internationally, including in Northern Ireland.⁷⁷ In terms of the legal profession, although there are potential benefits, including a move to more flexible working patterns, a range of concerns and challenges have also arisen.⁷⁸ In July 2020, a report by The Bar Council of England and Wales found that the financial impacts of the crisis, particularly on both publicly funded and early career barristers, were potentially devastating with huge reductions in work and income.⁷⁹ It noted that 16% of self-employed barristers wished to leave the Bar, compared to a usual annual turnover of 2-4%.⁸⁰ Although not expressly discussing wellbeing, it is clear from these

⁷⁷ Mental Health and Emotional Wellbeing Surge Cell (COVID-19) 'The Mental Health Impact of the COVID-19 Pandemic in Northern Ireland'. Available at: <<https://www.health-ni.gov.uk/publications/mental-health-impact-covid-19-pandemic-northern-ireland-rapid-review-july-31-2020>> accessed 18th January 2021.

⁷⁸ Richard Collier, 'Wellbeing in the Legal Profession after COVID 19'. Available at: <<http://slsblog.co.uk/blog/blog-posts/towards-a-new-normal-rethinking-wellbeing-in-the-legal-profession-after-covid-19/>> accessed 18th January 2021.

⁷⁹ The Bar Council 'Bar Survey Summary of Findings July 2020'. Available at: <<https://www.barcouncil.org.uk/resource/bar-survey-summary-findings-july-2020-pdf.html>> accessed 18th January 2021.

⁸⁰ Ibid, n.78.

findings that the need to address wellbeing issues at the Bar is becoming more, rather than less, important for the long-term sustainability and success of the profession.

Applying the JD-R Model to the findings of this study demonstrate that barristers in Northern Ireland face a significant level of job demands, often created (or exacerbated) by the self-employed nature of the role. This brings practical demands, including a potentially heavy administrative burden and the need to undertake multiple roles. These pressures, together with a sense of being in competition with ones' peers for instructions, feed into a workplace environment of long and unsociable working hours, where forms of incivility amongst colleagues are often normalised and work-life balance is too easily disregarded. At the same time, barristers also have access to a range of job resources, including the flexibility of organising their own time, the support of a bar family and, once established, the potential of work that is both intellectually and potentially financially rewarding.

It appears from this study that job demands are at their highest for early career barristers, i.e. those still in the process of establishing their career at the Bar. These are exacerbated by a sense that existing legal education and training (including, for some, the experience of pupillage) fails to give a sense of preparedness to allow participants to manage expectations appropriately and gain an understanding of some of the institutional practices at the Bar. It is also apparent that women and other minority populations within the Bar experience additional demands too, particularly in those areas of practice which have traditionally been male dominated. For such individuals, faced with the difficulties of establishing their career in a gendered environment, the impact upon wellbeing is likely to be significant.

To tackle wellbeing issues identified in this study requires a culture where mental health and wellbeing more generally are de-stigmatised, allowing open discussion and early proactive interventions when required. Where such a culture has not yet developed, there is the danger

of losing a more diverse cohort in these early years of practice, something which could have a stultifying effect on the Bar, making it unrepresentative and disconnected from society more widely.

Using the JD-R model, the first question to ask in response to these findings is whether the job demands upon barristers can be ameliorated? This is perhaps particularly problematic where some of the issues, such as the prevalence of self-employment and the role of instructing solicitors, are structural ones, deeply embedded within the functioning of the legal system in Northern Ireland. Although this should not lead to them being treated as sacrosanct, it does suggest that it would be potentially difficult to alter these without significant internal or external pressures to do so. However, alongside these structural issues, there are other job demands where proactive efforts could be made to lessen their effect. This could involve the Bar Library investigating ways of alleviating the administrative burden on members through the provision of some form of clerking service, the introduction of training to assist with working practices, and some form of on-going dialogue between barristers and with the judiciary around their inter-personal skills.

In addition, as indicated above, it is possible for job resources to have a buffering effect upon the impact of job demands. One of the existing resources most widely identified by participants was the collegiality of the bar family model. Considering how to develop this model even further could therefore assist in lessening some of the detrimental impacts of the demands above. This also inter-links with the findings that junior barristers are particularly vulnerable to heightened job demands. A review of the education and training system, in partnership with legal education and training providers and including pupillage, could help identify ways in which to enhance job resources through a particular focus on the wellbeing issues raised (including lack of preparedness). In tandem with this, further consideration should

be given to the early years of practice, with a focus determining (and responding to) the needs of early career barristers, both in practical ways (e.g. via the provision of more desks or support for home-working) and via emotional and psychological approaches (e.g. the introduction of formalised wellbeing-support schemes), perhaps emulating some aspects of the Wellbeing at the Bar initiative in England and Wales.⁸¹ Such targeted responses must also be considered in relation to women and other populations whose job demands are exacerbated by current working practices.

An over-arching focus of all these initiatives, whether focused on lessening job demands or increasing job resources, must also be on continuing to ensure that the culture of the Bar evolves, so that wellbeing is embedded and de-stigmatised. This is unlikely to entail a single radical shift, but rather involve a more incremental process of proactive initiatives, formalised opportunities to share good practice and increasingly open dialogue.

10. Conclusion

... It is a profession of survival of the fittest (Barrister 6).

The perceptions of wellbeing at the Northern Ireland Bar held by participants in this study suggest that it can be a competitive, difficult, even hostile, workplace environment, leading to potentially detrimental impacts on wellbeing. At the same time, some of the forms of collegiality experienced, together with a suggestion of gradually evolving culture, suggest some more positive aspects are present. Applying the JD-R model conceptualises job demands and job resources as a form of balancing act, enabling a holistic appreciation of wellbeing at the Bar. Drawing upon this indicates the potential to ameliorate some job demands and enhance

⁸¹ The Bar Council 'Wellbeing at the Bar' <<https://www.wellbeingatthebar.org.uk/>> accessed 18 January 2021.

some job resources in a way which is beneficial to wellbeing. To do so will require the engagement and support of key stakeholders to the Bar, such as the Bar Council. The results could move the Bar of Northern Ireland towards a culture where barristers are able to better balance their personal and emotional resources with the demands of the profession - an essential aspiration for a profession which retains such an important status and role within society in Northern Ireland.

In applying the JD-R model, this article emphasises where there are demands within the profession, including those affecting specific groups, the Bar Library, the practitioners themselves, and other stakeholders, can seek to adopt specific mechanisms and push for cultural change to alleviate burdens and enhance wellbeing. This model is useful to conceptualise how practitioners are supported in the Bar in Northern Ireland, and the demands of the profession, but can be used to assess wellbeing in the Bar in other jurisdictions, as well as other legal settings, inside Northern Ireland, and outside of it.