

**THEMIS PROJECT PROPOSAL**

**An examination into equal pay at the Bar**

***Overview***

1. During Themis’ launch event, Aswini Weereratne QC made a number of observations about changes required to minimise the pay gap at the Bar and equalise the opportunities for progression for men and women. The Bar Council has also recently released data showing a significant disparity in the proportion of work billed by men and women in different practice areas.[[1]](#footnote-0)This project intends to build on those recommendations to carry out substantive research on possibilities for change recommended by Aswini, and, in the longer run, to act upon that research to bring about change.
2. This project is intended to be brought forward by:
   1. A group of Themis members (“the members”), who will be tasked to (1) conduct initial research into the equal pay landscape at the Bar, to identify what work has already been done and what work is being done that overlaps with Themis’ own; (2) reach out to and liaise with organisations who are currently working on reforms associated to equal pay at the Bar; set up partnerships where possible to carry out work together; (3) Work towards producing a research report identifying key issues and recommended solutions; (4) if possible, set up an action plan to implement the report’s recommendations.
   2. Three senior advisors, who will be available on an ad hoc, light-touch basis, to provide insight and advice to the members on their work. The degree of involvement of senior advisors will be discussed prior to the project inception, depending on the views of senior advisors and members. It is envisaged that senior advisors may be able to advise on: project management; substantive research; project outcomes; partnerships to pursue while advancing the project.
3. Below is a provisional structure for what the project will look like. It involves two confirmed streams (workplace certification and fee monitoring and a provisional stream (unconscious bias). From initial research, it appears that unconscious bias has already been worked on and that unconscious bias training is widely available but not particularly effective. The original view held by the Themis Steering Group is that it would not be effective to replicate or pursue work on unconscious bias, although the Steering Group is open to rediscussing this with members and senior advisors. It is envisaged that the entirety of the project structure described below will be rediscussed with members (and senior advisors, if willing and available) during an onboarding call prior to the project’s inception.

***Project Introduction***

*Aswini Weereratne QC’s Recommendations*

1. First, Aswini suggested that there is a need to ***revisit the merit principle***. She gave an example: when women of colour achieve a position, there will usually be a “public trumpeting” or “private whispering” that such women are “probably not up to it,” and face “charges of tokenism”. Aswini noted that some argue that the pace of progression is slow because only the best can make it, but this means that we must revisit the merit principle. She indicated that we must make sure that the values and particular experiences that women can bring to her role are accounted for in the merit principle. She cited Lady Hale, who said that we “need to forge a new picture of a judge,” and indicated that this is about a culture shift and revisiting the criteria of appointment that promote equality of opportunity.
2. Second, Aswini indicated that there should be transparency and an enforceable legal requirement to actively regulate workplace practice. She noted that Chambers are now required to monitor equality, but that more is needed: what is needed is hard-edged enforcement to redress imbalances. She mentioned as examples “naming and shaming” and fee monitoring.
3. Third, she emphasised the importance of focusing on progression through to seniority and make sure that those with protected characteristics and from non-ordinary backgrounds remain in the profession.

*Detailed suggestions on the merit principle*

1. Aswini gave three detailed recommendations on how to tackle her first topic – revisiting the merit principle. She said we need:
   1. Enforceable certification in the workplace;
   2. Fee monitoring and fee structures;
   3. Tackling of unconscious bias in all work areas

***Project Streams***

*Confirmed Stream 1: Enforceable Workplace Certification*

1. **Definition**. This is a short explanation of equal pay certification taken from the Irish Government’s website:[[2]](#footnote-1)

*The purpose of the obligatory equal pay certification is to enforce the current legislation prohibiting discriminatory practices based on gender and requiring that women and men working for the same employer shall be paid equal wages and enjoy equal terms of employment for the same jobs or jobs of equal value. A bill of law (amendments to the*[*Gender Equality Act No. 10/2008*](https://www.government.is/Publications/Legislation/Lex/?newsid=8900031c-fbd6-11e7-9423-005056bc4d74)*) was passed by the Parliament on June 1st, 2017 and came into force on January 1st, 2018. Companies and institutions employing 25 or more workers, on an annual basis, will be required to obtain equal pay certification of their equal pay system and the implementation thereof. In accordance to the legislation, certification shall meet the requirements of the Standard ÍST 85, Equal Wage Management System – Requirements and guidance (normally called The Equal Pay Standard). Equal pay certification under the Standard ÍST 85 is designed to confirm that when decisions on wage are taken they are based only on relevant considerations.*

1. **Stakeholders**. Working on equal pay certification will involve engaging Chambers and the Bar Council.
2. **Project Tasks**. To get work on equal pay certification off the ground it will be necessary to:
   1. Research the current landscape, current initiatives and examples of equal pay certification/monitoring that can be relied upon to put together a proposal of equal pay certification for the Bar;
   2. Liaising with relevant organisations (Chambers/Bar Council);
   3. Put together a proposal summarising research findings and suggesting concrete next steps to implement equal pay certification at the Bar.

*Confirmed Stream 2: Fee Monitoring and Fee Structures*

1. **Definition**: The Employment Lawyers Association has in place a current project on fee monitoring.[[3]](#footnote-2) It appears the project is led by Maria Bloodworth, Deputy Chair of the ELA. The ELA project is described as:

*In 2019, the ELA decided to start with a pilot monitoring scheme, aimed at finding out whether gender might be influencing the decisions made by law firms about which employment barristers to instruct.*

*Data from this pilot suggested that the gender of the instructing solicitor may have a bearing on whether a male or female barrister was instructed, but the sample size was small. In January 2020 ELA therefore*[*launched a broader monitoring scheme*](https://www.litigationfutures.com/news/employment-lawyers-lead-the-way-on-equitable-briefing)*amongst its wider membership, which will come to fruition in May 2020.*

*Participation will itself raise awareness among the firms signing up for the scheme, but it is hoped that more will be revealed about underlying factors with the result that more concrete recommendations for addressing the issue can therefore be proposed.*

*Our monitoring scheme is aimed at understanding the practices that influence how and which barristers are instructed and how gender might play a part in that, most likely unconsciously.*

1. The ELA project draws a link between fee monitoring and progression to silk, and involves looking at equal allocation of work as well as fee monitoring.
2. **Stakeholders**: Working on fee monitoring will involve engaging Chambers and the Bar Council, as well as with the ELA given their current work on this. We may also reach out to other sector specific associations to see if they are willing to help conduct the research into their fields.
3. **Project Requirements**. To get work on fee monitoring off the ground it will be necessary to:
   1. Contact the ELA and seek to collaborate with them for this project and to understand what the outcome of their work in May 2020 was;
   2. Build on the ELA’s work, conducting any additional research needed and liaising with other sector representative organisations.
   3. Put together a proposal for action.

*Possible Third Stream: Tackling of unconscious bias*

1. **Definition**: The Bar Council has a guide on unconscious bias.[[4]](#footnote-3) The guide defines unconscious bias and gives a number of recommendations for action that can be taken to tackle unconscious bias (e.g. forms of training, etc.). Besides the Bar Council’s work, there is already wide-ranging information on unconscious bias and measures that can be taken to address it.
2. **Stakeholders**: Partners with whom Themis can work together with to implement the actions that are already widely recommended to tackle unconscious bias (e.g. BtB, Ndil, BSB, Bar Council)
3. **Project Requirements**. Given the amount of information already available on unconscious bias, the research element to this third limb of the project is likely to be less significant. Suggested steps are:
   1. Research definition and current recommendations to tackle unconscious bias. Select a number of methods of tackling unconscious bias to prioritise (e.g. training, awareness raising, workshops etc.)
   2. Partner up to implement methods of tackling unconscious bias at the Bar. Design a pilot scheme to test methods within a small number of progressive Sets of Chambers / with groups from the wider Bar (e.g. training or workshops open to anyone who signs up for them).
   3. Liaise with Chambers to introduce the piloted methods within Chambers more widely

***Practical Next Steps***

*January 2021*

1. **Onboarding of senior advisors**. Will involve: email communication, first onboarding call with senior advisors. **By 31 January 2021;**
2. **Call of interest to members**. In the January 2021 newsletter. Members will be asked to express an interest by **15 February 2021**;
   1. We are looking for volunteers to help us further conceptualise the project and to assist with: research, liaising with relevant stakeholders and report writing.
3. **Project Inception**. An initial onboarding call will be held with members (senior advisors will be invited to attend in case they wish to do so) on or around **28 February 2021**. The onboarding call will discuss, revisit and finalise:
   1. Substance of project: The project proposal will be discussed and project streams finalised;
   2. Project Management. It is envisaged the project will take place on What’s App and Google Drive. Sub-teams, communication methods, reporting structure and frequency of meetings will be discussed.
   3. Timetable. A timetable for action will be agreed.

1. <https://www.barcouncil.org.uk/resource/new-figures-show-shocking-gender-pay-gap-at-the-bar.html> [↑](#footnote-ref-0)
2. <https://www.government.is/topics/human-rights-and-equality/equal-pay-certification/> [↑](#footnote-ref-1)
3. <https://www.elaweb.org.uk/content/gender-diversity-bar> [↑](#footnote-ref-2)
4. <https://www.barcouncilethics.co.uk/documents/subconscious-bias/> [↑](#footnote-ref-3)