

# The possible forms of professionalism: credibility and the performance of queer sexualities among barristers in England and Wales

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## Abstract

This article constitutes the first account of sexual minority barristers' experience of and relation to professionalism at the Bar. Drawing on survey and interview data, it presents the Bar as a site of heteronormativity, where masculinist heterosexuality is pervasively assumed and publicly valorized. The 'credible' barrister – authoritative, respected, competent – is constructed as heterosexual. In this context, sexual minority barristers risk a loss of credibility in coming out or being out in the workplace. Our data presents mechanisms by which these individuals manage the public expression of their sexuality. Some – in contrast to heterosexual colleagues – deny entirely the professional relevance of their sexuality. Others adopt assimilationist strategies, curating a 'credible' public persona: out, but otherwise conforming to heteronormative expectations and values. While the data includes exceptions that give cause for hope, many sexual minority barristers experience professionalism as pressure to render their sexuality effectively invisible, at significant cost personally and professionally.

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## 1 | INTRODUCTION

This article is concerned with barristers who identify as lesbian, gay, bisexual, trans, or otherwise non-heterosexual (LGBT+) and the extent to which the credibility of the Bar's status and professionalism is aligned with heterosexuality.<sup>1</sup> The Bar is a historic, traditional institution with antiquated qualities, dating back to the thirteenth century.<sup>2</sup> By contrast, it was only in 1967 that homosexuality was partially decriminalized (for men over 21). This article draws on a survey of 126 sexual minority barristers (including Queen's Counsels (QCs)), trainee barristers, and Bar school students, together with 38 associated semi-structured interviews. Our data shows how homosexuality is discrediting in a culture where heterosexuality, and in particular male heterosexuality, is regarded as integral to the 'normal' or 'credible' performance of law. Heterosexuality is always on display and in public in this way at the Bar. Our data suggests that what is at stake for sexual minority barristers in coming out or being out is, in part, a loss of credibility – seen, for example, in the view that sexuality is personal and not professional, and in the belief that people (other barristers, clerks, instructing solicitors, lay clients, and so on) want to assume a heterosexual subject. The legal and social contexts of the Bar coalesce a set of imbricated dichotomies within and against which sexual minority barristers must define themselves and others: professional versus unprofessional, authoritative versus weak, facts versus feelings, objective versus subjective, inside versus outside, and so on. Implicated within all of these apparent oppositions is, of course, what Sedgwick considered the overarching *ur*-dichotomy of heterosexuality versus homosexuality.<sup>3</sup> The knotted interrelations of these dichotomies and disparate sets of discourses serve to both diminish and discourage overt displays or expressions of homosexuality and, critically, to locate (paranoically) homosexuality as a form of disqualification, even where it goes unexpressed.<sup>4</sup>

This article emerges from the first project to explore sexuality at the Bar,<sup>5</sup> and is one of only a handful of studies into sexuality in the broader legal profession. It is, however, part of a much larger academic field that concerns itself with diversity and difference in the legal profession. Here, the myth of the 'bleached-out legal professional' is said to offer a viable, value-neutral alternative to other forms of professionalism,<sup>6</sup> since overt references to sexuality or sexual identity are likely to be read as evidence of misplaced motivations and a lack of professional (query epistemic, query cultural) virtue – that is, of explicit unprofessionalism. What we see in our data is that a homophobic construction of homosexuality haunts and constrains sexual minority barristers and their possible forms of professionalism.

<sup>1</sup> In this article, we also use the term 'sexual minority'. As we describe in our methodology, our study was explicitly designed to look at the broad church that 'LGBT+' encapsulates, and this corresponds to the broad range of sexual identities offered up by our participant pool that included lesbian, gay, and bisexual, as well as, for instance, queer and pansexual barristers. Throughout the article, we also use the term 'queer' or 'queerness' where appropriate to denote non-heterosexual experiences, embodiments, and identities.

<sup>2</sup> J. Rogers, 'Representing the Bar: How the Barristers' Profession Sells Itself to Prospective Members' (2012) 32 *Legal Studies* 202.

<sup>3</sup> E. K. Sedgwick, 'Epistemology of the Closet' in *The Lesbian and Gay Studies Reader*, eds H. Abelove et al. (1993) 45.

<sup>4</sup> P. Morrison, *The Explanation for Everything: Essays on Sexual Subjectivity* (2001).

<sup>5</sup> For our earlier preparatory articles, see M. Mason, 'On Objectivity and Staying "Native"' in *Routledge Handbook of Socio-Legal Theory and Methods*, eds N. Creutzfeldt et al. (2019) 123; M. Mason and S. Vaughan, 'Sexuality at the Bar: An Empirical Exploration into the Experiences of LGBT+ Barristers in England & Wales' (2017) U. of Westminster School of Law Research Paper, at <<https://ssrn.com/abstract=3043790>>.

<sup>6</sup> S. Levinson, 'Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity' (1993) 14 *Cardozo Law Rev.* 1577.

Our article begins with an introduction to the Bar: its structures and regulatory architectures, and a snapshot of its diversity profile. Our methodology forms the second part of this article. We then turn to our data, split into two parts: the first begins with some context setting about academic work concerned with sexuality in the workplace and looks at how LGBT+ barristers navigate coming out; the second examines interfaces between sexuality and practice (including the idea of the ‘good gay’ barrister). In reflecting on our data, we speak to a number of strategies deployed by sexual minority barristers to help to mitigate the risk posed by their homosexuality to their professional credibility. We also offer up an analysis of the effects of heterosexuality as an organizing principle (heteronormativity) on those individuals or groups at the Bar who identify as, or who are marked out as, sexual minorities. Masculine heterosexuality is pervasive at the Bar, always in public and frequently valorized. We show that, rather than being absent from the professional arena of the Bar, the expression of sexuality (in the form of heterosexuality) is ubiquitous and compulsory. We also illustrate that, in the context of such heteronormativity, homonormativity can appear to be the only viable strategy by which sexual minority barristers can secure at least some professional authority. Adopting, as far as possible, the forms and modes of heterosexual culture (ways of speaking and acting ‘macho’, forms of dress and presentation, acceptable monogamous relationships, family structures that are deemed to have value, and so on) represents for sexual minority barristers a strategy of normification to avoid stigma and the associated loss of professional credibility.

## 2 | THE BAR OF ENGLAND AND WALES: CONTEXT AND DIVERSITY DATA

Let us start with some background and context. The almost 18,000 barristers in England and Wales are (generally) specialist courtroom advocates, and until 1990 had a virtual monopoly on advocacy. The Bar is a graduate profession where, after a law degree or non-law degree plus a one-year ‘conversion’ course, would-be barristers take a postgraduate Bar training course and are then ‘called’ to the Bar by one of the four Inns of Court, which have educational and collegiate functions.<sup>7</sup> Post-‘call’, graduates can call themselves a barrister, but are not yet able to practise unsupervised. The next stage is pupillage, where trainee barristers spend a year learning on the job. Unlike many other professionals (such as solicitors, doctors, accountants, and engineers), the majority of barristers (79 per cent) are self-employed. Those barristers who are self-employed commonly work in groups with other self-employed barristers from an entity known as a ‘chambers’. Self-employed barristers in chambers (‘tenants’) do not share profits with each other but do share pooled resources to which they all contribute (including real estate maintenance, information technology (IT), and other support functions). The work of self-employed barristers is almost exclusively derived via solicitors who instruct the barristers on behalf of their clients (an occupational quirk that is important for our later discussions). Certain barristers progress and ‘take silk’ (being able to wear silk gowns of a special design) and are known as KCs (King’s Counsels, formerly QCs). The other significant route of progression for barristers in England and Wales is to join the judiciary, which has its own significant challenges in terms of diversity and inclusion.<sup>8</sup>

<sup>7</sup> D. Palfreyman, *London’s Inns of Court: History, Law, Customs, and Modern Purpose* (2011).

<sup>8</sup> See for example K. Malleon, *The New Judiciary: The Effects of Expansion and Activism* (1999); L. Barnes and K. Malleon, ‘The Legal Profession as Gatekeeper to the Judiciary: Design Faults in Measures to Enhance Diversity’ (2011) 74 *Modern Law Rev.* 245; E. Rackley, *Women, Judging and Judiciary: From Difference to Diversity* (2013).

The Bar Standards Board (BSB) is the regulator of barristers and chambers, with a separate representative body known as the Bar Council. The main source of regulation from the BSB is found in its *Handbook*, introduced in January 2014.<sup>9</sup> The BSB has, as a statutory regulatory objective under the Legal Services Act 2007, the duty to ‘encourage an independent, strong, diverse and effective legal profession’,<sup>10</sup> as well as other obligations under the Equality Act 2010. One of the ways in which the BSB discharges these obligations is through the collection and publication of diversity data on its regulated community. This exercise began in 2012. Individual chambers are also required to collect and report on their diversity, though empirical work using data from 160 chambers has shown significant non-compliance with these requirements.<sup>11</sup> The latest BSB report, *Diversity at the Bar in 2021*, sets out that 58.3 per cent of barristers were willing to disclose sexual orientation data.<sup>12</sup> This is the third lowest response rate for the various characteristics protected by the Equality Act but marks a significant increase over time for the Bar – the figure being 47.4 per cent in 2019, 28 per cent in 2015, and just 4.7 per cent in 2012. The 2021 BSB report sets out that, excluding those who did not provide information, ‘11.5 per cent of pupils, 7.3 per cent of non-QC barristers, and 5.7 per cent of QCs provided their sexual orientation as one of Bisexual, Gay or Lesbian; or another sexual orientation (not including heterosexual)’.<sup>13</sup> This is up on 7.6 per cent of pupils, 7 per cent of non-QC barristers, and 4.8 per cent of QCs in 2019.<sup>14</sup>

While there is an extensive body of literature that speaks to various inequalities in the legal profession across a range of factors and characteristics, that body of work is more limited in relation to the Bar, and almost non-existent in relation to sexuality at the Bar. Existing work on the Bar (with which we engage more fully below) has repeatedly shown how women, Black, Asian, and minority ethnic (BAME) barristers, and those from lower socio-economic groups have faced, and continue to face, a series of explicit and implicit structural and other barriers to entry, retention, career development, and progression.<sup>15</sup> For example, when the Bar Council conducted focus groups and interviews with 85 women barristers in 2014, those who had been in practice for some time spoke of ‘a hostile environment, inappropriate behaviours and discrimination in the allocation of work (particularly in crime by both clerks and solicitors) when they started their working

<sup>9</sup> Bar Standards Board, *The BSB Handbook*, at <<https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/the-bsb-handbook.html>>. See M. Mason, ‘Making Way for Change at the Bar: The Practical Implications of the New Bar Standards’ (2015) 31 *J. of Professional Negligence* 139.

<sup>10</sup> Legal Services Act 2007, s. 1(1)f.

<sup>11</sup> S. Vaughan, ‘Prefer Not to Say: Diversity and Diversity Reporting at the Bar of England & Wales’ (2017) 24 *International J. of the Legal Profession* 207.

<sup>12</sup> Bar Standards Board, *Diversity at the Bar 2021* (2022), at <<https://www.barstandardsboard.org.uk/uploads/assets/bf4abb0-bd1d-45b1-8e48bd491484aea/a57202f4-b913-4623-a27b5568949d8cfe/BSBReport-on-Diversity-at-the-Bar-2021.pdf>>.

<sup>13</sup> *Id.*, p. 6.

<sup>14</sup> Bar Standards Board, *Diversity at the Bar 2019* (2020) 22, at <<https://www.barstandardsboard.org.uk/resources/resource-library/diversity-at-the-bar-2019-pdf.html>>.

<sup>15</sup> See for example J. Tomlinson et al., ‘Structure, Agency and Career Strategies of White Women and Black and Minority Ethnic Individuals in the Legal Profession’ (2013) 66 *Human Relations* 245; H. Sommerlad, ‘Socio-Legal Studies and the Cultural Practice of Lawyering’ in *Exploring the ‘Socio’ of Socio-Legal Studies*, ed. D. Feenan (2013) 181; A. K. Zimdars, ‘The Profile of Pupil Barristers at the Bar of England and Wales 2004–2008’ (2010) 17 *International J. of the Legal Profession* 117; A. K. Zimdars, ‘The Competition for Pupillages at the Bar of England and Wales (2000–2004)’ (2011) 38 *J. of Law and Society* 575.

lives'.<sup>16</sup> Save for a couple of Law Society reports (looking at LGBT+ employee solicitor networks inside law firms), the only work that speaks to sexuality and the legal profession (broadly construed) is that of Moran on the judiciary.<sup>17</sup> We draw on that work, where relevant, in the sections that follow.

### 3 | METHODOLOGY

Our project took place in two distinct phases. In 2016, two of the authors (Mason and Vaughan) launched an online survey to explore the experiences and attitudes of LGBT+ members of the Bar. Links to the survey were widely distributed by the BSB, the Bar Council, three of the Inns (Middle Temple, Inner Temple, and Lincoln's Inn), the Bar Lesbian and Gay Group and FreeBar (support networks for the LGBT+ Bar formed in 1994 and 2016 respectively), and the Bar Association for Commerce, Finance & Industry (BAFCI, the association for employed barristers), and via Twitter. The online survey was completed by 126 practising barristers (n = 94), QCs (n = 6), pupils (n = 7), and students taking or having recently graduated from the postgraduate Bar training course (n = 19). Our survey respondents were aged between 21 and 71 (having been called between 1968 and 2015), did not split equally along gender lines (the ratio of women to men was 28 to 98), and were mainly based in London (n = 100). A handful of survey respondents (n = 13) also held part-time judicial office. Of the total number of survey respondents, 87 identified as 'gay men', seven as 'lesbian', six as 'gay women', seven as 'bisexual women', two as 'bisexual men', five as 'queer', and two as 'pansexual'.<sup>18</sup>

While it had been informally (and repeatedly) suggested to us before undertaking the survey that we only need to look at the Family Bar (as that was, supposedly, where *all* of the LGBT+ barristers worked), our survey respondents specialized in a wide range of fields, with significant numbers (20 or more) working in each of civil, commercial/chancery, criminal, public, and – as we had been told – family law. Aside from demographics, our survey questions focused on four main areas: (1) homophobia and transphobia in the workplace, (2) whether (and how and where) barristers were out at work, (3) the potential connections between sexuality and practice, and (4) the purpose of current Bar LGBT+ networks and role models. In addition to closed responses, the survey invited open comments. These are reported below with the label 'Survey' and a number, to distinguish survey responses from interview responses. This article speaks to what we think is the most interesting aspect of our data – namely, the performance of sexuality at the Bar; other aspects have been shared in earlier preparatory articles.<sup>19</sup>

Following the survey, Mason and Vaughan used the data that they had captured to build a range of questions and themes for semi-structured interviews, 38 of which took place in the latter half of 2016: two with pupil barristers, four with students, five with QCs, and 27 with barristers. Interviewees self-selected through the completion of an interview request question at the end of the

<sup>16</sup> Bar Council, *Snapshot: The Experience of Self-Employed Women at the Bar* (2015) 41, at <<https://www.barcouncil.org.uk/resource/snapshot-the-experience-of-self-employed-women-at-the-bar.html>>.

<sup>17</sup> L. J. Moran, 'Judicial Diversity and the Challenge of Sexuality: Some Preliminary Findings' (2006) 28 *Sydney Law Rev.* 565.

<sup>18</sup> In their own 2021 survey, the BSB offered the options 'gay or lesbian', 'bisexual', and 'I use a different term (for example, pansexual or asexual)'. This was a new and positive development since 2019, when 'other' was the alternative option that the BSB used for non-LGB sexual minorities.

<sup>19</sup> Mason, *op. cit.*, n. 5; Mason and Vaughan, *op. cit.*, n. 5.

survey. Interviews took place either in person or over the telephone and lasted between 38 and 106 minutes. The majority were around 60 minutes long. Once completed, the interviews were transcribed and then coded. Coding was initially undertaken separately by two of the authors (Mason and Vaughan – the former using NVivo, the latter using pen and paper),<sup>20</sup> with first- and second-order codes then shared, reviewed, and agreed.<sup>21</sup> Both phases of the project had ethical approval from the University of Birmingham (Vaughan's former employer). We make no claims that the data on which we draw is representative; it is not.<sup>22</sup> This is for two main reasons. First, there is no reliable data on the overall LGBT+ Bar population given the low response rates to the BSB diversity data collection exercises (discussed above). As a result, while the absolute numbers (126 survey responses and 38 follow-up interviews) are sufficient to provide useful data,<sup>23</sup> we cannot say what proportion of the total LGBT+ population is represented by the sample. Second, those who came forward (both for the survey and for the interviews) were most likely those who felt that they had something to say and were willing to say it.<sup>24</sup> It is entirely possible that we have not heard the voices of LGBT+ barristers unwilling to be out in any way (including via an anonymous survey) and/or those who felt, for other reasons, that the survey was not for them. We also note in particular that while the survey explicitly invited participation from trans barristers (by the BSB's 2021 figures, approximately 53 barristers out of 17,774),<sup>25</sup> no one from this community responded; and that while reference was made to the trans experience by some participants, we felt it inappropriate to attempt to report on this area without trans voices included.

#### 4 | COMING OUT AND SEXUAL IDENTITY IN THE WORKPLACE

What follows, in this section and later, are discussions of the dominance of heterosexuality and forms of heteronormativity at the Bar, in which we use and draw on Berlant and Warner's framing of heteronormativity as 'the institutions, structures of understanding and practical orientations that make heterosexuality seem not only coherent – that is, organised as a sexuality – but also privileged'.<sup>26</sup> Queer theory, as outlined in seminal works by Seidman,<sup>27</sup> Warner,<sup>28</sup> and Berlant and Warner,<sup>29</sup> ought predominantly to be understood as a theory of heterosexuality as an

<sup>20</sup> See J. Séror, 'Computers and Qualitative Data Analysis: Paper, Pens, and Highlighters vs. Screen, Mouse, and Keyboard' (2005) 39 *TESOL Q.* 321.

<sup>21</sup> See A. Coffey and P. Atkinson, *Making Sense of Qualitative Data: Complementary Research Strategies* (1996); J. Saldaña, *The Coding Manual for Qualitative Researchers* (2009); V. Braun and V. Clarke, *Thematic Analysis: A Practical Guide* (2021).

<sup>22</sup> On rigour in qualitative work, see S. Tracy, 'Qualitative Quality: Eight "Big-Tent" Criteria for Excellent Qualitative Research' (2010) 16 *Qualitative Inquiry* 837; J. Morse, 'Reframing Rigor in Qualitative Inquiry' in *Sage Handbook of Qualitative Research*, eds N. Denzin and Y. Lincoln (2018) 796.

<sup>23</sup> On this, see further J. Cho and A. Trent, 'Evaluating Qualitative Research 2.0' in *The Oxford Handbook of Qualitative Research*, ed. P. Leavy (2014) 677.

<sup>24</sup> See D. Collier and J. Mahoney, 'Insights and Pitfalls: Selection Bias in Qualitative Research' (1996) 49 *World Politics* 56; D. Collier et al., 'Claiming Too Much: Warnings about Selection Bias' in *Rethinking Social Inquiry: Diverse Tools, Shared Standards*, eds H. Brady and D. Collier (2004) 3.

<sup>25</sup> Bar Standards Board, op. cit., n. 12.

<sup>26</sup> L. Berlant and M. Warner, 'Sex in Public' (1998) 24 *Critical Inquiry* 547, at 548.

<sup>27</sup> S. Seidman, 'Queer-ing Sociology, Sociologizing Queer Theory: An Introduction' (1994) 12 *Sociological Theory* 166.

<sup>28</sup> M. Warner, 'Introduction: Fear of a Queer Planet' (1991) *Social Text* 3.

<sup>29</sup> L. Berlant and M. Warner, 'What Does Queer Theory Teach Us about X?' (1995) 110 *PMLA* 343.



organizing principle of society (heteronormativity). As well as interrogating the means through which heterosexuality is naturalized in society (such as through the reification of sexual identity categories), this line of thinking also demands an analysis of the effects of heteronormativity on those individuals or groups marked out as queer – including those who self-identify as lesbian, gay, and bisexual. In our use of, and sense of belonging to, queer studies, we follow Epstein, who reads the turn to queer theory within the social sciences as a call

not to stop studying identity formation, or even to abandon all forms of identity politics, but rather to maintain identity and difference in productive tension, and to rely on notions of identity and identity politics for their strategic utility while remaining vigilant against their reification.<sup>30</sup>

Berlant and Warner argue that under conditions of heteronormativity, sexuality is always in public.<sup>31</sup> Heterosexual references are ever present and pervasive, but largely unmarked. What we will see below from our data, in this part and those that follow, is that homosexuality is discrediting in a professional culture where heterosexuality, and in particular male heterosexuality, is regarded as integral to the ‘normal’ or ‘credible’ performance of law. Heterosexuality is always on display and in public in this way at the Bar, and is maintained through macho culture, even though – as we will come to see – our sexual minority participants understood coming out as the act that makes sexuality public. As Stychin says, heterosexuality requires a homosexual opposite to be repudiated in order to become stabilized.<sup>32</sup> This is not so much a reification of any public/private divide as, instead, the maintenance of the illusion of heterosexuality. Moran draws on Berlant and Warner to make a similar argument: ‘Heteronormativity suggests that the absence of references to sexuality in current judicial studies is nothing more than the public display of the sexuality of the judiciary, as exclusively heterosexual.’<sup>33</sup> In his terms, ‘the existing public sexual culture’ of the institution of the Bar (as well as the judiciary and beyond) is one of heterosexuality.<sup>34</sup>

As set out above, our work is concerned with the experiences and identities of sexual minority barristers. While identity as a concept entered the social sciences and the humanities in the 1950s, work on what the literature labels ‘sexual identity management’ began somewhat later and has now been ongoing for almost 30 years.<sup>35</sup> The starting point for these studies lies in the ‘idea that organisations are important but often unacknowledged sites wherein heterosexuality is reproduced as privileged and natural and thus established as normative’.<sup>36</sup> The field of sexual identity management today encompasses various disciplines, with scholars based in business schools, sociology departments, psychology, gender, and sexuality schools, higher education departments, and

<sup>30</sup> S. Epstein, ‘A Queer Encounter: Sociology and the Study of Sexuality’ (1994) 12 *Sociological Theory* 188, at 197.

<sup>31</sup> Berlant and Warner, *op. cit.*, n. 26.

<sup>32</sup> C. F. Stychin, ‘To Take Him “at His Word”: Theorizing Law, Sexuality and the US Military Exclusion Policy’ (1996) 5 *Social & Legal Studies* 179.

<sup>33</sup> Moran, *op. cit.*, n. 17, p. 577.

<sup>34</sup> *Id.*

<sup>35</sup> See P. Griffin, ‘From Hiding Out to Coming Out: Empowering Lesbian and Gay Educators’ (1992) 22 *J. of Homosexuality* 167; J. Woods and J. Lucas, *The Corporate Closet: The Professional Lives of Gay Men in America* (1994).

<sup>36</sup> N. Rumens, ‘Towards Queering the Business School: A Research Agenda for Advancing Lesbian, Gay, Bisexual and Trans Perspectives and Issues’ (2016) 23 *Gender, Work & Organization* 39, at 39.

so on. The LGBT+ employees who are the subjects of these studies are very varied (though admittedly often white-collar workers, and often gay and/or lesbian), from those based in the National Health Service (NHS),<sup>37</sup> to lesbian firefighters,<sup>38</sup> to queer people in science, technology, engineering, and mathematics (STEM),<sup>39</sup> to the police,<sup>40</sup> to academics,<sup>41</sup> to auditors and accountants,<sup>42</sup> to international aid workers,<sup>43</sup> to seasonal Santa Claus actors,<sup>44</sup> to construction workers.<sup>45</sup> None of these studies, however, have looked at lawyers. Those three decades of (often) empirical research show how sexual minority employees ‘variously engage in an ongoing process of negotiating heteronormativity at work’.<sup>46</sup> The various identity management studies from workplace to workplace each make claims as to the importance of exploring sexual identity in their particular milieux. As Rumens puts it in the context of his work on accountancy,

[t]he poor attention paid to sexuality in accountancy reproduces a distorted view of accounting firms and places of work as asexual. In this vein, sexuality is conceptualised as something that is imposed into organisational life and which threatens to disrupt the productivity of the organisation.<sup>47</sup>

Our aim is to do something similar with regards to sexual minority barristers. The central claim that we make below is that, in this particular milieu, (homo)sexuality is seen as threatening to and disruptive of the credibility associated with professionalism at the Bar.

While this is not an article on homophobia at the Bar per se, such homophobia was striking in our data. We see this homophobia as part of the ecology that shapes how sexual minority barristers perceive and perform credibility in their professional lives. Just over half of our survey respondents had experienced some form of discrimination at work or in their professional studies on account

<sup>37</sup> N. Rumens and D. Kerfoot, ‘Gay Men at Work: (Re)Constructing the Self as Professional’ (2009) 62 *Human Relations* 763.

<sup>38</sup> T. Wright, ‘Lesbian Firefighters: Shifting the Boundaries between “Masculinity” and “Femininity”’ (2008) 12 *J. of Lesbian Studies* 103.

<sup>39</sup> J. Yoder and A. Mattheis, ‘Queer in STEM: Workplace Experiences Reported in a National Survey of LGBTQA Individuals in Science, Technology, Engineering, and Mathematics Careers’ (2016) 63 *J. of Homosexuality* 1.

<sup>40</sup> M. E. Burke, *Coming Out of the Blue: British Police Officers Talk about Their Lives in “the Job” as Lesbians, Gays and Bisexuals* (1993); M. Jones and M. L. Williams, ‘Twenty Years On: Lesbian, Gay and Bisexual Police Officers’ Experiences of Workplace Discrimination in England and Wales’ (2015) 25 *Policing and Society* 188.

<sup>41</sup> L. Knopp, ‘Out in Academia: The Queer Politics of One Geographer’s Sexualisation’ (1999) 23 *J. of Geography in Higher Education* 116.

<sup>42</sup> S. Stenger and T. J. Roulet, ‘Pride against Prejudice? The Stakes of Concealment and Disclosure of a Stigmatized Identity for Gay and Lesbian Auditors’ (2018) 32 *Work, Employment and Society* 257.

<sup>43</sup> R. C. Mizzi, ‘“There Aren’t Any Gays Here”: Encountering Heteroprofessionalism in an International Development Workplace’ (2013) 60 *J. of Homosexuality* 1602.

<sup>44</sup> P. Hancock, ‘Recognition and the Moral Taint of Sexuality: Threat, Masculinity and Santa Claus’ (2016) 69 *Human Relations* 461.

<sup>45</sup> P. Chan, ‘Queer Eye on a “Straight” Life: Deconstructing Masculinities in Construction’ (2013) 31 *Construction Management and Economics* 816; T. Wright, ‘Uncovering Sexuality and Gender: An Intersectional Examination of Women’s Experience in UK Construction’ (2013) 31 *Construction Management and Economics* 832.

<sup>46</sup> M. B. Ozturk and N. Rumens, ‘Gay Male Academics in UK Business and Management Schools: Negotiating Heteronormativities in Everyday Work Life’ (2014) 25 *Brit. J. of Management* 503, at 505.

<sup>47</sup> N. Rumens, ‘Sexualities and Accounting: A Queer Theory Perspective’ (2016) 35 *Critical Perspectives on Accounting* 111, at 111.



of their sexuality. One third had experienced some form of bullying or harassment in these arenas. Over a quarter of our survey respondents (26.5 per cent) had experienced sexuality-linked discrimination ‘sometimes’, ‘often’, or ‘frequently’ (a quarter had experienced such discrimination ‘rarely’; 47.9 per cent said ‘never’). These findings suggest that homophobia is stronger at the Bar than in the general population; Stonewall research shows that, in the general population, one in five lesbian, gay, and bisexual employees (19 per cent) have experienced verbal bullying from colleagues, customers, or service users because of their sexual orientation in the last five years.<sup>48</sup> Just under half of our survey respondents (48.7 per cent) had experienced ‘banter’ linked to their sexuality ‘sometimes’, ‘often’, or ‘frequently’. A further 26.5 per cent had experienced the same banter, though ‘rarely’.

I was still subject to quite a lot of what the blokes in chambers thought was hilarious humour. And every time somebody got drunk at a party or a dinner, I got some bloke coming up to me asking why I was a lesbian and hadn’t I ever considered having sex with men – really quite inappropriate comments. (QC56)<sup>49</sup>

We were struck by how many interviewees disclosed clear examples of homophobia and bullying while also denying to us that they had been discriminated against.

More recently, no, I’ve not experienced any homophobia. I walked past some ... [Inns of Court] staff recently on [address] who said kind of ‘Oh, if you’re gay, there must be something wrong with you in the head’. And it really took me aback. (S41)

Interviewer: And in your own professional life, have you ever been the subject of discrimination or abuse or bullying or ...?

Barrister: No! I’ve certainly been on the end of banter in the clerks’ room, but that’s almost been ... I’ve certainly been what I might say to be gently teased in the clerks’ room, but never ...

Same barrister later: The first chambers Christmas party that [my partner] came to ... I introduced [member of chambers] to [my partner] and he said words to the effect of ‘Have we already met through the glory hole in the loos?’ or ‘When he stuck his dick through the glory hole’. Or something pretty unpleasant like that. (B19)

Like Hunter in her work with women barristers in Australia, we think such denials of discrimination by barristers ‘were part of the active constitution of themselves as (non/gendered) subjects of the Bar’.<sup>50</sup> We see the Bar as an institution in which a ‘credible’ barrister (one who is authoritative, respected, valorized, and permitted) is a heterosexual barrister. As such, anything that destabilizes that credibility is to be avoided, and so overt displays or expressions of homosexuality (including complaints about homophobia) amount to a form of disqualification.

<sup>48</sup> Stonewall, *LGBT in Britain: Work Report* (2018), at <<https://www.stonewall.org.uk/lgbt-britain-work-report>>.

<sup>49</sup> The following codes are used to identify the participants: S = student; P = pupil; B = self-employed barrister; E = employed barrister; QC = Queen’s Counsel.

<sup>50</sup> R. Hunter, ‘Talking Up Equality: Women Barristers and the Denial of Discrimination’ (2002) 10 *Feminist Legal Studies* 113, at 113.

- Barrister: I've got one colleague here who I think is an unpleasant homophobe ... [W]e took a table at a solicitors' quiz night a few months ago, and that member of chambers and that pupil were there. And I'm told that he was making some fairly unpleasant homophobic comments which was making the pupil feel uncomfortable ...
- Interviewer: And then what happened?
- Barrister: Well, nothing! Rightly or wrongly. It would feel a little bit like if I went to the head of chambers, telling tales out of school. Rightly or wrongly ... I almost ask myself the question why I didn't do anything about it. All I'm telling you is that I didn't. (B19)

In our study, we were interested in how sexual minority barristers were out and how they navigated the processes of coming out at work. In some of the studies on which we drew, various factors have been shown to be relevant to the decision on coming out at work, accepting that coming out is not a singular event and that the presumption of heterosexuality means that queer people are faced with repeated decisions about coming out in any new context.<sup>51</sup> These factors include previous experiences,<sup>52</sup> how self-confident the sexual minority person is,<sup>53</sup> how central sexuality is to the sexual minority person's sense of self,<sup>54</sup> how 'LGBT+ friendly' the employer organization is,<sup>55</sup> whether the organization has specific sexual minority support mechanisms,<sup>56</sup> whether there are sexual minority role models/senior personnel in the organization,<sup>57</sup> and the relationship that the discloser has with their co-workers.<sup>58</sup> Many of these studies draw on Goffman's concept of stigma, 'to consider how personal and contextual factors influence (non)disclosure decisions relating to sexual identity'.<sup>59</sup> A large quantitative study of sexual minority people working in STEM in the United States, for example, found that participants who worked in places where women were well represented were more likely to disclose their sexuality (though the study could not point to the reasons for this).<sup>60</sup> Interestingly for our purposes, and thinking specifically about self-employed

<sup>51</sup> J. Ward and D. Winstanley, 'Coming Out at Work: Performativity and the Recognition and Renegotiation of Identity' (2005) 53 *The Sociological Rev.* 447.

<sup>52</sup> J. Clair et al., 'Out of Sight but Not Out of Mind: Managing Invisible Social Identities in the Workplace' (2005) 30 *Academy of Management Rev.* 78.

<sup>53</sup> Wright, *op. cit.*, n. 38.

<sup>54</sup> Clair et al., *op. cit.*, n. 52.

<sup>55</sup> Wright, *op. cit.*, n. 38; M. J. Tejada, 'Non-Discrimination Policies and Sexual Identity Disclosure: Do They Make a Difference in Employee Outcomes?' (2006) 18 *Employee Responsibilities and Rights J.* 45.

<sup>56</sup> Yoder and Mattheis, *op. cit.*, n. 39.

<sup>57</sup> F. Colgan, 'Coming Out of the Closet? The Implications of Increasing Visibility and Voice for the Career Development of LGB Employees in UK Private Sector Organisations' in *Research Handbook of Diversity and Careers*, eds A. M. Broadbridge and S. L. Fielden (2018) 438.

<sup>58</sup> S. B. Button, 'Identity Management Strategies Utilized by Lesbian and Gay Employees: A Quantitative Investigation' (2004) 29 *Group & Organization Management* 470; B. R. Ragins et al., 'Making the Invisible Visible: Fear and Disclosure of Sexual Orientation at Work' (2007) 92 *J. of Applied Psychology* 1103.

<sup>59</sup> N. Rumens and J. Broomfield, 'Gay Men in the Police: Identity Disclosure and Management Issues' (2012) 22 *Human Resources Management J.* 285, at 285.

<sup>60</sup> Yoder and Mattheis, *op. cit.*, n. 39.

Bar members, research by Legate and colleagues has shown how sexual minority employees are more likely to disclose their sexuality when they have greater autonomy about their work and in their working lives.<sup>61</sup>

Our survey data shows that the vast majority of sexual minority barristers (over 80 per cent in each case) were out with all or most of their family, friends, and other barristers in their chambers. Only slightly fewer were out with all or most of the pupils in their chambers and with chambers staff. However, just under half (46.8 per cent) were out with all or most of their instructing solicitors, and only a quarter (23.4 per cent) were out with all or most of their lay clients. A small number were not out with any barristers in their chambers (4.3 per cent), any pupils in their chambers (11.9 per cent), or any chambers staff (9 per cent). More than two-thirds (69 per cent) had been out during their professional training.

It has been a constant theme ever since the earliest work on sexual identity management that sexual minority people will be out to some but not to others.<sup>62</sup> In this context, Kaplan speaks of a ‘continuum of visibility’.<sup>63</sup> Participants in Seidman’s study were selective about how they disclosed their sexuality to family, friends, and colleagues, with such disclosure being seen as an affirmation of their positive sense of self.<sup>64</sup> Rumens and Kerfoot’s NHS-based interviewees ‘appear[ed] to be selective in terms of those to whom they disclose[d] by taking into account the recipient’s trustworthiness’.<sup>65</sup> Despite the (social and legal) advances and change over time, Rumens and Kerfoot suggest that the ‘cultural freight attached to male homosexuality can still disrupt attempts to self-identify as openly gay and professional in the workplace’.<sup>66</sup> For our survey respondents, there seemed to be a significant distinction between colleagues, on the one hand, and clients (both lay and professional), on the other, in terms of tendency to openness.

In their work on gay and lesbian auditors in France, Stenger and Roulet suggest that there were three kinds of action that their queer interviewees undertook to avoid stigma: shamming, distance, and normification.<sup>67</sup> Aspects of each of these three kinds of action were present in our data, as we will come to see. Stenger and Roulet suggest that, ‘rather than complete falsification, shamming is rather a bending of the truth ... [T]he majority of our respondents lie by omission.’<sup>68</sup> With distance, ‘the individual steps out of interactions to avoid being faced with embarrassing questions involving themselves and their sexuality’.<sup>69</sup> Meanwhile, normification ‘is the strategy by which stigmatized individuals disclose some elements of their stigmatized identity while trying to present themselves as ordinary people’.<sup>70</sup> A number of those in Rumens and Kerfoot’s study ‘[saw] themselves, in large part, as blending into the heterosexual milieu of everyday work life’.<sup>71</sup>

<sup>61</sup> N. Legate et al., ‘Is Coming Out Always a “Good Thing”? Exploring the Relations of Autonomy, Support, Outness, and Wellness for Lesbian, Gay, and Bisexual Individuals’ (2012) 3 *Social Psychological and Personality Science* 145.

<sup>62</sup> Woods and Lucas, op. cit., n. 35.

<sup>63</sup> D. M. Kaplan, ‘Career Anchors and Paths: The Case of Gay, Lesbian, & Bisexual Workers’ (2014) 24 *Human Resource Management Rev.* 119, at 121.

<sup>64</sup> S. Seidman, *Beyond the Closet: The Transformation of Gay and Lesbian Life* (2004).

<sup>65</sup> Rumens and Kerfoot, op. cit., n. 37, p. 773.

<sup>66</sup> Id., p. 782.

<sup>67</sup> Stenger and Roulet, op. cit., n. 42.

<sup>68</sup> Id., p. 267.

<sup>69</sup> Id.

<sup>70</sup> Id., p. 268.

<sup>71</sup> Rumens and Kerfoot, op. cit., n. 37, p. 774.

In our study, 40 per cent of survey participants had lied about their sexuality in a work context, and 58 per cent had actively concealed their sexuality.

I have not actively lied, but I have lied by omission, particularly if asked ‘Do you have a girlfriend?’ The answer ‘No’ confirms the assumption of heterosexuality inherent in the question. (Survey9768)

I have certainly played the pronoun game. (Survey9820)

Assumptions – as to both homosexuality and heterosexuality – were common experiences shared in our interviews and also in various other studies on sexuality in the workplace. Einarsdóttir and colleagues, for example, suggest that

people make their own assumptions about sexuality, which are primarily based on appearances, gestures and mannerisms, including how people move, but can also involve tone of voice. This list could also include age (unmarried 40-year-old must be gay), cultural interest and life style choice ... Put together these come to symbolize the gay body.<sup>72</sup>

Our interviews and qualitative survey data brought out two opposing views on why it might (or might not) be important to be out at work and why (or why not) sexuality might have some connection to legal practice. The first bundle of ideas relates to the concept of ‘bleached-out legal professionalism’. This is the narrative, first discussed by Levinson in 1993, that lawyers are fungible (vehicles for legal expertise who are swappable on a like-for-like basis such that personal differences between individuals are of no import).<sup>73</sup> This conception of professionalism is predicated on a vision of the lawyer’s role in society that places value on uniformity, predictability, and neutrality,<sup>74</sup> and is seen in much of the work on lawyers’ ethics.<sup>75</sup> Bleached-out professionalism as a construct does not refer to a normative statement, but rather to an ideological position that serves to maintain compulsory heterosexuality (as well as whiteness and masculinity). This conception of professionalism preferences role over identity, and was one animating force in our data on when and/or how interviewees were out.

My sexuality is completely irrelevant to my clients (lay and professional) and there is absolutely no need for it to come up. It’s not a question of being out or not; it’s about whether my clients should know anything about my private life. (Survey0998)

The second set of responses from our interviewees and survey data suggested that the personal and the professional could, on the contrary, be intimately connected. This was for three reasons.

<sup>72</sup> A. Einarsdóttir et al., ‘Fitting the Bill? (Dis)Embodied Disclosure of Sexual Identities in the Workplace’ (2016) 30 *Work, Employment and Society* 489, at 490.

<sup>73</sup> Levinson, op. cit., n. 6.

<sup>74</sup> See D. B. Wilkins, ‘Fragmenting Professionalism: Racial Identity and the Ideology of Bleached Out Lawyering’ (1998) 5 *International J. of the Legal Profession* 141.

<sup>75</sup> This is what is referred to as the ‘standard conception’ of lawyers’ ethics and the associated value trinity of partisanship, neutrality, and non-accountability. For a discussion, see S. Vaughan and E. Oakley, ‘“Gorilla Exceptions” and the Ethically Apathetic Corporate Lawyer’ (2016) 19 *Legal Ethics* 50.

First, some participants shared a sense that a barrister was able to do their job better when they brought the whole of themselves to their work. Half of our survey participants agreed or strongly agreed that their sexuality had some connection with their professional lives (41 per cent disagreed or strongly disagreed; 9 per cent were undecided). A minority (15 per cent) felt that their sexuality had influenced their choice of practice area. Double that number thought that their choice of chambers had been influenced by their sexuality.

Second, several of our interviewees suggested that, for their own mental health and well-being, it was important for them to be out at work and to see that their sexuality was in some way connected to their practice. Work in other fields shows how the same person may deploy a number of sexuality disclosure strategies in different contexts, leading to what Ragins calls 'disclosure disconnects' in which the lack of consistency on disclosure may become a source of stress.<sup>76</sup> Stress may also arise from 'the deployment of considerable mental and emotional resources' where there is 'fear of abuse together with maintaining a concealed identity'.<sup>77</sup> A number of our participants described negative impacts of remaining closeted on mental health, personality, and even their ability to practise law (such as difficulty in forming a bond with a client).

It's a constant thing that's ticking away and you've got the stress of pupillage, but you've now got the stress of not putting a foot wrong and giving away something you think is going to be discriminated against, so I just think it makes it more difficult, and it's a difficult process already ... and anybody who's stressed and worried about something is not going to perform at their best. (B10)

I would have to describe it in mental health terms because for me it was a source of stress ... [M]y mental health went completely, completely downhill. I would say it's a stress on your psyche. (B3)

You can't do your job properly if you're worried about hiding who you are. It's a trite thing to say, [but] unless you bring your whole self to work, then you can't put your whole self into the job. (E66)

The inverse is also true, with other studies on LGBT+ workers showing how disclosure can bring a sense of relief and energy linked to more positive feelings of well-being.<sup>78</sup> Research by Day and Schoenrade shows how 'more open workers are more affectively committed to the organization, have higher job satisfaction, perceive that top management is more supportive of their rights, [and] have lower role ambiguity and role conflict and less conflict between work and home'.<sup>79</sup> Some of our interviewees made similar observations.

I think it's really important because I remember how unhappy I really was in university when I wasn't out and the efforts I made to lie about it ... People are human

<sup>76</sup> B. R. Ragins, 'Disclosure Disconnects: Antecedents and Consequences of Disclosing Invisible Stigmas across Life Domains' (2008) 33 *Academy of Management Rev.* 194.

<sup>77</sup> F. Gavin, 'Out at Work?' in *Research Handbook of Diversity and Careers*, eds A. M. Broadbridge and S. L. Fielden (2018) 422, at 427.

<sup>78</sup> Clair, *op. cit.*, n. 52.

<sup>79</sup> N. E. Day and P. Schoenrade, 'Staying in the Closet Versus Coming Out: Relationships between Communication about Sexual Orientation and Work Attitude' (1997) 50 *Personnel Psychology* 147, at 157.

beings – they’re going to ask you about your life, you know, where you go, what you do, and there’s only so far you can continue to avoid it. (B23)

[I remember] the first time I had been professionally networking in a context where that just didn’t need the 30-second conversation with myself: ‘Am I editing or not?’ I could not believe what a difference it made to me . . . I now know, because I sometimes do it without having to edit, without having to even think about editing, that the degree to which I’m relaxed and engaged and able to just get on with doing what I’m there to do, it makes such a difference . . . I’m surprised by how much difference that makes to me. (QC39)

Third, a number of our interviewees suggested that, by being a sexual minority, they were innately more able to understand the differences of other people and how being different could come with negative impacts. This idea of the empathetic sexual minority barrister was a strong narrative in our interviews.

I guess it gives me an appreciation of being the other. A lot of the people we’ll be working with will be outsiders of some point of view in some way. (B14)

It gives me a strong sense of what you might call liberalism, tolerance, equality – those kinds of values, which are definite drivers for the choice of work I do. (QC54)

Having reflected on why it might (or might not) be important for sexual minority barristers to be out at work, we turn now to consider the relationships between sexuality and practice.

## 5 | THE VISIBILITY OF SEXUALITY AT THE BAR AND IMPLICATIONS FOR CREDIBILITY AND PROFESSIONALISM

Let us consider further the overarching and particularly masculine character of the legal profession, which provides important context for the difficulty of expressing minority sexuality and the performance of heteronormativity. Qualitative research commissioned by the Legal Services Board in 2010 highlighted a number of themes that impact on the retention and progression of barristers and solicitors, including the ‘legacy of the profession’s white, male elitist origins and the significance of cultural stereotypes’.<sup>80</sup> Building on notions of tacit attributes and practices, or cultural capital, Sommerlad and Sanderson set out that masculinity is ‘the core cultural capital of the legal profession and that law firm partnerships demand cultural capital (socialisation and initiation rites) that cannot be gained through study but revolve around masculine culture’.<sup>81</sup> Over time, ‘asexual gentlemanliness’ in legal professional culture has been ‘displaced by an aggressively commercial and overtly heterosexual masculinism’.<sup>82</sup> Collier depicts law firms as ‘deeply

<sup>80</sup> H. Sommerlad et al., *Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choice* (2010) 29.

<sup>81</sup> H. Sommerlad and P. Sanderson, *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (1998) 199.

<sup>82</sup> H. Sommerlad, ‘Becoming Lawyer: Gender and the Processes of Professional Identity Formation’ in *Calling for Change: Women, Law, and the Legal Profession*, eds E. Sheehy and S. McIntyre (2006) 159, at 161.



gendered and heterosexual’ and argues that a ‘normative (hetero) masculinity’ is the benchmark of the legal profession.<sup>83</sup> Similarly, in his work on gay judges, Moran suggests that heterosexuality is rendered the ‘apotheosis of moral accomplishment’ and therefore ‘made a judicial virtue’.<sup>84</sup>

Existing research thus sees the (broad) legal profession as a place in which cultural capital is accrued through performances of white, male heterosexuality. For our participants, too, the practice of law at the Bar was seen as macho, and legal credibility/professionalism as reliant on machismo.

There is a bravado about work levels, which covers all areas. So having to stay up all night to read the papers and then get ... slaughtered by some ghastly judge, and then ... coming back and exchanging battle stories. (B14)

The macho culture is associated a little bit more [with the legal profession], not just the bravado which you get from a lot of people, but I suppose it’s what comes with it. It’s hard to explain. I suppose it’s like the boys’ rugby club in some regards, and I suppose there’s the worry that what comes with that is the absence of understanding or acceptance of diversity. (B10)

I wasn’t taken on, and, being frank, I didn’t fit in. They were very, sort of, old school: rowers and rugby players and things. (B5)

Turning to the way in which this culture exerts pressure against the expression of homosexuality, we recall that in Woods and Lucas’ seminal work, many of their participants thought that it was unprofessional to disclose their sexuality to their colleagues because ‘a rational (male) individual keeps his emotions in check and his personal matters out of the office’.<sup>85</sup> Later work illustrated how some gay men struggle to appear as competent professionals,<sup>86</sup> with Ozturk and Rumens talking of ‘credibility’ at work,<sup>87</sup> and a study of lesbian teachers showed how they felt that they had to perform above and beyond to overcome perceived stigma.<sup>88</sup> However, a decade ago, Rumens and Kerfoot suggested that ‘while sexuality is not seen as a problematic element in the construction of a professional identity, much depends on how it is expressed as to whether it is deemed to be an impediment in establishing professional competence’.<sup>89</sup> They came to the conclusion that ‘normative discourses of professionalism that shape narrow ideals about professional conduct still persist’<sup>90</sup> and that ‘it would be unwise to assume gay men can yoke together any version of

<sup>83</sup> R. Collier, ‘Naming Men as Men in Corporate Legal Practice: Gender and the Idea of Virtually 24/7 Commitment in Law’ (2014) 83 *Fordham Law Rev.* 2387, at 2398.

<sup>84</sup> L. J. Moran, ‘The Public Sex of the Judiciary: The Appearance of the Irrelevant and the Invisible’ in *Gender, Sexualities and Law*, eds J. Jones et al. (2011) 79, at 84.

<sup>85</sup> Woods and Lucas, *op. cit.*, n. 35, p. 68.

<sup>86</sup> See E. Rofes, ‘Bound and Gagged: Sexual Silences, Gender Conformity and the Gay Male Teacher’ (2000) 3 *Sexualities* 439; Burke, *op. cit.*, n. 40.

<sup>87</sup> Ozturk and Rumens, *op. cit.*, n. 46.

<sup>88</sup> T. Ferfolja, ‘Schooling Cultures: Institutionalizing Heteronormativity and Heterosexism’ (2007) 11 *International J. of Inclusive Education* 147.

<sup>89</sup> Rumens and Kerfoot, *op. cit.*, n. 37, p. 776.

<sup>90</sup> *Id.*, p. 782.

professionalism and gay male sexuality'.<sup>91</sup> The challenge is that 'professionalism desexualises workers by asserting "proper" identities devoid of sexuality and through this process relocates lesbians and gay men to the periphery'.<sup>92</sup> Mizzi introduced the term 'heteroprofessionalism'<sup>93</sup> to 'describe forces that discouraged gay men from expressing an identity seen as outside normal or acceptable professional standards'.<sup>94</sup>

One of the participants in Rumens and Kerfoot's study suggested that 'the worst possible expression of gay male sexuality is one that is coded in stereotyped femininity; the performance of "camp" is seen as being disruptive and potentially inimical to the delivery of effective [professional work]'.<sup>95</sup> Other work has shown how gay men are ascribed what are thought to be effeminate traits in terms of body language and tone of voice,<sup>96</sup> such that sexual minority employees have felt the need to modify their behaviour and act 'very serious' to downplay their sexuality in the workplace.<sup>97</sup> Einarsdóttir and colleagues argue that the 'feminisation of gay men and lesbians may be more likely to cause offence in an organisational context which demands heterosexuality'.<sup>98</sup> Our own participants suggested that what was at stake in coming out at the Bar was, in part, a loss of credibility because sexuality is regarded as personal and not professional, and because people want to assume a heterosexual subject. We read some of this as to do with homosexuality in men being regarded as a feminine expression – associated with supposedly less serious domestic law/feminine practice, as previous studies have suggested<sup>99</sup> – and also as simply the need for heterosexuality to find its opposite to repudiate and/or be stabilized against (in that this is how the heterosexual matrix is maintained).<sup>100</sup> It is possible – indeed, likely – that men are under particular and unique pressure vis-à-vis the feminized perceptions of homosexuality and therefore have most to gain in homonormative performances.<sup>101</sup> For a white gay man to convince the Bar of his 'normalcy' is for him to restore the privileges of his gender; he can practise law and fit seamlessly into the macho culture. Various studies have shown how 'in those work contexts where hegemonic masculinity is valorized, openly gay men are able to practice masculinities that retrench hegemonic masculinity'.<sup>102</sup>

If you just happen to sleep with someone of the same gender but actually don't necessarily display some of the more traditional qualities that might be associated with

<sup>91</sup> Id., p. 774.

<sup>92</sup> Mizzi, op. cit., n. 43, p. 1608.

<sup>93</sup> Id., p. 1602.

<sup>94</sup> Yoder and Mattheis, op. cit., n. 39, p. 3.

<sup>95</sup> Rumens and Kerfoot, op. cit., n. 37, p. 763.

<sup>96</sup> See for example P. Fleming, 'Sexuality, Power and Resistance in the Workplace' (2007) 28 *Organization Studies* 239.

<sup>97</sup> P. Giuffre et al., 'No Retribution for Being Gay? Inequality in Gay-Friendly Workplaces' (2008) 28 *Sociological Spectrum* 254; Rofes, op. cit., n. 86.

<sup>98</sup> Einarsdóttir et al., op. cit., n. 72, p. 501.

<sup>99</sup> On the relegation of certain groups to certain parts of the legal profession, see L. Holland and L. Spencer, *Without Prejudice? Sex Equality at the Bar and in the Judiciary* (1992); Zimdars, op. cit. (2010), n. 15; Zimdars, op. cit. (2011), n. 15; Rogers, op. cit., n. 2.

<sup>100</sup> Stychin, op. cit., n. 32.

<sup>101</sup> On homonormativity, see L. Duggan, 'The New Homonormativity: The Sexual Politics of Neoliberalism' in *Materializing Democracy: Toward a Revitalized Cultural Politics*, eds R. Castronovo and D. Nelson (2002) 175.

<sup>102</sup> M. B. Ozturk et al., 'Age, Sexuality, and Hegemonic Masculinity: Exploring Older Gay Men's Masculinity Practices at Work' (2020) 27 *Gender, Work & Organization* 1253, at 1257.

gay people, you'd probably fare a lot better. Which is completely screwed up, but I suspect it's probably true. (B36)

When we come to sex and the idea that homosexuality is heterosexuality's opposite, the experiences of queer women are easily encapsulated alongside queer men, since homosexuality is read as equivalent perversion. However, when we turn to the idea that homosexuality is a feminizing of machismo, it is less clear how to capture the experiences of queer women. A number of our women interviewees spoke, for example, about how being 'butch' was damaging.

I would say that there are incidents. For example, when I was on the [XXXX] Committee, there was a feeling that I wasn't a very useful person to invite to events because I wasn't pretty. What they didn't quite say was that if you wanted women to make up the numbers, I was a bit butch. (B29)

I suspect very much that my lack of difficulty as a gay woman correlates almost exactly to the fact that I present visually as someone who would be perceived to be straight and I'm sure that if I was a less visually – I'm struggling for a better way to put it – but, you know, if I was somebody who looked, you know, who looked butch-er or whatever the best way of putting it might be, that I might have had [many] more difficulties than I've had. (B36)

Various studies suggest that queer women (as women) 'may incur disadvantage irrespective of sexual identity, which may further render disclosing their sexual identity more difficult'.<sup>103</sup> The following quotation stands out as emblematic of our interviewees' experience of intersections, since queer women uniquely experience heteronormativity as both an expectation to be heterosexual and an obligation to be coupled.

The other thing I would say is that because I was in my mid-30s when I did my training, I was at an age where a woman who was straight would be broadly expected to be married and maybe to have a family. And if I wasn't doing any of those things, it was much easier – whether in professional life or any other aspect of life – to explain that that wasn't the sort of life I wanted because I was different. It was much easier to be out and to be reasonably open than to have people think that I was a poor little thing who couldn't manage to get a man. And so I was quite out from quite early on. (B29)

Linked to our earlier discussions about disclosure, the idea of the public/private divide was also strongly expressed by some of our participants. Berlant and Warner have explained how 'heterosexual culture achieves much of its metacultural intelligibility through the ideologies and institutions of intimacy',<sup>104</sup> privileging institutions of private life and blocking the construction of

<sup>103</sup> S. L. Fielden and H. Jepson, 'Lesbian Career Experiences' in *Research Handbook of Diversity and Careers*, eds A. M. Broadbridge and S. L. Fielden (2018) 455, at 466.

<sup>104</sup> Berlant and Warner, op. cit., n. 29, p. 288.

non-normative sexual cultures. So too in our study we saw how this anchoring of intimacy to the private realm leaves queer experience and culture unspoken.

I suppose a bit of context to this is that I don't generally talk about my sexuality very much. I don't see that as being concealment so much as being relatively private. And I don't generally talk to people other than just my close friends about how I spend my free time, whether that has anything to do with sex. I am happy for other people to know my sexuality; it's just not something I feel a particular need to announce. (P62)

As Stenger and Roulet frame it, 'in heterosexist environments, heterosexual individuals do not hesitate to state their sexual orientation, while gay and lesbian individuals are perceived as revealing intimate and inappropriate information when they do the same'.<sup>105</sup> While a number of our interviewees implicitly drew on the myth of the bleached-out professional (discussed above) to suggest that their sexuality was part of their private life (and therefore irrelevant to their work), crucially it is only *homosexuality* that is relegated to the private sphere and seen as non-professional.

I was teaching someone. I said, 'Oh my goodness me, this is a bit camp', and yes, that is a problem because your job as an advocate is in a sense to disappear into the background ... [S]omething where you are standing out from your case, something which is distracting, is a problem ... [I]f you wanted to take the full range in which people express or don't express their sexuality in a non-sexual way, I can see that there might be situations at the margin where you would say this is now making you stand out in a way which is peculiar, and I guess then it's a very deep cultural question how far that is connected to your sexuality and how far it's something which is running alongside your sexuality. (QC43)

I think ... the whole nature of the profession is that your individual characteristics and traits are irrelevant; it's about representing your client, even down to the wig and the gown, and ... the barrister is a tool for the client and a medium through which that client is heard or represented in court. (S27)

Interviewer: Do you think [clients] make assumptions then about your sexuality?

Barrister: I try to create an impression that it wouldn't ever occur to them I had one. I don't want them to think of me in that way at all. (B24)

Some of our interviewees spoke of an active maintenance of heterosexuality:

If you're straight, it's not private, you know. It's not private that you have a husband or a wife or whatever you have; it's something you don't think twice about ... [S]ome people even write it on their profile: 'So-and-So is married with three children and lives in Devon and at the weekends enjoys archery.' (B3)

<sup>105</sup> Stenger and Roulet, op. cit., n. 42, p. 11.

With this in mind, let us move on to talk about the ‘good gay’ at the Bar and ‘acceptable’ forms of homosexuality.

## 6 | SEXUALITY AT THE BAR: THE ‘GOOD GAY’ AND THE DOUBLE BIND

Various accounts (primarily but not exclusively focusing on gender) suggest that non-standard entrants to the legal profession (including barristers) undertake a variety of career strategies, including forms of assimilation and compromise, that manifest in not challenging existing structures and traditions.<sup>106</sup> This also speaks to our work, and how we draw on Stychin’s ideas of ‘good gays’ and ‘bad queers’.<sup>107</sup> A number of interviewees shared that they outed themselves by referring to their husband or wife or boyfriend or girlfriend, and there was a suggestion that the ‘good gays’ (those conforming to heteronormative standards) were more acceptable at the Bar. Here, when we looked at the survey data in more depth, we saw that those who were in relationships were more likely to be out at work than those who were single. As Einarsdóttir and colleagues put it, ‘Perhaps we have arrived at a moment in time where LGB employees are accepted in the workplace as long as they do not collide with what their colleagues see as normal gendered and sexual practices’.<sup>108</sup> Williams and colleagues suggest that there is a ‘gay-friendly closet’<sup>109</sup> in which sexual minority workers are faced with a paradox; if they want to be accepted in a ‘gay-friendly’ environment, ‘they must exhibit allegiance to convenient gender roles, conservative politics, and middle-class values. Yet this conformity means that many co-workers and clients do not identify them as lesbian or gay – their homosexuality is essentially “invisible” to outsiders.’<sup>110</sup> Homonormativity is thus a mechanism through which queer people at the Bar can navigate heteronormative culture, comprising the performance of machismo, marriage, family, and so on. This allows those sexual minority barristers to manage the discrediting effects of homosexuality – to mitigate its negative, stigmatizing impacts. We should be clear that this is not the fault of the homonormative agent but of the heteronormative culture that renders homonormativity the only viable choice for ‘outness’.

I have been with my partner since 2005, we’ve been civilly partnered since 2008, I have two children, so I am just like the straights. I’m just like the straights and I look just like a straight. So I mean, I’m being a bit facetious but I suppose what I’m trying to say is that I’m not particularly threatening in that way, you know. (B36)

You know, I’m godfather to a lot of their children, and they like their children to come stay with me and my partner because we’re a sort of good example that you can be gay and live a mainstream life and the rest of it. You don’t have to live in a drug-fuelled club scene. (B14)

<sup>106</sup> See R. Auchmuty, ‘Early Women Law Students at Cambridge and Oxford’ (2008) 29 *The J. of Legal History* 63; Tomlinson et al., op. cit., n. 15.

<sup>107</sup> Stychin, op. cit., n. 32, p. 200.

<sup>108</sup> Einarsdóttir et al., op. cit., n. 72, p. 501.

<sup>109</sup> C. Williams et al., ‘The Gay-Friendly Closet’ (2009) 6 *Sexuality Research & Social Policy* 29.

<sup>110</sup> C. Williams and P. Giuffre, ‘From Organizational Sexuality to Queer Organizations: Research on Homosexuality and the Workplace’ (2011) 5 *Sociology Compass* 551, at 557.

I imagine you're a lot more inclined to involve your personal life and your professional [life] if your personal [life] is otherwise fitting. So if you're married with three children and you happen to be gay, I imagine you'd be more inclined to talk about that in chambers where your colleagues are also married with three children but happen to not be gay, than if you're out on the town shagging someone else every other weekend. Which is perfectly fine, but you'd probably be less inclined to talk about that even if other people in your chambers were doing the same but were straight. (S27)

Due to ingrained practices associated with cultural capital, the legal profession requires those who do gain entry to acculturate to the professional norm by regulating their conduct and behaviours. Other work has shown that, for example, BAME students seeking entry to the profession feel 'the need to "act" white',<sup>111</sup> and Sommerlad and Sanderson argue that certain women undergo a form of assimilation in order to succeed in the legal profession, whereby they adopt male characteristics and ways of being in order to reach the top.<sup>112</sup> Our study revealed that, sometimes, an allegiance to convenient gender roles expresses itself as overt repudiation of certain performances of homosexuality – that is, overt instances of stigmaphobia.

If they are a confident gay, great, they're going to have no problem. If they're an under-confident gay, yes, they're probably going to have a problem, perhaps. (B33)

I think [conforming to gender roles] can help because it allows you to pass as straight in situations when you need to or you feel you need to. But even if you're openly gay, ... with people who still have stereotypical ideas of masculinity, it just lets you get along easier and people react to you in less of a sort of strange way and see you as less different. (B16)

Ability to 'pass', says Stychin, may be gendered and racialized, requiring 'the ability to pass as a military [or appropriate] subject in other ways as well'.<sup>113</sup> Crucially, a number of people are left behind in the double bind of queer sexuality at the Bar. There are those who are further distanced from homonormative performances (such as those who are not in monogamous relationships, are gender non-conforming, or are not cisgender – all of whom may be tacitly or explicitly repudiated and further distanced from acceptance by the homonormative regime); there are those who are multiply marginalized (such as women and those who are working class and/or non-white – each category experiencing its own unique modes of discrediting and, crucially, impossible to strategically hide); and there are those who do not fit into the homosexual/heterosexual binary (such as bisexual people, for whom the coming out process is fraught and misunderstood).

I think there's a class issue as well. I think if you're a gay man who's been public school educated or been to a posh university, probably you've got a different set of experiences. It also depends on where you practise and what you practise in. (QC56)

I think sometimes it's impossible really to separate [being a sexual minority] from the fact that I'm an ethnic minority and a woman because sometimes there's so many

<sup>111</sup> H. Sommerlad, 'Researching and Theorizing the Processes of Professional Identity Formation' (2007) 34 *J. of Law and Society* 190, at 210.

<sup>112</sup> Sommerlad and Sanderson, op. cit., n. 81, p. 60.

<sup>113</sup> Stychin, op. cit., n. 32, p. 194.



things, so many factors that make me ‘other’ that [being gay] is the only one that isn’t immediately obvious. So sometimes I think selfishly I make my life a little bit easier by slightly avoiding any questions or anything that could bring it up in [a] context where I just don’t want to deal with it, I just don’t want to deal with the reaction or with the awkwardness that the other person then feels because they’ve made a heteronormative assumption and then feel flustered about it. Sometimes I just don’t really want to deal with it. And I don’t like that, it’s not something I’m happy about in myself, but I must admit that does happen. (S27)

I realized they were talking to a same-sex partner and then after the conversation ended they had a brief conversation with me in which they played the pronoun game. I had this sudden horrible realization that they were reading me as a straight person and that felt very, very wrong – it was very uncomfortable for me . . . Being in a bisexual position, it was very hard for me to come out to them because I couldn’t say . . . I couldn’t make a casual reference to my girlfriend because I didn’t have one. (B3)

Homosexual sensibility at the Bar can also queer and challenge the pervasive macho culture and the assumption that the tacit masculinity of the law begets credibility and, vice versa, that the most prudent approach to practising law is the masculinist way of doing things.

[My sexual identity] gives me an appreciation of being the other. A lot of the people we’ll be working with will be outsiders of some point of view in some way, whether it’s because of some disability or [because they] come from another culture or psychological, psychiatric isolation. So being able to look at things from a non-mainstream point of view and try and find, you know, what’s positive and what needs work [in] a neutral and non-judgemental way, I think that’s probably assisted by personal experience. (B14)

If you have some understanding of what it’s like to be singled out or discriminated [against] . . . I think it helps [clients] relate and have a bond with you, although it may not be for the same reasons. (B10)

I think people’s sexuality manifests itself in different ways in terms of how it assists them. I think for me – yes, I suppose in terms of the way I relate to people, the way I can empathize with people, yeah, I would agree to that to an extent. (B35)

These (albeit minority) views among our interviewees give us some cause for hope. There is a need to challenge macho culture from the top down to encourage the proliferation of different modes of expression and the practice of law. This cannot be a burden shouldered by sexual minority barristers alone; it must be shared by everyone, since heteronormativity implicates everyone and heterosexuality is still read as default.

## 7 | CONCLUSION

This article, emerging from the first study into sexuality at the Bar, has drawn on a survey of 126 sexual minority barristers (including QCs), trainee barristers, and Bar school students, together

with 38 associated semi-structured interviews, to make a series of claims. The most significant of these is that homosexuality is discrediting in a Bar culture where heterosexuality, and in particular masculine heterosexuality, is regarded as integral to the 'normal' or 'credible' performance of law. What we see is that the form of professionalism (broadly conceived) presented and navigated by sexual minority barristers is heteronormative insofar as it privileges and rewards heterosexuality as credible, while calling into question homosexuality as a viable position of professionalism. Put another way, respectability and credibility are nearly synonymous, since what is deemed respectable under the terms of heteronormativity in broader professional engagements at the Bar (ways of speaking, dress, relationships, family structures that are deemed to have value, and so on) may also be more likely to be afforded credibility under the terms of a heteronormative culture of professionalism.

Our interviewees suggested to us that what was at stake in coming out was, in part, a loss of credibility – the idea being that (homo)sexuality is something personal and not professional, and that other people (clerks, instructing solicitors, lay clients, judges, other barristers, and so on) want to assume a heterosexual subject. We have explored the subtle and complex ways in which professionalism at the Bar is constructed and how those sexual minority barristers who fall outside of that construction, but who seek to succeed in the mainstream, have to find strategies to conceal those parts of themselves that do not fit the mould and to highlight those parts that can be presented as a simulacrum of the standard credible and professional barrister.<sup>114</sup> What we saw were a set of dichotomies within and against which sexual minority barristers must define themselves and others: professional versus unprofessional, authoritative versus weak, facts versus feelings, objective versus subjective, inside versus outside, and so on. These dichotomies both serve to diminish and discourage overt displays or expressions of homosexuality and, critically, to locate (paranoically) homosexuality as a form of disqualification, even where it goes unexpressed.

Giving the lie to the myth of the bleached-out legal professional, this article underlines that, rather than being absent from the professional arena, the expression of sexuality (in the form of heterosexuality) is in fact ubiquitous and compulsory. Heterosexuality is always on display and in public at the Bar, even though our queer interview participants understood coming out as making sexuality public. In the context of such heteronormativity, homonormativity can appear to be the only viable strategy for securing at least some professional authority. Adopting, as far as possible, the forms and modes of heterosexual culture (acting macho, not being camp, being in relationships, those relationships being monogamous, and so on) represents a strategy of normification to avoid stigma and the associated loss of professional credibility. Since the sexual minority barristers in this study staked their credibility on a kind of bare-bones notion of homosexuality – as a flattened identity form – articulation of the nuances of sex, sexuality, and culture, including the oppressions of heteronormativity, were considered to be a bridge too far, threatening to undermine their legitimacy (and thus their credibility) as professionals. In this way, the experiences of barristers in this study, which appear as concrete examples of what has been referred to as hetero-professionalism, have commonalities with accounts of BAME law students “‘acting’ white’ and women lawyers assimilating by masculinizing. This research can therefore be seen as an example of how one particular aspect of the normative formulations of professionalism operates at the Bar, utilizing the myth of the bleached-out professional to limit expressions of diversity even at a time when the legal professions purport to espouse the rhetoric of diversity and inclusivity.

However, despite this challenging heteronormative environment, there were a handful of sexual minority barristers in our study who appeared to have been able to retain or reclaim a vision of

<sup>114</sup> We are grateful to one of the anonymous reviewers for suggesting this very helpful framing.

their sexuality as holding value for themselves, their clients, and the profession. Through them, we can see the value of bringing the whole of oneself to the Bar, the effectiveness and enlivenment of camp aesthetics, and the value of community, solidarity, and empathy that these barristers found emerging from their minority sexual identity.

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