



e-law

Better law for the environment

September/October 2020 | Issue 120



Welcome to the September/October edition of e-law. The focus of this issue is diversity and inclusion in environmental law.

We are most grateful to Judy Ling Wong CBE for her piece [Building impetus-Black Lives Matter and environmental law](#) which looks at building impetus towards integrating diversity, equality and environmental law. Judy will be speaking at UKELA's

Garner lecture on 4 November, and this piece sets the scene before the lecture. The article draws on how we may shape our responses to aspects of the impact of three dimensions of our present lives – Covid-19, climate change and Black Lives Matter. I do hope you can also join us for the lecture on 4 November.

Secondly, our thanks go to Consolata Uwarobosa Enobakhare for her article [Diversity, equality and inclusion in environmental justice](#). Her article highlights how environmental racism happens in a spectrum, and how women from racial minorities in low-income groups bear a disproportionate burden of environmental risks within their communities. The importance of diversity in the legal profession is asserted and the article also highlights how the inclusion of minority ethnic groups within the sector could bring about a truly transformative environmental justice movement.

Finally, Emma Lui sets out her personal reflections on diversity and inclusion experiences in the workplace and the thought process in reacting to different forms of racism and microaggressions in her thought provoking piece [Diversity and inclusion – our different but collective experiences in the workplace](#). The article also provides perspectives from contributors across the UK, the USA and the Republic of Ireland based on experiences of racial insensitivities and unconscious biases in professional environments. We are very grateful to Emma and to all of the contributors for their honesty in sharing these private thoughts and experiences to provide such an enlightening piece.

UKELA is aware that the language used when diversity issues are expressed and discussed can be a sensitive issue. Lately, there has been discussion of the use of "BAME" or "BME" and criticism of it as failing to capture the specific experiences of the groups under that collective term: if you are interested, you can watch this [video](#), in which four people from different backgrounds explain how they prefer to describe themselves. Some people prefer to use terms such as "person of colour" or "ethnic minority" or specific terms such as "black" or "brown". Others consider that "BAME" is still

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a useful term. In this edition, authors have used the language with which they are most comfortable and we have supported their approach.

In this edition I am also pleased to welcome our two new Editorial Assistants, Violet O’Gorman and Laura Hildt, who will be helping to edit the next edition.

Best wishes

Sophie Wilkinson

Sophie Wilkinson
UKELA e-law Editor

E-law editorial team

Sophie Wilkinson, Editor – Sophie is an environmental law specialist at LexisPSL with 13 years’ experience, including 11 years’ experience in private practice. She moved to LexisNexis from Shoosmiths LLP where she was a Senior Associate. Prior to this Sophie trained at Browne Jacobson LLP and spent 6 years at Eversheds LLP.

Cecily Kingston is a trainee solicitor at R&R Urquhart solicitors based in northern Scotland.

Dr Ben Christman – Senior editorial assistant, is an independent environmental law researcher.

Words from the Chair



As you will read in this edition we have dedicated the following pages to the issue of diversity and inclusion in environmental law. Following on from the UKELA Annual Conference and those concerns raised about it (which I referred to in the previous e-law), we have worked hard to bring you

articles that offer a range of perspectives and insights on how UKELA and the wider environmental law profession can strengthen commitments to diversity and inclusion.

This summer's events with the Black Lives Matter movement opened up the space for all of us to reflect and consider what our own commitments to the issue might be. For UKELA, we felt it important to give space for a diverse range of perspectives to be shared not only in these pages, but also on our events platforms. I do hope that you will find the subject of the Garner Lecture of interest and I look forward to (virtually) seeing many of you there to hear from Judy Ling Wong CBE.

I was struck by the clarity and openness of the contributions that both shone the light on the problems (structural and systemic issues that prevent the environmental law profession from being more diverse and inclusive) as well as highlighted solutions and positive actions that can be taken to overcome the challenges faced by those who are disadvantaged as a consequence of their ethnicity and race. I am very grateful to all contributors for their pieces and I hope you find them interesting and informative reading.

I outlined in the previous edition some of the steps UKELA has taken to do more in this area. You will see in this edition an invitation to join UKELA's Diversity and Inclusion Team and Members Forum, and I do hope you consider joining. These are newly established committees for UKELA that will help us proactively look at what more we can do to ensure we are aligning our actions with our commitment to diversity and inclusion.

On this rather blustery autumnal day, news develops apace about further Covid-19 restrictions across the country. Perhaps, like me, many of you are looking ahead to the prospect of Winter with enhanced restrictions and limited opportunities to meet with friends and family with a sense of trepidation. As social creatures these altered times have, and will continue to be, challenging to manage; but I hope that in UKELA – our online content and events – you might find connecting to colleagues and friends helps brighten the winter months.

Looking ahead to 2021 we are thinking deeply about what it is that you – our members – might like from us. To this end please do look out for our members' survey that we will be sending to each of you to gather your views and ideas on the kind of content you will find interesting and informative as well as how you might like to see our online platforms evolve to support remote and virtual interactions. I look forward to receiving your ideas and responses and putting those into practice for you next year!

Over the summer we ran a series of 'In Conversations With' where I grilled different UKELA members on how they had been managing during lockdown and how they had adapted to the altered working conditions. I hope you enjoyed watching those. I thoroughly enjoyed all of the conversations and want to thank everyone who participated. It was very generous of you to let us peer into your homes and hear your stories and anecdotes; as well as to share your ideas of what you think the long-term impacts of the pandemic will have on environmental law. We are thinking of a new series of interviews for the Winter months and you will have a chance to make suggestions for these in the survey – so please do share your suggestions!

For now, I trust you and yours continue to be well. Thank you for your continued support and loyalty to UKELA. Our financial footing strengthens as you book your events with us, so thank you for participating in those. Membership renewal season is also upon us and I do hope that you decide to retain your membership with us. You will see that Council has decided to freeze membership prices to thank you for your support this year, and I do hope you are able to renew with us once again.

All the very best, and I hope to see many familiar faces at the upcoming Garner Lecture

Kirsty Schneeberger

Kirsty Schneeberger MBE
UKELA Chair

UKELA news

Membership subscriptions

The Trustees are pleased to announce that next year's membership subscriptions will be frozen at 2020 levels. We are incredibly appreciative of the continued support from our members throughout this most extraordinary of years, with the vast majority of you staying engaged and connected. In recognition of this fantastic loyalty, the trustees have taken the decision to keep membership subscription rates at current levels for another year, which we hope will help our members to stay in touch with UKELA and each other.

We will also continue to provide a rich resource of content for you to make sure that your membership remains excellent value for money. Look out for more online events – webinars, conferences and careers events; as well as more interviews with members and others. We will continue to provide the expert voice on environmental law when responding to government consultations, via our working parties and the governance & devolution group. We welcome your feedback on any aspect of UKELA's offer to our members. If you would like to get in touch, please contact our Operations Director, [Alison Boyd](#).

Paying for events

We are making some small changes to the way you pay for our events and membership. From now on, we will only be accepting payment by debit or credit card. The option to pay by cheque will be withdrawn and payment by direct transfer into our bank account will be by exception only. We know that the majority of our members already pay by card, so there is no change for them, but understand that this does mean a change for some of you. However, payment by methods other than a card payment is costly for the organisation and takes up valuable staff time, particularly in chasing non-payments. In the case of cheque payments, this represents a COVID-19 risk that we are keen to eliminate. You will notice that the option to 'pay later' will disappear from our website when you sign up for an event or renew your membership as well. Thank you for your support to help us move to a more efficient, safe and cost-effective way of managing our activities.

Join our Diversity and Inclusion Team

We hope you are enjoying this edition of elaw which is focusing on diversity and inclusion in environmental law. You may have seen that UKELA now has a Diversity and Inclusion team – this team is currently made up of 4 trustees and the Operations Director and is tasked with, among other things, understanding and monitoring the diversity of UKELA; developing ways to improve that diversity and raising awareness about lack of diversity in the wider environmental movement. We are looking to add to this team from the wider UKELA membership. Might you be interested in joining us?

We are particularly keen to recruit members who have lived experience of diversity and inclusion matters. The commitment would be to join a team call once every quarter, the purpose of which will be to keep under review the agreed terms of reference (TOR) and take forward any agreed actions identified under the TOR; and then to report back to UKELA's Council and the membership on progress. It would give the right candidate the opportunity to help UKELA keep its own house in order as we seek to influence change in the wider environmental law network. If you are interested in applying, please send an email to alison@ukela.org by close Friday 30 October 2020, outlining briefly why you would like to join the team and what you would bring to the post. Please note this is a voluntary position and we expect that all meetings will take place virtually for the foreseeable future. We look forward to hearing from you.

Diversity and Inclusion Members' Forum

Would you like to join our members' forum looking at diversity and inclusion issues within UKELA and the wider environmental law network? As you will have read elsewhere in this edition of elaw, UKELA is working hard on our own approach to diversity and inclusion, whilst seeking to influence progress in the wider environmental law field. We have a Diversity and Inclusion Team (see our separate item about joining that team) who meet quarterly to take forward detailed actions within an agreed Terms of Reference. This team is keen that its actions and decisions are monitored and scrutinised by a representative body of UKELA members. This is where the Members' Forum

comes in. We are looking for 4-5 members, ideally those with a lived experience of diversity and inclusion issues, to sit on our Diversity and Inclusion Members' Forum. The commitment would be to meet twice a year to review progress from the preceding six months and give feedback, as well as to provide a link to the wider membership (for example, by providing a short report for elaw). If you are interested in joining this forum, please get in touch by email to alison@ukela.org by close Friday 30 October 2020, outlining briefly why you would like to join the Members' Forum and what you would bring to the post. Please note this is a voluntary position. We expect the forum to meet virtually for the foreseeable future. We look forward to hearing from you.

UKELA working party news

Working party and governance & devolution group (GDG) update

Readers will be aware that UKELA's working parties were active at the UKELA Annual Conference running a range of current and informative specialist sessions relating to climate change, litigation, nature conservation, public health and noise. Soon after, many embarked on responding to what has become a busy summer of consultation papers issued by various government departments. These include detailed submissions on the Environment, Food and Rural Affairs Committee inquiry on Air Quality (6.8.20), led by the nature conservation working party but with input from the public health and environment working party and the climate change and energy working party and detailed responses to the Ministry of Justice on the departure from retained EU law (13.8.20), led by the environmental litigation working party.

Law and policy proposals continue to come forward and the following are now underway: a consultation response to the Environment Agency's consultation on river basin management led by the water working party with input from the nature conservation working party; drafting submissions to the Government White Paper: Planning for the Future led by the planning and sustainable development working party drawing on input from across the working parties via GDG and responding to the Independent Review on Administrative Law being formulated by the environmental litigation working party but again drawing in expertise from the GDG and across the working parties. Look out for calls for comment from the working parties and if you have an interest providing input into any work of this nature please do not hesitate to contact [Paul Stokes](#) who can direct you and/or liaise with the relevant working party.

The first GDG meeting was held in July 2020, following the formal closure of the Brexit Task Force (BTF) in January 2020. The GDG comprises one working party convener per working party plus Council members, and some previous members of the BTF. The GDG has also been very active over the summer in publishing law and policy consultation responses including: submissions to the Public Bill Committee on the Environment Bill and detailed submissions to the House of Lords sub-Committee on maintaining a level playing field in law post Brexit. It has also continued to represent UKELA at the OEP stakeholder meetings arranged by Defra.

The first meeting recognised that we expect a considerable amount of work in the coming months including (but not limited to) matters relating to divergence of law between England, Northern Ireland (NI), Scotland and Wales (something considered by the Governments' common frameworks progress), updating previous work on International Environmental Law (published in 2017), a review of proposals on environmental governance including a comparative analysis between England, NI, Scotland and Wales and work on Brexit SIs. The current co-chairs, Angus Evers and Begonia Filgueira are proposing to step down at the start of next year (they intend to stagger their departure and to stay on the GDG to aid continuity). The next GDG meeting is scheduled for 14 October 2020.

Student news

Student adviser role offers career development

UKELA is offering a student with the right skills and outlook an opportunity to join our student team as a Student Adviser. UKELA typically has two Student Advisers at any one time who work with the support and supervision of our Trustees and staff.

The role of student adviser involves:

- Advising UKELA's Council on how to make our services relevant and accessible to student members throughout their education and professional development.
- Working with student contributors on articles for our members' journal, e-law.
- Managing student mailings, maintaining mailing lists and social media posts to keep members up to date.
- Ensuring the student section on the [website](#) is up-to-date.
- Providing practical input on specific initiatives, such as our moot competitions and student bursary scheme.

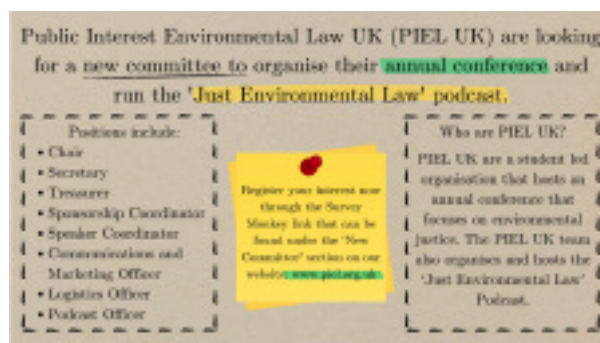
Ideally, the student adviser will attend Council meetings (via Zoom until further notice) and be available to discuss ideas with UKELA staff and Trustees responsible for the student programme. The adviser is also expected to attend or assist with (as appropriate) our student careers advice sessions and the moot competition finals day (typically held in Spring or early Summer). Please note both are online until further notice. Student Advisers are volunteers and may benefit from a free place at UKELA's annual conference (subject to budgetary restraints). All reasonable travel and subsistence costs are refunded.

If you would like to be considered for this two-year role, please send a CV and succinct covering letter addressed to UKELA's Operations Director, Alison Boyd via email (elly-mae@ukela.org).

One of UKELA's existing Student Advisers, [Beatrice Petrescu](#) would be pleased to have an informal discussion in advance of your application. Zoom interviews will be held with shortlisted candidates the week commencing 23 November 2020.

The closing date for applications is midday on Monday 2 November 2020.

Public Interest Environmental Law UK (PIEL UK) are looking for a new committee



Interested students should complete the survey monkey sign up link which can be found [here](#) or on the 'New Committee' section of the [PIEL UK website](#). Full contact details are also on the website and PIEL UK are also happy to answer any questions at pieluk@googlemail.com. They are planning to hold a webinar outlining committee roles in the first week of October and will be sharing further details with students who register their interest.

UKELA student members' Facebook group

Want to link up with fellow UKELA student members to share your views and have discussions during this time of social distancing? If so, please join our [UKELA Student members' Facebook group!](#)

Student publication opportunity

Interested in co-authoring a hot topic article with an environmental professional? UKELA provides an opportunity for students to publish their work in e-law, our members' journal which is circulated to over 1400 practitioners. Students are invited to email a short abstract of up to 500 words to [Sophie Tremlin](#) or [Beatrice Petrescu](#), our student advisors. If selected, the Editorial Board will aim to pair students with a supervising practitioner in that field. Articles can be on the e-law issue theme or on any topic related to environmental law. The theme of the next issue is energy efficiency and buildings, expected to be published in December 2020.

UKELA events

Meet the Filmmakers: Sir David Attenborough, A Life on our Planet: 22 October 2020

Following the launch of World Wildlife Fund's new film, David Attenborough: A Life on Our Planet we are delighted to be hosting a special Q&A session with the filmmakers. This is an exclusive opportunity for UKELA members only. It is free to attend and we recommend you try and watch the film in advance. Find out more and [register](#) on our website.

Annual Garner Lecture: 4 November 2020

Join us online for one of the main highlights of the UKELA year, where we are delighted to welcome Judy Ling Wong CBE as our distinguished speaker for the Annual Garner lecture 2020. Judy will be introduced by our Patron, Maria Adebowale-Schwarte.

The theme of her lecture will be on what environmental lawyers (and UKELA) can do to address and promote inclusion and diversity in environmental law. She will provide insights or parallels with addressing and promoting inclusion and diversity in the wider environmental movement, linking into aspects of environmental justice, environmental policy and climate change. This event is kindly sponsored by Freshfields Bruckhaus Deringer.

Read more about Judy's work on her [website](#) and that of the [Black Environment Network](#).

Registration is required for this event. Please log in to the website to [book your place](#).

Careers Advice Session – Wales: 11 November 2020

Join us for a careers advice session on training and working in environmental law aimed at those based in Wales.

We are pleased to offer a range of careers advice sessions starting with a special Wales event. The event will be a Zoom meeting for an informal session. Once our advisers have spoken there will be plenty of opportunity to ask any questions so please do come prepared. Registration is required; spaces are free but limited to 25 so [book now!](#)

Introduction to wildlife law course 2020: 16-20 November 2020 – now fully booked, join the waiting list!

Join us for the first ever online 'Introduction to wildlife law'. This course will be spread across five afternoon sessions, giving participants plenty of opportunities for breaks away from the screen and for individual study. This event is kindly sponsored by Browne Jacobson LLP.

More details on our [website](#). Join the waiting list by [getting in touch](#).

Young UKELA the basics: Energy and Renewables – Energy for the Future: 25 November 2020

We are pleased to bring you a seminar looking at the basics of law in the energy and renewables sector. We have expert speakers lined up to update you on the latest hot topics. More details on our [website](#).

Non UKELA events

Q&A: Christmas Lecturer talks geoscience, climate change, and diversity

Imperial's [Professor Chris Jackson](#) will give one of three [Royal Institution Christmas Lectures](#), the [first Black scientist](#) to do so. The lecture, 'Planet Earth: A User's Guide' will focus on climate change – including its history, and the natural and human processes that drive it. In this Q&A, he discusses the lecture, and the importance of role models in diversifying science. "The extremes [climate change] brings will overwhelmingly affect the most disadvantaged among us globally," he said. "This is a time where empowering these people is vitally important".

The e-law 60 second interview



Ginny Butcher

Ginny Butcher graduated top of her class in LLB (Hons) Law and has recently completed the LPC LL.M, achieving a distinction. Ginny participated in UKELA's Annual Conference this year, presenting a Speaker's Corner, and previously acted as the UKELA South West Student Ambassador. As a physically disabled woman, Ginny is passionate about diversity and inclusion, equity, and social justice, and has published a number of articles in the field of disability activism.

What is your current role?

I just graduated from the LPC LL.M course at the University of Law in Exeter, and now I am job hunting.

How did you get into environmental law?

During my undergraduate degree, the late and great Polly Higgins gave a lecture at my university on ecocide. I attended and was absolutely riveted. I then chose to study environmental law as an optional module, and it went from there.

What are the main challenges in your work?

It's not really a job-seekers market at the moment!

This edition of elaw is on a theme of diversity and inclusion in environmental law. What one action could the environmental law community take to improve the opportunities and career path for those in under-represented groups?

Accessibility is the key. From a disability perspective, this might mean providing live captions or British Sign Language interpreters at events, or publishing all documents in an alternative 'plain English' format. Accessibility could also mean ensuring low cost memberships and event discounts for people from low-income backgrounds or first-generation university students. Improving accessibility works for everyone, and the benefits are often boundless.

What environmental issue keeps you awake at night?

The destruction of our oceans and waters. I'm hugely passionate about marine biology and wrote my undergraduate dissertation on live wrasse fishing (of all things). If I can't sleep, I'm probably thinking about whaling, or salmon farming, or vaquitas.

What's the biggest single thing that would make a difference to environmental protection and well-being?

Liability for big businesses. If we could find an enforceable and impactful way to hold corporations, companies, and private bodies accountable for their environmental impact and damage, I think it would go a long way towards lasting environmental protection.

What's your UKELA working party of choice and why?

Probably the nature conservation group, because you can't beat the protection of flora and fauna in my opinion.

What's the biggest benefit to you of UKELA membership?

Most definitely the events and networking opportunities. I have met an array of wonderful people through UKELA, and have enjoyed a number of insightful lectures, conferences, and panels.

Environmental law headlines

A selection of recent environmental law news and updates prepared by the teams at [Lexis®PSL Environment](#) and [Practical Law Environment](#).

Government publishes updated guidance on meeting climate change requirements after transition period

[Practical Law Environment](#)

On 19 August 2020, the UK government published updated guidance on meeting climate change requirements after the end of the Brexit transition period on 1 January 2021.

The guidance covers:

- EU Emissions Trading System (EU ETS) compliance and operations, including details of the dates when Union Registry accounts will remain available to UK operators.
- Changes to licensing for geological storage of carbon dioxide.
- The information that UK and EU suppliers placing energy-using products on the EU and UK markets will need to provide and the ecodesign and energy labelling standards that they will need to comply with.

The guidance reflects the notices on the impact of the UK's withdrawal from the EU on the EU ETS and Ecolabel scheme published by the European Commission on 7 July 2020 and 26 June 2020 (respectively).

For more information, see [Legal update, Government publishes updated guidance on meeting climate change requirements after transition period](#).

Environment Bill policy paper on environmental targets

[Lexis®PSL Environment](#)

On 19 August 2020 the Department for Environment, Food and Rural Affairs (Defra) published the [environmental targets policy paper](#) as an accompaniment to the Environment Bill. The paper sets out:

- How Defra intends to develop 'ambitious, legally binding targets' to combat environmental and climate challenges.
- An overview of the scope of targets being considered.
- Information on the sources used to set targets and how stakeholders can get involved.

The power to set long-term environmental targets is

considered by Defra to be an important aspect of the Environment Bill. As well as a means to monitor government actions on important environmental issues, the targets provide certainty to businesses in planning for the future and stimulate investments in green technology and innovation. The first targets are expected to be brought forward by 31 October 2022, after which time the government as well as the new environment watchdog, the Office for Environmental Protection, will report annually on the progress being made in improving the natural environment in accordance with these targets.

The government is already required to set at least one target in four priority areas: cleaner air, cleaner water, less waste and more biodiversity. The policy paper explains that further priority areas and targets can be introduced, based on ongoing scientific research and stakeholder consultation, to ensure that present and future governments continue to tackle 'the most pressing or newly emerging issues'. The first public consultation is expected to take place in early 2022.

For more information, see: [LNB News 19/08/2020 10](#) and News Analysis (from February 2020): [Environment Bill 2020 – analysis of the first reading](#).

Shipments of animal by-products are excluded from EU Waste Shipments Regulation unless mixed with or contaminated with hazardous material (ECJ)

[Practical Law Environment](#)

On 3 September 2020, the Court of Justice (ECJ) gave its decision in three joined cases, *XN and others v Openbaar Ministerie* (Cases C-21/19, C-22/19, C-23/19) EU:C:2020:636. The case concerned criminal proceedings against PF Kamstra Recycling and two of its employees (XN and YO), in relation to shipments of mixtures of animal by-products and other material from the Netherlands to Germany. The shipments consisted partly of animal by-products and partly of other material, and the company had not notified the authorities nor obtained their consent under the EU Waste Shipments Regulation ((EC) No 1013/2006). The mixture of animal by-products and other material constituted Category 3 material under the EU Animal by-products Regulation ((EC) No 1069/2009).

The Netherlands court requested the ECJ give a preliminary ruling concerning whether the shipments of the mixtures fell within the scope of the EU Waste Shipments Regulation or the EU Animal by-products Regulation.

The ECJ confirmed that shipments of animal by-products falling within the EU Animal by-products Regulation were excluded from the scope of the EU Waste Shipments Regulation, except where animal by-products were mixed with or contaminated with hazardous material. The court also highlighted the differences in the definitions of by-product under the Waste Framework Directive (2008/98/EC) and animal by-product under the EU Animals by-products Regulation, noting that the concepts of by-product and waste were mutually exclusive under the Waste Framework Directive, whereas animal by-products under the EU Animal by-products Regulation may be waste within the meaning of the Article 3(1) of the Waste Framework Directive.

For a detailed analysis of the court's conclusions, see [Legal update, Shipments of animal by-products are excluded from EU Waste Shipments Regulation unless mixed with or contaminated with hazardous material \(ECJ\)](#).

Indicators for the resources and waste strategy

[Lexis®PSL Environment](#)

On 18 December 2018, the Department for Environment, Food and Rural Affairs (Defra) published the Resources and Waste Strategy (RWS) for England, which set out the government's plans to preserve material resources by minimising waste, promoting resource efficiency and moving towards a circular economy.

On 6 August 2020, Defra published the first edition of '[Monitoring Progress](#)', the purpose of which is to monitor the government's progress in achieving key strategic objectives outlined in the RWS, in addition to relevant objectives set out within the 25 Year Environment Plan, the Clean Growth Strategy, the Industrial Strategy, and the Litter Strategy. The report includes at page 5 an Indicator Framework for Monitoring the RWS, laying out 'headline indicators' in six priority areas against which progress will be measured.

Monitoring Progress was published alongside an [evaluation plan](#), which establishes how policies implemented as part of the RWS will be evaluated in order to measure the strategy's effect on waste and resource use. It sets out evaluation principles, quality assurance mechanisms and a range of methods for assessing the attribution of policies to outcomes.

Taken together, these documents are intended to provide a 'systematic, regular and comprehensive picture' of the impacts, outcomes and progress of the RWS.

For more information see: [LNB News 01/01/0001 2642](#) and News Analysis (from December 2018): [Government publishes resources and waste strategy](#)

Circular economy package statement

[Lexis®PSL Environment](#)

In 2015, the European Commission proposed the [Circular Economy Package](#) (CEP); a revised legislative framework which identified 'steps for the reduction of waste and establishing an ambitious and credible long-term path for waste management and recycling'.

The CEP's objectives are to reduce the adverse impacts of waste generation and the overall impacts of resource use by ensuring appropriate application of the waste hierarchy, placing restrictions on landfilling and incineration and through changes to the arrangements affecting hazardous waste and waste oils. It sets a target to recycle 65% of municipal waste by 2035 and to have no more than 10% municipal waste going to landfill by 2035.

On 30 July 2020, the [Circular Economy Package policy statement](#) (the Policy Statement) was jointly published by Defra, the Scottish Government, the Welsh Government and the Department of Agriculture, Environment and Rural Affairs (Northern Ireland). The Policy Statement concerns the UK-wide implementation of the CEP, which entered into force in July 2018.

The Policy Statement builds on the Resource and Waste Strategy, the 25 Year Environment Plan and the Welsh Government strategy 'Beyond Recycling'. It outlines the key changes made by the CEP and provides at Annex I the steps the UK will take to meet its legal obligation to transpose the 2020 measures through UK legislation. Annex II contains the Regulatory Triage Assessment assessing the costs and benefits of the proposed changes and, lastly, Annex III outlines proposed updated guidance on the Packaging and Packaging Waste Directive.

The Policy Statement is an important part of the UK government's existing commitment to move towards a more circular economy and reach net zero greenhouse gas emissions by 2050.

The Waste (Circular Economy) (Amendment) Regulations 2020, SI 2020/904 came into force on 1 October 2020 and transpose the CEP in England and Wales, and partially for Scotland and Northern Ireland.

For more information see: [LNB News 30/07/2020 54](#) and News Analysis: [Government publishes Circular Economy Package Policy Statement](#) and [Waste \(Circular Economy\) \(Amendment\) Regulations 2020—News Analysis](#).

Government consults on mandatory TCFD climate governance and reporting for large occupational pension schemes

[Practical Law Environment](#)

On 26 August 2020, the Department for Work and Pensions (DWP) published a consultation on taking action on climate risk and improving governance and reporting by occupational pension schemes.

The proposals will require large occupational pension schemes with £5 billion or more in assets, all authorised master trusts and authorised collective money purchase schemes to:

- Put in place effective governance, strategy, risk management, and accompanying metrics and targets for the assessment and management of climate risks and opportunities, from 1 October 2021.
- Publish climate risk disclosures in line with the Task Force on Climate-related Financial Disclosures (TCFD) recommendations within seven months of the end of the scheme year underway on 1 October 2021, or by 31 December 2022 if earlier.

The consultation proposes that a complete failure to publish a TCFD report would be subject to a mandatory penalty imposed by the Pensions Regulator.

The government plans to extend these requirements to occupational pension schemes with £1 billion or more in assets from 1 October 2022 and, subject to a review of the requirements in 2024, to consult on extending them to all other schemes.

The consultation closed on 7 October 2020. For more information, see [Legal update, Government consults on mandatory TCFD climate governance and reporting for large occupational pension schemes](#).

Government consults on prohibiting use of products grown on illegally deforested land

[Practical Law Environment](#)

On 25 August 2020, the Department for Environment, Food and Rural Affairs (Defra) published a consultation to inform the government's response to the Global Resource Initiative (GRI) taskforce's March 2020 recommendation on mandatory due diligence requirements to make international supply chains greener. The consultation proposes to introduce laws that would:

- Prohibit large businesses operating in the UK from using products grown on land that was deforested illegally (known as forest risk commodities).
- Require those businesses to carry out due diligence on their supply chains and publish information to

show where key commodities came from and that they were produced in compliance with local laws protecting forests and other natural ecosystems.

- Impose fines and other civil sanctions on businesses that fail to comply with these requirements.

The consultation closed on 5 October 2020. If the government decides to legislate, it will consult again on secondary legislation prescribing the commodities to be included within the new law and on the due diligence steps that businesses would need to take.

For more information, see [Legal update, Government consults on prohibiting use of products grown on illegally deforested land](#).

The extent of a landlord's contractual right to enter land 'for all reasonable purposes' (Rees v Windsor-Clive)

[Lexis®PSL Environment](#)

In *Rees v Windsor-Clive* the Court of Appeal (CA) considered the practical meaning and extent of a landlord's right to enter land 'at all reasonable times and for all reasonable purposes'. This case concerned farmland leased to a tenant, which the landlord entered in order to undertake certain activities (including a habitat survey) in compliance with conditions attached to planning permission relating to the land.

The lower court held that the permissible rights did not extend to those which cause damage to the land or significant interference with the operation of the working farm. However, it was found that the landlord's right of entry extended to conducting environmental and other surveys in connection with permitted development of the tenanted farm, and to do the things incidental to such surveys. The latter included the installation of 'Anabat' detectors to trees for a few days to map the nocturnal patterns of bats.

In dismissing the tenant's appeal, the CA confirmed that such rights should always be read in a common sense way, so as to allow them to work in a sensible fashion. It will only unlawfully derogate from the grant of exclusive possession and/or interfere with the right of quiet possession where there is a substantial, serious, or significant interference with the tenant's rights. That is a question of fact and degree and involves consideration of whether the purpose of the letting is frustrated: that is a high threshold. While each case must be considered on the facts, this decision confirms that landlords have latitude and flexibility when relying on rights of entry.

For more information, see: *Rees and another v Windsor-Clive and others* [2020] EWCA Civ 816 and News Analysis: [The extent of a landlord's contractual right to enter land 'for all reasonable purposes' \(Rees v Windsor-Clive\)](#)

Diversity and inclusion in environmental law

Building impetus – Black Lives Matter and environmental law



Judy Ling Wong CBE

At a glance

This article looks at building impetus towards integrating diversity, equality and environmental law through addressing:

- The need to harness the power of citizens to play their role alongside professionals.
- The potential scope of environmental law within the vision of an environmentally friendly economic system.
- The identification of specific actions bridging the diversity, equality and environmental law sectors.

Diversity, equality and environmental law

We all operate within a battlefield of ideas. How we draw on our experiences to shape how we think determines how we act. Black Lives Matter has made its mark in powerfully touching the heart and connecting a vital message to the mind to work towards change. The expanse of global goodwill is staggering. But goodwill is never enough. There is work to be done to translate goodwill into effective action. Environmental law is one of the powerbases of our societal framework. Specifically, there is the fundamental task of finding the meaning of taking on the theme of diversity and equality in the context of this particular arena of expertise.

At the Garner Lecture, on 4 November, I aspire to give impetus to the search for a dynamic relationship between environmental law, and diversity and equality. In this article, I will touch on various dimensions to set the scene. I will draw on how we may shape our responses to aspects of the impact of three dimensions of our present lives – Covid-19, climate change and Black Lives Matter.

Law is a prime locus of power within the framework of society. Parallel to it is another oft-unrecognised locus of power – emotion, the driver of action. The message of Black Lives Matter has shaken all of us. The combination of structures of power and emotion is formidable when they come together. Not so long ago, when the UK government proposed to sell off the

national forest estate, a wave of emotion moved through the population, but most significantly, through those with intimate links to power, such as members of the National Trust. To them it was not acceptable to let go of forests, an essential component of their concept of the natural environment, and its place in their lives. The idea of losing the national forest estate struck at the centre of personal and national identity, at a way of life. The astonishing thing to note is that the UK government dropped the matter within three days. Paying attention to how we connect at the levels of hearts and minds is crucial to how we may successfully and strategically engage people, professionals or citizens to put effort into influencing the structures that determine whether something that is valued becomes or remains a living thriving reality.

At this point, I would like to bring to mind the fact that putting diversity and equality into place is not about doing a favour to particular groups of people. It is about the vision of a cohesive, inclusive and effective society of which we can all be proud. The impact of how George Floyd died is not the result of a single incident. Historically, the relationship of the USA police and people of colour has been a continuous trail of pain that stretches back to the transatlantic slave trade. The sudden prominence of Black Lives Matter is the combination of a most horrendous incident with a societal tipping point. All of our consciousness has been gathering force for some time. The UK also had its own notable experience around the murder of Stephen Lawrence, which fuelled many actions that have changed British society, and put the 'duty to promote race equality' into the legal framework.

Opportunities and questions

Against the pressure of 20th and 21st Century life, keeping even the most pressing societal issues at the top of the agenda is a challenge, so I welcome the opportunity to engage with you all on the complex journey before us. The three key experiences pushing at our consciousness for our attention at the present time are delivering an intriguing challenge. There are new forces beckoning us with the potential of forging very different solutions, with implications for the environmental law sector.

Firstly, the value of family and community is not somehow new, but the enforced retreat of the Covid lockdown has brought into sharp focus that, in a crisis, we are OK as long as what matters at the core of our lives – family and community relationships – are functioning well. The rest is paraphernalia. This consciousness, brought to the forefront of our minds, combines with another interesting aspect. Various of my middle class friends have been telling me stories of how they were astonished at the amount of money piling up in their bank accounts. Unable to go out and spend money on non-essentials, the monetary gap between themselves and the have-nots is plain to see. They have surprised themselves in their capacity in adapting to massive changes in their lives. Can this bear the potential of politicians grasping the willingness of more people to share and create a more equal society to create a sea change in tax policy? Sharing is at the heart of equality. The tragedy of contemporary life is that in a world of plenty, we refuse to share. Daily we watch people eating themselves to death while others line up at food banks. Through the lens of environment, poverty also leads to environmental degradation. The poor in many countries, just to cook, have to chop down trees. In the UK, the need for cheap food and goods coerce people to fuel environmentally aggressive practices that destroy soil, pollute our world, kill our bees, and attack health here and across our planet. Many are more ready for a set of different answers to ways of being and acting.

Question: how does the environmental law sector use this new readiness to engage differently to harness the power of people to play their role in the use of environmental law to protect nature and people?

Secondly, the reality of climate change keeps pushing at our doors of consciousness in the most dramatic way. These intense confrontations have combined with the experience of a partial collapse of our societal framework through Covid. There was the burning of Australia, and right now the wildfires in California. Here in the UK, there is flooding, continuing to get worse, and more often. So much so that taxi drivers are talking about building on flood plains. Heatwaves in cities cause unavoidable suffering and death. As the impact of elements of climate change and their increasing intensity manifests itself, there is no escape. The spectre of total societal collapse has become more real. But significantly, against all of this, the value of science is gaining prestige against the experience of Covid. The voice of science is beginning to gain traction in the public consciousness and the underpinning of policy. Many recognise that we can meet the massive changes with the potential of heading in another direction. We are talking about building back better to replace environmentally destructive activities with greener initiatives and savvy operational methods that create a different and flourishing economy.

Question: what is the scope and role of environmental law within a new vision of an environmentally friendly economic system, and what is the information, knowledge and support that ordinary people need to be effective, working in tandem with law?

Thirdly, Black Lives Matter accentuates the knowledge that we are fundamentally social beings, able to empathise and to be moved to commitment and action through emotional identification. It is feeding our motivation to seek understanding and to be a part of the diversity and equality movement. It is no news to any of us that in all environmental scenarios, the negative impact falls most heavily on the poor and on people of colour. We know all of this – whether it is local air pollution and other industrial pollution, lack of quality housing, overcrowding in localities with no access to green spaces or green elements, the depressing bleakness of neighbourhoods, educational debt, lack of youth services or activities, children that come to school hungry, the huge psychological burden of lack of hope because of discrimination in employment and promotion, or the damage to young people's sense of self from stop and search. The list just goes on. The George Floyd matter points to the fact that law is not enough. We need citizen vigilance. We need access to the understanding of the detail of law, how it fails us through lack of enforcement, or the flaws in structures for implementation, and what can be remedied. Above all we need environmental lawyers to defend us while they draw strength and inspiration from the presence and the power of diverse voices.

There is an extra dimension to diversity. Black and ethnic minorities are intrinsically local and global people. We have living links to their countries of heritage that fuel us with passion for issues in countries across the world. Racism wreaks suffering within a nation, and across the world as historically whole countries have been and are exploited without conscience because of the colour of people's skin.

Question: how will the environmental law sector identify the actions needed in terms of the enforcement of existing law, the formulation of new laws and the role of citizens, working across the sectors of environmental law, diversity and equality?

Moving into the future

It is important that we work to harness the emergence of motivating layers of consciousness. Covid has alerted us to interconnectedness, and the role of damage and encroachment on nature in creating pandemics. Climate change confronts us with an existential threat. Black Lives Matter has highlighted that suffering across all of this is not equal. Against all of these pressures, there are crucial elements of mass awakening that changes the dynamics for the better.

Websites are full of statements of support for Black Lives Matter across all sectors. It is time to grasp the opportunity and look at the specific contribution of the environmental sector.

I have set the scene in this short piece, and invite you all to join with me at the Garner Lecture. Let's look at the scenario and the potential elements of a programme of activity. What other questions do we need to define the arena of our explorations and to move us towards the answers and the actions together? No doubt diverse citizen voices will be a key theme.

In the Chinese language, we do not have single-word adjectives, we have word phrases for adjectives. So, what we have for 'an educated person' is 'a person that has learnt to ask questions'. I often find that if one can formulate a good question, one is already halfway to the answer.

I look forward to engaging with you all to move us all into a more optimistic and brighter future.

Judy Ling Wong, painter, poet and environmentalist is best known as the Honorary President of Black Environment Network (BEN). She was awarded an OBE for pioneering multicultural environmental participation in 2000, and a CBE for services to heritage in 2007.

Diversity, equity and inclusion in environmental justice

Consolata Uwarobosa Enobakhare

At a glance

- Racism is real and Black Lives Matter.
- Environmental racism happens in a spectrum, and women from racial minorities in low-income groups bear a disproportionate burden of environmental risks within their communities.
- This article asserts the importance of diversity in the legal profession and highlights how the inclusion of minority ethnic groups within the sector could bring about a truly transformative environmental justice movement.

Introduction

The unjust and racially motivated killings of black men and women in the US over the last three months, coupled with the quietness and self-reflection time only a global pandemic can force upon individuals, have resulted in a re-ignition of social and racial justice conversations that have always been problematic in our society. Following these traumatic events, the Black Lives Matter movement sparked a plethora of protests around the world against police brutality, demanding racial justice across all sectors. Black and minority groups are now using this painful opportunity to share their (lived) perspectives and realities in the hope of steering the general consciousness into reflecting on a system that by default is prejudiced against them.

As a young black woman in the early stages of my career in environmental law and policy research, there have been a few striking realisations concerning the inextricable links between gender equality, climate justice and the representation of people that look like me in the environment conservation sector. I have therefore found myself reflecting on how sexism and racism in the form of misogynoir¹ manifest within the sector, and how this intersection perpetuates oppression within the environmental justice movement itself.

Although Black and Minority Ethnic (BME) communities have unique and historically different identities, the type of inequalities faced in the workplace are to a certain extent similar, placing minorities at the receiving end of environmental racism, a form of systemic racism.

This article thus argues that given the intersectional effects climate and environment breakdown have on BME communities, the environment conservation

movement cannot continue drawing support and interest mainly from the upper-middle class male segment of the population.

Race, class and environment – an inevitable correlation

Environmental justice embraces the principle that all people and communities have a right to equal protection and equal enforcement of environmental laws and regulations. However, the reality is that the system within which people and communities operate is one where sexism and racism exacerbate each other creating particular challenges for black women.

As has been advocated by Friends of the Earth (FoE), climate change and air pollution issues are race issues.² In 2019 FoE conducted a study with the help of communities up and down the country, which exposed the illegal air quality conditions in thousands of UK locations.³ In addition a UK government report on Racial Equality Impact Assessment found higher risk of exposure of black British children to air pollution than white children.⁴ Such findings are not confined to Britain. A study conducted in the US on environmental racism shows that the race of an individual is often a reliable predicament or indicator of proximity to pollution.⁵ The effects of this correlation can be examined both in distributive justice terms (relating to the distribution of environmental burdens) and in procedural justice terms (relating to the decision-making process that lead to those distributions).⁶

The tragic story of nine-year-old Ella Kissi-Debrah, who lived close to one of London's busiest roads, is a painful example of how vulnerable members of society are increasingly harmed by air pollution (described as a 'hidden but deadly killer' by her mum).⁷ Ella died after a respiratory failure resulting from a severe asthma attack.⁸ In the three years of severe seizures leading to her death, there were spikes in the local air pollution levels that regularly breached EU legal limits.⁹ At the beginning of 2019, following the new evidence gathered, the Attorney General commissioned a further inquest to investigate whether Ella's death could be linked to unlawful levels of nitrogen dioxide in the air. Securing justice for the breaches of Ella's 'right to life'¹⁰ and 'right to health'¹¹ are a necessary step towards addressing the impact of pollution on human health. The disproportionate exposure and impact of Covid-19 on BME groups in



the UK is another public health reality that highlights the racial inequalities within the system.

Indigenous, black and brown communities around the world are more vulnerable to air pollution because of racism that sees them commonly located near belching factories, smog-filled highways, exploding pipelines and other extractive infrastructure which is driving the climate crisis. Within such areas described by Klein as 'sacrifice zones',¹² BME communities have less power to reject development plans and less leverage to propose divestment from polluting activities. On the other hand, richer, whiter communities are better equipped to fight off highways or terminals in their neighbourhoods, polluting factories and oil and gas pipelines.

Social justice, environmental justice and BME in the legal profession

We cannot address environmental injustice without questioning the racial, class and gender-based discrimination reality upon which it stands. Therefore, another link worth exploring is that between climate justice and social justice and how this impacts access to the legal professions in England and Wales.

In 2017 a study by Policy Exchange found that 'environmental professionals'¹³ are the second least diverse professions in the UK.¹⁴ Analysis has found that just six out of more than 800 UK-based partners at Magic Circle law firms are black.¹⁵ However, a study of the Solicitors Regulation Authority found that, female Black, Asian and Minority Ethnic (BAME) entrants to the legal profession have increased. Nevertheless, black people are still under-represented and female professionals are still disadvantaged in terms of career progression.¹⁶ This is evidence of a double burden attributable to the intersection of female-gender and minority ethnic status.

Historic disenfranchisement and anti-immigrant rhetoric have both contributed to the demonisation of low income black and brown communities in working spaces. The UK environmental institutions and workspaces must therefore consider the global historical effects of colonisation and industrialisation and the ways these have impacted the lack of a diverse representation of minority interests in the environmental movement. We must recognise the social privileges of economic, political, and religious elite masculinities in the rise of the ideologies and priorities that govern modern society.

The disadvantages that affect the career progression of BME individuals, such as lesser career prospects, are compounded by the fact that the environmental sector does not always engage with the issues that black people face in their societal context. Therefore,

developing equitable climate and environmental policies that address the tension between social and ecological values, will require that we first listen to the needs of low income communities and commit to working collaboratively to develop policies that are truly equitable according to the international principle of 'common but differentiated responsibility'.

Environmental racism happens in a spectrum

Environmental racism can manifest in varied ways. The acknowledgment of the repercussion of the imperialist history and post-imperialist societal hierarchy of the UK and other Western countries over the Global South (GS) are fundamental to address the racialised and hostile environment that trails all the way down to the underrepresentation of BME communities in working environments. Environmental racism may be as overt as the infamous comments of Lawrence Summers (Chief Economist and vice president of the World Bank from 1991 to 1993), who in a leaked memoranda asked 'between you and me, *shouldn't the World Bank be encouraging more migration of the dirty industries to the less developed countries [emphasis added]?*'¹⁷ In other words, Summers suggested that the poorest countries in the world, already environmentally devastated by western extractive industries, also become the backyard for toxic waste dumping.

The historical patterns of institutional racism and sexism within the UK are unfortunately still with us today. The colonial attitude of the government is still very palpable when it comes to climate change and environmental justice. A very recent judicial review case brought by FoE against UK Export Finance (UKEF)'s decision to fund the Mozambique liquified natural gas (LNG) project, is, in my view, an example of this.¹⁸ The absence of proper participation in the decision making process to finance the project and the inadequate consideration of the impact of the project on local communities, demonstrate how the systematic and ongoing appropriation of the GS ecological resources is reinforced by political and economic dominance. Environmental racism may look like a government continuously choosing to not invest in community based renewable energy solutions and promoting fossil fuel investment instead. One can therefore observe how post imperialist control patterns continue to enable western governments like that of the UK to maintain hegemony over resource rich countries in the GS and perpetuate particular interests in a country.

Just a week ago, I witnessed a familiar and disappointing demonstration of the lack of representation and awareness within the environmental sector. I joined a webinar that discussed

the impact of climate change in Commonwealth countries. The vast majority of the 53 country members are comprised of African, Caribbean, and Asian countries. However, the panellists were exclusively white men, and so it was only white men who were leading the conversations and offering perspectives about the impact of climate change on a group of countries which are predominately populated by people of colour. This is a striking example of how lack of inclusion of BME is widespread within the international environmental policy sector.

That seminar for me highlighted that being merely non-racist is an outdated minimum humanity threshold that must be superseded by active anti-racism work. To help organisations become anti-racist, an equitable representation of BME individuals in the workspaces should develop through a working culture that promotes inclusive recruitment, retention and progression opportunities.

International effects of our actions

This past decade has been the hottest on record.¹⁹ The Intergovernmental Panel on Climate Change report has found that we must reduce global emissions by 7.6% every year for the next decade to meet the 1.5°C Paris Agreement target. At the current emissions rate, we are heading for a 3.2°C temperature rise.²⁰ Extreme weather is growing more frequent and the climate crisis is disproportionately affecting nations around the equator, which means that the people bearing the brunt of the impacts are primarily people of colour and the poor. In addition, sexism further negatively exacerbates the systemic inequalities experienced every day by black women.

Sudan, for example, is currently in a natural disaster state of emergency. This has been going on for three months, after it was hit by its worst flooding in decades, with heavier-than-usual rainfall causing the Niles to breach their embankments in the capital Khartoum.²¹ Just last year in the Bahamas, hurricane Dorian killed hundreds of people, leaving more than 70,000 people homeless, damaging homes and disrupting power and water supplies.²² Redefining and diversifying the environmental movement is vital to truly understand that nobody owns nature, mountains, oceans, rivers and the natural resources within it, but ensures that everyone's interests are protected.

Climate change, weak social safety networks, the exploitation and mismanagement of natural resources and poor governance are some of the breeding grounds, that together with extreme weather conditions and ecological disasters caused by the changing of the climate, put GS countries in disproportionately vulnerable conditions.

Conclusion

A healthy planet is the basis of our survival as a species. Sadly, the current pandemic has served as a scary preview of the racial and ethnic disparities that will widen due to climate change. This article has highlighted the need for equitable access and representation of BME individuals within the environment sector. Anti-racism work within the environmental protection movement must adequately redress the structural unfairness and the double penalties that exist in black women's lives. Environmental consultancy agencies, environmental associations, NGOs and grassroots organisations should seek active and inclusive environmental decision-making processes to include black voices in shaping the transition to a renewable energy economy.

Ultimately, it will take the full representation of BME within the environmental sector for environmental justice to become a reality.

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Endnotes

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Diversity and inclusion – our different but collective experiences in the workplace



Emma Lui, UKELA Trustee

At a glance

- This article provides a personal reflection on diversity and inclusion experiences in the workplace.
- It explores the thought process in reacting to different forms of racism and microaggressions.
- It provides perspectives from contributors across the UK, the USA and the Republic of Ireland based on experiences of racial insensitivities and unconscious biases in professional environments.

Diversity and inclusion is not a subject you would normally expect to see in e-law. Yet, as is the case with many legal and environmental networks in this country, I am keenly aware that UKELA is not as diverse a membership as it could be. I am pleased to see UKELA dedicate an edition and the upcoming Garner Lecture to this theme, particularly given the professions¹ and institutions² associated with our members' and work.

Context

Like many of you watching the recent 'Black Lives Matter' protests and subsequent events in the USA and at home sparked by George Floyd's unjust death, I've been reflecting on my own awareness and understanding of issues related to race, privilege and unconscious biases. This period has also triggered and opened a safe space for cathartic and honest conversations with others who similarly identify as being from a minority background about our different and shared experiences which have served as the basis for this personal piece.

Reacting to racism and microaggressions

Let me begin by stating clearly that I am not an anthropologist, psychologist, or social scientist.

While privilege and unconscious biases of the majority groups are now frequently acknowledged in policies and media discourse on diversity and race, I personally find that one particular aspect is often overlooked: the thought process that goes through the mind of the affected individual. This is the justification that the individual on the receiving end makes or excuses for

the comment or behaviour which made them uncomfortable and gives the offending individual or group the benefit of the doubt. Consequently, by invalidating our own feelings and reactions, we leave the insensitive comment or behaviour unchallenged, carrying or compounding any arising self-blame into future similar interactions. Often after the event our reaction will be: 'why didn't you say anything at the time?'

This thought process/coping-mechanism is shaped from a lifetime of internalising and responding to everyday racism and forms of micro-aggressions (microassaults, microinsults, and microinvalidations),³ and may not be familiar to those who have not had such experiences or do not identify as being from a minority background. Over the course of these safe space discussions, it struck me how universal this thought process was when met with the behaviour that caused us upset or discomfort. To illustrate:

- 1 Have they made a physical threat against me based on my ethnicity or cultural background?
- 2 Have they called me an offensive slur?
- 3 Did they disparage my ethnic or cultural heritage in some other way?
- 4 Did the behaviour or comment come from malice or rather a lack of thought?
- 5 Will I be supported if I say something?

We each recalled times when in the spur of the moment or in the pressure of a professional space, we had invalidated our feelings and reactions because we decided to attribute the offending behaviour or comment to a lack of thought. There were times when it didn't feel like it was an appropriate forum to complain, and other times, we admitted to being unsure if there was a complaint mechanism or process to even raise the issue. We acknowledged that there were factors which contributed to our perceptions that there was a spectrum or 'severity degrees' of racism, such as based on your particular identifying race; gender; age; whether you were a first, second or third generation immigrant; perceived socio-economic class; the country you were in. As a British East Asian woman, could I really complain about my own experiences in this country compared to what a British black man might face?⁴ I may occasionally get 'ni hao' bellowed at me by complete strangers as I walk down a street or hear my surname mispronounced by colleagues, but surely that is more

bearable than the real risk of racial profiling and physical injury or death as a black man in some American neighbourhoods?

I acknowledge that my experience is not the same. Experiences of racism, like the individuals and communities they affect, are uniquely different. I will for society to change in recognising the diversity and validity of these negative experiences.

The importance of the workplace

I have chosen to focus this piece on our workplaces as these are defined spaces where we all have conscious agency in our interactions with our colleagues and clients. I hope you will agree with me that surely no experiences of racial discrimination or microaggression should be ignored or minimised in these surroundings. Yet for many minority individuals, either through racial and ethnic socialisation⁵ (i.e. the developmental process through our parents and communities where we learn about indirect and direct messages about race) or simply trying to further our careers by assimilating in a white-majority space, we actually seem to tolerate these injustices more in these environments. Additional factors such as disparities in professional experience or not wanting to risk being blacklisted for career promotions particularly influence our responses to everyday racism and microaggressions in our workplaces.

Over the past few weeks, I have had some very open and honest conversations with colleagues and peers from Ireland, the UK and the USA. On the condition of anonymity, I have put together this collective piece on their behalf, identifying some common themes, and I sincerely thank them for trusting me with their thoughts and personal experiences.

I hope that by sharing with you some of the voices who know this thought process all too well, and giving them a platform to speak to you in their own words, you will be able to use them to broach conversations on race, diversity and microaggressions more readily and with more understanding.

The following perspectives relate to experiences in interviews, team-building, conferences and networking events, inappropriate comments, tokenism, and direct discrimination. To help separate the different contributors, I have alternated between bold and italic text in presenting their individual voices.

1. Interviews

I am a British South Asian man practising as a barrister. In my experience, interview panels sometimes ask BAME

candidates what they would do if their client was racist or said or did something racist. A BAME friend of mine was once asked at a pupillage interview what he would do if the client said 'I don't want a brown lawyer', and I have also been asked in an interview how I would respond if the client was racist. Sometimes, there are of course racist clients – but I think the question should be avoided. There are many ways of testing a candidate's resilience and in areas of law where there is very low BAME representation (and where clerks or senior solicitors sometimes do not give BAME lawyers work for this very reason) it will be perceived by many as an unfair question and a reminder of yet another hurdle that keeps us out of the profession.

Another question which seems to be very frequently asked from candidates who have been living in the UK for some time, but have roots or were educated in another country, is – 'why don't you go practise back home'. Presumably this is an attempt to test the motivation of those who want to commit to the legal profession in the UK but it sounds to the ear, particularly to those who have experienced some anti-migrant prejudice, very much like 'why don't you go back where you came from'.

I am American-Chinese, born in the United States. I think there's a lot of racism masked as 'humor' which is why we're just told to 'lighten up' when offended. I did an interview once as a consultant where the client from a major national corporation told me I didn't look like I should be allowed to interview him since I didn't look like an American citizen and proceeded to continuously tell me to 'wake up' since he said he couldn't tell if my eyes were open. This was in a professional setting where I was representing a company that his company was consulting. My manager and another colleague were there with me in the room. I never reported it because I didn't know what would be done about it, and since neither of my co-workers stood up for me at the time. They were all very apologetic after the fact and seemed uncomfortable as it happened, but nobody said anything.

2. Team building and dynamics

I am a mixed race woman of Nigerian and Irish parents. When I was a new hire on a graduate programme at one of the biggest banks in Dublin, I was asked to take part in a 'guess the baby photo' icebreaker game. I didn't participate. It felt a bit redundant considering I was the only person of colour in our whole wing, never mind team. Across the bridge in the next wing there was another black woman but I'm mixed and she isn't so even if the game was across the whole floor it still would have been obvious which photo was of each of us. And this is a company where there was probably 300-400 staff on our floor. I think they just genuinely forgot they had two ethnic minority staff there.

Many times I have had what I now call my 'bad English days' and people in my office make fun of me for mispronunciations of words in English. This is the opposite of what happens when they speak my own native language and I just try to help them by passing them a note or private email.

There were very few East Asian women at my previous place of employment and our colleagues frequently got us mixed up. The most egregious case was the manager of one of the IT teams. She came up to me multiple times thinking that I was one of her subordinates. Other than the colour of our skin, we could not look any more different. She was much shorter and more slender than me, had very long hair, didn't wear glasses and was middle-aged.

3. Conferences and networking events

I am a British South Asian in-house lawyer. I can think of several examples where I've experienced direct discrimination, racism outside the work environment which impacted my work in the office, and microaggressions. One particular example is when I attended an industry conference in London, on a topic I have professional and personal interest in. There were several panels made up of consultants, investment banks, asset managers and tech company representatives. During the audience Q&A for one of these panels, I asked three questions directed at a particular panellist who was Head of Policy for his particular organisation. During the break, I went up to this particular panellist intending to introduce myself properly and follow up on my questions. He looked at me, took out his wallet, handed me a coupon and said 'Mine is the satchel and jacket.' I was confused and explained that I was a lawyer in asset management, and had asked him those three particular questions during the panel Q&A. His response was 'Oh no, that wasn't you. It was the other one.'

After my initial shock to his reaction, I had to compartmentalise my own distress. I couldn't afford to let that exchange jeopardise what I could take away from the learning opportunities at the conference, or other introductions. I just had to put it in a box in my head and continue in that environment. There are times when the disparity of power tips the balance in deciding not to challenge or respond to a situation. In my opinion, there is no real scenario when you come out ahead by raising this sort of thing. Too often, there is a 'British' kind of reluctance to engage.

I remember attending a networking event in the mid-2010s where an older gentleman, eminent in his field, came over to introduce himself to our group. While the group was made up of mostly South American and British lawyers, I was the only British East Asian individual

there. I was singled out by being asked what 'heritage' I was. While it made me uncomfortable, what could I do in that situation? I smiled politely, and answered that I was born in the UK but my parents were from Hong Kong. I've ran into him at other events where sometimes he's introduced me to others as being from Singapore. I still haven't found the courage to put him right.

I have lost track of the number of times where I am the only ethnic minority in the room. Being approached by another attendee, thinking I'm having an engaging discussion about the seminar topics or panel speakers, only to be disappointed when the inevitable question of 'so, where are you from' is asked in pointed tones. I have a British accent, why does it matter? It bothered me as a student attending networking events, it still bothers me as a qualified lawyer. I understand we are openly trying to do more as a profession but it wears you down when you attend event after event, but all anyone seems to be interested in is your country of origin and not your professional knowledge or expertise. As I see a more ethnically diverse cohort of students coming through trying to get their foot on the ladder, I hope that they no longer have that question asked of them.

4. Inappropriate comments

The part about having to internalise and invalidate your own feelings is so true. I still struggle to figure out how I should feel when faced with a microaggression. I remember speaking to someone about how I was looking for a legal position in Chicago, and they said 'why don't you open a Chinese takeaway in (insert their hometown here).' Obviously there's nothing wrong with opening a Chinese takeaway. But... That's just not in my career trajectory. Everyone else was chuckling so they had already interpreted it as humor on my behalf. There have also been times when my coworkers have joked that I was hired because the interviewing director had 'yellow fever'. It minimises my efforts and achievement as the facts are (1) I interviewed with five different people for the role, and (2) most of the interviewers, not just the director, had said in my feedback that I was the best candidate on performance and experience for the position.

As a British black barrister, my experiences as a pupil have been mostly fine. Contrary to what most people would assume, I have so far not been mistaken for a client or interpreter in court by either a judge or court staff or anyone else. Prior to my pupillage, I was a paralegal at a law firm and there was an incident where I was asked to run a personal errand for the head of the law firm. I had never seen such a request made for any other paralegal in my entire time at the firm. Another white paralegal looked at me, confused at the fact I had been asked to run this errand. I have also experienced inappropriate comments in my time working in the legal sector. An example was when I

was shadowing a case in court as a mini-pupil. The person I was shadowing notified the court clerk of the capacity in which I was observing the case. As the hearing was about to begin, the court clerk said to the judge that ‘there’s a coloured person at the back here to observe a case.’

I am a South American working in a US law firm. Many, many times when I mention where I am from I have heard jokes about my country and cocaine or cartels. Or how they are afraid to go there because they might get kidnapped. There’s also clear sexism in the jokes they make about women from my country too.

While I was chatting with a senior clerk about his holiday, he made a casually racist comment about a particular central Asian country. I regret not politely calling him out on it. He is not otherwise unpleasant and would probably have listened. It made me think that diversity training is important. There are some communities in respect to which people have a massive blind-spot about racism. A surprisingly large number of people in the profession do not understand that sweeping negative statements about entire communities – be they Romanians, Bulgarians, Polish, Roma, Travellers are completely unacceptable.

I am so tired of hearing ‘your English is so good.’

I’ve never really thought of myself as having experienced ‘real’ racism but COVID-19 really opened my eyes to the underlying stereotypes and microaggressions East Asians still face. Some of my coworkers were loudly making jokes about Chinese people and COVID-19. It wasn’t targeted at me but I was right there. I can’t really remember what they said exactly because I was trying to tune them out. But one of the jokes was about the WHO’s announcement that dogs can’t get the virus. They laughed about how Fido isn’t safe again, and they have to keep their pets away from Chinese people. This happened in a law firm, by the way.

5. Tokenism

I am a Latina woman working in the United States after completing my Masters in Law here. I was moved to a new office of my law firm where the personnel is not very diverse. The law firm hosted an event for the board of directors and a diversity NGO. The managing partner, who never thinks of me for anything else related to the law firm called me over, almost to show off the only Latino member of the office. That felt like a very bad way of showing diversity, and made me feel uncomfortable in the office because it did not seem like it was a genuine interest in engaging with the diversity issue.

Our company wanted to ‘refresh’ our corporate images portfolio. I hadn’t been there very long and there was

an in-joke in the office that the few ethnic minority members would be called upon again for the photoshoot as they always had been in the previous sessions. I was quite surprised to get an email asking me to take part. It did feel like blatant tokenism – ‘Here’s a new ethnic minority face you haven’t seen before!’ – but as someone relatively new to the organisation and trying to establish good relationships, I didn’t feel like I could say no. If I’d been there longer or had earned their attention on my own merit, perhaps I would have felt differently.

Language is also important. Not long ago a white colleague once used the ‘N’ word jokingly. It was not directed at me, and ludicrously, it occurred during a discussion about a diversity training session that another colleague had been on. The individual who had had the training grimaced and told the colleague to stop talking. Some people have differing views about the ‘N’ word but it is obviously offensive to many, particularly when the person using the word is not black. Better not to use it.

6. Direct discrimination

I arrived in NYC three years ago bright eyed and ready to start my dream career in the US, ‘the land of opportunity for many’. Little did I know that, when they said many it did not include me: a black Ghanaian woman.

As soon as I arrived, I would be faced with daily microaggressions. Having multiple checks done on you when finding an apartment or opening a bank account when white folks who make less money than you are welcomed at the door – their white skin the only pre-check they need, being denied into so many rooms at work but rushed in to others to fit a diversity quota. Going to after work events and the joke being made that ‘(Name), you’ll be most likely to die first because you’re from Africa’. These are things I can’t make up. I live with all of this because of the color of my skin.

Conclusion

I close this personal piece by again dedicating my sincerest thanks to the individuals who have contributed and for sharing their private thoughts and experiences in this way. I recognise that diversity and inclusion can be, and is, a difficult subject to raise in personal and professional circles, and I hope this piece may provide a helpful springboard to start to discuss the complex structural, individual and collective factors around the subject and to begin addressing them.

If you have experienced similar thoughts or events to some of those raised in the piece, I invite you to get in

touch with our new UKELA Diversity and Inclusion group so we can hear about your own experiences, and ensure UKELA as an organisation is as welcoming and inclusive as we can and should be.

Endnotes

- 1 Solicitors Regulation Authority, 'How diverse is the legal profession?' (20 March 2020)
<<https://www.sra.org.uk/sra/equality-diversity/key-findings/diverse-legal-profession/>>
- 2 Diane Toomey, 'How Green Groups Became So White and What to Do About It?' (*Yale Environment* 360, 21 June 2018)
<<https://e360.yale.edu/features/how-green-groups-became-so-white-and-what-to-do-about-it>>
- 3 I have taken the following definitions from the University of Illinois at Urbana-Champaign's Center for Democracy in a Multiracial Society – Racial Microaggression Research Group (February 2011)
<<http://publici.ucimc.org/2011/02/racial-microaggressions-and-its-impact-on-campus-climate-at-the-university-of-illinois>>

Microassaults: "explicit racial derogation characterized primarily by a verbal or nonverbal attack meant to hurt the intended victim through name-calling, avoidant behavior, or purposeful discriminatory actions." They often occur in more private settings, away from public scrutiny.

Microinsults: behaviours and "communications that convey rudeness and insensitivity and demean a person's racial heritage or identity." Many times the perpetrator is unaware of the insult.

Microinvalidations: "communications that exclude, negate, or nullify the psychological thoughts, feelings, or experienced reality of a person of color." Similar to microinsults, the perpetrator is often unaware of the racial microinvalidations.

- 4 The Lammy Review, 'An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System' (8 September 2017)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf>
- 5 The American Psychological Association, 'What Is RES?' <<https://www.apa.org/res/about/racial-ethnic-socialization>>

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