

Institution: Queen Mary University of London (QMUL)
Unit of Assessment: Law (C20)
Title of case study: Promoting Equality and Diversity
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Malleson and Barmes' research at QMUL on how to promote equality and diversity has influenced policy and legislation through its impact on a number of official bodies, including the Advisory Panel on Judicial Diversity in 2009/10, the House of Lords Constitution Committee Inquiry on Judicial Appointments in 2011/12, the Joint Committee on Human Rights report on the Equality Bill in 2009, the Advisory Panel for the selection of judges to the Court of Justice of the European Union ('CJEU') in 2010 and also of the Coalition for the International Criminal Court ('CICC') in 2011. As founder members of the <i>Equal Justices Initiative</i> ('EJI') and of the AHRC research network, 'Promoting Equality and Diversity through Economic Crisis' ('PEDEC'), their research has also informed public and policy understanding of equality and diversity issues more widely.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Barmes has been Professor of Labour Law at Queen Mary since September 2007. From 2007 to 2010 she undertook research on 'positive action' - activity designed to improve the position of a social groups that have suffered systematic disadvantage. She combined exposition of the conceptual underpinning of UK and EU equality law with inter-disciplinary evaluation, leading to the following theoretically and empirically grounded arguments: first, that UK equality law should be liberalised to allow organisations more scope for conduct deliberately calculated to benefit social groups whose members have been systematically disadvantaged; secondly, that a model should be followed whereby law guides and informs organisational experimentation with positive action; and thirdly, that the positive action provisions in the Equality Bill were significantly flawed, including for not respecting the limits of relevant EU law. Barmes' model envisages the law performing three functions: delineating the space within which organisations are free to experiment with positive action; steering organisations that take such measures, procedurally and substantively; and capturing what is learned in different organisational settings for use by others.</p> <p>Malleson is Professor of Law and has held this post since 2005. From 2006 to 2009 she undertook research into whether there is a case for positive action in judicial appointment and, if so, what form this should take. This built on highly influential earlier research demonstrating that the idea of 'merit' is constructed rather than fixed, and that traditional definitions need to be rethought so that a wider range of qualities and experiences are valued. Malleson's positive action research built on this, for example to develop the argument that lawyers from groups whose members are under-represented on the bench should be encouraged to apply through a system of 'taps on the under-represented shoulder'. From 2009 to 2011 Malleson jointly led an AHRC funded Queen Mary/UCL team doing extensive empirical work on processes (nationally and internationally) for the nomination, election and appointment of international court judges. The findings illuminated the politicised nature of current processes. Malleson and her collaborators consequently generated proposals to enhance the transparency and legitimacy of the international judicial selection process, including recommending a new advisory panel for appointments to the International Criminal Court.</p> <p>From 2008 to 2009 Barmes and Malleson undertook joint research into the impact of the legal profession on attempts to increase diversity in the judiciary. Inter-disciplinary analysis of the profession, reform initiatives and background equality law demonstrated, first, that the profession is carrying out its 'gate-keeping' role in ways that hamper the construction of a more diverse judiciary and, secondly, that diversity initiatives to date have suffered from two repeated design flaws, 'soft target radicalism' (meaning that where radical initiatives are taken, they tend to be aimed at the targets which are easiest to reach) and 'regulatory bind' (meaning that the existing regulatory framework restricts the possibility to promote a wider equality agenda). It follows that equality law</p>

which directly regulates legal practice needs to be strengthened and the regulatory binds on the Judicial Appointments Commission and other relevant public entities to be loosened.

3. References to the research (indicative maximum of six references)

- K. Maleson, 'Rethinking the merit principle in Judicial Selection', (2006) 33 *Journal of Law and Society* 126-40.
- L. Barmes, 'Equality Law and Experimentation: the Positive Action Challenge', (2009) 68 *Cambridge Law Journal* 623-54.
- K. Maleson, 'Diversity in the judiciary: The case for Positive Action,' (2009) 36 *Journal of Law and Society* 376-402.
- L. Barmes, 'Navigating Multi-level Uncertainty: EU, Member State and Organizational Perspectives on Positive Action' in G. Healy, G. Kirton and M. Noon (eds), *Equality, Inequalities and Diversity: Contemporary Challenges and Strategies* (Palgrave MacMillan, 2011), 56-76.
- K. Maleson, *Selecting International Judges: Principle, Process and Politics* (OUP, 2010) (with R. Mackenzie, P. Martin and P. Sands). (Results from AHRC funded research).
- L. Barmes and K. Maleson, 'The Legal Profession as Gatekeeper to the Judiciary: Design Faults in Measures to Enhance Diversity' (2011) 74 *Modern Law Review* 245-271.

4. Details of the impact (indicative maximum 750 words)

We can demonstrate impact in: advising parliamentary and executive policy makers in diversity initiatives and legislative provisions; influencing the work of the statutory advisory body of England and Wales on judicial appointments; providing input to the development of new processes for selecting judges at international level and informing the wider debate on equality.

In 2009 Maleson and Barmes established the Equal Justices Initiative (see www.law.qmul.ac.uk/eji). The EJI 'brings together academics, practitioners, judges and policy-makers to work towards gender parity on the bench'. Its work has influenced policy development in the UK, ensuring that sound evidence, ideas and argument are communicated to a broad range of policy makers in this area. The ultimate beneficiaries are, however, the citizenry as a whole, as more informed decision-making should lead to the UK having a more legitimate and effective judiciary that draws on the talents of the whole population. Around 100 people have signed up to the EJI as supporters. Building on research by members of its Executive Committee, including that of Maleson and Barmes described above, the EJI prepared a submission to the House of Lords Constitution Committee Inquiry on Judicial Appointments in 2011/2012. The Committee report referred extensively to that submission, as well as to Maleson's individual evidence. It proposed changes designed to increase diversity in judicial appointments including a number argued for in the EJI submission, such as applying the "tipping provision" in the Equality Act 2010, extending the remit of the Judicial Appointments Commission ('JAC') to Deputy High Court Judges and removing the President from Supreme Court Appointments Commissions when selecting a successor. All three are in the Crime and Courts Act 2013.

Advising Policy Makers on Diversity Initiatives

Maleson's work on merit and specifically her 2009 proposals about positive action were drawn on by the Advisory Panel on Judicial Diversity set up by the Ministry of Justice ('MoJ'). The Panel's 2010 report commented on the need to use the professions to encourage people into the judiciary, particularly those from under-represented groups, and advocated Maleson's proposal for 'taps on the under-represented shoulder'. Maleson, Barmes and other members of the EJI met with key policy makers about developing diversity initiatives. For example, in March 2010 they met the new chair of the JAC; in October 2010 they met with senior officials from the MoJ with responsibility for taking forward the report of the Advisory Panel; in May 2011 they met five of the six most senior female judges in England and Wales. Maleson and Barmes have since had ongoing informal e-mail and other contact with individuals in public life working on judicial diversity in different ways. Members of the judiciary (including the Head of the Judicial College) and governmental bodies (including, indirectly the Irish MoJ) have requested copies of Maleson and Barmes' work.

Direct Impact on new guidelines for the appointment of judges

Malleson's research on international court appointments has also had a direct impact on reforms to the process by which judges are appointed to the CJEU. In 2009 Malleson and Philippe Sands, Professor of International Law at UCL, were invited to meet with Lord Mance at the Supreme Court to share the findings of their research, given Lord Mance's appointment to the advisory panel on the selection of CJEU judges under the Lisbon Treaty. Their input fed into the rules and guidelines for the operation of the panel which Lord Mance helped to draft. In April 2011 Malleson was contacted by the Legal Adviser to the CICC, requesting copies of her 2010 book for each of the members of the CICC's informal advisory panel on appointments to the ICC. The request said: 'We have followed your work closely over the past few years and we are sure that the Panel will benefit from your research and insights.' The ICC has now established its own advisory committee on nominations, a development which was in part influenced by this research.

Informing the wider equality debate

Barnes and Malleson's work has also informed wider equality debate and action. From 2010 to 2012 they ran (with Queen Mary colleagues from Business and Geography) the AHRC-funded research network, PEDEC (see www.geog.qmul.ac.uk/pedec). This has a website, email list and held four workshops with participation from a notably wide range of non-academic organizations (including the Equality and Human Rights Commission, the Runnymede Trust and the Disability Alliance). Over 200 people signed up to the network, around 120 attended the workshops and to 19 March 2013 the website had generated 24,683 page views. The network brought together individuals and groups from different regions within the UK and internationally. In 2011/2012 Barnes and Malleson were several times consulted by the Government Equalities Office and Business Innovation and Skills on the design (and peer review) of government research on equality and to connect policy-makers to relevant research and researchers. The legacy of PEDEC has been assured by the work of the Equality and Diversity Forum Research Network ('EDFRN'), of which Barnes is a steering group member and in 2012 became co-chair. Barnes' 2010 research informed the Joint Committee on Human Rights' analysis of the positive action provisions in the Equality Bill (see HL Paper 169 HC 736, paras 286-290). The December 2009 version of the Equality Bill was amended before enactment to insert a proportionality requirement into sub-section 159(4). This reduced some of the risk of UK law on positive action, and organizational measures based on this, being de-railed by EU law challenges.

5. Sources to corroborate the impact (indicative maximum of 10 references)

Sources to corroborate impact on UK judicial diversity policy-making:

www.justice.gov.uk/publications/docs/advisory-panel-judicial-diversity-2010.pdf

Legislative Scrutiny: Equality Bill HL Paper 169 HC 736 (The Stationery Office, 27 October 2009)

www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/15110.htm

www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf

Sources to corroborate impact on policy relating to appointments to international courts:

www.iccindependentpanel.org

www.guardian.co.uk/law/2010/sep/08/law-international-court-justice-legal

Individuals to corroborate impact on policy relating to appointments process to international courts:

UK Supreme Court Justice

Legal Advisor, Coalition for the International Criminal Court

Individuals to corroborate impact on policy makers and the wider debate on equality

Economist in UK Government Equality Office

Retired Judge of the High Court of England and Wales