

<b>Institution: Birkbeck, University of London</b>
<b>Unit of Assessment: Law</b>
<b>Title of case study:</b> How research on diversity (specifically sexual orientation) within various institutions of justice has influenced policy development and reform initiatives.
<p><b>1. Summary of the impact</b></p> <p>This case describes Professor Moran's research on perceptions, expectations and experiences of sexual orientation discrimination and how they affect the lives of those who work in the justice and legal services sector. His impact has been two-fold. His research has informed policy development, reform initiatives and operational practice within the Judicial Appointments Committee. And he has raised the profile of sexual orientation which previously had not featured on the diversity agenda in the legal professional and justice sector. Raising awareness of sexual orientation as a diversity characteristic has led to campaigns and training initiatives to support career development for LGBT legal professionals.</p>
<p><b>2. Underpinning research</b></p> <p>The research underpinning this case was carried out by Professor Moran between 2006 to date, at Birkbeck School of Law. His work is unique, providing the first empirical study of sexual diversity within the judiciary; and it is significant, given research by US academic Professor Tod Brower and studies by campaign group Stonewall that have reported that the public's perception of the fairness of the justice system increases when the judiciary is seen to better reflect the diversity of society.</p> <p>Moran's work provides the first empirical account of how lesbians and gay men manage their sexual difference while in judicial office and identifies not only some of the challenges these judges might face, but also strategies for the better incorporation of sexual difference. He published his preliminary findings in 2006. One challenge Moran encountered was that he was addressing something (sexual orientation) that many stakeholders felt was not a characteristic that was or should be taken into account. His research asked "How do you research the operation and effects of that which is not to be spoken about?"</p> <p>His innovative response in 2009 was to research more subtle portrayals of the judiciary. Drawing on queer theory and art history, he undertook a textual analysis of official judicial portraits of the Chief Justices of the Supreme Court of New South Wales. He interviewed artists who had experience of making judicial portraits to understand the symbolism and the representation of the judicial image. Moran concluded these portraits represent both the individual but also celebrate the qualities of the relevant state institution to itself and to the public, publishing these findings as 3.1 below and referring to the issues in 3.2.</p> <p>In 2011, Moran pursued further the apparent absence in judicial settings of references to the sexuality of members of the judiciary. He examined records of swearing in ceremonies of judges of the Supreme Court of New South Wales, finding that sexuality was referenced in every text. Heterosexuality was deemed a judicial virtue, references to the heterosexual family being both literally and metaphorically a source of values indicative of the highest qualities of judicial office; commitment, dedication, devotion, fidelity, love and self-sacrifice (see 3.3). The sexuality of lesbian and gay judicial appointees was also apparent as such a virtue, but was coded.</p> <p>During the same period (2009-2010) Moran developed related research into barriers to judicial careers by legal practitioners who identified themselves as LGBT, a population not previously studied by judicial appointment researchers or policy makers. This study (3.4) exposed previously unidentified perceptions and expectations of prejudice.</p> <p>Moran's key findings were that 70% of LGBT lawyers felt there was prejudice within the judicial selection process, with a similar proportion stating that more openly gay LGBT judges would encourage them to apply for a judicial role. Moran made recommendations concerning the judicial appointments process; and about awareness raising and stimulating cultural change</p>

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within judicial institutions (see section 4).

In 2011-2012 Moran undertook a major survey of career progression within the legal sector (3.5), examining the effects of gender, ethnicity, disability and sexual orientation on career progression, salaries and working patterns. He found a significant lack of progress towards inclusiveness and called for the sector to set targets for the inclusion of women, ethnic minorities, LGBT and disabled lawyers and business services professionals; and to deliver fair career progression for all. He made recommendations to firms on how they should deliver their inclusiveness initiatives, and monitor progress (see section 4).

**3. References to the research**

- 3.1 Moran LJ. (2009) 'Judging pictures: a case study of portraits of the Chief Justices Supreme Court New South Wales', *International Journal of Law in Context*, 5(3), 61-80. A peer reviewed journal. <http://dx.doi.org/10.1017/S1744552309990139>.
- 3.2 Moran LJ. (2010) 'Judicial legitimacy, diversity and the representation of judicial authority' *Public Law* 4, 662-671. A peer reviewed journal. Moran was specifically invited by editors to contribute a response to an earlier lecture delivered by Lord Justice Etherton, Chancellor of the High Court. (Electronic copy available to panel on request.)
- 3.3 Moran LJ. (2011) 'Forming sexualities as judicial virtues', *Sexualities*, 14(3), 273-289. A peer reviewed journal. <http://dx.doi.org/10.1177/1363460711400808>
- 3.4 Moran L.J. and D. Winterfeldt (2011) [Barriers to Application for Judicial Appointment: Lesbian, Gay, Bisexual and Transgender Research](#). This initiative had the support and approval of the Judicial Appointments Commission. Sir Christopher Stephens, Chairman of the Judicial Appointments Commission and Lord Justice Etherton participated in a launch of the report hosted by the Law Society in July 2011.
- 3.5 Moran LJ, S. Ward and D Winterfeldt (2012) [Career Progression in the Legal Sector 2012: A Report on Lawyers and Business Services Professionals by Gender, Ethnicity, Social Mobility, Disability and Sexual Orientation](#) London: InterLaw. Former Attorney General Baroness Scotland (Labour peer and practicing barrister) provided the foreword, commending the study and urging those in the legal sector to respond to its concerns. The report was also endorsed by the Law Society, who invited the authors to present the findings there in July 2012.

**4. Details of the impact**

The significance of Moran's work is that it has contributed to promoting attitude change in relation to sexual diversity in the legal profession. Attitudes to diversity, and diversity itself had both suffered enduring effects from the criminalisation (until 1967) of consensual same sex relations. Until 1991 it was the Lord Chancellor's policy to appoint only married people to the judiciary, to avoid potential scandal arising from the appointment of homosexuals. Consequently, the private lives of barristers eligible for judicial appointment used to be vigorously vetted; and (as shown by the results of a 2009 Law Society survey of LGB solicitors) such practices and attitudes are still remembered by those who have been in the legal profession for 30-40 years. Moran has both promoted the need to incorporate sexual diversity in all aspects of the legal profession, and stimulated changes in practices of monitoring and publishing data on diversity.

**Impact on Judicial Appointments Committee (JAC)**

Moran contacted the JAC after the 2009 publication of the JAC's first *Barriers to Judicial Appointment* research, suggesting he re-run the research to survey the 'missing' voices of legal practitioners who identified themselves as LGBT about their perceptions of barriers to applying for judicial roles. Moran published this research as 3.4, and subsequently discussed JAC's approach to gathering diversity data with its Chairman Sir Christopher Stephens. The impact of Moran's research was to lead JAC to:

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- a) Widen its definition of diversity to include sexual orientation. JAC states that it gives diversity significant priority, but until Moran's research had only analysed and reported on the diversity of selections for judicial appointment by gender and ethnicity (source: JAC evidence to select committee pg. 356, see 5.5 below).
- b) Introduce sexual orientation as a category of demographic data collected during the applications process. From autumn 2011, JAC has monitored the sexual orientation of candidates, to facilitate the statutory goal of ensuring diversity in the pool of eligible candidates and promote awareness of the composition of those newly appointed to the judiciary. JAC made this policy announcement at the launch of 3.4, directly crediting the report with influencing JAC's decision (see 5.7 below).
- c) Work more closely with LGBT groups to improve the perception of JAC appointments process. CEO of JAC agreed to work more closely with Interlaw to achieve its outreach goals [source: foreword to 3.4; example of outreach event held on 21 Sept 2011 (see 5.8)]

Moran's continued involvement in JAC activities suggests he has succeeded in permanently changing policy. In April 2013 he was invited by the Chief Executive and Assistant Director to advise how JAC should implement new "tipping point" provisions in the Crime and Courts Act 2013 that promote the appointment of a candidate from an under represented group where otherwise two candidates are of equal merit.

### ***Impact on Lords Select Committee on Judicial Appointments Process***

Moran submitted a copy of 3.4 and written evidence (as part of two different respondent groups) to this select committee in 2011 (pp. 186-195; pp. 309-314, see 5.5). He recommended measures which could be easily incorporated to have a positive impact on judicial diversity, specifically a requirement for diverse shortlists for all judicial appointments; and the better collection of statistical information (including sexual orientation). Moran's evidence also emphasised that diversity in the judiciary leads to better decision-making; and criticised the JAC assumption that diversification of entry level positions would eventually lead to diversity at upper levels of the judiciary, as inadequate because of the length of time (20-30 years) that it would take for such "trickle up" effects to take effect.

Certain conclusions of the Select Committee (in its report for the House of Lords published March 2012, see 5.6) aligned with Moran's evidence which suggest it at least provided support for the committee's views, or may have influenced them more strongly. Those conclusions were:

- a more diverse judiciary would not undermine the quality of judges;
- judicial diversity needs to be increased to increase public trust and confidence in the judiciary, and current measures are not sufficient; and
- there has not been sufficient commitment to removing barriers to applications from under-represented groups.

### ***Impact on the judiciary***

Moran utilised his membership of the Equal Justices Initiative, to discuss 3.4 and 3.5:

- with the Chief Executive of the Supreme Court in October 2010 with respect to the Supreme Court appointments review; and
- with the Chair of the Tribunals Judicial Diversity Group in March 2011.

Moran's research on judicial portraits, and the mention or representation of sexual orientation has stimulated debate and led to two specific impacts on judicial image making.

- a) [text removed for publication].
- b) Following a blog co-authored by Professor Moran and Professor Villez, 'YouTube justice UK style' the UK Supreme Court changed the editing of its YouTube videos of judges delivering summaries of their judgments. Drawing upon his research on visual culture and judicial images (3.1) Moran's blog criticised the videos as little more than 'primitive television' that would fail to attract a public that lives in a culture saturated with sophisticated video imagery. Ben Wilson,

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Head of Communications at UKSC credited the blog as the trigger for specific editorial changes to address that criticism, these being the use of a wider range of shots and different camera angles which change the visual dynamic of image (see 5.4).

***Impact on the Law Society***

Professor Moran provided advice and support (5.1) to the Law Society for its 2009 survey of LGB solicitors, leading the society to develop its '*Careers Barriers Action plan*', and to start collecting and publishing data on the sexual diversity of the legal profession. Moran's research contributed to Law Society's policy on widening diversity, with consequent impacts on the support it offers to both member firms and individual members. Two specific examples identified by the Law Society (see 5.1 and 5.3) are that Moran's research informed the advice it gives to firms on how to meet their new regulatory obligations to collect and publish data on sexual orientation; and also helped the Law Society improve the fit of its offering to individual members in relation to the development of diversity training. Moran has presented his research several times at the Law Society (e.g. giving the 9<sup>th</sup> Stonewall Lecture in June 2010 to over 120 delegates) and to the Law Society's Equality and Diversity Committee. The latter led to his invitation to join the Law Society's strategic LGB steering group. Moran was a member 2007-2013, during which he played a key role in recommending initiatives to support the Law Society's delivery of its Equality and Diversity vision and strategy (see 5.1).

Moran also utilised the Law Society's magazine *Solutions*, as a channel to a wider practitioner audience, by summarising his findings (of 3.5) and recommendations for reform of the judicial appointments process in an article "Diversity Challenge" in October 2010 (see 5.9).

**5. Sources to corroborate the impact**

- 5.1 Equality & Diversity Manager, Law Society [factual statement already provided].
- 5.2 [text removed for publication].
- 5.3 Former Chair of Equality and Diversity committee, Law Society [contact details provided].
- 5.4 Interview with Head of Communications at UK Supreme Court, recording or full verified transcript available on request.
- 5.5 Select committee on the constitution [Judicial Appointments Process: Oral and Written Evidence](#), House of Lords, 28 March 2012.
- 5.6 Select committee on the constitution [Twenty-Fifth Report: Judicial Appointments \(executive summary\)](#), House of Lords, 7 March 2012.
- 5.7 JAC news release [JAC expands its diversity monitoring](#), 7 July 2011.
- 5.8 Notice of [Judicial Appointments Commission \(JAC\) LGBT Judicial Outreach Event: September Meeting and Networking Drinks \(Wednesday 21 September 2011\)](#), InterLaw Diversity Forum for LGBT Networks website, (accessed 10 October 2013).
- 5.9 'Diversity Challenges', *Solutions*, a magazine of the Law Society, October 2010.