

100 YEARS

1. May I begin with an apology and an explanation.

An apology to those for whom this week is half term. Our only mitigation is that school terms are not co-ordinated and there was no perfect date.

An explanation: although this has been billed as the red robes event- it is a double celebration of the return to the RCJ of the red robes worn by Elizabeth Lane, Margaret Booth, Brenda Hale and Jill Black to the Royal Courts of Justice and a celebration of the first 100 years of women in the Law. We are here to recognise and celebrate the achievement of women across the legal profession solicitors, barristers and CILEX members and across the judiciary- in courts, tribunals and the magistracy since the Sex Discrimination (Removal Act) of 1919.

2. I have been encouraged by the inestimable John Sorabji who helped me prepare this speech to begin by referring to a painting by Guardi from the 1870s called the “Gala Concert in Old Procuratory for the Czar’s Daughter”. It shows a formal dance with three rows of figures

dressed in black, some holding musical instruments. There was a debate about the identity of the figures.

3. Obviously, they were musicians but not just any musicians. They had played for Kings and Emperors, Princes and Popes, and daughters of the Czar. They had been acknowledged as prodigies. Many could play more than one instrument to a level that put others to shame. Vivaldi had written some 140 concertos for them. One of their number was described as the '*premier violinist in Europe*'. They were accomplished composers. Yet their names are lost to history-why? Because they were all women.
4. The whole point of celebrating 100 years of women in the law is that the women who led the way do not go unrecognised.
5. There was some progress before 1919 but not much. Although many universities still refused to award women degrees, Eliza Orme studied for a law degree at University College London, securing her degree in 1888. She could not officially practice law at the time but that did not stop her. She set up office in Chancery Lane and

developed a conveyancing practice, operating below the radar of the Law Society and the Inns of Court.

6. She was followed by Cornelia Sorabji, the first woman to take the BCL at Oxford and first woman to be admitted to read in the Law Libraries at All Souls in 1892 and at Lincoln's Inn. In the 1920s she was the first woman admitted to practice at the Bar in both England and India.

7. During the same period, women were fighting the long battle to become solicitors. In late 1913, the Court of Appeal declared that Gwyneth Bebb, and 3 others did not qualify as a "person" for the purposes of the Solicitors Act 1843 and therefore could not be admitted to the Roll. This was despite the fact that Section 48 of the Act provided that "*every word importing the Masculine Gender only shall extend and be applied to a Female as well as Male [...] unless it be otherwise specially provided, or there by something in the Subject or Context, repugnant to such Construction*". Apparently, the court decided it *would* be repugnant to allow women to become solicitors because there had never been a female attorney. Well yes

my Lords – there was a reason for that! The 1919 put right what the court had got wrong.

8. It led directly to women qualifying as barristers and solicitors and changed the landscape of the professions. Carrie Morrison, Mary Pickup, Mary Sykes, and Maud Crofts were the first women solicitors qualifying in 1922.

9. The same year, Dr Ivy Williams was the first woman to be called to the Bar in England. Dr Williams never practised but became a legal academic. She was the first woman to be awarded a Doctorate in Civil Law by Oxford University and the first woman to teach law at an English University. The fact there was a woman barrister was recognised as a truly memorable event in the history of the law but I quote: “*was never likely to be justified by any success they will achieve in the field of advocacy*”¹. Oh yes??

10. Meanwhile there was a break through for the magistracy. Ada Summers in November 1919 became mayor of Stalybridge and an

¹ Dr Ivy Williams biography, 100 Years’.

ex officio Justice of the Peace. In 1920, she was appointed as a JP in her own right.

11. Helena Normanton was the first to practice at the Bar. In the face of Middle Temple's refusal to admit her in 1918 she petitioned the House of Lords to reverse the decision. The 1919 Act saved the Lords from making the same mistake the Court of Appeal had made in *Bebb*. . She was called in 1922 choosing to practice under maiden name. She was the first woman to secure a passport in her maiden name, to prosecute a murder trial and the first female King's Counsel in 1949.

12. What follows a long list of notable women with apologies for supporters of those I have omitted:

- i. Sybil Campbell the first woman appointed to the professional judiciary as a stipendiary magistrate in 1945.
- ii. The first female Circuit Judge, Elizabeth Lane, appointed in 1962 having been appointed the Recorder of Derby the year before and appointed as the first female High Court judge in 1965.

- iii. Rose Heilbron the youngest KC since the late 1700s appointed the same year as Helena Normanton. The first female Recorder in 1956, the first woman to sit at the Old Bailey in 1972, and the second woman to be appointed as a High Court judge.
- iv. In 1977 Rosina Harris the first female senior partner of a major London law firm.
- v. In 1979, Margaret Booth appointed the third female HCJ
- vi. In 1998, Dame Elizabeth, now Lady, Butler-Sloss the first woman appointed to the Court of Appeal. The Supreme Court Act 1981, just like the Solicitors Act as interpreted by the CA, could not conceive of the idea that a woman could be a judge, and required her to take the title Lord Justice of Appeal. It would take six years before the title changed to lady Justice of Appeal by way of a Practice Direction. When I was appointed to the Court of Appeal in 2005, then the fifth woman to be appointed an LJ after Lady Butler-Sloss, Lady Hale, Lady Arden (previously the first female Chancery Division judge)

and Janet Smith, I was the first formally, rather than informally, to be styled a Lady Justice of Appeal.

- vii. Back to 1998 that year saw the first woman to chair the Bar Council – whatever happened to her?
- viii. The first female head of division was again, Elizabeth Butler-Sloss, in 1999, President of the Family Division.
- ix. In 2002 Carolyn Kirby became the first woman president of the Law Society. Amongst her many accomplishments was serving as a judge in the Mental Health Tribunal.
- x. In 2006 June Venters became the first female solicitor to be appointed a QC.
- xi. Dame Rosalyn Higgins was the first woman appointed to the International Court of Justice and became its first female President in 2006.
- xii. The first female head of the Commercial Court – Elizabeth Gloster was not appointed until 2010. She became the first female Vice President of the Court of Appeal’s Civil Division

in 2016. The Criminal Division beat the Civil Division to it. Its first female Vice President, who from 2011 had previously been the first female Vice President of the Queen's Bench Division, was appointed in 2013. Modesty stops me from mentioning who that was.

- xiii. The first female Master of the High Court, Barbara Fontaine, was not appointed until 2003. Even in 2003, I am told that her proposed appointment was met with outrage from some on the grounds she was a woman **and** a solicitor. She proved the doubters wrong and she became the first female (and very successful) Senior Master in 2014.
- xiv. Lady Hale became first female Law Lord (note the Lord) in 2004, and then the first female President of the Supreme Court in 2017.
- xv. In 2017 Julia Macur became the first woman Senior Presiding Judge and Jill Black the second female Supreme Court Justice.
- xvi. Victoria Sharp was appointed the first female President of the Queen's Bench Division in 2019.

xvii. Finally, and most definitely not bringing up the rear but leading the way, are CILEX members and women Tribunal judges. CILEX has long been a beacon of equal opportunity providing a path into the law for those from non-traditional backgrounds. Similarly, the Tribunal system has an excellent track record. Approximately 50 % of Tribunal leadership judges are women and 46 % of all tribunal judges are women. They have included Siobhan McGrath, Alison McKenna, Vivien Rose, Ingrid Simler, Judith Farbey, Gwynneth Knowles, Sarah Falk and Jennifer Eady and the recently elected first woman to lead the Western Circuit- Kate Brunner QC.

13. Many other women, deserve a mention but we don't have the time. So slow steady progress in the courts- about 37 % of judges are now female, somewhat speedier progress in tribunals. We continue to await the first female Chancellor of the High Court, the first female Master of the Rolls, the female first Senior President of Tribunals and the first female Lord – Lady – Chief Justice. But knowing the quality and commitment of the women now joining the

judiciary- I hope it will not be long before we lose the concept of a woman being the first in a particular post and simply accept the appointment of a woman as the norm.

14. There remains much work to be done if we are fully to realise the 1919 Act's promise. For some years I have led the judiciary's work on diversity and as a result I have been asked to provide a few reflections on the challenges ahead. I am not one to look over the shoulder of my successor as Chair of the Diversity Committee of the Judge's Council especially one as able and committed as Ingrid Simler so I shall be cautious. I should like first to explain a little of what life was like for my generation of women and the generation before me- it may help explain my advice to my successors.

15. Many of the women who qualified in the 50s, 60s and 70s kept their heads down and suffered sexual assault, discrimination and being patronised, without complaining or reporting, hoping that if we had any ability it would eventually be recognised. We feared, as some women today still fear, that if we reported anyone, we would be considered a trouble maker and our careers would suffer.

16. We saw how the declared feminists were treated – they were considered (by some women as well as men) as bra burning, man hating, strident women likely to rock the boat. You couldn't be a feminist- in the sense of believing in women being treated equally and fairly- feminism was associated with extremism. I was always a feminist but kept it quiet for years. I remember vividly, when a judge, being given a T shirt sporting the legend “*This is what a feminist looks like*” by the Fawcett Commission and at last having the confidence to wear it proudly. If I could still get it into it, I would!

17. It is with that background I humbly offer the following advice:

- i. Be wary of those who express fine sentiments but do little to put them into action. I have been working in the field for many years and I have learned how to spot those genuinely committed to the cause of diversity.
- ii. In promoting the cause of diversity – never forget men have as great a role to play as women. The battle to eradicate sexual harassment and discrimination will only be won if we work together.

- iii. Never forget that diversity takes many different forms- some less visible than others and although the fight to promote gender equality is important, so too is the fight to promote equality for all whatever their race, social or professional background.
- iv. Analyse what the Tribunals, for example, are doing right and compare it to other parts of the system.
- v. Try to persuade those with influence that it is in the interests of their institutions, their organisations, their firms, their sets of chambers to promote a better work/family life balance. We must retain in the profession those with caring responsibilities, men and women who rightly believe they are entitled to time with their families, despite the demands of their professional lives. A happier and healthier work force is more productive and more likely properly to represent the society it serves. Every organisation should examine its working practices and analyse whether it is making the best use of technology and flexible working.

- vi. Promote a zero tolerance policy for sexual harassment and discrimination. Every organisation should provide a mentor or someone to whom those affected can speak about any problems and appropriate steps can be taken to resolve the problem.

- vii. Keep working on eradicating unconscious bias. We all suffer from it and alerting people to the problem can be the first step in solving it. Having the female role models to whom I referred will obviously help in getting people to accept that their lawyer, their judge may be female and just as good if not better than a man.... But we have not yet reached the stage where a successful woman is accepted as the norm. Changing attitudes of that kind will be a big task, but getting out into schools and into communities, as members of the legal profession and the judges do increasingly, is an excellent start. It will also be a challenge to discover a way in which the potential of those who have taken a break from the profession or reduced their work load to care for others can be assessed without being unfair to their competitors.

18. When I was the Vice-Chair of the Judicial Appointments Commission in a short paper that considered how the judiciary was changing. I said this about judicial diversity.

‘For the pace of change to accelerate we all – judges, lawyers, the JAC, society as a whole – have a part to play.’

In other words, we are all in this together: improving diversity should not be an add on for the legal profession and the judiciary. It should be part of their DNA.

19. The last hundred years have shown considerable change for the better. Through the perseverance, the persistence and the brilliance of the very many talented women who have transformed the legal profession and the judiciary, four of whom wore these robes, great strides have been made.

20. Greater strides still need to be taken, to secure full participation in all levels of the legal profession and the judiciary by women; to reduce the attrition rate robbing the profession of women partners and QCs and to ensure that more, talented women rise to the top of the profession and judiciary and stay there.

21. May I close with the hope that the return of these very special robes to the RCJ provide inspiration to all women lawyers so that full equality for women in the law becomes a reality.