# The factors influencing differences in outcomes by ethnicity in legal professional assessments: A systematic literature review

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This report is a summary of the first phase of our research to better understand the reasons differences in professional assessment outcomes by ethnicity. It also sets out the next steps for the second phase.

In this first phase of this important work, the University of Exeter reviewed in detail over 250 UK and international academic, government and professional reports and articles. They also consulted with 25 experts, including other academics, regulators and members of the profession.

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## Background

Our [annual education and training monitoring reports](https://www.sra.org.uk/sra/how-we-work/archive/reports/education-training-authorisation-monitoring-activity/) [https://www.sra.org.uk/sra/how-we-work/archive/reports/education-training-authorisation-monitoring-activity/] show long standing and widely-acknowledged differential outcomes for candidates from different ethnicities in legal qualifications. This troubling pattern is also the case in other countries and in professional assessments in many other sectors, as well as in school, further and higher education. It is often known as an 'attainment gap' or an 'awarding gap'.

We know this has a real impact on individuals and on the wider profession, so we want to understand better what is happening. We [commissioned the University of Exeter](https://www.sra.org.uk/sra/news/press/2021-press-releases/exeter-university-attainment-gap-research-launch/) [https://www.sra.org.uk/sra/news/press/2021-press-releases/exeter-university-attainment-gap-research-launch/] to conduct independent research to better understand the factors driving differences in outcomes in legal professional assessments. We can then share this evidence, so that we and others can consider how best to address the issues.

The legal assessments that are in scope of this research are those that pre-date the Solicitors Qualifying Examination (SQE), such as the Legal Practice Course (LPC) and the Graduate Diploma in Law (GDL).

We anticipated seeing a difference in outcomes in the SQE and we are monitoring this by diversity characteristics. Our quality assurance processes include reviewing how we make sure that the examination itself is fair and free from bias, and we have a detailed [evaluation programme](https://www.sra.org.uk/sra/research-publications/evaluating-sqe/) [https://www.sra.org.uk/sra/research-publications/evaluating-sqe/] for the SQE. We will take on board the findings from this research as we continue with our evaluation programme.

## Key findings from phase one

The University of Exeter's review has confirmed the complexity of the factors that might explain the differing outcomes in professional assessments. The review also confirmed that a variety of possible solutions have been identified by others, although not all of these have been tested.

They found strong evidence that the following influences exam outcomes positively and/or negatively to varying degrees:

- education journeys, including:
  - any positive or negative experiences at school, college or university

- how well students feel that they fit in at their place of education
- the availability of support in education and work for minority groups.
- students' beliefs in how they might succeed in a profession, which includes whether they think that:
  - a profession is elitist and affected by the privileges that some characteristics are more likely to offer some people (such as being White and/or male)
  - there are barriers and/or opportunities to entry and progression based on characteristics with which they identify, such as social class and ethnicity
- the experience of being part of one or more minority groups, which can include being rejected or discriminated against because of those characteristics
  - negative experiences can lead to the need to make extra effort on 'coping strategies' to achieve positive outcomes in academic and professional settings
- life circumstances, such as families' socioeconomic status and neighbourhood.

They also found that there:

- were varying definitions of the attainment gap, ethnicity and other characteristics, which makes it difficult to compare findings and draw conclusions from different studies
- • have been several interventions in academia, and across different sectors, to address the differing outcomes, from which others might learn, although not all were evaluated to find out whether they were effective
- was limited literature on:
  - the lived experiences of Black, Asian and minority ethnic candidates of legal professional assessments in England and Wales
  - how the different factors that might explain the differing outcomes interact with each other
  - the causes of the differing outcomes in legal professional assessments.

This is the first piece of research that brings together the wide variety of potential factors relating to professional assessments, especially where these are relevant to legal assessments. Past research tends to focus on a limited number of factors.

This extensive review is an important stage in the research and has helped the University of Exeter to design a theoretical model of the reasons that could explain the differing outcomes. They will test this model, and address the limitations of the past literature, in phase two.

## **Next steps for phase two**

The researchers will use data analysis, interviews and surveys to test whether and how the various potential factors explain the issue and to understand people's lived experiences. The research is likely to produce insights that are useful in other sectors too, as it may unpack wider societal and structural issues.

Phase two will continue through 2023. We expect the research to be complete by the end of 2023 and for the final report to be published in spring 2024.

The final report will bring us closer to understanding what we and others can do to address the differing outcomes by ethnicity. Given the complexities set out by the researchers, it is likely to need several activities and changes, potentially from many different organisations. And any improvements will take time. In commissioning this research, we are committing to playing our part in bringing about lasting change.

If you are interested in contributing to the project or hearing more about it, you can provide your details using this short survey [https://form.sra.org.uk/s3/Expressions-of-interest-in-the-research-to-understand-the-ethnicity-differences-in-legal-qualification-outcomes] .

# **Report by the University of Exeter**

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## Acknowledgements

## Preliminary remarks

### What we looked at

There is a long-standing pattern of attainment gaps for certain groups in legal professional assessments such as the Legal Practice Course (LPC). Such gaps particularly affect Black, Asian and minority ethnic candidates. Attainment gaps are also evident in other sectors with professional assessments, in education more broadly, and, as anticipated, in the first sittings of the newly introduced Solicitors Qualifying Examination (SQE).

The Solicitors Regulation Authority (SRA) commissioned this research to better understand the factors driving the attainment gap for these groups in legal professional assessments. It also wanted to consider whether there are steps that could be taken by the SRA and others to address the factors that underpin this widespread picture.

### What we did

A detailed examination of specific professional assessments will not be conducted as part of this research, although these may be discussed to some extent where necessary. This research focuses on factors other than characteristics of assessments themselves that influence attainment gaps. Although we do give some consideration to how methods of assessment can contribute to the attainment gap, including among different ethnic groups.

We also discuss studies returned in the systematic literature review (SLR) that touch on methods of assessment, including their possible impact on attainment. More specifically, since a separate, independent and in-depth evaluation of the SQE will be commissioned by the SRA, this is outside the remit of this commissioned research.

Overall, this report of the SLR synthesises pre-existing studies that help us to better understand the potential reasons for the attainment gap and potential interventions to address it.

### Categorisation and terminology within the review

We use the term 'minority ethnic' to refer to people from minority ethnic backgrounds. Although this term refers to all ethnic groups, most of the studies seen in the SLR did not discuss white minorities. We refer to specific groups where possible so that the reporting is as accurate as possible and does not hide differences within these broad categories.

For the research question of the SLR, we relied on the term Black, Asian and minority ethnic. This was done in order to capture as many results as possible due to the broad use of the aforementioned term in the literature. It is also a term used by the SRA in its publications and communications. The SRA also recognises the difficulties of appropriate terminology.

When describing the studies included in this review, we tend to use the terminology as referred to in the study cited. This report also uses terminology of the studies cited when referring to other protected characteristics, such as, for example, sexual orientation or gender.

We acknowledge that the terminology used for minority groups in this research (as would be with any other group defining term) was from the outset, and continues to be, problematic. This will be compounded by ongoing social change, organisational change, inter-group and identity change. Furthermore, there is a need to think about how we categorise and how we make that categorisation work for (ie conceptualising and operationalising) white ethnic (sub- ) groups.

We will use the categorisation we have been commissioned to research but acknowledge the problematic operationalisation of limiting terms such as this. We will continue to think about terminology throughout the duration of the project. We hope that our research findings will help us come up with conclusions/suggestions about the usefulness of various terms in research and other settings. In the meantime, to mitigate this immediate challenge, in our Workstream Two we will offer space for individuals to identify themselves. We will also continue our dialogue with stakeholders and to critically challenge the terminology of group categorisations.

## Executive summary

This is the first report of a research project commissioned by the Solicitors Regulation Authority (SRA). The project aims to better understand the reasons for differential performance by candidates from Black, Asian and minority ethnic backgrounds in legal professional assessments in England and Wales. This is also known as the attainment gap.

This report details the findings from Workstream One of the project. The findings were drawn from an SLR that included 215 articles from academic literature and 43 practitioner-focused reports published since 2010.

The SLR showcases the existing knowledge on the ethnicity attainment gap, drawing on literature from across multiple disciplines and examining causes at the:

- individual or micro level (relating to candidates themselves);
- community or meso level (relating to the community and infrastructure surrounding candidates); and
- societal or macro level (relating to social structures and institutions). The research question underpinning the SLR was the following:

What does existing literature tell us about the attainment gap of Black, Asian and minority ethnic candidates in legal professional assessments?

**Themes in the literature**

Literature examined as part of the SLR revealed important insights relating to four main themes, which emerged from the review process.

The four themes are the following:

**1. The challenges of terminology:**

An important finding of the SLR relates to the different definitions and categorisations used to describe both the focal point of interest (the attainment gap) and the population of interest in this project. The definitions and categorisations varied mainly depending on the country of the study. Variations were also observed regarding the notions of socioeconomic status and class. Importantly, some research included all minority ethnic groups in one category, obscuring potentially important differences between different minority groups.

The lack of consistency in terminology and categorisation presents challenges for this project, as well as for any other future research on the topic.

**2. Socioeconomic and educational background:**

The SLR revealed substantial scholarship on how a candidate's background and education in the years preceding legal professional assessments can constitute important factors that may influence their assessment performance (and relatedly the attainment gap).

The surveyed literature detailed a series of mechanisms that may affect attainment, such as:

- institutional education systems;
- socioeconomic background;
- language competence; and
- neighbourhood and family.

Importantly, substantial attainment gaps persist at university level, which is likely to feed through into professional assessments. The literature also suggested that minority ethnic students may struggle to feel like they fit in well in some educational environments and that these issues of fit may influence attainment.

In the educational context, a range of factors (at the macro, meso, and micro levels) can have a clear impact on attainment. These include:

- inclusive curricula;
- relationships between staff and students;
- the notions of social, economic and cultural capital; and
- psychosocial and identity issues.

## 3. Professional and employment contexts:

The literature demonstrated that perceptions of a profession and individual 'fit' within it can influence performance on professional assessments. This could for example be through influencing self-efficacy (belief in one's own capacity for success), motivation, aspirations, and related choices.

As a result, the literature suggested that the current characteristics of the profession are likely to have important implications for attainment in professional assessments too. This is even though the legal profession relates more directly to the post-qualification stage.

In the legal context, several factors may trigger these issues, such as:

- perceptions of the legal profession as elite and stratified;
- barriers to entry (such as the high costs associated with legal professional qualifications);
- a lack of acknowledgment that factors other than merit influence progression;
- the continuing influence of social class, privilege and whiteness in career success and progression; and
- negative lived experiences leading to particular coping strategies.

## 4. Interventions:

The SLR also yielded potential interventions to address the attainment gap.

These varied in terms of level, context and implementation.

## Overarching themes

A number of overarching themes in the literature cut across several of the broad categories discussed above. These bring together factors that can explain the disadvantages that Black, Asian and minority ethnic individuals face in different contexts and contribute to the attainment gap.

The identified overarching themes are:

- Social and cognitive factors in education and career, including self-efficacy beliefs and outcome expectations;
- Implications of holding minority status, including experiences of rejection and discrimination;
- Implications of holding multiple marginalised identities (known as intersectionality);
- The normalisation and privilege of whiteness and maleness/masculinity in dominant culture, as well as practices that indicate low representation, low participation and disadvantage for individuals who do not have these characteristics;
- The need to employ coping strategies to manage marginalised identities, meaning using extra effort to achieve positive outcomes in academic and professional settings;
- Lack of integration and unsupportive climates for marginalised identities in academic and professional settings.

**Omissions in the included literature**

The SLR identified omissions and limitations in the current literature. The inconsistency in the terminology employed, as well as the categorisation are a challenge. More specifically, the choice of terms is not always justified and could lead to either oversimplification or complexity. Furthermore, these disaggregation challenges hamper like for like comparisons.

To better understand the attainment gap in the context of legal professional assessments, it is important to identify three key understudied aspects of the issue:

1. The SLR revealed a lack of incorporation of the voices of Black, Asian and minority ethnic candidates in studies of legal professional assessments in England and Wales. This represents an important omission in fully understanding causes underlying the attainment gap in question.
2. The wide range of potential attainment gap contributors are often examined separately, meaning knowledge on how they work together and interact with each other is limited. A multi-level approach, bringing together multiple potential causes of the gap, and their interaction with one another, is important in gaining a cohesive understanding.
3. Research is needed to examine how the potential causes of the attainment gap work specifically in the context of legal professional assessments. The legal profession's potential role in the attainment gap problem has for the most part been overlooked, something that this project intends to address. Detailed empirical studies in this area are vital to enhance understanding of how causes work together in the context of legal professional assessments specifically.

The importance of social and cognitive processes revealed by the literature review suggest that a framework informed by Social Cognitive Career Theory (SCCT) may be promising in structuring empirical work on this topic. At the same time, it will also be helpful to incorporate some additional constructs to this framework. Such constructs include, for example, how people identify with the legal profession, which we refer to as law identity.

SCCT is discussed in more detail in sub-sections 3.3 and 6.1 and relates to a theory that explains the development of academic/vocational interest, the pursuit of career choices and the persistence and performance in that academic/vocational field.

**Workstream two plans**

The analysis of the SLR undertaken in this report lays the foundations for the follow-up research of Workstream Two.

Taking into account the challenges and omissions identified when reflecting on the findings of the SLR, the follow-up research aims to:

- Adopt a nuanced approach to terminology and categorisation by disaggregating where we can and by taking into account intersectionality;
- Focus on highlighting the lived experiences of individuals themselves;

- Drawing on prior qualitative work, go beyond set categories of race through self-identification and identity. For example, this will be achieved by interviewing participants who will be asked to self-ascribe their ethnicity, without any pre-defined categories;
- Adopt a broad approach incorporating influences at multiple stages of an individual's education and career development;
- Establish whether there are any links between the legal profession itself (and perceptions of it) and performance in legal professional assessments;
- Draw on SCCT to examine the multiple causes underlying the attainment gap and how these causes work together to influence attainment.

## Introduction

Each year the SRA publish an education and training monitoring report relating to their transitional routes (LPC, Qualified Lawyers Transfer Scheme and Equivalent Means). The reports show a widely acknowledged and persistent difference in legal professional assessment outcomes by ethnicity, insofar as solicitors' qualifications are concerned. This is commonly known as the attainment gap and is not unique to legal professional assessments. It affects all levels of education and is a global phenomenon.

UK data on degree awards from the past decade show figures changing but with persistent gaps.

Higher Education Funding Council for England (HEFCE) 2010 data (Higher Education Funding Council for England, 2010; Times Higher Education, 2010) shows that the proportions of students awarded Upper Second (2:1) or First (1st) class undergraduate degrees in the UK were different by ethnicity:

- 62% of white students were awarded a 2:1 or 1st class undergraduate degree;
- 37% of Black students were awarded a 2:1 or 1st class undergraduate degree; and
- 42% of Pakistani and Bangladeshi students were awarded a 2:1 or 1st class undergraduate degree.

Data from Advance HE (AdvanceHE, 2017) reveals that across the UK in 2015/16, the attainment gaps are largest in England. According to the data, 79% of white students in England were awarded a 2:1 or 1st class undergraduate degree. The figure stood at 63% for Black, Asian and minority ethnic students. Despite the data showing a better average performance across all groups, there still was a 16 percentage point gap in England. When compared to an attainment gap of 9 percentage points in Scotland and in Wales, this highlights the importance of geographical context.

More recent data from the Office for Students (2020-2021) shows the persistence of the attainment gap. 87% of white students were awarded at least a 2:1 degree, compared to 81% of Asian and 69% of Black students. The 'awarding rate' has increased more for Black students than other groups since 2016/17. However, the attainment gap of 18 percentage points when compared with white students is still substantial.

This is the first of three reports looking at what causes the different levels of attainment in legal professional assessments across ethnic groups. The report details the findings from Workstream One, in which we have conducted an SLR. The SLR investigated what the academic and selected grey literature contributes to our knowledge of this attainment gap.

An SLR is a scholarly synthesis of published studies. It extracts and interprets data, then critically analyses, describes, and summarises interpretations. SLRs are commonly used in health care and public policy. This SLR has a broader focus on global data on education performance, as well as data on the profession, putting the assessments into a wider context. Therefore, the research question for the SLR was:

What does existing literature tell us about any attainment gap of Black, Asian and minority ethnic candidates in legal professional assessments?

The SLR does not provide solutions but informs our understanding of existing knowledge on attainment gaps relevant to our study. Armed with a broad knowledge base, we can then justify a focus on relevant details and environments, confident that important contextual information has not been overlooked.

Any priority area yielding limited results in the literature can be identified to be further investigated. The findings of the SLR help identify gaps and inform the design and specifics of the empirical research to be conducted in the project's second phase.

## Findings from the systematic literature review

We took an interdisciplinary multi-level approach to the SLR to understand the attainment gap of Black, Asian and minority ethnic candidates in legal professional assessments. We used two major global databases to search for relevant Management and Organisation Studies (MOS) articles. Moreover, 19 peer-reviewed Law journals were chosen by the law-based members of the research team (for full details of the methodology, see Appendix 1).

Multiple search terms such as 'academic achievement', 'educational attainment', 'ethnic groups', 'ethnicity', and 'education' were used in search strings, giving an initial sample size of over 6,000 articles. The team did an initial scan of titles and abstracts, constructing relevant inclusion and exclusion criteria – for example, based on the quality and date of publication – which reduced the sample to 447 articles (272 law papers and 175 MOS papers). The team then read the full text of these articles, and again based on agreed inclusion and exclusion criteria arrived at a sample of 215 articles. These are included for analysis and synthesis in this report.

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## 1. Description of sample

The 215 (99 from law journals and 116 from MOS) fully reviewed papers came from over 35 countries on five continents. The United States had the largest number of articles with 97 papers (45%), followed by the UK with 47 papers (22%). In total, the 215 papers came from 52 journals (14 from law and 38 from MOS). Within the law papers, 53 of 99 (54%) came from two journals, the Law Teacher and the Journal of Legal Education. Within the MOS papers, 45 of 116 (39%) came from one journal – the Journal of Vocational Behavior. In addition to management and organisation studies, the MOS articles came from disciplines such as psychology, sociology, economics and accounting.

We noted significant differences between law and MOS articles in terms of the approaches used. Doctrinal, conceptual and socio-legal pieces were common in law, whereas MOS articles adopted a more systematic approach to methodological, empirical and theoretical questions. In addition, MOS articles were almost all structured in a standardised format, allowing for easier searches. We tracked the number of articles by year since 2010, when the Equality Act 2010 (EA) came into force. In law, there was a steady increase over the 12-year period with 44 of the 99 (44%) articles published since 2018. Likewise, in MOS, 50 of 116 (43%) articles were published since 2018. For more details on the description of the sample, see Appendix I.

The four themes identified by the SLR were: the challenges of terminology; socioeconomic and educational background; professional and employment contexts; and interventions. In addition, a set of overarching themes describes the social mechanisms explaining the attainment gaps. These themes emerged as fundamental components of education pathways and practice settings. They also revealed differences amongst disciplines and divergence within and between countries. In the following sections, we set out each of these themes and the set of overarching themes.

## 2. The challenges of terminology and categorisation

Articles returned from the SLR revealed a wide range of terminology, categorisation and definitions regarding our focal point of interest - the attainment gap - and our population of interest. This is an important finding, demonstrating categorisation and definition issues.

For our report, we will look at the attainment gap of minority ethnic groups but will comment on certain ethnic groups where these terms are used specifically in the literature.

**Definition and categorisation of identities**

The SLR revealed, broadly, four major approaches to categorising identity (using a variety of terminology): white/Black, ethnic minority, intersectionality, and socioeconomic status (including intergenerational mobility). These categories are used for different purposes, with different definitions and therefore have limitations, including issues of comparability, which will be elaborated on below.

Categorisation found in the SLR featured mostly in the context of the binary black/white approach. Categorisations differed by region. For example, a study from Brazil talked about different 'colour' descriptive categories as well as an Afro-Brazil category (Francis and Tannuri-Pianto, 2013). Other studies from the US talked about immigrant status and intersection with race/ethnicity (Dias and Kirchoff, 2021). A study from Australia talked about people from culturally and linguistically diverse backgrounds and categories, for example, Aboriginal people (Lumley, 2015). Across the sample, there was a wide range of categorisation terminology used. For example: race, racialised, ethnicity, Black or black, Asian, Mexican, Latino, Latina, LatinX, African American, European American, Indian American, Nigerian ethnic groups, Aboriginal people, negro people, Han-minority, people from poor working-class backgrounds, minority ethnic individuals, BME, BAME, Black Asian Minority Ethnic, people of colour, disadvantaged backgrounds and marginalised groups. We have included in our SLR the term 'non-traditional backgrounds' because it evidences the complex ways in which economic, social and educational background shape future opportunities (Francis, 2015).

The black/white binary was critiqued across the literature covered in our SLR. One piece highlighted how this approach overlooks experiences of Latinas/os and other racial minorities, and how this shapes our conversations (Barnes, 2010). Another highlighted the challenges of operationalisation of ethnicity (Baskerville et al., 2016). For example, ethnicity and race are often conflated by many North American scholars, whereas many British scholars see race as objective and ethnicity as a self-determined subjective claim. As a result, while there might be a parallel debate on similar challenges, such varied approaches to concepts and theories hinder consensual dialogue (Baskerville et al., 2016). The multi-faceted dimensions of identity, beyond 'race and ethnicity' are recognised in the profession of counselling psychology. There, the term multicultural has been broadened to encompass dimensions of race, ethnicity, gender, sexual orientation, age, disability, religion, and social class (Lee, Rosen and Burns, 2013).

Some literature chose other minority identity concepts and theories, which may include Black, Asian and minority ethnic groups. For example, one piece used the notion of 'racio-ethnicity', referring to differences marked by race *and* ethnicity, arguing that distinct classifications of these categories can lead to inaccuracies (Ruiz Castro and Holvino, 2016). Another piece spoke about notions and dimensions of culture (Vetters and Foblets, 2016), and another developed the concept of intersectional female ethnicity (Essers, Benschop and Doorewaard, 2010).

Intersectionality featured frequently in the returned literature (defined as multiple, overlapping identities which might occur when different factors interact and shape an individual's experiences and circumstances). For example, one piece focused on how gender, class, racio-ethnicity and culture intersect at the individual, organisational and societal levels to create and reinforce advantages and disadvantages across complex dimensions of difference (Ruiz Castro and Holvino, 2016). Another analysed the intersection between gender and social class and how this affected students' chances of being admitted to law school (Vetters and Foblets, 2016). Finally, a study focused on the variance by race/ethnicity and gender using SCCT (discussed in more detail in sub-sections 3.3 and 6.1) with STEM college students (Byars-Winston and Rogers, 2019). It concludes that an intersectional approach is needed because different combinations of social identities and cultural group memberships can lead to different lived experiences (Byars-Winston and Rogers, 2019).

In contrast to this work on intersectionality, a piece from the UK looked at the 'double jeopardy hypothesis' (Taylor, Charlton and Ranyard, 2012). This is a definition that intersectionality avoids because it suggests an additive assumption rather than a unique interactive identity associated with membership of different disadvantaged demographic categories. Another related term, the 'ethnic prominence hypothesis', argues for the salience of ethnicity over gender in perceptions. The smaller the numerical size of a social group, the greater the likelihood for it to be a salient aspect (Taylor, Charlton and Ranyard, 2012).

Several pieces dealt with Social Economic Status (SES), social mobility, and class – but these were often not defined or were used interchangeably. We perceive SES as a static measurement and social mobility as referring to intergenerational change. Furthermore, the review showed that US studies often use the term 'class' when referring to financial status. However, some returned UK studies used the term differently. See, for example, the following quote from one of the UK studies looking at ethnicity and class: 'middle-classness continues to be fundamentally associated with whiteness within the popular imagination.' (Archer, 2011, p. 149). While the notions of SES, social mobility and class go beyond categorisation along the lines of ethnicity, the SLR implies a relationship between class and ethnicity, as well as between social mobility and educational attainment.

Social mobility is about ensuring meritocracy through equal opportunities and vowing that people can reach their potential regardless of the circumstances in which they were born (Dursi, 2012). Social mobility can be measured by looking at socioeconomic background and by capturing data on parents' occupation and level of education (Social Mobility Commission, 2021). For example, one piece looked at class generally and the role of parents' socioeconomic status attainment on an individual's social mobility in later life (Shane and Heckhausen, 2013). Another paper examined the role SES of the family plays on the career aspirations of young children (Flouri et al., 2015), showing SES and ethnicity as determinants of aspirations (in boys).

Related to this, the literature looked at self-regulation theory and meritocratic beliefs about students' SES attainment (Hu et al., 2020). The Bridge Group – a non-profit consultancy that uses research to promote social equality – recommended lobbying for socioeconomic background to be a protected characteristic (Bridge Group, 2020). In Wales, in March 2021, the Socio-Economic Duty came into force. It aims at delivering better outcomes for those who experience socioeconomic disadvantage, though it does not apply to schools (Llywodraeth Cymru/ Welsh Government, 2021).

**Definition of attainment gap**

The terminology surrounding the gap in the attainment of different groups of candidates in assessments varied considerably. As stated above, in this report, we will use the term 'attainment gap'. This is the term used by the SRA in the call for this project as it is the most common in the UK. However, the term 'achievement' was more commonly used in other national contexts (Reardon, Kalagrides and Shores, 2019; Yang et al., 2015; Sáinz and Eccles, 2012). Other international pieces used terms such as 'performance' (Williams, 2013), or 'racial test score gap' (Katz, 2016). An article on legal education referred to legal professional assessment candidates as 'first time-passers', the 'never-passers' and the 'eventual-passer' (Yakowitz, 2010). Finally, another simply made reference to 'student success' (Farley et al., 2019).

**Decolonisation narrative**

With regards to the above terminology, it is interesting to note that some literature highlighted the preference for terminology surrounding decolonisation instead of 'racism'.

This might demonstrate a wider, contextual approach to understanding disadvantage, such as critiquing the system or the conditions faced by minorities. Decolonisation in this sense refers to acknowledging and (re-)examining the curriculum with regard to colonial influences. At the same time, it refers to redesigning the curriculum with the aim of eliminating racial hierarchies and creating a sense of belonging in academia for all. For

example, one piece argued that racism, also within legal education is not segregation but colonialism, ie a system of power relations (Peller, 2015). Another argued that the 'decolonising discourse' is preferable to the gap narrative and looked at student-staff relationality (Raza Memon and Jivraj, 2020).

Furthermore, an article focusing on the decolonisation of university curricula noted that the Black, Asian and minority ethnic attainment gap is a very real and long-running problem, one that occasionally, by some authors, is erroneously just blamed on 'racism' (Matiluko, 2020). Decolonisation goes beyond rectifying representation and must include critiquing what is taught, how it is taught and why it is taught. It is about facilitating a classroom where all feel they belong and where debate and discourse is encouraged and connected to social realities of various groups (Matiluko, 2020).

## 3. Socioeconomic and educational background

A substantial portion of the current academic literature analysed in the SLR focused on aspects of background and education in the years preceding law school or law qualifications. These factors help expand our understanding of the context and underpinning social mechanisms that may influence the attainment gap later in life. Several studies also focused on the law school experience, with very few studies focusing on legal services qualifications as such.

**Pre-school and school education**

Several large US-based studies show that educational attainment gaps start at preschool (kindergarten) levels and remain throughout school years. Gaps are largest in high SES areas, due to the larger differentiation of resources available between the 'haves' and the 'have nots'. Preschool attendance is 'associated with enhanced reading and math skills, particularly for racial and ethnic minorities, children from lower SES families, and children whose parents were rated as less cognitively stimulating' (Tucker-Drob, 2012, p. 7).

US-based studies more commonly use the term 'achievement gap', defined as 'a proxy measure of local racial inequalities in educational opportunity' (Reardon, Kalogrides and Shores, 2019, p. 1166). Comparing differences between Black and white, and white and Hispanic children, Reardon and colleagues question the focus on the causal mechanism as either institutional education systems or socioeconomic and neighbourhood conditions (2019). They argue that this is a false dichotomy and that these issues are often inseparable. They also point out multi-level influences both close to (eg classroom interaction) and more distant from (eg neighbourhood economic conditions) the children (Reardon, Kalogrides and Shores, 2019).

A UK-based longitudinal Millennial Cohort Study examines the role the SES of a child's family and neighbourhood, as well as other contextual determinants, plays on the career aspirations of young children. These other contextual determinants include parental education level, maternal involvement and child's cognitive ability. By the early age of seven, family SES proves predictive of their aspirations, but with clear racial and gender differences (Flouri et al., 2015). A separate study of adolescents drawing on the Longitudinal Study of Young People in England, born in 1989/90, found that girls appeared more intrinsically motivated and less impacted by family background (Gutman and Schoon, 2012). Findings suggest that at a younger age, minority ethnic boys and boys from higher SES had more white-collar aspirations than white and lower SES children. They also suggest that in

England, seven-year-old boys' aspirations are directly shaped by their parents' educational, economic, and ethnic backgrounds (Flouri et al., 2015).

English language competence is understandably another influencing factor of educational results. A study considering six minority ethnic groups from the UK 2001 census (Black Caribbean, Black African, Indian, Pakistani, Bangladeshi, and Chinese) measured preschool and during school achievement. In preschool, the minority ethnic children significantly underperform compared to the white British group. The study showed increased

performance for most of the minority ethnic groups, except the Black Caribbean children, reducing achievement gaps during school years. However, much of the increased performance is explained by improved language capability, which also then explains the lack of increased performance from Black Caribbean children (Dustmann, Machin and Schönberg, 2010). Studies in other countries also confirmed the importance of ethnicity and language together (Frattini and Meschi, 2019; MacKinnon and Parent, 2012; Yang et al., 2015).

However, large studies focusing only on social mobility in the UK observe systemic barriers at every level of education and beyond (Dursi, 2012). For example:

- From birth, the link between socioeconomic background and future educational attainment is well established from literature prior to our review, with inequalities in educational capability evident from as early as 22 months (Feinstein, 1999);
- Throughout school years, gaps in linguistic and numeracy capability may be accelerated, with clear correlations between GCSE grades and socioeconomic groups. Strong links between low educational achievement and low school standards are also found, and a recent report by the Organization for Economic Co-operation and Development (Chung, 2012) highlights increasing social segregation in UK state schools;
- A-level choices are also largely influenced by being in state versus independent education, which then further influences the choice of higher education institution and course;
- This carries through to university in terms of course and institutional aspirations and whether they are admitted. Law remains one of the most popular undergraduate courses in the UK;
- Data show a link between the university attended and earnings in law (Dursi, 2012; Francis, 2015). In addition, it has been reported that students from lower socioeconomic backgrounds graduating with identical qualifications are still less likely to secure levels of graduate positions or earnings equal to those of their wealthier peers (Dursi, 2012). This indicates that extraneous factors other than an individual's capability are impacting success and thus aspiration.

A large body of literature describes the multiple and multi-level factors that influence school educational achievement (eg Aucejo and James, 2019; Gutman and Schoon, 2012; Reardon, Kalogrides and Shores, 2019; Swisher, Kuhl and Chavez, 2013), including parental income (Wilson, Burgess and Briggs, 2011), parental education and class background (Feliciano and Lanuza, 2017), parental language proficiency (Schüller, 2015), geographical location (Gregory, 2013), neighbourhood poverty (Swisher, Kuhl and Chavez, 2013), family priorities and a country's economic context (Perez-Brena et al., 2017), gender attainment gaps within racial and ethnic groups (Lipshits-Braziler and Tatar, 2012), and the differences macro educational policies can make (Khanna, 2020; Taş, Reimão and Orlando, 2014).

Studies point to either direct effects of those factors or indirect effects – for example, mediated through career motivation or aspiration. In the UK and US, test preparation (for example, extra classes or tutoring) is found to significantly influence educational outcomes and is more available to children from affluent backgrounds (Buchmann, Condron and Roscigno, 2010). Although not within our review sample, in their book on social mobility, Major and Machin describe the UK's 'escalating educational arms race', with 'glass floors that limit downward mobility of those from privileged backgrounds and class ceilings limit upward mobility of those who happen to be born into poorer homes.' (Major and Machin, 2018, p.66).

Focusing on gender differences in adolescents and using the Longitudinal Study of Young People in England, with a cohort born in 1989/90, Gutman and Schoon (2012) find that young people from lower socioeconomic backgrounds and lower prior achievement (at age 11) were more likely to express uncertainty about their career aspirations (at age 14). However, their pathway model shows that the link between prior school achievement (at age 11) and later school motivation (at age 14) is stronger for boys than girls. The links between parental educational expectations, self-perceived ability, motivation, and academic performance show a similar pattern. This suggests that boys have a greater reliance on socialisation factors than girls. In other words, they are more affected by

positive (and/or negative) feedback and (the presence and/or lack of) encouragement from parents than the more intrinsically motivated adolescent girls. Gender differences were also found within ethnic groups, with some ethnic groups fundamentally not supporting education for girls, for example. Additionally, gender differences can also be explained by socialisation due to lower overall expectations.

In Wales, a report on educational curricula experiences of Black, Asian and minority ethnic communities found the following, related to a number of factors, ranging from the lack of representation to negative lived experiences to decolonising curricula literature: '[...] the attainment of children and young people from some minority communities is being hampered by a curriculum that has failed to represent their histories, and the contributions of their communities, past and present. They are hampered by the lack of positive role models in an education workforce that does not adequately reflect the ethnically diverse profile of Wales; and they are hampered by experiences of racism in their everyday school life. This must change' (Williams, 2021, p. 4).

## College/University

As with the literature on schools, the majority of the literature focused on differential achievement at college or university was based in the US. Whilst such findings may help inform our questions, we must be cognisant of the very different social histories that underpin race relations in differing countries (Opara, Sealy and Ryan, 2020). That there are attainment gaps in England and Wales is not in dispute. However, in the UK, the body of academic literature explaining the gap is perhaps less well-developed than that in the US.

Multiple US-based studies discussed differential rates of enrolment, experiences, success and completion for various minority ethnic groupings (Ciocca Eller and DiPrete; 2018; Brunet Marks and Moss, 2016; Owens et al., 2010). Moving away from measuring binary categorisations, panel data from American colleges shows that for various combinations of race, ethnicity and sex, having academic staff who match students' intersectionality leads to better student performance. Significantly, as a group became better represented, the importance of this relationship declined (Fay et al., 2021). This speaks to the importance of role models and representation of various characteristics in upper echelons, all of which impact culture and students' sense of belonging and identity (Adediran, 2018).

Other US-based studies, for example, by Hall and colleagues (2017) show how having a diverse friendship group moderates a negative association between ethnic discrimination and academic outcomes, acting as a buffer. Prasad and colleagues (2017) looked at the importance of multiple variables such as students' embeddedness, motivational characteristics ('grit' and self-efficacy), and perceptions of academic and social fit.

Compared to Caucasian students, research showed that minority ethnic students face additional challenges of embeddedness and academic fit with their disciplines, which may negatively impact academic outcomes (Adjin-Tettey and Deckha, 2010; Fouad et al., 2010; Tracey, Allen and Robbins, 2012; Urbanaviciute et al., 2016).

One response to minority individuals' lack of belonging or fit is to increase the representation of minority groups, either at an organisational or national level. For example, in the UK, partly in recognition of the additional challenges faced by 'non-traditional groups' at university, there is a focus on 'widening participation' (Gibby and Broadbent, 2015). This aims to increase the numbers and proportions of ethnic minorities, people with disabilities, and those from low socioeconomic backgrounds attending university, for example in law (Gibby and Broadbent, 2015; Waters, 2013), and other professions (Evers, Olliffe and Dwyer, 2017).

Interestingly, a number of studies from both the US and Europe looked at the impact of varying levels of diverse students on the performance of both the majority and minority groups with mixed results (Diamond and Huguley, 2014; Diette and Uwaifo Oyelere, 2014), white students often receive higher grades when in diverse student groups (Dills, 2018). One study found that universities tend to respond to student struggles with individual support rather than recognise that often 'inadequacies in resilience are social and

institutional, and not personal failings or lack in the skill sets of students' (Ferris, 2022, p. 9).

While supporting academic and social development, research often fails to address the fundamental discriminatory attitudes that still exist among some institutions or people. For example, studies in higher education revealing persistent microaggressions and the perpetuation of stigma around race and class, show that 'paradoxically, the social institutions involved in' promoting social mobility 'conspire in the reproduction of both racial and class privilege' (Gray, Johnson, Kish-Gephart and Tilton, 2018, p. 1245; Carter, 2012).

In another example, a study of minority ethnic middle-class parents and children in the UK highlights this intersection of class privilege and racial subordination. Pay gaps between white and minority ethnic individuals are highest in middle-class professions and managerial occupations (Clark and Drinkwater, 2007; Archer, 2011). As has been found in prior research on gender in organisations, even when representational inequalities diminish, material and structural inequalities may still exist. Increasing representation is a good first step, but without cultural change, the benefits are limited.

As can be summarised from the literature briefly outlined above, the causes of attainment gaps are multiple and multi-level. Influences from outside of higher education affect individuals' performance within education. Following the approach set out in the HEFCE Report of 2015, we suggest that it is useful to consider differential outcomes that are underpinned by influences at three levels:

- **The Macro Level:** This is the wider context of learning, including both the structure of the English HE system and socio-historical and cultural structures such as those of race, ethnicity, culture, gender and social background that are embedded in the general environment in which universities, employers and students operate.
- **The Meso Level:** This covers the individual HE providers and related structures which form the social contexts within which student outcomes arise.
- **The Micro Level:** This is the level of communication between individual students and staff in the HE environment, including the micro-interactions that take place on a day-to-day level.

**Law school**

The attainment gap in higher education can be described as an incredibly complex social phenomenon (Bodamer, 2019; McKee, 2022). However, some suggest that less complex solutions are needed. Focusing on law school, Ferguson (2017) suggests that with a better understanding of some of the fundamental issues for what are termed 'non-traditional' law students, 'micro-adjustments' or 'nudges' can have a significant positive impact. For the purposes of this report, we use the term law school to mean higher education institutions that deliver a legal education either at undergraduate or postgraduate level.

**Entry point issues**

According to a recent book across school, university and the labour market, social mobility issues become most acute at the point of entry. (Major and Machin, 2020). Ferguson (2017) analyses factors of the Oxbridge application process for undergraduate law degrees and how the focus on A-level grades and on measurement of attainment is assumed to represent meritocracy. A-levels are only partially contextualised on application to university, by looking at the school but not at socioeconomic or poverty-related issues. These same grades are also used as the 'objective' measure of 'potential' or 'talent' when applying to law firms.

In a report for the Social Mobility & Child Poverty Commission looking at social mobility within legal, accountancy and finance professions, Ashley and colleagues explain that the qualitative attributes used in assessing students, such as 'drive, resilience, strong communication skills and above all confidence and 'polish' … can be mapped on to middle-class status and socialisation' (Ashley et al., 2015, p .6). Consequently, these attributes

reproduce inequalities from social origin characteristics, such as class privilege and white ethnicity (Zimdars, 2010b).

The attainment gap of Black, Asian and minority ethnic students is a persistent problem. By the time all Black children in the UK get to age 17/18, regardless of their heritage, they are the ethnic group least likely to get accurate A-level grade predictions. In turn, this impacts the type of university they can likely attend (Rutter, 2013; Everett and Papageorgiou, 2011). In addition, as the figures above show, Black, Asian and minority ethnic students are far less likely to get a 2:1 or 1st class degree compared to their white peers. The situation refers to all subjects, including law, even when they enter with the same A-Level grades (AdvanceHE, 2019).

There have been various calls for widening participation in law schools, particularly noting that if this is not successful at law school, then obviously it will not happen within the profession (Fay et al., 2021). Recent UK figures show that 35% of students enrolled onto first degree law courses in 2021 are from a Black, Asian and minority ethnic background (The Law Society, 2022). Challenges include a lack of role models, aspirations, and opportunities (Balan, 2019; Levin and Alkoby, 2013; Moraitis and Murphy, 2013; Waters, 2013).

The discussion on widening participation is often bound up with that on positive or affirmative action (see the section below on Interventions). One question raised in a study of underprivileged law students in an Australian context was whether being identified as a 'widening participation student' would lead to them either being labelled or considering themselves as less capable. The study found no evidence that widening participation law students needed any additional support services if there was a well-designed and comprehensive programme that supports all students in the transition to higher education (Evers, Olliffe and Dwyer, 2017).

The HEFCE 2015 report also offered explanatory factors for the difference in outcomes. In the section below, we focus on the literature specifically about law and law schools using the HEFCE frame of explanatory factors (HEFCE, 2015):

- **Curricula and learning, including teaching and assessment practices:** Different student groups indicate varying degrees of satisfaction with the HE curricula, and with the user-friendliness of learning, teaching and assessment practices.
- **Relationships between staff and students, and among students:** A sense of 'belonging' emerged as a key determinant of student outcomes.
- **Social, cultural and economic capital:** Recurring differences in how students experience HE, how they network and how they draw on external support were noted. Students' financial situation also affects their student experience and their engagement with learning.
- **Psychosocial and identity factors:** The extent to which students feel supported and encouraged in their daily interactions within their institutions and with staff members was found to be a key variable. Such interactions can both facilitate and limit students' learning and attainment.

**Learning and assessment in law school**

Several studies, in the US and UK, have established that law school performance is a predictor of future career success (see, for example, Farley et al., 2019; Sander and Bambauer, 2012; Zimdars, 2010a). It is therefore important to look at the law school learning and assessment environment.

**Learning environment**

One of the most obvious aspects influencing the learning environment for students at law school is the homogeneity of the teaching faculty. Faculty often neither reflects the student bodies nor the population more widely (Fay et al., 2021; Sotardi et al., 2022; Vaughan, 2016). As in other professional environments, 'a diverse faculty is important not just so that students can see themselves in the people who teach, advise, and mentor them and be assured that there are faculty who understand their differences. It is also essential to

advancing knowledge broadly and to pursuing ideals of justice in ways that recognize and include the experiences, aspirations, and needs of an even more diverse world' (Mann et al. cited in Segall and Feldman, 2018, p. 615).

Teaching standards and support structures within law schools inevitably shape how students think about themselves. They affect how much control and influence students believe they have over their learning throughout their academic journey (Sotardi et al., 2022). Learning is a social process, with interactions between teachers, students and peers critical to its success, and with the aforementioned interaction patterns influenced by race and ethnicity (Woolf, 2020).

Results from two studies in Australian law schools, as well as from a comparative one (Australia, Chile and South Africa), propose ways to achieve more inclusive and interactive learning environments. Some examples they use are the conscious use of case studies involving different socio-cultural groups and allowing more discussion of the implications of the law for different marginalised groups (Cantatore et al., 2021; Israel et al., 2017; Ricciardo et al., 2022). It is important to note here the focus on inclusion and inclusive education (De Beco, 2017) and not just the numerical representational goal of diversity.

Taking a more radical approach, Matiluko (2020) acknowledged the intersecting challenges, particularly of racially marginalised women in UK law schools. She calls for British undergraduate law curricula to bring 'an end to colonial continuities' in the ways that courses are taught (Matiluko, 2020, p. 547). Decolonisation, in the context of this report, does not refer to the material struggle – for example, land rights – but rather to institutional structures and practices which perpetuate the negative impacts of past colonial histories.

Decolonisation of curricula has become a common discussion point in UK higher education recently. However, as Matiluko points out, just talking about it is insufficient, law schools must demonstrate it 'overt[ly] in praxis' (Matiluko, 2020, p. 556).

Faculty could consider what knowledge is being produced, where it comes from, how it is taught, what power dynamics underpin it, and how more racially diverse students might relate to what is being taught. The academic literature is dominated by Western and Global North scholarship, and scholars' voices from outside of this hegemonic norm are rarely on the curricula. Voices from marginalised groups need to be heard in the classroom and all student backgrounds recognised as valuable in UK law schools.

Structural change is noted as being necessary to address the persistence of the Black, Asian and minority ethnic attainment gap and one clear way to address this is through decolonisation and curriculum reform (Universities UK and the National Union of Students, 2019). To prepare students to practise law in a particular jurisdiction, the course must teach the appropriate laws. However, teaching can recognise the roots of the laws and how they may perpetuate inequalities. Whilst maintaining the same content, teaching can include all voices meaningfully, and endeavour to create a sense of belonging for all. In turn, this would make what is taught meaningful for those students who might bring about transformational change in society (Matiluko, 2020).

In addition to teaching content, some studies focused on teaching styles or behaviours. For example, a study on the intersection between gender and social class in undergraduate law programmes in Colombia revealed how in-class experiences can perpetuate inequalities.

The paper described the 'hidden curriculum', meaning the different references of success and expectations, as well as levels of attention given to men and women law students and students of different class backgrounds by both the teachers and the institution, and how this can reproduce discrimination (Ceballos-Bedoya, 2021). Looking at how to address the attainment gap for Indian American women regarding success or failure of bar exams, Toya (2019) suggests teachers ensure safe spaces for minority voices to be heard. Additionally, institutional support should be in place to address technology poverty, which was particularly relevant during the Covid pandemic.

**Assessment environment**

The concept of stereotype threat has long been understood as a psychological threat experienced by individuals when in a social situation in which they feel at risk of conforming to a stereotype about their social group (Steele and Aronson, 1995). Most studies agree that whilst any students may experience test anxiety, minority ethnic students' performance on standard aptitude tests, such as the Law Schools Admission Test (LSAT) popular in the US and Canada, are particularly vulnerable to ethnicity-related anxiety or stereotype threat. One such study by Adjin-Tettey and Deckha (2010), which considered Aboriginal and other Canadian ethnic and racial minorities, made reference to earlier work in the US that observed 'something intrinsic to the structure or process of legal education affects the grades of all minorities' (Clydesdale, 2004, p. 737).

Much prior research in the gender field (outside of the scope of this review) has pointed to women having to 'overperform' to be considered as equal to their male colleagues in male-dominated environments. This also includes having more and higher-level qualifications.

Social explanations for this include the requirement of 'potential' not being as recognisable in individuals who do not 'fit' the expectation of what someone in that role should be like. This may be relevant to any assessments requiring social interaction, eg verbal examinations (Russel and Cahill-O'Callaghan, 2015). However, written assignments or exams may also present particular challenges for underrepresented groups.

The aforementioned challenges are often framed as 'writing problems'. In this context, an Australian study suggested that students should be purposefully acculturated into particular different styles of legal writing, rather than assuming they will intuitively pick them up (Moraitis and Murphy, 2013). As another study notes: 'If students from traditionally underrepresented groups require greater ability and effort to achieve the same results as students from traditionally overrepresented groups, then the entire system of assessing students from before admission, through law school, at the bar exam, and after may be systematically undervaluing the achievements of those students' (Strand, 2017, p. 201).

Moreover, Bansal, in an interesting study looking at how the Covid pandemic forced an immediate change in the exam format of UK law schools, noted that '[a]ssessment provisions within legal education in law schools in England and Wales are characteristically traditional – possibly to the point of archaicism' (Bansal, 2022, p. 355). Due to the online requirements of the pandemic, traditional closed-book exams (CBEs) were swapped for online open book ones (OBEs). Arguments for CBEs (that they are reliable, assess individuals, allow moderation, and incur little academic misconduct) are said to be founded only 'on a false belief that traditional law exams are superior to alternative assessments', as opposed to on sound pedagogical and education principles (Bansal, 2022, p. 357).

Bansal argues that the disbenefit of test anxiety, affecting 'behavioural, cognitive, and affective components, which ultimately weakens academic performance' (2022, p. 357) is greater for racial and minority ethnic students, who also 'feel inadequately prepared for traditional forms of academic assessment at university (eg CBE)' (Bansal, 2022, p. 357). This can lead to greater dissatisfaction with their assessments in comparison with their white peers.

The study suggests that the combination of teaching aimed at CBEs but ending up being assessed with OBEs leads to the disbenefits of both (Bansal, 2022). The paper questions whether UK law schools will revert completely to CBEs, or whether OBEs were found to have made any difference to the potential bias suffered by Black, Asian and minority ethnic students – evidenced by the persistent attainment and satisfaction gaps (Universities UK and the National Union of Students, 2019). The important point is that the pedagogical approach (design, delivery, formative assessment) is aligned with the assessment approach.

### Relationships between staff and students

#### Belonging and community of practice

'Law students who feel as though they are being cared for, respected, and encouraged by law school academics in law school will likely see greater potential in themselves, and

experience a sense of belonging and empowerment' (Sotardi et al., 2022, p. 85).

The importance of a sense of 'belonging' (socially and academically) emerges as a key determinant of student outcomes across several studies in the literature. A large body of sociological and social psychology literature explains the mechanisms behind this, for example, perceptions of stereotyping and bias (see, for example, Fouad et al., 2010).

Several studies from law schools reiterate the findings (for example Bodamer, 2019; Williams, 2013; Adjin-Tettey and Deckha, 2010). Interactions between academics and students can help shape which students succeed, as well as how and what they learn. Consequently, intervention strategies for creating and maintaining law classrooms that welcome, acknowledge and value diversity in the student cohort are suggested (see, for example, Adjin-Tettey and Deckha, 2010; Israel et al., 2017).

Minority ethnic students' 'perceived experiences of bias, discrimination, or unfair treatment, experiences of not being taken seriously in class, worrying that the professor underestimates their intelligence, and indicating that others would be surprised to see them succeed all significantly and adversely influence students' sense of belonging' (Bodamer, 2019, p. 477). This negatively impacts learning (Williams, 2013) and performance in law school even when controlling for demographics, enrolment status, past performance, and school controls.

Several studies discussed the important sense of working toward joining a community of practice within the legal profession (Balan, 2019; Ferguson, 2017). This is a challenging concept when you do not automatically relate to those within that community (for example, there are very few 'non-traditional' Queen's (now King's) Counsels – see Blackwell, 2015). An ethnographic study by a Black law professor speaks of the additional challenges and stereotypes Black people experience, and how law schools have both perpetuated racism and have an important role to play in remedying it (Gadson, 2019).

Recent law school literature acknowledges that since the problems may be caused at a system level, therefore the solutions should also be applied at that level. For instance: 'A lack of training contracts is not counteracted by an arms race in CV drafting. A lack of community is not cured by working on one's social skills. A sense of meaninglessness from chasing opportunities for social mobility that are rapidly disappearing is not resolved by developing a positive attitude to repeated rejection' (Ferris, 2022, p.14).

**Psychological safety**

The feeling of not belonging or feeling unwelcome in law school may stem from not feeling safe (Bodamer, 2019). Literature outside the scope of this review has previously defined psychological safety as when individuals believe they can be themselves and fully contribute without fear of negative consequences for their self-image, status, or career (Kahn, 1990).

One paper highlighted how maintaining a psychologically unsafe environment disproportionately affects minority ethnic students and further perpetuates systemic issues of race and ethnicity (Lain, 2018). The situation provides a better opportunity for those in the majority to succeed as lawyers. The paper gave an example of a race-based case study discussed in the classroom with very few minority ethnic individuals and the 'numerous levels of racialized interaction that were compounded by the class demographics' (Lain, 2018, p. 784). It also drew on an earlier study wherein students of colour struggled with racialised incidents in class (Sue et al, 2009), noting that 'they felt their integrity being attacked, they were fearful of the consequences of the conversation, and they were exhausted at having to deal with microaggressions' (Lain, 2018, p. 785). A lack of psychological safety can harm all students, but minority students may be 'adversely affected on a more significant level' (Lain, 2018, p. 787).

**Social, cultural, and economic capital**

In their 2015 report, HEFCE referred to the inconsistencies in students' experience of higher education dependent on their levels of social, cultural, and economic capital. For law

students, this includes, for example, how they build, maintain, and use networks both within and outside of the law school, how they draw on external support and how their financial situation affects their learning, engagement and performance (Glater, 2019).

Studies in the USA caution against identifying students potentially at risk of underperformance primarily through their race, as race and socioeconomic factors are too intertwined. However, it is also acknowledged that Black and Latino students face financial constraints and social dislocation more than white and Asian students (Soled and Hoffman, 2020). In addition, in the USA, men also receive larger law school tuition discounts than women (Merritt and McEntee, 2020). 'Students from a lower socioeconomic bracket may have to assume paid employment during the tenure of these intensive courses, in addition to other commitments, and thereby compromise their test results' (Adjin-Tettey and Deckha, 2010, p.181). This Canada-based study shows how performance impacted by financial circumstances contributes to reinforcing stereotypes of Aboriginal and other racial minority law students as intellectually inferior. As with the above US-based study, it recognises the intersectionality of economic and racial status negatively affecting academic performance and, therefore, life chances.

A sociolegal paper by Chien, Mehrotra and Wang (2020), looking at who gets the most prestigious clerkships, found: 'three critical inflection points in the pipeline for clerkships that may contribute to potential racial and gender disparities in judicial clerkships (1) law student/applicant decisions based on perceptions, preferences, and ambient signals; (2) institutional support from law schools through faculty and staff engagement with the clerkship process; (3) and selection decisions made by judges' (p. 539).

As further explained in sections below, applicant decisions, expectations and ambition levels are influenced by their own and others' prior attainment.

Two UK studies, one based in a post-92 university, and the other in two post-92 and one Russell Group university, identified many complex and intersecting issues as impacting students' performance, with students identifying work experience as key (Childs, Firth and de Rijke, 2014; McKee et al., 2021). Of course, non-paying internships are even less accessible for financially less privileged students (see, for example, Grenfell and Koch, 2019, study of Australian legal internships and Sommerlad et al.'s 2010 report). Most forms of work experience at the Bar in the UK (itself a part of the legal sector very much lacking in diversity) are unpaid (Bar Standards Board, 2018). Law students with financial disadvantages need to ensure relevant legal work experience is paid, often constraining opportunities.

Despite a reasonable amount of academic literature on the importance of social capital in the professions in the UK, there is little academic literature specifically looking at its impact on Black, Asian and minority ethnic law students' progression in the UK (for an exception see Sommerlad et al., 2010). US-based studies show how students referred to as 'non-traditional' may feel socially and culturally isolated in law schools (see, for example, Soled and Hoffman, 2020). A UK study highlighted the lack of social capital as a negative influence on any marginalised group in legal education (McKee et al., 2021). Another underscored the importance of networking and seeking advice from both career services and tutors (Childs, Firth and de Rijke, 2014). However, we know from other work in higher education that disadvantaged, or socially marginalised students are less likely to use such advice opportunities.

Citing Morley (2007, p. 205), Francis (2015, pp.182-183) points to how 'socio-economic privilege appears to be transferred onto the production and codification of qualifications and competencies, [ensuring that] social gifts are treated as natural gifts'. Strong academic qualifications were the starting point and employers look for 'other means of distinction' such as communication skills and confidence as noted earlier.

Francis (2015) showed that of UK law students from working class and non-traditional backgrounds 'the successful students were those who had understood the need for distinction and who had the cultural capital and intellectual ability to demonstrate it' (p. 183). This was more challenging due to 'deep-rooted structural constraints' (Francis, 2015, p. 194) of law schools in terms of supporting disadvantaged groups. The author also points

out that graduates' social and cultural capital is further weakened by the lower reputational capital of the institutions they are much more likely to have attended. Focusing on the very elite UK law schools, Ferguson (2017) suggests targeted non-academic support for socioeconomically disadvantaged students, with a focus on integration into the 'community of practice' and the acquisition of cultural and social capital (Ferguson, 2017).

**Psychosocial and identity factors**

As we have seen in much of the literature returned from our review, in endeavouring to understand the complex social mechanisms that influence academic outcomes, we need to consider both individual identity and environmental/social level differences and how the two interact. For example, prior experiences at a social level of unfair treatment or lowered expectations of law professors towards ethnic minorities negatively impact student outcomes (Bodamer, 2019).

In management, organisation and vocational studies, SCCT is a well-established theory that explains the development of academic/vocational interest, the pursuit of career choices and the persistence and performance in that academic/vocational field. The theory focuses on how the individual's cognitive processes interact with their social environment to influence their choices and career development.

Predicated on Bandura's Social Learning Theory, it focuses on four cognitive variables: 1) self-efficacy beliefs, 2) outcome expectations, 3) interest and 4) goals. It was originally conceived by Lent and colleagues (2010). A large body of literature has since developed, focusing predominantly on gender differences, but also on some minority ethnic samples, entering STEM careers (mostly engineering, academia or medicine).

One of the findings from SCCT work on women and ethnic minorities (not in law contexts) is that due to their marginalised and often vulnerable position, negative experiences tend to have more profound impacts on self-efficacy than on the male white majority (see, for example, Cadaret, et al., 2017; Dahling and Thompson, 2010; Ezeofor and Lent, 2014; Flores et al., 2021a; Lent et al., 2010; Sheu et al., 2018; Lent et al., 2018). Whilst at least 40 of the papers returned in our literature search touched on aspects of SCCT, we found no studies testing SCCT in the legal context. Moreover, none focused on ethnic minorities and professional post-graduate qualifications. This reveals an obvious gap for future research.

We did find one very recent paper taking a social-cognitive approach to legal students' studies across three New Zealand law schools. Taking account of the personal characteristics of the law student, the academic engagement behaviour and the law school environment, the study used longitudinal survey data measuring psychological distress, interest in a legal career and satisfaction with law school. Findings showed clearly that increased interest in a legal career is linked to greater confidence in performance expectations at law school (Sotardi et al., 2022). The perception of the law student personal characteristics focuses on achievement motivation, including: interest in legal career, academic self-efficacy, effort expectancies, subjective task value, satisfaction with law school and subjective wellbeing. Student engagement behaviour includes: lecture attendance, amount of group study, and amount of self-study outside of lectures and tutorials. The law school environment includes: support provided by staff, assessment manageability, timing of assessments, and grade coherence (expected and received).

## Legal qualifications

The SLR did not result in many articles directly tapping into the realm of legal professional qualifications and/or assessments, especially in connection with ethnicity attainment gaps. Several authors focused on changes that might be brought by the SQE (Guth and Dutton, 2018; Hall, 2018; Davies, 2018; Bailey, 2018; Nicholson, 2022). Due to the SQE not being in the remit of this project, this section focused on any pertinent information the literature could provide to answer the research question of Workstream One. In regard to the latter, the literature highlighted the following issues:

**Disconnect between qualifications and entry into the profession**

An observation apparent in some studies was that there is a disconnect between legal professional qualifications and the entry into the legal profession. It was noted that law firms do not recruit solely based on performance in such qualifications, and that this situation was unlikely to change (Guth and Dutton, 2018). Indeed, research has showed how employers in the legal sector tend to rely on degree classification (Nicholson, 2022), and/or on the university attended (Mason and Guth, 2018), as opposed to performance in legal professional assessments. Consequently, candidates may not be as interested in excelling in these assessments, compared with their university studies and/or their A-levels.

A competency-based approach to legal professional assessments has been highlighted as a way to bridge the gap between theory and practice (Sylvester, 2015). Further disincentivising effects may arise due to the overall lack of relevance of legal professional qualifications to the labour market outside the legal sector, potentially having a larger effect on Black, Asian and minority ethnic candidates (LETR, 2013b).

**Costs and accessibility**

In the following section on the legal profession, the costs of legal professional qualifications are mentioned as a barrier to entry. Here, the costs of training can end up acting as a determinant of the quality of provider chosen by the candidates, influencing their performance in legal professional assessments. This situation inevitably reduces the accessibility of some training for disadvantaged groups.

Preparatory courses for some legal professional assessments such as the LPC or the Bar Professional Training Course (BPTC) are not typically incorporated into a degree, resulting in significant costs for candidates. Recently though, the introduction of the SQE led some law schools to incorporate preparatory courses or seminars into their degrees at both undergraduate and postgraduate level. This could alleviate students attending such law schools from the additional costs associated with such training (Davies, 2018).

Incorporating preparatory courses for legal professional assessments also impacts on student recruitment strategies – and student's choice of university, depending on each Law School's offering (Nicholson, 2022). Funding opportunities in the form of sponsorships may exist, but these are largely handed out on the basis of merit. Merit can be problematic for social mobility for the reasons set out elsewhere in this report, and which revolve around the difficulties of using past attainment to determine merit (LETR, 2012).

The large law firms are likely to cover training costs for their trainees, whereas the smaller firms, which are usually more diverse (Sommerlad et al., 2010), are likely not to (LETR, 2013a). In addition, the LETR also noted the existence of informal classification of LPC providers, linked to their ties with the large law firms (LETR, 2013b). This creates a hierarchy for legal professional qualifications' candidates, depending on the provider they attended (LETR, 2013b). The variable standards among providers may have also contributed to the candidates' performance (Legal Education and Training Review, 2013a).

A study by the Bar Standards Board on attainment in the BPTC showed 'that ethnicity significantly affects average module scores, even after variables such as prior educational achievement are controlled for' (Bar Standards Board, 2017, p.18). Interestingly, a study on the Bar pass rates in the US noted that race alone does not play a significant role but it should be contextualised in light of historical educational achievement (Yakowitz, 2010).


## 4. Professional and employment contexts

Professional and employment contexts, and the legal profession in particular, might not at first glance appear to be directly related to the ethnicity attainment gap in legal professional assessments. However, the characteristics of a profession, combined with legal professional assessments' candidates' perceptions of the profession, can influence the attainment of those candidates (including in ways described above). For example, this could be achieved through influencing candidates' belief in their own capability (self-efficacy), their motivation, and their related choices. For this reason, the ethnicity attainment gap

could be linked to the way in which diversity manifests itself in the profession and the latter's dominant narratives. It could also be linked to the barriers to access, success and progression, as well as the perceptions and lived experiences of minority ethnic professionals and the coping strategies these adopt in return. Put simply, the profession itself shapes how people identify with law (which we will refer to as law identity) and as a result can influence academic and career- related behaviours.

**Characteristics of the legal profession**

The legal profession has a reputation as an elite profession, mainly due to the higher educational credentials and privileged social background of those comprising it (Zimdars, 2010b). As the LETR has previously acknowledged, the profession has become increasingly diverse (LETR, 2013b), although there are still concerns about how representative it is as a whole (see, for example, Vaughan, 2017 and Vaughan, 2016, who also raises concerns about the reliability of some of the available data). Statistics are largely –albeit unevenly- reflective of the general working age population. When compared with the university population in law, though, the possibility of under-recruitment surfaces (LETR, 2013b).

Who is recruited among Black, Asian and minority ethnic individuals is also important to consider. This is especially so in relation to other protected characteristics and low SES, some of which are under-represented wholly or partly in the legal profession (Zimdars, 2011; Neuberger of Abbotsbury, 2013). Indeed, the LETR observed that diversity in the profession refers to 'middle-class' diversity (LETR, 2013a, p. 53).

In medicine, workplace diversity and inclusivity have been identified as success factors for ethnicity attainment in post-graduate speciality training (Roe et al., 2019). Participants of the study saw this as an important characteristic, influencing both the working and learning environment, mainly by fuelling their aspirations, respecting individual perspectives and diversity of thought, and making them feel represented (Roe et al., 2019). Overall, how diversity is managed at the workplace level could benefit from further research, to fully unpack its impact on performance and organisation outcomes (Guillaume et al., 2013).

The legal profession is stratified across its different sectors, although the specifics depend on the jurisdiction studied. For example, a North American study showed that women and minority ethnic lawyers tend to be over-represented in the public sector, but under-represented in private law firms (Dinovitzer and Dawe, 2016). The only exception were Asian American lawyers, who, by being more likely than any other group to work in the largest law firms, constitute a so-called model minority (Dinovitzer and Dawe, 2016).

Similarly, in England and Wales, CILEX members, cost lawyers and conveyancers are more socially diverse compared with solicitors and barristers (Brannan, Purtill and Stec, 2018; LETR, 2013a). In turn, solicitors tend to be a more diverse sector of the legal profession compared with barristers (Vaughan, 2017). Within solicitors, large City firms' solicitors tend to be white and of high socioeconomic background, whereas Black and minority ethnic women and people from low socioeconomic backgrounds are much more common in High Street firms or practices (Sommerlad, 2011; SRA, 2022).

A conceptual piece from the US argued that digitisation could further increase stratification within the profession, as only large law firms tend to have the capital to afford the introduction of new technologies (Caserta, 2022; Sako and Parnham, 2021). Stratification and problems with career progression feed into legal professional assessment candidates' perception of the profession, potentially affecting their aspirations and law identity, which, in turn may influence their attainment.

The stratification has led to discussions about a glass ceiling. The glass ceiling exists because diversification efforts have been successful at the level of entry, but are not reflected higher up (SRA, 2020). White male graduates of elite universities tend to dominate the upper echelons of the different branches of the legal profession. This occurs across different sectors of the profession and across various jurisdictions. Studies confirming this focused on:

- US corporate law firms (Dinovitzer and Garth, 2020) and UK elite law firms (Sommerlad, 2011; Dinovitzer and Dawe, 2016) where Black, Asian and minority ethnic individuals are under-represented at the partner level;
- clerkships, particularly prestigious ones, in the US (Chien, Mehrotra and Wang, 2020);
- the judiciary in England and Wales, as well as the US, especially insofar as apex courts are concerned (Barmes and Malleson, 2011; Barton and Moran, 2013); and
- the awarding of QC (now KC) status to barristers (Blackwell, 2015).

The glass ceiling exists even for workplaces that present themselves as meritocratic, such as the bar (Zimdars, 2010b; Zimdars, 2011) and/or as strongly aligned with equality, diversity and inclusion, such as academia in the UK and the US (Vaughan, 2016; George and Yoon, 2014). Indeed, for law firms, a disjunction between diversity as a marketing tool and as a shared value was observed (Adediran, 2018).

Due to its long-standing history and association with the notion of an elite profession, change might come harder for the legal profession, compared with other, younger professions such as engineering (Bowman, 2011). Overall, drawing on several older studies focusing on the US context, Dias and Kirchoff noted that entry and assignment in areas of the legal profession are underpinned by gendered and racialised processes (Dias and Kirchoff, 2021). Ethnicity becomes a determining factor of outcomes within the profession, similar to previous stages of one's life, leading to a vicious cycle that can also be reflected in the ethnicity attainment gap. The stratified representation could lead to Black, Asian and minority ethnic individuals seeing obvious limitations on how far they can go in their legal careers, which go beyond their control. In turn, this could disincentivise them from doing their best in legal professional assessments.

**Barriers to entry**

Barriers to entry into the profession are multi-dimensional and can extend to the pre-qualification stage. This can involve for example, parts of the qualifying work experience, or the lived experience of eventual candidates in legal professional assessments with potential employers. Like other aspects of the professional context, such experiences are likely to influence candidates' law identity and aspirations and may manifest themselves in their attainment.

The LETR highlighted the costs for legal professional qualifications, coupled with the perceived lack of diversity in the profession as major reasons for discontent (LETR, 2013a). Such costs render support from a prospective employer at the pre-qualification stage in the form of funded preparatory course as part of one's offer for a training contract key. However, the stratification of the legal profession and its racialised processes affect who benefits from the aforementioned schemes, and introduce barriers to entry more broadly (Dias and Kirchoff, 2021).

The graduate level entry structure of the legal profession tends to reproduce pre-existing imbalances and marginalisation (Zimdars, 2011). For example, a study of the legal profession in Ontario, Canada, identified, among others, the affordability of legal education and diversity within the legal profession as major challenges (Levin and Alkoby, 2013). An SRA-commissioned study reported lower earnings for Black, Asian and minority ethnic candidates during their training contract, compared with white candidates, and fewer opportunities for vocational in-practice training (SRA, 2015). A more general study of UK graduates showed that minority ethnic graduates perceived gaining employment and entering the labour market as more difficult compared to their white peers (Taylor et al., 2012). The study also showed variations depending on gender, ethnicity or the intersection of the two (Taylor et al., 2012).

Although barriers manifest differently depending on the protected characteristic at hand, drawing on equality and diversity literature can still provide useful insights. A Belgian qualitative study of 50 women early career researchers in academia, another highly specialised and graduate level profession, identified several barriers to entry (Bourabain, 2021), such as:

- the smokescreen of equality (ie showing adherence to equality policies but not implementing them effectively in day-to-day practice);
- patronisation (ie undervaluing or delegitimising the efforts of someone not belonging to the majority group); and
- paternalism (ie controlling, oppressive and repressive behaviours by superiors, and those thinking themselves as such).

Similar barriers were identified in another study of academia (Carter-Sowell et al., 2019).

Relatedly, the profile of those making hiring decisions can play a role regarding the factors they take into account in their decision-making, which can disadvantage individuals from certain socioeconomic and ethnic backgrounds (George and Yoon, 2014). More broadly, it can also affect the diversity perspectives they espouse, as observed by a study of German executives (Bader, Kemper and Froese, 2019). In the legal sector, such observations may explain the introduction and application of contextual recruitment processes by some firms and chambers.

**The myth of meritocracy**

A major barrier to entry in the legal profession for Black, Asian and minority ethnic individuals is the 'myth of meritocracy', which has been noted to reproduce social disadvantages (LETR, 2012). The use of 'merit' as a gateway to employment and the way that merit is usually assessed, which is linked to prior achievements and social traits respectively, negatively impacts disadvantaged groups. This is so because those who are already in positions of power define merit based on assumptions of neutrality in education measures (Sommerlad, 2011). This approach results in a system of social stratification particularly prevalent in the legal profession (Sommerlad, 2011).

Attainment indicators, some of which can be arbitrary, are used as a proxy for merit and can overshadow any diversity issues, yet have a significant impact on entry to and progression in the profession (Ashley et al., 2015; Bridge Group, 2021; Hagan and Kay 2010; Johnson and Eby, 2011; Neuberger of Abbotsbury, 2013; Monahan and Swanson, 2019; Sommerlad, 2011; Wang and Lysenko, 2014; Zimdars, 2011). Professional attainment indicators include attainment in legal professional assessments, with a study identifying positive effects on earnings of those having been awarded 'Outstanding' in the Bar Vocational Course (BVC) or having received funding for the latter (Zimdars, 2010b). Relatedly, a study of 2,178 British aspiring barristers found 'a pattern whereby white BVC students are much more likely than all British minorities to have attended Oxbridge, to have obtained a first, and to have attained more highly than minorities on the BVC' and 'increased representation of all minorities… among low attaining students' (Zimdars, 2011, p. 592). In that regard, some literature cautioned that not requiring a Qualifying Law Degree to become a solicitor may end up further accentuating the role the university attended plays in recruitment (Davies, 2018; Mason and Guth, 2018). Although, it is worth noting that going to university is no longer a requirement to become solicitor.

The use of merit as a gateway to employment and the way that merit is usually assessed is present across the legal profession and operates even during the pre-qualification stage. An example of that is the application process for vacation schemes and internships, but also for training contracts (LETR, 2013a). The LETR surveyed lawyers, academics and students, and noted that '95% of respondents to the survey, on average, thought that academic qualifications were a reliable system for determining access to professional education vacation schemes and internships and obtaining training contracts' (LETR, 2013a, p. 54). This was confirmed by another empirical study of solicitors' firms which found that even though the university attended might no longer be as important as in the past, degree classification is still considered a proxy of an applicant's quality (Nicholson, 2022). Yet, the institution attended continues to act as 'prox[y] purportedly determining legal ability and skill but in practice discriminate against BAME and lower socio-economic group law graduates' (Aulakh et al., 2017, pp. 14-15).

Firms in the professions more generally consider academic performance a good indicator of intelligence, as well as a predictor of success in professional assessments (Ashley et al., 2015). Academic qualifications may include A levels or even GCSEs (Francis, 2015). Given

the SLR findings elsewhere in this report, relying on educational performance tends to add to the disadvantage of minority ethnic individuals who are looking for work experience to extend their legal knowledge and enter the profession.

A study noted that the application of merit in the profession goes beyond the need for academic excellence (Francis, 2015). Becoming the ideal well-rounded candidate requires a set of soft skills, which tend to disadvantage students from under-represented backgrounds (Francis, 2015). Soft skills and prior experience are appreciated by potential employers (Nicholson, 2022; Aulakh et al., 2017). The appreciation of prior work experience, which often involves unpaid work that not everyone can afford, can create a pre-pre-qualification stage out of regulatory reach, presenting an additional barrier to entry associated with merit and ascription (Ching et al., 2015). An Australian study raised the issue of financial barriers to accessing university-run unpaid internships (Grenfell and Koch, 2019).

The focus on such factors may steer attention away from performing well in legal professional assessments. Under-represented candidates may struggle to gather all the attributes required by the legal profession or put additional effort into some that they perceive as more important to compensate for the lack of others (Guth and Dutton, 2018; Mason and Guth, 2018).

**Social class, privilege and whiteness**

As hinted in the previous sub-section, the myth of meritocracy goes hand in hand with issues of social class, privilege and whiteness. These are among the multiple disadvantages that signal the long-standing structural embeddedness of minority ethnic individuals' marginalisation in society (Johnson and Eby, 2011). Literature observed a link between social class, privilege and whiteness within the practice of 'everyday cloning', also known as homophily (Bourabain, 2021). The practice presents opportunities for those belonging to the same (dominant) group, whilst excluding marginalised groups (Bourabain, 2021). In the legal context, such opportunities are present at both pre- and post-qualification stages. Similar to observations generally about the professions, managing to gain employment at an elite firm does not necessarily lead to success in the qualifications for less socioeconomically privileged individuals, or to retention post-qualification (Ashley et al., 2015).

Difficulties in attending assessment centres, as well as the overall lack of economic, social and cultural capital constitute barriers to entry (Ching et al., 2015). Indeed, the literature noted not only the difference in successfully getting a vacation scheme but also in application patterns for those between students in pre- and post-92 universities (Francis, 2015). Given the demographics of such establishments, these observations tend to correlate with both ethnicity and socioeconomic background (Francis, 2015). Vacation schemes can lead to training contracts with funding for preparatory courses for legal professional assessments. They may also lead to a clear post-qualification employment route, although not for all (Aulakh et al, 2017). Even though training contracts are no longer required to qualify as a solicitor, big law firms continue to offer them as their main entry route.

Disadvantaged students tend to lack the opportunities to develop the forms of capital required for planning a well-formed future strategy. At the same time, they also receive 'negative signals from the profession', manifested, for example, in 'firms' expectations about the type and quality of students with which they will engage'. (Francis, 2015, p. 198). The insights and know-how that come with social class, privilege and/or whiteness, lead to information asymmetry and can influence the credentials, type of employment and earnings one gains throughout their work cycle (Dinovitzer, 2011; Dursi, 2012; Zimdars, 2010b).

Literature from the US highlighted the low preference and expectations among Black and Asian students for undertaking a clerkship and showed that '[u]nderrepresented minority students, particularly those without existing knowledge or networks, may enter law school with very limited information about clerkships and how to attain them' (Chien, Mehrotra and Wang, 2020, p. 551). The situation is further exacerbated by hiring processes starting early, because minority students may lack the insights of their peers (Chien, Mehrotra and Wang,

2020). Overall, the country context is important when studying the relevance of social class, privilege and whiteness, as the degree of their influence may vary from one jurisdiction to the next (Dinovitzer and Dawe, 2016).

**Barriers to career success and progression**

Barriers to entry are closely linked to those affecting career success and progression and vice-versa. However, it is worth mentioning the latter separately, to showcase their multidimensional character (Adams–Harmon and Greer–Williams, 2021). Although seemingly unrelated to the attainment gap, they can explain the glass ceiling apparent in the legal profession. They can also explain the associated lack of role models in high positions, as well as the problems with the lack of representation more generally. Consequently, the foregoing could affect perceptions and ambitions among candidates in legal professional assessments.

Such tensions and experiences are likely to also arise in the pre-assessment stage, when candidates undertake internships, vacation schemes, etc. These experiences might be eye-opening and affect candidates' self-efficacy, ambitions and grit to draw parallels with SCCT. The foregoing issues particularly affect Black, Asian and minority ethnic communities (Ethnic Minorities and Youth Support Team Wales, 2018). Even when belonging to the middle class, Black, Asian and minority ethnic individuals still encounter barriers in their professional lives. To that regard a study noted that the highest discrepancies by ethnicity are found in professional and managerial occupations (Clark and Drinkwater, 2007; Archer, 2011).

Barriers to career success and progression can manifest themselves early on in professional settings. These settings include internships or vacation schemes, which are of direct relevance to future legal professional assessments' candidates. The barriers range from the level of the individual (eg self-perception) and their close relations and work environment (eg interactions with line managers and peers), to societal (eg structures of reproduction based on protected characteristics) (Wyatt, 2015; Atewologun, Sealy and Vinnicombe, 2016; Ruiz Castro and Holvino, 2016).

Professionals belonging to marginalised groups have the difficult hurdle to balance their distinctiveness (eg the need to be appreciated as unique at work) with their belongingness and fit to their workplace. Workplace environments built on the white male paradigm take away control over that balancing exercise from marginalised professionals. This particularly affects those possessing more than one protected characteristic, such as Black women, who may have to overcome the additional barrier of sexualised visibility in male-dominated workplaces (Fernando, Cohen and Duberley, 2019; McCluney and Rabelo, 2019).

Perceiving the workplace and the profession more broadly as racialised and/or gendered environments influences people's choices, even if change is underway (Duberley and Cohen, 2010). This applies also for minorities who are well-represented in the upper echelons of the legal profession at entry. A US study showed high attrition rates for those (Dinovitzer and Dawe, 2016). Likewise, a UK study showed similar trends for less privileged individuals (Ashley et al., 2015). Internalising such perceptions and experiences may also affect performance in legal professional assessments.

Migrant status may accentuate the aforementioned barriers, and, as such, potentially manifest itself in performance in legal professional assessments. This is particularly relevant for assessments like the QLTS, which are tailored to candidates already qualified in other jurisdictions (Fry, Crewe and Wakeford, 2012). Migrant status also introduces additional barriers such as stringent migration regimes, non-transferable education credentials, economic and cultural differences, lack of familiarity with the labour market, etc (Wang and Lysenko, 2014). The extent of these barriers' effects depends on the reproduction of privilege associated with masculinity and whiteness among them (Sang and Calvard, 2019). Regarding the legal sector in the US, migrant status was not a stand-alone explanatory factor for the difference in earnings, but a study considered it alongside protected characteristics (Dias and Kirchoff, 2021).

## Perceptions

### Stereotyping, bias and fit

The content of this section predominantly includes studies referring to post-assessment settings. However, it is also relevant for this project, since these issues may arise in pre-qualification work experience. Stereotyping, and stereotype threat, are linked to the mainstream explanation for the lack of representation of minorities in professions. This is sometimes centred on the notion of a 'deficit in their group's ability or motivation to perform the work required to do the job successfully' (Block et al., 2019, p. 46).

Stereotyping has also been linked to the notion of identity capital, which is different from merit, and which tends to help those possessing the characteristics of the dominant majority (Wald, 2016). Identity capital refers to 'the value one derives from one's personal identity' (Wald, 2016, p. 111). Minorities are sometimes framed as such not purely because of their under-representation, but also because of their perceived low-status identities compared to the dominant ones (Settles, Buchanan and Dotson, 2019).

The need for fit has been acknowledged as constraining the opportunities available for Black, Asian and minority ethnic lawyers in the UK (Aulakh et al., 2017). A study of French judges exposed how members of the dominant identities use deflection mechanisms focusing on fit and meritocracy to downplay the relevance of protected characteristics for the profession (Cohen, 2018).

Since stereotyping often focuses on individual deficits, individuals affected by it adopt different strategies, with some internalising the dominant narrative and becoming invisible or disengaged (Block et al., 2019; Fawcett Report, 2022; Settles, Buchanan and Dotson , 2019). Anecdotal views among participants in a Canadian study showed that minorities are not keen to work for the bigger law firms, perceiving themselves as a better fit for less-lucrative careers (Levin and Alkoby, 2013). Indeed, another study focusing on the US associated stereotyping with occupation segregation, both reasons that can push ethnic minorities away from a profession they see as not fitting (He et al., 2019). Literature on the US judiciary noted that stereotyping, combined with legal education, influences minorities' ambitions, but also their performance and professional standing (Moyer et al., 2021).

Stereotyping in the legal sector in the US has infiltrated the evaluation of judges (Gill, Lazos and Waters, 2011, Elek and Rottman, 2014), and the confirmation hearings of the US Supreme Court Justices (Boyd, Collins and Ringhand., 2018).

Racial stereotyping has also been observed in the legal profession in England and Wales, particularly in the North of England (Sommerlad et al., 2010). Regarding professional qualifications, a study commissioned by the General Medical Council (GMC) noted the negative impact of stereotype threat on the attainment of minority ethnic students, due to the performance-reducing fear of confirming negative stereotypes (Roe et al., 2019). Workplace stereotypes associated with race and ethnicity, alongside qualifications, were also reported in another study of the medical profession (GMC, 2019).

Stereotyping can also lead to bias, the so-called out-group bias, where members of the dominant group are wary of the qualifications and abilities of marginalised individuals (Boyd, Collins and Ringhand, 2018). In the UK, this can be reflected in the gate-keeping of the legal profession 'that gives rise to the translation of entrenched group-based identity hierarchies from legal practice into the judiciary' and 'reflects the systematic disadvantage and marginalisation in the legal profession of certain identity groups; notably but not exclusively, women and members of ethnic minorities' (Barmes and Malleson, 2011, p. 246). Even at a much earlier stage, a UK study of law students showed that Black, Asian and minority ethnic students were more aware of barriers to entry to the legal profession, and more likely to feel subjected to unconscious bias (McKee et al., 2021). At its extreme, a lack of fit and bias can lead to self-selection out of the profession (Francis, 2015; Bridge Group, 2021). Stereotyping also proliferates the perception of an existing glass ceiling and feelings of alienation (Ezzedeen, Budworth and Baker, 2015).

### (Hyper)visibility and invisibility

The literature flagged up the concepts of visibility, hypervisibility and invisibility as relevant to describe the experience of marginalised individuals. A report commissioned by the Social Mobility and Child Poverty Commission noted the simultaneous visibility and invisibility of marginalised individuals based on ethnicity and/or social class in elite firms. Research participants observed that these individuals 'were less likely to pass professional examinations, or to be appointed by the firm upon qualification' (Ashley et al., 2015, pp. 13-14). Black, Asian and minority ethnic individuals are visible due to their status as belonging to traditionally marginalised groups. Simultaneously, they are also invisible concerning the appreciation by their peers and managers of their abilities and characteristics that can give them success in their field (Block et al., 2019).

Studies focusing on STEM showed that women of colour are invisible by reason of their gender and ethnicity, resulting in intersectional invisibility (Wilkins-Yel, Hyman and Zounlome, 2019). A study of Black, Asian and minority ethnic and white senior managers observed that the former felt under scrutiny more often and saw visibility as a double-edged sword (Wyatt, 2015). Visibility could end up in hypervisibility, which refers to those succeeding in a profession being perceived as tokens, and, consequently, being subjected to higher levels of scrutiny (Settles, Buchanan and Dotson, 2019). Research has shown that marginalised individuals tend to be affected by both (hyper)visibility and invisibility at work, which could lead to 'identity-based mistreatment' (Buchanan and Settles, 2019, p.1).

**Microaggression and discrimination**

As a result of stereotyping, bias, (hyper)visibility and/or invisibility, Black, Asian and minority ethnic individuals can experience microaggressions in education settings and workplaces. Similar to other aspects of the profession, microaggressions and discrimination may influence candidates' perceptions, their law identity, and aspirations to succeed. An example from academia showed how ignoring voice and presence in the sector can take the form of ignoring achievements (Settles, Buchanan and Dotson, 2019). Studies of women of colour in STEM grouped microaggressions under four themes (Wilkins-Yel, Hyman and Zounlome, 2019; Carter-Sowell et al., 2019):

- skills and expertise delegitimisation;
- messaging about lack of fit and belonging in the discipline;
- ignoring voice and presence; and
- gendered and racialised encounters that focus on stereotyping, like perceiving them as tokens.

A Bridge Group study noted the existence of microaggressions in the legal profession, as well as the complacency of some senior leaders in calling out such behaviours (Bridge Group, 2018). A study of attitudes towards microaggressions against Asian Americans found that it is hard for bystanders to notice and challenge subtle microaggressions compared to more blatant forms, even if these are directed towards a so-called model minority (Kim, Block and Yu, 2021). Another study noted how microaggressions in the form of delegitimisation or questioning of belonging can undermine one's competence, increasing self-consciousness (Wilkins-Yel, Hyman and Zounlome, 2019).

The literature showed how Muslim women or British-born Pakistani and Bangladeshi women, although having similar educational attainment and apprenticeship opportunities, continue to experience unfair treatment and inequality in employment (Tariq and Syed, 2018). A US study showed that lawyers with protected characteristics have perceived discrimination against them by clients as well as their supervisors. The lawyers suffered distinct biases depending on the characteristic(s) they possess (Nelson et al., 2019).

Another piece, drawing on the author's lived experience as 'an openly lesbian Latina (law) professor', reflected on the pernicious nature of workplace politics (Arriola, 2017, p. 489). A study of women of colour showed that 75% have experienced one or more forms of racism at work (Fawcett Report, 2022). Microaggression and discrimination are identity-based stressors that according to the literature can deplete coping resources, leading to negative health and wellbeing outcomes (Settles, Buchanan and Dotson, 2019).

**Coping strategies**

Environments where stereotyping, (hyper)visibility and invisibility, and microaggressions are rife can influence how Black, Asian and minority ethnic professionals choose to present themselves. The following literature refers to professional settings, but it is likely to be of relevance for educational settings too. The experience of marginalised individuals in less diverse professional environments, as well as the coping strategies they adopt, varies depending on the actual group one belongs to (Settles, Buchanan and Dotson, 2019; Lendák-Kabók, 2021).

The literature discussed a strategy employed by minority ethnic professionals called identity shifting, which helps people forge relationships that ensure professional and societal advancement. It entails efforts to fit in with the predominantly white values, at the expense of one's own values, wellbeing and lived experience (Dickens, Womack and Dimes, 2019; Sang, Al-Dajani and Özbilgin, 2013). Another study referred to the related concept of identity performance to explain how minority ethnic professionals try to fit into a role traditionally held by whites (Carle, 2014).

A US study observed that to combat stereotyping in racialised and gendered fields of the legal profession, such as the judiciary, women and ethnic minorities tend to be overqualified and work harder (Moyer et al., 2021). However, given that coping strategies are dependent on the individual, some might choose to remain 'strategically invisible' (Settles, Buchanan and Dotson, 2019). Read together, these two contrasting strategies can explain some of the micro-level reasons why the ethnicity attainment gap persists.

Another coping strategy identified in the literature is that of 'professional role distancing' associated with any protected characteristic. This strategy, which involves dissociating from aspects that form part of an individual's core identity, was observed in law students set to work in corporate law firms (Bliss, 2017). For some, particularly from under-represented groups, such distancing from their identities can be traumatic (Bliss, 2017). The impact of professional role distancing, and other coping strategies aiming to ensure that marginalised professionals fit, can be reflected in their most common career pathways. These pathways tend to be away from elite law firms (Bliss, 2017).

## 5. Interventions

The SLR uncovered literature that discussed a variety of diversity-related interventions in educational, legal, and other professional settings from various countries. The literature was broadly divided into two strands. The first strand conceptually discussed the details and viability of potential interventions, whereas the second evaluated interventions that had already taken place. The latter are discussed in more detail under the What Works and Case examples sub-sections.

We identified three areas of intervention activities discussed in the literature:

- Education-targeted interventions: including diversity activities or initiatives focused on education;
- Profession-targeted interventions: including diversity activities or initiatives focused on the profession;
- Institutional interventions: including diversity activities or initiatives for organisations, associations and/or regulators.

These interventions were not all aimed at directly tackling the attainment gap in legal professional assessments. However, their broad range is relevant due to the wide-ranging nature of factors influencing the attainment gap. Accordingly, they can be taken into account when considering targeted interventions to address it. There were several law articles (nearly 30% of the included papers) that discussed diversity or inclusive activities, albeit not directly on the attainment gap. Although not on ethnicity, one piece warned that interventions addressing disadvantage without also addressing the conditions (ie structural, and/or cultural) leading to disadvantage, jeopardise their success (Feenan, Hand and Hough, 2016).

**Education-targeted interventions**

Interventions of this type focused on changing admission policies, law school culture, assessments and curriculum. Most of the literature mentioned in this sub-section refers to the higher education context. Yet, some of the aspects discussed are also of relevance to earlier educational settings. More specifically, the latter concerns the curriculum and assessment, as well as the culture and support interventions. The said activities were discussed and/or conducted in the context of increasing diversity and inclusion in learning environments for students.

**Admissions interventions**

In the context of admissions, an empirical US study raised the need to look beyond the standardised entry criteria, based on entry tests such as the LSAT and attainment in prior qualifications (Shultz and Zedeck, 2011). Another study from the US suggested outreach activities and alternative entry exams to increase minority enrolment (Gregory, 2013). In the UK, an article raised the issue of changing the socioeconomic sources that are taken into account for contextual offers at law schools of elite universities (Ferguson, 2017). Instead, it argued that focus should be placed on poverty-related proxies (Ferguson, 2017).

Studies of affirmative action policies in India and Brazil showed improved chances or outcomes for the targeted group (Khanna, 2020; Francis-Tan and Tannuri-Pianto, 2018). Brazil is an interesting country to observe because racial typologies are quite clear. They are based on phenotype or skin tone, thus moving away from the black/white binary, with racial quotas existing in higher education (Francis and Tannuri-Pianto, 2013). A Canadian study cautioned that affirmative action risks perpetuating racialised stereotypes about the beneficiaries not being qualified enough (Adjin-Tettey and Deckha, 2010). In turn, this may generate hostility towards minority ethnic students, negatively affecting their learning environment (Adjin-Tettey and Deckha, 2010). At the same time, another study used experiments to suggest higher levels of support for affirmative action policies based on unidentifiable procedures (Ritov and Zamir, 2014). Such procedures do not remove and replace individuals, but instead add underrepresented candidates thereto (Ritov and Zamir, 2014).

In the US, affirmative action policies in university admission have been commonplace. However, such policies have been controversial. Affirmative action does not exist as such in England and Wales, with positive action allowed under the Equality Act 2010. It is worth noting that positive action does not fully encapsulate all forms of affirmative action. This refers in particular to the more far-reaching forms that may border on positive discrimination, which is prohibited in England and Wales. Nevertheless, drawing on the broader affirmative action literature is still useful, so long as the findings and suggestions are read with the UK context in mind.

**Curriculum and assessment interventions**

Careful consideration of the curriculum design has been highlighted as important to foster inclusivity. Participants in a number of studies underscored the need for cases that are drawn from the real-world and include diverse socio-cultural groups. They also highlighted the need to discuss the impact of law-making on the latter (Ricciardo et al., 2022; Cantatore et al., 2021; Israel et al., 2017). At the same time, attention has to be paid so that discussions of real-world examples do not lead to racialised incidents (Lain, 2018). Another article called for the inclusion of Black British feminist modes of thought in legal education, alongside interrogating the assigned reading, to decolonise the curriculum (Matiluko, 2020).

Decolonising or liberating the curriculum has gathered student support as part of wider initiatives that aim to change the university or departmental culture (Raza Memon and Jivraj, 2020). Inclusive education or curriculum is linked to ideas of social justice, and it has been argued that more could be done to improve its application in practice (De Beco, 2017). A suggested potential intervention is to show cultural humility in curricula, which presupposes respect and reflection toward the study of other cultures (Hamman, 2017).

Curriculum change, affecting course content and delivery, has been posited by a Canadian study as an important component of wider institutional change, needed to improve the

experience of racialised students (Adjin-Tettey and Deckha, 2010). Another paper put forward the need for curriculum change with synergies between law and language teachers to ensure students become familiar with the linguistic and disciplinary demands of law (Moraitis and Murphy, 2013).

In the context of oral skills, which the LETR highlighted as important, a UK-based study suggested a collaborative learning community that addresses confidence and anxiety issues reported by female students (Russell and Cahill-OCallaghan, 2015). It does this by engaging students predominantly with questions of an exploratory nature and supported by non-contact activities. This approach is proposed as a response to the knowledge-checking function of class discussion, and traditional law school teaching more broadly, which tend to favour male students (Russell and Cahill-OCallaghan, 2015). More broadly regarding curriculum content, a study in engineering education, suggested that introductory courses on the subject-matter studied can act as early interventions to increase confidence and self-efficacy (Navarro et al., 2014).

Regarding assessment methods, a study put forward OBEs, accompanied by associated changes in a modules teaching and learning, as a better form of assessment for Black, Asian and minority ethnic students, who tend to be disadvantaged by traditional forms of assessment at university (Bansal, 2022). Moreover, in the context of higher education in law, traditional paper-based assessments were criticised as not being conducive to competence development (Bansal, 2022, discussed in more detail in sub-section 3.3 above). Instead, authentic assessments in extra and co-curricular activities, such as mooting and debating, are put forward as a more effective alternative. Being accredited and University-run, they test student knowledge and skills in situations that simulate the real world (Berger and Wild, 2017). The study, which drew on academic performance data from a cohort at a post-92 law school, showed a correlation between academic performance and students who participated in authentic assessments as part of extra and co-curricular activities (Berger and Wild, 2017).

Finally, law schools can potentially prepare students for the barriers they might face when trying to enter and progress in the profession by raising awareness about the latter through modules on human resource aspects of operating a law practice (Hagan and Kay, 2010, p. 225). Such strategies can be beneficial for everyone. Privileged students can become aware of their privilege and the struggles of others, whereas disadvantaged students can better prepare for the realities of legal practice (McKee et al., 2021).

**Culture and support interventions**

Educational support and culture have been highlighted in the SLR as important areas of intervention. Drawing on a number of studies (Adjin-Tettey and Deckha, 2010; Gregory, 2013; Israel et al., 2017; Levin and Alkoby, 2013; Raza Memon and Jivraj, 2020; Ricciardo et al., 2022), attempts to reform the culture of law schools have included activities such as:

- raising students awareness of diversity;
- creating support systems;
- increasing trust, courage and understanding in the relationships between staff and students; and
- equipping them with the right skills for becoming culturally-competent legal professionals.

Another important step toward inclusive culture is recognising all student backgrounds as valuable (Matiluko, 2020). Diverse friendship peer groups also helped moderate the association between ethnic discrimination and academic outcomes (Hall, Nishina and Lewis, 2017).

Interventions should try to tackle all aspects of educational provision, including support services. For example, this could be achieved by rethinking the provision of wellbeing services (Ferris, 2022), or the racialised university structures more broadly (Raza Memon and Jivraj, 2020). A UK study suggested targeted non-academic support as an integration method to improve the cultural and social capital of socioeconomically disadvantaged students (Ferguson, 2017). Indeed, it has been noted that external support, coupled with

crystalised career goals, effective learning and consciously systematic effort can help students overcome academic challenges (Hwang et al., 2014).

At the same time, studies suggested that diversity of thought and representation at university can improve by (Oldfield, 2019; Settles, Buchanan and Dotson, 2019):

- recruiting more racially, ethnically and/or socioeconomically diverse faculty;
- raising anti-racist consciousness among faculty members; and
- organising diversity training for staff that raises awareness of the lived experiences.

Insofar as access to professional experience or practice-based education is concerned, a UK study mentioned the potential of schemes based on partnerships between law firms and law schools, especially their outreach networks (Francis, 2015). Relatedly, an Australian study of internship programmes aimed at improving opportunities that should be accessible to less-privileged students, raised the need for those to be accompanied by some sort of financial support (Grenfell and Koch, 2019).

Initiatives on the role and purpose of mentors and/or counsellors can also play an important role. Mentorship has been highlighted as an important intervention at the education stage, through the introduction of minority student mentors (Pearsall, 2015). Academic mentoring programmes have been considered positive interventions to increase self-efficacy through positive encouragement combined with environmental support (Navarro et al., 2014).

Along the same lines, career counsellors play an important role in supporting widening participation or affirmative action students. As such, they could be more diverse and trained in culturally diverse counselling (Owens et al., 2010). High, and even primary, school counsellors can boost self-efficacy and build career development opportunities, alongside coping strategies and support systems (Inda, Rodríguez and Peña, 2013; Schelfhout et al., 2021). It is important to have coping role models who share their cultural backgrounds and values and who can demonstrate methods for negotiating the college environment while maintaining connections to one's home culture and family (Ezeofor and Lent, 2014, p. 420).

## Profession-targeted interventions

In general, the profession-targeted interventions focused on three key areas: recruitment processes, professional development and changing the culture of workplaces. Profession-targeted interventions can improve representation and minority ethnic candidates perceptions of the profession. They can also positively influence their law identity and fit. The effect of this is to potentially improve educational attainment, based on the discussion of professional contexts above. Overall, insofar as the legal profession is concerned, it has been noted that more research on profession-targeted interventions is needed (Aulakh et al., 2017).

### Recruitment interventions

Recruitment interventions relating to university-level students and focused on ameliorating their sense of fit early on through paying attention to the organisational image have been suggested as a way to reduce attrition (Prasad et al., 2017; Pearsall, 2015). Similar strategies could be of relevance for the profession too. A study of women in material science and engineering noted that diversifying the sector can only be achieved through recruitment and retention strategies that change existing perceptions about the profession (Bowman, 2011).

In terms of law firm recruitment strategies, and particularly in relation to elite firms (eg Magic Circle and other leading City firms), targeting the most prestigious law schools is likely to overlook a big share of minority ethnic or low SES professionals who tend to be under- represented therein (Bar Association of San Francisco, 2010; Ashley et al., 2015). It has been noted that parts of the legal profession have made progress in looking beyond the university attended. However, degree classification still remains an important factor in recruitment, with an article calling for raising awareness of its limitations or reform of recruitment processes (Nicholson, 2022).

Firm-led initiatives aiming at improving access or raising aspirations of disadvantaged individuals, need to be accompanied by institutional change on what constitutes merit and talent (Ashley et al., 2015). Similarly, recruitment strategies focusing on attracting and supporting students from ordinary backgrounds could also lead to a more diverse profession (Ashley et al., 2015). Another report also suggested the use of contextual data as part of a holistic recruitment strategy (Oware, Mokades and Ivanova, 2013).

Anonymous shortlisting, monitoring and transparency, as well as bias training could further improve the process (Oware, 2014; Schultheiss, 2021; Carter-Sowell et al., 2019). Supply-side initiatives (eg outreach, skills training, mentoring) have been associated with diversifying the legal sector in England and Wales (Bridge Group, 2021). To complement those, research also calls for demand-side initiatives, related to contextual offers and blind-CV recruitment (Bridge Group, 2017).

Positive, as well as affirmative, action policies may also exist at the professional level and could help increase participation of under-represented groups. It has been suggested that more coordinated action is needed to encourage and support effective positive action policies in the UK. Such action should involve government, sector bodies and employers, and include apprenticeships (Equality and Human Rights Commission, 2019).

In the legal sector, the Bar Council has issued guidance as to how to use positive action measures (Bar Council, 2020). Its Equality, Diversity and Inclusion Directory suggests the use and normalisation of sophisticated positive action policies (Bar Council, 2022). An Indian study cautioned about how affirmative action hires are perceived, and linked perceptions of such hires as less competent to low levels of awareness surrounding their disadvantage (Prasad et al., 2017). Having said that, a South African study on the impact of the post- apartheid policy of Broad-Based Black Economic Empowerment noted a considerable increase in the likelihood of Black women being employed in top positions, compared with the alternative of no such policy existing (Klasen and Minasyan, 2021).

**Professional development**

Systematic professional development programmes were suggested, as were other interventions that can improve outcome expectations, job satisfaction and commitment (Singh et al., 2013). An article on the barriers faced by women to achieve leadership positions put forward the need for interventions such as mentoring, networking, experiential learning, career planning and sponsorship (Schultheiss, 2021). Training managers and decision-makers on human resource matters to ensure that they support others development and progression was suggested as potentially helpful (Johnson and Eby, 2011).

Similarly, another positive intervention was having -and applying- retention and promotion policies for under-represented groups, combined with a planned strategy of different types of mentoring (Carter-Sowell et al., 2019). Sponsorships and mentoring, peer support, leadership development, networks and flexibility, have all helped women progress in male-dominated workplaces. Together with representation, they have also been identified as factors supporting minority ethnic professionals (Adams-Harmon and Greer-Williams, 2021; Dickens, Womack and Dimes, 2019; Flores et al., 2021b). Regarding mentoring, it is crucial to ensure its quality. Minority ethnic individuals may often be assigned sponsors or mentors of limited power to influence their career development (Johnson and Eby, 2011; Wyatt, 2015).

Individual-centred interventions were also evident in the SLR, with a US study noting that successful Black women executives intentionally sought out inter-race and inter-gender relationships with those who could be instrumental in their career development (Smith et al., 2019, pp. 1730-1731). Such developmental relations are effective when the unique, and often intersectional, challenges of under-represented individuals are taken into account in the guidance provided by advisors and mentors (Smith et al., 2019). Individuals decision-making capacity regarding their careers could be further improved by firms engaging in a range of outreach initiatives, mentoring, internships, financial assistance with tuition and/or fast-track programmes for minorities (Adediran, 2018; Hagan and Kay, 2010; Johnson and Eby, 2011).

**Culture interventions**

Workplace culture has been identified as another area of potential interventions. US-based research showed that even when firms have diversity initiatives, ethnic diversity is not always an organisational issue diffused across the firm and considered a shared value. In this context, commitment to diversity is only used instead as part of the firms outward presentation to clients (Adediran, 2018, p. 67). Organisational change, for example in the form of alternative working arrangements, better work-life balance and benefits, is important to support everyone working at a firm. This should be complemented by mentorship, and by law societies and bar associations exerting pressure on firms for culture change and policies that foster diversity (Hagan and Kay, 2010). Representation, organisational support and having a diversity-centred climate can improve minority ethnic professionals psychological capital and organisational commitment, in turn, positively affecting their career outcomes (Newman et al., 2018; Singh et al., 2013).

Another study called for increased participation in bridging cultural activities to improve workplace culture and output efficiency, through collective learning, the creation of shared group identity and the promotion of social differences (Fulton, 2021). Issues with workplace culture may escalate and take on the form of microaggressions towards minorities. A study on perceptions of microaggression toward model minorities (who are widely perceived as successful in overcoming any ethnicity-related barriers) showed the practical need for raising bystanders awareness of microaggressions as the first step to addressing those (Kim, Block and Yu, 2021).

Overall, training and development programmes on diversity and inclusion have been suggested at the leadership level but also across the workplace (Parker et al., 2022). These could be complemented by collective mobilisation through agency staff networks and union links, based on liberal and radical discourses aiming at engendering transformational effects (Parker et al., 2022). Similar programmes were launched to help the judiciary in New South Wales, Australia (Lumley, 2015). Reverse mentoring has been espoused by a number of law firms, and in September 2020 the Bar Standards Board Race Equality Taskforce launched a pilot reverse mentoring scheme. An evaluation report of facilitated psychological sessions to support those involved in reverse mentoring in the NHS recommended their use in such schemes, with the participants noting a range of benefits (Akinkunmi and Chapman, 2021).

To tackle stereotyping and invisibility more systematically, studies highlighted the contribution of support groups, formal and informal networks, self-affirmation and raising awareness more systematically in the workplace (Block et al., 2019; Wilkins-Yel, Hyman and Zounlome, 2019; Settles, Buchanan and Dotson, 2019). A UK study found barriers to accessing informal networks for Black minority ethnic professionals at the managerial level compared with their white peers (Wyatt, 2015). Accordingly, formal networks at the company level were a useful alternative, despite some noting the risk of being stigmatised for taking part in those (Wyatt, 2015).

The sub-section on recruitment interventions mentioned that initiatives to diversify the workplace based on positive or affirmative action can have unintended consequences. In turn, these can affect the overarching workplace culture (Leslie, 2019). Increasing individuals commitment to diversity and/or awareness of the disadvantages that some people face can help to mediate some of these. However, such mediating policies can still entail unintended consequences, such as the feeling of exclusion by non-targets or career disadvantages for their beneficiaries. In that regard, a study highlighted the salience of a holistic approach to diversity initiatives, which takes into account the needs of a particular workplace (Leslie, 2019).

**Institutional interventions**

Although not extensive, there was a strand in the literature that called for improving data collection and increased collaboration between regulators. A Canadian study underscored the need for more reliable data on the profession, and more specifically the judiciary (Levin and Alkoby, 2019). In the UK, there is inadequate data on social mobility

(which is not a protected characteristic in the EA 2010), with several pertinent datasets being fragmented (Major and Machin, 2020). Indeed, the principal investigators of the LETR called for more detailed, consistent and regular reporting of diversity and social mobility data (Ching et al., 2015). They also called for synergies between the regulators in the four UK jurisdictions and other common law jurisdictions to create transnational legal education datasets (Ching et al., 2015).

## What works

It is prudent to begin this section with the acknowledgement that we have found only limited evidence for effective interventions promoting positive outcomes specifically for attainment. This was also highlighted explicitly in relation to the MOS literature that was surveyed (Guillaume et al., 2013). Having said that, the SLR has revealed some success stories.

### Increasing minority ethnic representation, especially when intersectionality is considered

As mentioned above, students perform better in the presence of faculty who match them intersectionally (Fay et al., 2021). Similarly, improved representation within the student body positively affects ethnic identity which then affects performance. For example, quotas as part of university admission policies may encourage applicants to self-categorise. A study from Brazil showed how an affirmative action admission policy that included a 20% quota for Black or Afro-Brazilian students (as translated into English from Portuguese), increased the likelihood of individuals self-categorising (Francis and Tannuri-Pianto, 2013). In addition, the increase in self-categorisation is bound to provide better data for future race/ethnicity equality studies (Francis and Tannuri-Pianto, 2013).

### Improved and robust data collection is the basis for better research

The SLR provided us with evidence that large, comprehensive datasets can support robust research (conceptual, empirical and mixed) pertinent to minority performance and outcomes by ethnicity. For example, the Bar Passage Study (BPS) is a large and comprehensive panel dataset on law students in the United States. A study drawing on the BPS revealed not only that there are large ethnicity gaps in performance but, more importantly, that these gaps persist even after controlling for credentials such as education performance and personal and familial characteristics (Williams, 2013).

Furthermore, the American Bar Foundation (ABF) has benefited from the Law School Survey of Student Engagement (LSSSE). This is a large dataset on law students perception and experience, which was used in a research project on diversity, equity, and inclusion in the legal profession and education (Chien, Mehrotra and Wang, 2020). LSSSE is a source of reliable, empirical data on the breadth of the law school experience from over 380,000 student responses from roughly 200 schools across the United States, Canada, and Australia). This dataset is far more detailed and multidimensional than the National Student Survey (NSS), an annual survey of final year students at publicly funded universities and higher education colleges in England and Wales, Northern Ireland, and Scotland.

In 2018, the LSSSE added questions on belonging, experiences of bias, stereotype concerns, and personal and emotional support to its annual survey. The LSSSE dataset is, therefore, uniquely placed to support research on belonging, which, as we argue too is important when researching disparate ethnicity outcomes in legal professional assessments (see also Bodamer, 2019).

### Race neutral assessment of lawyering competence

Although this is at the theoretical stage and still needs to be empirically tested as a workable law school admissions test, Shultz and Zedeck (2011) created generally race-neutral assessments and tested them as a part of a research project. This predicts the likely success as a practising, problem-solving attorney by designing a different meaning of merit. In line with this, it expands the assessment to include relational skills, negotiation and planning skills, self-control and self-development, creativity and practical judgment, among

other proficiencies, through objective testing (Holmquist et al., 2014). This research so far provides promising results but requires commitment from the legal higher education community by using the test and contributing to its research analysis.

**Belonging and community**

As noted earlier, a couple of studies showed that diverse friendship peer groups were successful in moderating the negative association between ethnic discrimination and academic outcomes (Hall, Nishina and Lewis, 2017). Such social-cognitive factors are relevant. Support and positive encouragement were also deemed successful in a study of engineering students career/study plans across gender and race/ethnicity (Navarro et al., 2014). Supportive peer groups can enhance self-construal (which is any specific belief of the self, or how people define themselves and make meaning of themselves in relation to others) and this is important for academic satisfaction (Ezeofor and Lent, 2014). Beyond higher education, the SLR found that a supportive (workplace) environment and climate predicted self-efficacy (Lent et al., 2021).

On a different note, when discussing inclusive learning and teaching approaches, these can only be successful if done properly. Referring to methods on how to create a safe learning environment for such inclusive teaching and learning practices, Lain (2018) analyses best practices for navigating racialised interactions within the classroom. Lain refers to racialised interactions as topics or discussions that deal with race directly or discussions that evoke the complexity of race. The suggested starting point is acknowledging that racism is normal and endemic within our society, and it permeates all aspects of our culture, including law (Lain, 2018, p. 782, citing Litowitz).

Effective teaching requires acknowledgment of the history and stratification in our society, and that is a topic that can make some students prone to feeling humiliation or feeling worthless (Lain, 2018, p. 787). This reinforces the point made by Merritt and McEntee (2020) when looking at gender equity that the first critical step towards a remedy is to recognise that the problem exists. Success factors include faculty who understand lived experiences and notice implicit interactions (Lain, 2018) – often referred to as cultural competency (Wilkins-Yel, Hyman and Zounlome, 2019) or cultural humility (Hamman, 2017) or inter-cultural skills building (Gregory, 2013), and have the ability to control the process of the dialogue (Lain, 2018).

**Multi-action intervention bundles**

Several studies touched on the positive effects of holistic interventions. A Brazilian study mentioned earlier combined quota admission policies with giving those student groups access to a range of programs to support their academic and social development, including tutoring services, seminars on the value of blacks [sic] in society, and meeting space for work and leisure (Francis and Tannuri-Pianto, 2013, p. 736). Successful multi-intervention strategies included academic training, socialisation, and university support programs, such as tutoring. Although it is worth noting that there were reported differences in gain for male and female quota students (Francis-Tan and Tannuri-Pianto, 2018).

A study on experiences of LGBTQI+ students confirms that a combination of visible acceptance, tangible support, and genuine inclusivity (eg inclusive curriculum design) work to improve experiences. Specifically, they can improve perceptions of the law curriculum, law school culture, support services, and their wellbeing. For example, an accepting law school environment positively impacted wellbeing and a more inclusive curriculum was linked to the perception of an accepting environment (Ricciardo et al., 2022). Other examples of best practices include implicit bias training for assessment, coaching, mentoring, networking, experiential learning, career planning and sponsorship (with someone who has influence and decision-making power) (Schultheiss, 2021).

**Early intervention at university legal education**

A university in England designed an Early Intervention Project (EIP) aimed at increasing attainment for a cohort of 145 first-year law students (not based on ethnic group

membership) between 2018-19. A distinct value of this project was its early intervention approach – noting that absences often were a symptom of underlying issues (McKee, 2022). This early intervention resulted in increased attendance for the EIP students and this increase, coupled with support and signposting, then led to improved student attainment (McKee, 2022). This intervention also supported a better understanding of the complex life circumstances that students face, which can in turn help design better interventions going forward (McKee, 2022).

The use of language is central to law as an academic discipline. Language skill determines success as early as the application process to study law (LETR, 2013a). In addition, academic literacy, in particular academic writing skills enhance lawyers necessary communication skills.

An Australian law school initiated support for a diverse law student cohort (albeit not specifically geared towards a minority) through a workshop focusing on writing skills. Students who attended benefited and achieved positive outcomes in their assessment and the first semester of their studies more broadly (Noakes, 2021).

The need to support students literacy skills, while not specifically linked to any racial or ethnic group, has been highlighted in the UK too (LETR, 2013a). As reported above, educational inequality based on socioeconomic backgrounds is perceptible even before primary school and leads to differing linguistic capabilities that continue into higher education.

**Case examples**

A case example for multi-action intervention bundles is the Fairness Project. The Fairness Project ran a bundle of interventions across several UK law schools. The objectives of the project were:

- to raise student awareness of the structural and entrenched diversity barriers existing within the legal profession and to recognise the barriers to which students as individuals may be susceptible;
- to help students to develop strategies, tailored to their own needs, to find possible ways through such structural barriers; and
- to raise awareness of, and to challenge, any biases that the students have themselves (McKee et al., 2021, p. 286).

Following these interventions, there was evidence of increased sector awareness of barriers and to some extent also an increase in students confidence in their ability to address these challenges (McKee et al., 2021).

A case example for belonging and community is the Michigan Access Program (MAP) in the US. The MAP has two basic components: a pre-orientation session in late August and a series of workshops during the academic year. (Gregory, 2013). The pre-arrival orientation session for 26 students in 2011 intended to create an inclusive learning environment. It continued with workshops during the academic year, including social gatherings and networking opportunities. The programme created space and opportunities for students of different ethnicities and social identities to interact and form friendships. The result was improved self-confidence and sense of belonging among participants. Such pre- and post-admission initiatives are important in supporting minority students throughout their academic journey (Gregory, 2013). The success of these interventions depended on creating opportunities for meaningful cross-cultural engagement, and such interactions were the core strength of the intervention (Gregory, 2013).

Two case examples for increased representation and increased sense of belonging and identity have been highlighted by studies from the US. One study focused on a National Science Foundation ADVANCE project, a three-year partnership program named Institutions Developing Excellence in Academic Leadership (IDEAL) from 2009-2012. The aim was to increase the representation of female tenured faculty in STEM disciplines across a consortium of six higher education institutions in the US. This programme achieved transformational change, resulting in better representation of women in tenured faculty and

leadership positions. The specific initiatives leading to this outcome can be attributed to the creation of a learning community, which comprised leadership programmes, plenary conferences and subject advancements. These effectively supported inclusion through knowledge, skills, resources and networks (Bilimoria and Singer, 2019).

Similarly, another US project, a layered mentoring scheme for women of color to support professional advancement (ADVANCE Scholar Program) successfully improved retention, advancement and promotion of faculty (Carter-Sowell et al., 2019). In the course of this initiative, scholars were paired with an internal senior colleague (as an internal advocate) and an external scholar. This intervention helped reduce social isolation and enhanced career outcomes such as progression and recognition (Carter-Sowell et al., 2019). This supports the point above that having faculty who match students intersectionality leads to better student performance. It also highlights the importance of role models and representation in students sense of belonging and identity.

## 6. The overarching themes explaining attainment gaps

The findings of the SLR revealed six overarching themes that impact attainment gaps. These themes (or factors) may not explicitly be related to the attainment gap in the literature.

However, together they explain the disadvantages that marginalised group members face in educational and professional contexts that underpin the attainment gap. We consider Black, Asian and minority ethnic group members a marginalised group because of the disadvantage they face in legal education and the profession.

The influencing factors to the attainment gap we present below are not all derived from Black, Asian and minority ethnic group samples, but are all derived from samples of marginalised groups. Hence, these factors will enable us to understand the conditions and processes that marginalised groups (and by extension Black, Asian and minority ethnic groups) experience that underlie the attainment gap.

Furthermore, in delineating these influencing factors to the attainment gap, we also cover literature that investigated professional outcomes for marginalised groups. Research from professional contexts can help shed light on the realities that reinforce disadvantages for marginalised group members throughout their lives and careers. This is important, especially since professional contexts can be seen as a continuum of academic pursuits.

The influencing factors are centred around demographic characteristics of individuals such as race and ethnicity, gender, sexual orientation and gender identity, socioeconomic status/background and immigration status. Therefore, they constitute social identity experiences (ie experiences individuals go through because of their marginalised demographic characteristics or being a member of a marginalised group) in academic and professional settings.

The factors that influence the attainment gap include:

- social and cognitive factors in education and career;
- implications of holding minority status;
- implications of holding multiple marginalised identities (intersectionality);
- the normalisation and privilege of whiteness and maleness/masculinity;
- the need to employ coping strategies to manage marginalised identities; and
- lack of integration and unsupportive institutional climates for marginalised identities in academic and professional settings.

Below we set out the SLR findings under each of these influencing factors to the attainment gap.

## Social and cognitive factors in education and career

The SLR findings revealed three social and cognitive factors that influence educational and career outcomes contributing to the disadvantage experienced by marginalised groups.

These factors include:

- SCCT factors, including self-efficacy beliefs, outcome expectations, interest, and goals;
- embeddedness; and
- cultural values.

We will now discuss the findings of each of these social and cognitive factors and their bearing on education outcomes.

**Social cognitive career theory (SCCT) factors**

SCCT (discussed above, see sub-section 3.3), provides insight into how a range of social and cognitive factors (SCCT factors) can influence attainment in a specific context. As noted above, the key factors in SCCT which explain differences in intentions and attainment are self-efficacy beliefs, outcome expectations, interest, and goals.

Findings from the SLR revealed that differences in SCCT factors are important in influencing behaviours that are likely relevant to academic outcomes (as predicted by the theory). For example, SCCT also posits that self-efficacy beliefs (ie a person's beliefs about their capabilities to perform certain behaviours) are very important in explaining academic and career outcomes. They are central to individuals persisting in the face of obstacles and in overcoming setbacks in education and career pursuits.

Studies investigating the role of social cognitive predictors in academic outcomes in engineering among college students in the US (Lent et al., 2013; Lent et al., 2015; Navarro et al., 2014) revealed that as self-efficacy beliefs increased, persistence in engineering increased and vice versa. Moreover, these studies also revealed that as environmental support increased, persistence in engineering increased because of an increase in self-efficacy beliefs.

SCCT is important as it can help to explain why particular variables have an impact on attainment. For example, individual differences in previous academic performance may influence future attainment in professional qualifications. One study argued that previous school performance (eg law school GPA) played a significant factor in passing the bar exam (Yakowitz, 2010). SCCT highlights how this previous performance can impact future attainment (in addition to other factors and controlling for ability) – through influencing people's self-efficacy, outcome expectations, and goals.

Research using SCCT also provides insights into how links between ethnicity and factors associated with negative academic outcomes might be broken. For example, one study showed that the negative impact of discrimination on self-efficacy was reduced when minority ethnic students had diverse friendship peer groups (Hall, Nishina and Lewis, 2017). Overall, much of the SCCT literature explains why a range of factors are linked to attainment (ie through influencing self-efficacy, outcome expectations, and/or goals), and how we might address prior negative experiences.

**Embeddedness**

Second, findings from the SLR revealed that a lack of embeddedness (ie connection with discipline and university community) and complementary fit (ie an individual's perception about whether their environment matches their disciplinary needs and goals) may hurt minority ethnic students' attrition intentions (ie students' thoughts about leaving the university). Findings from a US-based study revealed that the negative relationship between pre-entry embeddedness and attrition intentions was explained by complementary fit (Prasad et al., 2017). It also revealed that it was stronger among minority ethnic students compared with Caucasian students (Prasad et al., 2017). Additionally, when the complementary fit was not in the model, the negative relationship between pre-entry embeddedness and attrition intentions was still stronger for minority ethnic students compared with Caucasian students (Prasad et al., 2017).

**Cultural values**

Third, findings from the SLR revealed that cultural factors are pivotal in understanding minority ethnic group members' academic outcomes (Dev, Mberu and Pongou, 2016; Shen and Liao, 2022). For example, in an Asian context, the value of familial duty and obligation is important with a premium placed on meeting the desires of families and parents (Shen and Liao, 2022). A study of Asian American college students revealed that, for participants in culturally valued majors (ie STEM, Business), educational channelling (or directing and guiding a student towards studying a particular subject/course) by self or parents positively predicted subject satisfaction via parental expectation fulfilment. Conversely, for participants in non-culturally valued majors (ie humanities and social science), educational channelling negatively predicted subject satisfaction via internalised stereotypes (Shen and Liao, 2022). These findings are important because they showed that cultural values can impact academic satisfaction. In turn, this is important in influencing goals and, as a result, attainment in the SCCT framework (Lent et al., 2013; Lent et al., 2015; Navarro et al., 2014).

## Implications of holding minority status

The SLR findings revealed that there are negative consequences of holding a minority status identity. These consequences contribute to the disadvantage that marginalised groups experience in education and professional contexts. Essentially, the SLR found that minority identities signify 'low-status' or 'lower-status' and are therefore subjected to discrimination and bias which adversely impacts academic and professional outcomes. More specifically, a paper by Settles, Buchanan and Dotson (2019) argued that the difficulties minority group members face are partly due to their low-status identities and not just their numerical underrepresentation. For example, prior research outside of the scope of this SLR demonstrates that high-status minorities (eg male nurses or care workers) do not suffer the same challenges in career progression as low-status minorities (Simpson, 2004).

Settles and colleagues (2019) also outlined the minority stress model, which points out that minority group members face identity-based stressors such as rejection, prejudice, and discrimination. Consequently, these identity-based stressors present challenges to goal-related efforts and deplete coping resources leading to adverse physical and psychological health consequences (Settles, Buchanan and Dotson, 2019). For example, a study on diversity in Australian law schools found that LGBTQI+ students (as minority sexual and/or gender identities) experience increased levels of stress when interacting with academic staff. They also experienced increased levels of harassment and bullying whilst studying compared with their non-LGBTQI+ peers (Ricciardo et al., 2022).

Similarly, a study explored the experiences of international students (as a growing minority group) in the Juris Doctor (JD) program in US law schools (Ballakrishnen and Silver, 2019). The findings showed that as international students navigate their law school environments some cannot escape the negative implications of their minority status. This happens even if they put considerable effort, as their international status inherently affects identity and participation.

In line with much research on pedagogy and minority identity, findings revealed that the classroom was a hostile place for most international students. The latter felt they were not able to contribute and had difficulty fitting in due to problems with peer interactions. They also felt exclusion and/or distance due to faculty members calling international students with their last name but calling domestic students with their first names (Ballakrishnen and Silver, 2019).

Additionally, findings revealed that an international student identity was a negative one because it was linked with a lot of stigmas. Such stigmas include assumptions that their English ability and cultural understanding will be limited. Findings also revealed that international students tried to assimilate with the American culture through peer friendship. However, they found it hard to maintain friendships with American (domestic) students, and therefore had to settle for homogenous ethnic friendship groups. This was pronounced for international students whose proficiency in English was not the best. This made them view themselves as outsiders of the in-group of English-speaking domestic students (Ballakrishnen and Silver, 2019).

Minority group students face discrimination and bias, which hurts their academic experiences. A study examined the sense of efficacy of coping with career barriers (ie gender discrimination, ethnic discrimination and childcare and family issues) among university students in an Israeli context (Lipshits-Braziler and Tatar, 2012). Its findings showed that minority ethnic Israeli groups (ie Jewish immigrants from the Soviet Union and Arab-Israelis) perceived more personal discrimination and higher levels of group discrimination compared to the majority ethnic Israeli group (ie Israeli-born Jews).

Furthermore, a paper argued that educational systems in the US maintain a subordinate social status of Black people, resulting in differential economic attainment (eg compensation and rate of employment). In other words, this signifies institutional discrimination that plugs Black people in the US into an educational system that facilitates and maintains low-status and poor career outcomes (Johnson and Eby, 2011).

Correspondingly, a study investigated how (non-EU) ethnic Russian university graduates as minority ethnic group members and self-initiated expatriates transition to the labour market in Germany (Mahadevan and Zeh, 2015). These graduates faced structural obstacles when seeking employment because of the imposed ascription of 'strangerness' and 'otherness' placed on them. An example of such obstacles were the extreme bureaucracies in changing students' residence title to that of an employee by the authorised body of the federal labour market. This experience negatively impacted their agency (ie power, motivation, and resources) to achieve and limited their chances of success (Mahadevan and Zeh, 2015).

In professional contexts, minority group members face immense difficulties because of their negatively-evaluated identities. For example, the reflections of an openly lesbian Latina professor (as a sexual and racial minority professional) in the US legal academy revealed the rejection of her personal and professional identity because she was neither white nor male. Her reflections also revealed that she faced implicit and explicit bias and bitterness from colleagues. She was subjected to vicious workplace politics due to her presumed incompetence linked to her minority identity (Arriola, 2016).

Similarly, a study in the US on employed sexual minority adults' experiences of marginalisation in the form of heterosexist discrimination found that greater experiences of marginalisation were related to a decrease in work volition and decent work. This refers to the perceptions of safe working conditions, allowance for free time and rest, access to health care, adequate compensation, and values consistent with one's personal and community values (Douglass et al., 2017).

Finally, a study from the GMC (2019) showed higher number of complaints for international medical graduates, compared with UK graduates. International medical graduates, moreover, faced several barriers associated with their status, which were at times exacerbated for those who were Black, Asian and minority ethnic (GMC, 2019).

## Implications of holding multiple marginalised identities (intersectionality)

The SLR findings revealed that concurrently holding multiple marginalised identities can compound the disadvantage that marginalised groups experience in education and professional contexts. This phenomenon is related to intersectionality and it paints the 'double (or multiple) jeopardy' that many individuals face for holding multiple marginalised identities (eg Wilkins-Yel, Hyman and Zounlome, 2019; Dickens, Womack and Dimes, 2019). As discussed in earlier sections, numerous studies showed that ethnicity and socioeconomic status intersect and impact the academic performance of students (Reardon, Kalogrides and Shores, 2019; Ciocca Eller and DiPrete, 2018; Adjin-Tettey and Deckha, 2010; Zimdars, 2010a; Soled and Hoffman, 2020).

For example, a study found that bachelor's degree completion is lower among Black students than among white students in the US. This study concluded that Black students' poor academic and socioeconomic resources were the drivers of the gap. It thereby showed that race and social class background intersects and underlies a lot of problems faced by minority ethnic students (Ciocca Eller and DiPrete, 2018). Additionally, a study that investigated racial/ethnic differences in achievement in US education concluded that the

institutional education system and socioeconomic and neighbourhood conditions cause the attainment gaps (Reardon, Kalogrides and Shores, 2019). These findings point to intersectionality, and more specifically, the reality that socioeconomic status is closely intertwined with ethnicity outcomes.

Work on other marginalised identities provides further insight into how different aspects of identity can interact to cause cumulative disadvantage. For example, gender and socioeconomic status can intersect to cause disadvantages for individuals who hold marginalised identities. This was demonstrated in a study that investigated the quality of legal education in Colombia and found that gender and socioeconomic status intersect to cause disadvantages for female students (Ceballos-Bedoya, 2021). Lower-SES (ie low economic capital) women are the most disadvantaged due to their reduced likelihood of passing the admission tests of the best public law school programs and/or afford the best private law school programs. Conversely, upper-SES women have guaranteed entry to high-quality legal education because they have the economic capital to access the best private programs. Altogether, these results showed that legal education (institutions and teachers) in Colombia reproduce gender and social class discrimination, revealing an intersection of gender inequalities and socioeconomic status (Ceballos-Bedoya, 2021).

Furthermore, ethnicity and gender also intersect to compound disadvantages for marginalised group members in professional contexts. For example, a study found that women faculty of colour experience isolation and lack mentorship opportunities in a predominantly white research university in the US. This was attributed to the intersection of ethnicity and gender, which made it difficult for women faculty of colour to attain tenure-tracked professorial positions (Carter-Sowell et al., 2019).

Similarly, a study showed that because of the intersectional position of being a Black woman in male-dominated professions, Black women had to engage in identity shifting to gain acceptance. This is the intentional strategy of altering one's language and behaviour because of feelings of exclusion, and perception and expectation from others (Dickens, Womack and Dimes, 2019; Fawcett Report, 2022). A study of Black, Asian and minority ethnic senior professionals in a Big4 professional service firm and the UK civil service revealed how the intersection of their seniority, ethnicity and gender often confounded those around them. This was due to their non-prototypicality (ie their identity not being the standard or prototype in their profession), and also highlighted the salience of their ethnicity (Atewologun, Sealy and Vinnicombe, 2016).

## The normalisation and privilege of whiteness and maleness/masculinity

The SLR findings revealed that the norm and privilege of whiteness and maleness (or masculinity) contribute to the disadvantage that marginalised groups experience in educational and professional contexts, generally and specifically in law. More precisely, the SLR found that in most disciplines and professions the dominant culture and practices normalise and privilege being white (whiteness) and being male (maleness). Their dominance indicates low representation, low participation and/or disadvantage for individuals who do not have these characteristics (Hamman, 2017; Sommerlad, 2011). This can happen even where individuals without the said characteristics are not in numerical minorities, because of their perceived low-status (see sub-section 6.2 above). Consequently, academic disciplines and professions are constructed or set in ways that maintain and reproduce whiteness and maleness, including work patterns and cultures (Hamman, 2017; Hearn, 2014; Sommerlad, 2011).

Whiteness and maleness together form a strong prototype of the norm in many professions. Whiteness, maleness and high SES negatively ascribe the use of merit in legal education and the legal profession more broadly (Sommerlad, 2014). Sommerlad's research considers all three main branches of the legal profession across England and Wales. She describes how the concept of merit is used in ways that is ahistorical, and 'disassociated from structures of power, status, and influence' (Sommerlad, 2014, p. 2346), assuming markets are 'level playing fields'. It has become a commonplace mantra in recruitment and

promotion 'deflecting criticism of the slow progress towards diversity, equality, and inclusion' (Sommerlad, 2014, p. 2346).

As prior research on meritocracy has found (McNamee and Miller, 2004; Sealy, 2010; Son Hing, Bobocel, and Zanna, 2002), those in positions of power (largely white, male, middle-class) set the standards and social norms by defining merit 'while the commonsense understanding of it as objective enables it to perform the social magic of legitimizing these results of systemic privilege as justly deserved' (Sommerlad, 2014, p. 2347). As such, the psychological reality for marginalised groups is that they know they are considered non-prototypical in professions, and this presents an additional individual challenge. Therefore, marginalised group members are often 'othered' and compared to the normative prototype. For example, a study found that graduate women of colour in STEM doctoral programmes, as non-prototypical members of STEM, faced microaggressions related to their lack of belonging in STEM. They experienced delegitimisation and being ignored in terms of their expertise and skill, as well as gendered and racialised encounters (Wilkins-Yel, Hyman and Zounlome, 2019).

Whiteness and maleness also afford privileges due to their prototypical position in many professions. For example, a study based in New Zealand and Australia examined the experiences of migrant academics (Sang and Calvard, 2019). Findings demonstrated the privilege given to whiteness and maleness. White male western (UK, European, North American) migrant academics experienced stability and benefitted from migrating. Such benefits involved settling in easily in terms of migration experience, headhunting, active mentoring in male-dominated homosocial networks, promotions, and access to resources such as funding for research. However, being female (sex/gender) and in a minority ethnic group (ethnicity) intersect to produce disadvantages in all those aspects. This study also found that disability intersects with masculinity to impact the career of skilled migrant workers as a disabled male academic was only offered a precarious contract. The study showed privilege ascribed to whiteness and maleness regardless of immigrant status (Sang and Calvard, 2019).

Regarding legal education, a Canadian study examined the challenges that those in law school encountered in trying to overcome the hegemonic (ie predominant influence of) whiteness. The authors framed Canadian law schools as steeped in institutional racism and facing challenges in diversifying the dominant culture to serve a more egalitarian climate (Adjin-Tettey and Deckha, 2010). Findings revealed that in Canadian law schools ethnicity intersects with poorer socioeconomic conditions for Aboriginal and other minority ethnic groups, which can be termed as the 'racialisation of poverty'. This racialisation exposes people to life circumstances that negatively impact their academic performance and life chances (Adjin-Tettey and Deckha, 2010). Similarly, a paper on the US context revealed that 'Black, Indigenous, and People of Color' students struggle with financial resources in comparison with their white peers. Consequently, they end up in significant student loan debts, which negatively impact their life outcomes (Gonzales-Zamora, 2020).

Moreover, the lack of representation for minority group members in law schools is observed among law faculty (Vaughan, 2016). If this negatively influences teacher-student interactions, as suggested by multiple studies, then the negative outcomes on the student performance cause the white male hegemony to be reproduced. Law education normalises and privileges whiteness and maleness within the law curriculum (Zimdars, 2010b; Dinovitzer and Garth, 2020). Studies have suggested that more concerted efforts should be made to include more material relevant to, authored by and focused on various minority groups (McWhirter and McWha-Hermann, 2021).

Similarly, a paper bemoaned the lack of reflection by law schools and teachers on connections between (white male) culture, power, and the law (Hamman, 2017). The legal system, its institutions and its education were created by white males and have not experienced the transformation of 'cultural humility' (Hamman, 2017). Prior research outside of the scope of the SLR revealed that the idea of 'cultural competence' has been introduced in training in other professions such as medicine, nursing, psychology and social work. An example of that is the mandatory nature of cultural diversity education in medical training in Canada (Dogra, Reitmanova and Carter-Pokras, 2010).

The legal profession in England and Wales continues to reflect white male hegemony and not the general society (Vaughan, 2017). Consequently, this means that lawyers who are from the Black, Asian and minority ethnic communities in England and Wales find it more difficult to advance. Relatedly, a study investigated lawyers' commodification (ie taking advantage) of one's identity, linking identity capital (ie the value one obtains from one's identity) and notions of merit (Wald, 2016). This is particularly pertinent to professions such as law, as, according to the authors of the study, the individual is often the 'product' on sale and therefore status becomes even more important. Findings revealed that white male lawyers benefit from positive racial and gender stereotypes to attain high status within the legal profession, including job offers and promotions. Such positive stereotypes refer to their competence and loyalty to law firms and clients (Wald, 2016).

A recent report by the Bar Standards Board (2022) found that minority ethnic and female barristers tend to earn less than their white and male peers. Female minority ethnic barristers were identified as the lowest earning group, while white male barristers had the highest earnings (Bar Standards Board, 2022). Another study that analysed the income differences in the American legal profession found that ethnic minorities and women foreign- born lawyers experience a significant income disadvantage compared with US-born males and US-born white peers (Dias and Kirchoff, 2021). The authors suggested that 'this process is driven by factors relating to how foreign-born lawyers are culturally perceived when they arrive at older ages in the US, combined with racialized and gendered characteristics' (Dias and Kirchoff, 2021, p. 374). Additionally, the authors suggested that this cultural difference is further exacerbated because the American legal profession generally favours white males irrespective of nationality (Dias and Kirchoff, 2021).

## The need to employ coping strategies to manage marginalised identities

The SLR findings revealed that the need to engage in coping strategies contributes to the disadvantage experienced by marginalised groups in academic and professional contexts. Coping strategies are behaviours that members of a marginalised group employ to manage their identity in order to achieve a positive social identity and positive outcomes, more generally. This means that members of marginalised groups may have to expend extra effort to manage how they present their social identity in a bid to navigate discrimination and stereotypes.

Marginalised groups face various types of discrimination. For example, a study examined how women engineers in different stages of their careers (ie early-career, mid-career and late-career) navigate the over-sexualisation of their identity in the workplace which hampers their perceptions of competence (Fernando, Cohen and Duberley, 2019). Findings revealed that women early in their career more frequently drew on strategies that increased the status of women. These strategies included positive distinctiveness (ie publicly embracing their femininity), advocating on behalf of women and educating others about the positive attributes of women. Conversely, those in their mid- and late-careers reported using strategies that de-emphasised their femininity and increased their professional identity and behaviour in order to avoid negative outcomes in the workplace (ie social re-categorisation). These findings make the general point that individuals with marginalised identities must navigate discrimination to attempt to derive positive outcomes (Fernando, Cohen and Duberley, 2019).

Another example in the professional context investigated how faculty of colour (ie Black, Hispanic/Latinx, Asian, and American Indian faculty members) in the US at a predominantly white, research-intensive university navigate the problems of (in)visibility at work. Minority ethnic group academics face stressors (eg rejection, discrimination, and prejudice) at work through hypervisibility (ie tokenism) and invisibility (ie social, professional, and epistemic exclusion, such as the lack of recognition of achievements and scholarship) (Settles, Buchanan and Dotson, 2019). To strategically deal with these negative experiences, these minority academics either increased positive visibility by working harder or avoided negative experiences through strategic invisibility. Strategic invisibility is a behaviour to manage the risk of being mistreated by choosing to make themselves invisible. Findings also revealed that some minority ethnic group academics' coping strategy was to

disengage from the academy (ie they left their jobs) because of negative experiences with tokenism and exclusion. This occurrence signifies that not all strategies lead to a positive outcome in the academy. The study showed that minority ethnic group members have to engage in coping strategies to deal with workplace stressors and negative experiences that stem from perceptions of their marginalised identity (Settles, Buchanan and Dotson, 2019).

Coping strategies also involved dealing with stereotype threat by expending energy on behaviours to present oneself in a good light to reduce stigma or to make sure a stereotype is not confirmed. Academia is a context infused with systemic stereotype threat which produces situations where women, for instance, experience increased visibility because of their gender and increased invisibility of their professional identity (ie professional characteristics that make them successful academics). Therefore, a study investigated how women scientists in a top-tier academic research institution navigated their careers in a context full of systemic stereotype threat (Block et al., 2019). Findings revealed that women had to engage in strategies to manage their (in)visibility by either fending off the threat, confronting the threat or sustaining self (ie staying steadfast in a commitment to personal goals) in the presence of the threat. Ultimately, these findings show that marginalised groups must engage in extra work to counteract stereotype threat (Block et al., 2019). Moreover, a study showed that female undergraduate students face stereotype threat in terms of their suitability for engineering (as a STEM discipline). This means that women undergraduates have to engage in coping strategies to counteract their vulnerability to stereotype threats and the stigma they face (Cadaret et al., 2017).

Coping strategies may signal the depletion of resources (eg time, energy, etc) that can be used to achieve professional success. This may result in adverse career outcomes and unintended negative consequences (Atewologun and Singh, 2010; Dickens, Womack and Dimes, 2019). For example, identity shifting, which is a coping strategy, can be detrimental to outcomes. A study investigated how Black UK professionals negotiate and construct ethnic and gender identities at work. Findings revealed that Black professionals must do a lot of work to counteract and challenge stereotypes due to their workplaces having less-inclusive cultures. Specifically, Black professionals adopt identity shifting to challenge stereotypes of being workshy and poorly educated (Atewologun and Singh, 2010). This strategy involves a lot of effort managing feelings, heightened self-monitoring and altering behaviours to deal with stereotypes such as altering appearance, speech and actions.

Therefore, identity shifting inhibits Black professionals from being original and authentic with their identity in the workplace. Similarly, a study on Black women's use of identity shifting in the workplace suggests that it has negative consequences for them. These include conflict with cultural values, critical self-judgement and decreased physical and psychological wellbeing (Dickens, Womack and Dimes, 2019).

### The lack of integration and unsupportive institutional climates for marginalised identities

The SLR findings revealed that the lack of integration and unsupportive institution climates for marginalised identities contributes to the disadvantage that marginalised groups experience. More specifically, the SLR found that members of marginalised groups:

- did not have a sense of belonging (Owens et al., 2010; Adjin-Tettey and Deckha, 2010);
- faced exclusion (Atewologun, Sealy and Vinnicombe, 2016; Atewologun and Singh, 2010; Arthur and Popadiuk, 2010; Dickens, Womack and Dimes, 2019; Settles, Buchanan and Dotson, 2019); and
- experienced insurmountable barriers to assimilation despite considerable efforts (Ballakrishnen and Silver, 2019).

Moreover, a paper argued that efforts to diversify and integrate marginalised group members in law school should also focus on SES. It noted that it is not only race or ethnicity and gender that are important, but also the socioeconomic background of faculty and students (Oldfield, 2019). Therefore, law schools should increase the socioeconomic diversity of faculty members and students to enrich the campus learning environment. For example, faculty from low SES can bring novel perspectives to the study and teaching of law and broaden intellectual diversity. Students from low socioeconomic backgrounds may

also increase intellectual diversity by choosing to share their experiences of deprivation when they get into law schools (Oldfield, 2019). Furthermore, it was suggested that students whose parents did not go to university or high school should be equipped with mentorship and support services. This would enable them to overcome their socioeconomic disadvantaged background and to achieve academic success as part of programmes' aiming at improving inclusivity (Oldfield, 2019). Altogether, these suggestions make the point that diversity and inclusivity efforts should go together to help students from socioeconomic disadvantaged backgrounds.

Relatedly, a study that explored diversity and inclusion in Australian legal education suggested that diversity and inclusion have to be fostered actively in the classroom through student-teacher interactions (Israel et al., 2017). The authors emphasised that interactions between academics and students can help shape which students succeed as well as how and what they learn. Therefore, interactive learning strategies should be promoted in the law school environment to encourage inclusivity in the student cohort and legal education (Israel et al., 2017). Moreover, the author emphasised that an inclusive and interactive learning environment accompanied by diversity in teaching content and materials can help students from marginalised groups thrive in legal education.

Ultimately, an integrative and supportive climate in legal education would also be diverse and inclusive in terms of being relevant to the lived experiences of marginalised people. A paper journalled an African American legal academic's involvement in the Black Lives Matter movement and how it shaped her thinking about how the law should be taught in law schools. Therein the author commented on the necessity for change: 'Many of our students — especially those subordinated by race, gender, sex, and class — come to law school with an acute understanding of law's entanglement with power, our country's violent history, and our unequal present. By refusing to name these realities in the classroom, we ask our students to submerge and forget what they know to be true from their lived experiences. We miss opportunities to let them teach us. We fail to equip them to return to their communities with tools to respond to their realities. We exclude the possibility that in their classmates they will find comrades and allies in the struggle to demand better from the law' (Akbar, 2015, p. 369).

Similarly, a paper on critical race theory (CRT) (which posits that racism is not just the result of individual prejudice but is also embedded in legal systems and policies) in the US called for law schools to stop viewing CRT as simply a historical effort with no significance in legal education. Instead, they should recognise CRT as an important element in attaining racial justice (Wing, 2016). Therefore, in being diverse and inclusive to marginalised groups and supportive of the lived experiences of racial minority groups, CRT should be relevant to legal education. This is especially the case in order to inspire individuals to engage in real-life social justice causes (Wing, 2016).

Broadly speaking, many professional environments have unsupportive climates and cultures toward the realities of marginalised group members, and this negatively impacts professional outcomes. For example, a study investigated factors that predict decent work for LGBTQ+ employees (Smith, Baranik and Duffy, 2020). Findings revealed that an unsupportive work climate for LGBTQ+ employees decreased decent work via work volition. Findings also revealed that when psychological ownership (ie general control at work in relation to work identity) decreased, the supportive work climate decreased and vice versa (Smith, Baranik and Duffy, 2020). Correspondingly, findings from a study revealed that when sexual minority workers perceived support in how they see others being treated as sexual minorities and how they expect to be treated as a sexual minority, commitment to the organisation increased (Lent et al., 2021).

Another study investigated the relationship between diversity climate and affective organisational commitment among resettled refugees in Australia (ie Iraqi, Iranian, Afghanis and Pakistani refugee workers) (Newman et al., 2018). Findings revealed that a good organisational diversity climate was related to increased organisational commitment via increased psychological capital (ie hope, optimism, self-efficacy and resilience) of the resettled refugees. This relationship of diversity climate predicting organisational commitment via psychological capital was stronger for refugees higher in identification with their ethnic identity. Altogether, this study showed that organisational diversity climate is

important to the psychological resources and commitment of refugees, especially for those who identify highly with their ethnic identity (Newman et al., 2018).

In the legal profession, a study investigated racial diversification in elite law firms in the US (Adediran, 2018). Findings revealed that racial diversity is not an organisational identity for elite law firms as it is not valued among members. Rather, elite law firms are only committed to championing racial diversity as a corporate identity. Using diversity as a corporate identity only serves the function of an outward presentation to clients because clients reportedly value commitment to racial diversity. The authors concluded that racial diversity is not a true goal for elite law firms in the US, which signals failure in equality, diversity, and inclusion pursuits (Adediran, 2018).

Analogously, in the UK, the legal profession is socially less diverse than the overall university population. This points to the pre-existing link between education and social origin with white ethnicity and class privilege, and is sometimes associated with Oxbridge attendance (Zimdars, 2010b; Vaughan, 2017; LETR, 2013a; Sommerlad, 2011). Prior research outside of the scope of the SLR has revealed that when minoritised individuals believe an organisation to be disingenuous in their diversity activities, they experience increased identity threat (based on gender, ethnicity or sexual identity (Newman et al., 2018). Accordingly, attrition intentions increase due to a sense of compromised moral legitimacy (Windscheid et al., 2016).

## Discussion and next steps

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### **Overview and proposed pathways**

Our SLR covered the period between the enactment of the EA (2010) to early 2022. Initial literature searches returned more than 6,000 academic articles, which were reduced for relevance using clear inclusion/exclusion criteria and process. As a result, for this review, 215 articles were fully analysed to showcase the existing knowledge on the ethnicity attainment gap. They were complemented by 43 pieces of grey literature.

Much of the literature was written in disciplinary silos. Within the management and organisation studies (MOS) literature, there was not much written about the legal context. Likewise, not many law journal articles took into account explanations and understandings from MOS. Within the (legal) education literature, there was also very little focus on the attainment gap in legal professional assessments per se. A key goal of future work should be to integrate work from across disciplines.

In this section we have integrated existing research into a set of potential relationships between ethnicity and attainment that can be tested quantitatively. In Workstream Two, we will examine these relationships, and also address omissions in existing research (discussed in the following section), through conducting a quantitative survey and through complementary interview-based qualitative work.

Drawing on existing research, we have found that:

From an education perspective, systemic barriers at school already shape students' embeddedness, perceptions of academic and social fit, and related motivational characteristics (eg self-efficacy). Factors contributing to such barriers include language, social mobility and colonised curricula. This continues into higher education where identity and learning experience affect learning, relationships and success. We also found that perceptions of a profession can influence attainment.

In the legal context, there are long-standing perceptions of the legal profession as elite and stratified. Such factors may contribute to students from some backgrounds feeling that they do not fit within the profession (ie not developing 'law identity'). This reduced law identity could reduce self-efficacy and influence aspirations and choice. In turn, the foregoing have the potential to detrimentally influence attainment. We also identified a range of contextual

factors with the potential to contribute to differential attainment including different family resources.

On a different note, some of the examined literature suggested that methods of assessment may contribute to the attainment gap. Closed as opposed to open book exams, or oral as opposed to written exams were used as examples. Assessment methods' contribution might be due to them potentially exacerbating vulnerabilities (eg low self-efficacy), which are faced disproportionately by individuals in particular groups.

From a social psychology perspective, the interplay between individuals' thoughts about themselves and social processes guide human behaviour. The relevant body of literature concludes that social and cognitive factors influence educational and career outcomes, contributing to the disadvantage experienced by marginalised groups. Such factors have often been discussed under the framework of SCCT (set out in sub-sections 3.3 and 6.1). This is a potentially useful finding, especially when linked to social identity experiences delineated by the overarching themes. For example, marginalised groups may face non-prototypicality in professions, low status, underrepresentation, etc.

Consequently, SCCT could provide us with a novel tool within the legal sector to understand and identify how to begin to address the attainment gap. When supplemented with relevant identity processes (ie the concept of law identity), it is a promising framework that integrates these social and cognitive factors. This framework will help us to understand not only factors that are associated with the attainment gap, but why and how they relate to one another.

Drawing on our SLR findings, and inspired by SCCT as a framework, we have developed a set of proposed pathways. These pathways show how ethnicity might be linked to differential attainment and have the potential to explain the attainment gap (see Figure 1). They form a set of tentative initial predictions. The predictions consider how factors identified by the SLR as being potentially important in explaining the attainment gap might be having an impact in practice. They were formulated to apply specifically to the context of legal professional assessments.

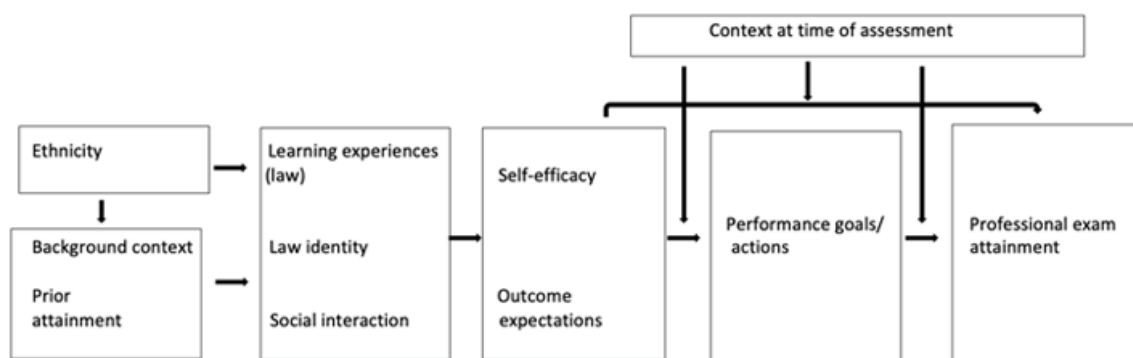## Potential pathways linking ethnicity and attainment



Figure 1: This is a simplified representation of potential pathways and does not include all possible causal paths between variables. Many variables included here are likely to also influence each other. For example, self-efficacy is likely to influence outcome expectations, and learning experiences may influence law identity. Pathways do not replicate previous work informed by SCCT but draw on constructs from SCCT to structure concepts identified as important in this report.

1. People of different ethnicities having different experiences prior to university in terms of:
    a. background context (factors before university other than prior attainment that have the potential to influence future performance). This includes, for example, family resources, primarily discussed in sub-section 3.1 of this report; and

      b. differential attainment prior to studying law (also discussed in Section 3.1 of this report).

2. People of some ethnicities can experience:
      a. negative learning experiences when studying law (as discussed in Sections 3.3, 3.4 and 6 of this report);
      b. less of a feeling of 'law identity'. This refers to the feeling of fit with law and the legal profession, as discussed in Sections 3 and 4 of this report; and
      c. what we have termed difficult 'social interaction experiences'. These entail negative experiences resulting from being a member of a marginalised group, as discussed in Sections 4.4 and 6 of this report.

These experiences can all result both directly from differences in ethnicity and, also, indirectly as a result of differences in background context and prior attainment.

3. Less positive learning experiences, less of a feeling of 'law identity,' and difficult social interaction experiences then result in:
      a. lower self-efficacy (a person's beliefs about their ability to succeed in law); and
      b. less ambitious outcome expectations (beliefs about the consequences of performing certain behaviours such as studying for exams).

For a brief overview of relevant concepts in SCCT, such as self-efficacy and outcome expectations, see Section 6 of this report.

4. Lower self-efficacy and less ambitious outcome expectations, then, have an impact on people's performance goals and actions (according to SCCT). Specifically, lower self-efficacy and less ambitious outcome expectations lead to:
      a. people aspiring to less ambitious goals (eg aiming for a pass rather than a distinction); and
      b. adjusting actions accordingly (eg engaging less with difficult course material).

5. Lower self-efficacy and less ambitious outcome expectations can lead directly to lower attainment on legal professional assessments. Less ambitious performance goals and associated actions can also lead to lower attainment on legal professional assessments.

6. The precise influence of self-efficacy, outcome expectations, and performance goals and actions on attainment can differ as a result of context at the time of assessment. The latter refers to the immediate context surrounding the taking of legal professional assessments. For example, the extent to which low self-efficacy influences attainment may differ depending on the type of assessment used (see Sections 3.3 and 5.1 of this report).

In Workstream Two we will measure each of the factors in these proposed pathways to examine the extent to which they are important in legal professional assessments. We will also gather broader data to test competing predictions.

## Identifying and addressing omissions and gaps in the literature

### The challenges of terminology and categorisation

Racial categorisation has been highlighted by the reviewed literature as varied, inconsistent, limited and limiting. For example, categorisation relates to the categories that society, or research, provides us with. These are the constructed parameters we conduct our research in.

There is a risk of overlooking significant differences within a category/group as we talk about people as 'one' group. Specifically, this risks conflating experiences of minority ethnic persons, as well as overlooking other minorities and/or creating limitations in analysis.

Furthermore, varied categorisation proves a challenge in drawing consistent conclusions as it hampers comparing like for like.

In Workstream Two, we aim to address that risk and fill this omission through careful attention to terminology. This includes how we approach the data, particularly regarding our

comparative element. By way of illustration, we will carefully categorise groups to unpack distinct experiences, rather than presuming that all minoritised groups have similar experiences. We will try to disaggregate where we can and take into account intersectionality.

Categorisation, although overlapping in some findings, is distinct from self-identification and identity. For example, self-identification is the relationship an individual has with a category or a group. Consequently, individuals might not necessarily self-identify (ie they may not have a relationship) with the categories of/within Black, Asian and minority ethnic. Therefore, we will provide room in the qualitative and quantitative data collection for individuals to self- identify. Specifically, in the quantitative data collection, alongside ethnic categories, we will also give participants an opportunity to indicate their preferred terminology for their ethnicity/race. We will ask: 'In your own words, what do you call your ethnic group?'

During the qualitative data collection, a list of ethnic categories will not be provided. Instead, participants will have an opportunity to self-identify using their preferred terminology.

On the other hand, identity is a different concept. Identity here refers more to social identity which is the part of an individual's self-concept that is derived from being a member of a group. This refers to racial or ethnic identity, or even identity in a broader sense (we found that intersectionality of categories or even the wider context, influences identity). Therefore, it includes aspects of living out one's group membership such as culture, belonging, embeddedness, values, and beliefs. The findings from our SLR alluded to this.

Consequently, we will therefore design our qualitative and quantitative work in Workstream Two by bringing people's lived experiences to the fore.

The distinction between categorisation, self-identification and identity is important. We are of the view that the terminology we use might accentuate the very problem we are researching. Consideration of intersectionality will also be taken into account. This will enable us to look into for example, whether and how ethnicity intersects with other protected characteristics and factors, such as SES.

In addition, the definition of disparate performance in assessments in the existing literature has been varied and inconsistent. Depending on terminology describing this gap, the responsibility could be perceived to lie with the individual (attainment) or the system and structures (vulnerability theory). None of the returned literature used the term 'ethnicity awarding gap' (AdvanceHE, 2022; using this term for the first time in its annual statistical reports in 2020). By using awarding gap rather than attainment gap, similarly to vulnerability theory, one shifts the responsibility to the institution. This makes it a systemic, structural issue, rather than an individual capability issue.

In our future research, we will continue to maintain an open mind when examining causes of disparate performance. We will keep our perspective wide to include individual, contextual and systemic causes, and paying attention also to the decolonisation narratives.

## Socioeconomic and educational background

We noticed that the percentage attainment gaps across all degrees are markedly different in England versus Scotland and Wales. We feel this emphasises that attainment cannot be solely explained with reference to a single factor, such as ability. Instead, it has multiple causes, which include contextual factors and other systemic, socioeconomic issues. This is confirmed by studies where attainment gaps are higher in high socioeconomic status areas.

We thus conclude that the attainment gap is a multi-level problem (individual, organisational and societal) with causal factors identified at close and distant proximities. This includes factors within the educational setting and those less apparent, such as parental occupation. Although the UK academic literature engages with contextual factors, a systematic multi- level approach is not common when discussing the ethnicity attainment

gap. In that regard, we note that the HEFCE Report of 2015 does take a multi-level approach that could be used as basis for future research.

Furthermore, more work is required, opting for a 'life-cycle', rather than a cross-sectional approach to individuals' qualifications and careers (HEA, 2016). We aim to contribute to this multi-level and 'life-cycle' centred discussion with our research.

In addition, there were very few empirical studies focusing on the attainment gap in the context of legal services qualifications, especially in England and Wales. Furthermore, not many studies on legal education in the UK, from those returned in our SLR, focused specifically on minority ethnic students.

In Workstream Two, we will test the influences of a variety of factors on attainment. We will examine not only factors associated with attainment gaps but how those factors interact, specifically in the context of legal professional assessments. We will do this by testing our proposed quantitative pathways (see above), which integrate a variety of factors. Moreover, we will conduct qualitative research to better understand the lived experiences of students and professional qualifications' candidates in legal education. To better understand the lived experiences of these individuals, we will focus in particular on motivation and engagement. In line with this approach, we will also consider the internal and external factors that influence elements like motivation and engagement. We will use a life-cycle approach to engage multiple minority identity individuals at various time points from university into law careers.

## Professional and employment contexts

Having diverse, inclusive and representative professions, and especially for this research a diverse, inclusive and representative legal profession, is important for several reasons.

Earlier sections of this report have demonstrated how this can be linked to the attainment gap.

It is interesting to note that previous research into the attainment gap in legal professional assessments does not seem to have extensively looked to the profession for potential causes. For example, despite extensive literature on representation in the profession, this has not been thoroughly researched as barriers to attainment in professional legal assessments. We note this for other potential factors as well, such as the costs of preparation for the assessment, or perceptions of the legal profession.

Our interdisciplinary and multi-level approach to future research will move towards filling this gap. We want to better understand how barriers related to students' and candidates' career expectations can have a knock-on effect on performance in legal professional assessments. We want to do the same also regarding expectations from the profession more broadly. In this context, we want to further unpack the following contributory factors. Marginalised candidates may feel they cannot enter the profession or advance in their careers post- qualification. As a result, they might not give their best in legal professional assessments.

Another related explanation could be that they may think excelling in such assessments would make little difference given the barriers they have to encounter elsewhere (Ezzedeen, Budworth and Baker, 2015).

We want to examine whether the professional barriers that minority ethnic candidates face result in them downplaying the importance of doing well in such assessments. This could happen because these candidates may choose to prioritise success in other areas seen as more valued by employers, such as work experience and soft skills. These are areas identified by the literature, wherein minority ethnic individuals tend to experience disadvantages, having to try harder compared to their white and/or more privileged peers. As a result, they may allocate fewer resources to legal professional assessments.

On this basis, we want to explore if career expectations and perceptions of the profession impact effort. Alongside this, we want to better trace how factors drawn from the

professional and employment context can be influential in that regard.

Such factors may include, but are not limited to:

- a lack of representation;
- attrition rates;
- stereotyping;
- bias;
- (hyper)visibility and invisibility;
- microaggressions;
- discrimination and/or racism in work experience or interviews with law firms; and
- pre-qualification funding challenges.

## Interventions

The interventions theme of the SLR reminds us that the challenge at the core is contextual and multi-dimensional. This confirms the appropriateness of our interdisciplinary, multi-level approach.

Some causes of differential attainment in areas such as academic writing or oral skills, may arise early, even before primary school. Factors affecting the attainment gap continue well into higher education, adding to the challenges faced in assessments. This necessitates interventions that tackle all levels and stages of one's educational journey.

Career trajectories may be influenced by the perceptions of and interactions between people's values, identity, and beliefs, necessitating further initiatives and interventions therein.

For our future research, we will keep an open mind as to the breadth of causes, their potential life-cycle and the range of external influences that can impact the individual. We will also consider best practice shown by the SLR and contemplate on the appropriateness of relevant initiatives and interventions for this particular research project.

We feel that further research is warranted on interventions for different subject groups, organisations, and disciplines to help assess candidates' lived experience regarding intervention success.

In Workstream Two, in-depth interviews will be conducted to explore perceptions about several types of interventions, as well as potential unintended implications of these interventions. These will be with policymakers, managers or leaders of law firms/companies or associations, and university educators. The same could be asked of former candidates based on their experiences.

## Overarching themes explaining attainment gaps

Following the SLR we confirm that empirically, there is insufficient analysis of the causes of the attainment gap in relation to legal professional assessments.

The SCCT was a very promising theory that explained academic and career outcomes. However, it seems that this theory has not been linked by past studies to some social identity experiences that underlie the disadvantage faced by marginalised groups, for example, identity experiences may include non-prototypicality, low status, underrepresentation, etc.

Therefore, we still do not know how the social identity experiences of minority ethnic students (or candidates of professional assessments) impact academic performance. It seems all these social identity experiences are assumed to be in play without any concrete evidence (at least from our SLR readings).

However, findings from the SLR show that professional settings have evidence of some of these social identity experiences (especially in qualitative research). We aim to use this evidence in our research going forward to investigate how the social identity experiences of

minority students affect performance. Altogether, there is room for us to extend SCCT to include elements such as social identity experiences that help explain the disadvantage faced by racially marginalised groups.

There are also specific social and cognitive processes that require more research attention. For example, while findings from the SLR have shown coping strategies for marginalised groups in professional settings, there was little in educational settings.

Some papers in our literature search touched on aspects of SCCT. These were predominantly in the US. However, we found no studies testing SCCT in the legal sector that focused on ethnic minorities and professional qualifications. This reveals an obvious gap for future research.

To address these omissions and limitations, we will use a framework informed by SCCT, and will explore factors predicted to be important by SCCT in the legal context. We will also, as mentioned above, integrate the concept of law identity within this framework.

Moreover, we want to explore the impact of known challenges on minority ethnic students' wellbeing and mental health. Known challenges include negative stereotypes, discrimination, bias and stigmatisation. Relatedly, we also want to determine whether there is a relationship between wellbeing and academic performance. Therefore, our future research will explore the relationship between negative experiences that stem from being a minority ethnic student/candidate on the one hand and wellbeing and legal education performance on the other.

## Next steps

Based on the findings described and discussed above, we propose qualitative and quantitative empirical work for Workstream Two.

### Qualitative empirical work

The SLR provided robust insight to inform our proposed causal pathways (see Figure 1 above). Having said that what appears to be less well documented is the impact of relevant variables on social identity experiences. Little was revealed in the SLR of the lived experiences of law students or legal professional assessments' candidates. This also applies in relation to early career legal professionals from minority ethnic backgrounds.

Therefore, we propose qualitative empirical work, using semi-structured interviews with law students, legal professional assessments' candidates and early career lawyers to give voice to their lived experiences.

Qualitative research is used to study a particular group in-depth, with smaller numbers of participants than quantitative approaches, which can take a broader perspective. We would hope to extend the existing knowledge on the nature of the relationship between social and individual processes of minority ethnic individuals.

In addition, we propose to interview senior legal educationalists, involved with teaching pre-qualification law students or those helping candidates to prepare for legal qualifications.

These interviews would focus more on their perceptions of students' and/or candidates' behaviours and performance, along with curricula and other issues.

Finally, interviews with law firm Heads of Diversity/Managing Partners of law firms would focus on their perception of issues in performance and selection processes. They would also centre on their actions to increase diversity.

### Quantitative empirical work

The SLR has revealed the importance of not only understanding the factors that are associated with attainment gaps, but also understanding why and how they are important.

In our quantitative empirical work, we will test our proposed pathways inspired by SCCT and integrating the concept of law identity and assessment fit (see above). For example, we will ask students questions about how they identify with the legal profession, and how they have performed on a range of past assessments.

We propose testing the proposed pathways specifically in the context of legal professional assessments relating to the solicitors' qualification route. This will be achieved through the collection of survey-based data from a large number of law students and candidates who plan to or have sat these legal professional assessments.

For those who have already sat the assessments, we will ask for details of actual attainment in those exams. For those yet to sit those, we will get details of course performance to date, which we expect to be related to qualifying exam attainment. The details would cover professional assessment preparation courses and/or any other degree courses. We will also follow up with current professional assessment candidates once they have received results, where possible.

## Appendix methodology and references

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## **Appendix methodology**

This project takes an interdisciplinary multi-level approach to understanding and addressing the attainment gap of Black, Asian and minority ethnic persons in the legal professional assessments. This Workstream (Workstream One) aims to collate existing data and literature on attainment gaps in the form of a systematic literature review.

## Research question

This review addresses the question: What does existing literature tell us about any attainment gap of Black, Asian and minority ethnic candidates in legal professional assessments?

## Identifying relevant studies (Systematic literature search)

SLRs are common in healthcare, public policy and social sciences using a structured systematic process to identify all academic literature relevant to a given topic. They are not, however, common in law studies, and as such the SLR process was initially challenged by both the lack of metricisation of law journals and lack of standard structure of law articles.

We conducted the literature search using EBSCO and Business Source Complete for Management and Organisation Studies (MOS) articles and 18 law journals chosen by the law-based members of the research team. This included: Alternative Law Journal, Canadian Journal of Law and Society, Canadian Legal Education Annual Review, International Journal of Law in Context, International Journal of the Legal Profession, Journal of Empirical Legal Studies, Journal of Legal Education, Journal of Law and Society, Law & Social Inquiry, Law & Society Review, The Law Teacher, Modern Law Review, Oñati Socio-Legal Series, Alternative Law Journal, Annual Review of Law and Social Science, International Journal of Law & Education, Legal Education Review, Legal Studies, and Social & Legal Studies.

The search terms used in various search strings included: ';academic achievement', ';educational attainment', ';ethnic groups', ';ethnicity', ';education', ';cultural pluralism', ';higher education', ';intersectionality', ';minorities', ';gender', ';race', ';equality', ';minority students', ';group identity', ';sustainability', ';gender inequality', ';achievement gap', ';diversity in education', ';immigrants', ';social status', ';attitude (psychology)', ';diversity in organisation', ';social classes', ';Black people', ';white people', ';Black women', ';education policy', ';racism', ';racial differences', ';stereotypes', ';students', ';educational quality', ';learning', ';social justice', ';stem education', ';comparative studies', ';affirmative action

programme', ';college students', ';educational equalisation', ';educational leadership', ';health services accessibility', ';multiculturalism', ';social capital', and ';wellbeing'.

## Initial search results

Searches returned 6,285 articles. Inclusion and exclusion criteria were developed on an initial sub-sample of articles based on title, abstract and keywords (see Tables 1 and 2 below). Four members of the research team then coded a subsample to evaluate a) consistency in coding approach between raters and b) accuracy of the inclusion/exclusion criteria. A coding check was run to determine inter-rater reliability and found 87.5% coding consistency between the four raters.

The inclusion/exclusion criteria were then applied to the full sample on the title, abstract and keywords, and checking for duplicates, reducing the number of articles to 447. Where uncertainty existed, the full-text studies were retrieved and assessed. Differing opinions were resolved by discussion to reach a consensus between the research team.

### Table 1. Inclusion Criteria: studies to satisfy all criteria

| Criteria | Description |
|---|---|
| 1. Must be written in English. | The study will collect only articles in English. |
| 2. Must be in context of the study. | Articles included were from contexts of education, in law firms/sectors, or other professions such as medicine, academia, engineering, and accounting. |
| 3. Must contribute to the research question. | Articles must contribute to answer the research question such as focusing on attainment/achievement in education; progression, career planning of marginalised persons in the professions; discrimination in law firms in white/Western contexts; the impact or success of organisational-level interventions; or experiences related to gender, sexuality, or diversity/inclusion in relevant education and working places. |
| 4. Must be peer review articles. | Peer-reviewed articles that are accepted for publication exemplify the best research practices in a field and denote quality. |
| 5. Must be published from 2010 onwards. | To manage a viable number of articles from three database resources, the study will only include articles or reports from 2010 onwards, since the enactment of the Equality Act 2010. |

### Table 2. Exclusion criteria: excluded if satisfied one of the following criteria

| Criteria | Description |
|---|---|
| 1. If not relevant journal articles. | Book reviews, book chapters, editorial commentaries, personal viewpoints, purely methodological analyses on attainment gaps will be excluded. |
| 2. If not relevant to research question. | Articles that examine legislation/general legal policy on D&I, racism, affirmative action etc without focusing on the application within a law firm/organisation and other professional contexts will be excluded. |
| 3. If do not focus on a relevant population. | Articles which explore attainment, progression, or career planning but not with regards to marginalised or minority group persons will be excluded. |
| 4. If gender, only in relevant context. | Given the large volume of articles on gender, unless they are discussed in the context of achievement in education, academia, medicine, accounting, engineering, professional services, management consulting, investment banking or other relevant profession, they will be excluded. |

## Description of sample

A total of 447 articles (272 law papers and 175 MOS papers) were included for full-text retrieval. Reading the whole text of each paper fully and re-applying the inclusion and exclusion criteria, a total of 215 papers were selected to be included in the review.

The 215 (99 from law journals and 116 from MOS) fully reviewed papers came from over 35 countries on five continents. The United States had the largest number of articles with 97 papers (45%), followed by the UK with 47 papers (22%).

In total the 215 papers came from 52 journals (14 from law and 38 from MOS). Within the law papers, 53 of 99 (54%) came from two journals, The Law Teacher and the Journal of Legal Education. Within the MOS papers, 45 of 116 came from one journal – the Journal of Vocational Behavior. In addition to MOS-specific journals, the MOS articles came from disciplines such as psychology, sociology, economics and accounting.

In terms of methods used, there was great variation between the papers in the law journals versus the MOS journals, the latter requiring what social scientists would term 'scientific rigour'. Of the law journals, 49 (50%) were described as conceptual/essays/reflections (although the term conceptual was used mostly to mean ideas and proposals, rather than the social science meaning of defining concepts and delineating propositions). Most of the remaining studies were described as quantitative or mixed methods, with very few (five) purely qualitative studies. In the MOS papers, 52 (45%) were quantitative studies. On the whole these included sophisticated statistical analysis (eg logistic regressions) and were based on large sample survey data, secondary analysis of national datasets, often longitudinal, administrative datasets, and experimental studies. 26 (22%) of the MOS papers used qualitative methods, with 21 using interviews (semi-structured or narrative). Others used focus groups, diary studies, or open-ended online surveys. There were two mixed methods studies and three meta-analyses. The remaining articles were a combination of case studies, conceptual papers, an editorial and some literature reviews.

We noted the number of articles by year since 2010. In law there was a steady increase over the twelve-year period with 44/99 (44%) published since 2018. Likewise, in MOS, 50/116 (43%) were published since 2018.

## Grey literature

In addition to the systematic review of academic literature, we included in our review a number of pieces of 'grey' literature, for example highly relevant practitioner focused reports or articles, published by professional or public-sector bodies. These were recommended to us by the SRA's internal project group as well as the External Reference Group for this project. 43 grey documents were included. Given that the SLR did not return any academic literature focusing on Welsh settings, four pieces from the suggested grey literature were specifically about Wales.

## Data extraction

Five reviewers extracted data that met the inclusion criteria by independently using a pre-specified extraction table containing the following information:

- authors;
- published year;
- journal;
- title and hyperlink to included papers;
- abstracts;
- study design, methods, theoretical underpinning, data analytics/metrics;
- included/excluded decisions;
- which marginalised group;
- early years gaps, school education gaps, university gaps;
- non-legal professional qualifications, legal professional qualifications;
- in work gaps, such as progression and pay gaps;
- country contexts;
- initiatives or interventions;

- individual unit of analysis, organisational unit of analysis, profession unit of analysis, societal unit of analysis;
- terminology and issues;
- future research suggestions;
- additional relevant notes.

## Data analysis

The inductive analytical approach was used to build a thematic framework from the content of included papers. Four descriptive themes were identified both with substantial numbers of articles focused on each, as well as in-depth and rigorous studies. These themes were:

a. the challenges of definitions and terminologies
b. background, context & education
c. professional and employment contexts
d. interventions.

Through additional analysis and synthesis, an overarching set of themes describing the social mechanisms explaining the attainment gaps became apparent. These themes emerged as fundamental components of education pathways and practice settings and revealed differences amongst disciplines and diversity within countries. These overarching themes were:

1. social and cognitive factors in education and career
2. implications of holding minority status
3. implications of holding multiple marginalised identities (intersectionality)
4. the normalisation and privilege of whiteness and maleness/masculinity
5. the need to employ coping strategies to manage marginalised identities
6. lack of integration and unsupportive institutional climate for marginalised identities in academic and professional settings.

The main body of the review describes each of the above themes and overarching themes with reference to particular journal articles. Many of the articles were relevant to multiple themes. Their synthesis reveals both the strengths of the literature, but also where the literature shows gaps in respect to our research question and the aims of the overall project.

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