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Professional associations, agency, motivation and capacity for change: The case of social mobility and the Bar

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Abstract

This thesis uses a mixed methods approach utilising questionnaires, focus groups and interviews to explore how and why an embedded professional association may act to alter a longstanding trait of its profession. Focussing on the trait of social closure at the English Bar, it uses an access programme (Pegasus Access and Support Scheme - PASS) created by a professional association of the Bar (The Honourable Society of the Inner Temple) as a case study.

Social closure occurs through mechanisms controlling access to the profession. Whilst formal and explicit exclusionary strategies existed historically, more informal exclusionary barriers still operate. These indirectly disadvantage those from lower socio-economic backgrounds as they emphasise aspirant entrants' social capital and habituation to the social norms of the Bar. One way in which these attributes can be assimilated or increased is through mini-pupillage; work experience in barristers' chambers.

PASS provides mini-pupillage opportunities to non-traditional aspirant entrants. More widely, it could be construed as a challenge to exclusionary recruitment practices. However, such a challenge requires that the conceptions of merit underlying exclusionary recruitment practices, as well as the practices themselves, are altered. By maintaining the privilege attached to mini-pupillage, PASS was not as radical as sometimes portrayed. The educational and social contexts of students participating in the programme also influenced its efficacy.

A challenge to patterns of social closure requires a collaboration between the professional association's elite, and salaried staff with specialist knowledge of access and education from other professional backgrounds. This emphasises the role of individuals and agency in such action. Despite the general diminished power of professional associations, there remains potential for innovative action. This is realised when the attributes of the professional association combine with acts of agency by individuals which cause elite influence and alternative institutional logics to mutually reinforce one another.

Contents

Declaration.....	ii
Abstract.....	iii
Table of Contents.....	iv
List of Tables.....	v
Acknowledgements.....	vi
Chapter 1 – Reactions of the Professions to Social Mobility as Societal Concern: Context, Policy Background and Arguments.....	1
Chapter 2 –Methodology.....	31
Chapter 3 – Theorising the Bar: Professional Structures and Conceptual Framework.....	60
Chapter 4 – Values, Attachment and Professional Associations.....	107
Chapter 5 – The Importance of Individuals within a Professional Association.....	156
Chapter 6 – Transformative Action for Social Mobility: Radical Intervention or Maintenance of Status Quo?.....	194
Chapter 7 - Wider Constraints on Interventions by Professional Associations: Challenges Within and Challenges Without?.....	244
Chapter 8 – Conclusions.....	291
References.....	305
Appendix A.....	321
Appendix B.....	335

List of Tables

Table 1: Table to show the participation and response rates of Pathways' students to feedback questionnaires.....	41
Table 2: Table to show participation and response rates of PASS students to feedback questionnaires.....	44
Table 3: Table to show biographical abbreviations of interview and focus group participants.....	51

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and

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or determined enough to finish.

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CHAPTER 1 – REACTIONS OF THE PROFESSIONS TO SOCIAL MOBILITY AS SOCIETAL CONCERN: CONTEXT, POLICY BACKGROUND AND ARGUMENTS

The legal profession is an ancient cornerstone of the British establishment. For many centuries, wigged and gowned figures have been depicted with fascination by writers and television producers, often as white, male and privileged. Statistics show that this is, to an extent, true. The most traditional areas of practice, such as Chancery, remain the preserve of white, male Oxbridge graduates (72% male; 61% Oxbridge educated and 97% white; Working Lives Report, Bar Council, 2014: 105). In most other practice areas, however, the picture is different (39% male, 21% Oxbridge-educated and 89% white at the Family Bar; Working Lives Report (2013: 27, 105)). Nonetheless, research by Zimdars (2010) demonstrated that pupil barristers (those in the final, vocational, stage of training) do not reflect the university graduate population as a whole, and that whilst participation rates of women and ethnic minorities compare favourably with other professions, there is not representative participation of those from working class backgrounds as compared to the university population as a whole.

There are a number of causes of this under-representation of those from working class backgrounds (referred to throughout this thesis as ‘non-traditional aspirant entrants’)¹. This thesis uses a case study of Inner Temple (a professional association of the Bar)² to examine two research strands. Firstly, how and why a professional association may seek to bring

¹ Choosing nomenclature is in itself a delicate matter; this term is preferred as it features as the accepted definition in most specialist academic papers (see, for example, the Social Mobility and Child Poverty Commission’s most recent report ‘Non-Educational Barriers to the Elite Professions’ (Ashley et al., 2015)).

² Inner Temple is the shortened name used throughout this research for The Honourable Society of the Inner Temple, one of the four Inns of Court; the professional associations of the Bar. Membership of one of the four Inns is a requirement for qualification and practise as a barrister in England and Wales.

about change within the profession, and secondly the challenges experienced by non-traditional aspirant entrants. In examining the second research strand, the case study focusses particularly on the Pegasus Access and Support Scheme (PASS), a scheme developed by Inner Temple providing work experience opportunities at the Bar to non-traditional aspirant entrants.

To address these two large areas of interest, this research sets out to answer five specific research questions in the wider context of why a professional association may seek to cause change within its profession, and how it may do so:

1. To what extent does social closure remain a defining feature of the professional project within a post-professional³ landscape?
2. What are the defining factors that restrict social mobility in the context of entry to the Bar?
3. To what extent is it possible for an ‘embedded’ professional actor to disrupt patterns of social closure?
4. What are the key factors driving interventions supporting social mobility by professional associations?
5. What are the key factors motivating Inner Temple’s Pegasus Access Scheme intervention, which is intended to encourage social mobility within the profession?

³ The term ‘post-professionalism’ was coined by Kritzer (1999). It refers to the sociological state of professions experiencing a decline in power and influence (p.715) leading not to the extinction of the profession, but rather to a re-shaping of them forced by external conditions. Kritzer defines such re-shaping as including the increased use of technology within the profession; increased specialisation leading to segmentation, and a loss of exclusivity of knowledge and practice rights (p.720).

- a. Will it succeed and are other professional associations capable of similar action?

1.1 Key arguments

In developing answers to these questions, this thesis advances arguments around four key themes, supported by existing literature and a case study. These are: the evolution of professionalism; individual stories; talent and meritocracy as recruitment criteria, and the diminished power of professional associations. These four key themes come together to illustrate that substantive attributes of a professional association can provide a foundation upon which action to challenge manifestations of the central value system can be built. However, more nuanced matters such as the emotional ties between a profession and its members, and the leadership and importation of external practices by individuals will influence the efficacy of a professional association's action. Furthermore, no professional association can be immune from societal concerns, and these may be reflected in attempts by external bodies to direct or constrain the professional association's action.

The case study used is the Pegasus Access and Support Scheme (PASS), a programme instigated and developed by Inner Temple. Inner Temple describes the programme on its website as;

*a co-ordinated work experience programme that aims to support those from diverse backgrounds to consider a career at the Bar. The Scheme is administered by the Honourable Society of the Inner Temple for the Bar of England and Wales. It is part of the Inns of Court's work to encourage and support diversity and social mobility in the profession.*⁴

⁴ www.pegasus.me [accessed 26th May 2015]

The first theme is the evolution of professionalism. As would be expected of an embedded traditional professional association, Inner Temple has a strong attachment to the profession's central value system. At the Bar, aspects of this central value system have supported social closure. These aspects include attachment to elite status and potentially exclusionary ritualistic traditions, justified by the argument that it is necessary for the maintenance of high standards. Therefore, the decision by a professional association to take action which ostensibly challenges social closure as a tenet of the central value system through the implementation of an access scheme is worthy of exploration. The embedded nature of the professional association and its close attachment to the central value system mean that change can occur. For these changes to be as fundamental as they are portrayed to be, however, these developments will need to be (or be presented as) 'going with the grain' of existing values. I argue that in the case study such evolution 'went with the grain'; it was directed by societal concern with social mobility to which the professional association responded, and maintained existing structures focused on retaining the Bar's elite status.

The theoretical underpinnings of the ways in which a professional association may act in an interventionist manner are assessed through the use of organisational change literature. These bring to the fore the second key theme; the role of the stories and experiences of individuals, both those who established the programme, and those who participated in it. Individual stories are under-valued in existing literature, partly resulting from the lack of literature on the Bar, meaning that its combination of public-service focused and self-employed attributes are not taken into account by existing analytical models. Such individual stories featured strongly in this thesis, and their role in mobilising a professional association towards change was clear. The presence of this theme also highlighted the relative neglect of the affective domain in professionalism; this was an important tool in individuals' motivations to be involved in professional association projects.

Emerging as the third key theme was the promotion of talent and meritocracy as the chief recruitment criteria. The Bar has historically utilised recruitment practices that favoured identifiers of traditional backgrounds, such as linear educational routes, familiarity with social norms of the Bar and work experience. This meant that socio-economic circumstances contributed significantly to a person's likelihood of succeeding in recruitment processes. The case study programme, PASS, was claimed by those who established and administered it to be intended to re-focus the recruitment process on 'raw' talent, and was believed by those students who participated in it as being able to do so. This placed emphasis not just on non-academic skills, but on transferable skills such as communication and analytical abilities. The motivation for doing this continued to focus, however, on maintaining the Bar's elite status – accessing 'non-conventional talent', as one participating student referred to it, so that the profession could continue to 'be the best'. Thus an agenda promoting meritocracy could not be construed as straightforwardly altruistic (see chapter 4); it also encompassed an element of self-interest, and a maintenance of the profession's elite status. Furthermore, PASS itself was identified as contributing to maintaining the status quo through reinforcing the value placed on work experience. This led to it confirming the continued importance of historically-accepted markers of suitability for the Bar, and their perceived correlation with the raw skills needed for the Bar. I therefore argue that it is not the radical move away from the traditional construction of 'talent' that some participants in this research portrayed it as, as it does not disrupt existing structures of cultural reproduction.

The fourth and final key argument is that professional associations are no longer as powerful as they once were. With increasing external constraints operating on professions, it is no longer the case that professional associations can steer the development of the profession in the direction of their choosing. This loss of power has occurred through increased legislation

and regulation, and pressure from external perceptions of the profession. This is seen in the evolution of professionalism discussed above tracking wider societal concerns. Not only will direct regulation constrain the actions of professional associations, so will less obvious and more general factors. For example, the efficacy of PASS was influenced by the life experiences of the students who participated in it: their pre-existing individual stories could not be altered by PASS. Where a professional association does maintain power to influence the profession, however, individuals within the professional association will be key to exerting that power.

A conceptual framework was constructed from existing sociological literature. This was used to analyse data from the case study, creating a symbiosis of the literature and the case study. Through this, this thesis develops ideas surrounding the ability and motivations of professional associations to intervene within the profession on divisive, politically sensitive matters. It also brings to the fore the challenges of increasing social mobility at the Bar, and the experiences of those who participate in access programmes, as students or practitioners, aiming to achieve that.

This academic interest in the actions of an Inn of Court also casts light on an area of the legal profession previously overlooked by research. Despite some research into the operation of the equivalent body in the solicitors' profession (The Law Society; Francis (2004)), no research has specifically focussed on the contemporary operation of the Inns of Court. Historical accounts of the Inns provide a helpful background (see Cocks, 1983; Polden, 2010), and a comparative element can be introduced through research into the workings of the Bar Associations in America (e.g. Larson, 1977; Halliday, 1987). The relationship between the Bar and the government in England has also been explored by Abel (2003). However, the way in which an Inn of Court as a professional association may operate in an

attempt to cause changes within the profession (in this case study, in an attempt to diversify demographics) is a previously unexplored area.

1.2 Context

This research comes at a time when much of society is concerned with equality of opportunity, and the perceived elite nature of certain professions causes discontent.⁵ The Government has made it an increasing priority,⁶ with an extensive range of documents on the Government website concerned with social mobility matters, including a recent speech by the Prime Minister on improving life chances for people from all backgrounds.⁷ Amongst commentators, however, discussion abounds as to whether social mobility is occurring,⁸ and even if it is, whether it can ameliorate inequalities in society.⁹

Existing policy documents on social mobility (explored below) demonstrate that there is particular pressure on professions to ensure that they are recruiting young people only on the basis of merit and potential. However, such merit and potential may have been shown in many different ways, especially by those who have not followed the educational system in a linear fashion, or have had their education otherwise disrupted. For many young people a lack of opportunities means that they have not yet been able to fully realise or demonstrate this potential in a way that can be used when applying for work experience or jobs. Thus there is increasing pressure on professions to value transferable skills, and those

⁵ See Milburn, A (2014) 'Elitest Britain?', London: Social Mobility and Child Poverty Commission (p.10)

⁶ <https://www.gov.uk/government/policies/social-mobility> [accessed 29th July 2015].

⁷ <https://www.gov.uk/government/speeches/pm-speech-on-opportunity> [accessed 25th August 2015]

⁸ Milburn, A. (2015) 'Social mobility has come to a halt', The Telegraph, 25th May 2015 (<http://www.telegraph.co.uk/news/politics/11627719/Social-mobility-has-come-to-a-halt.html>) [accessed 29th July 2015]

⁹ Clark, G. (2015) 'Social mobility barely exists but let's not give up on equality', The Guardian, 4th February 2015 (<http://www.theguardian.com/commentisfree/2015/feb/04/social-mobility-equality-class-society>) [accessed 29th July 2015]

demonstrated outside of the education system, equally with traditional educational achievements.

1.2.1 The policy background

In light of this widespread concern regarding social mobility, important context to the current research is provided by a number of policy documents from the last five years. In recent times ‘social mobility’ has become a much-used phrase. The buzzword of many political policy papers, it nonetheless bears a greater exploration of its central pre-occupation.

Defining social mobility is not straightforward. It can be defined as ‘akin to equality of opportunity’ (Crawford et al., 2011: 6) and the relationship between an individual’s position on the income ladder in early life as compared to their incomes as adults (Papademetriou et al., 2009: 1). When measured inter-generationally, it is expressed as ‘the relationship between the socio-economic status of parents and the status their children will attain as adults’ (Causa and Johansson, 2009: 5), whilst intra-generational social mobility is concerned with changes to position in the social hierarchy of an individual (Nunn, 2011: 5). Social mobility can also be absolute; the social hierarchy of the entire society shifts, or relative; an individual moves within the established social hierarchy (Nunn, 2011: 5–6). It is widely acknowledged that as such an amorphous concept, it is easier to identify the drivers of social mobility than it is to pinpoint its exact conceptual definition (Crawford et al., 2011: 6), and these include education, skills and employment (Crawford et al., 2011; Papademetriou et al., 2009; Nunn, 2011).

Neither is measuring social mobility, nor the effect of programmes aimed at increasing it, easy. It is not until people have retired that it is possible to assess their social mobility (assuming that earnings and occupation are the method of assessment used) (Kennedy, 2010). Therefore, we know much more about social mobility of the generation currently in

their sixties than we do about the generation currently in their thirties, who may yet get promoted or move on to more prestigious jobs before they retire. This makes assessing 'current' social mobility somewhat of a challenge.

The success of those programmes aimed at increasing social mobility through intervention at a very young age, such as 'Sure Start', will not be known until the cohort who had access to such programmes is much older (Kennedy, 2010: 78–79). Therefore, assessing the effectiveness of current initiatives is difficult for the same reason as measuring current social mobility; social mobility is an event which continues over the working life of a person, and therefore cannot be reliably measured until their working life has come to an end. Indeed, this is one limitation of the current research; it is a snapshot of the interventions currently employed by Inner Temple. The long-term effects of PASS will only be known if follow-up, or ideally longitudinal, research is carried out in the future (see 'Further Research', chapter 8).

As Nunn et al. (2007: 69–70) conclude, the factors which dictate to what extent people are able to achieve intra- or inter-generational social mobility are also complex and vary between individuals. This was reflected by the views and experiences of the students who spoke with the researcher during this project. What actually motivated and constrained, and what they perceived as constraining them, was complex, varied and nuanced. This complexity means that a 'joined-up' approach between Government departments, agencies and non-Governmental organisations is necessary in order to improve social mobility by addressing those factors which inhibit it. The report also highlights that although social mobility is a measure of societal fairness, there are other such measures with which it needs to be considered in conjunction to gain an accurate picture.

Social mobility is perceived as desirable because it is inextricably linked to societal fairness, and so too to social cohesion. It is described as the manifestation of equality of opportunity, albeit that the gulf between formal and substantive equality may be vast (Nunn, 2011: 6). At its heart, social mobility is the progression of a person to the possession or achievement of attributes that are associated with a social class that is higher than that of their parents. In less eloquent terms, it may be synonymous with climbing the social ladder. Whilst some academics have suggested that this is a trait inherent in all, that everyone will attempt to emulate the behaviours of those above them in the social order (Bourdieu, 1984), for others it is a process that should be striven for across society. Such a determination to ‘cause’ social mobility through external forces, however, may not be straightforward due to the huge variation in the opportunities afforded to individuals to demonstrate their ability and access drivers of social mobility (Crawford et al., 2011: 6). This inequality of access to opportunities reinforces social stratification (Parsons, 1940), whereby society adopts a normative pattern, with individuals theoretically divided by the differentiation of roles, leading to a differentiation of goals for different social groups (1940: 845). Each group has different moral patterns, and compliance with these is inculcated at an early age (1940: 846) similarly to the inculcation of tastes documented by Bourdieu (1984). Differential evaluation of the values of each strata then leads to a hierarchy being created according to desirability of the values of each strata considered under six attributions; these include achievements, possessions, authority and power (Parsons, 1940: 848–9).

The current focus on (inter-generational) social mobility, the movement by an individual from their parents’ social strata, is largely due to a political desire to ensure that it increases.¹⁰ The UK currently lags far behind other similarly developed nations in ensuring that those of

¹⁰ See text of the Prime Minister’s ‘One Nation’ speech delivered on 22nd June 2015 - <https://www.gov.uk/government/speeches/pm-speech-on-opportunity> [accessed 29th July 2015]

equal talent but from under-privileged backgrounds have the same chance of accessing the most respected professions as those with more privileged upbringings. What is illustrated clearly by the social policy documents available is that the current research is contributing to narrowing a wide gap in the literature. Whilst there is a lot of general research into social mobility, and this can be combined with various academic research focussing on non-traditional entrants to the profession as solicitors, and extensive research on the American Bar, there has been comparatively little written about the situation at the English Bar, and none of that has been recent. Meanwhile, there is increasing pressure on legal professional organisations to collect data giving more detail than ever before about applicants and entrants to the profession so that the attributes of entrants can be monitored. However, much of this data, although collected, does not undergo meaningful analysis to identify patterns and potential for change.

Concern about a lack of social mobility at the Bar relates to three broader concerns. Firstly, that if the Bar is not representative, individuals who are intimately concerned with the pursuit of justice may not be able to relate to, or understand, the needs of their lay clients. Secondly, for as long as this imbalance persists, the struggle for a more representative judiciary will continue to be hard to advance, as the pool from which many judges are drawn will be unrepresentative. Thirdly, that talented young people who are capable of a career at the Bar are deterred from even attempting to join the profession because they feel that they will not succeed if they are from a lower socio-economic group. Many young people from such backgrounds may be the first in their family to go to university, or the first to have hopes of entering a profession such as medicine or law. Young people in this group may find the prospect of the Bar a foreboding one. Reasons given for this by students who participated in this research included: stereotypes of the profession; unfamiliarity with the social norms of

the profession leading them to feel that they did not ‘fit in’, and a lack of information about the working practices of barristers and life at the Bar.

The current increase in interest in this area has largely been triggered by the then Deputy Prime Minister Nick Clegg asking former MP Alan Milburn to undertake a comprehensive review of social mobility after the latter stood down at the 2010 General Election.¹¹ Whilst a Member of Parliament, Mr Milburn had already undertaken work examining social mobility, published in his 2009 Report ‘Unleashing Aspirations’, and was later appointed as the Independent Chair on Social Mobility and Child Poverty (House of Commons’ Education Committee, 2012). Mr Milburn accepted this role (letter of 12th August 2010), with his remit as ‘considering how best progress towards the long term goal of the United Kingdom becoming more socially mobile can be fairly assessed’.¹² Since 2010, there have, therefore, been a number of documents produced by both groups representing specific professional groups (see below documents from the Bar Standards Board and the Legal Services Board, for example), and also more general documents produced by groups whose aim is to increase social mobility within society (for example The Bridge Group and the Sutton Trust).

For a more comprehensive overview, it is helpful to begin by examining two significant documents from the ‘pre-Milburn’ social mobility literature. Langlands (2005) ‘examined the available evidence and reflected some of the genuine concerns expressed by professional bodies, universities and other higher education institutions and employers’ (before the increase in university fees and the altered arrangements regarding repaying student loans). His Government-published report broke down its recommendations for increasing social

¹¹ <https://www.gov.uk/government/news/letter-to-alan-milburn-on-his-appointment-to-review-social-mobility--2> [accessed 29th July 2015]

¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62364/milburn-clegg-letter.pdf [accessed 29th July 2015]

mobility into four categories, delineated by the four stages which one usually has to pass through in order to enter a profession: initial decision-making prior to entry to higher education; application to higher education; period of study, and entry to and retention in employment (Langlands, 2005: 8-9). This thesis focusses on the third stage identified by Langlands; entry to the profession, although it does also engage with issues surrounding careers decision-making at secondary and higher education levels and experiences within the higher and vocational educational stages.

Existing research highlights that 'early intervention' in the education system is vital. Research conducted from birth shows how quickly those of high ability from lower social backgrounds fall below the performance of their higher social background but low ability peers from the age of 6 years (Feinstein, 2003: 85). This demonstrates how social stratification (Parsons, 1940) begins to manifest in the earliest stages of an individual's life. Such stratification is inherently linked to social mobility, as social mobility is the process by which individuals can move out of the strata of their parents (inter-generational) or themselves progress from one strata to another. This research focuses on inter-generational mobility, as the young people participating had their eligibility for PASS assessed according to matters such as parental education, and identifiers of parental income such as free school meal eligibility.

Early intervention is important to pre-empt and reduce such stratification at a young age. The targeting of resources at children from more disadvantaged backgrounds then needs to continue throughout their education to provide the resources and encouragement to enter higher education, and gain qualifications which will improve their chances of a stable, higher-entry level job. Such ongoing support gives young people the tools to potentially move from one level of social stratification to a higher level.

Appropriate advice and information at an early stage of secondary education is needed to combat negative stereotypes of certain professions which may be especially prevalent amongst those from lower socio-economic backgrounds; that a certain profession 'isn't for people like them' (Langlands, 2005: 8). Such support then needs to continue into higher education: Jerrim, Vignoles and Finnie (2012: 22) demonstrate that, in comparison to the USA and Australia, England has the lowest percentage of people from the 'low socio-economic' group going to university, and links this to the poor school performance of many children from that group.

Furthermore, such encouragement needs to continue through formal education and extend to the provision of careers' information. Responses to the Milburn Review from The Bridge Group and The Sutton Trust (significant independent charities promoting social mobility through inclusion in higher education) highlighted the need for information and encouragement to be given to those with ability from lower socio-economic backgrounds at university level by those already in professional positions (The Bridge Group, 2011: 2). This linking of professionals and non-traditional aspirant entrants is one element seen in the case study intervention, and mentioned by many participants as a valuable way of offering support and insight to aspirant entrants who may struggle to access accurate information about the profession otherwise.

Evidence of this was found in the current research, with many practitioners discussing the challenge of ensuring opportunities were available to those young people who had relatively poor grades from formal education but who showed potential through other attributes and transferable skills. They also highlighted that, during their formal education, many students did not realise how competitive a career in Law was, and thus the grades it required, until they had already sat the examinations.

As a result of the strength of the research showing that employment, and chances thereof, is intrinsically linked to the ability of people to improve their social mobility, there has been significant engagement with professional bodies and education providers to try and establish how best they can assist in increasing social mobility. This engagement has been particularly strong in those professions where there has traditionally been a significant under-representation of those from lower socio-economic backgrounds, of which Law is one. Data used by the National Equality Panel (2010: 329) showed that the percentage difference between the average family income of a typical professional and the average family income across the population was highest for lawyers (a 75 per cent difference) compared to eleven other specific professions, and a collective twelfth category of 'other professions'. The Milburn Report (2009) highlighted the lack of progress made in access to the professions, with a focus on four specific sectors: law, media, medicine and government/politics.

Langlands' report acknowledges that different professions face different particular challenges, but in addition to the key themes identified as relevant to a number of the professions studied (2005: 14), two particular challenges were seen facing the legal profession. Firstly, that prospects, pay and working conditions were seen as important factors in the choices made by graduates working in the profession. This reduced the likelihood of graduates working in an area predominantly comprising legally aided work. Secondly, there were still issues surrounding social background and access, despite attempts to address diversity (Langlands, 2005: 53). It will be examined below how the position in relation to Law in particular has changed since 2005. Regrettably, Langlands considers only the solicitors' side of the profession, completely ignoring the Bar and its position. There are some significant differences in the ways in which the Bar and solicitors' firms operate, so this omission is unfortunate.

Similar concerns were raised in the Department of Work and Pensions report produced by Nunn et al. (2007). This report ‘examined the factors that are facilitating and inhibiting social mobility in the United Kingdom (UK) in the early years of the twenty-first century’, and looked particularly at the role that employment could play in social mobility. The authors assert that ‘Trends in social mobility are remarkably resistant to policy interventions. Those in higher social classes appear to have been able to take greater advantage of the opportunities created by policy interventions and more able to use a variety of additional social advantages to maintain their relative position. This may undermine the potential equalising benefits of universal public provision.’ (Nunn et al., 2007: 4). The report does highlight, however, that employment opportunities are a crucial part of social mobility progress; ‘people who have experience of unemployment are more likely to find themselves trapped in low quality ‘entry’ level employment, with limited opportunities to progress.’ (Nunn et al., 2007: 4).

Therefore, it is clearly recognised that those measures aimed at increasing social mobility may themselves widen the gap between the middle class and the working class. This means that any policy interventions must be carefully formulated and monitored to reduce this differential effect as far as possible. Furthermore, if social mobility is so resistant to policy interventions, it is necessary to ensure that any policy interventions that are utilised are radical enough to address the problem where it is most felt, and where intervention could lead to the most significant returns. It appears that one such area is the promotion of secure employment with opportunities for career progression for those who may otherwise find themselves ‘trapped’ in entry-level employment.

Such interest in social mobility over a period of time, combined with increasing awareness of the difficulties faced by those from low socio-economic backgrounds in getting access to the ‘top jobs’ led to the commissioning of a report dedicated solely to social mobility in

England and Wales; 'Unleashing Aspirations' (Milburn, 2009), colloquially known after its writer as the Milburn Report. The Report was wide-ranging, and included a large-scale consultation process with various bodies, both charitable and professional, with relevant expertise and experience in working to increase the accessibility of the best education and jobs to those from low socio-economic backgrounds.

Research shows that, compared to six other developed countries (USA, France, Denmark, Sweden, Germany and Canada), Britain is displaying the least intergenerational social mobility when measured by the strength of the links between the earnings of fathers and sons (Kennedy, 2010: 78–9), and that rates of occupational mobility are lower than the international average for men and are at the bottom of the range internationally for women (National Equality Panel, 2010: 324–5). However, Kennedy also states that evidence suggesting that social mobility has actually declined in this country is 'far from clear cut', due to challenges of measurement (see above).

Although professions had been key to increasing social mobility in the post-war era (Milburn, 2009: 16–17), they have subsequently come to contribute to its stagnation, with extrapolation suggesting that in the future, professionals will come from families that are in the top 30% of the population in terms of income (2009: 20). The report further highlighted existing research on the importance of factors affecting children very early in their lives in their later life paths (2009: 26–41) and called for these to be ameliorated through policy-based interventions.

As well as interventions, advice has been issued to professional bodies on how to improve social mobility: an example can be seen in the 'Social Mobility Toolkit' (2012). This was funded by the Legal Services Board, the General Medical Council and with support from the Chartered Insurance Institute and the British Dental Association; all professions which have

traditionally struggled to recruit and retain those from lower socio-economic backgrounds. The Toolkit document is aimed at advising ‘traditional’ professional bodies and companies on how to understand and monitor social mobility, and on best practice for improving access (2012: 4). Thus, it is hoped that by giving out information on how best to recruit the strongest candidates for a position regardless of their background, the professions will feel better able to adapt their recruitment practices to reflect best practice, and also to monitor social mobility within their organisation to allow the effectiveness of current programmes to be evaluated in the future.

Taking heed of the criticisms levelled at the legal profession, a consultation paper by the Legal Services Board (LSB) ‘discusse[d] our policy proposals in relation to increasing diversity and social mobility at all levels of the legal services workforce. It focuses on the role of providers (firms and chambers) and approved regulators in this process...’ (2011: 1). The LSB is the independent body responsible for over-seeing the regulation of the legal profession, and works with the ‘approved regulators’ (including the Bar Council and the Law Society) who undertake the routine regulation of lawyers.¹³ The LSB and the approved regulators share eight regulatory objectives, and this thesis argues that increased regulation to promote these has contributed to a reduction in the power of professional associations such as the Inns of Court (see chapter 7).

As an approved regulator under the Equality Act 2010, the LSB is now required to collect and monitor diversity data on those entering the profession. It therefore wanted to establish an evidence base on the profession’s current demographic, and to gather information on attributes of applicants in the future, by developing new diversity monitoring forms (LSB, 2011: 2). The consultation was chiefly aimed at establishing the views of solicitors’ firms

¹³ <http://www.legalservicesboard.org.uk/> [accessed 8th September 2015]

and barristers' chambers on what questions should be asked of current and prospective lawyers, and how the information obtained should be released to the public in order to comply with the duty under the 2010 Act. Currently, data on socio-economic status is only collected from new applicants by way of a question on their parents' education; a relatively basic measure.

The LSB therefore attached to the Consultation Paper a template questionnaire, and invited responses on its appropriateness. Of the responses accessed, the setting of targets caused most concern (something the LSB had said that it was 'minded to reject at this stage' in any event (2011: 3)), and the requirement of very small sets of chambers or firms to publish their data, possibly leading to the identification of members who had a particular disability, for example (response from the Inner Temple (2011)). There were positive comments about the intention to collect data on socio-economic backgrounds (response from Matrix Law)¹⁴. In designing the template questionnaire, the LSB stated that, 'We have sought advice from the Equality and Human Rights Commission (EHRC) on the best approach to measuring each characteristic. We have sought to follow an approach that complies with best practice and is aligned as far as possible with external datasets such as the national Census.' (2011: 34). This alignment will help transparency in assessing social mobility as it will be possible to draw meaningful comparisons between datasets obtained by different organisations.

Although statistics showed that those qualifying and entering practice as solicitors and barristers are now much more diverse than they had previously been (with significantly increased proportions of women and black and minority ethnic people entering the profession (Bar Council, 2014: 9)), there continue to be concerns regarding lower rates of retention and progression of people from those demographics, with high attrition at each

¹⁴ http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/matrix_law.pdf [accessed 8th September 2015]

stage from the BPTC, pupillage, and tenancy (Bar Council, 2011: 9–12). The Bar Council figures from 2012 clearly illustrate this problem; whilst just over 49 per cent of those Called to the Bar were women, only just over 37 per cent of barristers practising in England and Wales were women (2014: 16). Therefore, it is understandable that most replies to the LSB's Consultation paper were keen to support initiatives that supported social mobility, and contributed suggestions on how to do so more effectively. Not only does such support need to address the relatively low number of non-traditional aspirant entrants entering the profession, it needs to consider what may cause a disproportionately high attrition rate. This will require an understanding of how non-traditional aspirant entrants experience the profession and the factors relevant to their decisions on career choice and progression. This thesis contributes to that understanding through its engagement with non-traditional aspirant entrants in a focus group setting. This allowed their perceptions of the profession, and the challenges they face in entering it, to be explored in detail in interaction with peers and the researcher.

At a similar time, responses were also being composed to the Legal Education and Training Review (LETR) Discussion Paper 'Equality, Diversity and Social Mobility Issues Affecting Education and Training in the Legal Services Sector'. The LETR is a joint project of the Solicitors' Regulatory Authority (SRA), the Bar Standards Board (BSB) and the Institute of Legal Executives (ILEX) Professional Standards bodies, which provides a fundamental, evidence-based review of education and training requirements across regulated and non-regulated legal services in England and Wales. The BSB's Equality and Diversity Committee's response to the LETR Discussion Paper makes particular reference to an anomaly found at the Bar; the fact that 'there is currently *no* 'Equality Code' in place which requires all members of chambers' recruitment committees to undertake equality and diversity training.' (BSB 2012: 1). Published during the course of this research, the LETR

(2013) was extensive and made a number of wide-ranging recommendations across every level of the legal training process. However, it made little in the way of recommendations directly addressing concerns arising in this research.

A progress report (Milburn, 2012) followed up the recommendations made in the 2009 Milburn Report, measuring progress against four criteria (2012: 11). Firstly, raising aspirations; secondly, work experience and internships; thirdly, recruitment and selection, and fourthly, flexible routes into the professions. He concludes that, in testing economic times, increasing access has been side-lined in some cases; although some organisations have made significant progress, he concludes that overall, progress has not been sufficient (2012: 29). A lack of information at school-age, narrow recruitment bases and the importance of work experience are indicated as particular challenges (2012: 29). Milburn praises 'real efforts' in his examination of the legal profession, but again laments the amount remaining to be done (2012: 40), and specifies four areas particularly requiring attention. These are the purpose of programmes, the sustainability and evaluation of programmes, embedding fair practices, and widening the recruitment pool (2012: 40–41). This thesis identifies and directly engages with all four of these issues.

Recurrent themes in these policy documents are criticism of elite professions, such as the Bar, for failing to take sufficient action to recruit young people from diverse socio-economic backgrounds. Whilst there is often recognition that young people are emerging from education without the qualifications that they need for such professions, this is identified as attributable in many cases to their socio-economic circumstances, not a lack of intellect. However, as professions continue to recruit largely by reference to selection criteria that give preference to traditional academic achievement, it is difficult for intelligent young people without these traditional markers of merit to gain access to the most prestigious professions.

Solutions suggested for increasing the number of young people from lower socio-economic backgrounds in the professions centre around two main matters. Firstly, the provision of greater support throughout their schooling, especially in relation to decision-making about higher education, and secondly, the improvement of links between elite professions and young people. Such improvement is often conceived of as being through mentoring schemes and a greater availability of information for young people. At the core of any social mobility discussion is the matter of meritocracy; indeed, I suggest that the two concepts are inextricably linked. The corollary of everyone achieving according to their talents, unmediated by advantage or inhibited by lack thereof, is that no-one is restricted in their achievement by their background. Therefore, the two notions appear to be co-dependent. These increasing concerns about social mobility and meritocracy have been particularly expressed in relation to the legal profession, and especially the Bar. Perceptions of the Bar as operating as an ‘Old Boys’ network and thus being accessible only to those from higher socio-economic groups and with inside connections have caused the profession to come under scrutiny. Such scrutiny has fallen not on individual chambers, but on the profession as a whole, and on the Inns of Court as professional associations which control initial admission to the profession by way of ‘Call’.

1.2.2 Route to practise

To practise at the Bar, a person must be ‘Called’ by their Inn of Court. There are four Inns of Court; Inner Temple, Middle Temple, Gray’s Inn and Lincoln’s Inn. An aspiring barrister can choose which of the four they wish to join, and there is widely regarded as being little material difference, although the amount and distribution of scholarships may influence choice. Membership of an Inn is a pre-requisite of practice, meaning every barrister joins as a student, undertakes qualifying sessions, is Called, and then remains a member of their Inn while ever they are practising.

Call is a ceremonial occasion which requires a person to successfully complete a qualifying Law degree or the Graduate Diploma in Law (GDL), the Bar Professional Training Course (BPTC), twelve Qualifying Sessions at their Inn (these may be dinners preceded by talks, residential advocacy weekends or lectures), and to have a character reference as a fit and proper person. Once Called, a person can begin pupillage; the final vocational stage of training and a pre-requisite for practice. Competition for pupillage is intense: Only around one in seven of those who complete the BPTC and are Called secure pupillage. There are many elements that a chambers will look for when selecting from pupillage applicants. At the paper sift stage attention will be paid to academic ability, written communication, work experience and other indicators of commitment to the Bar. From the paper sift a much smaller number will be selected for interview. At first interview, candidates will be assessed on their oral communication skills and interpersonal skills by a small panel of chambers' members, and may be given specific oral or written advocacy exercises to complete. At many chambers, interviews go to two rounds with the second interview often being more demanding and with a larger panel of tenants.

The process is undeniably rigorous for any candidate, but statistics (including the disproportionate number of privately- and Oxbridge-educated barristers) suggest that those from particular demographics are more likely to succeed. This sits ill at ease with a commitment to equality of opportunity regardless of background, and the possibility of high achievement based solely on intellectual ability. Research, however, suggests that other factors such as educational and socio-economic circumstances significantly affect a young person's chance of successfully entering the profession (Sullivan, 2010).

Ultimately, if an aspirant entrant cannot succeed in this process, they will not be able to practise, despite having formally obtained entry to the profession through the completion of the BPTC and being Called by an Inn. As the statistics show that there is a diverse body of

students undertaking the BPTC (Bar Council, 2011: 9-12), it appears that the attrition of students from lower socio-economic backgrounds between the BPTC and practice occurs at the stage of securing pupillage.

A key element to securing pupillage has been identified as work experience (Francis and Sommerlad, 2009). Often called ‘mini-pupillages’ at the Bar, work experience allows an aspirant entrant to experience the reality of day-to-day life at the Bar; speak to those already in practise; observe areas of Law that may not be covered by their degree course, and assimilate those almost imperceptible behaviours that will allow them to fit in within the profession.¹⁵ Furthermore, it allows the making of contacts within the profession – practitioners who can assist by giving advice, encouragement or maybe even valuable inside information. For many traditional aspirant entrants, they already have such contacts through family, friends, or their educational establishments. These contacts not only potentially provide advice and guidance during the process of applications for pupillage, but they may, themselves, lead to the provision of a mini-pupillage, arranged informally through the contact. This allows traditional aspirant entrants access to a crucial opportunity to fit themselves for the Bar, and gain valuable knowledge and understanding, without having to go through the highly competitive process of applying for mini-pupillage. Some interviewees admitted that many chambers receive so many applications even for mini-pupillage that many may go unread and unprocessed, often due to the other demands on the time of the barrister trying to both administer the scheme, and also run a busy practice of their own.

¹⁵ Throughout this thesis, when ‘work experience’ is referred to, it usually means ‘mini-pupillage’, as opposed to general legal work experience, unless there are clear contextual markers suggesting otherwise. Data collected for this thesis suggested that students and practitioners both felt that legal work experience that did not take the form of a mini-pupillage, such as time in a solicitors’ firm, was not ascribed the same value as mini-pupillages. It is suggested that this is because such work experience does not expose aspirant entrants to the specific social norms of the Bar (see chapter 4).

Thus, there is often an inequality of opportunity between traditional and non-traditional aspirant entrants of access to mini-pupillages. Such opportunities allow those who secure them to fulfil objective criteria requiring the completion of mini-pupillages, and to be better informed both about the profession itself, and the life of a practitioner. However, they also allow aspirant entrants to be more convincing in their future applications, through exposure to the expected social norms seen at the Bar. Data gathered for this thesis illustrated that the opportunities for this experienced by traditional aspirant entrants in family, educational or social settings were not experienced by non-traditional aspirant entrants. Similarly, the experiences of non-traditional aspirant entrants in this research was that they struggled to secure work experience, and especially mini-pupillage, as they did not have familial and informal contacts whom they could approach to secure such experience. In direct application processes, they were also overlooked, which was itself something they attributed to not yet having been able to secure mini-pupillages, causing a vicious circle and feelings of discouragement. For these reasons, Inner Temple focused an access programme on the provision of mini-pupillages to non-traditional aspirant entrants.

1.2.3 Professional association as interventionist actor

As a professional association, and not a body that directly employs any barristers, Inner Temple may not seem the most likely body to implement such a programme. However, as the bodies responsible for the initial admission of aspirant entrants, the role of the Inns of Court cannot be ignored in any discussion around the demographic composition of the profession.

As an historic and elite profession, the Bar has traditionally operated occupational closure (Larson, 1977). Whilst claimed to be an exercise in protecting standards, the increasingly rigorous academic requirements for entry can be gained only through expensive courses. Information about the profession, and work experience within it, are difficult to access for

those without informal links within the profession. Furthermore, a traditional educational path is usually expected (Francis and MacDonald, 2009). It may not be expected that an embedded professional association within a traditional profession would seek to change a longstanding status quo. Their field position within the profession is central, and therefore such an association could be expected to wield significant power such that it could make an alteration if it desired (Greenwood, Suddaby and Hinings, 2002). However, it would also be expected that such an organisation would have a strong attachment to the central value system as a consequence of its embeddedness, and therefore might not wish to alter a longstanding status quo. In the case study, this longstanding status quo was an acceptance of practices which indirectly facilitated social closure.

However, the professional association used as a case study in this research (The Honourable Society of the Inner Temple) has established and promoted an innovative programme aimed at overturning a notion previously regarded as crucial to the professional project, despite being an embedded professional association within a traditional profession. Their Pegasus Access and Support Scheme, a scheme aimed at assisting and encouraging non-traditional students' access to the profession through the provision of mini-pupillages, is used as a case study to facilitate the exploration of intervention by a professional association.

1.2.3.1 Case Study: The Pegasus Access Scheme

This scheme is used as a case study to support and demonstrate the theoretical aspects seen in the existing literature. The Scheme (hereafter 'PASS') was established by Inner Temple in 2012. Since then, it has had one pilot cohort, and two full cohorts, with the application process opening annually. Successful candidates then undertake their mini-pupillages over the remainder of the academic year at a time convenient to them and the chambers with which they are placed. Although the pilot cohort was relatively small, full cohorts since have been increasing in size (see Table 2 below), and it is hoped that this number will increase as

more chambers sign up to be ‘partner chambers’; those that accept students through the scheme.

There are currently 61 partner chambers, all London-based apart from two. (The Scheme is currently focussing on London-based chambers due to organisational constraints on extending the scheme. It is hoped that it may be possible to extend it to more sets outside of London in the future.)¹⁶ These chambers are of varying sizes and their expertise covers all practice areas, from general common law sets (e.g. 3 Paper Buildings) to specialist sets in media and information law (e.g. One Brick Court).

PASS is notable as it is the first programme developed and run exclusively by an Inn of Court on this scale. It is run in partnership with chambers, who agree to give a number of their mini-pupillage slots in a year to PASS candidates. These candidates are then selected by Inner Temple on the basis of an application form. Some are also given a short telephone interview if deemed necessary for the Education and Training team to fully assess their application. The application form is designed to capture motivation and skills necessary for the Bar learnt from other contexts, as well as educational and personal disadvantage that the candidate may have encountered, preventing them from fully demonstrating their potential. The application form consists of a relatively small number of questions regarding academic achievements compared to most mini-pupillage application forms. It also requires a personal statement setting out why the candidate is considering pursuing a career at the Bar. One academic reference and one character reference are also required.

Salaried staff members of the Education and Training Department at Inner Temple who have specialist knowledge of access and education sift the applications. This means that traditional conceptions of merit are not rigidly applied, as they are experienced in quantifying

¹⁶ <http://www.pegasus.me/partners.html> [accessed 26th May 2015]

achievement in its context. Furthermore, the students select the areas that they are interested in from a list of practice areas, and Inner Temple staff then match them, as far as possible, with chambers that undertake that type of work.

The mini-pupillage offered through PASS is intended to be the same as any other mini-pupillage offered by that chambers to direct applicants in terms of work seen, activities undertaken and duration. However, the chambers is required to provide expenses to students who secure their mini-pupillage through PASS, something that the students who participated in this research noted was key to their being able to undertake the placements.

1.3 Outline of thesis

This research focusses on a specific subsection of a specialised profession, requiring an initial introduction to the structure of the profession and its workings. Many of these aspects of the profession are key to an understanding of the context of the professional association and thus how it operates. Therefore, this thesis proceeds initially with chapter 3 briefly describing the landscape of the Bar, and Inner Temple before setting out the theoretical frameworks with which this research engages, and the research background against which this research is set. Chapter 4 then considers the key matters for a professional association; those values that are, or have previously been regarded as, central to a professional association. It also explores why, in the case of the Bar, social closure has featured as a component of the central value system; how this value system is perceived externally, and what may motivate a professional association to seek to alter the composition of the central value system.

Chapter 4 then moves towards a consideration of the methods by which a professional association may be an interventionist actor, focussing on how such an organisation may be able to use its power and influence within its profession to effect change on the central value

system. Specifically, the role of internal dynamics, loyalty, and the motivations experienced for developing or engaging with such a project, are explored, and change management literature is used to assess whether this change is likely to be successful in the longer term. Building on the role of individuals as initially introduced in chapter 4, chapter 5 looks at this element in more detail, examining matters such as institutional entrepreneurship, and probing more deeply the importance of individuals within a professional association and their effect on the development and efficacy of interventions.

Moving more deeply into the case study, chapter 6 examines PASS itself, beginning by introducing work experience, its importance at the Bar, and how it is usually obtained by aspirant entrants. It then considers why Inner Temple has chosen to channel its action into a programme focussing on work experience, and whether a programme which focusses on causing non-traditional aspirant entrants to conform to the established norms is a truly radical innovation. It concludes that it is not as radical as some might try to portray it, and that a more innovative programme would be one which challenged the existence of these norms and encouraged the recognition of ability demonstrated differently.

Both chapters 5 and 6 have raised the issue of the potential importance of individual agency within professional associations, and chapter 7 analyses this importance in the light of post-professionalism, as identified by Kritzer (1999), and constraining factors on professional associations' ability and choice to act in altering the profession itself. These constraints are analysed in terms of their sources, and the degree of control over these sources held by a professional association. Particularly at the Bar, these constraints are mainly external, such as legislation, and those operating on the target audience for interventions. These constraints suggest that professional associations are no longer masters of their own destiny as they had previously been perceived, and the reasons for this are analysed towards the end of this chapter. It is argued that the role of individual agency has been overlooked in the academic

literature on professional associations specifically, and that it would not be possible for a professional association within a conservative and traditional profession to be interventionist in a divisive area such as access without significant human capital and individual agency within the association. Furthermore, the links made between employed individuals at the different sites of professional power at the Bar also appeared to have been overlooked. Although outside of the scope of this research, this is highlighted as an area for potential further research.

The thesis then culminates in chapter 8, which seeks to draw together the threads examined into concluding thoughts on the operation of professional associations in traditional professions, their sources of powers, constraints on that power, and how it can be used to pursue an alteration in the central value system subscribed to by a profession.

CHAPTER 2 – METHODOLOGY

This chapter will explain the methods used in this research; why and how they were chosen to advance the understanding of those issues encapsulated in the research questions. In choosing the mixed qualitative and quantitative research methods, how best to surmount ethical challenges and risks of bias were considered. Prior preliminary data was collected to direct the grounded theory approach, and further data was then obtained through questionnaires, focus groups and elite interviews. The effects that these methodological choices had on the research itself, and how they assisted in advancing the key themes are also explored.

To give this research as much depth as possible, it was necessary to use a mixed research method, as this allowed a pragmatic combination of the strengths of both qualitative and quantitative research methods. This combination meant that interview data could be used to add a depth, richness and array of lived experience to the research. A fixed mixed methods design was therefore used, as it was known from the outset that a combination of quantitative and qualitative data would be gathered (Creswell and Plano Clark, 2011: 54). Thus, the design was formulated around the apprehension of ‘what would work’ to obtain the data required (Creswell and Plano Clark, 2011: 60). Data already collected by Inner Temple in the course of its own efforts to evaluate PASS also assisted with this research. As explained in chapter 1, this research project pursued two broad aims. Firstly, exploring the role that social closure has played in the conceptualisation of professionalism at the Bar, and secondly the role and potential success of professional associations in causing changes within traditional professions. These issues were explored with the assistance of a case study; the Inner Temple’s Pegasus Access Scheme (PAS – renamed the Pegasus Access and Support Scheme (PASS) during the course of the research).

To fulfil these aims a number of techniques, explored more fully below, were used. It was important to this research that the views of all parties participating were gathered. Therefore, a number of different groups were identified who might have different perceptions of the programme's meaning and operation. These were Benchers (elected senior members) and salaried staff of Inner Temple, representatives of participating chambers, representatives of other professional associations and chambers which were not participating, and students. With each of these groups there was slightly different information that the researcher was hoping to access. In exploring the role that professional associations can take in addressing contentious issues within the profession, interviews were conducted with chambers' and professional association representatives. In interviewing Benchers, the hope was to gain an understanding of the motivation behind the intervention; why the Benchers had initiated action to improve social mobility through Inner Temple and had agreed to dedicate resources to such a programme. When interviewing salaried staff who administered the programme the focus was on how the programme ran in practice, and how this compared to the theory of the programme. Discussion of possible improvements was also common. With chambers' representatives discussion centred around the relationship between the Inn and the chambers in running the programme, what a mini-pupillage at that chambers consisted of, and how the chambers viewed mini-pupillages as an aid to entry to the profession. To consider the impact of interventions on those at whom they were targeted students of both PASS and Pathways to Law (hereafter 'Pathways')¹⁷ participated in focus groups. However, in reality, data from interviews and focus groups with all categories of participants was relevant in every area of the research. Although this thesis focuses more closely on the PASS data, as that programme

¹⁷ Pathways to Law is a programme aimed at Sixth Form students, run by The Sutton Trust (<http://www.suttontrust.com/programmes/pathways-to-law/> [accessed 27th May 2015]). As part of the programme students spend one day at Inner Temple participating in activities such as debating, court visits and Q&A sessions with barristers.

has been entirely constructed by Inner Temple, data from the Pathways focus group is also used to add depth to the data, and to include the experiences of younger aspirant entrants.

To explore more thoroughly the experiential elements of PASS, both in terms of those who conceived and set up the project, and those students who have participated in it, qualitative data collection was undertaken. As stated above, this also extended to some younger students (in years 12 and 13) who had been involved in the Pathways to Law programme. This chapter will explore the methodology of the data collection, and potential strengths and weaknesses of the methods employed in the context of the research's aims and background.

A methodological choice, informed by time constraints and the funding imperative to evaluate PASS meant that I did not seek access to documents such as Committee meeting minutes or other internal documents relating to the establishing of PASS. Interviewees were relied on for these details so that their perception of the programme and how it had developed could be explored. The use of such documentation could, however, be utilised in any further research into the programme.

2.1 Ethics

It is crucial that research conforms to ethical standards designed to protect the welfare of participants. Before participants were approached or data collection begun, this project received approval from the Ethical Research Panel at Keele University. Participants at each level were provided with role-appropriate information sheets when they were invited to participate. All participants were required to sign a consent form if they agreed to participate, acknowledging that their participation was voluntary, could cease at any time, and would in no way affect their engagement with further programmes offered by Inner Temple, or their employment/position at Inner Temple (see Appendix B for information sheets, letters of invitation and consent forms). Thus, this research was overt, and consent was sought before

participation, meaning that all participants were aware that they were participating in academic research, and the aims of that research (Noaks and Wincup, 2009: 45).

All participants were promised anonymity in the reporting and any subsequent publication of the research, meaning that students and staff could feel reassured that their identities would not be released, or their answers revealed with a connection to their identity (Bachman and Schutt, 2011: 68). This is important as participants need to feel able to be honest about their perceptions of the PASS and its effects without fearing that any future applications they may make to Inner Temple (for example, for funding for the BPTC) would be influenced by their participation and comments in the current research. Benchers and staff also needed to be confident that any neutral or negative views could be expressed in a safe domain without the possibility of professional repercussions.

Although biographical markers are used to give context when interview responses are used in this thesis, none are so specific as to allow the combination of the quotation's content and the biographical markers to identify the speaker. This means they are necessarily scant, as the group of barristers involved explicitly with social mobility at the Bar is fairly small, meaning any more detail would risk others within the group being able to identify them from the content of their quotations. The questionnaires which were used as the foundation of the documentary analysis did not contain the identities of the students who had completed them when passed to the researcher, although the completion of a 'Name' field had been optional on the original format of the questionnaire. Whilst this may have led to some answers not being truthful, if participants did choose to give their name but did not want to be known to hold certain views it is not an ethical concern as the researcher did not know the identities of those students. In order to track those who had returned in a second Pathways cohort, the questionnaire data from the February 2013 cohort did contain the names and email addresses of the participants. However, these were removed from the data set by the researcher once

the spreadsheet had been coded to denote which participants had attended which previous event.

More generally, it was important that this research was conducted in a way that did not reinforce any negative connotations that non-traditional aspirant entrants might have of the profession. In exploring a programme aimed at tackling a socially-sensitive issue, the stakes of the research are higher than simply complying with regulatory requirements. In pursuing the academic aim of assessing how and why a professional association was taking action to improve social mobility, it was important to be aware of the tensions in that area, and the sensitive nature of some of the matters that the research covered. Taking care not to reinforce power imbalances or existing stereotypes was therefore a consideration, in the hope that participating in this research was part of a broader positive interaction with the profession for the non-traditional aspirant entrants involved.

2.2 Funding

An important issue in research is the source of funding, and any effect that this might have upon the conduct, and consequently also the outcomes, of the research. This research has been fully funded; partly by Keele University, and partly by The Honourable Society of the Inner Temple. Inner Temple collected and provided to the researcher the questionnaire data, and also acted as intermediary between the researcher and the participants from Pathways to Law and the Pegasus Access Scheme. Furthermore, they provided a location for the focus groups. The researcher had no prior affiliation to the Inner Temple before beginning this research.

Research on the effect of funding sources on research has largely focused on scientific research. There has often been an assumption, implicit or explicit, that a dependence upon external resources (in this case, funding and data provision) forces researchers to alter their

conduct of research in order to maintain or secure funding (this is known as resource dependence theory; Pfeffer and Salancik, 1978). The Bar is notoriously hard to access for academic research (see, for example, Flood's account of his ethnography of barristers clerks (1981), and Rogers' writing on her research into pupillage (2010)). In this respect, the identity of the funding source was very important in this research. Not because it (knowingly) influenced the output of the researcher, but because the hurdle of access to participants was largely overcome by Inner Temple, as a respected professional association trusted by practitioners, funding the research. This seemed to give the researcher credibility with participants, and probably influenced the decisions by a number of those interviewed to agree to participate. The endorsement by Inner Temple of the research was undoubtedly key to obtaining not just the data that Inner Temple had already collected, but also to obtaining the additional data collected by the researcher.

'Funding bias' or 'sponsorship bias' has been identified as a sub-category of 'experimenter bias'; it refers to the potential desire of the researcher to demonstrate results which support a viewpoint or outcome desired by the body funding the research (Bero, 2013). Whilst a 'conscious partiality' (such as that displayed by feminist researchers who are open about their own beliefs; Mies and Shiva, 1993: 68) can be taken into account by any consumers of the research, it is those loyalties about which the researcher is not open, and their potential effects on the research, which are of concern, as they cannot be taken into consideration by readers. As this research is partly funded by an organisation whose programme is being examined, their vested interest in the outcome of this is something of which to be mindful (Bryman, 2012: 150). However, the researcher did not experience, or feel aware of, any pressure to produce particular findings, or even necessarily to report positively on the programme. In conversation with those who had been instrumental to the funding of the research emphasis was placed on discovering whether PASS was, in fact, a meaningful

programme for increasing social mobility. Subconscious bias, however, cannot be so easily discounted.

The researcher in this research is independent, as I have had no previous involvement with either Inner Temple or PASS, and this should ameliorate some of the possible 'bias' effects identified in existing research. For example, Eisner (2009) found that in offender treatment trials conducted by researchers independent of the intervention, effects were likely to be reported. This effect is mirrored in a meta-analysis of anti-depressant studies. Those funded by a pharmaceutical company were likely to favour the drug of that company to an extent not found by non-industry sponsored research (Bruce Baker et al., 2003) by up to a multiple of four (Becker-Bruser, 2010). Although the researcher was not aware of any pressure to produce particular findings, qualitative research is vulnerable to the criticism that certain pieces of interview data are selected to give a biased picture which is not representative of the whole body of data collected. Efforts were made, therefore, to highlight both the positive and negative views of participants, and to give quotations relied upon within the text so that readers can also form their own views on what interviewees said.

2.3 Sampling

Due to the purpose of this research in investigating the ability of embedded professional associations to act on a divisive issue such as social mobility at the Bar, it was not possible to have a representative sample from which generalisations could be made to the wider population. It is not, however, an inherent weakness in research that it is not capable of generalisation, providing it is not intended to be and is not applied as if it were (Bachman and Schutt, 2011:45). There will also be selection bias in the present sample due to self-selection. Letters of invitation were sent out, but there was no compulsion for participants to attend. It is therefore possible that those who attended held stronger views on the matters

being researched than those who did not, and potentially more positive, or more negative, views. However, despite this bias risk, the depth of data needed required interactive methods such as focus group and interview participation. Therefore the sample had to be guided by the willingness and availability of participants for these activities.

Previous research of this type has thus been carried out using a purposive sample (for example, Sommerlad (2007); Francis (2004) and Braithwaite (2010)), sometimes called a judgmental sample. This is a method whereby participants are selected based on the knowledge of a population and the purpose of the study. The subjects are selected because of some characteristic which they are known to possess. In this research, the sample was purposive because the desired outcome of the research was to discover the thoughts and perceptions of those who had been involved in Pathways to Law and the Pegasus Access Scheme, and the development of the programmes. Therefore it was only useful to speak to those involved in the programme in some way. Those who could speak authoritatively on the matters relevant to this research were those within the embedded professional organisation of Inner Temple, those in participating chambers, and the students. Two additional interviews were carried out with an employee from another professional association and a representative from a set of non-participating chambers to provide a comparative viewpoint. It would therefore have been pointless to take a non-purposive sample, as it would not have been possible for the relevant matters to be explored.

Theoretical sampling, as often found in work based upon grounded theory (which this research is, see below), was also used to build upon the initial purposive sample. Theoretical sampling is *'the process of data collection for generating theory whereby the analyst jointly collects, codes, and analyses his data and decides what data to collect next and where to find them, in order to develop theory as it emerges'* (Glaser and Strauss 1967: 45). As background literature and questionnaire data was analysed, the researcher began to establish

key themes which directed decisions on potential interviewees who were best-placed to discuss these themes. This was one justification in the current research for theoretical sampling; it is most useful once some key concepts have been discovered, often through preliminary data collection with a relatively 'random' group who have experience relevant to the study topic (Charmaz, 1990). Once interviews had begun, suggestions made by interviewees about others who may have material contributions to make were followed up; some were interviewed when further investigation had confirmed the likelihood of them having relevant knowledge. Thus theoretical sampling was then used to generate further data to confirm and refute original categories.

Although sampling can affect validity, it does not do so negatively in this research. There are three aspects of validity; measurement validity, generalizability, and causal validity (Bachman and Schutt, 2013: 41). Measurement validity (Bachman and Schutt, 2013: 85) focuses on whether the research has effectively measured the phenomenon that it set out to measure. Generalisability can take two forms; sample generalisability, and cross-population generalisability. This research is only concerned with the first of those. Cross-population generalisability describes the ability of results to be generalised from the sample to the entire population. Samples from which this can happen display external validity (Bachman and Schutt, 2013: 42). This is not problematic in the current research, as it is not suggested that the results obtained will apply to the entire population. Sample generalisability, however, is relevant to this research, as it focuses upon the ability of the research to be generalised to a larger group with the same characteristics as the sample group (Bachman and Schutt, 2013: 43) i.e. other embedded professional associations.

It was possible to access all but two of those whom I had hoped to interview from among the Benchers, chambers' representatives and those from external bodies for comparison. The twelve interviews conducted included a chambers' representative from a set of chambers

that was not participating in PASS, and an individual from another professional association. The number of PASS students who participated in focus groups was a little lower than originally hoped, as students either did not respond to the request, having indicated to staff at Inner Temple that they were willing to participate, or agreed to participate but then did not do so. Nonetheless, the individuals who were interviewed or participated in focus groups were diverse and as representative as possible of those involved.

2.4 Prior preliminary data collection

At the beginning of this research, Inner Temple had already collected some data through questionnaires administered to students who had attended access events at the Inn. There was also data from events held in other locations which targeted university students, usually through a panel presentation and drinks reception at the university in question. This data was not analysed due to time constraints and its lack of direct applicability to access issues, as those universities visited were often Oxbridge and Russell Group universities.

It was therefore decided only to analyse the questionnaire data from Pathways and PASS students. This data was held in electronic form by the Inn, having been entered into the SurveyMonkey.com system, and was made available to the researcher in anonymised form. There were nine sets of data, representing nine different Pathways cohorts. There was a tenth event in November 2013 but questionnaire data for that was unavailable during the time that data was being collected and analysed. Therefore it is not included in the data referred to through the thesis, although the numbers were later obtained and are included in Table 1 for completeness. The majority of the Year 13 cohort in February 2013 had attended previous events as Year 12 students; four had attended in November 2012, and thirteen in November 2011. The remaining eight did not say whether they had attended a previous day, and if so, which one. The table below summarises the Pathways cohorts and their response rates;

Event	Location of students	School year group of students	Number of participating students	Number of responses to survey	Response rate
April 2010 (Pilot)	All institutions	Year 13	41	41	100%
January 2011	London	Year 12	114	110	96%
April 2011	Out of London	Year 13	78	73	94%
June 2011	London	Year 13	105	68	65%
December 2011	London	Year 12	140	139	99%
April 2012	Out of London	Year 13	62	62	100%
November 2012	London	Year 12	139	128	92%
February 2013	London	Year 13	28	25	89%
April 2013	Out of London	Year 13	77	56	73%
November 2013	London	Year 12	91 signed up (exact attendance unknown)	87	96% (based on 91 attendees)

Table 1: Table to show the participation and response rates of Pathways' students to feedback questionnaires

This questionnaire data provided an important platform upon which decisions about further sampling and data collection could be made. It also provided a starting point from which the researcher could draw preliminary conclusions about the themes requiring deeper exploration in interviews and focus groups. By providing a basic outline of the matters that

were perceived as important by the Pathways and PASS participants, questioning in the focus groups could be more efficiently directed to uncovering greater detail about those matters already highlighted as relevant.

The exact questions asked in the questionnaires varied from cohort to cohort, causing some complications of analysis. Where the questions asked did not correspond, this is highlighted in the analysis. Furthermore, demographic data were not collected from the January and June 2011 cohorts, or the February 2013 cohort. Where demographic data is referred to, the total number of responses is given in order to aid clarity. The content of the questionnaires used to collect data from the Pathways students was not determined by the researcher. However, on the whole they asked questions similar to those that the researcher would have chosen, and addressing the same broad issues.

After basic coding and analysis of this data, it was entered into the SPSS computer software to look for less obvious relationships. Due to the variations in the questions asked when collecting the data, it was not possible to suggest any causative effect from these data sets. Therefore no further reference is made to these SPSS results in the thesis. Further disadvantages of the collection of data by questionnaire are now explored.

2.5 Questionnaires

Questionnaires allow the collection of large amounts of data from numerous people in a relatively short timeframe (Bachman and Schutt, 2011: 231), and were consequently used in this research to build a broad base of data to discern important issues for further exploration with face-to-face participants. The usual challenge of low response rates, which has often been believed to hamper reliability (Rea and Parker, 1997) was addressed in part in this research by the usual practice of asking the students to fill in the questionnaires whilst they are still present at the programme, and collecting response sheets as they leave. However,

some students will have left early, and on one occasion (February 2013) a large number of students had to leave just before the questionnaire was distributed, meaning a particularly low response rate that day. The response rates for individual days of the Pathways scheme, and the overall response by year cohort for PASS students can be seen in Tables 1 and 2. Furthermore, recent methodological research has suggested that response rates may not be as crucial to data reliability as previously thought; Holbrook et al. (2007) found that in a sample of surveys with response rates ranging from 5 to 54 per cent, those with the lowest response rates were not less accurate to a statistically significant degree.

Another criticism sometimes levelled at the use of questionnaires is the potential for misinterpretation of the questions being asked by the researcher, and the lack of an opportunity to clarify their meaning, as there is no real-time interaction. However, all research requires the use and understanding of language between researcher and participant. Even if questionnaires are administered to collect quantitative data, it is possible that a participant may misunderstand a word or phrase, or find the meaning ambiguous (Burton, 2000: 293). Whilst this is a valid criticism of the use of questionnaires in this research, and the quality of data extracted from them through documentary analysis (Noaks and Wincup, 2009: 106), it is equally applicable to any interactional research method.

Furthermore, although some may perceive that selecting answers on a questionnaire in a manner akin to a Likert scale introduces a degree of certainty into research, it also brings the problem of absolutism. A number/set value such as 'good' or 'very good' can remove all shades of grey between different responses/situations, and when faced with numbers on a Likert scale, for example, what for one person amounts to a '3' may amount to '2' or '4' for another (Liebling et al., 2011). Therefore, claims that quantitative research removes subjectivity are untrue; issues of interpretation regarding the questions, if not the answers, remain.

In the current research, response rates and interpretation are not as crucial, as the questionnaire answers are not the only data being used; they allowed the data to cover a wider range of participants than it would have been possible to include in focus groups. For logistical reasons, it proved impossible to use focus groups as a method of data collection for the second full PASS cohort. It was therefore decided instead to circulate two questionnaires written by the researcher, one before the students undertook their placement, and another afterwards. This was in addition to the post-placement questionnaire written and distributed by Inner Temple, the answers to which were also provided to the researcher.

The ‘before’ and ‘after’ questionnaires written by the researcher were designed to allow some measure of attitudinal change, by the use of a number of the same questions in both questionnaires. Due to the non-scientific research design, it is not possible to claim causation of any attitudinal changes purely as a result of participation in PASS, but it did allow an exploration of potential changes in perception contributed to by the programme. The table below sets out response rates to the questionnaires sent to PASS students; as can be seen, the response rates varied greatly.

Cohort	No. of students participating	Response rate to Inner Temple’s post-placement questionnaire	Response rate to researcher’s pre-PASS questionnaire	Response rate to researcher’s post-PASS questionnaire
Pilot	18 (13 actually undertook placements)	7	N/A	N/A
First	30	25	-	-
Second	48	17	31	16

Table 2: Table to show participation and response rates of PASS students to feedback questionnaires

The role of the focus groups was to collect qualitative data from the students themselves about the experiential elements of the Pathways and PASS programmes to add depth and credibility to the research through engaging with those at whom the programme was aimed. A focus group setting was preferred over an interview setting for the student participants to encourage dialogue and discussion, and also to allow the gathering of data from a greater number of students in a shorter period of time. Logistically, it also allowed greater numbers of students to be reached, as Inner Temple was able to host the focus groups. It was made clear to students, however, that their participation was not a necessary pre-requisite for engagement with future access initiatives run by the Inn (see 2.1 on ethics).

Due to student availability, the first full PASS cohort participants were split into two groups of four students each. Group 1 attended the Inn to participate on February 27th 2014, whilst Group 2's focus group was conducted by conference call between two of the planned four participants and the researcher on April 4th 2014. The two students who did not participate did not respond to the researcher having initially agreed with staff at Inner Temple that they were willing to participate in a focus group. Though no reason was established, both had applied for BPTC scholarships from the Inn. Between the time of agreeing with Inner Temple staff that they would participate in the research, and the researcher contacting them, they had learnt that they had been unsuccessful after interview in their scholarship applications. This may have negatively affected their willingness to participate in the research. Despite initial hopes, it was not possible to conduct focus groups with students from the second full cohort, hence the use of questionnaires, as detailed above, instead.

2.6 Focus groups

Three focus groups were used in this research. The first was with nine Pathways students, the second with four PASS students, and the third with two PASS students. The groups were

unrepresentative although relatively homogenous, and the members were unknown to one another (Merton, Fiske and Kendall, 1956). The first two focus groups were carried out at Inner Temple by the researcher. The third was carried out by conference call due to logistical issues, with the researcher and both participants in their home locations. Each was scheduled to last for up to 90 minutes, and preliminary schedules of questions used can be seen in Appendix A.

This method seemed to work well overall. It encouraged shy participants to contribute (a particular concern with the younger Pathways students), and engaging in discussion led to views being expanded upon and explored more deeply within the group. This is an example of the 'group effect', where the contribution of one group member 'triggers' thoughts and contributions in others, causing a 'cascading' effect (Lindlof and Taylor, 2002: 182). This triggering effect happened frequently in all three of the focus groups conducted. The presence of a larger group also seemed to distract participants from their status as participants in research and recording of their answers, potentially reducing the Hawthorne effect (Landsberger, 1958). This is a phenomenon whereby participants subconsciously alter their behaviour as a result of their knowledge that they are being observed. In the Pathways' focus group, due to the age of the participants, who were all under 18, a representative from the Pathways programme sat unobtrusively in the corner of the room. Although she made no comment during the focus group, the students were aware of her presence and this may have influenced the views that they communicated about the programme.

There are, however, disadvantages to the use of focus groups; mainly the possibility of 'Groupthink' (Janis, 1972), and social desirability (Crowne and Marlowe, 1960). These theories both result from the human desire to fit into a group within which a person finds themselves. In Groupthink, participants seek to display loyalty to aid group cohesiveness, and are therefore less likely to express views which they think may not be held by, or popular

with, the rest of the group. This may lead to uncommon or less socially-acceptable views being suppressed. Similarly, social desirability theory suggests that group participants are less likely to admit true feelings about sensitive issues, and matters of socio-economic and educational background, as featured in this research, may be among such issues, potentially reducing the veracity of responses. Overall, however, it did not seem that student participants felt obviously inhibited by the methods used; all contributed to the discussions to varying degrees, with even those who were initially quite reserved fully participating by the end of the session. Almost all did so with a disarming degree of frankness about their experiences and thoughts, including what they thought it meant to be a 'non-traditional aspirant entrant'; their perceptions of the profession both good and bad, and uncertainties over their own career paths. Furthermore, participants seemed not to shy away from disagreeing with each other, which itself led to some of the most valuable data when participants engaged in debates amongst themselves on contested issues.

Data gathered in these focus groups allowed, from a subjective view point, an opportunity to ascertain whether there is a general understanding amongst the group of the process of obtaining pupillage and whether the PASS has contributed to this. For example, in his research with part-time Law students, Francis (2011) found, through using focus group discussion, that there was a misunderstanding on the part of many of the students of the two-yearly recruitment cycle of most City solicitors' firms. This will mainly be utilised in a report to Inner Temple, however, and not the academic thesis.

As mentioned above, the use of a qualitative data collection method does have some disadvantages due to its subjective nature, but the experiences being studied in this research do need to be understood in primarily subjective terms. However, as an informed interviewer with experience of the system, it was possible to exercise judgement and thus provide a level of objective measure on the students' observations and thoughts on their chances of success

at the Bar, and the effects on this of the intervention of Inner Temple. Once again, the terms of the research make perceptions very important, as occupational closure in operation is more to many aspiring entrants than simply the qualifications barrier (as detailed by Larson, 1977). It is also closely connected with concerns about whether they will fit in and be accepted (Sommerlad, 2007) and therefore, entering into discussion and eliciting opinions on these matters is important. Consequently, the subjective nature of the data collected through the focus groups is not detrimental in the context of this research; rather, it is crucial.

All of the focus groups were recorded and then transcribed for analysis. The focus group that took place via telephone was held with the researcher in a private location on speakerphone so that the conversation could still be recorded. Participants were made aware that the focus groups would be recorded in advance of their participation (see documentation in Appendix B) and also consented in writing to this recording on the day via the consent forms. Each group was told that recording could be stopped at any point if they wished.

Whilst focus groups were judged to be the most appropriate method of data collection for the students involved in these programmes, interviews were preferred for Benchers, Inner Temple staff and chambers' representatives. Speaking with these participants individually allowed for an exploration of nuanced views, and the possibility of discussing views which might not have been communicated in a group setting. Anonymity and confidentiality were assured in the letter of invitation, the information sheet and on the consent form, and interviewing of employees was done with the knowledge and permission of Inner Temple. All those approached agreed to be interviewed, although it is possible that some felt implicitly pressured to do so because the research was being carried out on behalf of their employer.

2.7 Interviews

Interviews were used to collect further detailed qualitative data about the experiences and views of individuals connected to PASS. They were the preferred method as they allowed exploration of events that had already happened (unlike ethnography) and allowed participants to relate events in their own words, and according to their own perceptions. As the mobilisation of a professional association is experienced differently by those involved, this subjectivity was crucial, particularly in exploring the motivations for such a mobilisation. There are three ways in which interviews may be conducted; structured, semi-structured and unstructured (Burgess, 1984).

For this research the semi-structured interview (Noaks and Wincup, 2004: 79) was chosen. Structured interviews were not used as they severely restrict the route which the interview can take, and consequently the ability of the interviewer to respond to unexpected revelations or deviations during the interview, which may be more likely on sensitive topics (Noaks and Wincup, 2004: 78). Unstructured interviews, in contrast, involve the researcher allowing the interviewee to talk about anything from a given starting point. It can consequently be difficult to direct the interview towards topics necessary for the research, with irrelevant material being introduced and the interview becoming impracticably elongated (Kumar, 2011: 89). There is, however, the useful possibility that the freedom allows the interviewee to raise matters not considered by the interviewer, enriching the data.

The semi-structured interviews used in this research consisted of the interviewer having a list of topics, but using them flexibly to guide the conversation, as opposed to asking exactly the same questions to each interviewee. A list of questions was drawn up (see Appendix A), and their content varied depending upon the interviewee's position and affiliation. However, these lists were used only as guidance, and exploration of additional relevant issues was

encouraged, with the questions used to ensure that a 'baseline' of information was elicited from every participant, allowing direct comparisons on important matters. Furthermore, the schedules evolved over the course of the research, as some interviewees and focus groups introduced as important themes which had not previously been included.

A number of these interviews could be described as 'elite' interviews (Moyser, 1988), as the reason behind the selection of four of the participants was their position within the elite of the Inner Temple, meaning that they held influential positions and contributed to decision-making. This meant that they were able to comment on particular matters as they had been involved in the decision-making pertaining to them; for example, the reasons why PASS was established, and how this had been done.

Twelve separate individuals were interviewed for this research, with interviews ranging in length from 45 to 90 minutes. When interviewees were approached they were given the choice of where the interview would be held, with the researcher willing to travel to wherever the interviewee preferred. Eleven interviewees were interviewed in person at their place of work, all of which were in London, with one exception. Most of these interviews were organised directly with the individual, although many were practising barristers and therefore clerks often assisted with finding a mutually convenient time as they had access to the interviewees' professional diaries. The twelfth interviewee was interviewed over the telephone as a face-to-face interview organised had to be cancelled at late notice due to professional commitments. All of the interviewees were interviewed in private, with no-one else present. The interviews were recorded for transcription, and all interviewees were made aware of this both in advance and on the day. They were given the opportunity to ask for the interviews not to be recorded, or for recording to cease at any time. This did not occur, although in one interview the recording was halted and then restarted when a colleague needed to speak with the interviewee.

All focus groups and interviews were carried out by the same researcher, so there are no issues of inter-observer reliability (Bachman and Schutt, 2013: 90), or of varying styles or interpretations. Where focus group or interview data is used in the thesis, it is accompanied by relevant biographical detail coded as set out in Table 3.

M/F	Male/Female
Inner/non-Inner	Denotes whether the interviewee was a member of Inner Temple (as a Bencher or barrister) or employed by Inner Temple in any capacity.
Other prof. assoc.	Denotes that the interviewee has membership of other professional associations, such as the Bar Council, BSB or other similar bodies. It was decided not to be more specific than this to protect the anonymity of the interviewees.
Chambers' rep.	Interviewee was speaking in their capacity as the person in their chambers who deals with mini-pupillage applications, and by extension PASS participants, in those chambers.
Salaried	These interviewees were employed as salaried members of staff by the relevant organisation. They were not legally-trained.
FG	Focus Group
1/2	Denotes which number focus group the speaker participated in (applies only to PASS participants).

Table 3: Table to show biographical abbreviations of interview and focus group participants

2.8 Mixed methods approach

Although heavily qualitative, as is shown from the methods detailed above, this research utilises a mixed methods approach, which has been more recently recognised as a third research ‘paradigm’ (Kuhn, 1977) alongside qualitative and quantitative paradigms. In the present research, the data was qualitative dominant (Morse, 2003), with a greater quantity of qualitative data being collected, and the analysis was also qualitative dominant, to an even greater degree, to allow engagement with the articulation by the participants of ideas, aspirations and perceptions. However, it is qualitative dominant as opposed to pure qualitative as there is some quantitative data, consisting of parts of the biographical and demographical information obtained from the Inn regarding each student; the employment of some basic statistical devices, and a recognition that quantitative methods can enhance the research process (Johnson et al., 2007: 124).

Mixed methods approaches should be justified by the type of research being undertaken, (Bryman, 2007) and in this research elements of all five justifications explored by Greene et al. (1989) are present. All five (triangulation, complementarity, development, initiation and expansion) emphasise the ability of the different types of data to work together to contribute towards greater understanding, elucidation or detail of the data. In this research qualitative data was used to give colour and detail to the quantitative data which communicated bare numerical fact, but revealed nothing about the actual lived experience of those wishing to go to the Bar from non-traditional backgrounds, who may experience social closure most acutely. Furthermore, it allowed articulation by Benchers and staff of motivations and opinions on PASS not expressed formally. This allowed engagement with more nuanced feelings of participants, and the opportunity to explore their experiences in greater depth through interaction with the researcher and responsiveness to their stories. The depth of data required for this research could best be achieved through interaction and adaptive

questioning not possible when using fixed content questionnaires or other methods which collect quantitative data or lend themselves to quantitative analysis techniques.

2.9 Reflexivity and interpretation

However, there is another angle to the researcher's involvement with this project. Prior to beginning the PhD, I had completed the Bar Professional Training Course (BPTC) and been Called to the Bar by another Inn of Court. At the end of the first year of the research, I secured pupillage with a set of chambers which did not participate in this research (and neither are they PASS chambers). Prior to this, I had spent significant amounts of time on mini-pupillages, marshalling, and generally being involved with the legal profession. However, I had no prior links to anyone interviewed for this research.

The relevance of this brief researcher biography is that it is recognised, perhaps most saliently by ethnographers, that things seen and heard by a researcher are then interpreted by that researcher, and the meaning which they take from those words and actions will be affected, albeit subconsciously, by their own knowledge and practices. For example, in her research on domestic kitchen practices, Martens (2012) was distinctly aware of her own knowledge of kitchen practices, and the ways in which she would carry them out, when she was observing the footage of her participants' kitchen use. She discusses the difficulties of researcher knowledge being projected onto the actions of participants, and this was certainly an issue of which I was aware whilst conducting this research.

I usually found that the best solution was to ask participants to clarify their meaning where I felt that it could be interpreted in more than one way, and especially on topics which I felt strongly about (with hindsight, this was perhaps also a subconscious nod to a feminist method of research, whereby the researcher attempts to elicit the understood meaning from participants themselves, as opposed to imposing their own meaning onto events; Kindon,

2003). However, as the research progressed, I found that it became easier to remove myself from the difficult debates in this area for the purpose of analysis, and to evaluate them with a more critical eye. Nonetheless, interpretation is crucial for this research (due to the use of grounded theory; see below), and thus many of the most important quotations are laid out within the thesis so readers can make their own interpretations.

As well as the downsides to ‘insider researchers’, there are undeniably advantages (Costley et al., 2010). Having knowledge of what can be a very idiosyncratic profession, and one which is complex and multi-layered, allowed me to gain the trust of participants; although I never divulged my own background unless explicitly asked about it (in which case I disclosed the minimum possible), it is likely that participants could tell from questions and discourse that I possessed at least some understanding of the system of qualifying, and how the profession operated. This allowed a more detailed exploration of difficult issues with some participants, and potentially caused others to feel that the research was something in which they could have confidence, as it was being conducted by someone with an understanding of the professional context. To this extent, interviews often seemed to cover more detailed and contentious ground than might have been possible otherwise.

2.10 Grounded theory

As illustrated in part by the non-representative sampling, this is explorative research, without hypothesis testing, to investigate an area of interest (Bachman and Schutt, 2011: 43). From this investigative approach, a grounded theory approach was utilised (Glaser and Strauss, 1967) whereby theories were formed and concepts developed flexibly as the research unfolded (Layder, 1993). Glaser and Strauss have defined grounded theory as ‘the discovery of theory from data systematically obtained from social research’ (1967: 2); clearly an apt description of this particular research. Although extensive literature reviews in relevant areas

have been conducted, and views advanced on potential outcomes within certain areas of the thesis, there is nonetheless no settled hypothesis that this research aims to prove or disprove as in the typical experimental model of research (an early advocate of such a research style was Francis Bacon (1926)). As Dey (1999) states, grounded theory, although not based on an hypothesis, nonetheless requires knowledge of the relevant field through engagement with existing research; however, in grounded theory this knowledge is used to inform our analysis, as opposed to prescriptively directing it. Indeed, existing literature can itself be seen as ‘data’ within grounded theory, and used actively to integrate the knowledge produced by the research (Glaser, 1992). This also allows for the role and use of the researcher’s own knowledge of the field, as discussed above.

Within chapter 3, a conceptual framework is established which introduces the reader to the existing literature which is later used to inform the analysis of the data collected in this research. In this way, the existing literature is very much an active element in this research; it is used to shape understanding of the data collected, as an aid to its interpretation, and to suggest how this research may build further upon existing literature through its exploration of a developed concept (social mobility) within an area that has been subjected to little academic analysis (the Bar).

Although originally conceived by Glaser and Strauss, grounded theory has since seen a split between its two ‘founding fathers’, with Strauss and Corbin (1990) advancing a different conception based on the ‘basic of qualitative research’ which was seen by Glaser (1992) as being overly prescriptive; he referred to it as ‘full conceptual description’. Meanwhile, Charmaz (2000: 521) built upon Glaser’s symbolic interactionism-inspired approach; ‘[b]y adopting a constructivist grounded theory approach, the researcher can move grounded theory methods further into the realm of interpretive social science consistent with a

Blumarian (1969) emphasis on meaning, without assuming the existence of a uni-dimensional external reality.’

It is Charmaz’s conception which is preferred in this research, as through it, grounded theory offers the opportunity to emphasise the meaning attributed to professional associations, social mobility, and programmes aiming to promote it, by those who are involved in these within the Bar, and the students experiencing the programmes. As the experiential element of students on these programmes is so important to this research, as explained above, grounded theory allows accessing of the meaning attributed by participants, as opposed to one imposed by the researcher. Furthermore, as Charmaz (1995, 2002) notes, some elements held in common by all grounded theories lend themselves to exploratory research such as this, most notably the simultaneous collection and analysis of data; the creation of analytic codes and categories developed from data and not by pre-existing conceptualisations (theoretical sensitivity), and discovery of basic social processes in the data.

Whilst not suited to an experimental method, the aim of this research is more akin to that identified by Crooks as being especially suited to grounded theory (2001); ‘[Grounded theory] is ideal for exploring integral social relationships and the behaviour of groups where there has been little exploration of the contextual factors that affect individual’s lives.’ In light of the arguments advanced in this thesis that both the English Bar, and the situations of aspirant barristers from disadvantaged backgrounds, have been rather neglected by research, the need for a theory that allows the lack of specific research in this narrow area to be taken into account demonstrates a particular attraction of grounded theory.

From data generation in grounded theory, three types of coding usually take place; open, axial, and selective (Strauss & Corbin, 1990; 1998). Open refers to the process of generating initial concepts from the data. Axial refers to the development and linking of concepts into

conceptual families through a coding paradigm, and selective coding is the formalising of these relationships into theoretical frameworks. This coding is 'kept active' by a constant interrogation of the data for meaning by the researcher as they code (Glaser, 1978). The aim is that enough data will be collected whereby 'saturation of concepts' is reached; that is not the point where no more data can be collected, but the point at which collecting more data will not cause any more categories to be created or generate greater conceptual knowledge of the categories existing (Glaser and Strauss, 1967: 61). These coding exercises took place with the assistance of NVivo software, and a development of an initial document which examined the themes found in the interviews, so that these could be linked to one another and to over-arching theoretical concepts.

From this point, it was possible to develop a 'core category' around which the generation of theory occurs (Glaser, 1978: 73), and to which all categories were linked. As it should account for most variations in data, it tends to be a more highly abstracted category than others within the formed theory, but should still be firmly grounded in data. A weakness of the theory, however, is that the method of developing this core category is regrettably vague.

A further criticism levelled at grounded theory is that it is not 'rigorous' due to its basis in inductive conclusions, amongst other reasons (see Gasson, 2004: 85–92), although this is clearly a value-laden and comparative term in itself; a process that is rigorous in one sense may not be in another, yet it may still objectively be rigorous. Charmaz also defends grounded theory thus: 'Weaknesses in using the method have become equated with weaknesses inherent in the method' (Charmaz 1990: 1164); thus, properly conducted grounded theory is defended by its supporters as being equally rigorous as other methods. Indeed, it also has its own criteria for assessing the reliability of grounded theory-based research (Glaser 1978);

- a) Fit and relevance - how well do the categories relate to the data and derive from constant comparison and conceptualisation of the data?
- b) Workability - to what degree are the categories integrated into the core category that emerges?
- c) Modifiability - are all the concepts that are important to the theory incorporated into it by the constant comparison process? A modifiable theory can be altered when new relevant data is compared to existing data.

A further 'test' for the rigour of grounded theory has been suggested by Melia (1996); that of whether the grounded theory produced from the data creates a 'plausible story'. In research which places so much weight on the interpretation of data by participants, as opposed to its construction and meaning imposed upon it by the researcher, this is an important test of rigour for this method, and one that demonstrates its value in research such as this, which is aiming to expose a rarely-studied area of the legal profession to academic research.

In this research, the grounded theory model led to a framework emerging from the data that emphasised the role of individuals within organisations when seeking to alter manifestations of central values. It became clear that PASS would not have come into existence without the particular efforts of a small group of individuals. They came together to utilise effectively the increased power resulting from their combination of elite status within the professional association, and the professional knowledge of access and education. The theoretical framework resultantly focuses on the role of individuals within the wider context of a professional association, and how they may influence the actions of the professional

association. A co-existent framework that emerged was that of constraints; both those operating on the professional association and those operating on non-traditional aspirant entrants. Both of these sets of constraints exerted significant influence on the efficacy of a programme, and contributed to a portrayal of the Inner Temple as operating from a basis of generally diminished power of professions and their professional associations. The next chapter will set out the existing literature which forms the conceptual framework used for analysis throughout the thesis. In-keeping with a grounded theory approach, this existing literature is also treated as data in itself, strengthening the conclusions drawn through the symbiosis of current research and new data and arguments.

CHAPTER 3 – THEORISING THE BAR: PROFESSIONAL STRUCTURE AND CONCEPTUAL FRAMEWORK

Having set this research within its academic context, and established the matters that it will explore, it is necessary to build a conceptual framework that will provide a structure for the analysis in this thesis. Due to its unusual nature, the structure of the profession is also set out for the sake of clarity before the data collected for this research is presented. As is common in research based on grounded theory, this thesis uses existing literature as data in itself (Glaser, 1992). This existing literature informs an analytical framework which allows current data to be analysed, and contributes to expanding current understanding of professional associations and social closure at the Bar. The structure of professional associations of the Bar is complex, however, and therefore the first section of this chapter will explain how the Bar is structured, and how the components inter-relate, before moving on to the theoretical framework.

3.1 Structure of the Bar

The unique structure of the Bar is not the main focus of this research, however it has a significant effect on the matters covered. This means that it must be borne in mind when addressing the capacity of Inner Temple as a professional organisation to implement programmes, and also its ability to influence the rest of the profession. Not only does the prevalence of self-employment and consequent logistical differences pose a challenge to initiatives such as access programmes, there is also dispersed professional leadership, with a variety of bodies (introduced below) performing traditional professional association roles in a non-linear set-up.

3.1.1 Institutions of the Bar

3.1.1.1 Chambers – power in autonomy

These are unique structures in which a group of self-employed barristers rent office space and hire clerks (and sometimes administrative staff) by each barrister paying a monthly or annual sum in chambers' fees and rent. Chambers are not usually corporate entities (although some chambers are run as small business, such as Matrix)¹⁸ but a group of individuals looking to benefit from economies of scale by jointly hiring the property and support that they require. Chambers were an important element of this research, as they chose to participate (or not to) in PASS. They were also key to the operation of PASS, as the programme required that each chambers incorporate its PASS mini-pupils into its regular mini-pupillage programme. As is described in more detail in chapter 6 this lead to variations in student experience which affected the efficacy of PASS.

Chambers' governance is usually through various committees comprised of different tenants. Most tenants will sit on a committee for a set term, before they are succeeded by another tenant. Consequently there may be a lack of consistency and continuity within these committees, despite the magnitude of decisions often taken by them. Furthermore, membership of committees is voluntary (although in smaller chambers pressure may be exerted on tenants so that each committee is 'complete'), but as the barristers involved are self-employed and have busy practices, it is not possible to devote extensive time to committee roles. Interviewees recognised that this made the running of chambers-based access programmes very difficult, and this recognition contributed to a wider implicit understanding that chambers were not the best organisations to establish programmes:

¹⁸ <http://www.matrixlaw.co.uk/Information/Organisation.aspx> [accessed 7th April 2015]

So I think, part of the problem [lack of programmes] at the Bar is that we are all self-employed very busy practitioners and we all take on voluntarily different roles within chambers. (Interviewee 10, Inner, F, Bencher, other prof. assoc.)

As well as each chambers operating autonomously, there is no unifying body to which all must belong. Internal practice therefore varies between chambers, posing a challenge to consistent and cohesive action across the profession as no over-arching body has coercive power (besides regulatory objectives fulfilled by the BSB – see 3.1.1.4). All members of each chambers must belong to an Inn to practice, so members of each of the four Inns of Court are found within any chambers. The prevalence of self-employment at the Bar (81.4% in 2012; Bar Council, 2014: 9) means a more fragmented profession, as many sets of chambers – even in Central London – are smaller than the leading solicitors’ firms in the City.

This requires Inns to foster strong links with individual members if those members are to feel included by the professional association, something interviewees felt Inner Temple did particularly effectively. Such efficacy gave an important base for establishing PASS, as practitioners from Inner Temple provided encouragement to their chambers to participate. Many barristers are also members of specialist Bar associations which are often practice area-based (e.g. the Family Law Bar Association; FLBA), or are linked by some other attribute of practice (e.g. Young Legal Aid Lawyers), or personal characteristic (e.g. Association of Women Barristers). It is often through these associations that barristers both network and innovate, as sub-communities within the profession.

The relationship, and particularly the level of control possible, between chambers and Inns of Court is highlighted in this thesis. Whilst chambers are autonomous, the links that the Inns of Court can forge with individual practitioners may go a long way to influencing the

behaviour of those chambers when there is an option for them to co-operate with an Inn of Court. In PASS the power of co-dependency was illustrated, with each body taking on the necessary elements of PASS with which it was equipped to deal. Inner Temple had the administrative resources, whilst chambers had the practitioners. Without both of those elements, the scheme would not have been tenable. Overall, this system seemed to cause relatively little friction or disagreement.

3.1.1.2 Inns of Court – community in fragmentation

The Inns of Court, once a barrister has qualified, are of relatively less practical importance than whilst a student, although they do monitor and provide opportunities to accrue Continuing Professional Development (CPD) points. However, participants in this research emphasised that many barristers retain a loyalty to their Inn developed whilst students, and this early development was supported by the attachment already claimed by some PASS participants to the Inn. As a student member undertaking the Bar Professional Training Course (BPTC) there is a requirement that 12 qualifying sessions are attended, consisting of dinners; intensive, heavily-subsidised, residential advocacy training, or talks by prominent lawyers or legal academics. Furthermore, many students are financial beneficiaries of their Inns, as scholarships are awarded by all four Inns. More and larger scholarships are awarded for the BPTC, but some smaller sums are awarded to pupils. The Inns also undertake other activities such as attending University careers' fairs and hosting Dinners to the Universities (when students attend formal dinners at the Inns). The Inns also participate in access work to varying extents; Middle Temple has developed the Access to the Bar Awards¹⁹ and Inner Temple participates in Pathways to Law and has developed PASS.

¹⁹ <https://www.middletemple.org.uk/members/special-interest-groups/access-to-the-bar/> [accessed 30th July 2015]

The Inns are largely practitioner-run through a committee structure, with a small base of salaried staff. Thus, some barristers continue to be heavily involved in Inn-based activities throughout their careers, as described by this interviewee. Loyalty of this kind became a prevalent theme in this research (see chapter 4):

Well I started off because I was involved with the Qualifying Sessions Committee which I chaired and I then went on to Chair the Education and Training Committee [...] for four or four and half years, something like that, so it was through that I became involved in the oversight really of the Inn's activities because the Outreach Committee is one of our sub groups. I had previously been involved with the Bar Council social mobility programmes. I was firstly on the 'C' Working Party and secondly I was the Chairman of the Working Party that set up the Social Mobility Foundation scheme which you have probably heard about. (Interviewee 9, M, Inner, Bencher, other prof. assoc.)

3.1.1.3 Representative body – Bar Council – position without power

Alongside the Inns are the Bar Council and the Bar Standards Board (BSB). It is not possible to put the Inns and the Bar Council and BSB into a hierarchy, as they do not exist for the same purposes and their composition is very different. It is, perhaps, more accurate to set out the position as the Inns operating in parallel to the Bar Council and BSB.

The Bar Council is the representative body of barristers, both employed and self-employed. It used to serve both representative and disciplinary functions. However, s.1 of the Legal Services Act 2007 (LSA 2007) created the Legal Services Board (LSB) and required the separation of representative and disciplinary functions, the latter now fulfilled by the BSB.²⁰

²⁰ Although some unrest remains about the genuine nature of its independence; <http://www.legalfutures.co.uk/latest-news/lsb-bar-council-interfered-independence-bsb-cab-rank-rule-changes> [accessed 30th July 2015]

The Bar Council is comprised of officers (the Chairman, Vice-Chairman and Treasurer), who are elected by members each May, and serve for a term of a calendar year from the following January 1st.²¹ Membership consists of around 115 barristers who are elected or who represent the Inns, Circuits and other interest groups. The work of the Bar Council is carried out through 16 committees, each with a specific specialism or focus. Their work is supported by the secretariat, which provides policy and administrative support. The Committees are made up of both members of the Bar Council and co-opted individuals. It was possible during this research to speak to a number of practitioners and salaried staff who currently sit, or have sat, on Bar Council Committees, particularly the Social Mobility and Education Committees, allowing an insight into the internal – and often hidden – operations of a professional association within a profession which has not previously been explored by research (see chapter 2). This thesis sheds new light on the interaction between the Bar Council and the Inns of Court. It also suggests that the Bar Council is perceived in generally negative terms by many practitioners, compromising its ability to take innovative action, although the perception of its efficacy varied significantly, even amongst those who had held an elected position within it.

3.1.1.4 Regulatory and disciplinary body – Bar Standards Board (BSB)

The BSB fulfils the regulatory and disciplinary functions which were previously also found within the Bar Council. The BSB is made up of 15 people; a combination of lay people (the majority, since 2012) and barristers. The Board is assisted in its work by three non-voting Special Advisers. The current Chair in 2015 is Baroness Deech, a former academic and former head of a number of regulatory bodies, and the Director is Dr Vanessa Davies, a non-practising barrister.²² Similarly to the Bar Council, the BSB takes most of its action through

²¹ <http://www.barcouncil.org.uk/about-us/who-we-are/officers/> [accessed 30th July 2105]

²² <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-staff/director-general,-bar-standards-board/> [accessed 29th July 2015]

committees, of which it has eight, all reporting to the Board.²³ The BSB is described for completeness, as it did not play a notable role in this research.

Although an overview of the general structure is necessary, the Inns of Court are the focus of this research, particularly their actions as a professional association in moulding the profession itself. As described above, the Inns of Court occupy an unusual position within the legal profession. To better understand their role, a brief recounting of their historical aspect is of help and interest, as without understanding where a professional association has come from, it is difficult to see where it might be heading.

3.1.2 Historical context of the Inns of Court

As Cocks (1983: 5) writes, ‘The modern Bar, with its distinctive blend of old and new ideas, was largely the creation of Victorian advocates’. For the current research, this historical background provides context to the current access challenges facing the profession. It also allows an appreciation of the significant roles that have been played by the Inns in the development of the Bar and its identity as a profession.

The Bar has always faced certain problems to which the Inns have had to respond, namely funding and over-crowding, partly attributable to its status as an elite but predominantly self-employed profession. Its response to these problems set a backdrop for current concerns and approaches towards greater access. The Bar’s loose-knit structure and self-employed nature made any institutional response to over-crowding difficult. The Inns did, periodically, attempt to put in place new obstacles, occasionally as a concerted effort by all four Inns, but on other occasions just a single Inn took steps towards restricting entry (Polden, 2010: 1019). Thus it is illustrated that the problem of how many people should be allowed admission to

²³ <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/> [accessed 29th July 2015]

the Bar, and whether or not it is appropriate to attempt to restrict entry, is not a new problem for this profession. The barriers that the Inns erected varied; there were ‘disqualifying occupations’, for example, and if you were engaged in such an occupation you could not be admitted to the Bar at any of the Inns. Inner Temple, acting alone in 1829, restricted its entry by imposing an entrance examination, examining candidates in ‘classics and general studies of a liberal education’ (Polden 2010: 1019). However, the other Inns did not follow suit, and Inner Temple, rather than losing potential students due to this additional hurdle, discarded the examination in the 1840s.

Nonetheless, there were complaints throughout the 1830s and 40s about the perceived lack of work available as a result of the Bar increasing in size (Cocks, 1983: 57). The early to mid-1800s were a turbulent time for the Bar and a time during which the Inns, Cocks suggests, actually played only a small role in the profession as a whole, and did not always do this in a way that made them popular within the profession. In Victorian times, it was possible, having been Called, for a barrister to ‘forget his Inn for the rest of his life’ (Cocks, 1983: 2), with most of the matters concerning a barrister being concentrated instead in the Circuit Mess on each respective circuit throughout the country. Cocks does concede that the Inns could be of real importance during this period, but it seems that they were more commonly regarded as self-involved; lost in their own world and contributing relatively little to the life of the profession (1983: 6). This is in sharp contrast to the views of participants in this research on the modern-day relevance of the Inns.

In the past it was easy to join an Inn if one had money, as it meant that no enquiry would be made into the character of the person concerned (Cocks, 1983: 1-2). This is closely related to class issues: although there are invisible boundaries in place caused by perceptions of tradition and exclusivity, there is also the very tangible barrier of the issue of being able to afford the training that is necessary to become a barrister. Even in the 1800s a university-

educated Bar student might expect to spend £400 per annum and another £600 on board and lodgings (Duman, 1982: 47-8). Even post-Call, one was not guaranteed an immediate income, and Edward Cox thought that even considering the expenses of only five attendances at Sessions and a restricted attendance on circuit, a barrister would need at least £272 per annum from savings or another income off which to live until he was financially self-sufficient through his own practise. It would be necessary to find this sum for a number of years, as it usually took more than five years to show a profit at the Bar (Cox, 1852: 39-40), and this figure is supported by Duman (1982: 57), who suggests £250-£300 on the basis of handbooks on the profession from the time. Consequently, those training for the Bar and in their junior years of practice needed familial financial support, a second job, or significant savings of their own upon which they could rely.

It was likely that only those from relatively privileged backgrounds would have either financial support from their families or savings of their own, and the Inns were restrictive about what sort of second job was considered suitable for a young barrister, demonstrating the power of the Inns at that time. Indeed, the Inns can still refuse Call to someone who cannot obtain a 'proposal for Call' (similar to a character reference)²⁴, although the denial of such a reference now would only exist on much more serious grounds. However, the key issue here remains that of maintaining the elite character of the profession: in the past it was held to be incompatible for young barristers to supplement their fees with other employment, and the need to be in chambers or in court when that elusive brief arrived precluded another job which required regular work (Polden, 2010: 1034). Many young barristers took on university fellowships teaching Law (Duman, 1982: 59).

²⁴ The Inns arrange pre-Call interviews with a Bencher or Master for aspirant entrants without existing connections; <http://www.innertemple.org.uk/education/students/call-to-the-bar?showall=&start=1> [accessed 4th August 2015]

As the sole ‘gatekeepers’ of the profession, the Inns had acquired the right both to lay down general requirements governing entrance and to exclude either from admission or Call those whom they felt undesirable. This further contributed to the Bar developing the ‘caste-like’ appearance of which Larson (1977: xv) is so critical, with those already within the profession admitting those who resembled themselves. The admission requirements applied vacillated between ethnic, moral, social and religious criteria, and even these were applied inconsistently (Prest, 1986: 107), creating a currency of privilege as opposed to merit.

In the modern day, the role of the Inns continues to evolve, although their main role is often perceived as the provision of qualifying sessions, scholarships and Continuing Professional Development training. Increasingly, they are also undertaking more activities focussed on students studying at sixth form or university level, to promote the profession. However, this seemingly narrow remit may in fact disguise the power that is held by the Inns as professional associations of the Bar.

3.1.3 Inns of Court as professional associations

As can be seen from the brief overview above, the Inns of Court are the main professional associations directly involved with practising barristers. The way in which professional associations affect the operation of a profession has been the focus of previous academic research, mainly based in the USA (e.g. Halliday, 1987; Nelson and Trubek, 1992). Professional associations also play an important role in the identity of a profession. Not only are the Inns practically important due to their ‘gate-keeping’ function, Larson notes that it is unclear how much community would exist without the ‘institutional supports’ of professional organisations and institutions of this kind (1977: x), and such significant organisations are crucial in the formation of a central values system (Shils, 1975: 4) and its exercise as a means of authority (1975: 24). This research illustrated the potential that an Inn

of Court had to influence the profession into altering recruitment practices due to the high esteem in which practitioners held it. This potential was unfulfilled due to insufficient challenges to established practices within PASS, but the underlying mechanisms which were used to implement PASS could, it is argued, be used as a foundation for more radical action. The willingness of chambers to engage with Inner Temple on PASS is indicative of a recognition of the leadership accepted through choice instead of coercion.

Although the role of legal professional organisations in England and Wales has been subjected to relatively little academic exploration, with the exception of work by Francis (2011) and Rogers (2012, 2014), the role of Bar Associations in America has been much more widely researched. Whilst the English legal system functions differently to that in America, it is still instructive to examine research on American Bar Associations and their relationships with their members, as the human element remains regardless of geographical location.

Halliday (1987: xiii) highlights that, in general, the existence and operation of closely-knit professional associations (described by Halliday as ‘collegial organisations’) has scarcely been noted by either sociologists or the general public, and he goes on to pose a number of questions which should be explored as a result of this lack of research:

‘Do they affect the policies and the administration of those institutions in which they have such a central role? Is their expertise deferred to by legislators and administrators? Do they effectively mould public policy – but out of the public eye? And what of the associations themselves. What kind of resources can they bring to bear on the objects of their collective action? Can they act cohesively? Or is the internal diversity of a profession such that forceful action is all but impossible? Do

professionals mobilise their clients? Can the web of associations, comprehensive and specialised, state and national, act in concert?’

In the context of the English Bar, this thesis begins to unravel some of these questions. It is suggested that the most novel contribution to this unravelling comes from the exploration of the role of the affective domain and loyalty to the professional association, and how that in itself can be framed as a resource that the professional association can utilise (Francis, 2011: 135). Since Halliday’s writing in 1987, these issues remain largely untouched when it comes to the Inns of Court. Although Rogers’ (2012) research examines how the profession ‘sells itself’ at recruitment events organised by Inns of Court, it examined the message being communicated externally to aspirant entrants. This thesis explores not just the message being communicated externally, but the development, and practical enactment, of an access scheme internally.

Much existing research into the professions examines monopolistic theory (e.g. Larson, 1977): actions which the profession possesses the unique right to perform, and action it takes alone to preserve them. The capacities and motivations for professional collegial action – that by which a profession seeks to further general interests, or joins together with another organisation with similar aims and objectives to pursue such a matter – are therefore not explored. This constitutes a significant gap in existing scholarship that this research contributes to closing. In contrast with much of the existing research, this thesis seeks to explore action taken by a traditional embedded professional association which is not intended to increase or preserve a monopoly power, but instead attempt to alter accepted practices and patterns of behaviour that may support social closure. This research engages with a professional association as interventionist actor, and analyses how a professional association may affect its own profession, and what motivates it to do so. Such attempts can variously be portrayed as self-interested, altruistic or symbolic; all motivations that are

considered in depth in this thesis. Motivations are especially a matter of interest where the intervention appears to address an indirect effect of traditional central values. The extent to which such an effort is made in conjunction with other professional associations is also examined.

In addition to the above, there currently exists little exploration of the motivations behind an organisation's actions. In Auerbach's (1976) research into education and practice at the American Bar, he undertook documentary analysis to explore motivations behind concerted actions, but only to the extent that it was recorded in those lawyers' papers seen by him. Therefore, as a non-monopolistic action, why a professional association has chosen to act in this way and how it then does so, is of interest to the academic community, as existing research has largely focussed on action by the professional association aimed at outside bodies or individuals.

Halliday examined how the demographics of a professional association can affect its ability to act. He used the Chicago Bar Association as a study subject, using its internal documents to 'explore interiors of elite decision making and also, more importantly, to examine the universe of professional action through that panoptic: it was a comprehensive record of professional collective activity, not edited for public inspection, but as it was recorded in internal files, giving a balanced perspective on professional associations' (1987: xv). His research demonstrated that any organisation that falls short of complete representation of professionals in a state or a country can less convincingly persuade a government that it should have statutory powers of self-regulation and monopoly and can less authoritatively influence government (1987: 49). These are attributes that a profession maintaining occupational closure to preserve its elite character is likely to need, as detailed above. Inclusive associations thus command legitimacy by their representativeness, and tend to control substantial resources denied to their more exclusive counterparts. Due to their

foundation on the basis of shared attributes, such associations are likely to be able to secure consensus relatively easily, due to their homogeneity (Halliday, 1987: 312), but may also struggle to influence policy decisions at a higher level due to their small size (Halliday, 1987: 137). This, however, is in conflict with Larson (1977: xv) and Abel's (2003) respective analyses, which state that homogeneity within a profession is crucial to the professional project, as it allows agreement to be reached more easily on divisive matters, and is perceived as allowing maintenance of its elite status.

A substantial risk associated with failing to represent different views amongst varying practitioners, practice areas, or seniorities within a profession, is the establishment of organisations running in opposition. In the 1960s, young lawyers from the Chicago Bar Association formed a counter-Bar association, as they felt that their interests as young practitioners were not being acknowledged (Halliday, 1987: 133). A similar outcry occurred in England in 1985 when young barristers perceived that the Bar Council was unrepresentative, and took this complaint to the Government (Abel, 1988: 130). Both incidents demonstrated the risk a professional association faces if it is, or is perceived to be, unrepresentative. Without members who feel that the professional association represents their interests, and are therefore willing to contribute to the work of the professional association, any meaningful action will be stymied. The field position, membership and form of a professional association thus have a significant effect on its ability to take collective action, and also influences the matters on which it chooses to take such action. For Inner Temple, its specific situation as an embedded professional association within an elite and historical profession affects its capacity to represent views and take action on divisive matters. It does not restrict its capacity as far as might be expected, however, where there are key individuals who are willing to take action that may disrupt the status quo (although whether such action does in fact fulfil that mandate is explored in chapter 6). This action

needed to be combined with leadership at both elite and salaried levels in Inner Temple for mobilisation across the professional association to be effective.

3.2 Conceptualising professional associations

Although often ‘behind the scenes’ players, professional associations may nonetheless hold significant influence over their profession. In many professions they perform representative, disciplinary and supportive functions to their members. For traditional and conservative professions such as law and medicine, they may act to maintain the profession’s elite status. This research draws heavily on the work of Larson (1977), Abbott (1988) and Abel (2003), amongst others who have written on the subject of professions and their associations.

In controlling the actions of the professional associations, it was the powerful segments of the profession that directed its endeavours (Bucher and Strauss, 1961: 331), sometimes leading to a break away by those segments which had sufficient power to distance themselves from their professional association and then collaborate with it on their own terms (Francis, 2011: 144-160). More recent literature has depicted professional associations overall as less powerful than they used to be. The Law Society was depicted by Francis as declining in influence over the profession as it was perceived by the profession as no longer able to pursue collective advancement (Francis, 2004). A number of theoretical suggestions for this occurrence have been advanced, and these are returned to towards the end of the chapter, considering whether professional associations are now, in fact, falling within those elements of professionalism that Nelson and Trubek described as ‘formal structures rooted in symbolic processes rather than technical requirements for organisational practice’ (1992: 212).

Freidson proposes professionalism as ‘a logically distinct and theoretically significant alternative to currently received models for conceptualising the organisation and control of work’ (1994: 8). He asserted that the essential elements of professionalism are continuing, but in a new form: this form is hierarchical, with everyday practitioners becoming subject to the control of professional elites who continue to exercise the technical, administrative and cultural authority that professions have had in the past. Francis notes that professionalism has, in specific areas of the concept, been redefined by the most powerful elements of the profession to further their own interests (2011: 137), as Flood (2011) had already recognised in relation to regulatory frameworks. The role of professional associations is now as the ‘professional elite’, who are exercising increased control within the profession itself, but not necessarily outside of the profession. It is argued that this is an accurate representation of the Bar; within the professional associations, seniority still remains key for mobilising projects. Outside of the professional association, however, the influence of them seems diminished.

Although it is recognised that there has not been one specific path for each profession, and that prevailing cultural and political norms in each country have influenced the process (Freidson, 1994: 6), academic critiques divide roughly into those which prioritise functionalism, and those which prefer a monopolistic approach. The functionalist approach stems from work by Durkheim (1957), who emphasised the purpose of professions as embodying sociological desires for order, and as possessing as defining qualities altruism (Marshall, 1963), autonomy, self-regulation, consumer control, community, specialist knowledge and their own culture. Functionalism thus provides a framework that ‘gives internal coherence for the idea of a profession’ (Kultgen, 1988: 72), and an encouragement to strive for an ideal. The status enjoyed by professions is perceived as a reward for striving for this ideal; professions as deserving of their elevated status as they perform an important

function (1988: 73). Furthermore, professions are portrayed as being helpful to the functioning of Western society (Semple, 2015: 187), contributing positively to society through their altruism and specialist knowledge.

Adopting a very different perspective to functionalism are the process-based approaches, including power and action approaches. Power approaches prioritise how professions came to hold the power that they do which separates them from other occupations, and how, having secured this power base, they then move to expand it (MacDonald, 1995), with an emphasis on organisational change. Action approaches, meanwhile, prioritise the ways in which professions interact with other organisations, both positively and negatively (Abbott, 1988), and how they use their power to influence their operating environment, with the emphasis being on the impact of individual agency in shaping these changes.

This research does not subscribe wholly to one theory of the professions; rather it advances a picture of professionalism within a particular sector (the legal profession) and a smaller sub-sector (the Bar). This professionalism has evolved through the interplay between various aspects of the profession, including tradition, self-employment and relationships between individual members and professional associations. Therefore, elements of functionalist, power and action approaches are each brought into the theoretical framework to analyse the case study.

Functionalism allows the examination of what the professional association is trying to achieve; what ideal is it striving for in attempting to promote social mobility? A functionalist approach also emphasises altruism and community, two themes which are prevalent in this thesis. Power-based approaches, meanwhile, allow an examination of the ways in which the instigation of the PASS programme may illustrate a professional association asserting power by demonstrating its ability to act in an innovative way. The use of organisational change

literature in the analysis facilitates an analysis of Inner Temple's actions as potentially demonstrating a desire for increased recognition, and thus potentially greater influence, than other professional associations within the profession. Finally, incorporating elements of an action-based approach is important in the context of the Bar, as the interaction between the different professional associations, and between the professional associations and individual members, is another key theme emerging in this thesis. Such approaches also allow consideration of the potential effects of individual action, and how individual agency may operate within a professional association context, especially when it is aimed at changing previously-accepted attributes of the profession.

As elements of all of these approaches are being engaged to try to build an understanding of why a professional association may act in an attempt to alter entrenched characteristics in the profession, a grounded theory approach was developed (see chapter 2). As it became clear through the course of the research that recourse to one theory of professions would not give the layers of nuance needed to fully engage with what is occurring within the professional association in the case study, others were interwoven to allow full analysis.

3.2.1 Ideologies of the legal profession

How ideologies develop within a profession is key to this research. An ideology which includes elements which contribute to social closure has developed: can this ideology now be restructured so that it no longer indirectly supports social closure? As Nelson and Trubek note, many activities undertaken by professional associations are 'an event in the production and reproduction of ideology' (1992: 178).

Differences between the ideologies seen in different areas of practice at the Bar shed further light on matters relevant to increasing diversity. Bar Council figures show that in England and Wales there are more likely to be entrants from non-traditional Bar backgrounds in some

practice areas than in others (Bar Council, 2014: 27, 105): The attitudes and working cultures prevalent in some practice areas may be less inclusive and welcoming to those from other demographics than other practice areas. Practices that reflected the ideology of earlier generations, once embedded in institutional structures may appear as given or inherent in the nature of the work or the organisation itself, and thus difficult to alter. For example, ritualistic events such as Qualifying Sessions and Call in their traditional forms are not necessary to the practice of law as a barrister, but the underlying processes are required: education and admission. Qualifying Sessions could take the form of educational lectures without the traditional formal dinner afterwards, and Call could be replaced by a document which stated that the individual had been accepted by the Inn as a fit and proper person having passed all the required qualifications. However, these ritualistic traditions are perceived by many both inside and outside the profession as being integral to the profession. Their indirect effect, however, PASS participants confirmed, can be to dissuade aspirant entrants to whom such practices are unusual and may cause discomfort.

Ideological product thus becomes material reality (Nelson and Trubek, 1992: 212). Such embedded ideologies may obstruct access to the profession for those from non-traditional backgrounds who feel that those ideologies are necessary for practice as a lawyer, when they are not actually inherent in the nature of the work. The embedding of these ideologies is therefore undesirable, and propagates a homogeneous profession. Thus, a vicious circle occurs whereby embedded traditional practices mean traditional entrants feel comfortable within the profession. Many non-traditional entrants are indirectly discouraged by the unfamiliarity of traditional practices and thus the profession remains largely homogenous. As the practices are embedded and accepted, and traditional entrants are comfortable with them (Bourdieu, 1984), such practices are not subjected to scrutiny which may identify them as separable from the profession's core function of legal services.

It is not, however, accepted by sociologists that the current demographic of a profession is its natural one: some theories emphasise the possibility of individuals following a path which has not previously been commonly associated with someone from their demographic. Contemporary social theory has stressed the potential for individuals to form an identity different from that which may be expected (Beck and Beck-Gernsheim, 2001). This explanatory model suggests that it is possible for there to be further democratising of professions as individuals drawn from diverse social backgrounds begin to feel that they are able to enter a profession which was once almost exclusively occupied by white, middle class males (Wilkins, 1998; 1999). As an organisation becomes more diverse, it becomes more likely that a more diverse group of people will apply to join it, as they recognise elements of themselves within those already within the organisation, and can thus identify with it. The emphasis on the possibility of change within an organisation, caused by individuals within the organisation, implies a weakening of the social stratification of access to resources, both material and symbolic, and of the role of traditional ideologies in shaping individual trajectories (Sommerlad, 2007). As Nelson and Trubek note (1992), it is easy for ingrained practices in a profession to begin to appear crucial to the very operation of the profession, when actually they are not, and can be abolished without harm to the profession's *raison d'etre*. Limited demographics fall within this category.

Some scholars suggest that these ideological processes are particularly significant for professional organisations, where professional education is seen as 'providing members with a common culture, in the sense of shared definitions of problems and common repertoires for managing those problems' (Tolbert, 1988: 104). Yet workplace ideologies often serve the interests of some groups in the organisation more than others, and can legitimate practices that are arguably harmful to the larger society (Nelson and Trubek, 1992: 213) as

seen in the maintenance of the status quo of recruitment practices for which traditional entrants are well-equipped.

Nelson and Trubek's 'arenas' approach thus explicates the relationship between professional ideology and social power: Lawyers' visions of their working life and working relationships are intimately related to the kinds of organisations they construct and the roles they play in political, social and economic exchange (1992: 213). Therefore, Nelson and Trubek argue, scholarship on the legal profession must examine the construction and deployment of professional ideology in the myriad of contexts in which lawyers appear, not just the arenas that are most visibly associated with the power of the professional group, to advance a broader understanding of how the practices of lawyers reflect, reproduce, and alter the social order (1992: 214). This research therefore focusses on participants' accounts, including those of the internal processes that occur when a professional association decides to utilise its power to alter professional ideology, and how it may put this into action (see chapter 4).

One way in which the social order is maintained is the exercise of social closure, and the discomfort that the homogeneity arising from its operation can cause to those who enter the profession without the expected social norms and professional identity. Nonetheless, the deployment of professional ideology in this specific context has been neglected by research, and social mobility at the Bar has not previously been examined in relation to the behaviour of a professional association. This research therefore aims to undertake an examination of the construction and deployment of professional ideology within this specific context, as well as the mechanisms by which a professional association may try to change it.

Nelson and Trubek's depiction of the profession as comprised of arenas is also useful in any attempt to explore how practices may permeate across professional borders. In the case study there was particular interest in whether the action taken by Inner Temple might have any

effect on ideologies in other areas of the profession – other Inns of Court or the Bar Council, for example. Bucher and Strauss highlight that a smaller sub-group within one large organisation may be capable of acting separately from the larger organisation; within any group there may be smaller sub-groups with different purposes and goals developing organically (1961: 332). Thus a seemingly united action, Bucher and Strauss suggest, may be caused by the most powerful segments presenting their position as that of the whole profession (1961: 332). Underlying such a presentation will often have been competition between the segments with differing stances regarding which view should be presented as that subscribed to by the profession as a whole. This inspired the engagement in this research with interviewees from a variety of chambers and professional bodies, to capture where disagreements had occurred, even if they were ‘swept under the carpet’ in the final formulation of the intervention. Changes to the archetypes guiding the relationships between bodies within the profession may also facilitate such permeation (Greenwood and Hinings, 1993).

3.2.2 Identity and ‘fitting in’

There has been debate concerning whether or not the professions as a whole are immune from, or neutral to, the class structure (Larson, 1977: xiv). Whilst they do initially appear to be so, in that most professions notionally operate as meritocracies, and admission is ruled only by the achievement of certain requirements (usually academic), it may be that those qualifications will be more easily accessible to those from certain socio-economic demographics, operating as a barrier to entry for those from lower socio-economic groups. Therefore, as Larson later states (1977: xvi), both objectively and subjectively, professions are outside and above the working class, as occupations and as social strata. This supports

an earlier contention by Goode (1957) that professions are in fact separate social groups, incorporating the internal commonality and shared experience of any community.

This allusion to professions as both occupations and social strata echoes the assertion by Freidson (1994) that the two concepts may join as one in some circumstances, including in the law. De Tocqueville stated that the absolute need of assistance in legal matters in England due to their complexity, and the public's high opinion of the ability of the legal profession, tend to separate it from the general public and erect it as a distinct class (de Tocqueville (1899: trans. Reeve, 1946): Chapter 16). Even the walled Inns of Court, centrally located in London yet also hidden, and the security measures which now pervade courts, set lawyers and their locations of practice out of the physical path of many lay people.

This thesis does not subscribe to the notion that a profession is a class, rather seeing it as a conflation, but it is clear that the two concepts are strongly linked. The fact remains that individual professional status is still an undeniably middle-class attribute and a typical aspiration of the socially-mobile children of industrial or clerical workers (Larson, 1977: xvi).

3.2.2.1 Social norms: Bourdieu's social capital and aesthetics

One possible contributory explanation for the under-representation of non-traditional aspirant entrants at the Bar can be found in Bourdieu's (1984) work on social stratification. Bourdieu proposes that society is split into 'class fractions' (1984: xxix), and that there are three elements which determine into which class fraction a person falls. These elements are social capital, cultural capital and economic capital. Their formation is triangular, with Bourdieu placing cultural capital apart from social and economic, both of which he claims are acquired over time and which are dependent upon the cultural capital which a person already possesses.

He emphasises the dominance of cultural capital from the very beginning of his analysis, by stating that ‘differences in cultural capital mark the differences between the classes’ (1984: 69). This highlights that social capital cannot be learned, neither can it be accumulated at a later age through education (1984: 15). Therefore, if it is postulated that a non-traditional aspirant entrant’s access to the profession will be inhibited by their lack of social capital, this is a matter which an intervention by a professional association is unlikely to be in a position to solve. Manifestations of social capital are developed at a young age, and as such an intervention by a professional association at secondary school or university level is unlikely to engage with the target group early enough to make any alteration to this. Even if it could engage early enough to shape the markers of heightened social capital, serious questions would arise regarding whether it would be ethical to do so (and it is argued that it is unlikely that it would be so). Later chapters consider the possibility of the greater transformative nature of recognising intellectual and practical potential relevant to the Bar over the outward manifestation of socio-economic class. Discussion of the ethicality of an earlier intervention is returned to in the final chapter.

Bourdieu claims that how a person chooses to present their social space to the world (i.e. a person’s aesthetic dispositions) demonstrates that person’s social status and thereby distances them from lower social groups (1984: 468-9). In this way, the social class of a person may be displayed in their demeanours and the ways in which they present themselves (1984: 32). Thus social closure may easily be propagated, as there are external signifiers by which a person’s class may be identifiable (such as their clothes; Thornton (1996: 226), and their speech (Bourdieu, 1984: 58)).

The development of aesthetic dispositions is largely determined by the social origin of a person, rather than being accumulated over time, as demonstrated by Bourdieu’s assertion that cultural capital is the most important, with economic and social capital occupying more

subsidiary positions. The acquisition of cultural capital, a key part of the formation of aesthetic disposition, depends heavily on ‘total, early, imperceptible learning, performed within the family from the earliest days of life.’ (1984: 59). The role of class is so important in the acquisition of these characteristics because ‘The ‘young’ can accept definitions that their elders offer them...’ (1984: 480), and these definitions form the basis of more nuanced preferences; ‘[Taste] functions as a sort of social orientation, a ‘sense of one’s place,’ guiding the occupants of a given...social space towards the social positions adjusted to their properties, and towards the practices or goods which befit the occupants of that position.’ (1984: 468-9). Bourdieu himself believed class distinction and preferences are ‘most marked in the ordinary choices of everyday existence, such as furniture, clothing, or cooking, which are particularly revealing of deep-rooted and long-standing dispositions because, lying outside the scope of the educational system, they have to be confronted, as it were, by naked taste.’ (1984: 77).

Social capital is identified by Bourdieu as a way in which the status of elite elements of society are preserved; those who do not display cultural signifiers of belonging to the upper class will be prevented from entering the ‘circle’ of a group or profession. Bourdieu (1984: 474-5) identifies that most people will seek to identify themselves with those higher on the social ladder, and to demonstrate their difference from those perceived as lower on the ladder. Therefore, many people will adopt the cultural signifiers of the next ‘rung of the ladder’, with the hope that they will be believed by others to belong to that group.

Existing research into non-traditional students at the Bar has shown that the link between educational and social capital is strong (Zimdars, 2010: 130), supporting Bourdieu’s theory that with cultural capital as the bedrock upon which those are situated, the challenges for non-traditional aspirant entrants are not easily tackled by a professional association. For

example, emphasis is often put on subtle factors, such the way in which women used their physical attributes and sexuality in a professional context (Sommerlad, 2007: 200; Thornton, 1996: 226), and the way in which they adapt their behaviour to distinguish between professional and non-professional contexts (Francis, 2015: 192).

As noted above, however, the ethicality of intervening on matters perceived by many to be elements of self-expression (albeit that the way that expression is used has class distinctions) is a complex question. Tocqueville observed that, due to the nature of the law, lawyers are usually inherently conservative, and the predominance of historical customs adds to this conservatism a taste and a reverence for what is old (de Tocqueville (1899: trans. Reeve, 1946: Chapter 16). Such an observation is particularly pertinent in light of more recent criticisms of the Bar for being ‘an alien environment for those who are not used to Chapel, Grace and dining’ (Dame Jocelyn Barrow, writing in her Report as Chair of the Committee of Inquiry into Equal Opportunities at the Inns of Court School of Law (1994), quoted by Abel, 2003: 183), which are customs from times gone by, and ones which those who have not gone to collegiate universities are unlikely to be familiar with. Thus, this ‘taste and a reverence for what is old’ often manifests itself in the preservation of traditions which are themselves exclusive. If non-traditional entrants are not willing to conform to or accept these traditions (and this maybe an even more significant issue for those who are from other cultural or religious backgrounds) then they are at risk of feeling uncomfortable within the profession, and may ultimately leave – this is an example of a ‘habitus’ of the legal profession as described by Bourdieu (see below). Thus there is a tension to be resolved between increasing access and preserving those classical origins which are felt to be so important to a traditional profession and its sense of community.

Professional development requires a student to adopt a certain identity and inner dialogue of being value-free and neutral, and consequently the habituation for an aspirant lawyer is to

become a 'disembodied, bleached out professional' (Wilkins, 1999), despite everyone being gendered, raced and classed (Collier, 2002). There is support for such a Bordieusian perspective from empirical studies which show that workplaces usually operate, albeit often unintentionally, systems of power relations which are imbued with race, class, gender and other social category distinctions (e.g. Haywood and Mac an Ghail, 1997).

In any organisation, cultures are created that may become subsumed within the professional ideology. Bourdieu describes how the knowledge of these cultures, and the accepted responses to them within a social group, can demarcate those who are within the group from those who are 'outsiders'. These are the 'habitus' and 'doxa' of the group; the unspoken and assumed rules ('doxa') by which social interaction and behaviour is conducted within the social field ('habitus') (Bourdieu, 1984). Under a Bordieusian perspective these social constructions, even if they shift in content over time, often are such that non-traditional entrants feel uncomfortable within the profession. This can have the outcome that they eventually feel that they have to either leave the profession, or assimilate the characteristics required by the culture in order to make their continuation within the profession less uncomfortable (Lee, 2000 and Wilkins, 1999). Thus a non-traditional entrant may feel that they have to extinguish markers associated with their lower socio-economic status, and instead adopt those associated with higher socio-economic status which they associate with lawyers (Sommerlad, 2007: 201). Whilst there are students from non-traditional backgrounds who may wish to challenge the presumptions and homogeneity of the legal profession, their attempts to do so are hampered by the fact that they struggle to gain the initial access to the profession required in order to readily make such a challenge, which can only really be effective if coming from within the profession (Battilana, 2006: 660).

In a profession which attaches such significance to history and tradition, there will be many students for whom the 'ease of a comfortable situation' (Bourdieu, 1984: 255-6) is much

more easily obtainable within the legal profession due to their standard educational route and links to the professions through friends or family. Those who have no such links may struggle to obtain the knowledge and guidance that they need from within the profession whilst seeking to enter it to make a 'comfortable situation' for themselves. Their struggles in obtaining the all-important work experience are documented extensively by Francis and Sommerlad (2009), and also examined more briefly by Sommerlad (2008).

One reason why entry to the profession is more difficult for non-traditional aspirant entrants is that firms more easily recognise an aspirant entrant who demonstrates the normative professional identity and has followed a recognisable pathway of traditional education (Francis and MacDonald, 2009), extra-curricular activities and work experience (Francis, 2011: 37-8). Without these, students struggle to present themselves as serious candidates. Traditional candidates are already familiar with the ways and norms of the field which they are seeking to join, enabling them to imitate the behaviours expected and fit into the profession comfortably (Bourdieu 1984: 255-6).

Francis and Sommerlad (2009: 65) identify work experience as a 'hidden moment' in cultural reproduction that was crucial for students to assimilate behavioural knowledge that they would need to present themselves as convincing candidates for the legal profession. As well as the demand for limited places, there are additional barriers to completing work experience which disproportionately affect non-traditional students. Research shows that work experience is an essential pre-requisite to finding a job in the legal aid sector (Young Legal Aid Lawyers, 2013: 22), and that consequently unpaid work experience represents a significant barrier to social mobility at the Bar (Young Legal Aid Lawyers, 2013: 19; Francis and MacDonald, 2009: 239).

Thus, those from non-traditional backgrounds may be disadvantaged by their non-traditional status as they seek to enter the profession. Not only are they likely to have very little knowledge of the profession, they struggle to access an opportunity to obtain such knowledge: work experience (referred to at the Bar as ‘mini-pupillage’). The importance of historic and ritualistic practices, along with the value placed on work experience, contribute to the occurrence of social closure at the Bar, by subtly and subconsciously propagating the notion that anyone who is not accustomed to such traditional behaviours and with existing links to the profession will feel like an ‘outsider’.

3.2.3 Occupational closure

Sociologists have explored the formation of social orders within society, where members of higher social strata will seek to exclude entrants from lower strata to maximise the benefit to those inside the closed group, a phenomenon called ‘closure’ (Weber, 1947: 188). This process was also identified by Weber as occurring in the occupational context (1947: 193). Professions often become real communities, and this means that members have permanent affiliation, identity, personal commitment and general loyalties (Larson, 1977: x). Therefore, despite supposedly being open to all of academic ability, professions such as medicine and law (Friedson, 1970) do, in fact, operate closure so that the established community can consider closely those whom it allows to be admitted. It is likely to admit only those who display ‘traditional intellectuality’ (Larson, 1977: xv), and those aligned outwardly with existing members (Abel, 1988: 48-9).

The usual method of such closure is by requiring aspirant entrants to have certain qualifications: a degree, a vocational qualification, or a certain amount of experience in a specific field (Larson, 1977: 171). Such entry requirements ‘screen out’ those who do not have those qualifications, such as those who, for whatever reason, are unable to obtain those

qualifications, as well as those who are unwilling. At the Bar this is illustrated in part by the current requirement of a degree to be considered for entry (in all but the most exceptional cases where other educational routes have been followed, often by mature entrants), even though this need not be in Law, due to the advent of the Graduate Diploma in Law (GDL) which can be completed in a year by those who have done a degree in another discipline.

Social closure at the Bar is also supported indirectly by a central value system that emphasises tradition and professionalism. At the heart of any cohesive group such as a professional association will be a central value system (Shils, 1975). This is likely to be defended rigorously by the profession as a whole, and the more central a professional association is within its profession, the greater its attachment to the central value system is likely to be (Shils, 1975: 10), and therefore the more determined its defence and maintenance of those values. In the case study, therefore, Inner Temple would be expected to defend the central values.

Such a value system will not be tangible, and its content may not always be obvious or easily defined or discerned. It consists of notions, ideas and values to which members of the organisation subscribe. Such subscription will often be subconscious or automatic; central value systems will often be maintained through traditional and accepted practices within an organisation. For example, at the Bar, formal dining is a ritualistic practice which has occurred for many hundreds of years, and contributes to the maintenance of a central value system of collegiality and traditional values. For an individual to feel comfortable within an organisation they will need to (subconsciously) subscribe to at least some of the values all of the time, although which values are being subscribed to may vary by time and circumstance (Shils, 1975: 10).

Within the legal profession and at the Bar specifically, the central value system incorporates many traditional practices. Whilst it is not suggested that social closure is itself an element within the central value system, this thesis argues that many seemingly neutral traditional practices propagate social closure by indirectly discouraging those who are not familiar with such tradition from applying to join the profession. Those from lower socio-economic backgrounds have usually been exposed to less traditional circumstances through their personal and educational experiences, meaning that they are thus unfamiliar.

Possessors of specialist knowledge, such as those who practice law or medicine, set about building up a monopoly of their knowledge, and are consequently able to develop a monopoly of the services that derive from it (MacDonald, 1995: 32). The concepts of ‘exclusion’ and ‘social closure’ are crucial to monopolies, as they act as mechanisms which help to achieve and maintain the social standing of the group. An illustration of this in the legal profession is the requirement of work experience, without which candidates are unlikely to be considered for training contracts with solicitors’ firms, or pupillages in barristers’ chambers (Francis and Sommerlad, 2009; see further chapter 6). This is a manifestation of a central value system; a pattern of behaviour focussed on supposedly maintaining high standards actually causing indirect social closure due to differential access to work experience. Professional associations, as outlined above, often act as the ‘gatekeepers’ regulating those who may join the ranks of existing members, and maintaining the elite status of the profession. Nonetheless, despite their general conservatism and established central value systems, academic literature shows that professions are also capable of change.

3.2.4 Can professions and their associations adapt organisationally?

Despite the diverse conceptions of professionalism that may be operating simultaneously within any one profession (Nelson and Trubek, 1992; Bucher and Strauss, 1961), it is largely

accepted by academics that professions as a whole struggle to adapt at any significant pace to changes of admission or composition. Kritzer suggests that legal professional associations have 'avoided coming to grips with this "brave new world"' (1999: 732), and Francis explored structural problems constraining the Law Society's responses to this new environment (2004: 347). Kritzer's (1999) analysis of professional associations as 'avoiding' acclimatising to a changing professional environment demonstrates that opposition within an organisation to change hampers development, as opposed to a fundamental inability to make those changes.

Kritzer (1999: 732) characterises the Anglo-American legal profession's response to change as 'try[ing] to hold onto an outmoded image of professionalism.' The developments to which he refers are those seen in the 1990s: roles carried out increasingly by specialised non-professionals, increased use by companies of competition between law firms to obtain favourable deals, and the accessibility to the general public of information previously only available through professionals.

A number of theorists suggest that the professions no longer enjoy the levels of power and autonomy they had in the past, and this is key to the analysis in the current research of whether professions remain 'masters of their own destiny', or whether we see them now as significantly weakened since their 'glory days' of governmental influence, monopoly and self-regulating autonomy. Kritzer (1999: 725) identifies that the West has now entered a period of 'post-professionalism'. This finds support in the English system: for example, under the Legal Services Act 2007, it is possible for those who have not completed their legal training, but are supervised by a suitably qualified person, to undertake work in chambers in the County Courts. Some barristers' chambers, which were previously smaller, have merged with other chambers in order to gain the size needed to benefit from opportunities to win contracted work (e.g. for contracted work in family and crime, KCH

and Garden Square on the Midland and Oxford Circuit merged (Nottingham Evening Post, 2011)), and to benefit from economies of scale and consolidation by mergers of larger well-known sets with smaller ones (e.g. the merger between Atlas and 4-5 Gray's Inn Square).²⁵ The increase in the number of tasks done by those who are not fully legally qualified has removed barriers to involvement with the law in an occupational capacity. However, other research, as documented above, has suggested that professionalism and the barriers that it creates are still very much a live issue which the Bar needs to tackle in order to secure the best candidates.

Other writers have advanced similar arguments, differing in detail and label. The first of these is 'deprofessionalisation', as postulated by Haug (1973), in which attention is focussed on the reduced legitimacy of professions stemming from higher levels of education within the population at large, making knowledge monopolies hard to justify. A less deferential society also means that the higher social status once afforded to the professions has dwindled. McKinlay and Arches (1985) suggest 'proletarianism'; that an advanced capitalist society has had the effect of making all work equal due to the processes of bureaucratisation and corporatisation.

This thesis does not argue that the Bar has been particularly affected by deprofessionalisation or proletarianisation. Rather, it advances the argument that professions, and professional associations by proxy, are having to 'move with the times'. As society expects a commitment to meritocracy, so the Bar is required to at least appear to deliver. The extent to which an appearance of such movement reflects reality, what motivates this movement and the willingness with which it is done are all key matters previously unexplored that this research seeks to contribute to understanding. It is argued that these institutions, professions and

²⁵ <http://www.legalbusiness.co.uk/index.php/lb-blog-view/95-4-5-gray-s-inn-square-merges-with-public-law-specialists-atlas-chambers> [accessed 28th May 2015]

professional associations can still be maintained, but for that to occur they must be seen to be moving in line with society's wider concerns, such as meritocracy and fair access. Going forwards, Kritzer identifies the tension between increasing specialisation and multidisciplinary practice. Changing structures of, and demands upon, law firms arise through subcontracting, reduced regulatory autonomy, and the increasing ability of potential clients to administer self-help through the ever-increasing availability in both printed and electronic forms of legal information. Sometimes individuals are able to manage without lawyers entirely, and in other cases to come to them later in the process, having already been able to conduct the litigation themselves in the earlier stages (Kritzer, 1999: 735-748).

To some extent this mirrors the analysis by Halliday (1987: 47-51) of the abilities – as opposed to simply the ideological willingness or reluctance identified by Kritzer – of larger or heterogeneous professional organisations to adapt to change. Once again, such adaptation for those organisations is not an inherent impossibility, but the characteristics of those organisations make effecting change much harder, to the point that a de facto impossibility may be reached, as no course of action can be agreed upon.

Francis (2004) examined the changes to the conception of professionalism within the Law Society (the representative body of solicitors), and particularly the differences between the conceptualisation held by the Law Society, and that held by solicitors' firms themselves. He perceived that the difficulties the Law Society was experiencing at that time in performing the roles which it had traditionally fulfilled were not simply due to contemporary issues which would pass, instead it was symptomatic of a more fundamental problem: that the Society's ability to 'serve as the fulcrum of the profession's collective advancement' was in decline. This was due to increasing divergence in the interest of City law firms (such as the Magic Circle firms; Flood, 2011), and High Street firms. It has been suggested, however, that this has not been seen at the Bar. Amongst the solicitors' profession there were other

indications of a lack of cohesion: for example, that some City firms were able to, and did, dictate the content of the Legal Practice Course (LPC) in favour of the areas in which their practices were largely based. This caused areas such as Probate, which were of importance to High Street firms, to be removed from the course (Francis, 2004: 334). They then went further, with eight City firms setting up their own LPC specialised to their training needs (Francis, 2004: 332) and this has been followed by an accelerated LPC which is completed in six months, and favoured by 'Magic Circle' firms such as Freshfields.

The Bar, however, has not seen such a shift, with all aspiring barristers still completing the same Bar Professional Training Course (BPTC) regardless of the area of law or geographical location in which they intend to practise. This continuing unity within the Bar, even if it is a 'façade of united action' (Abbott, 1988: 106) as opposed to a reality, arguably strengthens the Bar's professional associations (in this case, the Inns of Court) as organs of organisational change, as there have been fewer formalised divisions within the profession. This may mean that an Inn of Court finds it easier to exert influence over the rest of the profession. This may in part be due to the relatively small size of the Inn of Court itself (especially its decision-making body – the Benchers), increasing the likelihood of internal cohesion on a matter, making action externally aimed at the rest of the profession more likely to be effective (see chapter 4).

The role of behaviour patterns within the organisation itself are also important to this research; both those of individuals and collectively. Theories surrounding institutional logics, embedded agency and institutional entrepreneurship are consequently also engaged in analysing how such change is begun within the organisation's social frameworks. Institutional theory recognises tensions between the power of an organisation, and the power of individuals within it. As Ocasio (1997) highlights, every institution has a typical arrangement of institutional elements, within which it may have multiple institutional logics.

Institutional logics are the patterns which influence the thinking and action of individuals within the institution, and also organisational behaviour (Friedland and Alford, 1991).

Institutional theory has vacillated between emphasis on an institution as passively receiving influence from its wider context (DiMaggio and Powell, 1983), and emphasis on it as leviathan determinedly resisting all attempts to influence it within which any exercise of individual agency is 'entrepreneurial' due to its apparent difficulty (Lounsbury and Crumley, 2007: 993). This second position stemmed from DiMaggio (1988) arguing, in response to misinterpretations of an earlier paper (DiMaggio and Powell, 1983), that neo-institutionalism lacked an understanding of agency.

This research argues that neo-institutional theory, with its emphasis on the transformative nature of interactions between 'field and firm' and the organisation's context (DiMaggio and Powell, 1991), is not inherently incompatible with embedded agency. Instead, embedded agency can add another layer to the organisation's attributes affecting its interaction with external bodies. This research further argues that the actions of individuals within an organisation can influence an organisation in steering a middle course between the dichotomous positions of institutions portrayed as 'passive cultural dopes' or as 'hypermuscular supermen' (Suddaby, 2010: 15). Indeed, the experience of Inner Temple suggests that it may be possible to attain a 'happy medium'.

Ultimately Suddaby (2010: 15) suggests that institutional theory should be a paradigm aiming to explain the fact that organisations often behave in ways that defy, or do not advance, economic logic and do not seem in line with rational behaviour in a certain circumstance (Thornton, 2004: 8). In the case of the Bar, a widening of access will not increase profitability in the way it might in a corporate setting, and there is financial outlay involved in establishing programmes such as that in the case study, although it does not defy

rationality. Nonetheless, institutional theory offers two contributions important to the current research. Firstly, a way of analysing action by a professional association as an institution, and secondly, the importance of socialisation; an explanation advanced as contributing to why non-traditional aspirant entrants may struggle to access the profession (see 3.2.2 above).

3.2.5 Capacity of elite embedded professional associations to effect change

The importance of the distinction between embedded and non-embedded professional associations is that those that are embedded may find it harder to act independently from, and thus exert power over, their members, especially on divisive matters. Thus, for embedded professional associations, departure from established practices is harder, as it is likely to require either a distancing from the profession (which is almost impossible due to its embedded nature), or a move away from tradition by the profession as a whole (also unlikely in traditional professions, which are usually known for their conservatism; de Tocqueville (1899: trans. Reeve, 1946)).

Conversely, however, a wholly ‘outsider’ body is unlikely to be able to exert sufficient influence over a profession to instigate change (Halliday, 1987: 344). This thesis suggests that the key role of trust between members and their professional association helps to explain why such difficulties may be experienced by an outsider body. This supports Francis’ observation that an actor may be able to balance central and peripheral traits to maximise its effectiveness in causing change (2011: 30).

Capacity to act may arise collectively, or it may be created by individuals within the organisation. Greenwood, Suddaby and Hinings (2002: 61-2) identified three reasons why a professional association may retain influence over its related profession. Firstly, that the professional association may act as an arena within which the profession interacts

collectively; secondly, as a means through which interaction with other communities (and, specifically, other professions and the government; Abel, 2003) is facilitated, and thirdly, as a compliance-monitoring mechanism of normatively- or coercively-sanctioned rules. This overlooks, however, the internal mechanisms at work within the professional association which allow it to exercise this influence. For example, in the case study it is necessary to understand how the PASS programme came about within the professional association before examining how it was presented externally. This requires some attention to individual level effects.

Institutional logics (Friedland and Alford, 1991) help to explain the relative ease with which a professional body can exert pressure for change either within itself or on the wider profession, and thus provides one potential explanation for how change may be brought about within a traditional profession's embedded professional association. Friedland and Alford argue that it is impossible to understand an individual's behaviour, or that of an organisation, without locating it in a societal context (1991: 232). Such an assertion, whilst seeming simple, is attractive; an organisation is fundamentally a group of individuals and for any cohesion to occur it is necessary that the organisation forms patterns of human activity by which time and space are organised, and meaning attributed to them in a consistent fashion (1991: 243). Such patterns are social reproductive processes which are propagated within the organisation by their role as 'the rules of the game' (Jepperson, 1991: 143). Thus any person wishing to be subsumed into the organisation successfully will need to adapt to at least some of the institutional logics: certain ways of processing and relating to the world around them. Institutional logics are products of human interaction, however, 'socially-constructed, routine-reproduced program or rule systems' (Jepperson, 1991: 149), and are therefore malleable, meaning that in a professional association they may alter and adapt as the profession itself moves in different ways and prioritises different goals.

Ritualised behaviours reproduce these principles of the organisation (Friedland and Alford, 1991: 250), but an individual entering the organisation from outside may resist full adoption of the institutional logics. In this way, institutional logics may gradually alter – a necessary corollary of the fact that even undesirable matters may become subsumed into them (Jepperson, 1991: 149). Such alterations were thought to occur in pursuit of increased profit or efficiency, though Thornton (2004: 5) acknowledges that institutional logics help to explain why corporate decisions may deviate from economic efficiency and instead pursue collective outcomes, such as greater social diversity as seen in the case study, which will not directly increase profit or efficiency.

It has been noted in management literature that the (as was) ‘Big Five’ accountancy firms were able to straddle international and jurisdictional boundaries, thus seizing opportunities for growth in contradiction to prevailing institutional logics (Greenwood and Suddaby, 2006: 40). On a much smaller scale, it may be that the ability of Inner Temple to disrupt previous patterns of cultural reproduction both internally and in the Bar more widely is improved by its employment of staff familiar with other institutional logics as they have moved from the human resources field into the legal field. Their experience of other institutional logics influences their professional approach, and this was seen in the case study in how they approached social mobility matters. The use of other institutional logics by employees with experience in non-legal fields may cause a subtle shift in those prevailing within their current legal setting. These alterations may, over time, manifest more widely in the legal setting in interactions with other organisations, consequently altering the archetypes governing the wider field.

Battilana (2006) used Bourdieu’s social field theory to identify which individual actors had the greatest likelihood of causing institutional change. This signalled a shift from an

emphasis on the power of expected and constrained behaviour moulded by the habitus and doxa operating on actors, to an emphasis on the position of the actor themselves within the social field. She emphasised that the success of any project undertaken by embedded actors is likely to be related to their position within the field, not just their ability and willingness (2006: 659-660). Other factors will also be relevant, however, and some of these are specific to the legal profession. Braithwaite concluded that, 'the literature suggests that such [diversity] campaigns may be problematic as a driver of change in the large law firm context, not least because there is a lack of strict enforcement, blurred objectives and a failure to recognise the resilience of the law firm status quo.' (2010: 143).

The recognition throughout Braithwaite's article of the resilience of the status quo is, possibly, of even greater significance for the Bar, as it continues to rest much more upon its historical roots. However, the Inn, as a professional organisation, occupies a different position to that of an internal department trying to exercise influence over the rest of the firm from its embedded position. Although the Inn is an embedded professional actor, in that it is placed both physically and ideologically within the profession with which it is associated, it has the advantage of employing separate staff to chambers, giving it a greater distance from those whom it is encouraging to act; it is in less close proximity to those over whom it is trying to exert influence than internal diversity staff in a solicitors' firm.

It is argued here that this assertion can be applied by analogy to a professional association within a field, as it was to an individual actor within an institution. Actors who were most likely to feel strongly about acting to increase access to the profession were often those who were on the outside of the profession, and therefore although they had the willingness and potentially the ability (Sommerlad, 2007: 216-7), they lacked the position within the field needed to be able to effect change (as identified by Battilana (2006)). Based on Shils'

formulation of the central value system, Francis (2011: 29) states that it is often those at the periphery who have the capacity to drive forward changes, given that they have much less of an attachment to the central value systems than embedded actors or individuals. There is a fine line between those who are peripheral enough to not feel strongly attached to the 'inherent' (Nelson and Trubek, 1992: 212) central value system, but who are sufficiently integrated into the profession to cause change (Battilana, 2006: 659-660). In this respect Inner Temple occupies a unique position: its embedded position allows it to take meaningful action to promote a change because it occupies an elevated position within the profession's 'social field', and has both the capacity and intra-profession respect as an elite actor. Therefore it can put into practical effect the feelings of a critical mass of individuals.

The central value system will never be subscribed to wholly by every member of an institution; 'The central value system which legitimates the central institutional system is widely shared, but consensus is never perfect.' (Shils, 1975: 10). Thus, whilst many members will not wholly affirm it, most will affirm all of it some of the time, or some of it all of the time. Consequently there is opportunity for disagreement with a central value short of removing oneself from the institution. However, such disagreement may also found a desire to initiate a change in the central value system. Such a desire has been key in the case study, and its combination with a powerful field position allowed a potential challenge to the indirect effects of the central value system.

3.2.6 Motivators for change within a professional association

Motivators for change may come from a number of sources. They may be external to the profession, or internal. Even within one element of change there may be mixed and nuanced motivators experienced by different individuals within the professional association. For many organisations, the possibility of increased profit arising from being perceived to be

diverse and inclusive is a significant driver (Kotter, 1995: 60). This includes within the legal profession, where the 'diversity approach' was used to convince senior partners in a solicitors' firm that investment in access programmes was financially worthwhile, as equality of opportunity can be 'sold' as good for the firm's reputation (Braithwaite, 2010: 141). Considering the lack of a profit-increase based incentive at the Bar, it seems likely that other reasons take precedence in motivating a professional association to trying to cause change. This is not to say, however, that these motivations may not have an element of self-interest in them, with much of the data from interviewees revealing mixed motivations. Whilst many interviewees prioritised the perceived potential positive effect for non-traditional aspirant entrants, many also admitted that they were aware that gain for the profession was a likely concomitant. Some interviewees saw this as a 'side-effect' that happened to be favourable, whilst others perceived it as an aim equal in importance to that of improving opportunities for non-traditional aspirant entrants.

Although at the Bar equality cannot be 'sold' as a profit-making attribute, Rogers (2012) suggests that it can be used to improve reputational profit. She found that the Inns of Court perceived 'inclusiveness' as an attitude which aspirant entrants wanted. Therefore it sought to convince aspirant entrants at recruitment events that it held such values (Rogers, 2012: 212). Therefore, any programme aimed at increasing diversity at the Bar is likely to hinge around an ideological commitment to the potential of every individual, and the transformative nature of a group, albeit not a firm, being diverse in order to gather greater lived experience within its members (Sommerlad, 2008: 193).

Other literature addresses altruistic acts of non-governmental organisations (Fisher, 1997), as well as the symbolism of such programmes in a climate where 'inclusiveness' is seen as an important value by aspirant entrants (Rogers, 2012: 220-1). Where the motivation is portrayed as altruism, an inherent challenge is the subjectivity of what comprises an

‘altruistic’ act. Altruism, arising from Comte’s work (Bridges, trans. 1973), is the doing of things to further the welfare of others. Here this was claimed by some interviewees as the motivation for Inner Temple’s introduction of PASS; an action by Inner Temple to further the (occupational) welfare of non-traditional aspirant entrants.

One interviewee went so far as to state that, without a commitment to meritocratic access and social diversity, the Bar would no longer be entitled to call itself a ‘profession’; it would simply be an occupation. This belief illustrates the complex link between altruistic behaviour and gain for the profession itself (further explored in chapter 4) which was expressed by many participants. There was clear awareness in many that the inter-relation between self-interest and altruism made it hard to separate the objectives of opportunity for non-traditional aspirant entrants from a stronger recruitment pool and improved perception for the profession.

With any such action, questions can be raised about whether it objectively improves the position of the group in whose interests the action is supposedly being taken. This research, however, focuses instead on the subjective experience of those participating in an access programme. A more probing angle of examination is therefore exploring the perceptions of the ‘recipient’ of the action. Research into organ donation, for example, has identified the deeper complications of ‘gift practices’ that underlie the ‘gifting’ of anything: there must be a giver and a recipient, a creditor and a debtor. Where a gift has been given, there may be an implicit expectation of a reciprocation, albeit not in kind (Scheper-Hughes, 2007: 508), and unspoken attributions of value and self-worth (or lack thereof) to the parties on the basis of the gift (Kaufman, 2013: 58). Some PASS participants communicated levels of indebtedness that suggested the power imbalance already experienced by them as outsiders was exacerbated by their participation. This was particularly the case for those who did not perceive any benefit to the profession from PASS; their belief that PASS was wholly

altruistic seemed to generate disproportionate feelings of gratitude (see chapter 4, section 4.4.1.2). This is despite the characterisation in this thesis of any act as having both altruistic and self-interested motivations, so closely intertwined are the two that it is almost impossible for one to exist without the other (Mansbridge, 1990: 134).

A further consideration is that action is often developed subjectively by the organisation conducting the intervention. This creates a risk that the organisation projects onto the subject group particular needs or characteristics, and makes unfounded or misguided assumptions about what will assist the group (Fisher, 1997: 458). Conversely, a professional association may act in the pursuit of external recognition, but it is unlikely that this would be expressed as the justification for action.

As Dent and Whitehead (2002) note, there is a substantial body of work theorising the professions. However, there is much less which engages with how these theoretical aspects of professions and professional associations affect their operation in practical terms. Rogers' (2012) research addressed one dimension of that in exploring how the profession marketed itself to aspirant entrants. This research addresses another dimension by exploring the relationship between the theorising of professional associations and the development of a programme aimed at contributing to an alteration of a longstanding characteristic of the profession.

3.2.7 Challenges to sustaining change within a professional association

Once a professional association has brought about change, the process does not come to a halt. The next challenge after instituting new practices is to maintain them. Researchers have attempted to formulate models which explicate the stages that an organisation will go through in incorporating changed values or practices into the profession's identity and routine interactions. In the case study, the ways in which Inner Temple had brought about

change and were making efforts to incorporate it into the profession's identity were examined through a number of frameworks constructed to evaluate organisational change. One challenge posed by the existing literature on sustaining organisational change is that it often presumes a profit-making entity. In the case of the Bar this is not an ideal model – the profession, in line with its claims to altruism (Carr-Saunders and Wilson, 1933) tends to construct its identity more closely aligned with a public service model than a business model. Such tensions, however, resonate with discussion in chapter 7 surrounding changes to models of the legal profession. Not only does research need to account for evolution, but also for the different ways in which evolution may affect professions with less common structures. As addressed above, the motivations may therefore be different. The non-profit-related ways in which organisational change is measured, however, remain relevant in the context of this thesis. Ferlie and Pettigrew (1988) note that differing models also pose different challenges of quantification of change. In their research into the National Health Service they considered different facets of change, each of which could be considered to give a holistic portrait of the change that had occurred within the organisation: speed, quantity, quality and processes experienced by the organisation's members. Kuipers et al. (2013) address the role of factors defining success or failure. They note, as this thesis also argues, that it is impossible to assert success or failure when it is not agreed what changes would amount to success, or what would denote failure by its continued existence or occurrence (2013: 11). Thus the definition of success or failure is key to assessing whether a desired outcome has been achieved (Kuipers et al., 2013: 12).

Pettigrew et al. (2001) criticise the apparent lack of interest in the dynamic and holistic appreciation of both processes and outcomes (2001: 701), suggesting more attention to be paid to how success in the management of change is defined, with potential focus on quantity, quality and pace of change, and how these three may interact or operate in

conjunction (2001: 701). The factors suggested by Pettigrew when studying change: context, content, process and outcomes, are endorsed by Kuipers et al. (2013). They also suggest the addition of a fifth factor in the context of assessing change in public organisations which has been overlooked: leadership (2013: 2). This supports arguments advanced by Kotter (2008: vii) that leadership is wholly distinct from management, and that the two should not be confused (Kotter, 2013).

A further consideration when examining changes attempted by Inner Temple is how such changes have been directed. Kotter argues that leadership plays a key role in organisational change, stating that many organisations today do not have the type or level of leadership that they need to facilitate and secure a change process (1999: 1). Albeit on a smaller scale, this research attempts to engage with those issues in considering the likely longevity of the change, despite the limitations as discussed in chapter 2.

3.3 Conclusion

This chapter brought together the main concepts upon which the rest of the thesis rests, grounding the key arguments in existing theory as is common when using a grounded theory approach. In combination with chapters 1 and 2 it provides a foundation for the exploration of the complex issues of the actions of professional associations and access to the Bar, and the particular challenges at the meeting of those matters. Chapter 4 now moves to the substantive material with which this thesis is concerned, setting out the key nature of a central value system to any profession, and arguing that it is counter-intuitive for a professional association to act in contradiction to a long-held notion within that value system. Such counter-intuitive behaviour therefore requires an analysis of the motivations that may have caused a professional association to behave in this way; how such behaviour

is perceived by a target audience, and whether the perceptions of the target audience may be in conflict with those of the professional association.

CHAPTER 4 – VALUES, ATTACHMENT AND PROFESSIONAL ASSOCIATIONS

...if we don't continue to have altruistic motives then we won't be entitled to call ourselves a profession. (Interviewee 9, Inner, M, other prof. assoc.)

This was the response of an interviewee, a highly successful QC and Deputy High Court Judge, when asked what he thought had motivated the establishment of PASS. In this chapter I will argue that professionalism, as one element of the central value system subscribed to by the Bar, can evolve. Due to the number of professional associations at the Bar, this thesis makes its arguments on the basis of the professionalism articulated and espoused by one of the professional associations within the field. It argues that the professionalism articulated by Inner Temple is shown in this thesis to be capable of evolution. Such evolution can occur because of certain attributes of the professional association; specifically in this research the smaller size of the decision-making element of the professional association (the 'elite', who hold significant influence), and the professional association's relative heterogeneity giving it the internal respect of its members. Furthermore, the field position and links to other sites of power gave Inner Temple the ability to bridge boundaries. Combined with the respect it held, this made it a potentially powerful institutional entrepreneur. This chapter also introduces a previously under-researched matter in professions; that of the affective domain (Francis, 2011: 135). In the case study the affective domain was engaged through the loyalty of practitioners towards their Inn of Court, something Inner Temple capitalised on in the development of PASS. This loyalty manifested itself as trust in the professional association to only pursue a change in the central value system through the evolution of professionalism where to do so would not cause harm to the profession. The emotional engagement also contributed significantly to the human resources available to Inner Temple.

These resources were important; practitioner involvement was key to the programmes for credibility both within the profession and amongst aspirant entrants. Both of these parties seemed to subscribe to the belief that it was only from current practitioners that it was possible to obtain accurate information about the profession, and many aspirant entrants stated in questionnaires and focus groups how much they valued interaction with those in practice. Where these interactions were positive, links were fostered with aspirant entrants on an emotional level which suggested that, if they were to enter the profession, in the future they may also show such loyalty to the Inn, continuing a cycle of members willing to assist in areas such as access programmes.

Finally, the chapter explores what might motivate a professional association to pursue such evolution. Such motivations may be manifold, conflicting and complicated. In the case study, it was possible to identify differing motivations perceived by different groups; participating students, chambers, Benchers of the Inn and salaried staff of the Inn. These included altruism and reputational gain for the profession. Notably, it is argued that evolution was 'going with the grain'. There are two dimensions to this notion. Firstly, evolution occurring in accordance with existing professional values and priorities. Secondly, evolution also going with the grain in the context of wider societal and market changes. Evolving professionalism is thus unlikely to challenge either prevailing trends in society, or, perhaps paradoxically, more deeply held values and ideas within professionalism. The structuring properties of these fields, possibly combined with a level of pragmatism from those in leadership positions, shape the limits of what is possible. Thus the conservatism of professionalism continues.

4.1 Central value system of the Bar

Any profession will have values that are central to its identity; these produce patterns of behaviour that group members acknowledge and follow. At the Bar, a traditional elite profession, such values revolve around long-established ritualistic practices and professionalism. A ‘side-effect’ of the holding of traditional values has been social closure, as non-traditional aspirant entrants struggle to adopt a persona recognisable by the profession. This is partly due to their non-traditional educational pathways (Francis and MacDonald, 2009) and adherence to different social norms (Bourdieu, 1984), marking them out as ‘different’ from traditional entrants. They therefore struggle to demonstrate the social capital expected in both applications and interviews. For those that do enter the profession manifestations of a traditional central value system make some feel uncomfortable, dissuading them from continuing within the profession.

Similarly ‘professionalism’, requiring high standards of the service provided by the profession’s members (Larson, 1977: 145), may indirectly cause social closure. In this case, social closure results from the maintenance of standards being used as justification for higher entry requirements, including expensive professional qualifications that cannot be afforded by many non-traditional aspirant entrants from lower socio-economic groups (Witz, 1992). Thus even though social closure is not itself a central value, it is a product of central values, which are portrayed by the profession as a necessary part of the professional project.

4.1.1 Impetus from the top – the role of the elite

As established in chapter 3, the more tightly linked the professional association itself is to the profession’s values, the more it is likely to defend those values. Due to the historical role of the Inns in creating much of the central value system through their control over admissions

(see chapter 1), their ideologically and physically embedded nature is likely to increase their attachment to the central value system.

The key group influencing the direction of a professional association is its 'elite'; those 'maintaining the organisation, controlling the conduct of its members and fulfilling its goals' (Shils, 1975: 4). Within an Inn of Court, the elite is the Benchers; those elected to office who govern the Inn, and who chair the Committees that often make, or contribute towards, decisions on the Inn's interactions with the profession.²⁶ In this case study, this elite of senior practitioners, combined with specific attributes of Inner Temple explored in this chapter, give it significant power as an institutional entrepreneur (Garud et al., 2002: 958-961). An institutional entrepreneur is defined by DiMaggio, who is credited with coining the term, as an individual or group thereof who 'create a whole new system of meaning that ties the functioning of disparate sets of institutions together' (DiMaggio 1988: 14).

This thesis illustrates that the approval of the elite is key in any evolution of the central value system. In the case study, a number of members of the elite had gone further than mere approval, contributing to the very impetus to alter inherent practices that lead to social closure. At Inner Temple, there are already Benchers who have themselves come from non-traditional backgrounds; even in the small sample used for this research, there were Benchers from state and grammar schools, as well as independent schools, and they were conscious of their role as members of the elite with an understanding of the challenges faced by non-traditional aspirant entrants. This diversity and awareness permeating up the hierarchy within a professional association will increase the likelihood of decisions being made with the needs and experiences of non-traditional aspirant entrants in mind. This will arguably facilitate a challenge to the inherency of some exclusionary patterns of behaviour, as these

²⁶ <http://www.innertemple.org.uk/component/content/article/103-history/itad/319-memberships-of-the-inns-of-the-court> [accessed 9th August 2015]

Benchers remember their own experiences of them. The inherent role of the elite in constructing the central value system (Shils, 1975: 5) means that any commitment amongst the elite to furthering social mobility is more likely to be reflected within the core operations and aims of the institution than if that commitment was held only by those who occupied less powerful positions. Therefore a combination of position within the professional association's elite and diversity of the Benchers involved in PASS promotes an understanding of the challenges faced by non-traditional aspirant entrants which could come to be reflected in evolutions of the central value system (though chapter 6 argues that this does not occur for other reasons).

Practising barristers represent a more diverse group than in the past, and aspirant entrants likewise being representative of many different ethnicities, socio-economic and educational backgrounds (Bar Barometer; Bar Council, 2014). It is towards a central value system that better reflects this that a professional association wishing to cause change must innovate. Ideologies of previous generations that are irrelevant and unnecessary need to be acknowledged as anachronistic, and their inherency challenged. Traditional patterns of behaviour from these ideologies have become subsumed into the habitus of the social field, thus appearing to be inextricably embedded. However, many student participants, but also a number of interviewees, recognised that they are capable of removal or modification (Bourdieu and Wacquant, 1992: 133) to reflect modern society and respond to concerns about the lack of social diversity within the Bar. They further recognised that this would make it more accessible to entrants who are unfamiliar with social conventions which represent the traditional past but have little functional purpose. Such a process is likely to be slower within an embedded historical professional association, but the leverage that such a professional association has over its own members, and the wider profession, is likely to be crucial to effecting change.

4.1.2 Tradition and professionalism: two central values contributing to social closure

At the Bar, professionalism is prioritised over management ideas and procedures (Muzio and Ackroyd, 2005: 641) as the key basis for professional practice (2005: 620). Its construction varies (Francis, 2011: 53) but all arenas will recognise the notion and its basic components (Nelson and Trubek, 1992). As professionalism continues to have a very traditional format at the Bar whilst professionalism survives social closure continues. However, this research illustrated that it is propagated at chambers-level in selection for mini-pupillages, instead of by the profession on an occupational basis, illustrating that Muzio and Ackroyd's findings in the solicitors' profession (2005: 618-9) apply equally to the Bar.

At the Bar, I argue that such closure can occur at two stages. Firstly, if a non-traditional aspirant entrant cannot afford the BPTC fees and does not secure a scholarship, or secondly if they complete the BPTC but do not get pupillage. At the stage of entry to the BPTC, private providers contribute significantly to closure through the extremely high cost of the course (see chapter 7 for further discussion). However, it must be acknowledged that the Inns of Court also play a role at this stage because they award financial scholarships for the BPTC, with the highest exceeding the full cost of the course. These are awarded through a process of application forms and interviews. As is discussed later in this thesis, the ways in which a candidate presents themselves both on paper and in person will be influenced by their socio-economic background and life experiences (see chapter 7). Therefore although it is outside of the scope of this research, it is suggested that the scholarship stage poses similar challenges and faces similar criticisms to those seen in the application for and allocation of work experience; that the system favours traditional intellectual achievements through a recognised educational path (Francis and Sommerlad, 2009). The two stages at which

closure may operate also illustrate two different sites of occupational power, as Muzio and Ackroyd identify in the solicitors' profession (2005: 618-9), both using patterns of behaviour contributing to social closure.

Professionalism, therefore, despite being defended as the maintenance of standards to ensure that unwitting consumers are not subjected to a sub-standard service (Abel, 2003: 96) is shown in this research to nonetheless result in social closure at the Bar. Participants in the current research had mixed views about the role of traditions and professionalism in social closure at the Bar; particularly interesting was a lively debate in the Pathways focus group. The researcher asked the students how they felt about some of the more obviously 'traditional' elements of practice at the Bar, and used as an example the wearing of wigs and gowns by Criminal counsel, eliciting responses such as:

Tradition and culture is good, like, sometimes it's good, but you don't, it's not really needed as long as you can fight the case, and you know, I think that's what's important. (Pathways FG Participant 3, F)

It's what makes a barrister a barrister [...] it gives, like, identity to the community.
(Pathways FG Participant 9, M)

How I see it is I don't think tradition puts people off anything. (Pathways FG Participant 5, F)

I think what you wear doesn't really matter; what you do and your actions, matters more than what you wear. (Pathways FG Participant 6, M)

...but what about culture, tradition? Like, culture and tradition is good, but, like, in some parts, it's not, for example the wig, what's the point in wearing the wig?
(Pathways FG Participant 1, M)

This illustrates that even within a small group of non-traditional aspirant entrants (nine students) reactions to manifestations of tradition are very different. Whilst some students could not see the practical utility to such traditions and therefore dismissed them as unjustified (such as participant 6), others perceived them as vital to the sense of belonging within the profession (such as participant 9).

4.1.2.1 Closure and community

Such a sense of belonging and community as articulated by the Pathways students was a key theme in this research.²⁷ Another student in the same focus group commented insightfully on the dichotomy between the perceptions of those external to the profession as compared to those internally, highlighting that individuals determined to join the profession may be able to ‘see through’ the manifestations of tradition that may discourage others:

I would never ever say it was a bad thing, but the tradition, the idea of going in and wearing a wig and...I don't know...it's by no means a bad thing but it gives off the impression that you have to be a Lord's son or something to go into it, or have God-knows-how-many connections within the actual area and that's just the way it is; it's the prestige it has, and as I say, that's not a bad thing at all and I think it's just one of those things that, if you are interested in becoming a barrister you will realise that that's not always the case. (Pathways FG Participant 2, F)

The variety of reactions illustrates the tensions that a traditional profession may experience in attempting to reduce social closure through removing those practices not in themselves necessary to the provision of legal services. Whilst to some students the mystique of the profession, which occurs partly through traditions and practices with which they are unfamiliar, seems alluring, to others it is intimidating. Both participants who found it alluring

²⁷ The role of loyalty to the professional association is returned to later in this chapter at 4.3.1

and those who found it intimidating, however, said that it denoted community. For some this gave them something for which to aim; they saw the Bar as a community and recognised their position outside it. They used their desire to be part of the community to motivate themselves to pursue entry. Those participants who described it as intimidating, meanwhile, found the community aspect symbolised closed-ness and separation, and emphasised their difference. Amongst the Pathways students, the first view was not so common, and where held was more likely to be expressed by male participants than female. The second view was more common, especially amongst female participants. Amongst the PASS students, however, the first view was more common amongst those of either gender. This may be partly attributable to the further progress that PASS participants had made towards entry to the profession, however, with some Pathways students still undecided whether to pursue careers in Law at all.

As non-traditional aspirant entrants are less likely than traditional entrants to have encountered such traditional organisations before, non-traditional entrants at large may be more likely to feel intimidated than attracted. Thus any access effort must seek to balance the removal of traditions propagating social closure with maintaining the sense of community valued by both existing members and aspirant entrants alike. Many practitioners were also aware that the profession's outward manifestations of tradition could be off-putting to non-traditional aspirant entrants:

We do present, if we don't do something about it, as a sort of rather formidable face to the outside world of exclusivity which makes it quite difficult for people from non-privileged backgrounds to even contemplate walking through the gate. (Interviewee 9, Inner, M, other prof. assocs.)

However, opinion was divided on the solution to the challenge identified by this interviewee. Two commonly-cited options were to demystify the profession through better public engagement, or to re-appraise whether some traditional practices were necessary. Such a re-appraisal was particularly recommended where interviewees felt that such practices were neither necessary nor in-keeping with the Bar's desire to present itself as 'inclusive' (Rogers, 2012: 220) and meritocratic. A number of interviewees supported more radical changes, acknowledging that a central value system may require updating. It is argued in this thesis that professionalism is an evolving concept that can develop, and is likely to do so in a way that reflects societal sensitivity to topical issues. Academic analyses of professions need to account for such societal changes (Kritzer, 1999). It is therefore possible in theory that professionalism at the Bar could develop to enshrine the pursuit of meritocracy as a social justice ideal. Although the habitus of the Bar is already well-established this thesis argues that an entrenched value can theoretically be removed or modified. Whether this can be done by a professional association such as Inner Temple depends upon the interplay of complex factors in both theory and practice.

Therefore, it appears that a close attachment to the central value system can actually facilitate a professional association in causing change within a profession. This may seem unexpected, and yet Inner Temple's commitment to the central value system, and status as a traditional professional association, appears to have bolstered its leadership as members of the profession felt it to be a trustworthy body that would only seek a re-evaluation of the central values where such was prudent and necessary. Nonetheless, to cause change a professional association will also need other attributes.

This section has established that a central value system will exist in any group. At the Bar, this central value system consists of traditional historic practices. Whilst these are not necessarily intended to exclude those from certain socio-economic backgrounds, they do

often have that effect. In the formation and potential evolution of the central value system, the elite will be a key group in influencing the direction of such development. In the case study, adaptation of the central value system has been led by Benchers – Inner Temple’s elite.

4.2 Initiating organisational change

In the case study, Inner Temple was regarded by interviewees as more likely to succeed in initiating organisational change than other professional associations of the Bar. The key attributes explored in existing literature as facilitating or hindering the initiation of change are size and heterogeneity. This thesis also advances the importance of the affective domain (Krathwohl, Bloom and Masia, 1964; Francis, 2011: 135), embodied in the case study in the role of loyalty, a matter mentioned somewhat unexpectedly by a majority of interviewees and student participants. It is argued that, due to the self-employed structure of the Bar, loyalty is important in any consideration of professional association action due to the relative lack of coercive power held by the professional associations.

4.2.1 Size

In terms of the professional associations of the Bar (see chapter 1), the Bar Council is much the smaller organisation, with 115 members who comprise the Council at any one time,²⁸ but with the ambit of representing the whole profession. Although not explicitly stated by any participants, one perception supported by academic literature is that the Bar Council struggles to take any decisive action because although its membership at decision-making level is relatively small, by the time of appointment, those members may have further professional goals:

²⁸ <http://www.barcouncil.org.uk/about-us/constitution-and-structure/> [accessed 30th July 2015]

...by the time that people get to the top they have got appointments being dangled over them historically, so they all behave. (Interviewee 7, Inner, M, other prof. assocs.)

Meanwhile, the Inns are much larger organisations, but have to represent only the approximate quarter of the profession which falls within their membership. Despite their overall size, decisions are usually made by much smaller committees, giving the opportunity for active membership and thus greater representativeness. This may be another contributory factor to practitioners' generally favourable feelings towards Inns, and closer working relationships with them, facilitating support for even potentially controversial moves, such as a challenge to the central value system.

It is argued that this combination of a smaller decision-making body but membership of approximately one quarter of the profession allows an Inn to benefit from aspects of both attributes. The size of a professional association has been identified as crucial to its ability to gather sufficient agreement to make an alteration to the status quo within the profession (Halliday, 1987: 136). Smaller numbers are more likely to lead to consensus, and where an organisation is smaller, communicating to all the members will be more straightforward. At the Bar the dispersed nature of the members would have posed a challenge in the past. However, the embrace by professions of technology in the post-professional era (Kritzer, 1999: 728) means that communication both within and without the professional association is much easier; email and websites being especially useful in this regard. This allows the association to stay engaged with members who offer support, even if they cannot be physically present. Membership is not so large, however, that this task is impossible.

In PASS the dispersed nature of members is actually necessary to the functioning of the programme, with individuals from the Inn often ‘selling’ the scheme to their set and encouraging chambers to participate. As members are dispersed across many chambers, this was regarded by most interviewees as an effective way of publicising the scheme; in this way the fragmentation of the profession was seen as a help, and not a hindrance, to increasing participation in programmes such as PASS. This thesis therefore supports earlier research on the effect of size on the mobilisation of professional associations. It does suggest further nuance though; a smaller decision-making group within the profession association may ameliorate potential challenges arising from large membership.

4.2.2 Heterogeneity

Size alone, however, will not be decisive; composition is also important. Previous academic literature has demonstrated that the authority of representativeness can be subverted internally by the inability of the representative body to mobilise quickly and consensually on many of the most critical questions either for the profession or for the state. Thus, inclusiveness may cause stalemate, as it brings inside the organisation the full range of conflicts and polarities that divide and segment a profession (Halliday, 1987: 123). The most controversial questions are also likely to be the most far-reaching, and it is those on which a representative organisation will struggle to act. The tension is aptly summarised thus; ‘wealth of inclusiveness is at once its poverty. The weakness of strong associations comes precisely because at the point of its maximal inclusiveness an association has internalised the complete range of diversity within a profession.’ (Halliday, 1987: 136).

Due to the relatively small size of the Bar Council, there is arguably less opportunity for dissenting voices to infiltrate and make themselves heard, especially in the wider context of the career-stage of many members, as identified by one interviewee. It is therefore argued

that the Inns of Court are able, and Inner Temple has succeeded, in ‘negotiat[ing] the fine line between the stalemate of inclusiveness and co-ordination through oligarchy’ (Halliday, 1987: 310). The use of committees, whereby members can discuss potentially divisive matters in small groups, before deciding how to advance them to the Inn at large, may allow the presentation of ideas in a more considered way to a smaller group. Feedback can be given increasing the likelihood of wider agreement. Although decision-making occurs in the same way at the Bar Council, it was perceived by practitioners as being removed from their professional concerns and interests, and with a decision-making body that was not representative. It was also implicit in a number of interviews that practitioners felt that the Bar Council could not be relied upon to prioritise the profession’s best interests, although no substantive reasons were given for this. Thus a vicious circle seemed in evidence; because practitioners were reluctant to engage with the Bar Council, it was not able to increase the human resources that it had at its disposal through willingness of practitioners to assist in the running of programmes, for example. However, because it ran few programmes, it was perceived as ineffective and blasé to the concerns of the profession. Practitioners felt more involved and included by Inns of Court (see 4.3.2 below) suggesting that a combination of small size at decision-making level and reduced ambit facilitated action by Inner Temple. Such action was respected by members as although the elite were a small number they were viewed as diverse and therefore decisions were more likely to be ‘for the greater good’ of the profession. It could gain consensus on an issue and then mobilise effectively as practitioners were willing to assist.

It was further suggested by one interviewee (see 4.2.1) that a cause of the Bar Council’s impotence was that its members were often in line to be holders of significant offices, and this discouraged them from pursuing politically difficult topics at Bar Council level. This may explain, in part at least, why the Bar Council has struggled to gain the respect of some

practitioners, and also why it is not perceived as having the ability to make significant contributions on controversial matters. A recent illustration of a perceived (by practitioners) failure of the Bar Council was its lack of intervention when the Government announced plans to further cut the legal aid budget, with serious ramifications for the criminal Bar and criminal justice more widely, although some unity was regained as walk-outs were staged, and eventually, a joint response was issued by the Criminal Bar Association and the Bar Council.²⁹

This research suggests that an analogy may be drawn between the Inns of Court and the voluntary work organisations of the early 20th Century, where men could shape their organisations ‘into instruments for the fulfilment of their purposes...[t]he professions would become the exemplars and bulwarks of social stability’ (de Tocqueville, quoted by Halliday, 1987: 18). It is argued that in the past the members have shaped the Inns themselves into such instruments, which prevented the entry of those whom the majority did not feel ‘suitable candidates’. The ‘social stability’ that resulted from its homogeneity eased the tensions associated with trying to take collective action when a membership is diverse, as described by Halliday (1987, see above). Thus Inns favoured homogeneity historically, as would be expected from a conservative traditional body. Nonetheless, as demonstrated in this research, a combination of organisational and individual factors is causing a move towards the pursuit of greater heterogeneity. This suggests that Tocqueville’s assertion may no longer hold the power that it once did, with a greater recognition that a professional association will need to balance the ability to reach consensus with diversity to ensure that the majority of members feel that their interests are being represented. A perceived lack of this combination seemed to be a key factor compromising trust in the Bar Council and supporting the Inns of Court.

²⁹ <http://www.barcouncil.org.uk/media-centre/news-and-press-releases/2014/july/joint-statement-by-the-bar-council,-the-criminal-bar-association,-the-circuit-leaders-and-the-ministry-of-justice/> [accessed 15th August 2015]

This internal collaboration facilitated within an Inn also extends to external collaboration, or at least the potential therefor, between the Inns of Court. The four Inns liaise allowing agreement and collaboration on a much greater scale than could be facilitated between individual barristers or sets of chambers, albeit that the level of co-operation between Inns was not agreed upon by interviewees:

It's very difficult sometimes to work out what the other Inns are doing. [Other Inn]; sometimes I think they are a bit like a secret society, I will probably get told off for saying that, but you just don't seem to be aware of what they are doing. When you ask for information, you know when Bar Council asks what are you doing in these areas, they may well be doing something, but they are not prepared to tell us about it or they don't publicise it. (Interviewee 10, Inner, F, Bencher, other prof. assocs.)

I think the other Inns, I really wouldn't want to speak for them, but I think the other Inns are happy that we do it and they often say things like 'oh Inner's doing that' and it's almost a delegated responsibility at this stage, so I think they are absolutely fine with doing that. (Interviewee 11, Inner, M, salaried)

These interviewees had different modes of connection to the Inn, possibly explaining their different opinions on levels of collaboration; it may be that there is a greater level of co-operation between the salaried staff of the Inns than there is between Benchers. Furthermore, the first quotation may be an illustration of antagonism towards the Bar Council as much as a general reluctance to co-operate between all of the sites of professional power at the Bar.

4.2.3 Multiple sites of power within a profession

Whilst the previous section addressed heterogeneity within one professional association, this section addresses relationships between the different professional associations and other

bodies at the Bar. These relationships between the Bar Council, the Bar Standards Board, the Inns of Court, and chambers are significantly shaped by the unusual way in which the Bar operates: relatively small groups of self-employed practitioners joining together to form chambers, whilst also being members of Inns of Courts, with the Bar Council as the overarching representative body. These sites of power may sometimes conflict when trying to act in relation to the same issue, such as social mobility, especially as it is a sensitive issue.

The relationships between these bodies was a recurring theme in interviews. Many practitioners had strong views on the utility or lack thereof of the Bar Council, and all apart from one were much more positive about the contribution of the Inns to the life and progression of the profession than they were about the Bar Council's contribution. Many interviewees recognised the tensions that existed between the Bar Council and the Inns, and this was well-known especially to those interviewees who held, or had held, both Inn and Bar Council positions (of whom there were two). Of those two interviewees, one denounced the utility of the Bar Council, whilst the other took a more balanced view.

It was notable that the salaried staff tended to be much more frank about the complications associated with the multiplicity of sites of power. They were straightforward in their admissions of the challenges faced due to a history of complicated relationships between the Inns and the Bar Council, but without attributing blame to any party for this. In contrast, practitioners tended to be either more circumspect about the existence of challenges, or keener to attribute blame for the complexity of the relationship. What was widely agreed on, however, was that there remains significant separation between the sites of professional power, potentially leading to duplication of effort, and a lack of cohesiveness of approach:

I think if there was more cohesion, more targeting, then perhaps we could work together to achieve more together, but then when the profession is made up of

different institutions, some have different amounts of resources, different agendas and it's very difficult to try and bring all that together. (Interviewee 8, Inner, F, salaried)

What was shared by both parties, however, was an awareness that interventions were likely to be much more effective when run by an organisation that was more 'in touch' with those practising in the profession:

I am under no illusions that the Bar Council is not held in high regard by a lot of people in the profession. The Inns however have much more [idea of the] reality of day to day life of practitioners, so I would imagine that is why the take up on the Pegasus Access Scheme has been much quicker than the Bar Placement Week was when it started. (Interviewee 6, non-Inner, M, salaried, other prof. assoc.)

This interviewee's unprompted and direct comparison between Inn-run and Bar Council-run access schemes illustrates the duplication of effort suggested by Interviewee 8 above, and also the awareness within the profession of the limitations of the Bar Council. Thus, it is argued in this research that the perception by practitioners of Inner Temple as being active and involved in the life of the profession, as opposed to a more detached figure such as the Bar Council, contributed to their willingness to support the programme. It is further argued, however, that this may lead to a vicious circle for other professional associations. As Inner Temple cultivates loyalty through its engagement with its members, this loyalty leads to an increased willingness for engagement. Where this then empowers the professional association to instigate and run programmes such as PASS, the eventual result may be a sidelining of other professional associations. This could include the other Inns if they are not so successfully cultivating involvement by their practitioners.

Co-operation between Inner Temple and chambers seemed to be much less fraught. On the scale of PASS, it appears that internal coalitions are successful and sufficient (and the small scale of these coalitions is not necessarily a barrier to success; Kotter, 1995: 62). These coalitions had allowed the programme to be promoted amongst chambers ‘on the grapevine’. However, it seemed that forming wider coalitions would be a challenge, largely because the next sensible tactical coalition to form was likely to be with the Bar Council, but due to the historical conflicts, this seemed unlikely to be a well-received option (the effect of the structuring properties of a field on professional association action are explored in more detail in chapter 7). This suggests that any increase in the size and reach of PASS may be dependent at least in part on the historical relationship between these different sites of power.

4.2.3.1 Links between sites of power within the profession and the role of archetypes

In the present research, due to the tri-furcation of power of the Bar Standards Board, Bar Council and Inns of Court, the archetypes that guide the interactions between these bodies are important. Key to the theory of archetypes is a desire for a common understanding; an interpretative scheme that applies across organisational boundaries to give coherence in the organisations’ working relationships (Greenwood and Hinings, 1993: 1056).

As all sites of power are influencing the archetypes guiding the relationship, the institutional logics in one institution may affect those operating elsewhere, as may conceptions of professionalism operating in one area affect another (Nelson and Trubek, 1992). These lower-level changes by one association (due to alterations within institutional logics or ideologies, for example) may alter the interplay with others, and consequently the archetypes in operation across the profession. Historically, an acceptance of social closure caused by central values would have been likely to be within the interpretative framework that shaped relations amongst the professional associations, and between the professional associations

and chambers. An alteration by Inner Temple to its approach to social closure may therefore influence other professional associations' awareness of, and action on, the matter.

It is argued in this research that the case study suggests that archetypes within a profession may evolve over time. This is especially so if the profession is seeking to adapt to changes in the market or other interactions that are affecting its self-identity, as such adaptation is likely to involve interplay with other organisations within the field. Inner Temple is potentially altering the archetypes operating within the Bar by introducing social mobility as an additional new value underpinning its approach to its role as a professional association which may affect its interaction with other professional associations. Furthermore, by creating PASS as a scheme that requires interaction and agreement with chambers, there is support for Kirkpatrick and Ackroyd's observation that relationships between bodies often provide a catalyst or form of assistance to change (2003: 735). As a professional association in a profession consisting largely of the autonomous chambers that actually select from the pool of aspirant entrants, it would be very difficult for Inner Temple to take any significant action that did not involve another party within the profession. The challenges posed by this, however, have been explored above.

To some extent, the increase in managerialism and adaptation away from traditional professional archetypes in solicitors' firms (Pinnington and Morris, 2003: 86; Hanlon, 1999: 123-63) has been reflected at the Bar, but only by the largest chambers. A number of the more progressive chambers with many tenants have already adopted more business-like structures, often including some Human Resources staff, such as the Chief Executive at these chambers:

If you were thinking of [this chambers] as being a small business, I run the business.

So I do the, I organise the training, I organise the recruitment, I teach in resources,

I do business development, I manage the finances, I manage the business, I do quite a lot of coaching and mentoring of barristers you know from very early when they are trainees all the way through to becoming new members, maybe taking sabbaticals, maybe changing the areas they want to work in, maybe becoming a silk or becoming a judge so I do quite a lot of training and mentoring through that.

(Interviewee 12, non-Inner, F, chambers rep)

This illustrates that even within a traditional profession some groups are already acting differently to the archetypal behaviour, although at the Bar these are a tiny minority. Other chambers occupied a middle ground; whilst maintaining a largely traditional structure, they nonetheless integrated some elements of a more business-based model, such as more extensive administrative teams.

However, in the case study, such chambers tended not to participate in PASS, either because they felt that they were already sufficiently addressing matters of social mobility within their own structure, or because they had decided to try a different approach, which meant that it was not logistically possible to subscribe to a programme based on mini-pupillage provision. This reflected their wider commitment to less traditional models of practice manifested in a number of ways, such as the removal of traditional labels unique to the Bar, such as ‘pupillage’ and ‘door tenant’:

We don't do [mini-pupilages], we made an active decision not to do it when we set up. We decided not to do it because they traditionally were, and I think they have changed now with things like the Pegasus system and some other schemes and systems that people put in place, but they were traditionally unpaid work experience [...] and it seemed to us to be very unfair to people who didn't have anyone that they

knew and also that they were unpaid we thought was awful [...] so we have just never done it... (Interviewee 12, non-Inner, F, chambers' rep.)

Those chambers had the size and resources to initiate an alteration of archetypes, but these seemed not to have spread beyond a certain small subset of large and progressive chambers practising mainly in human rights and international law. For most chambers, archetype changes will need to be instigated and assisted by a professional association (Greenwood and Hinings, 1996: 1027). Greenwood and Hinings argue that archetypes cannot be generalised past the legal and accountancy contexts, and are especially ill-suited to analysing public services in the United Kingdom because of the lack of power held by professional groups (2003: 740). An unusual aspect of the Bar is the lack of coercive power held over members and chambers due to the predominantly self-employed structure of the profession. Therefore what is usually levelled as a criticism of archetype theory; that it ignores the dynamics of more coercive change (Kirkpatrick and Ackroyd, 2003: 739) actually makes it especially well-suited to analysis of the Bar. Kirkpatrick and Ackroyd concede that archetype theory offers a satisfactory method of analysis for traditional professions in which professional associations hold significant power, as they are likely to be the origins of change in those professions (2003: 744), as observed in this research. Through PASS Inner Temple is challenging the archetypes of the profession in conjunction with chambers, illustrating the often collaborative nature of such change (Kirkpatrick and Ackroyd, 2003: 735).

It is argued that in this research Inner Temple were also observed to be moving into a site of power previously largely untouched by professional associations of the Bar. This site of power is that of interacting with aspirant entrants earlier and more intensely than the Inns have done previously, with students participating in PASS before either formal (Call) or practical (pupillage) entry to the profession. Pathways to Law and the Bar Placement Week

are run in conjunction between the Inn and the Sutton Trust, and the Bar Council and the Social Mobility Foundation respectively. Middle Temple runs the ‘Access to the Bar Awards’, but these are on a much smaller scale.³⁰ Thus there exists no other programme run solely by a professional association, and targeting students so close to the time when they will seek entry to the profession. Such a movement into an unoccupied area gave Inner Temple the opportunity to define the archetypes in that area, and to contribute to altering the interactional pattern as a result.

There is little suggestion that the power now being capitalised on by Inner Temple has ever lain anywhere else, albeit that the Bar Council, as the representative body, is arguably intended to lead the professional associations of the Bar. A number of interviewees claimed that the Bar Council was no more or less effective now than it had been previously, although some suggested that its role had become less clear since the removal of its disciplinary function to the BSB:

It's effectively a trade union which is just so limp it's unbelievable. (Interviewee 7, Inner, M, other prof. assocs.)

This interviewee had held a Bar Council position and was consistently scathing about the organisation throughout his interview. He characterised the organisation as generally powerless, in direct contrast to his appraisal of the Inns. His reference to it as a trade union evokes images of unpopularity and politicisation. Although the Bar Council participates in the Social Mobility Foundation’s Bar Placement Week scheme, run in London, Birmingham, and Leeds and Manchester,³¹ despite having been established for some time this did not seem

³⁰ <http://www.middletemple.org.uk/members/special-interest-groups/access-to-the-bar> [accessed 15th August 2015]

³¹ <http://www.barcouncil.org.uk/media-centre/news-and-press-releases/2015/july/bar-council-holds-eighth-annual-bar-placement-week-in-london/> [accessed 15th August 2015]

well-known in the profession more widely. A number of interviewees who were not linked to the Bar Council had not heard of it, and most of those who had heard of it only mentioned it when directly questioned. Inner Temple appears to be capitalising on what is perceived to be a gap left in the profession for both general leadership on divisive issues (see chapter 7), and especially social mobility access programmes (see chapter 6). In doing so it is arguably increasing its own power within the profession. This view, however, was not universal, with one interviewee, who was both a member of Inner Temple and a member of the Bar Council, stating:

I think [Inner Temple staff member]'s view is that the Bar Council should be just co-ordinating what's going on across the profession and not trying to run programmes as well, but we just took the view that unless the Bar Council did it, and we don't have massive resources to be honest, but unless we did it there were a whole host of young students that were going to miss out on the experience, we felt and I feel that there is a very strong argument for Bar Council having to run programmes if there is no other resource to provide it. (Interviewee 10, Inner, F, Bencher, other prof. assocs.)

This provides an illustration of what interviewees perceived to be a significant challenge within a profession with multiple sites of power. Not only may different sites of power not agree on what each should do, but what is done may be perceived differently, if it is known about at all. Interviewee 10's opinion was that the Bar Council needed to fill a gap in access programme-provision and acted effectively to do so. As a member of the committee which did that, this brought her into what she perceived as conflict with a member of Inner Temple's Education and Training Department who perceived the Bar Council's role differently. That member of staff perceived a co-ordinated oversight role for the Bar Council

with the creation and administration of specific programmes undertaken by the Inns. It is suggested that this approach could allow for capitalisation on the closer links that other interviewees said that the Inns had with practitioners. This difference in perception compromises the possibility of programmes being joined together for greater effectiveness and economies of scale, and one interviewee suggested that programmes may be perceived by their providers as ‘in competition’:

I think there's one programme in particular, Middle Temple's Access to the Bar which is only eight people but it offers people a mini pupillage and a week of marshalling and they also get a small bursary to help them cover the expenses and I think there could be more co-ordination with that and there was potentially a bit of...between the two just because they were launched at similar times and obviously PASS has expanded exponentially since that and has potentially taken off more quickly... (Interviewee 11, Inner, M, salaried).

For student participants ‘competition’ between access programmes did not seem to feature in their analysis: barely any had heard of Bar Placement Week or the Middle Temple Access to the Bar Awards. However, there was unanimity that the provision of a programme such as PASS significantly increased the positivity felt by non-traditional aspirant entrants towards the Inn. This meant that it took precedence over the other Inns of Court and professional associations in the eyes of those who may be within the next generation of the profession, with focus group participants saying ‘*my loyalty lies with Inner*’, whilst another said ‘*in terms of membership in the future I definitely wouldn't want to be a member of any other Inn*’.

Fostering such early attachment through positive recognition of its work in this area by non-traditional aspirant entrants may further increase the Inn's power, as discussed later in this

chapter (see heading 4.3.2). In addition to such attributes, the field position of an association will be key to its efficacy in implementing such changes, affecting as it does both the absolute power of the association, and its power relative to others in the field (Battilana, 2006; Sommerlad, 2007).

This section has established that where organisational change is desired in an organisation with a very strong attachment to a central value system certain conditions are likely to be needed before change can be sought. In-keeping with earlier research, Inner Temple's nature as a mid-sized association seems to have assisted it in having sufficient support to mobilise, without being so big as to be unwieldy and unable to reach consensus. This thesis suggests that the role of smaller decision-making bodies is especially helpful in this. Compositionally Inner Temple is, relative to the profession, fairly heterogeneous. This research suggests that there is a mid-point between complete heterogeneity and complete homogeneity at which mobilisation on divisive matters is relatively straightforward, and the resulting decisions are regarded as representing the wishes of the general membership. It is suggested this occurs because different opinions and positions can be considered and incorporated through committee discussions, without their being so numerous and diverse that any action is stymied by disagreement.

4.3 Field position of embedded professional associations

Inner Temple occupies a unique position; whilst many of its members feel strongly about the need for an end to social closure within the profession, Inner Temple's embedded position allows it to take meaningful action to promote a change because it occupies an elevated position within the profession, and has both the capacity and intra-profession respect of an elite actor. Therefore the combination of Inner Temple's field position and the

support of its members for initiatives that aim to disrupt social closure give it capacity to cause change not seen in the Bar Council.

Inner Temple is sufficiently central to access necessary resources to gain respect (Battilana, 2006: 656). Through its members, it also seems to have the strength of feeling that Sommerlad suggests is more commonly found outside of the profession in those seeking entry (Sommerlad, 2007: 216-7). This strength of feeling comes from individuals (see chapter 5), and it is argued that the ability of Inner Temple to disrupt previous patterns of cultural reproduction both internally and in the Bar more widely is improved by its employment of staff who are familiar with other institutional logics (see chapter 5). These staff have come from the human resources field into the legal field, and brought with them institutional logics from their previous settings.

Meanwhile, many chambers are comprised solely of barristers and clerks; there is little scope within a chambers' setting for someone to come in from another type of organisation with different institutional logics and use those to innovate within chambers. Furthermore, often barristers and a skeleton support staff are so busy that they struggle to manage basic sifting of mini-pupillage applications (as Flood and Whyte (2009) recognise, the chambers' structure of clerks and minimal administrative staff can markedly affect how certain tasks, such as marketing Direct Access availability, are undertaken). As stated by one interviewee, this encourages the use of 'shorthand' measures of success that privilege students who have followed a traditional entry route, a significant challenge to non-traditional aspirant entrants. Already identified in existing literature on the solicitors' profession (e.g. Sommerlad, 2007: 209; Francis and MacDonald, 2009: 222) interviewees confirmed that, in their experience, they are also used at the Bar:

I think that chambers still use like shorthand measures for how good a student is going to be such as which university they went to, what degree awards they got, they don't look at the kind on contextual data, say work experience, other competencies that have been developed in, they don't attach enough importance to it. (Interviewee 6, non-Inner, M, salaried, other prof. assoc.)

The Inner Temple's strong links with individual barristers, chambers, and the Bar Council and Bar Standards Board, mean it straddles professional 'jurisdictions', allowing it to act against prevailing institutional logics (as in Greenwood and Suddaby's research (2006: 40), albeit for different reasons). It is argued that Inner Temple appeared to be successfully bridging boundaries within the profession (similar to that witnessed in some members of the Society of Trustee and Estates Practitioners; Francis, 2011: 117), and this was partly attributed by interviewees to any chambers having members from all four Inns, making all chambers potentially susceptible to influence from any of the four Inns:

You see the chambers and the Pegasus Scheme, well chambers don't have an allegiance to an Inn. They pay their rent to an Inn, [but] there is no chambers allegiance. (Interviewee 7, Inner, M, other prof. assoc.)

Such a strong field position; being embedded yet neutral, combined with elite status, is not occupied by any other professional association of the Bar (see 4.2.2.1 above). This dichotomy of being both embedded, and yet having an element of removal from chambers, seems to have facilitated Inner Temple's channelling of practitioners' desires to assist in access schemes towards collective effort in launching PASS. As explored above, its role as a non-partisan organisation has allowed it to introduce a programme aimed purely at improving diversity at the Bar. It has also assisted it to secure participation of autonomous chambers through utilising various links both between the Inn and chambers, and then

between individuals within different chambers. Furthermore, its ability to liaise with the Bar Council, and to marshal willingness and experience through specialist salaried staff (see chapter 5), has maximised the effect of the programme by preventing duplication and introducing those who have experience of the specific issues being addressed, overcoming to some extent the difficulties caused by the fragmented structure of the profession:

The Bar is very fragmented, we have the Bar Council which is notionally the top layer but actually is quite poorly resourced. You then have the four Inns which actually have the money, because they have scholarships and endowments but vary enormously in terms of their commitment to social mobility and their willingness to change due to historical reasons, and then you also have as a separate stream, if you like, the specialist bar associations like the Chancery Bar Association, the Criminal Bar Association, they don't have very much by of administrative or cash resources at all but they quite often have really good contacts with their members and so really good ability to communicate with [members] and they will come forward. Then you have chambers which even the largest chambers are quite small organisations compared with the big city firms so marshalling that through all these different organisations is one of the real challenges for the Bar. (Interviewee 2, non-Inner, F, other prof. assocs.)

Running programmes to combat social closure requires knowledge of access and education. Furthermore, it requires human resources in terms of time spent scrutinising each application to ensure that its sender is eligible for the programme, and then considering aptitude as displayed in potentially non-traditional ways. To participate in PASS, however, all that was required from chambers is open mindedness and a willingness to be involved; they were not required to take on any extra administrative burdens, as these were borne by administrative staff at Inner Temple who had specialist knowledge of access issues (see chapter 6).

4.3.1 Barrister loyalty to Inns of Court

Most of the interviews conducted for this thesis referred to some form of an emotional attachment felt by barristers towards their Inn of Court. This often manifested itself as identifying themselves with their Inn, and loyalty towards it. Many described willingness to participate in events organised by the Inn, and to respond positively to requests for assistance in matters such as advertising PASS. The Inn was portrayed by one interviewee as an organisation being shaped by its members to be an instrument for the fulfilment of a purpose (as described by Carr-Saunders and Wilson, 1933); in this case, improving access. In discussing this, he used the phrase *'But I think we see ourselves as an Inn'*. Such self-identification with one's Inn was a recurrent theme in the interviews, and, even at a much earlier stage, with PASS participants. This self-identification seemed to found a strong sense of loyalty by practitioners to their Inns, which in turn motivated their involvement in, and support of, programmes that the Inn established. One interviewee admitted 'off the record' that they preferred Inner Temple to their own Inn, partly because Inner Temple was making a greater effort on social mobility, with which they personally identified, and they were consequently supporting PASS within their chambers.

This seemingly emotional connection suggests that the affective domain of professionalism (Krathwohl, Bloom and Masia, 1964) may be playing a role in how barristers regard the Inns of Court. The role of this element, developed from Bloom's taxonomy of the cognitive domain (1956) may have been previously underestimated when considering how legal professional associations mobilise with the practical support of their members (as noted also by Francis (2011: 135) regarding the attachment of STEP professionals to their originating professions). In the next chapter significant attention is paid to the role of the individual; however, the affective domain addresses that meeting point of the self with the organisation, and how that emotional connection is built and utilised.

A member of salaried staff suggested that some loyalty was generated through the scholarship scheme *'I mean another factor may be that they feel they want to give back to their Inn because they have been given a scholarship for example'* whilst another interviewee recounted visiting the Inn as an aspirant entrant himself and finding the staff to be kind and helpful. Salaried staff also recognised that the relationship between practitioners and their Inn of Court was stronger than might be expected, and, it is argued, stronger than it is between members and most other professional associations:

.. members of the profession do feel a strong tie in loyalty to the Inns and their Inn in particular, they trust the Inns, perhaps it was because they got a scholarship from the Inn, or training or they remember certain events or because they walk around the Inn most of the day when they are based in London. [...] You don't see that reflected in the same way in maybe other institutions at the Bar where they don't have the same loyalty or connection or history. (Interviewee 11, Inner, M, salaried)

As detailed above, almost all students in the focus group and questionnaire responses, stated that if they did pursue a career at the Bar, they would only consider joining Inner Temple, with many expressly stating that the Inn's commitment to social mobility influenced this decision heavily (albeit that some may not have felt comfortable saying otherwise in research being conducted on behalf of Inner Temple). This suggests that it is possible to engage with students on an affective level early on in their potential careers, and that doing so may foster a loyalty which benefits the Inn by enabling it to continue having members who support Inner Temple's schemes. For this participant, regardless of the motivation for the establishment of a scheme such as PASS, the fact that it had been established at all was enough to make her feel an ideological connection; that the Inn valued the same things that she did:

...the fact that they are putting the resources and the time into doing something like this shows that they value it more...diversity more than the other Inns do, and for me that's really important so in terms of membership in the future I definitely wouldn't want to be a member of any other Inn. (PASS FG1 Participant 1, F)

Both existing loyalty, and the ability to engage with aspirant entrants in such a way as to create loyalty in the next generation, gave Inner Temple added human 'resources' above and beyond those accessible by the other professional associations; people it could call on to support its programmes practically through giving their time, knowledge and connections. As discussed above, whilst Specialist Bar Associations benefitted from some of the loyalty shown to Inns of Court, and therefore were another professional association that could potentially undertake such a programme, they were stymied by a lack of funding.

This thesis suggests that the affective domain plays an important role at the Bar in the relationship between practitioners and professional associations, particularly the Inns of Court, and specifically Inner Temple. It is utilised by practitioners to give them a sense of community and belonging (see 4.1.2.1 above) and this is fostered by the Inns of Court. The Inns then capitalise upon this emotional connection by using it to engage with practitioners. Such engagement can take a variety of forms, but one is providing human resources and other practical support for endeavours by the professional association such as access programmes.

It is argued that the role of the affective domain cannot be fully understood due to a lack of existing research. On the basis of this research, however, this is suggested as an area in which further research may be fruitful, as it appears that it may have significant influence on the ability of a professional association to marshal support for initiatives that represent a change from long-established practices (see chapter 8).

4.3.1.1 How does Inner Temple capitalise on this loyalty?

It seemed that Inner Temple was able to capitalise on the loyalty of such members who were spread throughout chambers and varying physical locations because the Inn had fostered a strong network. This meant that members who were fundamental in establishing and running programmes were often in touch with other Inn members in other chambers, and supported formal requests for participation with informal friendly persuasion:

...the way it works is the senior people within Inner ring their contacts in the Inn, it doesn't matter where they physically are, they could be in Gray's, Lincoln's or wherever, and there is the arm twisting over lunch to say 'well come on, this is a jolly good idea, you know, we want your chambers signed up for it.' That's how it works.

(Interviewee 7, Inner, M, other prof. assoc.)

In this the Inn was assisted by a relevantly experienced member of salaried staff who was able to harness and direct this willingness to assist into the form of programmes designed to address salient issues (see chapter 6). Most importantly, however, Inner Temple commanded a respect that the Bar Council, technically a higher-level professional association, had been unable to foster, with one interviewee saying that the Bar Council should cease to be involved in matters such as promoting access, *'I think the Bar Council should go and the Inns should carry on [running access programmes], the Inns should do it.'* One of the reasons given by this interviewee was that the Inns of Court had greater resources through loyalty from members, and were therefore better placed to run such programmes.

Salaried staff showed keen awareness of the need for involvement of members in access programmes. It was iterated many times that human resources in the form of practising members were as necessary as financial capital, as only those practising could give non-

traditional entrants a genuine account of the Bar as a profession; this was expertise that could not be bought in from elsewhere:

All the activities that we do we very much rely on them for involvement. (Interviewee 8, Inner, F, salaried)

Disagreement arose, however, about the degree to which the source of a programme affected its likelihood of success. One interviewee stated that its Inn foundation was crucial to PASS's success, although he was not able to pinpoint why:

For whatever reason they very much trust the four and I think the Inns having ownership over PASS in particular did very much help in that case [...]. (Interviewee 11, Inner, M, salaried)

In this quotation the conflation of all of the Inns is notable; another interviewee referred to Inner Temple's access activities as being done 'on behalf of all the Inns', as an acceptance of an implicitly 'delegated responsibility'. It was not universally agreed, however, that Inner Temple was acting ahead of the other professional associations. A dissenting interviewee suggested that, in fact, it was the Bar Council who had taken the lead on access schemes, and the Pegasus Access Scheme represented the Inns seeking to keep up, not breaking new ground. This interviewee also dismissed the importance of ownership of the scheme that had been focussed on by many other interviewees:

...the scheme either sells itself or it doesn't. I think most sets of chambers wouldn't give a stuff whether it was from the Bar Council or the Inns. I mean they would just want a good scheme. I think sometimes because the Inns have been so slow generally, on some issues like this it gives it a novelty that the Bar Council is recognised to have

done quite a lot of work in this area. Whereas some of the Inns hadn't.' (Interviewee 4, Inner, M, Bencher)

This section has argued that, of the professional associations of the Bar, an Inn of Court is the best-placed to initiate an innovative intervention. It has addressed the specific attributes of Inner Temple, and its relationship to its members, which have facilitated it, as an embedded professional association, to embark on an innovative project. A combination of size, heterogeneity and member loyalty have been key to the launching of PASS. It is argued, however, that the role of loyalty has been overlooked by existing research into professional associations. Data collected for this thesis suggests that cultivating an emotional link with members could be very valuable to a professional association that wants to take an active role in shaping the direction of the profession.

A key question for this research, however, is why a professional association, and especially one within a very conservative and traditional profession, is responding to societal pressures to ameliorate manifestations of its central value system that lead to social closure. From social closure as crucial to the professional project, it is argued that there has been a significant shift that has led, instead, to an apparent focus on social mobility. It is argued that this reflects a wider societal shift from valuing closure to valuing mobility (see chapter 7 on the role of external factors). Besides societal pressure, however, it is argued that there are additional and more complex motivations for the action taken by Inner Temple.

In addition to its size and heterogeneity, Inner Temple has benefitted from a favourable field position. Amongst other professional associations of the Bar, it was generally well-regarded by those from which members were interviewed. It also gained human resources through voluntary assistance given by members. This assistance was portrayed as the product of

loyalty to the Inn, and it was clear from interviews that many practitioners felt a strong affective attachment to Inner Temple, and to participating in activities which it ran.

4.4 Motivations for increasing diversity

In a profession with a long history, attachment to a central value system is likely to have become stronger with time, making it likely that greater drivers will be needed for change. It is argued in this thesis that key individuals were present at every stage of the process of developing and introducing PASS, and they brought on board others to make the group more effective through the influence of numbers.

The motivations driving participation differed between groups, however, and even individual motivations were inconsistent within those groups. Some focussed on perceived gains for the profession, others for the Inn, others for society at large or lay clients more specifically, and others for the non-traditional aspirant entrants themselves. This desire for social mobility, it is argued, is an example of tension between different elements of traditional professionalism; professionalism has been portrayed as valuing altruism (Carr-Saunders and Wilson, 1933), which is one driver for increasing social mobility, and yet it has also pursued social closure for self-interested reasons (Larson, 1977: 74). Can this seemingly direct conflict be reconciled?

Practitioners and salaried staff who were interviewed all expressed a belief that the Bar as a profession would be better for selecting its candidates from the widest possible pool, a possibility prevented by social closure. A salaried staff member cited this as being the driving force behind the commitment of many individuals to the effort to increase social mobility, and thus the diversity of the Bar, and, perhaps even more importantly, as an ideological commitment in which participating practitioners genuinely believed:

I just think they really believe in the aims...in the overall aim of trying to have a profession which is diverse and which reflects the society it's representing. So in the overall theme I think that's why they are still enthusiastic and committed to the project.'[...] I think a lot of members of the profession do feel that way and perhaps we are giving them a vehicle for being able to contribute to that. (Interviewee 8, Inner, F, salaried)

Practitioners were particularly keen to emphasise that they did not see the role of access programmes as lowering the standard of entry, but of opening up the possibility of a career at the Bar to academically-able young people who, due to their background, may not have previously considered it, and also of enlightening chambers as to the variety of backgrounds very able aspirant entrants may have:

I think it's, particularly in terms of PASS, I think because of the criteria they apply, it's exposure I suppose to people from different backgrounds. It also ensures that as well as the people that we might see through conventional routes that members of chambers are being exposed to people from a completely different route and seen how able they are and I think that helps to keep...when you are recruiting people... to keep in mind; 'Actually, I remember so and so and actually they didn't do all these things but they are a really good candidate' and I think also, you know, a lot of us in terms of our own different routes are really keen to promote social mobility in the profession and I think it's important for us to support and make a contribution generally.' (Interviewee 1, non-Inner, M, chambers' rep.)

Many of the students also interpreted the role of access programmes as aimed at replacing an emphasis on aristocracy with an emphasis on meritocracy:

I think that one of the most important things that a programme like Pathways does is just discard wholly the idea of minorities. And it's all about talent, because, realistically, talent is what you have that determines where you will end up, and, as the Judges and barristers and people you mentioned, what they're looking for is talent rather than where you're from or what your status is; bit by bit that idea is being banished and it's not...it's all about ability. (Pathways FG Participant 4, F)

To establish the participants' perceptions of the motivations behind this intervention, the PASS students were invited to speculate on why Inner Temple had decided to establish such a programme:

...I can think of a lot of good reasons why they might be motivated to though; and you know, they involve perhaps widening the Bar to people who have encountered disadvantage; it might be a realisation that you get a lot of similar students; similar types of Oxbridge, public school people who end up at the Bar; that isn't representative of people who have genuine talent, so there may be this sort of self-searching going on. (PASS FG2 Participant 2, M)

I think the very fact that the Inner Temple has created the scheme, and I think forty or so chambers have signed up to it [...] just indicates the fact that this is something that they want to happen; they understand that there are people who may not fit the archetypal sort of barrister set up...mould; they know that there are people out there who are just as capable, just not necessarily fitting in the mould, and they want to expose themselves to those people. (PASS FG2 Participant 1, M)

These references to talent seemed to be used to refer to an inherent quality within a person – something that they had or did not have. I suggest that this is a reference to specific skills and traits that vary across individuals by nature. They have an innate-ness and cannot be

taught 'from scratch'; some people are naturally good at them or possess them, and others do not. Examples include problem-solving, analysis and emotional intelligence. Participants (both students and interviewees) described such 'talent' or 'ability' as something which could be not be taught, nor could it be removed by any circumstances. It could, however, be constrained or obscured by them. All agreed that a combination of such abilities were necessary for practice at the Bar. Talent was innate, and Inner Temple was perceived as trying to remove the overlay of disadvantage that might hide such talent from the sight of recruiters.

Most students thus seemed to agree that the Inn had had altruistic motives; it wanted to provide opportunities for non-traditional aspirant entrants to demonstrate their aptitude for the profession. Some articulated the possibility that the programmes were run for institutional gain, but student participants did not seem to think that this had been a significant aim:

...it may be purely to appear quite connected with the modern world, to satisfy the non-legal sector, to satisfy the politicians, this kind of thing, and discharge their duty; I mean that's a slightly more cynical take but, y'know, possible. But I think the fact that so many barristers chambers have sort of got involved, is, I think, indicative of a concern that resounds in the context more generally, whether that concern is of substance or just to try and appear well-connected and trying to help people who have got more obstacles doesn't really matter I think; the fact that they are doing it, and that, it seems, they are going to continue to do it I think is the greatest support and they've definitely taken the initiative on this, I think, and I think that looks very good for the Inner Temple: they are THE Inn that has pioneered this scheme. (PASS FG2 Participant 2, M)

...the fact that they are putting the resources and the time into doing something like this shows that they value...diversity more than the other Inns do... (PASS FG1

Participant 1, F)

It must be noted, however, that securing the best entrants for the profession, as a number of interviewees characterised PASS's aim, is not just aimed at fairness towards aspirant entrants; the profession will benefit from recruiting the most able entrants. Existing literature on motivations behind programmes aimed to assist a particular section of society (e.g. Fisher, 1997), identifies a number of potential underlying theories. However, it is notable that there is not one agreed motivation, aim or objective behind PASS. Although all groups' answers incorporated similar key themes, there was not a consensus, even amongst members of the same group (e.g. students or participating chambers). This causes two challenges; firstly, it makes it difficult to identify what type of motivation is most likely to result in action by a professional association. Secondly, a lack of clear aims and objectives is a potential challenge to the effectiveness and sustainability of the programme (e.g. Kotter (1995), Kuipers et al. (2013)).

4.4.1 Sources of motivation

To develop a nuanced understanding of why professional associations may take action to alter the central value system and increase socio-economic diversity within a profession, it is necessary to examine both the publicly-claimed motivations for actions, and those that may not be declared. For this purpose, interviews with stakeholders were crucial; they were involved with a professional association's intervention, and provided a number of different interpretations of motivation for the existence of the case study programmes. Student participants also offered another point of view: their perceptions of what motivated a professional association to undertake such activities. The predominant themes that arose

from the data collection were the symbolism of access programmes, and the extent to which such programmes could be characterised as altruistic.

4.4.1.1 Depiction and perception of access programmes

The PASS website describes the programme as a '*work experience programme that aims to support those from diverse backgrounds to consider a career at the Bar.*' And as '*part of the Inns of Court's work to encourage and support diversity and social mobility in the profession.*'³² What became clear from interviews, however, was that the true motivations behind the scheme were not so straightforward. Whilst this official and publicly-declared statement on the programme's dedicated website (which is wholly separate to Inner Temple's main website) emphasises as the motivations encouragement and support for non-traditional aspirant entrants, the perceptions of both interviewees and students varied greatly.

Despite potentially limited effects on demographic change (see chapter 6), there are collateral benefits that a professional association may gain by running access programmes, such as awareness and improved perceptions. In the case study, as well as giving work experience to students who may otherwise struggle to access it, there was a deeper significance and symbolism attributed by some participants to the willingness of Inner Temple and chambers to participate in an access programme. For the students, it was felt notable that a professional organisation within an elite profession was investing resources in assisting them; it made the profession seem approachable, modern, and engaged with social mobility issues. The following quotation reflects sentiments expressed in each of the three focus groups and many questionnaire responses:

I think it makes them seem a lot more approachable and attainable to people who are from less privileged backgrounds [...] you think of Law and you just think, it's

³² www.pegasus.me [accessed 26th May 2015]

impossible to get into; you need to be the son of a Lord and have twelve million in your bank and stuff like that; you know, it's just...it's silly but it has somewhat a degree of truth to it, and I think today was quite good at...it shows that they are trying to build bridges to avoid that. (Pathways FG Participant 2, F)

Therefore, not only can such programmes demystify a profession to those who participate directly, they also serve a more general purpose by demonstrating that the profession is interested in being more accessible, and taking practical steps to make this a reality. Narratives such as this are similarly seen under-pinning corporate social responsibility projects, with individual morality working both with and against collective responsibility where an organisation strives to be perceived as a 'good citizen' (Rajak, 2011: 64).

It is argued that this is likely to lead to good publicity for the organisation involved, as it will be perceived as being socially aware, something with which organisations are increasingly concerned (e.g. Braithwaite, 2010: 153). Evidence of such publicity in legal magazines such as *The Lawyer*,³³ and *Legal Week*³⁴ suggests that such initiatives are regarded as promoting the Bar to the wider public as believing in fairness of access. By being open about its role and work, it is perceived as taking positive action to further this aim. This is a practical step towards a more general dissemination of information, and a move away from the Bar as a secretive bastion of archaic practices characterised by 'demographic rigidity' (Abbott, 1988: 130).

The older students recognised that there was something to be gained by the profession in offering access programmes, and suggested that with university access now wider, the spotlight had moved from education on to occupation and was thus now resting on

³³ <http://www.thelawyer.com/chambers-follow-prime-example/1011745.article> [accessed 20th November 2014]

³⁴ <http://www.legalweek.com/legal-week/analysis/2166242/pegasus-slaying-bars-beast-diversity> [accessed 20th November 2014]

professions. This spotlight had, however, exposed the Bar as lagging behind other professions:

I think there's a lot of scrutiny on the Inns to make sure they're doing as much as they can ...balance things out and to make sure things are on as even a keel as they possibly can be and give those that have got less of a chance so to speak that little bit of an extra helping hand, because the Bar has got this awful reputation for being an old boys' club that hasn't evolved in the last 500 years [...] and I think it's about what Inn can do the most to make sure it's really getting the most people to the Bar across all ranges, not just crème de la crème. (PASS FG 2, F, Cohort 1)

This quotation exposes the relationship (and potential tension) between two goals. Firstly, a genuine desire to develop a programme that will make a meaningful alteration to exclusionary manifestations of the central value system, and secondly, the need, driven by external pressures, to be seen to be doing something to improve the Bar's reputation. Whilst these goals need not conflict, some students perceived a tension here, constructing the first goal as pursued for the benefit of non-traditional aspirant entrants, and the second as pursued for the profession's reputational gain. Some student participants portrayed these as conflicting because the second goal could be achieved by vacuous programmes and public-facing displays which did not actually assist access.

Despite this tension being recognised by the older students in both focus groups and questionnaires, most seemed satisfied that, predominantly, access interventions were based on an ideological commitment to diversity. In questionnaire responses, a number of participants alluded to the advantages that a professional association may secure, especially in improved public perception, from such activities. For example, a response to the question 'why do you think chambers participate in PASS' in the post-PASS questionnaire stated 'to

try and make their firms appear diverse and modern'. This respondent made no mention at all of whether participating in PASS represented a genuine desire, or simply a desire for the appearance of, equality. Such questioning has similarly been found to accompany some corporate social responsibility projects (Rajak, 2011: 12), but Rajak cautions against regarding such programmes as merely a 'smokescreen', as to do so fails to acknowledge the potential created for discourse and change within a certain set of values. As this thesis argues in chapter 6 the potential in PASS for creating interaction between the profession and non-traditional aspirant entrants may be much more significant than an alteration in demographics per se.

Some stakeholders, both lawyers and salaried staff, conceded that potential gains for the profession featured in decisions about such interventions. This supports the suggestion that, unsurprisingly, professional associations will also consider the potential for reputational gain as a result of these programmes:

I suppose another measure of success for us would be for...I suppose could be quite selfish, but to see our profile increase as an institution that is aware of the situation for people trying to come to the Bar, and be seen as trying to improve that. (Interviewee 8, F, Inner, salaried)

Five interviewees stated that they desired not just improved public perception on a superficial basis, but a greater understanding by the public of what the Inns of Court actually did, especially in terms of trying to promote access, and recognition for that:

...for the Inns of Court to be seen as actors of diversity. Which...who would have thought it fourteen century institutions would be an arch actor of diversity? I certainly think more generally the public is seeing, at least starting to understand what the Inns do through some of this work. (Interviewee 11, Inner, M, salaried)

It is argued that the underlying drivers behind creating the intervention are genuinely mixed; a contention supported by the lack of consistency in the measures of success applied. Whilst there may be consensus on establishing a programme, this consensus may nonetheless rest on different hopes and intentions for different individuals or groups within the organisation (Halliday, 1987: 139) creating uncertainty about what uniform aims, objectives, and measures of success should be applied. However, this thesis suggests that unity within the professional association may not be crucial to effecting transformative change, as the structure of the Bar means that various chambers may nevertheless differently interpret a programme administered by a professional association (unlike in other structures where a clear, agreed motivation and coherent implementation structures are needed; Suddaby and Hinings (2010)). The effects of such difference in structure are similarly illustrated by the differences seen in Braithwaite's research between those organisations accountable to shareholders, and those not (2010: 152) (see further chapter 7).

4.4.1.2 Altruism

A profession may be intent on 'reaching out' to an under-represented group. Carr-Saunders and Wilson (1933) uncritically ascribed altruism as a defining attribute of the professions. However, research has recognised tensions between characterisations of professional associations as alternately monopolistic (Larson argues that maintaining monopoly is key to the professional project; 1977: 79) or altruistic (Paterson, 1996), with Halliday preferring a sociological construction of the professions that highlights the juxtapositions between the profession as a narcissistic monopolist or benign altruist (1987: 3). Whilst NGOs are idealised as apolitical; motivated by altruism (Fisher, 1997: 442, 444), it could be argued that professional associations are more likely to be perceived as acting for reasons rooted in self-interest. Although potentially apolitical in the sense of not supporting political parties, they will not be apolitical within their profession, and any intervention is unlikely to be

characterised as neutral or wholly altruistic. It might be expected that a professional association would act for the good of others only when to do so will also confer a benefit on the profession. It is argued, however, that tensions between monopolistic and altruistic drivers cannot easily be resolved; indeed, it may exist because it accurately represents a recurring struggle within professions.

Altruism and self-interest have been recognised as inextricably intertwined, to the point that their separation is impossible (Mansbridge, 1990: 134), and it has been acknowledged that social and institutional arrangements making unselfish behaviour less costly make altruistic behaviour more likely (Mansbridge, 1990: 137). In creating PASS, a possible interpretation is that Inner Temple has made behaviour which is perceived as contributing towards increasing diversity (the offering of work experience to non-traditional aspirant entrants) less costly to chambers. By taking on the workload of constructing a more equitable application form, sifting the applications, and interviewing where necessary, Inner Temple is taking the time-consuming and effortful elements of the process away from chambers. Many interviewees highlighted this as a significant factor for many chambers in their decision to participate in PASS. The construction of PASS, however, leads to a conclusion that it cannot instigate long term change. Indeed, I argue in chapter 6 that for alteration that is sustainable without PASS concerning the provision of mini-pupillage, chambers will need to reconceive their selection processes for mini-pupils to consider disadvantage.

The inherent subjectivity of such interventions raises further debate. Friedman (1962: 2) states that ‘what one man regards as good, another may regard as harm’. It is not suggested that, in this context, an access scheme per se could be regarded as harm. However, the way in which such a programme is delivered could, potentially, cause a non-traditional aspirant entrant to have their ‘otherness’ reinforced. This could be harmful both to that individual and to relations between the profession and non-traditional aspirant entrants, if such

occurrences are related more widely. One PASS student mounted an ardent defence of his placement chambers having mini-pupils from its direct application process and himself in chambers simultaneously. His comment reveals discomfort (see further chapter 6) illustrating that some may perceive altruism as being used within an existing power imbalance to further disempower the students:

That obviously isn't the fault of the chambers, though, this is the thing; they just took mini pupils as they would normally, and they were kind enough to take me as well.

(PASS FG 2, M, Cohort 1)

The use of the word 'kind' in this context carries connotations of the benevolent bestowing of a gift; something which the recipient does not feel worthy to be given. It also suggests that, contrary to the comments of some other participants in this research, this student did not feel that PASS offered mutual benefit to chambers and students through the mutual exposure detailed above. Arguably, this is more likely to create discomfort, and potentially impact on a student's perception of the profession as a meritocracy, although such language was not used by other participants.

Such problems with 'gifting' are well-identified by sociologists. In the corporate social responsibility sphere, Rajak (2011: 177-8) highlights the difficulties that may occur when a corporate body 'gifts' assistance or resources to a community. The reciprocity inherent in gift-giving (Mauss, 1967: 63) causes difficulties for non-traditional aspirant entrants to the Bar and South African platinum miners alike by undercutting apparent empowerment with an implicit dependency. Such dependency arises from the inability of the gift's recipient to reciprocate, further reinforcing their relative powerlessness (Kaufman, 2013: 58). Whilst this thesis raises the possibility that some reciprocity may occur through loyalty demonstrated to the Inn (see 4.3.1), there remains a power imbalance between access programme provider

and access programme participant that the nature of PASS may serve to reinforce, hampering its ability to make meaningful changes.

Whatever a professional association's intentions in instigating an access programme, it may do so in such a way that it nonetheless maintains the status quo (see chapter 6). This may happen intentionally, or it may not be realised that a programme is only tackling issues at a superficial level, instead of tackling underlying assumptions. Indeed, such an implicit maintenance may be the basis upon which the profession accepts the programme at all (Braithwaite, 2010: 161). However, as the Bar is formed of autonomous chambers, each their own 'arena' (Nelson and Trubek, 1992), there is likely to be variation in the ways in which different chambers respond to, and present, PASS participants. Therefore there is likely to be variation in how truly transformative PASS is across different chambers, depending on the extent to which each genuinely alters its approach to recruitment and non-traditional applicants.

Considering the strong attachment to the central value system felt by traditional professional associations, what has prompted Inner Temple to try to alter an indirect effect of these values is an interesting question. There is not one single motivation that can be identified; instead there are many inter-linking and nuanced reasons why a professional association may take such action. Within the professional association, there may also be different perceptions on why the action was taken, as seen in Inner Temple. Whilst a broad consensus on the main themes prompting action emerged, examination of the details revealed a variety of other contributory factors perceived by both stakeholders and participating students.

4.5 Conclusion

This chapter has argued that the exclusionary manifestations of the central value system at the Bar are being challenged by Inner Temple. This is possible because attributes of Inner

Temple suggest that efficacy is influenced by more nuanced factors than simply size and homogeneity. The size and composition of the decision-making body, as well as the field position of the organisation taking action, may mediate disadvantages in size or composition of the organisation as a whole.

Substantive attributes alone are not decisive, however. This research highlighted the role of the affective domain, with Inner Temple able to capitalise on feelings of loyalty. The co-operation of practitioners attributed to this loyalty were key to its ability to establish an access programme challenging the central value system, as it provided both human resources, and ideological support.

Examining the motivations, both publicly-declared and privately perceived by stakeholders and participants, gives a rich insight into difficulties surrounding gift practices, altruism and self-interest when professional associations take action surrounding access issues. The interplay between these motivations, and the experiences of participants are explored in chapter 6. Particularly notable is the potential reinforcement of power imbalances between the two parties when participants feel that they are rendered more powerless by an organisation 'reaching out' to them in this way.

CHAPTER 5 – THE IMPORTANCE OF INDIVIDUALS WITHIN PROFESSIONAL ASSOCIATIONS

Eventually I came to be doing pupillage with Robin Potts QC; he hails from Newcastle-under-Lyme. Robin was an important character in my life [...] because Robin saw, or thought he saw, that there was something in what I could achieve. I didn't see it myself but he thought there was.

These are words spoken by Michael Todd QC, former Chair of the Bar Council, in his speech to the graduation ceremony at Keele University in 2015, where he was awarded an honorary degree. It clearly conveys the lasting impact on him, both professionally and personally, of individuals whom he encountered as he navigated the profession.

When there is an attempt to alter the central value system by a professional association through a programme such as PASS there will need to be specific individuals who initiate, administer and oversee the running of a programme, as a professional association is otherwise a nebulous group potentially lacking in cohesion. In this chapter I argue that individual stories, such as that recounted above by Michael Todd QC, cannot be overlooked, despite their relatively obscured status in much research into professional associations. To ignore the interplay between the previous experiences of individuals and their present actions leaves untold an important part of the story of any change initiated or participated in by human agents.

Separate from the role of individual stories is the role of individual agency; a person's actions and their ability to perform them. Although individuals' stories and agency are not the same, it is argued in this thesis that the two may often be connected, with stories motivating an

individual to demonstrate agency. Thus neglect of the importance of individuals had also led to the overlooking of how an individual within a large and powerful organisation may be able to innovate, and to act as an agent despite the constraints that would be expected to be imposed by the organisation (Battilana and D'Aunno, 2009: 31). This is referred to as the 'paradox of embedded agency' (Battilana, 2006).

Whilst occupational attributes of these individuals will be relevant to the introduction and maintenance of any change, so will their personal stories. This chapter draws on the literature on institutional theory, and particularly institutional logics, to support the argument advanced at the end of the previous chapter that individuals within the professional association play a key role in that process. It is argued that where a professional association is seeking to cause change, the professional and personal backgrounds of individuals within it increase their ability to demonstrate agency and provide leadership. Leadership here is identified as distinct from management (Kotter, 2013), incorporating an ability to inspire linked to the affective domain (see 4.3.1), as opposed to merely hierarchical superiority. At Inner Temple, leadership arose from a combination of salaried staff and Benchers, who between them had access expertise, different institutional logics and influence within the profession through their elite status.

Regarding PASS there were broadly three sets of individual stories; those of non-traditional aspirant entrants, practitioners, and salaried staff. Their stories influenced their perceptions of access at the Bar, and what could and should be done to improve it. For salaried staff, their stories were of professional involvement with education and access which had led them to want to work in a profession that they felt needed that assistance more than some others. They had previously been employed outside of the legal profession and consequently

brought into Inner Temple (and other professional associations) institutional logics from other areas. Others within the profession often perceived them as inspirational or visionary.

Importing this experience from human resources backgrounds, or professional experience of the ‘target matter’ that the professional association in question is hoping to pursue (in the case study, education and access matters), gave these individuals a basis from which to innovate. It also assisted them in presenting convincing arguments for such innovations that had the potential to alter practices resulting from the central value system which contributed to closure, as detailed in chapter 4. They did this despite being within the professional association; they demonstrated ‘embedded agency’. This chapter argues that such agency, bolstered by the hierarchical power and access to resources of the Benchers involved was vital to bringing about change at Inner Temple.

Amongst practitioner interviewees, many recalled at least part of their own journey to the profession in the course of interviews. Five of the seven practitioner interviewees identified themselves as coming from non-traditional backgrounds, and a further one recalled feeling that he ‘didn’t fit in’, despite his traditional attributes. For those that were most active in access matters, it seemed that a combination of loyalty (see 4.3.1) and their own stories had influenced their involvement in access issues, and PASS in particular (see below). For others it was less the effect of their own experiences, and more an awareness of the ways in which the prevailing social norms within the profession could cause challenges to entry for non-traditional aspirant entrants. I argue that these stories have influenced both which practitioners become involved with access programmes; the evolution of such programmes, and their personal responses to non-traditional aspirant entrants.

For the students, their personal stories were not yet inextricably linked to the Bar. However, the effects of their home and educational experiences on their perception of the Bar and their participation in PASS are explored in chapter 6, and analysed as one source of constraint on the efficacy of professional association action in chapter 7. This chapter concludes by arguing that the importance of individual stories is illustrated when the possibility of a transfer of the potential innovation seen at Inner Temple is examined. It becomes clear that without individuals in an organisation who will commit both ideologically and professionally to making such a change, entrenchment of practices seems likely to defeat change efforts. Consequently, it is not possible to state that a model such as PASS could simply be transferred to another organisation.

Methodologically, the current research also responds to criticisms made by Suddaby (2010: 16). He noted that research concerned with institutional theory has largely neglected the motivations and subjective experiences of actors involved in the changes that institutional theory studies have examined. This research addresses this weakness in existing research by particularly attending to the role actors' experiences play in their engagement with access initiatives in this chapter. This is in addition to the consideration of the motivations of the actors (see 4.4). The qualitative research method allows the exploration of the subjective experience of those actors. Interviews with a selection of key actors in the case study engage with the nuances of institutional action, facilitating an effort 'to understand how institutions operate through the influence and agency of individuals.' (2010: 17).

5.1 'When I came to the Bar...' – the importance of individual stories

Despite its neglect in previous research into professions, the importance of individual stories came to the fore in this research in a way I had not expected. Due to the qualitative nature of

the data collection, many of the interviews elicited stories of interviewees' own journeys to the Bar. Of the seven practitioners that were interviewed, five self-identified as being from non-traditional backgrounds. Three of those were Benchers, and all made clear the role that their own journeys to the Bar had had in influencing them to become involved in access initiatives. Not only was it their individual experiences that influenced them, it was the importance of the interactions with other people that they had experienced along the way, and especially where those interactions had been the very thing that enabled them to enter the profession:

The reason I joined Inner all those years ago was because I had no connection with the law at all and I went round all the Inns and spoke to the Education and Training Departments. I am not sure it was even called 'Education and Training' then. I remember her name: Mrs no Miss Geddes who used to run what is now the Education and Training as a one-woman band and because she was the most open and welcoming and supportive and sorted out a mini-pupillage on the telephone there and then; a mini-pupillage which then translated into a full pupillage, is a reason (a) I was able to come to the Bar and (b) the reason I chose Inner. (Interviewee 7, Inner, M, other prof. assocs.)

Their awareness of the pivotal moments provided in their careers by other individuals inspired a number of them to contribute to varying degrees to access programmes. For others, their experiences led them to form particular and strong views about what did and did not pose a factual challenge, both in the past, and nowadays. This sometimes led them to dismiss out of hand questions of perception which this thesis argues are important (see chapter 7), as they believed that they knew the reality to be otherwise:

I mean when I came to the law I was told, as a matter of history when I decided I wanted to be a barrister, well you have to be able to speak Latin, which is of course rubbish; you had to know French because of legal French which is of course rubbish, and you had to have family in the law: rubbish, we have none. (Interviewee 4, Inner, M, Benchers)

What was striking was that in their recounting some interviewees were not struck by the fact that their own routes into the profession had not been through formal processes. At the relevant times, however, the way in which they obtained their pupillages was the only way; no formal application systems existed, and all entry to the Bar was done on an informal basis (these practitioners were in their fifties and had been called in the 1980s). All that was required was convincing a practising barrister to allow you to undertake pupillage with him (albeit that the pupil had to pay their pupil-master for the privilege until this was abolished in 1975; Pirie and Rogers, 2012: 146). Indeed, one interviewee suggested that it was formal processes that had actually inhibited social mobility, as all aspirant entrants were reduced to pieces of paper, to which inflexible criteria had to be applied to make the process of paper sifting manageable for the busy junior tenant undertaking it (see 6.3):

I was able to come to the Bar because it wasn't constrained with rules and regulations and that's why social mobility has gone backwards [...] I walked into Jean Geddes' office and I said I wanted to be a barrister and obviously she took a view that it was certainly possible and picked up the phone and said, 'Look, I have got somebody here who is very keen, can they come and do a week's work experience?' and the barrister at the end, who is a very eminent family Silk now; Christopher Lockhart, he said yes. He couldn't care less where I came from. He didn't say, 'which school did you go to? Which university did you go to?'. He said, 'Of course he can. He can start in three weeks; I am doing a long planning enquiry,

come and do it', so I went and did work experience for a week and ultimately I got a pupillage in those chambers. (Interviewee 7, Inner, M, other prof. assocs.)

This interviewee believed that a strength of PASS was that it re-introduced this level of nuance – this possibility to look past the presence or absence of traditional identifiers, and consider a person on the basis of their drive and raw skills (see chapter 6):

Compare that to the Pegasus Access where, and there couldn't be a better person doing it, [X] sits down and reads all the forms and then rings people up and has an interview. It's Mrs Geddes. (Interviewee 7, Inner, M, other prof. assocs.)

Indeed, both this individual and another explicitly stated that once an individual had accessed the Bar, the profession had the potential to be the ultimate meritocracy because of its unusual structure (see 7.3), whereby solicitors would only instruct those counsel who proved to be competent:

It is an absolute meritocracy, in fact it's probably the perfect market in the sense that if you were good you get work, if you're not you don't. There is very little, I mean I was called in '87, and there was very little 'oh he's known as and she's known as' that anyone got work. It was the perfect meritocracy in that respect and much better I think than any other profession. The weakness as with all professions is who actually gets to be called to the Bar and have that opportunity. (Interviewee 4, Inner, M, Benchers)

The other theme arising from interviews apparent in this quotation is the difference in perception of practitioners of how they accessed the profession as compared to those seeking entry now. In a number of interviews there was allusion to feelings of a lack of willingness to try; a lack of resilience and a lack of drive to keep trying. These were innate attributes that were regarded as key to success at the Bar (see 4.4), and interviewees did not seem to

consider that lower self-confidence may itself be the result of socio-economic disadvantage (see 7.4):

Yes we have to give the message that if you want to come to the Bar wherever you come from you can, but there is an aspect of self-selection. There is no point in going out and recruiting people to the Bar; it's hopeless. You have got to have that something in you. (Interviewee 7, Inner, M, other prof. assoc.)

A member of salaried staff also noted this, similarly suggesting that it displayed an example of a lack of the innate 'talents' that aspirant entrants, regardless of their backgrounds, were regarded as needing and were expected to have, if they were to stand any chance of succeeding in entering the profession:

I think that there is also an issue with students as well which I am noticing more and more that the number one skill or attribute that they need I am finding strangely is diminishing, is resilience. They're knocked down once and simply can't pick themselves up again. I've had really shocking e-mails from some students who there were on PASS they didn't get an Inns scholarship and I can understand that if it is for financial reasons they will come back [and try again the next year] and various things but instead I just get vitriol; anger... (Interviewee 11, Inner, M, salaried)

The importance of individual stories in driving involvement in access programmes and the journeys of those within professional associations raises the question of whether non-traditional practitioners will drive forward change, or re-enact the closure that they themselves faced as entrants. In general, interviewees who had experienced such closure seemed keen to ensure that it was not reproduced, but were also quick to emphasise that there was no circumnavigating the need for 'talent'. Thus even though schemes such as PASS allowed circumnavigation of a part of the process that currently does not appropriately

acknowledge and unpack disadvantage (mini-pupillage selection), ‘talent’ was a non-negotiable requirement for any aspirant entrant. Those practitioners who had not faced closure themselves took more varied stances. Some, whilst sympathetic to the general cause, seemed to lack the depth of understanding of the particular challenges that faced non-traditional aspirant entrants. Others seemed to have as nuanced an understanding of the challenges as their non-traditional counterparts.

Individual stories are not the only aspect in which individuals are shown to be important in this research. Having emphasised the role of individual stories, consideration is now given to action by individuals.

5.2 Individual power within powerful organisations – embedded agency

Individual agency was portrayed by most interviewees as crucially important at Inner Temple, emphasising the ability of individual actors to perform institutional work (Lawrence and Suddaby, 2006: 51), as embedded agents (Greenwood and Suddaby, 2006). There was clear evidence that the ‘paradox of embedded agency’ (Battilana, 2006), which is based on the assumption that it is not possible for an actor to alter the institution that is conditioning their actions (Battilana and D’Aunno, 2009: 31) was engaged. Those actors involved in PASS were involved in a clear attempt to alter institutional logics.

There were two groups of actors who demonstrated embedded agency in Inner Temple; salaried staff and Benchers. Both groups would be expected to be constrained by the organisational norms of social closure, and thus would not be expected to act in ways to challenge this. In doing so, therefore, they are demonstrating embedded agency. In these respective demonstrations differences were observed. These were due, at least in part, to the

hierarchical differences between the two groups; the factors affecting the Benchers as the elite (see 4.1.1) differed from those affecting the salaried staff.

A common theme in interviews with both salaried staff and Benchers was that the nature of the Bar was such that individual action alone could act only as the spark; it could provide inspiration and the initial idea. Additional individuals were then needed to develop the idea into a meaningful plan and put it into action. For example, whilst Michael Todd QC was acknowledged by interviewees as acting as the 'spark' that had encouraged the profession to tackle its lack of socio-economic diversity, the work of others within the profession had been important in progressing that objective. In this way the fragmented structure of the Bar could prove challenging, but such difficulties were reduced when action was taken by a professional association that had access to many members, as it enabled like-minded members to be brought together, whatever their own individual stories (see 7.3).

Committees were the main structure by which salaried staff at Inner Temple accessed the greater influence of elite members (see 7.3 and 5.3 below). In this way they felt supported in promoting actions with potential to disrupt the previously entrenched characteristics of the profession by those with whom they were in close professional contact. These were often the members of the Outreach Committee, supporting arguments made later in this thesis about the role of committees in ameliorating other structural constraints (see 7.3). The Outreach Committee is a committee of around 20 people comprised of a number of practitioners and Benchers, as well as the Outreach Manager (a salaried member of Inner Temple staff). Its responsibility is to direct the Inn's outreach activities, advised by the Outreach Manager.

Within this setting, it was possible to consider ideas in a small group prior to putting them before the wider membership, and all of those interviewed seemed to regard it as a 'safe space' for suggesting possible paths of action for discussion. Convincing the professional association as a whole could be more difficult, and the profession at large, even harder still. When advanced by a Committee, however, ideas seemed to be regarded as more authoritative. A picture is therefore painted of two notions of embedded agency. Firstly, of individual embedded agency as widely recognised in the literature (Greenwood and Suddaby, 2006: 26), which often provided the 'new idea' in a controversial area, or dealt in a new way with an existing challenge facing the profession. Secondly, collective embedded agency, whereby a small group engaged in entrepreneurial behaviour to advance the new idea of an individual.

The role of the elite, as already highlighted (see 4.1.1) continues to be of interest in examining the mechanisms of innovation within a professional association. Due to their central position and consequent attachment to the central value system (Shils, 1975) the elite would be expected to conform with accepted practices of the institution; not to demonstrate institutional entrepreneurship or to seek to disrupt existing institutional logics. Not only were the personal stories important for some in their decision to make these challenges, but the elite were able to combine institutional entrepreneurship and embedded agency so as to form the preconditions for institutional change caused by individuals (Battilana, 2006: 664-5). Many other variables, such as the formal positions of individuals in the organisation's hierarchy, and the individual's informal position in networks within the organisation were also shown to be important, further supporting Battilana's findings.

In-keeping with earlier findings in this thesis regarding the importance of the social field position of the professional association itself (see 4.3), individuals' social field positions

within the organisation affected their ability to act as institutional entrepreneurs. Such is to be expected on the basis of Bourdieu's analysis of social fields (Battilana, 2006: 654). Salaried staff and Benchers have taken action in developing PASS on behalf of a group who had no field position (non-traditional aspirant entrants), and used their own position to drive forward institutional change for the under-represented group that would not have been able to secure such change itself. Although an external impetus came from the 'Entry to the Bar' Report into social mobility at the Bar (Neuberger, 2007), and the Legal Services Act 2007 (see 4.4 and 7.1.1), for change to occur it was necessary for individuals inside the professional association to commit to the cause as well. Such a change came about through an initial action by one key Benchers:

Basically when Michael Todd QC was Chairman of the Bar Council he was very keen that we should be more aware on the social mobility side and so he asked [A – Benchers of Inner Temple] to form a committee... (Interviewee 10, Inner, F, Benchers, other prof. assocs.)

This was then built upon by the recruitment of a salaried staff member with specialist knowledge of access and diversity. In analysing the success of these individuals in establishing PASS, their social field position within Inner Temple is key. Bourdieu (1984) postulated that social fields consisted of two main concepts; 'habitus' and 'doxa' (see 3.2.2.1); someone with an implicit understanding of the habitus and doxa of a field will feel more comfortable within it. It is likely that key Benchers had this advantage, and were able to use it to the benefit of the newly recruited member of salaried staff, who had been brought in from a non-legal organisation and was unfamiliar with the Inns of Court. This allowed them to establish a stronger field position for themselves within the professional association (potentially a 'segment' with part of its identity as a concern with social mobility; Bucher

and Strauss, 1961: 330), and thus increase their chance of success in promoting social mobility-advancing interventions such as PASS. In turn, PASS is aimed at promoting a change in ideology away from social closure, which could facilitate the entry to the profession of those who have no position in the field. It is argued in this thesis that the data collected provides illustrations of the significant powers of individuals in certain circumstances, and in conjunction with other groups both internal and external to their organisation. This thesis also casts doubt on claims by some scholars who argue that individual agency within large organisations is not powerful enough to have a notable effect (DiMaggio and Powell, 1983).

To perceive an institution such as a professional association as a product of human agency as opposed to a constraint upon human agency (as suggested by DiMaggio and Powell, 1991) allows far greater recognition of the ability of the association to be transformed by the will of those within it. Thus, there is often significant opportunity for entrepreneurial behaviour within a professional association, even if it is initiated by only a small group of members. For the current research, the promotion of social mobility and access on the scale seen in PASS is unique to Inner Temple amongst the Inns of Court, although Middle Temple has recently begun a smaller programme with a similar aim (Access to the Bar Awards; see previous chapter). On a micro-level, not every member of Inner Temple is involved in the promotion of access through the Inn's programmes. However, on the basis of Battilana's analysis (2006: 664-666), and that of Bucher and Strauss (1961: 332) this is not in itself an obstruction to the success of the programme; it is only necessary that those who are acting occupy a position and hold views which facilitate their effective intervention. These include personal ideological views, political views, and those views held as a result of personal experience of other institutional logics, all of which will affect the way in which individuals

within the organisation contribute to the endeavour to remove social closure from the definition of professionalism at the Bar (see 4.1.2 and 5.1).

Further interacting with the personal stories of individuals, and also deeply intertwined with their ability to display embedded agency, are the institutional logics of the environment in which they find themselves. The institutional logics of both the Bar at large, and Inner Temple more narrowly, are therefore exerting influence on those who are involved in PASS. The institutional logics at the Bar have long operated to the disadvantage of those from non-traditional backgrounds – not unexpectedly as they are an under-represented group.

5.3 Challenging prevailing institutional logics

A reconceptualisation of the prevailing institutional logics could reduce this disadvantage, but would be expected to be difficult to achieve in a traditional profession. Those with the most interest in challenging prevailing institutional logics are those for whom those institutional logics are causing discomfort or difficulty (Battilana, 2006: 661). Such individuals usually have neither the field position nor access to resources (see 4.3) needed to alter these logics. In the case study, however, it was not just non-traditional aspirant entrants who wished to challenge the prevailing institutional logics to assist them in pursuit of entry. As seen in chapter 4, so did members of the profession, albeit with different aims (see 4.4). Members of the profession articulated the aim of having access to all ‘able’ aspirant entrants to provide a more competitive pool from which to recruit to maintain the elite nature of the profession. Salaried staff focussed on the social justice imperative.

This parallel interest in challenging the institutional logics held by members of the elite and salaried staff, albeit directed by differing motivations, meant that they were willing to use their influence within Inner Temple to initiate a challenge to the existing institutional logics

of closure. The taking of action by those with an elevated field position within the organisation counteracted the relatively low levels of power and influence held by non-traditional aspirant entrants. This relative powerlessness was addressed by members of the elite acting, partly through appointing specialist staff, in an attempt to alter the institutional logics. Thus a powerful group (the elite) are challenging institutional logics on behalf of a group for whom they are not favourable. Action by the elite on behalf of a powerless group still requires an examination of how the elite were not constrained by existing institutional logics, however.

Inner Temple took clear steps with the intention of promoting social mobility. For reasons given below (see chapter 6), it is argued that this falls short of a fundamental remodelling of professionalism at the Bar. However, it is argued that it does amount to at least an attempt to alter the institutional logics within the professional association, in the hope that such an alteration will spread outwards to chambers and potentially other Inns. Through developing a programme which, regardless of uncertainties over the measurement of success (see 6.4.2) brings non-traditional aspirant entrants into contact with the profession, and which seeks to promote the general notion of social mobility,³⁵ Inner Temple appears to be attempting such an alteration. It is argued in the next chapter that it is likely to be, to the extent of information provision to non-traditional aspirant entrants, and mutual exposure between them and the profession. A gradual move towards a more socially inclusive profession may therefore occur. This would happen through the introduction and institutionalisation (Jepperson, 1991: 148) of new institutional logics which did not support manifestations of the central value system which were exclusionary on the basis of socio-economic background.

³⁵ www.pegasus.me [accessed 29th July 2015]

This thesis illustrates the importance of both positional and relational power which may operate within an organisation, and thus affect its institutional logics (from Thornton's typology; 2004: 16). Individuals who possessed power in one category formed alliances with those holding power in the other. This reinforced PASS with both the requisite specialist knowledge and the necessary seniority and influence within Inner Temple. The implementation of PASS in an organisation where social closure historically occurs illustrates that whilst the role of socialisation is important (see 6.3.2.2), it neglects to explain how behaviour can nonetheless be changed for strategic reasons (Thornton, 2004: 38-9). However, the possibility exists that organisational structures differentially emphasise elements of socialisation and logics according to the organisation's intentions or desires at a particular time (Thornton, 2004: 39).

Realising that elements of its existing logics may be incompatible with social mobility, in 2009 Inner Temple appointed a salaried individual from a non-legal background with responsibility for directing the organisation's 'outreach activities' (itself a potentially loaded term). This employee was well-known by all those who were interviewed, as he was central to the Inn's outreach activities (this individual is hereon referred to as 'X'). He brought with him from his previous employment institutional logics providing him with frames of reference that pre-condition choices and vocabularies, and contribute to the formation of a sense of identity (Friedland and Alford, 1991). It appeared that he had then partly adapted these existing logics to the legal profession, giving him a new 'global' logic (Jones and Livne-Tarandach, 2008: 1078, 1080). He had also maintained fragments of his previous occupational identity, which gave him a greater repertoire of competing logics to draw upon, facilitating adaption of behaviour (Meyer and Hammerschmid, 2006: 1012). Social mobility and promoting access thus remained at the core of his professional actions, but were

explained and interpreted differently depending upon the audience (similarly witnessed in Magic Circle firms; Braithwaite, 2010: 173).

A marked alteration in institutional logics is unlikely to be the result of just one individual, however, as different groups (referred to as ‘social orders’ by Friedland and Alford (1991)), within an organisation will have different institutional logics. Institutional logics can therefore inform three levels of analysis: the role of individuals within the Inn; the Inn as an organisation itself, and its connection with non-traditional aspirant entrants. Every interviewee was exposed to a number of institutional logics. They moved in a variety of institutions; at least two or more of the Bar Council, the Inn, individual committees within the Inn and/or the Bar Council, specialist Bar Associations, their chambers, and other smaller special interest groups (e.g. Young Legal Aid Lawyers). Each of these, regardless of its relative size or influence, will have different institutional logics. It was particularly notable within the salaried staff, and especially the member of staff who had been key in creating PASS, that they had been influenced by what they had experienced at their previous employments, even in terms of bringing a programme that they had encountered elsewhere into conjunction with Inner Temple. One salaried employee had worked with the Pathways programme in his previous employment with a higher education organisation, and had negotiated Inner Temple providing the Bar-based part of the programme.

A number of interviewees in the case study suggested that organic change had been occurring over a number of years, with the Bar becoming more diverse, and gradually lessening its reliance on recruitment by ‘old Boy’ networks. Specific individuals were credited with having advanced the cause at a faster pace than it would have occurred had the development been left to take its own course. However, institutional logics will play a key role in determining the possible actions open to actors within an organisation, as detailed in the next

section. This research also illustrates that they will shape collective behaviour, meeting Lounsbury and Crumley's criticism (2007: 993) that the actions of individuals have become celebrated at the expense of an awareness of the multi-level nature of change, and that the notion of performativity is to be preferred. Within performativity change is construed as constant and innovation ongoing, but contributed to, and steered by, individuals and small groups (2007: 996).

5.3.1 Individual and collective challenges to institutional logics

Actors do not simply reproduce existing institutional logics; some also have the capacity to adjust or alter them. This may happen through various mechanisms such as theorisation and transposition, amongst others. As discussed above, institutional logics may be portrayed as a "tool kit": they are malleable, and applied differentially across social situations (Thornton, 2004: 40). Where individuals join together to form a group, however, a greater array of tools may come to be at their disposal. Specifically, they may benefit from an elevated social field position which research suggests will increase both their willingness and ability to alter a dominant institutional logic (institutional entrepreneurship; Battilana, 2006: 659). Therefore it is argued that it is not necessary for all the properties to meet in one individual for institutional change to occur.

At Inner Temple, 'X' was a key institutional entrepreneur identified by all of the interviewees. This individual was not a practitioner; they had a professional background in organisations focussed on higher education, and within those had held positions that related specifically to increasing access and improving social mobility. Similarly to the salaried human resources staff in Braithwaite's (2010) research, therefore, this individual was able to bring in ideas and practices from other spheres and apply them to the situation at the Bar. They were also able to marshal the people who shared the 'unique mission' (Bucher and

Strauss, 1961: 330) of the increase of social mobility, through their administrative powers and links to members of the organisation at all levels.

Their individual entrepreneurship was supported by their ability to bolster their own relatively low position in the organisational hierarchy by being perceived as a legitimate actor by stakeholders at all relevant levels, and the ability to build bridges between those stakeholders and their diverse interests and aims, allowing access to a variety of both human and financial resources (Battilana, 2006: 660). Thus, this individual in the case study does not fit neatly into either of Battilana's 'incumbent' or 'challenger' categories (2006: 661). It is argued that this is at least partly attributable to the fact that this individual was head-hunted into the organisation for the express purpose of bringing their specialist knowledge on access matters into Inner Temple. They therefore occupied a somewhat harder-to-define position, whereby although in hierarchical terms they were relatively low, they nonetheless wielded significant power in respect of this particular project (PASS). This seemed to stem from their having been brought in by the organisation specifically for the purpose of developing access programmes due to their specialist knowledge, which seemed to contribute further to their relative lack of constraint by institutional logics. Consequently their purpose was perceived in part as being to challenge existing exclusionary practices and logics.

This thesis illustrates that the structure of the Bar causes significant challenges to the alteration of institutional logics, as compared even to the solicitors' profession (e.g. Braithwaite, 2010). Whilst a very small number of the largest and more progressive chambers do employ staff with backgrounds in other institutional logics, in most cases this is not possible due to financial constraints requiring chambers to keep administrative staff to a minimum. This means that there is less opportunity for the introduction of members of staff who have other institutional logics which they may use to assist institutional

entrepreneurship. Professional association involvement addresses part of this challenge as it can employ staff who can co-ordinate larger-scale initiatives not restricted to one chambers, but ranging across the profession (see chapter 4).

As discussed above, there were two groups that were especially important to the establishment of PASS; Benchers and salaried staff. The particular sub-groups of these that were involved in PASS were those who were part of the Education and Training Department, and the Outreach Committee. The Education and Training Department is an administrative department staffed entirely by salaried employees.

Employed within the Education and Outreach Department were a number of staff from non-legal backgrounds, some of whom were instrumental in setting up PASS and other outreach activities: two of these individuals were interviewed. The Bar Council similarly had salaried employees from higher education and the not-for-profit sector who collaborated on social mobility projects, of whom one was interviewed. These staff had operated in different institutional logics in previous jobs and this seemed to have a significant effect on their work within the legal profession. They brought new ideas and alternative ways of putting them into action, as well as a passion for, and knowledge of, their specialist area. Their expertise and its importance was recognised by others within the professional association as key to establishing PASS:

It's been entirely driven by Education and Training which is fantastic in Inner Temple we then recruited X who has driven this forward with great skill and passion... (Interviewee 7, Inner, M, other prof. assocs.)

...we have an Education Department, we have a Recruitment and Outreach Manager, so all those sides of it mean that there are people who can deal with that

because barristers can try and conceive the schemes, get guidance from someone who is as expert as [X] and recommend it and persuade others to join, but I am afraid you need someone day to day administering it. (Interviewee 4, Inner, M, Benchers)

Although constraints from the institutional logics of the Bar will operate on salaried staff coming into the Bar, these constraints seemed to be ameliorated by the importation of elements of previous institutional logics. Furthermore, by having colleagues also from non-legal backgrounds in similar posts in other organisations, there was more opportunity for collaboration between sites of power (see 4.2.3) that could capitalise on organisations being stronger together, despite the historical inclination against this, as discussed in the previous chapter. Salaried staff who worked for different professional associations of the Bar, but had broadly shared professional backgrounds, did not seem to feel so constrained by inter-organisational antagonism detailed by some practitioner participants (especially between the Bar Council and the Inns of Court). In these circumstances, strong working relationships between individuals were seen as the best way to overcome such difficulties:

I have to say that [Y] and the Bar Council has been fantastic and [Z] before him has been absolutely fantastic about representing the work that the Inns do in this respect, but there always has been some wariness I think. (Interviewee 11, Inner, M, salaried)

Salaried staff also implicitly confirmed that they brought in outside logics:

I had had experience with Pathways from [when I was at] the Russell Group [university organisation], it was lauded as one of the most successful, [...] and all the research showed it having a very positive impact on students and access to higher education and access to professions thereafter. So I brought them in and started to run all the Bar-related activities. (Interviewee 11, Inner, M, salaried)

Research on the effects on individual actors of contradictions or complementarities between logics which they experience across different institutional settings has disclosed greatly varying results. The degree of malleability of institutional logics varies between organisations and individuals. However, actors often tailor institutional logics to fit practical activity, creating pluralism in institutional logics in specific local settings such as corporations and organisational fields (Lounsbury & Crumley, 2007: 996). Such pluralism at the Bar is illustrated by the differing approaches to social mobility and of different chambers and Inns; even within one broad ‘institution’ (the Bar), and smaller sub-institutions (one Inn) there will be differing institutional logics which influence the differing approaches to those matters within that institution.

It was thus clear that, in any move towards changes to the conception of professionalism within Inner Temple’s segment to include social mobility, the roles of individuals accustomed to other institutional logics had been key in initiating the project. They brought with them a level of innovative thinking which may be harder to access internally within an embedded professional association of a traditional profession such as an Inn, or which, once accessed needs expertise to act upon. PASS demonstrates innovative action is possible when a mixture of individuals from the established logic, and other logics, come together with those who form part of the elite of the professional association, and are numerous enough to form their own segment within the organisation based on their values and ideas.

Many participants singled out ‘X’ as being the ‘driving force’ behind many of the Inn’s achievements in promoting social mobility and setting up suitable projects to further that aim:

[X] will probably be very modest about it but I think that is very much largely down to him and his efforts and the way he views things [...] I might be wrong but I do think it is [X], because I do think he is very progressive and forward thinking in the way he does things. (Interviewee 10, Inner, F, Bencher, other prof. assocs.)

Nonetheless, it was emphasised by others that this individual, although they played a crucial role, nonetheless relied on the enthusiasm of others to participate in access schemes, which could be channelled through the Inn's organisational and administrative facilities as a professional organisation:

A lot of that is down to having a very enthusiastic Outreach Manager, but it's something that this Inn, we are very proud that we are involved in those activities and we think it is important, and obviously with any project that you set up, if you want it to keep going, you have got to keep the enthusiasm going and our members are very enthusiastic about the whole thing. (Interviewee 8, Inner, F, salaried)

'X' was a clear example of the potential power of individual agency. Prior to Pathways, Inner Temple undertook very limited social mobility activities, and it was the recruitment of X (who was head-hunted for the role – see above) that led to a drastic increase in the Inn's involvement in social mobility initiatives. In interviewing X, the qualities that other interviewees attributed to him were apparent. In combination with his charisma, he was perceived as having a powerful mix of professional skill and ideological commitment to access issues. This very individual combination of skills and personality meant that he had demonstrated agency and succeeded in driving forwards progress in an historically controversial area.

The previous chapter established that attachment to the central value system need not be a hindrance to innovative action by a professional association. Chapter 5 therefore focussed on the role for individuals and particularly, in the case study, on the potential influence that a small group of individuals can have on a large organisation. Addressing the paradigm of embedded agency, it suggests that when wider conditions within the organisation are right, it is possible for individuals to behave in ways which appear not to be constrained by existing norms and institutional logics. However, it is suggested that this is often easier for individuals who have arrived into the organisation from other professional environments. This is due to their experience of other institutional logics which inform their approach to the matter being addressed in their present employment.

5.4 Can a professional association alter the conception of professionalism within its segment or arena?

On the basis of the attributes of Inner Temple as a professional association portrayed in chapter 4, and the roles played by individuals as detailed so far in this chapter, it is argued that Inner Temple has the level of power and field position required to effect changes within the profession, as a result of changes occurring internally. These are largely attributable to the actions and knowledge of those from other professional backgrounds importing different institutional logics into the professional association. Whilst it is argued that it is too early in the life of PASS to be able to assess whether the conception of professionalism held within the ‘arena’ of the Bar has been altered by Inner Temple to include a commitment to social mobility, it is argued that changes in the central value system on an institutional level appear to be occurring.

It is largely accepted by academics that professions struggle to adapt at any significant pace to changes of admission or composition. Kritzer suggests that legal professional associations have ‘avoided coming to grips with this “brave new world”’ (1999: 732), and Francis explored structural problems constraining the Law Society’s responses to this new environment (2004: 347). Kritzer’s (1999) analysis of professional associations ‘avoiding’ acclimatising to a changing professional environment is informative; it demonstrates that there may be opposition within an organisation to change, and it may be this which hampers development, as opposed to a fundamental inability to make those changes (see 4.2).

This thesis, however, argues that not only might a profession recognise societal changes that mean it will need to adapt to maintain its elite status, it may also make an effort to adapt to those changes, although a number of factors will influence the success of any attempts it makes. Any attempt which alters the dynamics or practices of the profession, or a segment thereof (Bucher and Strauss, 1966), could be considered as the concept of professionalism evolving, albeit incrementally or slowly. The notion of an evolving conception of professionalism was particularly strikingly articulated by one interviewee:

Because I believe that the Bar will be significantly under greater threat as a profession if we don’t improve the access for all groups in society to a career at the Bar because I think we need to be more representative of the society we serve than we probably are... (Interviewee 9, Inner, M, other prof. assoc.)

This suggests that there are members of the profession who believe that, to be able to continue its claim to being a profession, the Bar must ensure that it is diverse, and representative of those whom it serves. However, on the basis of Kritzer’s assertion that a profession may struggle to come to terms with changes which are significant for its self-

identity (for example, the provision of its less complex services through channels outside the profession itself), the idea that diversity is now an integral criteria for a profession to be able to so call itself is likely to be one that would be disputed. Changes to the conception of professionalism within the highly traditional legal profession would not be acceded to so easily.

Kritzer states that in the Anglo-American legal profession, ‘The response by the legal profession to these and other developments has been to try to hold onto an outmoded image of professionalism.’ (1999: 732). Inner Temple’s actions in seeking to promote social mobility through PASS suggest that statement may not hold true across an entire profession and all of its professional associations. Indeed, by creating and developing PASS, one could argue that Inner Temple is attempting to update the image of professionalism, by portraying social mobility and diversity as an integral part of a new ‘professional project’ whereby entry is solely determined by ability and determination:

...in all this the message is not that we are going to lower the standards to get a wider access. What we are saying is that the standards are high; they will become increasingly higher as the numbers go down because its competition. All we are saying is. Do not be put off going for the challenge simply by virtue of what your parents did, where you went to school or where you went to university, but you still have to be the best. (Interviewee 7, Inner, M, other prof. assocs.)

This message was also being successfully communicated to non-traditional entrants, as evidenced by comments from Pathways’ students that such programmes were not about making entry easier, but fairer in practice and not merely appearance (though *cf* comments explored under section 4.4):

There are certain pervasive ideas of the Bar to the effect that it is a middle-class profession dominated by airs and decorum, which excludes those who don't comply with a certain manner of behaviour, a members' club masquerading as a profession. I never believed that, but some aspects of it seemed to ring true. But this perception was totally undermined by my experience at [chambers]. Instead of class or background, the primary criteria for entry actually seemed to be intellectual ability, flair for advocacy, alacrity, industry and wit. So in other words, the meritocratic rhetoric of government and Inn of Court pamphlets was shown to bear some resemblance to reality. (Inner Temple post-PASS feedback questionnaire, cohort 1)

Therefore, it is argued that although Inner Temple's promotion of social mobility through PASS is not sufficient to amount to an alteration of the profession's conception of professionalism, it does nonetheless reflect a potential change in both the central value system (as explored in chapter 4), and the institutional logics of the professional association. Arguably the latter is needed before the former can occur. For change in the central value system action will be necessary in the quotidian operation of the professional association. Therefore removal of institutional logics supporting social closure could contribute to a removal of manifestations of the central value system that support closure. Such presence will occur when it is incorporated into the 'rules of the game' (Jepperson, 1991: 143) used by actors within the professional association in their decision-making processes and systems of understanding that they apply to their daily life within the organisation.

It seems that Inner Temple may be building foundations for an alteration within the Inn of its manifestation of the central value of professionalism to one that promotes social mobility and equal access. This change within Inner Temple's 'arena' (Nelson and Trubek, 1992) may then extend externally to other Inns over time, although the degree and rate of this will

be dependent upon a number of matters. Specifically, whether Inner Temple manages to consolidate the changes made in such a way that they are sustainable in the long term within Inner Temple itself. If so they may be able to permeate to other arenas (see 5.4 below). A second matter upon which it will depend is the attributes of the other professional associations to which permeation could occur, as the attributes of a professional association play a significant role in whether that organisation can initiate, maintain and consolidate new practices. Attributes supporting these processes would need to be found in any organisation hoping to facilitate such change; it would not be enough that they had been present in the originating organisation. Each subsequent organisation would then need to institutionalise the process and values, as described above.

5.5 Challenges to transfer of values in the case study

Building upon the idea that there may be a new conceptualisation of the central value of professionalism at Inner Temple by reference to existing literature, Paterson (1996: 139) conceives professionalism as a contract between profession and state which can be under constant renegotiation. He states that despite extensive renegotiation, many core values relating to professionalism will survive, with more uniting the profession than dividing it. Francis (2004: 324) suggests that the value of Paterson's model is as a 'recognition of the evolutionary nature of professionalism'. It seems that this is the most helpful interpretation in relation to this current research, focusing as it does in detail on a programme run by the Inner Temple which has among its aims the incorporation into the arena of professionalism operated by the Inns a commitment to social mobility of aspiring entrants.

This thesis highlights that a profession may be divided into 'segments', which compete to impose a dominant profession-wide conception of legal professionalism (Bucher and Strauss, 1961: 330). Although, as stated by Nelson and Trubek (1992: 186),

professionalism's form is contingent upon the particular arena in which it is being exercised, its production and form in one arena may influence its production and form in other arenas. At the Bar, due to the fragmented structure there are a greater number of arenas than may be found in other professions, many with crossover of membership (e.g. chambers, specialist Bar associations, Inns of Court, the Bar Council). Furthermore, each of these arenas has a significant degree of autonomy from the others. For example, on 11th July 2014, COMBAR, the Commercial Bar Association, was announced as a partner to the rebranded PASS (Pegasus Access and Support Scheme)³⁶ – a move by one specialist segment independently from others.

The production and form of professionalism in a particularly strong segment/arena may exert significant influence over smaller or less stable segments/arenas within the same profession. When there is one professional organisation presiding over the whole profession, this may cause discord: Bucher and Strauss (1961: 330) stated that no professional association could be wholly representative; it could only ever represent a segment within a profession. However, at the Bar, for example, where there are four Inns of Court, it is theoretically possible that each Inn may construe and pursue professionalism slightly differently without any significant impact upon the profession as a whole. Compared to chambers and the Bar Council, it appears that the Inns are the most important arena for effecting change within the profession, due to their combination of size, loyalty and heterogeneity (see 4.2). Furthermore, if part of the profession develops an institutional logic which values social mobility, this may permeate into other parts.

³⁶ <http://www.pegasus.me/combar.html> [accessed 14th August 2015]

Due to the less rigid hierarchy and membership overlap between segments within the profession, changes within one segment may permeate into others more so than in other professions, an advantageous situation when trying to implement access initiatives. On the views of those interviewed for this research, it would appear that, within Inner Temple's 'segment', actors perceive diversity and access as sufficiently important to attempt to alter both the prevailing institutional logics, and the interpretation of the central value system, with PASS being one example of a mechanism by which this is occurring. However, only time will tell whether other organisations of the Bar will incorporate this into their segments, as all have different attributes affecting both their ability and willingness to effect change.

A notable challenge to such permeation is a lack of collaboration between sites of power. The individual 'X' worked closely with a colleague, 'Y', in a similar job at another professional organisation within the Bar (not an Inn of Court), who similarly had a background in access matters and policy, and was also lauded by other participants as being a significant influence in achievements at the Bar in promoting the social mobility agenda:

*...with the current chair of the Social Mobility Committee [of the Bar Council] and the current policy officer, I don't know if you have met Y? He's very dynamic...I think there's a much broader sense and we can't do everything but we need to have as broader approach as is consistent with being effective really. (Interviewee 2, non-
Inner, F, other prof. assocs.)*

However, this cohesiveness did not seem universal:

It's very difficult sometimes to work out what the other Inns are doing. Inn X sometimes I think they are a bit like a secret society, I will probably get told off for

saying that, but you just don't seem to be aware of what they are doing. (Interviewee 10, Inner, F, Benchers, other prof. assocs.)

Some participants were rather more pragmatic:

I would say that we are all very much in close contact with the other Inns so anything we do in terms of, particularly with the schools, we are doing very much very much on behalf of the other Inns as well. (Interviewee 8, Inner, F, salaried)

The first quotation illustrates a distrust and unwillingness to share new ideas and best practice. This may hinder transfer into other arenas of a professionalism committed to equality of opportunity, and consequently the ability of the Bar to strive for greater social mobility. However, due to the trust and loyalty displayed between practitioners and the Inns (see 4.3.1), the Inns of Court nonetheless seem best placed to drive such changes to the widest audience, although the extent of this within any particular Inn would be limited by those attributes explored above. Cohesiveness (or a lack thereof) between the Inns is partly a further symptom of the unusual structure of the Bar, as many participants discussed. In the context of a question about how the Inn would measure the success of PASS, one participant stated:

I would say they [the Bar as a whole] are sharing a view on what would be a measure of success but they may not...the Bar isn't exactly cohesive in its approach to trying to achieve that success. (Interviewee 8, Inner, F, salaried)

This supports an argument made in this research that confusion and a lack of clarity surround the aims and objectives of PASS (see chapter 6). It is suggested that the lack of a cohesive approach may in fact be symptomatic of a lack of shared vision across the profession on what outcome amounts to a success of access programmes. Whilst a general agreement on a

desire for the Bar to be more diverse was articulated, how that should be quantified was a much more complex issue. All interviewees were asked what they would regard as a measure of success for PASS, and many articulated very different potential measures (see 6.4.2).

It is argued that one barrier to a transfer across professional associations was the structure of the profession (see 6.4.2), as it seemed a recurring theme that the professional structure of the Bar did not lend itself well to concerted efforts in any sphere of difficulty, such as access and social mobility. However, other facets of its unusual structure also prevented it from tackling that lack of cohesion:

I think if there was more cohesion, more targeting, then perhaps we could work together to achieve more together, but then when the profession is made up of different institutions, some have different amounts of resources, different agendas, and it's very difficult to try and bring all that together. (Interviewee 8, Inner, F, salaried)

There seemed to be a greater degree of cohesion between the Inns (albeit that some comments suggest this was not so with all four Inns), and between Inns and practitioners, than there was between practitioners and the Bar Council. This was admitted to even by those who had held Bar Council posts. One such interviewee stated that the Bar Council was, and always had been 'absolutely hopeless', characterising it as a 'limp trade union' whose existence had previously been justified by the regulatory function, now removed to the BSB. Others who had similarly sat on Bar Council committees were less scathing about their experiences, with one stating that the Bar Council did act to fill perceived gaps in provision of programmes, despite financial constraints. Apart from one, those who had sat on Bar Council committees were generally more favourable towards its efforts than those who had not:

I think [X] gets quite cross with me because I am quite keen for all the Bar Placement Weeks to be rolled out onto the circuit and that is quite a tall order and I think X's view is that the Bar Council should be just co-ordinating what's going on across the profession and not trying to run programmes as well, but we just took the view that unless the Bar Council did it, and we don't have massive resources to be honest, but unless we did it there were a whole host of young students that were going to miss out on the experience, we felt and I feel that there is a very strong argument for Bar Council having to run programmes if there is no other resource to provide it. (Interviewee 10, Inner, F, Bencher, other prof. assocs.).

The lack of cohesiveness amongst the Inns, and between the Inns and the Bar Council also, it was suggested by one interviewee, actually diluted the human resources available for such projects, and consequently made it seem that, in some practice areas particularly, there was not much enthusiasm to support such projects:

Given the way the Bar is structured, so although Chancery work has a greater problem than the Bar as a whole in terms of attracting students and supporting and promoting and recruiting students from less privileged backgrounds it's still really quite a hard topic there is quite a lot of enthusiasm out there and every time we put a plea out for support for one of our scheme we get a huge amount of volunteers. So it's harnessing it that's the difficulty. (Interviewee 2, non-Inner, F, other prof. assocs.)

One interviewee suggested that programmes run by Inner Temple were 'being done on behalf of the Inns as a unit', but this attitude was not one expressed by other participants, and neither was it interpreted as such by the recipients of the intervention (see below).

However, some practitioner participants thought that if the programme could be a genuine joint effort and presented as such, this would be for the good of the programme:

I do think that schemes like this would probably be stronger if they were run jointly by all the Inns but for that to work it would have to be run jointly by all Inns in a way that Inner Temple runs the Pegasus Scheme. (Interviewee 9, Inner, M, other prof. assocs.)

Such cohesiveness and collaboration would be necessary for a spread of altered institutional logics within professional associations, and altered archetypes shaping the relationships between professional associations (Kirkpatrick and Ackroyd, 2003). The lack of research considering the unusual professional structure of the Bar makes this an area in which more research could contribute to the exploration begun in this thesis of the effect of one site of power on another in a complex professional structure (see 4.2.3).

This tension regarding to what extent the actions of one Inn can be, or are perceived to be, an action on behalf of all Inns of Court could not be explored through this research due to the lack of availability of any Benchers or staff from the other Inns approached for interview. However, when it was put to interviewees that Inner Temple was forging ahead in this area in a way that did not seem to be occurring at the other Inns, their reactions were mixed:

I can't really speak for other Inns and I'm actually not one of those that feels comfortable with the idea that we do things better than other people, partly because I have got no evidence based on it... (Interviewee 9, Inner, M, other prof. assocs.)

I have to say I am very lucky to be in Inner Temple, but Inner Temple are at the forefront of [social mobility work]. (Interviewee 10, Inner, F, Bencher, other prof. assocs.)

Where participants were willing to concede that Inner Temple was breaking new ground in this area, its ability to do so was normally attributed to the individual who had specific responsibility for the outreach activities undertaken by the Inn, again emphasising the importance of individuals explored above:

I think at the moment so far as other Inns are concerned Inner is ahead in terms of these projects, partly because we set up a Recruitment and Outreach Committee and partly because we were lucky enough to get someone as excellent as X. (Interviewee 4, Inner, M, Bencher)

A shift in the construction of the central value of professionalism to include a commitment to social mobility appears to have occurred within Inner Temple. Any possible spread of this, however, is likely to be constrained by the prevailing norms and the individuals in other organisations. As this thesis has established, it is a complex interplay of circumstances that may give rise to the ability to attempt innovative action. This thesis suggests that these circumstances include size; composition; human resources such as loyalty, and the presence of motivations both within and external to the professional association. Therefore it is not a simple case of sharing best practice; there need to be circumstances integral to the organisation for such innovation to spread. Even were it to do so, it might be interpreted differently by other organisations.

5.6 Conclusion

Despite criticism that Bourdieu's social field theory ignores the role of human agency which this thesis argues is crucial, Bourdieu responds that 'habitus is not the fate that some people read into it [...] it is an open system of dispositions that is constantly subjected to

experiences...’ (Bourdieu and Wacquant, 1992: 133). Thus, it is the experiences that a person has that play a significant role in shaping their habitus, with every experience having the potential to alter it. Therefore, actions by individuals can have significant effects on the habitus of others, and this can include the habitus of an organisation.

This chapter has argued that the stories of individuals, and their roles within an organisation, are extremely important to an understanding of professional association action, especially in a matter of human interest, such as social mobility. How these personal stories affect the actions of those individuals are further shaped by the prevailing institutional logics, which require alteration if a truly meritocratic recruitment agenda is to be pursued.

Inner Temple as an organisation, through the work of individual actors, and groups of actors, is seeking to change the habitus of the field from one with attributes which propagate social closure, to a new habitus of professionalism where only ability, demonstrated through traditional or non-traditional methods, is valued. A particular challenge to this aim is that Inner Temple is an embedded professional organisation within a very traditional profession, and both it as an organisation, and the profession at large, are steeped in archaic practices and methods with established ‘doxa’ and ‘habitus’.

These are demonstrated in the occurrence of social closure resulting from the central value system, and in the presence of institutional logics which have thus far implicitly supported social closure. Challenges are now being made to the central value system’s indirect support of social closure, and the institutional logics supporting that, within the professional association. This coupled with the field position of Inner Temple within the wider profession, means that as a professional association, it is well-placed to behave innovatively, and in such a way that that innovation may spread to other professional associations within the field.

PASS demonstrates institutional entrepreneurship on the part of Inner Temple in a clear attempt to shift the tacit, unexamined and accepted assumptions within the field which comprise the doxa that is assumed to exist by many outside of the profession, even though some within argued that this shift had already begun:

I mean I went to a state school and didn't tick any of the boxes really that I should have ticked if I had wanted to become a barrister and I think in many ways we get an unfair press. I think there is a lot of media hype about the bar, they like to portray us in the press as middle aged, middle class white males who are all fat cats and it really isn't made up of that anymore and hasn't been for twenty years I wouldn't say. So I think slowly we are getting through all that... (Interviewee 10, Inner, F, Benchers, other prof. assoc.)

However, this is by no means the end of the story. It is not enough for abstract changes to occur – for a shift in the central value system and institutional logics developing if no real change is felt in concrete efforts in outward interactions. Such outward interactions and perceptions will be particularly important where recruitment matters are concerned, as they may encourage or deter certain groups of people from applying. The next chapter therefore moves on to examine the case study programme in much more detail. It looks specifically at whether PASS is in fact challenging the status quo of social closure through its provision of mini-pupillage for non-traditional aspirant entrants, or whether it is propagating traditional notions of skill valuation which disadvantage non-traditional aspirant entrants. It considers whether the changes discussed so far in this thesis are being actively converted into meaningful action by a professional association to pursue change in the promotion of social mobility, and the experience of those students participating in the programme. Although the

intervention does represent an attempt to address social mobility issues, it is argued that its likelihood of doing so on any noticeable scale, in the short term at least, is low.

CHAPTER 6 –TRANSFORMATIVE ACTION FOR SOCIAL MOBILITY: RADICAL INNOVATION OR MAINTENANCE OF STATUS QUO?³⁷

It has been argued in the preceding chapters that social closure remains a defining feature of the Bar, resulting from its central values which indirectly privilege entrants from traditional backgrounds. I argue that although it may be possible to identify the articulation by and within Inner Temple of a model of professionalism that assumes an explicit commitment to social mobility (see further chapter 4), the capacity of this professional actor to affect models of professionalism in other arenas (Nelson and Trubek, 1992) or, indeed, the profession as a whole is far less clear. This chapter will argue that an intervention by a professional association may not be as radical as it first appears if it serves to reinforce the status quo by creating opportunities for an ‘outsider’ group to conform to the ‘accepted’ norms of the profession. It does this by using work experience at the Bar as an illustration; a programme offering legal work experience opportunities to non-traditional aspirant entrants, it is argued, reinforces the privileged status of legal work experience over other methods of gaining relevant skills, consequently failing to tackle the deeper causes of social closure.³⁸

This chapter will focus on the role that work experience has played in establishing and propagating social closure at the Bar. It then explores the ways in which a professional association may move to combat this. Work experience (often called ‘mini-pupillage’ at the Bar) may fulfil many roles; it allows students to see the daily life of a barrister; to gain helpful knowledge by meeting and speaking with those practising; to experience areas of

³⁷ I am grateful to those who offered helpful comments on elements of the content of this chapter when I presented it at the SLSA conference in Warwick in 2015.

³⁸ Throughout this chapter, reference to legal work experience, unless explicitly stated, refers to mini-pupilages specifically. Whilst legal work experience more generally, for example in a solicitors’ firm or similar, did seem to be favoured above no work experience, it nonetheless became clear that it was mini-pupilages that were particularly privileged in the process of gaining full pupillage.

Law outside degree syllabi, and to fulfil a formal requirement for many pupillage applications. For all these reasons, it has been identified as offering a unique opportunity for identity formation (Francis and Sommerlad, 2009: 65), as it exposes students to the social norms and behaviours expected at the Bar. These consist of the unspoken and assumed rules ('doxa') by which social interaction and behaviour is conducted within the social field ('habitus') of the profession, and is known to those within it (Bourdieu, 1984). For those from non-traditional backgrounds, who are often without informal contacts within the profession, it is argued that securing such exposure is harder than for their counterparts from traditional backgrounds, reducing opportunities to assimilate norms and practices of the Bar. It is argued, therefore, that work experience has been crucial as a method of 'gate-keeping'; both the way in which it is secured, and the experience of the mini-pupillage itself, are likely to disadvantage students from non-traditional backgrounds. Thus, work experience has been a key dimension of social closure at the Bar. Therefore, for a professional association hoping to improve access, increasing the opportunities for non-traditional aspirant entrants to undertake mini-pupillages makes this 'moment of identity formation' more widely available, allowing them to make informed choices about careers in the legal profession and present themselves as serious candidates.

There is also, however, an element of mutuality; as non-traditional aspirant entrants are exposed to the profession, so also the profession has an opportunity to both assess aspirant entrants, and market itself to them. For traditional applicants social capital (Bourdieu, 1984: 69) and their recognisable educational paths mean that they are more likely to secure mini-pupillage through chambers' direct application processes, and therefore have easier access to this mutual exposure.

However, the identifying of students as coming into contact with the profession through an access scheme, and the effect of this on the degree to which students feel themselves to be 'outsiders', is identified as a problem. In the case study it must be questioned how significant an effect such a small scale programme can have on a large and traditional profession. Whilst PASS may be a significant and useful experience for those students who access it, it is argued that its potential to cause a genuine demographic shift should not be over-estimated due to both its small scale and its neglect of the more fundamental issues underlying the challenges experienced by non-traditional aspirant entrants. Indeed, whether such a shift is even desired may be questioned (Braithwaite, 2010: 150), and discerning whether it was desired was difficult due to the opaque aims and motivations (see 6.4.2). There were disagreements between stakeholders as to whether a demographic shift was indeed the PASS's aim, and, if it was, whether this was its sole aim.

It is argued that until a measure, or measures, of success are well-defined and agreed upon, it will not be possible to quantify the success of such schemes at all (see 6.4). Such quantification is hampered by the innate subjectivity associated with initiatives aimed at 'helping', or 'doing good' (Fisher, 1997). Even the use of numbers does not necessarily reflect meaningful change within the profession; Braithwaite (2010: 150) states that 'defining diversity by reference to numbers therefore risks tokenism and ultimately leaving the status quo unchanged.' Furthermore, any change may be restricted to within the 'arena' of the specific professional association running the programme (Nelson and Trubek, 1992), therefore not causing a demographic shift more widely across the profession, unless the relevant association wields significant influence through size and cohesiveness (Halliday, 1987: 133).

Ostensibly, the use of work experience as an entry criterion is a way of securing the best candidates; from the profession's point of view it is clearly in its best interests to recruit the best candidates. Evidence suggests that direct legal work experience is one indicator that the profession perceives as being possessed by the best candidates. However, it is argued that, due to the barriers identified in this chapter, the importance of work experience to those making recruitment decisions may be unjustified. This argument is advanced on the basis that whilst a profession would be expected to set its entry criteria such that the best candidates succeed, the importance attached to mini-pupillage is only delivering the best candidates from a certain subset; those from traditional backgrounds. Therefore those from non-traditional backgrounds who may in all material ways be equally good are disadvantaged. The result is that the profession does not access the best candidates overall whilst it privileges direct legal work experience in the form of mini-pupillages, as it has done thus far.

Previous chapters have explored the ways in which a professional association can formulate and bring into practice an intervention aimed at increasing diversity, and the internal factors that will facilitate this. This chapter builds upon that analysis by using the case study of Inner Temple to illustrate how a seemingly radical intervention may not have a drastic effect on the status quo, instead subtly propagating social closure by leaving unchallenged the privileging of experiences more easily accessible to a particular group. This reduces the potential power of a programme run by a professional association in a strong field position and with attributes indicative of potential wider influence within the profession.

6.1 The Bar as a social class, or the Bar as a series of social norms

There have been various explanations offered for the limited demographic diversity which exists at the Bar. Some writers suggest that the Bar has actually come to form a wholly

separate social class (Tocqueville; ed. Stone, 1980), whilst others have preferred an analysis in which the Bar is perceived as transcending class (Larson, 1977: 169), but with strong links to the ‘ruling’ classes to preserve monopolistic privileges (Larson, 1977: 81). Whilst such transcendence may be superficially achieved by a commitment to an ostensibly ‘value-free’ identity (Lee, 2000; Wilkins, 1998), this identity in itself may be easier to attain for those from higher socio-economic groups.

Whilst the notions of the Bar as a separate class, or a profession existing outside of the class hierarchy altogether have been advanced, it is argued that Bourdieu’s theory of social capital (1984) offers a more cohesive explanation for the challenges in access experienced by non-traditional aspirant entrants. Body language, speech patterns and dress, for example, will denote whether an individual has assimilated the traits of the ‘habitus’ of a higher social class (e.g. language; Bourdieu, 1984: 58) expected by the profession (e.g. Sommerlad, 2007: 200). A student who has not assimilated these traits may both struggle to access the profession, and, if they do so, may not feel comfortable. This was recognised by practitioners interviewed, who identified that non-traditional aspirant entrants may struggle to impress at both the paper application stage and interview, for these reasons:

But I think it [lack of familial links in professions] is a disadvantage only probably in the way that they conduct themselves in an interview and the way they might present their information on paper. (Interviewee 10, Inner, F, Bencher, other prof. assocs.)

It is argued that a profession which attaches such significance to history and tradition may be more difficult to penetrate than others due to its idiosyncrasies, but that those who already have links through family members or friends, and those who are familiar with other professions, will be advantaged in fitting in. Those who have no such links may struggle to

obtain the knowledge and guidance that they need from within the profession whilst seeking to enter it. This inhibits them in displaying familiarity with the social norms and accepted conduct allowing them to ‘fit in’ within the profession; one way of gaining this knowledge is through mini-pupillages. The struggles of such non-traditional applicants in obtaining the all-important work experience in solicitors’ firms is documented extensively by Francis and MacDonald (2009), and also examined more briefly by Sommerlad (2008). Why work experience holds such importance will now be explored.

6.2 Work experience: an opportunity for identity formation

Work experience is important for three reasons: firstly, in itself, it is often a criterion found in pupillage and training contract applications. Secondly, and relatedly, it allows firms and chambers to assess potential applicants. Thirdly, it is one way in which students can assimilate the behaviours expected by the profession, as they can observe and experience both occupational facets, and also the ways in which members of the profession conduct themselves. Student participants in this research described their difficulty in obtaining these mini-pupillages, however, reflecting official observations on the relatively small number of places available compared to the numbers of aspirant entrants competing for them (Neuberger, 2007: 40). Not only had most of the students experienced for themselves the difficulties in obtaining mini-pupillage, they also perceived that their non-traditional status was one cause of this.

Whilst the Legal Education and Training Review (LETR) highlighted the difficulties posed by the profession requiring work experience, and particularly the difficulty which non-traditional aspirant entrants were likely to face in accessing work experience (2013: 239), it made little in the way of recommendations. Instead it highlighted that the success of access schemes had yet to be successfully measured (2013: 240), and the only recommendation

relevant to this research was a more cohesive system for the advertisement of work experience opportunities (2013: 19). Although desirable, this chapter illustrates that cohesive advertising is unlikely to make much impression on the challenges facing non-traditional aspirant entrants in obtaining and participating in mini-pupillages.

The system for securing mini-pupillages varies from chambers to chambers. Most commonly, applications are made either on an application form constructed by the chambers, or by way of curriculum vitae and covering letter. These are sent to the chambers, where a barrister is usually in charge of sifting the applications. This is generally an unpopular job due to its time-consuming nature, and so it is often a junior tenant on whom this responsibility falls:

...it tends to be the most junior tenant. [...] when I arrived here it was 'suggested' that I might like to take on [the role] (Interviewee 5, non-Inner, M, chambers' rep)

Implicit in the allocation of this task to the most junior tenant is that it is an undesirable job. More troubling, given the importance of mini-pupillages established in this thesis, is the implication that it is not an important job: that is not worth the time of a more senior member of chambers. Similarly, at most chambers it is not deemed worthwhile having the applications read by more than one member of chambers, although one chambers participating in PASS already ran a system whereby panels of three barristers of varying levels of seniority appraised the forms. This was in-keeping with that chambers' general reputation of having a progressive ethos which directed its practices.

The application process is entirely paper-based, with no interviews.³⁹ Mini-pupillages can last from one day to a working week, and the level of structure varies greatly. All of the chambers' representatives interviewed for this research stated that chambers are inundated with applications in this way and are often unable to respond to unsuccessful applicants. As an initial filter, many will not take students before their second year of university. Throughout this chapter, obtaining mini-pupillage in this way is referred to as 'direct' or 'external' application.

Traditional students may be able to use familial links to secure such mini-pupillages without having to apply in this way, thereby circumventing any sifting process. For self-employed barristers there are no obstacles to being accompanied by individuals who have not been selected by chambers, meaning that 'informal mini-pupillages', as they are referred to in this chapter, are a regular feature at the Bar. By simply approaching social contacts at the Bar and asking if they may accompany them about their work for a period of time, these aspirant entrants are able to add another traditional identifier to their future application forms, further advantaging them in accessing the profession. In this way they also avoid being compared with those who have to apply through external applications.

For any student, regardless of their background, to present themselves as a serious candidate within the legal profession, it will be necessary for them to have undertaken work experience (Young Legal Aid Lawyers Report, 2013: 22). Often legal work experience will be a criterion for passing a paper sift, or at least valuable evidence towards fulfilling other criterion.⁴⁰ Some chambers even require a student to have undertaken a mini-pupillage with

³⁹ The exception to this is where a chambers requires an assessed mini-pupillage to be undertaken as part of the application process for pupillage, when an interview may be undertaken before or after the mini-pupillage.

⁴⁰ E.g. Wilberforce Chambers' Pupillage Policy states that selectors will primarily focus on, amongst other things, a potential pupil's 'motivation to do Chancery/commercial work as demonstrated, for example, by mini-pupillages.' (Wilberforce Chambers, 2013: 5, para 4)

those chambers before they will be considered for pupillage.⁴¹ However, at a more nuanced level it allows aspirant entrants to assimilate the behaviours that comprise the identity expected of someone within the legal profession (Carbado and Gulati, 2000: 1260). For students from traditional backgrounds, they are likely to have already formed fractions of this ‘appropriate identity’ from familial or educational settings, whilst for non-traditional students, there has been less opportunity, and they may have formed fewer or none of the traits identified as desirable by the profession. Not only are such traits necessary to secure work experience, they often also operate as a formal credential for which application panels and interviewers are looking.

Whilst this focussed only on students seeking to follow the solicitor route, not only is work experience equally crucial for those aiming for the Bar, but it can be even harder to secure, and the social norms which require assimilation can be even more opaque, as the Bar has clung more determinedly to historical practices. In her Report as Chair of the Committee of Inquiry into Equal Opportunities at the Inns of Court School of Law (1994), Dame Jocelyn Barrow referred to the Bar as ‘an alien environment for those who are not used to Chapel, Grace and drinks’; an effective summary of the rituals that prospective students face (cited in Abel, 2003: 124). This was reinforced in the current research, with one practitioner interviewee stating:

Somebody who’s done three or four mini pupillages may be better able to represent themselves better than someone who is on their first one and they’re just learning the etiquette and everything else. (Interviewee 1, non-Inner, M, chambers’ rep.)

⁴¹ E.g. Brick Court Chambers <http://www.brickcourt.co.uk/pupillage-and-tenancy> [accessed 13th January 2015]

The cultures that are created as a result of value-imbued constructions and organisations may shift in content over time. However, they often are such that non-traditional entrants feel unwelcome, and eventually feel that they have to either leave the profession, or assimilate the characteristics required by the culture to make their continuation within the profession less uncomfortable (Wilkins, 1998). Thus, the lack of a recognisable professional identity can hamper not only access, but also progression within the profession. Therefore, the opportunity which mini-pupillage affords to a non-traditional entrant to develop the norms expected within the profession is important not just for access, but also retention.

Work experience is a feature that recruiters in firms or chambers expect aspirant entrants to display on application forms, and manifest in their presence and conduct; it is a step on the 'typical path' (Francis, 2011: 38). Combined with a familiarity with the ways and norms of the field, traditional aspirant entrants are more likely to fit in seamlessly due to already displaying the behaviours and preferences which are demonstrated by those around them. This means they have a relatively comfortable experience joining the profession (Bourdieu, 1984: 255-6), as compared to non-traditional aspirant entrants who may experience cognitive dissonance as they try to reconcile their professional surroundings with their earlier experiences (Costello, 2005: 3-4).

Interviewees identified the legal profession's preference for a traditional educational route, and its potential indirect discrimination against those who have come through other routes. Regardless of other attributes, and transferable skills which they may have gained through other activities, they were disadvantaged by a lack of familiarity with the norms of the profession, contributed to by their lack of opportunity to secure legal work experience as a result of other responsibilities outside of their studies (Francis and MacDonald, 2009: 225, 239):

It's often geared towards traditional routes in. I can see quite a number of mature students who find it very, very difficult, not just to get mini pupillages under their belt, they are sometimes genuinely do but things like, well A levels were quite some time ago and actually those grades meant something very different back in that time or they are looking after a small child so they didn't perform as well in their undergraduate degree or they can show quite a lot of experience in many other things but maybe those don't always relate quite as clearly or as neatly. (Interviewee 11, Inner, M, salaried)

Even those with experience of a legal setting through their work (e.g. as a legal secretary) appeared to be thus disadvantaged (Francis and MacDonald, 2006: 97), and this was mirrored in this research; it is argued that legal work experience is privileged when assessing candidates for entry to the profession, and mini-pupillages particularly so. The partiality of most chambers towards traditional educational routes was identified by a number of interviewees as a particular challenge to non-traditional students:

actually drilling down to the sort of information that might be on a form relating to someone's educational disadvantage, I am sure in some cases they just don't even get that far, if they haven't got a 2:1 then they are already in the 'no' pile. Yeah it's difficult and I think education of chambers is something that we need to look into as well. (Interviewee 8, Inner, F, salaried)

Although some disagreed with this, citing that their chambers was much more concerned with the candidate's actual skills, and their interest in a career at the Bar;

...sometimes if a candidate isn't as able academically but has a lot of life experience and practical experience that can balance it out and conversely [...] you know everybody in these chambers so far has had different kind of backgrounds and stuff, and I think because of that [...], we all recognise and draw on that and try and make sure people who really understand and have a commitment make that sort of journey, that progress and understand what the job is about, and you know they deserve an opportunity to go and they usually make quite good barristers [...] What kind educational path they have taken is irrelevant. (Interviewee 1, non-Inner, M, chambers' rep.)

This illustrates that the approach by chambers to non-traditional aspirant entrants who are seeking mini-pupillages outside of PASS remains varied. Due to the structure of the profession, it is hard to enforce a uniform approach, however, as chambers have little coercive power over barristers, and in turn the professional associations have little coercive power over chambers.

For these reasons, it is argued that the provision of work experience, and the difficulty experienced disproportionately by non-traditional applicants in securing it (as previously evidenced in Francis and MacDonald (2006)), is one way in which social closure at the Bar has continued to operate. Questionnaire responses for this research illustrated the challenges faced by non-traditional aspirant entrants applying for mini-pupillages through direct application. This means that they are unable to fulfil the objective, factual criterion of having legal work experience in its own right. Of the 41 PASS students in the 2013/14 cohort, 33 answered a questionnaire on their previous work experience. Four had not been able to secure any work experience, despite extensive applications. Of those that had secured it, 12 had done so through a programme such as the Social Mobility Foundation or Pathways to

Law, and a further three had had it arranged through school or college. Thus, whilst appearing to be a simply objective criterion, the requirement of legal work experience may operate as an indirectly discriminatory recruitment criterion which non-traditional applicants are less likely to be able to meet. Furthermore, they have not had an opportunity to market themselves to the profession, and are less likely to be able to demonstrate the social norms which are expected within the legal profession, as they have not had an opportunity to assimilate these norms.

6.3 Challenges in securing and participating in work experience

6.3.1 'They're like gold dust' - securing work experience

For many traditional applicants, accessing work experience within a profession is not a source of much difficulty; due to their recognisable educational path they are likely to succeed through direct application. Where they do not, there will often be familial or social links of which they can take advantage to secure informal work experience. Their less recognisable educational paths and lack of informal contacts thus disadvantaged non-traditional aspirant entrants in securing work experience, and this challenge of access to mini-pupillages was the key hurdle that PASS sought to address. A number of interviewees echoed the experience of this interviewee, who explained that approaches from social contacts seeking work experience for young relations was common:

...I have had very difficult requests from solicitor clients to have their son or daughter for work experience that I have found very difficult to turn down. I have had High Court judges asking me to give work experience to friends of the family and they don't perceive that as being inappropriate or oppressive at all. (Interviewee 2, non-Inner, F, other prof. assocs.)

Not only were such requests seen as difficult to refuse, interviewees acknowledged that many of those who did agree to such requests did so without realising the negative impact they could have on social mobility. One interviewee recounted having himself made an offer of an informal mini-pupillage to a university friend, without it ever having occurred to him at the time that to do so was to advantage that person over those without such contacts who could not use them to circumnavigate the paper sifting process. This illustrates the subconscious and wholly unintentional ways in which social closure can be propagated within a profession (Sommerlad, 2007; 2008; Francis and MacDonald, 2006; 2009).

Illustrative of this was that even within a formal, published document setting out chambers' policy on mini-pupillages, one set of chambers expressly stated that 'informal' mini-pupillages could be given by barristers providing that they did not interfere with those given through the direct application process.⁴² One chambers' representative interviewed also described chambers as powerless to stop barristers offering informal mini-pupillages, and a consequent resignation to their continuation:

Well I mean obviously I think with all chambers there's an element of informal mini pupillages. I can't really stop the barristers from offering private experiences. [...] The only thing that we ask the barristers is that they try not to take on private students when we are running our own scheme so they are available for the people that have formally applied. And again there's not much that I can do to stop them if they ignore that. They tend to be quite good about it to be honest. (Interviewee 3, non-Inner, F, chambers' rep.)

⁴² Ten Old Square Pupillage Policy, 2015, para 97
<http://www.tenoldsquare.com/PUPILLAGE%20POLICY.pdf> [accessed 11th August 2015]

Such explicit and tacit acceptance of informal mini-pupillages is hard to overcome, partly because such practices are engrained within the profession, and so many barristers do not see the unfairness that they contribute towards. Challenging such behaviour is made more difficult by the structure of the field and the lack of coercive power meaning that chambers can, at best, request that barristers do not offer informal work experience, but it is not possible to implement any more forceful policies across the profession.

This means that a number of parallel routes to mini-pupillage can be seen to be operating: the informal route; the direct application route, and now the PASS route. In creating a separate route for non-traditional aspirant entrants, it could be argued that PASS is further emphasising their difference (see chapter 4). It also illustrates that wherever a deviation from the 'standard' (direct application) route occurs, it may contribute to a maintenance of the flaws in the standard route. Some members of the profession may see PASS as a tacit condoning of the elements of the standard system that disadvantage non-traditional aspirant entrants. Similarly, impetus to take stronger action against informal mini-pupillages is reduced, as PASS may be perceived to be counteracting the provision of informal mini-pupillages by providing an alternative route to non-traditional aspirant entrants (albeit with a formal application process).

Non-traditional entrants did not have informal links which they could utilise in trying to secure placements: In the current research (constituted of a self-selecting sample), only seven of a sample of 33 PASS students had any familial contacts in any profession, with only two having contacts in the legal profession (supporting Francis and Sommerlad's findings amongst aspirant solicitors (2009: 71)). This lack of contacts meant that they instead had to use external applications to try to secure mini-pupillages (itself an opportunity to make contacts). They often found themselves to be unsuccessful:

Getting mini-pupillages was absolutely impossible. You're applying to all these sets and giving it your all, and they're like gold dust! I mean, I remember at my Law Ball, one of the prizes, the top prize, I think, was a mini-pupillage somewhere, and then once you start getting them it's easier and easier to get them, because they've seen you've worked with each one. (PASS FG1 Participant 2, F)

I'd already applied for mini-pupillages, I think five times, before that, and not got anywhere, and so, being eligible for an access scheme, felt that this was almost something that was set up for people like me who'd tried and not succeeded. (PASS FG1 Participant 1, F)

One student suggested that these attempts were more likely to be unsuccessful than those made by their counterparts from traditional backgrounds, as they lacked both factual knowledge, and knowledge about the unspoken but expected social norms of the profession, such as appropriate modes of address and detail (supporting research by Sommerlad, 2007: 200):

[non-traditional aspirant entrants] perhaps have not had a realistic introduction to what that career entails; [traditional aspirant entrants] have also some understanding of that career that is beyond what you can just obtain from Googling 'barrister' or Wikipedia, erm, and I think that once any individual applicant or aspiring barrister has a little bit more of that context in real life; what do barristers have to deal with in real life; [...] you know, these kinds of things that you might not get from the very outset, once those are in mind then I think it perhaps gets a bit easier to pass the other hurdles. (PASS FG Participant 1, M)

Furthermore, non-traditional aspirant entrants' educational achievements are often not contextualised, meaning that, in direct application processes for mini-pupillage, they are disadvantaged. The legal profession recognises most easily the 'traditional' route: schooling to A Level, followed by a full time degree (and the Graduate Diploma in Law (GDL) if that degree is not in Law), and the Bar Professional Training Course (Francis, 2011: 38). Therefore, attempts by barristers or chambers' administrative staff, who usually deal with mini-pupillage applications, to contextualise achievement by school level or geographical location, for example, can disadvantage those who have taken a different route. Furthermore, attempts to apply 'common sense contextualisation' may lead to well-meaning generalisations that hinder rather than help, with one interviewee stating:

There is a margin to which I will play with what I think somebody should have and this maybe a little bit of my own illegitimate social engineering, but if somebody has gone to whatever is the really, really good local private grammar school, [local] Grammar or something and they have got A levels which are not bad but are not particularly stellar, and I think, 'well I went to a state school and got far better than that', they are going to get less credit than someone who went to [local] Comprehensive and did alright, kind of taking a broad view and then at university they might be doing quite well. (Interviewee 5, non-Inner, M, chambers' rep.)

This interviewee was responsible for selecting mini-pupils from the direct application process at his chambers. His quotation demonstrates the challenge of chambers doing its own administration of mini-pupillages; as identified by Certeau (1984), this interviewee was strategically adapting institutional structures in his use of them. In the absence of knowledge on the challenges facing non-traditional aspirant entrants and the ways in which these may be propagated, barristers may resort to typologies that they create on the basis of their own

beliefs and values, which may nonetheless propagate disadvantage in other ways. Barristers do not have the necessary specialist knowledge of access and education matters, as acknowledged by this practitioner:

It's very problematic actually because I think; the barristers who evaluate the applications can't really be expected to know all the nuances that might be relevant.

(Interviewee 2, non-Inner, F, other prof. assoc.)

However, neither do most chambers have resources to employ someone with that specialist knowledge. This leads to a vicious cycle, whereby non-traditional aspirant entrants are unable to gain mini-pupillage through the direct or informal routes, which prevents them from assimilating the norms and behaviours expected to be demonstrated, which in turn further hampers their access to the profession.

In the case study, Inner Temple had attempted to remove this layer of disadvantage by having an employee from a non-legal background with extensive experience of social mobility and higher education matters sifting PASS application forms. By recognising the variety of ways in which an aspirant entrant may have demonstrated their commitment to Law, gained transferable skills, or already made efforts to assimilate relevant legal skills, Inner Temple is seeking to open up the opportunity of mini-pupillages to a group who would previously have struggled to access it. As described earlier (see Methodology), this process applies a different conception of merit which contextualises the achievement of non-traditional applicants in their personal and educational circumstances.

This highlights why a professional association may feel that intervening on access to work experience is important. For the profession as a whole to benefit from the best applicants, it is necessary that those applicants with the necessary intellectual acumen can present

themselves as serious contenders, something it is hard to achieve without mini-pupillages, regardless of academic merit. Therefore, providing an opportunity to access mini-pupillages to students whose academic records, when considered against their educational contexts, are impressive, could disrupt patterns of social closure. It would achieve this by making the profiles of these students more closely akin to those of aspirant entrants who have followed the 'recognised' path. This, however, does not truly address the failure of the profession to recognise the gaining of skills through other experiences, and allows the privileging of mini-pupillages to continue, meaning that those non-traditional aspirant entrants who do not benefit from a programme such as the case study's PASS will continue to be overlooked in favour of those who have followed a traditional route, reinforcing social closure instead of challenging it.

Indeed, for a member of one set of participating chambers, there was a realisation during the interview that the form for direct applications for mini-pupillage used by his chambers (i.e. those not through PASS) might actively discourage non-traditional entrants:

I think this form is not going to do much to encourage people from non-traditional backgrounds because it's long and a bit scary, so...and I said I disagreed with it at the time. Make it shorter, make it more simplistic. There are so many categories and sometimes, inevitably when you see a box on a form you feel that you have to put something down and if it's asking for masses of details on qualifications and scholarships and membership of professional bodies, awards [...] I think it is going to put people off. (Interviewee 5, non-Inner, M, chambers' rep.)

Some non-traditional aspirant entrants may manage to obtain work experience through a direct chambers' application process, for example, with a chambers operating a more progressive selection policy. One chambers participating in PASS already operated an

application process for all direct mini-pupillage applicants that was ‘education-blind’; selection on the basis of 100-word answers to three questions about motivation to work in the legal profession and interest in legal matters, and whether the applicant had had previous mini-pupillages. Such progressive policies, however, seemed little in evidence in the accounts of interviewees and students, although some remained hopeful that a ‘side-effect’ of PASS might be to encourage chambers to take on board contextual matters in their direct application forms:

I would hope that it wasn't just about mini pupillages. I would hope that in general this scheme, it might not be now, it might not be next year, it might take quite a while for that to take place to see exceptionally talented individuals from disadvantaged backgrounds and think how their selection processes more generally take into account that disadvantage... (Interviewee 11, Inner, M, salaried)

Even once non-traditional aspirant entrants have secured work experience, they may find that fully participating in it is difficult due to personal and financial constraints, and particularly, more difficult than for those from traditional backgrounds (as experienced by part-time Law students (Francis and MacDonald, 2009: 239)). These barriers to participation will now be explored, along with the steps which professional associations may be able to take to ameliorate them.

6.3.2 Participating in work experience

Once non-traditional students have secured work experience, whether through direct application or via an access scheme, answers given by students in this research suggests that they often find the experience of undertaking it more difficult than their counterparts from

traditional backgrounds. Broadly, there seem to be two reasons for this; financial concerns and social norms.

6.3.2.1 Financial matters

Financially, completing work experience places a burden on students, and disproportionately on those from non-traditional backgrounds (Francis and MacDonald, 2009: 239). This is especially the case at the Bar, where the best-regarded mini-pupillages are London-based, meaning that students from outside of the Greater London area will have significant travel costs, and may even need accommodation in the capital for the week of their mini-pupillage. Even for those who are from London, there may be numerous journeys to different courts, and this can incur significant travel costs. Funded mini-pupillages are rare (precise statistics cannot be provided as there is no central database of those chambers providing mini-pupillages and whether they are funded), and tend to exist only in certain, privately-funded, practice areas.

Of the 175 chambers listed in tabular form in the 2015 Training Contract and Pupillage Handbook, 164 offered mini-pupillages (as evidenced by a tick in the relevant column – pp.592-601). Of those with more detailed listings (39 sets), only one (1 Crown Office Row) explicitly stated that it paid expenses on a non-assessed mini-pupillage.⁴³ A Google search of the phrase ‘mini-pupillage expenses’ revealed that, considering the first 30 results, all except three chambers had a policy on providing travel expenses. These ranged from paying ‘all reasonable expenses’⁴⁴ to ‘£10 per day’⁴⁵. Three explicitly stated that they were not able to provide expenses, and it was notable that all three of these were in predominantly publicly-

⁴³ Assessed mini-pupillages, which often form either a pre-requisite to, or part of, the application process for pupillage are discounted in this discussion as they serve a different purpose.

⁴⁴ Atkin Chambers, <http://www.atkinchambers.com/pupillage/index.cfm?id=495> [accessed 11th August 2015]

⁴⁵ 4 Paper Buildings, http://www.4pb.com/recruitment_mini-pupillage [accessed 11th August 2015]

funded practice areas (Criminal and Family). This brief exploration suggests that some chambers are becoming more aware of the factors that may prevent aspirant entrants from undertaking mini-pupillage.

Generally, however, in a traditional profession, assumptions may be made about the financial means of students on work experience; it may be presumed that they will be from traditional backgrounds where there are ample financial resources to fund travel or accommodation as needed. Therefore, this is a matter which any access intervention aimed at promoting opportunities for non-traditional aspirant entrants needs to consider and address. Of the first cohort of students who participated in PASS and completed Inner Temple's post-placement questionnaire (n=48) 25 agreed (18 strongly), that 'payment of expenses was essential in allowing me to undertake this placement', and focus group participants reinforced this, with two saying that they had had to cut short other mini-pupillages due to the travel costs being prohibitive:

...obviously you've got to be on peak as well, so a return, on peak, even with, like, my student railcard, was gonna be like, £30 for a day, and, like, I can't afford £150 in a week just to get into London. So it's a massive advantage to the scheme, like. I cut one of my MPs short by two days; I asked for it to be three as opposed to five because I couldn't afford to come in every day. (PASS FG1 Participant 2, F)

I had to ring them up and ask 'can I just have cases local to Canterbury so I can actually just walk there?'. It's so expensive. (PASS FG1 Participant 3, M)

In the case study, it was significant that financial expenses were provided directly by the chambers to their participant student(s) at the behest of the professional association. Thus, no extra cost was incurred by the professional association through this scheme. Such cost-

shifting potentially allows greater provision of access schemes, because the professional association does not have to bear any financial outlay to the participants themselves; its monetary commitment is restricted to employing specialist staff to administer the programme by way of filtering applicants. However, it will mean that participation will be limited to those chambers that themselves have the resources to pay students' expenses. In particular practice areas which are currently facing difficult financial situations due to cuts in legal aid, chambers which can afford this may be few in number, as illustrated above by the practice areas of those chambers not providing expenses. However, statistics also show that these are the areas that are already comparatively more diverse (Pike and Robinson, 2011: 25, Table 2.11).

Therefore, in this respect, the mode used by Inner Temple may be replicable by other professional associations that are hoping to run access programmes themselves. The Commercial Bar Association (COMBAR), a specialist professional association, has already given its support to PASS by creating its own scholarship through which five students per year who have an interest in Commercial Law are provided with a bursary in addition to their expenses funding through PASS, a dedicated mentor and access to a networking event.⁴⁶ Although this is an example of another professional association augmenting an existing programme, it demonstrates potential for greater involvement in this area within the legal profession. It also demonstrates the possibility of different professional associations complementing one another's programmes, although this is likely to depend on securing agreement to collaboration within both professional associations, which may pose challenges, as discussed in chapter 4 (and by analogy with the reluctance of legal educators and practitioners to unify; Larson, 1977: 167).

⁴⁶ <http://pegasus.me/combar.html> [accessed 1st December 2014]

6.3.2.2 'Dear Mr Blah Blah' - Social norms at the Bar

As discussed above, every social field has practices and norms that are not articulated or discussed, yet are adhered to by those who inhabit that social field (Bourdieu, 1984). To 'fit in' within the legal professional field, therefore, aspirant entrants need to assimilate these practices into their behaviour. Such assimilation will be easier for those from traditional backgrounds, as they are more likely to have been exposed to situations requiring those traits at an early age, something which has been highlighted as important. Experiences of the PASS participants illustrated that those from non-traditional backgrounds are likely to be hampered unless they assimilate the tastes and outward manifestations which are seen as demonstrating a higher social class than their own. It seems clear that when recruiting, the legal profession does look actively (even if not explicitly) for demonstrations of social capital, and is likely to find wanting those who cannot easily demonstrate it, regardless of their intellectual talents (Sommerlad, 2008). Participants in the PASS focus groups cited potential embarrassment from being unsure how to behave in certain situations. This stemmed from a combination of a lack of familial contact within the legal profession leading to a lack of familiarity with certain rules of legal etiquette, and formal social norms:

I mean, it's like a whole nother level like, when you're writing an email to a judge and it's, like it has to be 'Dear Judge' or 'Dear The Right Honourable Lord Justice'; you've never done that before, you don't know; I would've gone with 'Dear Mr Blah Blah' originally! So it makes a real difference to you. (PASS FG1 Participant 2, F)

This illustrates a lack of awareness experienced by some non-traditional aspirant entrants who have not been exposed to certain formal conventions, which supports empirical work by Francis (2011) and Sommerlad (2007) showing that a key factor relating to success in the legal profession is the aesthetic presentation and other social factors of candidates. Those

students who can subtly adjust their attire and appearance to suit occasions when they interact with the profession are likely to benefit. For example, Manderson and Turner observed Law students at the ‘Coffee House’ events run at McGill University. Despite no formal requirement to the effect, standards of dress were higher at those ‘Coffee House’ events sponsored by Law firms, suggesting that many students understood the need to demonstrate a professional appearance to the representatives of the firms attending (2006: 656). This suggests an understanding by those students of the reality that those who are attired in a specific way, which may suggest that they are from a certain sort of background (regardless of whether they, in fact, are from such a background), may influence those who are recruiting. However, sometimes capital can be displayed in the things that identify a student as being different, provided they are also combined with more ‘traditional’ capital such as education (Sommerlad relates an interview in which a recruiter muses on a hypothetical student wearing a headscarf due to her religion (2007: 206)). It may sometimes be the case that one element of a student’s personal circumstances or attributes mediates the lack of cultural capital in other areas, or actively augments it. Many non-traditional aspirant entrants do not possess mediating factors, and therefore feel uncomfortable within the profession unless they are willing and able to conform to or accept these traditions (an even more significant issue for those from other cultural or religious backgrounds, for whom certain traditions may be in active contradiction of their beliefs).

For non-traditional aspirant entrants, their acute awareness of ‘difference’ may develop relatively early in the recruitment process:

I mean that’s the first thing I noticed when I walked into Bar School was that [...] I’ve never been surrounded by super posh and smart people and then you get there and everyone’s just got, they’ve got, they even talk in different languages sometimes,

about like, they've gone to public schools and boarding schools and they talk about like the 'boys maid' and things like this and classes are called different things and events that I don't even understand what they are and that's quite intimidating...

(PASS FG1 Participant 2, F)

Whilst one interviewee did raise this as an issue also, he also suggested why it was that it was not as widely recognised by many practitioners: once a person had successfully secured entry to the profession, they may forget the difficulties that could be experienced. This was so even if they themselves had come from a non-traditional background;

The whole system is quite unclear, I mean it seems clear to me now but I have been in law for a few years now but I mean 'Inn of Court' - does that mean anything? I mean an Inn? What is a court? Does that mean anything to your people from the relatively disadvantaged backgrounds who haven't spent their school years in court yards in Berkshire and that sort of stuff, I don't know, probably not. I guess it's easier than it was, with the internet. (Interviewee 5, non-Inner, M, chambers rep)

For these reasons, non-traditional aspirant entrants often struggle to access work experience opportunities through direct applications. When they do access it, through direct applications or access programmes, they may struggle to fully engage in work experience opportunities. Although PASS addresses the financial aspect of this, it cannot alter the social norms of the profession. This is a particular cause of concern in relation to social mobility matters within the legal profession, due to the importance of identity formation. If non-traditional aspirant entrants become trapped in a cycle whereby they struggle to access work experience, and when they do so, are marked out by their presentation as not conforming to the 'desired' profile, their access will be severely hampered. Therefore, a focus on this as part of a professional association's project to increase access suggests that the intervention has the

potential to be effective by targeting a source of difficulty experienced by a large proportion of the group of whom it is seeking to increase access.

6.3.2.3 The experience of work experience through an access programme

Some challenges experienced by non-traditional aspirant entrants in direct mini-pupillages remain when mini-pupillages are provided through an access programme; furthermore, additional albeit different challenges may also arise. The efficacy of an intervention will be dependent upon the way it is experienced by the ‘target group’ (here, non-traditional aspirant entrants). As PASS is conducted within chambers, the experience that a participating student has will be of the chambers, not of the professional association itself. Therefore, the experience will vary between chambers. Such variation may not be material, or it may have a significant effect on non-traditional aspirant entrants’ perception of the Bar. It is argued that it has the potential to cause a mini-pupillage to be a less positive experience than it could be, if a non-traditional entrant encounters practices or situations that make them feel like an ‘outsider’. An example of this was demonstrated through the case study. One PASS participant was placed in chambers that had other mini-pupils, who had secured their placements directly with the chambers, at the same time. These other mini-pupils had different profiles to the PASS participant, and he felt that this made his status notable;

I undertook the mini alongside three others that had gained a mini at [PASS chambers] through the traditional route, so it was quite interesting to see the dynamic in that respect, ‘cause I mean the other three mini pupils were hugely qualified people [...] and it definitely kind of gave me a somewhat uneasy feeling I suppose. (PASS FG 2, M, Cohort 1)

This was not the only set of chambers that stated that they had PASS mini-pupils at the same time as those who had applied directly. Furthermore, some others mentioned awareness of their 'outsider' status, with a PASS questionnaire respondent stating that they could not see themselves at those chambers as 'I would not meet their very high recruitment criteria', and another stated 'I am not sure I have the right background to get accepted'. These responses suggest that for some PASS students their 'outsider' status was reinforced by the programme, and thus the status quo of social closure was supported, instead of tackled by the programme. Such an experience is not unique to PASS, with Francis finding some non-traditional aspirant entrants felt uncomfortable on vacation schemes because traditional students fitted in without obvious difficulty (2011: 55).

Whilst the candidate quoted above claimed that this did not cause him any concern or discomfort, there are two particular issues. The first is that, even if this participant was unperturbed, other less confident participants might have found this experience unpleasant. If this was so, it could have contributed to or created a view that the Bar is welcoming only to those who have a certain profile. Thus it could operate against one of the intentions of the programme held by the professional association to demonstrate that the profession is open to those of academic ability from all backgrounds. Secondly, it must be considered that the participant did, in fact, feel uncomfortable about his status within the chambers, but did not feel able to say so explicitly to the researcher, knowing that they were evaluating the programme for the professional association which had provided it.

The way in which a participant is presented both by the professional association to the stakeholders (in this case, chambers) and within the stakeholder is important. It is argued that to 'label' someone as participating in a programme, especially one which has eligibility criteria clearly published, is potentially to exclude that person further from the profession by

drawing attention to their ‘non-traditional’ status. In this respect, it is difficult for the professional association to control how candidates are presented within chambers, as many practitioners may see it as a simply factual introduction, as some of the students themselves claimed to:

So when I was introduced to people it was ‘Hi, this is X, he is on the Pegasus Scheme with us, he’s a mini-pupil’ [...] it wasn’t, er, pejorative, it wasn’t negative in any way, it was just, sort of, a matter of information as to who I was...and it was exactly who I was! (PASS FG 2, M, Cohort 2)

Furthermore, some chambers may not see the difficulty in presenting candidates as such. The same PASS participant stated that he felt that being identified as such led to people within chambers taking a greater interest in his background and aspirations:

...they were more interested in me, I think. It was less, ‘oh you’ve got another one of these, y’know, quite wealthy public school people...another one’ I felt that they were more interested in how I found university and how’s it going and this kind of thing; slightly more, y’know, they were more engaged and more sort of aware... (PASS FG 2, M, Cohort 2)

For some participants, however, this would not be identified as a positive experience, and this highlights the inherent subjectivity in ‘doing good’ (Friedman, 1962: 2); is PASS really making significant changes to the experiences of non-traditional aspirant entrants if it is allowing them access to work experience, but is not truly challenging the way in which the profession conceives of non-traditional applicants? Such issues are reinforced when participants refer to chambers as being ‘nice’ to take them (see chapter 4); the use of such a word suggests a power imbalance (see 4.4.1.2 above). This may be through perceived

feelings of pity towards the candidate or indebtedness on the part of the candidate towards chambers, when exposure of chambers to academically-strong, non-traditional applicants is actually likely to be a mutually beneficial interaction.

6.3.3 The purpose of work experience

Opinion was divided amongst interviewees, focus groups and questionnaire responses on the reasons why mini-pupillages were offered by chambers. As discussed in the previous chapter, the main differences of opinion arose between those who felt that the experience was entirely candidate-focussed, and those who felt that there was a mutuality of benefit for both chambers and the student. These two opinions were held fairly equally amongst participants from both student and practitioner groups. What both groups agreed on, however, was that mini-pupillages were not a form of assessment in themselves. Unlike on formal vacation schemes, the students were not given specific tasks to do on which they were assessed, and neither were they expected to ‘put in the hours’ and join in with social activities in the way that students on placements with corporate solicitors’ firms were expected to (Francis, 2015: 14).

Some chambers did keep rudimentary records of the names of students who had attended, and there was the obvious possibility that someone who had been on a mini-pupillage might be recognised by a member of a pupillage interview panel if they subsequently applied for pupillage. Beyond these basic records and incidental memories, however, mini-pupillages were portrayed as an opportunity for students to experience the profession, and witness the daily life of a barrister. In the pre-PASS questionnaire (n=31), students were asked to rank the reasons why they thought chambers offered mini-pupillages and the answer most commonly ranked as ‘most important’ was ‘to give students a realistic insight into the

profession' (n=12). This result was replicated, albeit in a much smaller sample size, in the post-PASS questionnaire, where six students (n=15) ranked it as the most important.

A number of participants felt that the information-sharing element of a mini-pupillage was, in fact, potentially the most important. Both practitioners and students felt this particularly strongly in relation to non-traditional aspirant entrants who may have less opportunity to access the information elsewhere. By undertaking a mini-pupillage it was felt that they were getting accurate information from people whose professional judgment they would be more likely to respect:

If an applicant was doing a mini pupillage you would give them the information, you would give them practical advice, you would say 'Look if you want to give yourself the best opportunity to succeed in the profession, you will need to focus on obviously making sure you get the best grades as possible', [...] sometimes it may be that having the experience actually helps them to focus. (Interviewee 1, non-Inner, M, chambers' rep.)

I was with [names], these really, really top advocates and they're just giving you; they're sitting down and for an hour of their time which they might charge out normally at however many hundreds or thousands of pounds and just giving you, you know, no holds barred, whatever questions you wanna ask, ask away, [...] you just couldn't do that unless you're in the chambers with them at the time. (PASS FG1 Participant 2, F)

This recognition of the possibility of raising aspirations through experience of the profession was also another recurrent theme. Although it is not possible to extrapolate from this sample to all chambers, the feeling amongst participants was clear: mini-pupillages are an introduction to the profession for potential applicants. They also allow an element of mutual

exposure whereby a chambers can ‘sell itself’ to a student who appears to have potential. What many participants made clear was that the Bar was not a profession where reading about it gave the level of information necessary for students to make an informed judgment about a career at the Bar; the experiential element was crucial. One participant who had subsequently secured pupillage went so far as to suggest that it was the immersive element of mini-pupillages that had led to her getting full pupillage, as she had not previously experienced the practice area of that set. The sound understanding that she had gained of how the profession worked from her mini-pupillages had, in her opinion, however, been the decisive factor in her success:

The experience that you’ll gain on a mini-pupillage is pretty invaluable. I mean, I am fairly sure that I got my pupillage on the back of the work experience I have and not on the back of anything I’ve learnt because I’ve never done Family Law. (PASS FG1 Participant 2, F)

Serving no formal assessment purpose, it could be argued that mini-pupillages are simply an institutional logic; something that the Bar has always done and thus continues to do. However, the responses from participants suggested that this was to under-represent the level of knowledge that students gained about the profession during them. Nonetheless, it is notable that PASS is not exploring other ways of engaging with aspirant entrants to further their understanding of the profession; it is doing so through the alteration of a well-established practice, further supporting the observation in this thesis that PASS is an example of a professional association ‘going with the grain’ in a ‘safe’ innovation.

6.3.4 The privileging of direct work experience

Many non-traditional aspirant entrants will have work experience of some form. This may include elements relevant to the legal ‘arena’, albeit that the type of employment or

placement undertaken is not itself based in the legal profession; and thus it is referred to as ‘indirect’ work experience. General work experience seems to be regarded within the legal profession as of significantly lower value than legal work experience (Francis and MacDonald, 2006: 97). The non-traditional students who participated in the Pathways focus group as part of the case study for this research identified this as a source of frustration; many had part time jobs or had done other work experience that they felt gave them skills relevant to legal practice, but were aware that firms and chambers were unlikely to consider the transferable skills that they had developed as useful for their career prospects:

I think it's good having work experience because there's always something in your work experience that you can bring into Law. Like me, I work in an old care home and when I write in my CV I say things like it helped me to work with a wide variety of people that I wouldn't work with outside this, [...] but if there's someone that's worked in a top law firm, the people with the top law firm are more likely to be accepted because they've worked like in that kind of aspect, of in Law, like what they're doing, like, you've just worked in an old care home. (Pathways FG, Participant 7, F)

It cannot be stated conclusively on the basis of Francis and MacDonald's research (2006) and the data collected in the present research that less value is attributed to work experience gained outside of the legal sphere, or not secured directly through interaction with the profession in the ‘pure’ form of mini-pupillage. However, it is argued on the basis of evidence from questionnaires and focus groups in this research, and the focus on mini-pupillages in criteria published online for full pupillages at many sets (e.g. Oriel Chambers require evidence of commitment to the profession ‘evidenced by the undertaking of mini-

pupillages and/or other similar work experience...⁴⁷), that such under-valuing does occur. This corresponds with the findings of Morley (2007: 202, 204) on general attitudes to linearity in graduate recruitment. It is likely to discriminate particularly against non-traditional applicants, who are more likely to need to work for financial reasons, reducing the opportunity to apply selectively for legal jobs. Furthermore, even the perception of under-valuing may deter non-traditional applicants, if they feel that their skills will automatically be devalued through not being gained within a legal setting, and thus social closure is maintained.

It seems likely that the differentiating factor in the value of work experience is partly attributable to the factors identified by Bourdieu: if a student has had legal work experience then they have been exposed to the doxa and habitus (see above) of the legal profession. If they have experience of working in other environments, although they may have developed valuable transferable skills such as communication or teamwork, they have nonetheless not assimilated particular social or aesthetic norms of the legal world. Therefore, the opportunity to form an identity which demonstrates these norms, showing that the aspirant entrant has assimilated them through prior experience, has not been experienced by those who have encountered the legal profession through other types of interaction.

The reluctance of the profession to identify as equally worthwhile experience of the legal profession gained 'obliquely' presents a significant problem for non-traditional aspirant entrants. At professional association level, therefore, it seems that initiatives aimed at educating the profession about the ways in which relevant skills can be acquired through other activities apart from mini-pupillages would be beneficial to access for those who have

⁴⁷ Oriel Chambers <http://orielchambers.co.uk/recruitment/pupillage/> [accessed 11th August 2015]; fn. 3 above

followed a non-standard route, and such a step may contribute towards the lessening of the role of social closure at the Bar.

PASS aims to give non-traditional aspirant entrants the opportunity to undertake direct legal work experience. This may remove one angle of disadvantage experienced by these applicants, as the scheme allows them to access direct work experience, and thus fulfil a criterion imposed by the profession for access, as well as providing an opportunity for identity formation. However, it does not challenge the fundamental assumption that the undertaking of mini-pupillage makes an aspirant entrant more suitable for the profession than one who has not undertaken direct work experience, but has nonetheless assimilated knowledge, or demonstrated interest, by other means. As argued below, this privileging may result from the perceived need to assimilate social norms, which is possible to a lesser extent in indirect experience.

In this respect, it is argued that the Inner Temple's challenge through PASS to traditional criteria in mini-pupillage applications that may inhibit access to the profession by non-traditional entrants is not as fundamental as it may first appear. Indeed, it is argued that it actively contributes to the notion that it is direct work experience in the form of mini-pupillages which is a key contributor towards successful access. It does this by creating a programme that gives access to that experience to those who may not otherwise be able to obtain it, instead of raising awareness amongst the profession of the ways in which indirect work experience may nonetheless allow a candidate to assimilate significant legal knowledge, understanding of the profession, and transferable skills, which, it is argued, would be a more transformative change. Instead, PASS implies that direct work experience is so important that access to it should be available to as many students as possible, instead

of acknowledging that other experiences may be as profitable as direct work experience for the generation of transferable, and some legally-based, skills.

PASS therefore contributes to ‘maintaining the status quo’ (Braithwaite, 2010: 153), albeit allowing more candidates to meet the requirements of that status quo, by continuing to propagate the notion that it is direct work experience which will put a candidate in a better position for entry to the profession. This is an example of a resilient status quo nonetheless surviving programmes aimed at increasing diversity, even if the programmes initially appear to be attempting to break down the status quo (Braithwaite, 2010: 153). This may be because the intention was not to break down the status quo at all, but to give an appearance of change, or because the status quo is so resilient that only a programme challenging core underlying assumptions could actually alter it. In this research it is argued that the first, albeit subconsciously, is likely to be the more prominent; it may not have been realised that the programme fails to tackle the deeper issues underlying non-traditional aspirant entrants’ reduced access to legal work experience, and why such work experience is perceived as privileged over other forms. However, the latter reason may also be relevant; as has been argued in chapter 4, a change to manifestations of the profession’s central value system might be occurring. Thus the status quo contributing to social closure may not be as resilient as previously thought. If social mobility eventually becomes subsumed as a core value, then an opportunity to dismantle the status quo from within becomes more likely, especially when coupled with embedded agency introducing new institutional logics through staff with different professional experience. This more significant change could potentially cause a dismantling of the underlying assumptions challenging greater social mobility.

Whilst in the long term a programme inadvertently maintaining the status quo is not desirable, it could be argued that if it is a forerunner to an attempt to educate the legal

profession about the value of other forms of work experience, it may nonetheless provide a sound base for this. By increasing the profession's exposure to non-traditional aspirant entrants, more awareness of the ways in which non-traditional entrants may have gained indirect experience can be built, and percolation to other 'arenas' of the legal profession (Nelson and Trubek, 1992) may occur. In this respect PASS seemed to be successful: a number of interviewees and focus group participants highlighted PASS as allowing mutual exposure. It gave non-traditional aspirant entrants the opportunity to discover that the Bar was not entirely white, male and middle-aged, and it gave chambers the opportunity to see the range of skills and abilities that candidates from non-traditional backgrounds had. As one post-PASS questionnaire response stated:

Before this mini-pupillage I had the impression that the bar is 'reserved' for white, upper class men, it was very traditional and very impenetrable. However I had the chance to see that things have changed, I had the opportunity to shadow young women barristers, and also one of them had a background similar to mine, which makes me feel more optimistic about pursuing a career at the bar. As for the environment at the chambers, it was very friendly, modern and forward looking.
(Inner Temple Feedback Questionnaire, Cohort 1)

Yes - they undertake work in the areas that I am interested in and have an excellent reputation. The atmosphere in Chambers was friendly, not stuffy, and the barristers I met were approachable and helpful. Before PASS I was uncertain whether I could work in London, but PASS demonstrated to me that the city is actually not as intimidating and unfriendly as I had imagined. (Inner Temple Feedback Questionnaire, Cohort 1)

It is argued that PASS's effect on social closure at the Bar will be reduced because it is not challenging the 'game' that disadvantages non-traditional aspirant entrants. Such a challenge might, for example, arise from using PASS as a vehicle to convey how chambers could adapt their own processes to take account of educational disadvantage or non-traditional routes. If this were the case, it might be more likely to cause a demographic shift, as mini-pupillages would become more accessible to a more diverse group of students, increasing access to both identity formation, and fulfilling a formal criterion. If this can be achieved, then there will be greater potential access to work experience than solely those mini-pupillages which are provided through the PASS scheme.

This case study has examined one form of professional intervention; a programme with a very specific remit of offering mini-pupillages to those who may otherwise struggle to secure them. A lack of work experience has been identified as an additional challenge facing non-traditional aspirant entrants, and therefore this programme has sought to provide assistance in relation to that specific hurdle. However, this is not the only way, and, as this chapter has argued, may not be the most effective way, of ameliorating disadvantage experienced by non-traditional aspirant entrants. Therefore the next section briefly considers, in the light and context of the case study, what other interventions may be open to professional associations.

6.4 Potential forms of professional association intervention

A central question for this research is whether an embedded professional actor is capable of taking action to alter an entrenched characteristic of the profession of which it is a part. More specifically, is this possible within a traditional, conservative profession in which social closure is entrenched. Disproportionately higher attainment by students from a higher socio-economic group relative to their peers in lower socio-economic groups from a very young age (Feinstein, 2003) illustrates that early intervention is likely to be key in ensuring that

young people from disadvantaged backgrounds attain the school-level qualifications needed to make them realistic and competitive entrants for the legal profession. Nonetheless, in the case study Inner Temple has chosen to focus its intervention on the provision of work experience (other events, such as Dinners to the Universities and Careers' Presentations often attract more traditional entrants).

Firstly, it should be observed that any significant change to the demographic of a traditional profession will take a protracted period of time. Whilst intervention by a professional association may be effective, and may achieve greater diversity, it will not do so within a few years. Any programme seeking to implement such a change will need to run consistently over a number of years to have a noticeable effect on the profession's demographics. However, changes which are much harder to quantify, such as more positive attitudes and approaches towards non-traditional aspirant entrants, may occur before any effect on demographic is seen, but would still be a very positive development for the profession. A change in one arena may, especially if that arena is powerful within the profession, affect other arenas, and especially those that are less powerful and influential in their own right (Halliday, 1987; Nelson and Trubek, 1992). Furthermore, other less tangible changes, such as more positive external perceptions, better provision of information and increased aspiration amongst the target group, may happen sooner and from a small scale programme, but nonetheless be important foundations for greater change.

Secondly, for any change made to be sustainable, it is necessary that the profession as a whole embraces different recruitment practices. Established professions tend to take on a 'caste-like appearance' (Larson, 1977: xv). This is unsurprising when it is well-established sociologically that people tend to choose others similar to themselves when, for example, administering recruitment processes (Mossman (2006) details this phenomenon's effect on

women seeking to enter the profession for the first time). The situation then becomes cyclical: the profession is comprised of demographically similar people, because when recruiting, the people already within the profession choose those most similar to themselves, perpetuating homogeneity within the profession. It therefore becomes increasingly difficult for people from other demographic backgrounds to enter. Although there is often no mal-intention, or even conscious intention, borne by those who select others similar to themselves, it clearly represents a significant hurdle to entering the profession to those who are under-represented within it that cultural reproduction within the workplace leads to certain candidates being more likely to be successful.

Broadly speaking, there are two strands to the problems facing the legal profession that mean that non-traditional practitioners are under-represented. Firstly, proportionally fewer non-traditional aspirant entrants consider seeking entry to the profession, and secondly, a large proportion of those that do are inhibited from fulfilling the requirements to enter the profession as the course fees for the LPC and BPTC are prohibitive. The interventions explored here are aimed at the first of those problems. They are, unfortunately, not able to solve the second problem, which, due to provision by private providers of the training courses, is somewhat stand-alone. Nonetheless, there is a brief exploration of potential solutions suggested in interviews with practitioners, and these are explored in the next chapter.

To be effective in altering the demographic composition of a profession, a professional association needs to either control entry to the profession, or have sufficient influence over those organisations recruiting directly into the profession to alter the recruitment practices identified as propagating social closure. This is a significant challenge, as it will be rare for professional associations to directly control access to the profession (although many will aim

to keep as much control as possible; Johnson, 1972). In this respect, the Bar is unusual; the Inns of Court do exercise control over those who are Called to the Bar, and without having been Called, it is impossible to practice. This means that, as professional associations, the Inns of Court are unusually placed to potentially affect the profession's demographic. However, in practice, this is not the case, as the two requirements for being Called are being 'of good character' and having passed the Bar Professional Training Course. It is the cost of the BPTC that means that many non-traditional aspirant entrants will not even get to the stage of being Called, as they are unable to afford the course fees (see chapter 7 for this, and other, constraints on transformative action by professional associations). This illustrates the difference between technical access (being Called) and the reality of access (an environment in which one can qualify to practise without exclusion or discomfort).

However, non-traditional aspirant entrants being discouraged from a profession by feeling that it is for 'different people to them', or is unwelcoming, is more susceptible to influence through a change in the way the profession portrays itself. In the case study, much focus fell on the potential of PASS to change perceptions of the profession held by non-traditional aspirant entrants, with themes of diversity, inclusiveness and meritocracy prevalent, especially in response to the open-ended question on Inner Temple's feedback form 'Has PASS changed your perception of the Bar and barristers? If so, how?'. This quotation is representative of responses:

The Pegasus Access Scheme has changed my perception of the Bar and of the barristers. Before the scheme, I felt that becoming a barrister would be very difficult due to my background. However, I was impressed at how diverse the Bar was becoming and the PASS is a good example of this. Having undertaken work at a top chancery set, I now have a renewed confidence to pursue my goal as a barrister.

(Inner Temple Feedback Questionnaire, Cohort 1)

For many stakeholders, in fact, this possibility seemed uppermost in their minds, above the potential for a change in the demographic composition of the Bar, which many raised but then discounted as being unrealistic for a programme of this limited reach (which, as argued below, is a legitimate concern).

6.4.1 Is the Pegasus Access Scheme fulfilling its aim?

As was set out in chapter 1, the narrow social demographic seen at the Bar is well-established. A trait of such longevity will not be easy to displace, as a significant number of years of consistent recruitment from across all social classes will be needed before practitioners from non-traditional backgrounds are represented at the Bar proportionally to their representation in society. For this reason, any programme that is targeting only small numbers of non-traditional aspirant entrants is unlikely to have a noticeable effect on the demographics of the profession. Therefore, in the case study, a programme which currently has a throughput of around 60 students per year is not going to cause a perceptible alteration in the demographic. This is not to suggest that there is no utility to such a programme, but rather that any measures of success need to be predicated on the understanding that the potential effect of the programme is limited. In light of this, it is argued that it is important for professional associations initiating such an intervention to be realistic about the goals that the programme is hoping to meet. As emphasised below, this may also in itself support efficacy of the programme. In interviews, it was suggested that this had not occurred in the case study, with some interviewees maintaining a belief that the programme could cause a demographic change.

The aim of PASS as stated publicly on the landing page of Inner Temple's PASS website is modest: *'to support those from diverse backgrounds to consider a career at the Bar.'*⁴⁸ A number of interviewees articulated more ambitious aims, however, suggesting a lack of agreement across the organisation about the aims of the programme. This lack of agreement also meant that some interviewees perceived what amounted to success of the scheme differently to others.

It is argued that all stakeholders should agree on what the programme is aiming to achieve, and how this success will be measured. Without such agreement it will be difficult to make decisions in relation to PASS that are complementary to one another, and aimed at taking it towards a clearly defined goal. Without such a clearly-defined goal to aim for, maintaining cohesion within the running of the programme may also be difficult. This was a notable matter when stakeholders were interviewed about PASS: a direct question was asked on what measures of success did that participant think were being applied, and there was much variation in answers:

I think numbers going through is important. I think whether that, not whether they then end up as barristers but whether that has then been a useful experience for them, either to persuade them to come to the Bar or to show them that the Bar is not what they want to do but at least then it's on an informed basis rather than a just guessed basis. (Interviewee 4, Inner, M, Bencher)

We have thought a lot about key performance indicators that we would use and actually it ends up going down to a basket rather than any one [...] I don't think success or selection can just be based on one thing [...] I would like to see many

⁴⁸ www.pegasus.me

more successful with Inns of Court scholarships, whether that's at Inner or any of the other Inns. (Interviewee 11, Inner, M, salaried)

One interviewee suggested a very clear demarcation between the role of Pathways and the role of PASS; perceiving Pathways as an information-disseminating exercise, and PASS as having a much more direct link to formal access to the profession:

I think if somebody or a significant number of people, whatever that is statistically, who go through that scheme then end up in some of the top chambers. That would be the mark of success. (Interviewee 7, Inner, M, other prof. assoc.)

This illustrates very clearly the variation in what even a small number of senior members of Inner Temple were perceiving as a measure of success. Without an agreement on this, it cannot be known whether all efforts are being directed most usefully towards securing a realistic and defined outcome, and it is argued that this could reduce the efficacy of the programme. Without quantifiable measures of success, and data collection examining whether these are met, it will not be possible for professional associations to know whether their interventions are having any, or the desired, effect (Kuipers et al., 2013: 11). Without this knowledge, it will not be possible for professional associations to build on best practice, and to adapt any programmes that they run such that their influence can be as effective as possible.

Existing literature has identified the potential challenges caused by a lack of clear aims and objectives in the legal profession (Braithwaite, 2010: 143), and more general management change literature (Pettigrew et al., 2001; Pettigrew and Ferlie, 1988; Kuipers et al., 2013) also emphasises the importance of an organisation knowing what it is seeking to achieve before it can take productive steps towards doing so. It is argued that, due to the particular

idiosyncrasies of the Bar, a method of considering change that places greater emphasis on contextual factors will give a more thorough analysis, as it allows for the effect of unusual structures and key historical habits to be considered. Pettigrew emphasises that ‘causation is neither linear nor singular. There is no attempt to search for the illusory single grand theory of change’ (1990: 270).

As Fisher (1997: 455) highlights in relation to development agencies, the ‘pursuit of participation [...] frequently fails to live up to [its] rhetoric, which seems to promote it and yet can amount to no more than the restructuring of control (Ribot 1996)’. For programmes run by professional associations to truly effect change within a profession, they must pursue genuine change, not only the rhetoric thereof.

6.4.2 The limiting effect of lack of stated and agreed aims and objectives

As has been detailed above, although there was a broad agreement on the aim of PASS being ‘to increase social mobility’ and ‘get the best candidates’, there was no overarching consensus on how or why this should be achieved. A number of participants tracked the source of impetus for social mobility back to the Entry to the Bar Report (Neuberger, 2007), but there was also a feeling that the Bar had been making gradual, organic progress in this area for some time, even if that progress had gone unnoticed:

I think there is a lot of media hype about the Bar; they like to portray us in the press as middle aged, middle class white males who are all fat cats and it really isn't made up of that anymore and hasn't been for twenty years I wouldn't say. (Interviewee 10, Inner, F, Bencher, other prof. assoc.)

I do think quite a lot of outsiders to the Bar would be surprised by the extent to which barristers are concerned about social elitism and social exclusivity at the Bar. I think

outsiders all think we are quite happy in our bubble as it were. (Interviewee 2, non-
Inner, F, other prof. assocs.)

Indeed, one practitioner participant stated that she felt that the Bar had been in error in not drawing more attention to the progress it had made:

I don't think the Bar is actually very good at saying actually we do do these things and we have been doing it for a long time [...] I think attitudes changed a long time ago and they are continuing to change. I am not saying it's perfect because it's not but, yea I think they are changing. (Interviewee 10, Inner, F, Benchers, other prof. assocs.)

Salaried staff who had come in from other organisations, however, disagreed with this. This is notable as it illustrates that the internal perception of a profession may be very different to the external perception, and that incrementalism is a real risk when progress is being evaluated internally (Abel, 2003: 25-6). It also suggested that these external staff felt that the Bar had been overly self-congratulatory when it had made very little progress until much more recently. One member of staff who had been working for the Inn for five years stated that he felt there had been a significant change within that time to the Bar's attitude as a whole towards access matters:

I would say though, when I started the line would be that the Bar doesn't have a problem. Perhaps it was denial, but I think it was more fundamental than that, that they truly believed that the Bar was meritocratic and that was their own self-perception. It was this own view of themselves; 'I got here and therefore anyone can if they work hard enough.' Almost 'pick yourself up with your boot-straps' mentality and I think that has changed. (Interviewee 11, Inner, M, salaried)

Such differences of opinion even as to the starting position of the intervention may challenge its efficacy; Lewin (1952: 228-9) suggests that organisational change happens in three stages: unfreezing of the current practice, a move to the new practice, and then the refreezing of the new practice. Without each of these steps, a new practice cannot supplant an existing one. It is argued that such ‘freezing’ cannot successfully happen if it is not agreed exactly what it is that is being frozen. In the case study, it would be possible for Inner Temple to, within its own practices, ‘unfreeze’ (as termed by Lewin, 1952) social closure, implement PASS as a manoeuvre towards a commitment to social mobility, and then ‘refreeze’ their practices including PASS.

Similarly, other literature discusses the need to ‘anchor’ or ‘institutionalize’ change (Jepperson, 1991: 148). Where institutionalisation of a new institutional logic occurs, it is likely to be secure as a new part of the framework by which those within the institutional logic relate to one another. If, however, it is simply ‘action’, Jepperson argues that it is susceptible to rebuttal by collective action. Thus, where a professional association wishes to introduce a new facet into its institutional logics, it will see long term effects only if it successfully institutionalises the new ‘rule’ within the central value system. This, however, remains subject to the inherent limitations caused by a lack of agreement and clarity on that which is being accepted as a new practice, or a new element incorporated into existing practice.

6.5 Conclusion

This chapter has sought to argue that the Bar, through its use of social norms and unusual practices, has continued to indirectly influence entry based on social class through engendering feelings of discomfort among non-traditional entrants and aspirant entrants, who cannot access opportunities to assimilate the social norms of the field (Bourdieu, 1984).

One way in which these feelings of discomfort can be reduced is by allowing non-traditional aspirant entrants the opportunity to assimilate these norms before entry. Mini-pupillages are crucial in providing an opportunity for this to occur, but they are hard to access and participate in for many non-traditional students, meaning they are disproportionately disadvantaged in the application process (Rolfe and Anderson, 2003: 319). Furthermore, well-intentioned interventions may themselves propagate feelings of ‘otherness’ due to the subjectivity of ‘doing good’, and this subjectivity further leads to problems of quantification and measurement of an intervention’s success. The privileging of legal work experience continues to reinforce the need to conform to the traditional path, as opposed to the treading of a new path which conceives of merit as demonstrable through other activities and experiences more readily available to non-traditional aspirant entrants.

Whilst the recommendations of the LETR to bring together the opportunities all in one place to save students time-consuming research examining the individual websites of each firm and chambers would doubtless be desirable, it does not address significant problems. It would need to be ensured that the system (presumably a website of some sort) was widely advertised across all universities, and it will still require chambers to advertise them accurately and for students to know which chambers to apply to. Furthermore, it will not in and of itself stop chambers failing to take into account educational disadvantage when paper-sifting candidates, and it will not address financial barriers to undertaking work experience disproportionately faced by non-traditional students in the traditional mini-pupillage process.

Alternatives which challenge the accepted conception of merit may, however, present a challenge to the status quo of the profession which, in itself, compromises their acceptance by the profession, and consequently their success (Braithwaite, 2010). The extent to which

such a genuine challenge can be mounted is likely to be affected by the relative power of the professional association (Halliday, 1987; chapter 4), and also its perceived motives for acting, which, in practice, are likely to be diverse, and encompassing both altruistic and self-serving agendas.

Having established that a central value system's indirect consequences can be challenged, and how this may occur in terms of both structural and human considerations, chapter 6 moved to a closer examination of the case study. This thesis suggests that the role of individual experience and stories has been previously underplayed in research into the professions and professional associations. It is impossible to understand how a profession may be best able to respond to societal changes without examining the individual experiences of those who are involved in formulating that response. This research has highlighted the importance of the personal stories of Benchers, salaried staff and practitioners in that respect. Of equal importance, however, are the personal experiences of the students at whom the intervention is aimed. An access programme such as PASS does not stand in isolation. The home, family and friends of young people all contribute to their view of the world, and of themselves.

Furthermore, their educational experiences may already have shaped whether the Bar is a realistic prospect for them by the time they reach the beginning of their university career. Challenges in access to good education may compromise a young person's ability to perform well in public examinations, regardless of their raw intellectual ability. The early stage at which the effects of lower quality education and family poverty begin to affect a child's chance of professional success later in life illustrate that early intervention is likely to be key to social mobility. Whilst it cannot be said that PASS is 'too little, too late', it is certainly restricted in what it can do by the educational and personal contexts of the young people at whom it is aimed. As the policy documents in chapter 1 highlight, many of those from lower

socio-economic backgrounds are also at an intersection of disadvantage. Even where they are not, the complex interplay of familial and educational factors that exist for many mean that a single access initiative at higher education stage may struggle to effectively address the results of socio-economic disadvantage.

The next chapter seeks to build upon the exploration of work experience by addressing those challenges faced by non-traditional aspirant entrants which are outside of the influence of professional associations and interventions which they may initiate. By doing so, it attempts to delineate the limits of professional associations' ability to cause meaningful change within a traditional profession, and considers ways in which a professional association may shape its intervention, such that these limitations are minimised.

CHAPTER 7 – WIDER CONSTRAINTS ON INTERVENTIONS BY PROFESSIONAL ASSOCIATIONS: CHALLENGES WITHIN AND CHALLENGES WITHOUT?

This thesis began by exploring the development and maintenance of social closure at the Bar, and the role of professional associations in this. It then examined why and how a professional association may take action to combat such closure, and whether such action is likely to be effective. The previous chapter examined an attempt to disrupt patterns of social closure by giving opportunities to non-traditional aspirant entrants that they may not otherwise have been able to access (using as an example work experience and its role in identity formation (Francis and Sommerlad, 2009: 65)). It was argued, however, that this is not the radical move that some have portrayed it to be, as it fails to challenge fundamental assumptions supporting social closure: the privileging of legal work experience and undervaluing of transferable skills that non-traditional applicants may nonetheless have assimilated in other ways. This undervaluation occurs primarily because of the perceived value of social norms, and thus the access programme examined is aimed at allowing non-traditional students to assimilate those norms, instead of valuing their difference.

This final substantive chapter therefore seeks to explore the wider context affecting the actions of a professional association attempting to change a deeply entrenched characteristic of the profession. It is argued that no profession is an island, and that circumstances beyond the control of a professional association will have a significant impact on the effect of its actions, awareness of which is vital. Specifically, the wider contexts of all parties involved will affect their interaction with one another and may constrain effectiveness of a professional association's intervention.

The two most relevant contexts are that of the professional association and the group at whom the intervention is aimed. For the professional association, there may be constraints within the profession but outside of their control which affect interventions. It is argued that these barriers may be susceptible to influence by the professional association, but it is likely that they will be difficult for a professional association to change as they are profession-wide challenges without a straightforward solution. In the case study, it is argued that there are two significant examples of such barriers. Firstly, increased regulation (such as through the Legal Services Act 2007). Secondly, the Bar Professional Training Course's significant financial cost. Unlike the solicitor's profession equivalent (the Legal Practice Course), the BPTC is rarely funded by an entrant's prospective chambers, and has increasing formal prerequisites.

In addition to those constraints within the profession but outside of the control of the professional association, there exist those constraints wholly outside of the profession, but which may nonetheless limit the effectiveness of an intervention. The constraint of this nature focussed on here is the educational and social contexts of the non-traditional aspirant entrants at whom the intervention is aimed. This is illustrated in the case study through the importance of social fields and a lack of access to information demonstrating a continued desire to retain control over the process of assimilating the cultural norms required for a comfortable social existence within the profession.

This research argues that the weakening of professional associations manifested in these ways is attributable to a number of causes, which can be divided roughly into two groups: firstly, those factors or events affecting the profession which are external, such as changes in regulation; and secondly, those factors internal to the field such as the structure and structuring properties which affect the perceptions and actions of those within it.

It is therefore argued in this chapter that professions and their professional associations as proxies are no longer as powerful as they once were. Whilst in the past professions controlled entry, the reproduction of their knowledge and culture, and their relations with government, times have very much changed. As a result professional associations now find themselves acting within a more limited sphere of influence in which they can exert their power. Entry requirements are under greater scrutiny, as they have been in this research, for fairness and equality amongst applicants. The reproduction of knowledge is no longer necessarily within the control of the profession itself, and nor is a privileged link to government, allowing the influence of policy and practice – a notable feature of professions. Within the legal profession, each of these three factors are readily identifiable. For example, the Legal Education and Training Review (LETR) highlighted weaknesses with the provision of professional education, and the particular barriers faced by non-traditional aspirant entrants.

Professions and professional associations, whilst seemingly weakened, do nevertheless retain the possibility for innovative action. It is more constrained by outside factors than has previously been the case, however, making innovation more reliant on internal actors, and on institutional entrepreneurship carried out both by individuals and the institution as a whole within wider constraints.

Finally, a conclusion is drawn together through a discussion of theoretical explanations offered by academics for the relative decline in power enjoyed by professional associations. The main theories considered are post-professionalism (Kritzer, 1999); proletarianisation (McKinlay and Arches, 1985) and deprofessionalisation (Haug, 1983), and restratification (Freidson, 1985). It is still argued, however that despite a potential decline in the power of professional associations, they have by no means been rendered powerless, but are instead adapting their use of power to bolster their position in changing times. This supports the key

argument in this thesis that professional associations have notable capacity for change. However, their evolutionary direction is not under their control as it has previously been, instead being directed by external events (such as legislation or political pressure), and an acceptance that refusing to evolve in line with these societal concerns would be detrimental to the profession.

7.1 'So limp it's unbelievable' - Diminishing power of professional associations of the Bar

The general trend depicted in sociological literature of the reduced power of professional associations has been reflected within the legal profession (Abel, 2003), and thus within the Bar as a sector of that profession, as well as in the solicitors' sector (Francis, 2011). A particular area of dispute illustrating the lack of power of the professional association is control over entry, and the ongoing discussions between the sites of power at the Bar (see 4.2.3) as to how best protect the profession's elite status when aspirant entrants are more numerous than ever.

As Abel recognises, the first line of defence against competition is control over entry (2003: 96). Thus, in exerting control over entry, a professional association sends out a clear message to others within the field that it is going to secure its place in the market by shoring itself up against its competitors. For professional associations, the exercise of control over entry has been key, justified as essential to protect consumers who are not perceived as capable of judging the quality or integrity of those offering professional services (Abel, 2003: 96). Historically, restricting membership has been a recurring issue at the Bar (Polden, 2010: 1018). In the context of this thesis, it is notable that oversupply of non-practising barristers

(those who have passed the BPTC but not secured pupillage) has been advanced by some practitioners as a reason not to engage in widening access work (see below 7.2.2)

With pupillages decreasing (to below 400, for the first time in five years, in the most up-to-date figures covering 2013/14),⁴⁹ but BPTC places remaining stable, this continues to be an area of tension between professional associations, members, and aspirant entrants.⁵⁰ A number of working groups have suggested that numbers on the BPTC should be reduced (Wood, 2008: 32-34; Neuberger, 2007: 51-57), and have given consideration to how this may occur; numerical limits, higher academic requirements, entrance examinations (such as an aptitude test), or English language requirements (Neuberger, 2007: 51). Whilst control over entry may be necessary to balance supply and demand of practitioners (Abel, 2003: 96) it may nonetheless be exercised in ways that control those numbers to the disadvantage of certain groups. A Consultation Paper on the future of training for the Bar (BSB, 2015) raises as an explicit question for the first time the effect that the imposition of a 2:1 requirement for undertaking the BPTC may have on non-traditional aspirant entrants.

In addition to such de facto reductions in power are formal restrictions. The most recent of these affecting the role of profession associations at the Bar is the Legal Services Act 2007. This legislation was introduced in part to reduce self-regulation. Previously the legal profession and professional associations had regulated the profession and overseen compliance with rules against restrictive practices. The LSA introduced a 'halfway-house' whereby the profession is being overseen by an external body, but this is an independent body instead of the government (Herring, 2014: 77). This external body is the Legal Services Board (LSB), introduced in s.2 as an oversight regulator of all legal services. An independent

⁴⁹ Bar Standards Board Statistics (2015) <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/pupillage-statistics/> [accessed 12th August 2015]

⁵⁰ Bar Standards Board (2015) <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/bptc-statistics/> [accessed 12th August 2015]

Office for Legal Complaints (s.114), removes these oversight functions from the professions themselves. In line with this aim to increase external oversight of the legal profession, it required existing professional associations such as the Bar Council and the Law Society to separate their representative and disciplinary functions in s.30. Thus, legislation imposed upon the professional associations changes their functions, something wholly out of line with the previous perceptions of professional associations, especially in elite professions such as medicine and law (Friedson, 1970).

This, however, was set against a long backdrop of increasingly interventionist action against the profession itself, mainly by Government, but also from other sources. One key area for this has concerned entry for new practitioners, and sustenance of those at the very junior end. Although funding for pupillages was introduced initially in 1990, it was not rolled out widely as it was not compulsory (Abel, 2003: 99). Furthermore, it was gaining tenancy that remained the main obstacle for those wishing to practise at the Bar. Consequently, in 1990, the Chair of the Young Barristers' Committee urged that BVC places be limited to the number of pupillages (Abel, 2003: 99). This was rejected, and it is interesting to note that the same issue was raised again in the Report of the Access to the Bar Working Party (Neuberger, 2007: 51-8). Once again, it was dismissed as impracticable and was stated that people should be allowed the opportunity to complete the Bar course if they had a 2:2 degree and sufficient finances. It was argued that it was not for the profession to tell people that they could not 'take the risk' of doing the BPTC, but that potential candidates had to choose for themselves whether that was a risk worth taking.

In the early 1990s, the young Bar was declared to be 'in crisis' by Peter Goldsmith QC (1993), who had been mandated to assess what the environment of legal practice would be by the turn of the century, in order to assess demand. He found that the Bar had grown by

23 per cent in four years, but that, in half that time, Magistrates' Court work had declined by 5 per cent and the Crown Prosecution Service had halved the proportion of Magistrates' Court cases for which it briefed counsel. Furthermore, it planned to halve it again, and had already cut Crown Court briefs by 10 per cent (Abel, 2003: 100). It was therefore unsurprising to find that 20 per cent of new tenants had experienced financial difficulties, further underlining the need for those considering the Bar as a career to either have parental financial support, or savings of their own on which they could rely when work was scarce.

In an effort to alleviate the financial crises in which some pupils found themselves, and which were unlikely to be alleviated early in their tenancies (assuming they secured them), in 1997 the minimum wage was held by the High Court to apply to pupils in the case of *Edmonds v Lawson*,⁵¹ although most chambers vehemently opposed such minima, and the Court of Appeal overturned the High Court ruling. Instead, the Bar Council agreed to set a minimum pupillage award, which was initially £10,000, and has recently risen to its current level, which is £12,000. However, when considering the amount of travelling necessary to various courts, and the living cost for those living in London, this by no means guarantees an escape from financial hardship. If the pupil then earns little in the second six, or the payment of what they earn is delayed (as is often the case with legal-aid funded work), they may still be subject to serious financial hardship.

Furthermore, the imposition of the minimum wage had the undesirable effect of reducing the number of pupillages available, a bottleneck which has tightened increasingly as legal aid is further reduced. The methods of funding available to students in order to finance the BVC also underwent a change, as the Government had previously provided some funding for such vocational courses, which declined significantly. Simultaneously, the cost of

⁵¹ [2000] EWCA Civ 69

university, a conversion year if necessary, and the BVC were all rising (Abel, 2003: 119). At the same time, the profession was open to criticism that, although it provided a large amount of money in funding, most of this was distributed by way of merit scholarships, which often went to those who were not in the most financial need:

The Inns are a bit protective of the data and their scholarships and who gets them as I am sure you are finding that we don't think they aren't necessarily going to the people who need them the most. Only two out of the four means-test their scholarships. (Interviewee 6, non-Inner, M, salaried, other prof. assoc.)

This echoed findings in the Neuberger Report (2007: 58-9), and in interviews, a small number of practitioners also observed that the challenges faced by non-traditional aspirant entrants in making convincing mini-pupillage and pupillage applications were equally applicable to Inns of Court scholarships (as also reported by Neuberger, 2007: 59).

Both Middle Temple and Inner Temple take into account need with merit. Lincoln's Inn and Gray's Inn both retain the fully merit-based system. These funding problems once again opened the debate on the introduction of a quota in order to limit the size of the profession. The Bar agreed only to fund pupillages on the basis that it could also control their numbers, and thereby replaced the previous implicit entry requirement of ability to pay with a 'modern meritocratic warrant' (Abel, 2003: 119).

The imposition of the minimum wage requirement, and the success of the Claimant in the Edmunds case, demonstrated that the Bar was no longer untouchable by outside bodies and regulation as it had previously been perceived. It would have to adhere to at least some of the requirements made of other professions and occupations, even where such seemed out of kilter with its elite and self-employed status. It seemed that the Bar was becoming

weakened as a profession less able to exercise its autonomy to behave in ways perceived by some as being outmoded and unfair.

It is argued that this challenge to the Bar as an autonomous profession has continued: various subsequent reports conducted by members of the profession have expressly criticised the lack of regulation in certain areas of the profession. For example, the Wood Report (2008) examined the lack of oversight of BVC providers, whilst the Neuberger Report (2007) highlighted the demographic homogeneity of the Bar. Furthermore, the profession as a whole is often regarded as being ill-thought of by the public, perceived as a profession where all practitioners are earning vast quantities of money for relatively little work.⁵² Many participants admitted that they had had such preconceptions themselves prior to participating in PASS, but conversations with barristers during their mini-pupillages had enabled them to gain more accurate information:

She was making me aware of how little I will be getting paid during a pupillage and, she actually said it's not that much different if you're doing Family law but she was saying it's not all about the money and it's just nice to be aware that someone is doing it for the same reasons that you are and not just for, like, a really big pay cheque or anything. (PASS FG1 Participant 4, F)

Rogers (2012: 223) noted in her research on Inns of Court recruitment events that barristers speaking at those events conveyed restrictions on the autonomy of the profession as a negative circumstance which had come about as a result of other elements of the legal profession and government action. This suggests an awareness within the profession that it can no longer portray itself as wholly in control of its circumstances, and a necessary reactor

⁵² 'Lawyers lament 'fat-cat' public perception', Financial Times, June 7th 2012 <http://www.ft.com/cms/s/0/1ab052ea-b0c3-11e1-a79b-00144feabdc0.html#axzz3b3nGb0uk> [accessed 24th May 2015]

in situations where previously it would have been expecting to be the actor. It is notable that these restrictions are perceived in negative terms, indicating the distaste of the profession for attempts to regulate it – to such an extent that one interviewee actually attributed some blame for the lack of social mobility to the presence of regulations (see also 5.1):

I was able to come to the Bar because it wasn't constrained with rules and regulations and that's why social mobility has gone backwards. (Interviewee 7, Inner, M, other prof. assocs.)

Not only is the Bar experiencing constraints, but it is being forced to acknowledge them, and potentially to act in reaction to them. A point of interest in this thesis was whether a move away from social closure and the implementation of a programme advocating social mobility was one which could be described as a free and deliberate choice by the professional association, or whether this was a manoeuvre triggered by external factors. PASS participants had very mixed views on this matter when asked 'Why do you think chambers offer mini-pupillages through PASS?', with answers including 'either to address, or, more cynically, appear to address, an issue with lack of diversity', 'to meet a quota' and 'committed to increasing diversity at the Bar and to help those from low income backgrounds/non-Oxbridge graduates gain access to the Bar' (all from the researcher post-placement questionnaire).

Thus, in then advancing a programme of their own making, was the professional association in the case study attempting to disguise forced change as occurring out of choice (Abel, 1985: 12), or was this a move genuinely conducted because the profession had come to a realisation of its own accord that it needed or wanted to encourage entry on the basis of merit alone? It is argued that a combination of both factors seems most likely: this research has certainly discovered within a professional association a core of embedded actors, a number

within the elite, who believe strongly that social mobility is important for aspirant entrants as a group, and also the Bar as a profession. It remains contested, however, whether movement towards a more socio-economically representative profession is internally or externally driven. This has been recognised by Maute (2011: 11-12) who suggests that the professions may evolve in these ways, conscious that if they do not, external action may instead be used to force them to do so. Under such circumstances, it is argued that evolution in the manner seen in PASS is the preferable option for a profession, as it allows them the recognition of choosing to act, as well as greater control over the way in which such evolution is pursued.

Many of the PASS participants recognised that there may be elements of both free choice and external pressure featuring in a decision to initiate a programme such as PASS (for further exploration see chapter 4), as shown by this response to the question ‘What do you think motivated Inner Temple to set up PASS’:

A genuine commitment to extending access to the Bar to people from socio-economic backgrounds where, historically, the Bar has not recruited from (nor wanted to recruit from). This seems to imply a working towards a long-term change in the make-up of the Bar; not only for the benefit of its future practitioners, but also possibly in order to evolve the Bar in the face of continual existential threats.

(Researcher pre-placement questionnaire, cohort 2)

This chapter continues by focussing on four key issues which currently constrain the actions of professional associations currently. Externally, there are two main factors: increased regulation and cultural reproduction through professional education. Internally, there are the structuring properties of the field to be considered. More generally, there is the challenge posed by the extent to which social fields are permeable, allowing individuals to move

between them. Firstly, the two internal factors, legislation and regulation and professional education, will be considered.

7.1.1 Legislation and Regulation

As has been detailed elsewhere in this thesis, regulation has increased in many professions. In the legal sector the Legal Services Act 2007 was a notable restriction on the self-regulation and autonomy previously enjoyed by the barristers' and solicitors' professions. This self-regulation took the form of disciplinary bodies existing within the representative bodies – the Solicitors' Regulation Authority (SRA) was within the Law Society, and the Bar Standards Board (BSB) was within the Bar Council. Such self-regulation had always been identified as key to the professional project (Larson, 1977: 53). Self-regulation allows a profession to demarcate its own limits, to advance its status, and to negotiate more forcefully with government for situations favourable to it (Abel, 2003).

Constraints occurring through the introduction of the Legal Services Board as a regulator, and the additional duties placed on the frontline regulators in each profession, cannot be ignored in the current research. As Francis states 'there is now little doubt that the LSB is a serious actor' (2011: 144). In addition to the broad reasoning behind, and aims of, the legislation as introduced at the beginning of this chapter, section 1(1)(f) of the LSA 2007 sets out as a regulatory objective to be fulfilled by the LSB and frontline regulators (the BSB and the SRA) 'encouraging an independent, strong, diverse and effective legal profession.'

This emphasises the force with which such an agenda of social mobility is now being pursued: diversity of all types has been enshrined in legislation as something which the profession must pursue. The imposition upon the legal profession of such legislation, effectively compromising its right to recruit in a truly autonomous fashion is, it is argued, wholly inconsistent with the powerful portrayals of the legal profession in the past. Whatever

theoretical framework was preferred – functional, action, power or other – all situated the professions in powerful and elevated positions that were not easily constrained by any organisation or exercise of state power. Abel (2003) details various occasions when the legal profession went on a deliberate collision course with the government over legislation which it felt compromised its ability to recruit in the way it preferred, or to otherwise fetter its discretion in any important matters.

As Boon (2010: 207) notes, the LSB has preferred a system of ‘principles-based regulation’, the less prescriptive counterpart to the ‘command-control’ system. This middle-ground model emerged after the Clementi Review (2004) highlighted a plethora of inadequacies in the current system, but also as a result of fierce opposition to one single legal services regulator. Such regulation, Boon argues, has the possibility to revitalise legal professionalism by increasing order, as the ‘hotch-potch’ of co-regulating bodies has been reduced (2010: 224). The LETR also flagged up concerns about the increasing regulatory challenges facing the profession now and in the future, and highlighted that the solution would not be to increase the number of regulators, but instead to encourage greater collaboration between those already existing (2013: vii). However, the LSB also signalled a move towards entity regulation: the regulation of groups supervising individuals, as opposed to the individuals themselves, introduced in part to address the challenges posed by new professional actors such as global professional services firms (GPSFs) (Flood, 2011: 508).

A necessary corollary of the introduction of a regulatory body such as the LSB, it is argued, seems to be diminished power for the professional associations that previously had a much wider scope of unconstrained action. In this jurisdiction, external regulation has been the path of choice of the legislature, imposed upon the professions and their professional associations. Semple (2015: 86) characterises the professionalist-independent paradigm of

legal services regulation with reference to self-regulation and a focus on the governance of individual practitioners. He notes that in North America, where a system not dissimilar to regulation of the Bar in England occurs, moves by the state towards greater regulation, although appearing to hail significant reduction in self-governance, have in fact not had such notable effects as expected (Fischer, 2006). As Trebilcock writes, the question in North America is currently whether the professionalist-independent paradigm of regulation of legal services can be reformed and revitalised without the threat of more external regulation (Semple, 2015: vii). It is argued that we are perhaps already beginning to see some preliminary answers to that question in England and Wales in the very decision to introduce the LSB. The existence of the LSB has also caused at least one of the regulators to seek to implement further legislation, with an announcement in May 2015 that the BSB is consulting on further legislation aimed at facilitating it in its role as an approved regulator under the LSA 2007. These include widening its disciplinary powers, securing them on a statutory footing, and increasing information-gathering powers (BSB, 2015a: 1). Thus, greater external regulation has also led to the creation of greater internal regulation.

It is not only in regulatory matters that the might of professional associations, and particularly those in the legal sector, are diminishing, however. Another key area which can be indicative of the power balance in a profession is the method and content of professional education: that training undertaken post academic qualifications, but before entry to the profession in full is allowed. This stage is sometimes called ‘vocational training’.

7.2 Habituation to the habitus: Professional education as cultural reproduction

Tolbert (1988: 104), amongst other scholars, has suggested that ideological processes are key in professional associations as they perceive professional education as providing a

common culture and thus shared understanding of problems and solutions. It has long been recognised that professional (i.e. post higher-education) qualifications play a significant role in shaping students into the mould that the profession desires them to fit by standardising the knowledge base (Larson, 1977: 46). Professional education is also a key stage in identity formation and cultural reproduction (assimilation of the field's habitus) for aspirant professionals, as well as the development of a common set of knowledge. If its purpose is fulfilled, they will complete the education as a member of the profession who possesses the general ideology and practices required by the profession, referred to by Larson as 'cognitive standardisation' (1977: 40). It is argued that such cognitive standardisation will often include not just knowledge, but certain values and beliefs.

This standardisation gives the monopolistic professional project the appearance of neutrality, and thus the appearance of legitimacy (1977: 41), and disguises to some extent the internal stratification that occurs within professions, but which is often invisible to the public (Abbott, 1988: 121). Furthermore, such appearances of commonality within the profession stemming from educating aspirant entrants into an appearance of homogeneity lead the elite section of the profession (Shils, 1975) to perceive commonality amongst the rest of the profession. They therefore present what they perceive to be the interests of the profession as belonging to the whole profession, further serving the force with which the profession's desires can be pursued: a façade of united action arising from a 'façade of homogeneity' (Abbott, 1988: 106).

Thus, professional education leads to the formation of a body of knowledge required for entry to the profession. For these reasons, it is in a profession's interest to have a relatively high degree of control over the content and teaching of a professional qualification. However, that body of knowledge will be applied differently by each individual due to their

personal differences. Larson suggests that three things arise from this: firstly, that social characteristics prevalent within the profession will influence the standardization at any one time; that the leading producers will define those requirements that cannot be taught, and thirdly, that the role of individual talent will vary (1977: 41). This is at variance with the claimed aim in PASS, that the role of talent should, in fact, not vary (see 4.4 and chapter 5). Many interviewees and students perceived PASS as an attempt by Inner Temple to develop the individual talent as an aspect that does not vary, but is considered paramount in all recruitment for the Bar.

In the legal profession, the second of those elements identified by Larson, that the leading producers will define those requirements that cannot be taught, has been key. As detailed throughout this thesis, there are outward manifestations of key qualities that the profession is looking for in aspirant entrants that it is difficult to teach; indeed many of them are formed very early in life having been learnt from parents and carers (Bourdieu, 1984). Furthermore, a move towards increasing access is reflective of the third element, with initiatives favouring ability over traditional backgrounds giving a greater role than has been seen previously in the legal profession to individual ability. This is something PASS is seeking to further.

The translation of these values into the legal profession through a standardised knowledge base is thus begun at the legal education stage (Francis, 2011: 17). This stage is influenced by the profession, which often has strong links to the providers of professional training, and may even part-run or fund such training. However, they may not retain full, or as much control as they would like, over the stage. In the legal profession, professional education in the form of the BPTC (and the solicitors' equivalent – the LPC) is run by commercial providers who are not connected to or funded by the Inns of Court in any way. This is contentious, with many commentators and members of the profession arguing that the

private providers do not have the interests of the profession or students at heart, but simply the desire for profit. During this research, the Legal Education and Training Review (LETR) was published. Although it made a number of recommendations regarding the provision of the BPTC, it did nonetheless declare that the system overall was 'fit for purpose', despite recurring concerns about the quality and provision of the course in some parts (2013: chs 4 and 5).

Reduced control over legal education is one way in which the profession is no longer as powerful as it once was. Before European competition laws forbade it under legislation preventing monopolies, there was only one provider of the BVC (the forerunner to the BPTC): the Inns of Court School of Law (ICSL). One of the interviewees recalled this as being fit for purpose and generally providing a good level of education to aspiring barristers:

[Professional associations] have no control over that. When I did it you had to go to the Inns of Court School of Law to do your Bar finals, it was the only place [...] I thought the teaching was good, the support was okay. [...] but once they stopped that because of competition rules and everything else, all of these places started springing up all over the county where you could do your Bar Finals which was great, because in theory you could live at home or close to home or at least be in a part of the county which was cheaper than London, but then they just hiked up the course fees.
(Interviewee 10, Inner, F, Bencher, other prof. assoc.)

Thus, provision of the Bar Professional Training Course has been a source of continued debate within the profession. Despite the introduction of competition supposedly aimed at increasing the standard and choice for students, it was felt by those interviewed for this research that this had not been the result. Although the Wood Report felt that there was a

negativity evinced by some students that was not consistent with its opinion of the teaching seen by members of the team (2008: 56, para 131), it seems that deep concerns still remain about the course, and thus little faith is put in the providers. One participant was undertaking the BPTC at the time of the PASS focus group in which she participated, and had particularly strong views in light of her experience:

I have a massive thing with the Bar Course because I don't think there is even half enough regulation [...] of the course; on the fees that are being charged, on the amount of places that are being offered, on the providers and how they are regulated. I just think...I think it's really actually quite appalling. (PASS FG1 Participant 2, F)

Various reports have examined the course's content and efficacy, as well as its potential effects on access to the profession (Neuberger, 2007; Wood, 2008). The course is a compulsory pre-requisite for obtaining pupillage, and therefore it cannot be circumvented. It is offered by a number of providers, some private commercial providers, some university-based providers.⁵³ The course is usually undertaken in one year on a full time basis, although most providers also offer the course part time over two years (BSB, 2014: 24).

Concerns about the quality of the course were rife amongst case study interviewees, both students and practitioners. A recurrent theme was the low entry requirement for the course: a 2:2 at undergraduate level. Statistics show that 25.4% of BPTC students had a degree classification below a 2:1 (Bar Barometer, 2014: 107). In the same year (the most recent for which data is available) only 4.3% of registered pupils' degree classifications were below a 2:1;⁵⁴ a clear cause for concern, as many are completing the academic stage and being Called

⁵³ BPTC Provider Information 2014-15

https://www.barstandardsboard.org.uk/media/1664258/bptc_info_table_2014-15.pdf [accessed 12th August 2015]

⁵⁴ <http://www.barcouncil.org.uk/about-the-bar/facts-and-figures/statistics/#PupilBarStats> [accessed 15th January 2015]

to the Bar, yet have little chance of practising. This was also a cause of concern to many of the interviewees, and recurred as a theme creating some conflict within the profession, as the vast over-supply of the BPTC led to some within the profession accusing those who supported access schemes of ‘giving false hope’ to non-traditional aspirant entrants, as statistically, the likelihood of success is so low.

[Lady Hale] also said the Bar shouldn't be doing so much outreach work because it was giving people false hope about being able to enter the Criminal and Family Bar when there simply wasn't going to be the pupillages available yaba yaba yaba, so even, I mean I have always seen outreach as providing good careers advice and hopefully aspiration raising more generally to those who otherwise wouldn't have it.

(Interviewee 11, Inner, M, salaried)

This level of competition, however, seemed to be something of which students were aware, especially after participating in PASS, and they understood that taking the BPTC was, in itself, a significant risk as it did not mean that they would succeed at the further hurdle of securing pupillage:

I think it made me value the competitiveness of getting a pupillage, because I never really understood it before I did my [PASS] mini-pupillage. (PASS FG1 Participant 4, F)

And it's not even certainty. It's not even a half chance; it's like a 1 in 10 chance after that that you're gonna get the job that you need to secure; there's no ways round it [...] so if you don't get a pupillage you can't get to the Bar, and you've got five years to use these qualifications which you've really worked hard for. (PASS FG1 Participant 2, F)

However, the entry requirements cannot be dictated by professional associations, despite their open acknowledgement that many students embarking on the BPTC will ultimately, and predictably, be unsuccessful; although they may secure a place on the BPTC with a 2:2, they are unlikely to obtain scholarship awards or pupillage without extenuating circumstances. Thus this is one way in which the professional associations are appearing in this research as weakened entities. This reduced level of control was also emphasised in the case study by the unrest felt regarding the introduction of an aptitude test for entry to the BPTC – a further exercise in controlling who gains access to the stage of receiving standardised knowledge in a setting aiming to facilitate the cultural reproduction of the profession’s norms. In July 2015 the BSB opened a consultation entitled ‘The Future of Training for the Bar: Academic, Vocational and Professional Stages of Training’.⁵⁵ For the first time this consultation explicitly raised the question of whether a 2:1 should be the academic minimum required for entry to the vocational stage of training (2015: 14). Accompanying discussion within the consultation paper on this matter is consideration of the negative effect that this may have on certain groups, particularly those from ethnic minority backgrounds or those with disabilities; no specific mention is made of those who have experienced socio-economic disadvantage (2015: 15).

The official academic standard of a lower second class degree was, for the 2013/14 academic year, supplemented for the first time by the ‘Bar Course Aptitude Test’ (BCAT). The BCAT was introduced in response to recommendations made by the Bar Vocational Course Review Group, chaired by Derek Wood QC (2008: 3), which suggested a number of possible forms that the test may take, and at what stage it should be administered (2008: 39, para 78). A pilot took place in 2009-10 with about 200 student volunteers, and a second pilot (in which

⁵⁵ https://www.barstandardsboard.org.uk/media/1676754/fbt_triple_consultation_9_july_2015.pdf [accessed 7th September 2015]

the writer participated, being a BPTC student at that time) took place between November 2010 and November 2011 (BSB, 2013: 10). The BCAT was then approved by the Legal Services Board in July 2012.⁵⁶ The BCAT handbook describes the test as assessing critical thinking, which it does by measuring three core areas of critical thinking: recognising assumptions; evaluating arguments, and drawing conclusions (2013: 3). In other words, it is aimed at identifying those raw and innate skills that participants in this research routinely identified by the over-arching term ‘talent’ (see 4.4 and chapter 5). A practice test is available free of charge online from the website of the body that administers it; Pearson Vue.⁵⁷

The idea behind measuring these skills through an aptitude test is that they are not learned, but innate, and are therefore not subject to teaching or coaching effects (Ogg et al, 2009: 784). Large quantities of research exist suggesting that this is not the practical effect of such tests, and that bias is found in many. Race (Jencks and Phillips, 1998), gender (Connor and Vargyas, 2013: 17) and cultural biases have all been discovered, with the latter including bias against those from lower socio-economic backgrounds (Stringer, 2008). Research commissioned by the LSB into legal aptitude tests drew a balanced conclusion highlighting both strengths and weaknesses of aptitude tests (Dewberry, 2011). It concluded that caution should be employed when considering the use of aptitude tests, as their results were affected by the experiences of the individuals taking them, and those from privileged backgrounds tended to perform better than their counterparts from less privileged backgrounds (2011: 72). Those who had sat the test, who included a chambers’ representative in an administrative position but undertaking the BPTC part-time, were unconvinced of its usefulness:

⁵⁶ <http://l2b.thelawyer.com/lsb-approves-introduction-of-bar-course-aptitude-test/1013628.article> [accessed 12th August 2015]

⁵⁷ <http://www.talentlens.co.uk/BCAT> [accessed 7th September 2015]

Before you have even started the course you've now got to pay £150 for an aptitude test which if you fail, it's ridiculously easy, it doesn't test anything, it's the biggest waste of £150. (Interviewee 3, non-Inner, F, chambers' rep)

Practitioners involved in conceiving it felt that the test in its final format was not true to what had been intended, and what had thus been supported by the professional associations. In its final format, it was felt to serve very little purpose:

Well I thought, everybody thought, the aptitude test might be a way forward but the test was watered down by the LSB and so it hasn't, all it's done in my view is just to take another £150 off the students. It costs them more money, because the actual nature of the test is not what was intended by the BSB or the profession. (Interviewee 10, Inner, F, Bencher, other prof. assocs.)

Furthermore, the use of aptitude tests was perceived very negatively by non-traditional aspirant entrants themselves, with participants in the case study focus groups perceiving them as an exercise in identifying privilege as opposed to talent:

So, erm, given that this aptitude test probably doesn't shed as much light on how clever you are to how hard you've worked in your academic degree and your academic grades I think it's just another way of, erm, trying to sort the wheat from the chaff, and I don't think that it's very accommodating towards people who will be put off by that. (PASS FG 2 Participant 4, F)

The phrase 'sort the wheat from the chaff' used by this participant is a powerful metaphor. It brings connotations of the desirable and the undesirable; those who are fit for the task and those who are not. Akin to the 'sifting' phase described in appraising mini-pupillage applications (see 6.3.1), aptitude tests provided another way in which the profession could

apply standardised measures to reduce the workload of interrogating individuals and their circumstances more closely (although in this case it was in relation to entry to the BPTC instead of obtaining mini-pupillages). This participant further seemed to suggest that success in the aptitude test could potentially come to be regarded as another marker of a traditional background, as she had earlier mentioned that she was aware that research suggested that traditional candidates would score more highly.

Thus, even access to the standardised knowledge has become more closely guarded, yet not at the behest of the profession itself, but of commercial providers who run the courses purely for profit. To gain control over the stage of professional education, a professional association would be faced with a stark choice: to run the courses itself. Furthermore, it would face the challenge of European laws on monopoly, as it had when the ICSL was the sole provider. When competition law prevented this continuing, the ICSL became one of a number of providers, before being absorbed into The City Law School in 2008.⁵⁸

Whilst a number of interviewees felt strongly that a return to monopoly was undesirable, they did feel that it was necessary to attempt to raise the standards of provision, and that this was something that a professional association-run course could potentially achieve. Part of the basis for such an assertion seemed to rest on the professional associations' status as a not-for-profit entity, and the possibility that such an ethos and set up could be used in any training provision:

...education should really be education it shouldn't be a profit making exercise, and whether that means in future the Inns coming together, because they have got a lot of financial resources maybe produce their own, maybe a not for profit charity or

⁵⁸ City Law School 'Our History' <http://www.city.ac.uk/law/about/our-history> [accessed 12th August 2015]

some sort of arm to deliver what training needs to be done. (Interviewee 1, Inner, M, chambers' representative)

Furthermore, the use of professional association resources in running the BPTC not-for-profit would significantly reduce the fees. With lower fees, scholarships would not need to be so large, and this would release some funds currently given in scholarships to finance the undertaking of the BPTC. Such funds could, for example, be used to form scholarships for living costs. For non-traditional aspirant entrants, the funding of such costs would be likely to allow those who had successfully secured a place to undertake the course without threat of financial hardship.

When further considering barriers caused by the BPTC which disproportionately affect non-traditional entrants, the course length being a year was criticised as unnecessary (in contradiction to the prevailing opinions communicated to the Neuberger Working Group; 2007: 47). Particularly for non-traditional aspirant entrants, the length of the course – as time during which they cannot work full time – is likely to be important, especially if they have caring responsibilities or have to be financially independent. Thus, a less radical and more common suggestion than professional-association provision of the BPTC was shortening it. This has already occurred on the LPC, where an accelerated course of around seven months is now available to all students at certain providers,^{59,60} and is compulsory for some firms' trainees.⁶¹ On a 'streamlined' BPTC, it was further suggested by case study participants that a professional association could play an important role:

⁵⁹ <http://www.thelawyer.com/col-opens-fast-track-lpc-to-all-students/1008042.article> [accessed 30th May 2015]

⁶⁰ <http://www.thelawyer.com/bpp-caves-in-to-pressure-with-fast-track-lpc-for-all/1006555.article> [accessed 30th May 2015]

⁶¹ <http://www.thelawyer.com/ao-unveils-fast-track-lpc-despite-fears-over-two-tier-system/1006289.article> [accessed 30th May 2015]

For example, perhaps the Inns could have a role in that, having resources available. We obviously subsidise our members hugely with qualifying sessions which we do, perhaps that's something we could do for the Bar Course. (Interviewee 8 Inner, F, salaried)

It is notable that when interviewees were asked to comment on the challenges they perceived to social mobility at the Bar, the BPTC featured heavily:

Well I think it's a disgrace actually because it seems to be ripping people off I think. But every attempt that the profession has made to look at how we deal with that was ground into the dust on competition grounds. (Interviewee 9, Inner, M, other prof. assocs.)

When asked if they thought there were any solutions to the challenges posed by the BPTC, all the proposed solutions gave a more significant role for the Inns as professional associations, supporting assertions in earlier chapters about the high regard in which they are held by practitioners. More generally, it demonstrates the power held by professional associations where there is an attempt to restrict the provision of specialist knowledge as a commodity produced by that profession (Larson, 1977: 14). It is argued that such increased participation, whilst potentially a way to make the BPTC more accessible, may be viewed as bringing a professional association into a commercialised arena in a way that is not desirable (see Faulconbridge (2012) on the challenges of close integration between education providers and City law firms).

Alternatively, however, such involvement by a professional association could be perceived as a hope for a return closer to the levels of power previously enjoyed by the profession. Whilst the current picture of professional education for the Bar paints a somewhat dreary

picture of private providers with purely commercial desires, a number of those interviewed clearly felt that greater professional association involvement in the way in which professional knowledge was standardised and taught would be to the benefit of both the profession and aspirant entrants.

A resultant tension could be observed between the ‘old school’ model and the newer, commercial model. In such a traditional profession, lamenting for the ‘old times’ might be expected. For those interviewees that could remember it, there seemed to be a genuine belief that the monopoly model under the ICSL had had advantages in terms of keeping costs relatively low, but combined with an acceptable standard of provision. These practitioners portrayed the commercial providers as financially greedy and without care for the welfare of the students who they admitted to the course in the knowledge that their hopes of obtaining pupillage were slim at best. Younger participants had no memory of the ICSL, and consequently seemed to have little to suggest regarding how the current situation might be improved. Nonetheless their distaste at what they perceived to be the unethical behaviour of the commercial providers was clear.

It is not only those things outside of the profession which may hinder the effectiveness of interventionist behaviour by a professional association within it, however. The structure of the profession itself may pose particular challenges to such action, and these will now be explored, focussing particularly on the unusual structure of the Bar, and how this has affected the ability of Inner Temple to take interventionist action.

7.3 Structuring properties of the field

Any profession has its own structuring properties. It has both its ‘hard’ structuring properties, such as the hierarchy of its organisations (see chapter 1), and its ‘soft’ structuring properties.

Soft structuring properties are the accepted ways things are done within the profession, and how those within the profession think about things: their frames of reference and pre-conditioned choices and perceptions. In terms of the alteration of established practices, the structuring properties of the field may exert as much force in determining whether change occurs as those external matters detailed above such as regulation and education.

The structuring properties of the field for the purposes of this research draw on many of those things already discussed – particularly the attachment to traditional practices, incorporating Bourdieusian ideas of habitus and doxa, and matters of institutional logics and how organisational change may be secured. Within a profession, established links between different organisations and specific roles for individuals may constrain the action that a professional association wishes to take. The significant constraint of multiple sites of power at the Bar was addressed in chapter 4.

7.3.1 Soft structuring properties

Thus, if a profession is seeking to bring about a change, it may need to alter elements of its internal ‘soft’ structure in order to achieve this. Specifically, the recruitment of new, specialist, staff (Braithwaite, 2010) with experience of different institutional logics (Friedland and Alford, 1991) may be necessary if a professional association is struggling to depart from time-honoured practices that have developed a fallacious recognition of being necessary, when in fact they are merely habitual (see 5.3).

A key ‘soft’ structural element at the Bar has been recognised by Abbott as internal stratification (1988: 120). Thus, even where access to a profession is open, once within the profession, individuals will stratify according to their specialist practice areas. Those who deal directly with clients (such as solicitors, or barristers doing direct access work) are regarded as being lower in the hierarchy than those who deal only with professional clients,

who are thus 'unsullied' by contact with non-professionals. Abbott argues that this is because the more a professional's work employs their specialist knowledge alone, and not other skills such as general communication or fact-gathering skills, for example, the greater a claim to being a professional they have (1988: 118, 120). In certain areas of work at the Bar, however, Direct Access and other realities of Criminal and Family practice mean that barristers in those areas have to compromise their knowledge with practical reality, lowering them in the perceived status hierarchy according to others within the profession. In the case study, this soft structuring was recognised as having a significant effect. For many chambers specialising in Criminal and Family practice, there was seen to be less of a need to participate in access programmes, as they were already more diverse than their cousins in the Commercial and Chancery areas (see chapter 1).

With a greater emphasis on fact management and people skills, any programme aimed at increasing diversity at the Bar is likely to hinge around the altruistic ideological commitment to the potential of every individual in the short term, whilst also marketing itself to members of the profession as a longer term gain through a more diverse pool of talent. There is also likely to be some reliance on the notion of the transformative nature of a group being diverse in order to gather greater lived experience within its members (Sommerlad, 2008: 193). It may be for this reason that those whose main area of practice is Criminal or Family are more diverse and show greater social mobility than those whose main areas of practice are Chancery and Commercial, with the 'Working Lives Report' in 2011 showing 65% and 60% of those whose main practice areas were Crime and Family respectively had been state educated (Bar Council, 2011: 25). By the time of the 2013 'Working Lives Report', this had decreased to 61% for Criminal practitioners, but stayed the same for Family (Bar Council, 2014: 105). Meanwhile, 71% of those mainly practising in 'Admiralty or Shipping', and 66% in 'Patent or IP' had been educated at fee-paying schools. Recent figures show that

even within the traditionally privately-funded practice areas, students who are state educated (and thus arguably more likely to be from a non-traditional background) are more likely to carry out publicly-funded (and consequently less well-paid) work; *‘State-school education is associated with an increased likelihood of doing publicly funded work in the professional negligence/personal injury practice area (where 53% of state-school educated barristers have received fees from publicly funded work compared with 33% of those who attended fee-paying schools), and commercial and chancery practice areas (where 32% of state-educated barristers and 16% of those educated at fee-paying schools received fees from publicly funded work.’* (Bar Council 2014: 105)

Arguably a greater array of lived experience is more important in publicly-funded work, focussing as it often does largely on matters of human interaction and difficult circumstances, in opposition to privately-funded work, much of which is conducted for businesses and hinges on interpretation of documents. The Bar itself shows some hints of recognising this difference of diversity between practice areas, with the majority of the partner chambers participating in PASS carrying out most of their practice in Commercial, Chancery or related areas (such as media or intellectual property), as compared to proportionally much smaller numbers of participating chambers which concentrate on Criminal or Family work.⁶²

7.3.2 Hard structuring properties

Hard structuring properties were observed to play two main roles in this research. Firstly, the self-employed nature of the profession meant that fragmentation between chambers was almost inherent, so any concerted effort needed to be headed by an organisation that had the

⁶² According to the classifications on www.pegasus.me [accessed 1st September 2015]

capacity to unite members from across sets of chambers. Secondly, many sets of chambers did not have the resources to employ their own staff who were experienced in access matters to run a programme themselves. Inner Temple was able to surmount both of these difficulties; it employed specialist staff, and it facilitated members who wanted to promote access in coming together and sharing their ideas.

When practical hurdles were removed, the willingness to support access programmes, which many interviewees said was prevalent at the Bar, could come to the fore. A recurring theme in interviews was that challenges to elements of the central value system were hampered by structural matters. For an ideology of social mobility to develop, there needed to be sufficient administrative help, which Inner Temple supplied for PASS. For many interviewees, it seemed that administration remained the biggest barrier to a professional project without social closure:

Particularly at Chambers level we don't have administrative support that a big firm has, if you want to run your own programme it's often a barrister who's got to do that. He doesn't have time or skills necessarily to set it up and administrate it whereas bigger firms have HR departments. [...] I think the Pegasus scheme is very good at playing to the strengths of the different organisations involved.
(Interviewee 2, non-Inner, F, other prof. assoc.)

The elite and removed position of Inner Temple allows the programme to have a much wider reach than it would if it were run by a chambers, but it has a respect that seemed to be less present in relation to other professional associations of the Bar, possibly because practitioners feel a greater attachment to their Inns. Such differential attachment was found by Francis amongst STEP practitioners, with many feeling more attached to their originating profession, regardless of the area they were currently working within (Francis, 2011: 130).

Crucially, it also had the funding to run such a programme, which prevented the other seemingly most suitable organisations, the specialist Bar Associations, from doing so. A number of interviewees stated that specialist Bar Associations benefited from many of the same attributes as the Inns (a strong field position, community and wide reach across chambers). However, they were unable to run such programmes as funding was a much bigger challenge for them than the Inns, with an even greater reliance on voluntary support from practising barristers for co-ordination of activities:

I suppose just thinking about how we do things with the FLBA (Family Law Bar Association) and what not, what the FLBA do when they need to get a message out or they need to get a job done they contact every set of chambers and they identify a member within that set, an FLBA member who will be responsible for collating all the information and they get fantastic responses as a result of doing that.

(Interviewee 10, Inner, F, Bencher, other prof. assocs.)

The number of different sites of power within the Bar differentiates the profession from most others. In both its general actions and its action in setting up PASS, Inner Temple has acted with relative autonomy. However, where there are other professional associations operating within the arena, the relationship between all those bodies exercising power will have at least some effect on each other's actions (see 5.4).

Inner Temple's ability to act is increased by the structural properties of the field, bringing together members with a shared interest. This is usually done in the form of a Committee, led by a Bencher of the Inn. It is then possible to take directed action in a way that would be difficult to achieve with the whole membership due to the plurality of views (Halliday, 1987: 136). In Inner Temple this group was the Outreach Committee as the decision-making body, supported with relevant practical knowledge by individuals within the Education and

Training Department. One interviewee suggested that it was the decision by Inner Temple to have a committee focussing on these matters that has allowed it to take decisive action, and that this was why some perceived it as having ‘moved ahead’ of the other Inns:

No, I suspect it is just because there is a dedicated committee to it and people care about it but I don't think people care more at Inner than they do at any other Inn. It's just that once you have a committee dedicated to it and people willing to work, then you can actually get things done. (Interviewee 4, Inner, M, Benchers)

This interviewee's focus on the ability to harness willingness to act was echoed by other interviewees who also highlighted the interplay between willingness and the challenge caused by the structural properties of the profession in bringing that enthusiasm into a useful and co-ordinated form:

I don't think there is a difference in terms of enthusiasm, I think the one really striking thing is there is a huge amount of goodwill in my experience right across the Bar for social mobility programmes. The problem is harnessing that effectively and that's the really difficult thing. (Interviewee 2, non-Inner, F, other prof. assoc.)

The idea for PASS had started life within a committee setting which had the specific remit of outreach and access issues. When formulating an intervention aimed at encouraging social mobility, the Outreach Committee had started with an entirely blank slate to consider how best to pursue their aim:

The first two sessions of which were just entirely blue sky thinking of how can we ensure that we get the best possible candidates to Inner. It wasn't just getting numbers, we wanted the best possible candidates and to ensure that there are no barriers to anyone applying and no barriers on the basis of any protected

characteristic, including and it's not a protected characteristic under the Equality Act yet, socio-economic barriers. (Interviewee 4, Inner, M, Bencher)

It is argued that this apparent willingness to consider any options for supplying the best candidates to Inner Temple suggests that, in theory, the Committee were recognising that a programme to improve social mobility and thus supply the best candidates regardless of background might require a departure from established patterns of practice stemming from the central value system. The quotation also illustrates the close links between an altruistic act and one which is designed to supply the best candidates to the profession for its own gain (see 4.4).

However, when considering potential forms of intervention the challenge of entrenched practices arose. The Inns have, for many years, been giving scholarships for the BPTC, and this is recognised as a key function of the Inns in the modern day. This focus could be detracting from the meaningful consideration of other possibilities. One practitioner interviewee suggested that the Inns of Court could form part of the challenge, as their practices were entrenched – meaning that they focussed on particular matters and were reluctant to examine afresh how their efforts could be focussed in innovative ways to address challenges:

Personally I see the Inns as quite a big barrier because they each have their own way of going about things and historically have. For example they put a lot of resources into their sponsorship programmes BPTC students. My own view is that it comes too late in the process actually to assist the people that need it and if we could redirect those really very significant resources that are put in at that stage to an earlier stage we could make a much bigger difference. I don't think any of the Inns have got their head around it at all, because for so many years they have been

supporting BPTC they see that as very much part of their role. (Interviewee 2, non-
Inner, F, other prof. assocs.)

This suggestion of re-directing money at programmes that engaged with non-traditional aspirant entrants earlier in their education fits with the research on the importance of early intervention as discussed in chapter 1. This could heighten aspirations earlier, and crucially, before the taking of GCSEs and A-Levels which would have significant effects on their future options. Despite the possibility of radical new programmes through the open-thinking exercise undertaken by the Outreach Committee, however, as was argued in chapter 6, the programme created has avoided a radical approach.

7.3.2.1 The role of committees

Within the professional association, and more narrowly within the Outreach Committee, opportunities for communication are created; the professional association is recognised as an arena for collective interaction, a role contributing to professional associations retaining influence over their professions (Greenwood, Suddaby and Hinings, 2002: 61). It is undoubted that the Inns form communities which allow communication both amongst members and between members and the professional association which would not otherwise occur. It also allows collaboration between organisations on projects such as this. In a committee setting, a common interest in the subject matter of the committee is also likely to bring members together in a more than merely formalistic way, giving a forum for the sharing of ideas, and reinforcing the community nature of such associations (Larson, 1977: xiii).

This internal collaboration facilitated within an Inn also extends to external collaboration or at least the potential thereof, between the Inns of Court. The four Inns liaise allowing agreement and collaboration on a much greater scale than could be facilitated between

individual barristers or sets of chambers. However, the level of co-operation between Inns was not agreed upon by interviewees:

When you ask for information, you know when Bar Council asks what are you [other Inn] doing in these areas, they may well be doing something, but they are not prepared to tell us about it or they don't publicise it. (Interviewee 10, Inner, F, Bencher, other prof. assocs.)

I think the other Inns, I really wouldn't want to speak for them, but I think the other Inns are happy that we do it and they often say things like 'oh Inner's doing that' and it's almost a delegated responsibility at this stage, so I think they are absolutely fine with doing that. (Interviewee 11, Inner, M, salaried)

These interviewees had different modes of connection to the Inn, possibly explaining their different opinions on levels of collaboration; it may be that there is a greater level of co-operation between the salaried staff of the Inns than there is between Benchers. Furthermore, the first quotation may be an illustration of antagonism towards the Bar Council as much as evidence of a general reluctance to co-operate between all of the sites of professional power at the Bar.

It may further be said that a key structural matter is where the 'edge' of the profession is found (Francis (2011) explored cause lawyers and paralegals as occupants of this area). Arguably, with significant legal aid cuts under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Bar, and particularly those practice areas in which non-traditional aspirant entrants are better represented, is moving increasingly towards the 'edge of law'. Butler et al. point out that every profession will sometimes be operating 'at the margins', an area described as contested, unstable, liminal and perilous (2012: 259). It may not seem immediately obvious what relevance the margins have to well-established professional

associations, but it is argued that it is a desire to stay away from the margins that contributes to professions behaving in previously unexpected ways. For example, a professional association may move away from occupational closure in an attempt to further secure its central status in a profession. In a modern world concerned with social mobility and success based on merit, it is embracing notions of social mobility that are likely to assist a professional group in staying away from those margins, whilst a deliberate continued focus on methods of admission which indirectly discriminate in favour of those who have followed traditional educational paths or have familial or social links to the profession propagates a view of the profession as ‘outdated’ and ‘old-fashioned’. Increasingly, a policy of inclusivity will nowadays be more advantageous to a profession (Rogers, 2012).

The implementation of such a policy of inclusivity, however, may be laborious. It is argued that not only might a professional association be constrained by its own structural properties and limits on its power, but it may also be constrained by events occurring which are outside of its own control. In this research a key challenge to the success of Inner Temple’s intervention was external influences operating on the participants in PASS, who often had experience of a relatively limited range of social fields. These social fields were usually quite different to those encountered at the Bar.

7.4 ‘It’s not the well-trodden path, really’ – peers, family and education of non-traditional aspirant entrants

As non-traditional aspirant entrants were likely to have experienced very different social fields to those existing at the Bar, part of the challenge for non-traditional aspirant entrants hoping to enter the profession is their ability to accept or minimise the cognitive dissonance that comes as a result of entering a profession in which they are currently a minority group (Costello, 2005: 3-4).

Most young people's worlds are framed by their peers, family and school, all of which influence attitudes to education and career choices. A number of the focus group students displayed uncertainty about their 'future selves' (Markus and Nurius, 1986: 954); specifically, whether or not they would succeed in accessing the profession, and their personal and professional lives if they did. Research has shown that students who are positive about their future selves are more likely to achieve their goals, as the 'future self' concept provides motivation (Markus and Ruvolo, 1989). However, it has also been shown that those who do not receive encouragement and support in their schooling from family, peers and schools are much less likely to have positive occupational future selves (Leondari, 2007). This was reinforced by the comments of the focus group that the educational and occupational choices made by their peers influenced their hopes about a career at the Bar:

Obviously some are influenced easier than others, but generally it's your peers, because if your peers are saying, 'personally, I don't wanna do this anymore, school's not for me, I'm just gonna drop out and probably just live off Job Seekers' Allowance' or something then, and they're doing pretty good at it, you'll think, I don't see why not I can't do the same thing. (PASS FG Participant 5, F)

A body of academic work explored in chapter 5 sets out the theory of institutional logics (5.3), and the abilities of staff to 'glide' between different fields (e.g. Meyer and Hammerschmid, 2006). Similarly, students need to be able to 'glide' between Bourdieusian social fields to continue to maintain friendships and community links whilst also behaving appropriately in professional settings (Francis, 2015: 192). For non-traditional students there may be a clash between practices and habits of schools and peer groups, and the Bar, and their relative marginalisation may make it harder for them to recognise and adapt to the differences needed in behaviour (Bauman, 2005: 135). Academic literature on these matters

has highlighted the difficulties faced by those moving from one setting to another, especially if these settings are very different (e.g. Hinchliffe and Jolly, 2011), and this was perceived by participants in their own lives:

And then my friends, it was again this slightly more obscure, slightly more niche choice, erm, as I say, it's not the well-trodden path, really... (PASS FG2 Participant 2, M)

We're not used to, I mean, I'm not used to the 'p's and 'q's that go with [the legal profession]. (PASS FG1 Participant 2, F)

At their educational establishments, the PASS students had come across very differing approaches to their hopes of becoming a barrister from tutors and lecturers:

I told my tutors, or at least one of them, and got sort of approval, as that's basically what he had done for a bit before he became a tutor, and you know, it ticks the academic box. (PASS FG2 Participant 2, M)

I got told that by my uni; I got told several times to not bother with the Bar because you were like...[a non-traditional entrant]...in the nicest possible terms they couldn't've made it more clear that I should have a back-up plan. (PASS FG1 Participant 2, F)

Such (potentially well-intentioned) concern for a non-traditional student who is academically able (this student had a First Class degree in Law from the University of Surrey) suggests that some higher educational professionals are propagating stereotypical views of the Bar, and these may discourage non-traditional aspirant entrants who place trust

in this information. Although not a focus of this research, it is suggested that there may be advantages to educating higher education institutions about the profession in order to support the efforts of other organisations in helping students make informed careers' decisions, a suggestion also made by the Neuberger Working Group in its final report (2007: 40).

To maximise the positive effects of interventions, partly by considering social fields, it is crucial that any group at whom an intervention is aimed are consulted about their perceptions and realities (Shah et al., 2006: 9), as opposed to having assumed perceptions projected onto them by others (in the case of those in Shah et al.'s research, disabled young people, or in this research, young people from non-traditional backgrounds). Such consultation is more likely to be possible where there is someone with relevant experience employed by the professional association running the intervention, and in the case study, feedback was being taken from every participant. This research is contributing towards an evaluation of that feedback, and the consideration of the experiences of participants within the programme will hopefully contribute to improving the programme.

Despite the knowledge of an experienced employee and consultation with programme participants, it is not possible for a professional association's intervention to alter the personal and social contexts of aspirant entrants. However, formulating interventions with an awareness of these contexts means that the impact of a programme is less likely to be attenuated by them. This will require someone with expertise in education or access, as opposed to the profession's expertise, as experience with PASS has demonstrated. A key strength of professional associations in undertaking work to improve access to the profession is that where stakeholders within a profession (such as chambers at the Bar) are small entities it is likely that funding for such a specialist post will only be available at professional association level. It would be both expensive and inefficient to have people doing a similar

job in many chambers. Such a model where this specialist assistance is employed by the professional association, however, is only likely to be appropriate for those professions where the professional associations are large and perceived as representative, but each operating unit of the profession is much smaller, and many are therefore willing to hand over the formulating of such interventions to a central, trusted body.

The remaining question then is how much power does that body continue to hold when it is a professional association? For some years now academics have postulated that professions are declining. Either that they no longer exist as an entity, as jobs formerly done by professionals are broken down and compartmentalised in smaller, more specialised jobs that are done by employees (proletarianisation), or that they remain, but in a much less powerful form (post-professionalism). Muzio and Ackroyd (2008: 49) suggest that professionalism adapts through various defensive manoeuvres by professionals to maintain their privileges. Thus the next section addresses whether, in modern society, a professional association is likely to have sufficient power to intervene effectively.

7.5 Effects of a post-professional world on the Bar

This thesis has painted a picture of a profession and professional association that, whilst reduced in power, are by no means completely powerless. A key explanation for the loss of professional power has been advanced by Kritzer (1999) who suggests that a state of 'post-professionalism' has now occurred as a result of societal changes which affect the ways in which the public interact with the legal profession, and in which the legal profession carries out its business.

Kritzer's assertions certainly find support in the English legal system, and were recognised in the LETR (2013). For example, under the Legal Services Act 2007, it is possible for those

who have not completed their legal training, but are supervised by a suitably qualified person, to undertake work in chambers in the County Courts. Some smaller barristers' chambers have merged with others to gain the size needed to benefit from increased possibility of securing contracted work (e.g. for contracted work in family and crime, KCH and Garden Square on the Midland and Oxford Circuit merged (Nottingham Evening Post, 2011)), or to benefit from economies of scale and consolidation of support resources by merging with a larger chambers, as in the case of Atlas Chambers merging with 4-5 Gray's Inn Square (a move chambers defended against rumours of a 'rescue deal', preferring instead to portray it as a controlled and strategic manoeuvre).⁶³ The increase in the number of tasks done by those who are not fully legally qualified has removed barriers to involvement with the law in an occupational capacity, but other research, as documented above, has suggested that professionalism, and the barriers that it creates, is still very much a live issue which the Bar needs to tackle in order to secure the best candidates.

Other legal scholars, however, have suggested that rather than a changing conception of professionalism which nonetheless preserves the main tenets of the notion albeit in an altered form that may be construed as being less powerful, professions are, in fact, dwindling in their very existence. Neo-Marxist theorists have instead proffered the theories of proletarianisation (McKinlay and Arches, 1985), and deprofessionalisation (Haug, 1973). Neo-Weberian scholars, meanwhile, focus on the ability of professional associations to change under the label of 'restratification' (Freidson, 1985).

This thesis has illustrated that the elite within an organisation may still play a significant role in shaping the actions of a professional association, and that their role should not be overlooked. Therefore, any theory advanced as contributing towards an explanation of the

⁶³ <http://www.thelawyer.com/news/practice-areas/bar-news/merger-for-4-5-grays-inn-square-is-not-a-rescue-says-chambers-head/3001026.article> [accessed 30th May 2015]

actions of Inner Temple needs to recognise the potentially transformative role of the elite on a professional association, as well as its own capacity for evolution. The theory of 'restratification' (Friedson, 1985) allows for this. Most of the research done examining this theory has focussed on the medical profession, and it is suggested that further academic investigation into the presence of restratification in the legal profession in England and Wales could be usefully undertaken. The research that has been carried out, however, depicts a 'halfway-house' approach in which the professions retain their elite status and collective interests, but in a modern legal workplace which has seen an increase in bureaucracy, managerialism and service-provision (Rogers, 2012: 208).

'Restratification' developed from the academic counteraction of the 'deprofessionalisation' school of thought with the 're-professionalisation' thesis, which advanced the idea that where professional practices are redefined, negotiated and amended as a result of external actors such as markets and consumers, there was nevertheless a remaining foundation of the defining features of professions such as autonomy, collegiality and monopoly, with organisational and professional boundaries blurred (Muzio et al., 2008).

In the legal profession the elite are still instantly recognisable, especially within the professional associations, where Benchers continue to hold a lot of power in the Inns of Court. Therefore, a model which recognises the structural nuances of the field but still provides a method of explanation for the significant changes that it is undergoing offers an appealing alternative to those theories which sound the death knell for the professions as they have previously been portrayed. However, restratification theory relies heavily on the presence of managerialism within the elite, something not apparent at the Bar, as the managerialist activity is not carried out by the Benchers themselves, but by support staff.

Furthermore, the extent to which managerialism can develop at the Bar remains more limited due to the autonomous nature of chambers.

The change within the demographic of the elite itself as observed in this research also requires explanation, as such evolution is not catered for in original articulations of restratification, which assume that on joining the ‘elite’ (in this thesis, becoming a Benchers), a newcomer will largely conform to the existing norms. More recent scholars, however, have acknowledged that the elite can itself change (Waring, 2014: 696). In the case study, there was evidence to suggest that some Benchers forming this elite within Inner Temple were deliberately not altering their professional identities, instead continuing to manifest their previous behaviours and identities (as ‘outsiders’), giving the elite a more ‘accessible’ feeling. These Benchers were credited with helping push PASS forwards, as they themselves either came from non-traditional backgrounds, or had for other reasons felt like they were ‘outsiders’ when they arrived in the profession:

I mean I went to a state school and didn't tick any of the boxes really that I should have ticked if I had wanted to become a barrister. (Interviewee 10, Inner, F, Benchers, other prof. assocs.)

I can't say I don't fit the natural stereotype barrister myself, I was at public school and so on, not one of the top few but I remembered distinctly feeling a bit of an outsider when I first came to the bar, I don't know if that is just a personal thing but if I felt like that I dread to think what someone from a more economically or socially challenged background would feel like. (Interviewee 9, Inner, M, Benchers, other prof. assocs.)

This was suggested by a member of salaried staff as being important not just in getting support for the programmes officially at the elite level (which was necessary for internal support and access to funding), but also having them overseen and encouraged by Benchers who had genuine ideological commitment to what the programmes were seeking to achieve. Thus, where traditional structures nonetheless hold progressive groups, it is argued that it will not necessarily constrain action as might be expected:

We have quite a young group of Benchers for the Inns, so some of the other Inns the Benchers are just that much older so I don't know what that might do to their perception of the Bar [...] I think just being a bit closer to the prospective students and seeing what that meant [...] And for whatever reason, from what I have seen, the Inn has quite a number of benchers who come from less traditional backgrounds or at least they have felt comfortable enough speaking out to ensure that the Inn rides along with that course. (Interviewee 11, Inner, M, salaried)

This supports arguments made earlier in this thesis in chapter 5 on the ability of individuals and small groups within organisations to effect change (Battilana, 2006; Braithwaite, 2010), and embedded agency. It also supports arguments that not only can demographic change occur within even a traditional profession, but it may do so openly, without a requirement that difference is disguised or denied. These Benchers had not felt the need to assimilate entirely the identities formerly associated with being Benchers; rather they held onto their identifying non-traditional features, despite the potential cognitive dissonance and discomfort associated with doing so (Costello, 2005: 3-4).

Evolution of the elite thus appears to be occurring. New Benchers are not simply turning themselves into the elite in its previous form, but are instead seeking to retain their identities

and, in doing so, are moving forward the wider commitment to social mobility. This may also be key to the maintenance of an elite, as it is not ‘stuck in the past’, but moving forward despite maintaining elevated status, and it is argued that this allows the conception of professionalism to move forwards as well. In this way, the profession may evolve with less strife than may be expected, whilst still retaining what appears to be a traditional professional model.

7.6 Conclusion

Earlier chapters considered why a professional association might take action to challenge a consequence of its central value system, and examined how this might occur. The case study, it was argued, was not as radical as it may first appear. This was due to its failure to challenge certain underlying assumptions which continue to privilege those from higher socio-economic backgrounds in entrance to the profession. It is not, however, only the formulation of the specific programme being examined which may stand in the way of a professional association improving access to the profession for those from lower socio-economic backgrounds.

Matters internal and external to the profession may influence the effectiveness of such a programme. Increased regulation of the profession may either arrest or assist innovation. Other matters outside of the control of the profession, such as commercially-provided professional education may have a serious effect on social mobility within the profession, but be outside of the control of the professional association. Similarly, even matters internal to the profession may cause barriers. At the Bar, particularly notable are the structuring properties, and the impermeability of social fields. The experiences of students may have a defining role in their perception of the profession, but also in their regard of themselves. The lack of control which a professional association has over many of these factors means that

interventions must consider them, and be formulated with the intention of having a meaningful effect despite these constraints.

All of these matters come together to form a conclusion that professional associations remain powerful in some aspects of their relationship with the profession and the wider world. In other aspects, however, we see organisations much weakened by increased external regulation and other societal matters such as education and policy. To succeed in forming an effective intervention, a professional association must actively consider these constraints on its ability to act, not ignore them.

This final substantive chapter of this thesis has therefore sought to portray a somewhat conflicted field. Whilst professional associations undoubtedly do retain power, and particularly so within their own spheres of operation, their general position appears much weakened. This is mainly as a result of increased regulation, and a loss of control over key elements of the identity formation undertaken by aspirant entrants. Meanwhile, professions fight a battle in balancing their recruitment practices; seeking to balance exclusivity in talent, with inclusivity in demographics. This is hampered by the relative lack of permeability of social fields, with aspirant entrants struggling to fit into a profession with very different social norms. Events external to the profession affect its operation in such contentious matters, with happenings in the political sphere and the educational sphere being particularly notable (see chapter 1). Politically, a commitment to social mobility generally, and reduced self-regulation for professions has caused the profession's recruitment practices to be under greater external scrutiny than ever before. Huge gulfs in the educational attainment of children from different geographical areas and socio-economic backgrounds pose a challenge to establishing parity of achievement without parity of provision or qualifications.

Theoretical explanations for the reduced power of professions have been offered through post-professionalism (Kritzer, 1999), proletarianisation (McKinlay and Arches, 1985), deprofessionalisation (Haug, 1983), and restratification (Friedson, 1985). It is argued, however, that despite diminished power, professional associations, and especially those within the legal profession, do retain some potency. The appearance of retention of power has been reinforced by the framing of actions as voluntary choices rather than imposed necessities. In the case study, therefore, one perception of what has happened could be that, aware of the requirements set out in the LSA 2007 and enforced by the LSB, Inner Temple felt that it needed to take steps to promote diversity, and did this by introducing a programme with this aim. By introducing their own programme, they have been able to keep control over it, and portray it as wholly their own choice, introduced free from external pressures and regulations, in line with Abel's observation that professions have generally sought to exert control over progressive initiatives instead of blocking them (1985: 12). This area is, it is argued, ripe for further academic investigation; which is expanded upon in the concluding chapter.

CHAPTER 8 – CONCLUSIONS

This thesis set out with the aim of exploring how and why a professional association might take action to alter a characteristic of the profession. It focussed particularly on this occurrence where the characteristic was an entrenched one, and the professional association traditional and elite. Using a case study, it sought to answer these questions specifically in relation to social closure in the legal profession, and the Bar as a sub-section of that profession.

8.1 Themes

As has been demonstrated, there is not just one factor that affects whether a professional association is capable of acting in a way that secures change within a traditional profession. There are instead many factors that are relevant, and it is the interplay between these factors, as well as their presence and strength, that influence the ability of the professional association to act. Exploring these factors has shed light on matters relevant to the exploration of professions and professional associations more generally, although no generalisability is claimed (see chapter 2). In focussing on one profession through a case study, and specifically on the actions of one professional association, this research has sought to explore an area previously neglected; the Bar of England and Wales. In examining this particular profession, it has also examined why it is that social mobility appears to be occurring more slowly at the Bar than in other professions.

The role of the elite within a profession has been identified as key in this thesis. Despite the suggestion of some scholars that the influence of the elite is diminishing, implied by the development of theoretical frameworks that give only a peripheral role to the elite (e.g. McKinlay and Arches, 1985; Haug, 1973), this research suggests that, at least at the Bar, this decline is not evident. Within a professional association the elite may retain control over the

direction in which the professional association is moving, and in this case study the influence of the elite was clear. Their support brought access to funds and internal influence that were necessary where a professional association with a longstanding central value system was seeking to create an intervention challenging practices that had developed as a result of that value system, and which were themselves longstanding.

This thesis illustrates not just that the elite may retain more power than some scholars have suggested, but also that the elite may evolve. In the case study it was notable that members of the elite did not conform as strongly to the traditional demographic of the Bar as may be expected. This was acknowledged by a number of those who participated in this research as crucial to the willingness of the professional association to undertake activities aimed at encouraging non-traditional aspirant entrants, and of increasing awareness within the profession of the additional challenges faced by such entrants in trying to enter the profession. On their inclusion into the elite, these individuals had retained large parts of their non-traditional or otherwise 'outsider' identities, and seemed to use these as both motivation for encouraging increased participation, and as a way of demonstrating to non-traditional aspirant entrants that success was a possibility for them. They also used their awareness of these challenges to encourage the profession to consider the importance of access and how to support it. The ability of the elite to evolve has previously been overlooked by research, and further work in this area could yield more information about the relative powers of the elite within more modern and differently structured professions, as well as factors influencing evolution within the elite.

Not only was the important role of the elite illustrated, but the importance of individuals, the focus of much existing research, was supported in the context of the Bar in this thesis. Particularly key was the collaboration between individuals who personally possessed, or had

access by virtue of their position within the organisational hierarchy, to various resources. No party had access itself to everything it needed to establish an intervention targeted at a longstanding manifestation of the central value system. Instead, each party had a specific niche: salaried staff recruited from other areas of expertise brought specialist knowledge about the target matter and different institutional logics to assist them in utilising their knowledge effectively. They did this by questioning accepted practices and developing new approaches influenced by their experiences of other institutional logics which they had assimilated from other workplaces. They also collaborated with similar-level staff in other professional associations within the field to try to maintain cordial relations. Meanwhile, as discussed above, the elite had access to funding, hierarchical leadership, and internal influence, which they used to gain both practical and theoretical support for the project.

Hierarchical leadership alone was not enough, however, and this thesis lends support to the work of management theorists such as Kotter (1995, 2013) who have expounded the distinction between management and leadership. Such a distinction was notable in this research, with much being made of the leadership shown by a member of salaried staff who occupied a fairly low hierarchical position, but nonetheless was regarded by members of the professional association as having showed influential leadership that had been crucial to driving the project forwards.

8.2 Key findings

Whilst this thesis illustrates the continuing relevance of factors such as size and field position to the ability of a professional association to act, it makes two notable observations on the attributes of an effective professional association. The first is the role of individual loyalty. A recurrent theme in this thesis is the role of individuals at all levels in creating capacity for change in a professional association. A key part of this was found in individuals' loyalty to

the professional association, a factor not previously explored. Whilst some academics have touched on the affective domain of professionalism (Francis, 2011: 137), within which loyalty of this sort would fall, further research in this area could be valuable in understanding one way in which professional associations can potentially increase their ability to cause change.

The second observation is that the effect of field position on the professional association's ability to act may not be so clear cut as some previous literature has suggested. The potentially paradoxical nature of a professional association needing to be both central and peripheral to effect change has been addressed by a number of academics; resolutions have included a movement from central to peripheral, and a simultaneous occupying of both positions (Francis, 2011: 30). This thesis, however, suggests that field position may not be as important as the driving force exerted by individuals; those within the elite and other key individuals within the professional association. It is argued that this research suggests that there are circumstances where a field position which may be expected to inhibit innovative behaviour can nonetheless be counteracted by other attributes of the professional association, such as elite actors or those showing particularly strong leadership. Similarly a strong attachment to the central value system arising from field position may actually contribute to enabling, instead of inhibiting, innovative action.

For the Bar, this research aimed to contribute to an improved understanding of a profession often invisible in research into the legal profession in England and Wales. Such neglect is to be regretted; the profession's idiosyncrasies and nuances make it a fascinating research area, and one ripe for exploration. Whilst there remain many questions about the profession which researchers may seek to answer, this research has built upon the foundation of recent research by Rogers (2010, 2012, 2014). Rogers examined the perceptions by aspirant entrants of their

chances of success (2014), and the portrayal made of the profession to aspirant entrants by the Inns of Court at recruitment events (2012). This research builds upon that body of knowledge of aspirant entrants by focussing on a particular group; non-traditional aspirant entrants, and the particular challenges that they may experience in entering the profession.

The case study has illustrated the challenges experienced by non-traditional aspirant entrants at the Bar, and particularly those challenges in accessing and participating in mini-pupillages. Although PASS allows improved access by having applications considered by someone with specialist knowledge, in this way it only aids students who apply for, and secure, mini-pupillages through the scheme. It does not, in itself, change the practices of chambers in selecting mini-pupils in the direct application process, which give preference to those who have followed a traditional educational route and supplemented this with 'standard' extra-curricular activities and work experience; a traditional conception of merit which disadvantages non-traditional aspirant entrants. In time PASS may encourage chambers to use alternative conceptions of merit if PASS students undertake mini-pupillage successfully. Chambers may realise as a result that a traditional conception of merit applied when selecting mini-pupils excludes some very able applicants who have followed a non-traditional route. Such a change may in part, however, be hampered by a lack of availability of specialist access knowledge within chambers, and a lack of resources to recruit such.

Although it appears that PASS is addressing concerns regarding access to mini-pupillages, albeit for a fairly limited group (those who apply to PASS) instead of the wider group of non-traditional aspirant entrants as a whole demographic, the evidence regarding its amelioration of challenges to participation was more mixed. Its provision of financial assistance was reported by many student participants as being very important, and the opportunities that it gave to meet and talk with practising barristers over the course of

(usually) a number of days gave students access to a lot of information about the profession, and the experiential element of observing daily life in practice.

However, as a programme run by a professional association but interpreted by chambers, who actually received the students, there were variations between students' experiences which, in some cases, had a potentially negative effect on the programme's ability to encourage non-traditional aspirant entrants. One example was the incorporation of PASS students with direct applicant mini-pupils with traditional profiles, highlighting the non-traditional status of the PASS student.

Overall, it is argued that, in its current form, PASS is unlikely to have a significant effect on the demographic of new entrants to the Bar. This results both from its small scale, and its avoidance of challenging traditional conceptions of merit. It also does not challenge the privileging of direct work experience; the view of many aspirant entrants and chambers that mini-pupillages are key to success in the pursuit of a career at the Bar. This maintenance of the status quo in the privileging of mini-pupillages is key to the argument made in this thesis that PASS is unlikely to be truly transformative on a profession-wide scale. PASS does not challenge the status quo of the value attached by the profession to mini-pupillages. Instead it gives non-traditional aspirant entrants an 'opportunity' for conformity; a route to more closely resemble their traditional counterparts through the provision of mini-pupillages and its contingent experiences such as exposure to social norms. Instead of seeking to change the rules of the game, it simply allows a small group of non-traditional entrants to play it.

Notwithstanding these observations, however, this thesis does argue that PASS can be truly transformative for the individual students who participate in it, whose comments illustrated that they valued the opportunity and most gained a lot from their mini-pupillages. There is also the possibility that, more broadly, a programme such as PASS may increase the

understanding of non-traditional aspirant entrants by the mutual exposure of students with such profiles going into chambers. Similarly, for students who had a good experience (which was the case for the majority who participated in this research) they often cited an improved perception of the Bar and a better understanding of the profession. Such improved perception and understanding may contribute, in a small way, to engendering a better appreciation of how the profession operates amongst non-traditional entrants, as many participants said that they had discussed their experiences with friends, family and university staff.

Existing research suggests that intervention at a much earlier age may be needed to ensure that young people have the information that they need to make informed decisions that will be relevant to their career choices. For example, participants in this research cited matters such as not knowing how important state examinations were at the time that they were taken, meaning that some students had poor grades hampering their access to the Bar. In some cases these grades were not the result of lack of ability, but lack of application, which many suggested could be improved by knowledge of the competitive nature of the profession at an earlier stage; giving aspirant entrants information so that they knew what would be expected of them academically by the profession. However, it seems unlikely that intervention specific to the legal profession before Sixth Form stage (as in Pathways to Law) would be successful. Opportunities to experience the profession are very rare for those under 18, due to rules on presence in Family and Youth Courts, and other ‘in camera’ sittings, and it is argued that an initiative aimed at promoting one specific profession to younger students, instead of the general increasing of aspirations, could be controversial. Furthermore, attempts by programmes to ‘bleach out’ the non-traditional characteristics of aspirant entrants makes for a deeply uncomfortable situation; it is argued that care must be taken to ensure that programmes such as PASS do not progress from those aimed at supporting young people to learn as much as possible about the profession, into those that deliberately set out

to morph non-traditional aspirant entrants into traditional entrants in ways deeper than their opportunities for work experience.

The interplay between tradition and social mobility in this thesis has illustrated that professional associations, despite not being as powerful as they once were, nonetheless retain a key role at the Bar. This is especially marked in relation to the Inns of Court, which benefitted from a combination of favourable attributes allowing powerful engagement with, and support from members. As the preceding chapters have demonstrated, the likelihood of success of an interventionist professional association will come down to a combination of internal and external matters. Some of those will be within the control of the profession, and some outside that control. The interplay of all of these factors, along with a number of intrinsic attributes of the professional association, and some of its target audience, will determine whether an intervention will succeed or not. Furthermore, the current research has highlighted that it may often be impossible to tell whether or not an intervention has 'worked' as there may be a lack of stated aims and objectives against which success can be assessed.

What is clear, however, is that certain actions and attributes of a professional association may indicate the likelihood of success. Whilst previous research has been criticised in turns for ignoring the roles of individuals, and then overplaying the role of individuals, the importance of them is confirmed in this research. Whilst not every individual who acts in a way contra-indicated by the prevailing institutional logics of the organisation is necessarily a brave institutional entrepreneur charging into battle against their elitist and evil institutions, the capacity of a single, or small group of, individual(s) within a larger institution should not be doubted under certain conditions. This research illustrated that a whole may be more powerful than the sum of its parts.

The success of individuals' efforts will often be affected by other matters, particularly the specialist knowledge which they bring from their own professional backgrounds, and whether they can bridge gaps between different levels and groups within the organisation, and thus gain support for their project in both financial and human terms. The ability to make links with those in other, related organisations, which may otherwise perceive competition or hostility in an institution's actions, is also important. If one or more individuals can do this then they may, with enough support, be able to make moves which challenge elements of the central value system even in an elite and traditional profession. In the case study it was unclear how much of a genuine challenge to the central values PASS was, although it was clearly perceived as one by many of the participants, both practitioner and student stakeholders. The level to which such views of genuine challenge can ever be supported, however, is also likely to be compromised by the lack of clear aims and objectives against which longitudinal outcomes can be measured.

This thesis paints a picture of professions and professional associations weakened, but by no means without power to influence and direct the development of the profession at the English Bar. The professional association, already well-used to the structural challenges and idiosyncrasies of the Bar, has willingly brought in outside expertise, whilst determination on the part of internal actors seeking a way to demonstrate their personal ideological commitments to social mobility and access on merit have provided important human resources for the project.

In developing PASS, Inner Temple has certainly established itself as an innovative thinker within the profession, and made a statement to other professional associations about what it values within the profession and what, amongst the myriad of issues currently facing the

profession in times of turbulence for the publicly-funded Bar, it feels is worthy of attention. This does not mean, however, that it is safe to admire PASS as the epitome of an access programme run by a professional association. As discussed in this thesis, such programmes may, in fact, whether intentionally or otherwise, contribute to maintenance of the status quo. This supports research by Rogers into the English Bar, in which she characterised the Bar as portraying a meritocracy but actually doing so as a defensive strategy in a wider climate of general suspicion of the fairness of entry to the professions (2012: 218).

8.3 Limitations

This thesis has engaged with literature on the professions, with a particular focus on professional associations, and the legal profession. It has incorporated business, legal, management, and sociological literature, and has examined Government and non-Governmental policy documents. This was supported by qualitative research which was able to cover a number of individuals from different groups involved with the PASS programme. However, the sample size was nonetheless relatively small, and the unusual structure of the profession means that it would not be appropriate to generalise from the case study to those programmes run by other professional associations in other professions (this is, however, an area for further research, as detailed below).

Although the challenges related to defining and measuring success have been raised in this thesis, they have not been addressed with substantive suggestions for how such success could indeed be measured. Once again, this would be a useful area for further research, examining the longer term running of the programme and its effects on both student and stakeholder participants.

As it was not possible to secure interviews with members of any of the other Inns of Court, it was not possible to offer a comparative analysis of the actions and approaches between the four Inns. This could be a direction for future research; due to the unusual nature of the profession, direct comparison with outside bodies is difficult, but research into the internal workings of the four Inns of Court could potentially facilitate best practice discussions and suggest routes to greater collaboration.

8.4 Implications for future work

As discussed above, a continuing implication for future work is that the Bar of England and Wales remains under-researched, and thus poorly understood. It would therefore be ripe for further research into how such an unusually structured profession operates, and particularly the interface between the various professional associations, as well as more detailed research into the interfacing between different sets of chambers. As all chambers are autonomous, research into how practices may percolate from different sets would be of interest, as would similar comparative work between the four Inns of Court (see above). Comparative work could also be undertaken longitudinally looking at the experiences of non-traditional aspirant entrants who do secure access to the profession to examine their continuation within the profession. Longitudinal work could also address the current lack of clarity regarding aims and objectives (see below), and examine whether there is any evolution seen in chambers' own processes to ameliorate the evidence in this thesis that many chambers' application forms and selection processes disadvantage non-traditional aspirant entrants by failing to consider their educational contexts.

Further attention on work experience could examine the value placed on PASS placements as compared to mini-pupillage secured through the direct or informal routes, to see whether there is any evidence of the effects identified by Francis (2015: 196) and Morley (2007: 201)

of work experience being devalued when it is incorporated within the credit-bearing modules of a degree, or undertaken for financial reasons. Due to the lack of existing research, additional exploration of the reasons why chambers value mini-pupillages when recruiting for full pupillage could also uncover more information on the qualities that chambers are looking for. This may allow a more detailed explanation of both why mini-pupillage is privileged and why there is a reluctance to acknowledge the value of even other more general forms of legal work experience; is the specificity of the experiential element really as key as it seems? Additionally, how else might the importance of work experience be challenged and the relevance of transferable skills promoted.

In more general terms, further research into how professional associations adapt to changes in the prevailing cultures would allow a more in-depth examination of those issues addressed briefly in chapter 7. In the search for a theoretical framework to explore how the Bar, and in particular its elite, seemed to have adapted to changes in societal values, consideration of the constraints and their strength provides useful information. Particular attention could usefully be paid to the role of the elite; the observation in this thesis that the elite is capable of evolution is something not yet thoroughly explored in the existing academic literature. Similarly, comparative work examining the power held by the elites at the Bar as compared to other professions could facilitate explanations of why the elite at the Bar have continued to hold such power; of particular interest is the relationship between the structure of the profession and the power of the elite.

Deeper research into uncovering the nuanced motivation for professional association action outside of the profit-making sphere would also add to the knowledge relevant to public-sector and other similar organisations, where the countervailing considerations are different to those in the corporate sector. The relationship between aims and objectives and outcomes

where there is no profit-based incentive would potentially reveal significant information relevant to the charitable and not-for-profit sectors about how change is conceptualised within the organisation. Similarly, further research on quantifying change that was not profit-based could also assist in the formulating of measuring outcomes outside of commercial organisations.

Finally, research into the role of the affective domain in professionalism could be a very useful direction on the basis of matters highlighted in this thesis and Francis' research (2011). Exploring how and why individuals come to form emotional attachments to organisations with which they are associated could provide important information on how organisations can better engage with their members, and what effect an affective connection with a professional association has on the members themselves.

Overall, this thesis has offered up-to-date pieces of the picture of a complex profession which has particular characteristics. These characteristics can both support and hinder the attempts at change made by its professional association, as illustrated at the English Bar. What is clear, however, is that these characteristics, and their effects, are nuanced and varied. Through the use of the case study, an insight has been provided into Inner Temple's engagement with a highly topical issue – social mobility. This thesis has combined an exploration of established matters concerning professions and their power within a little-researched profession with a modern societal concern on which research is still developing. In doing so, it has highlighted four key themes: the evolution of professionalism; individual stories; the construction of talent and meritocracy as recruitment criteria, and the diminished power of professional associations. The use of the English Bar, an idiosyncratic profession, has allowed new arguments to be developed around the evolution of professionalism and the diminished power of professional associations. In shedding light on the importance of

individuals' stories and exploring the construction of talent and meritocracy as recruitment criteria, however, it has provided new evidence as to the complex relationship between individual agency and the structures of the professional field.

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Appendix A

Schedules

- A.1 Focus Group – Pathways
- A.2 Focus Group – PAS
- A.3 Interview – chambers’ representatives
- A.4 Interview – salaried staff
- A.5 Interview – Benchers

(Note that where an interviewee held a position that was not one of those listed above the questions were adapted accordingly).

A.1 Focus Group Schedule – Pathways

Individual Biographical Details

- School? (Just for cross-referencing?) Could ask quickly how local?
- Which (if any) other programmes have you participated in? (i.e. SMF etc)
- Who encouraged you to take part?
- Why did you choose to take part?
- Ask for hands up as to who's decided on the Bar, who's decided against, and who's unsure?
- What has influenced those decisions?
- What might change, or already has changed, the minds of those who have decided?
- What subject are you hoping to study at university?

Role and Purpose of the programme:

- What did you hope to gain from participating in Pathways?
- What did you learn from participating in Pathways?
- To what extent, has the programme helped you feel that you understand what being a barrister is like?
- Has it made you feel that you understand what you need to do in your school work, in picking universities and university courses etc, to move towards a career at the Bar?
- Quick Show of Hands? Do you think participating in Pathways has improved your chances of getting pupillage in the future?
- Why/why not?
- To what extent do you think participating in Pathways has improved your understanding of the Bar?
- Why/why not?

Future Programmes

- Have you heard about the PAS?
- Will you consider applying for it once you've gone to university?
 - Why/why not?
- Have you done any legal work experience yet/got any lined up?

- How was it arranged?

The Bar more generally

- What do you think makes a successful barrister?
- How would you describe a barrister?
- Defining characteristics of barristers?
- How do the historical things, such as dining requirements and Inns of Court, affect your perception of the Bar?
- What barriers do you see between where you are now and being a barrister?

- What makes you want to be a barrister?

- What puts you off being a barrister?

Students from non-traditional backgrounds

- Does the Bar need to do more to encourage those from non-traditional backgrounds?

- What else should it do to encourage those people?

- Do you think Pathways will work in encouraging those students?
- If not, how could it be changed so it did?
- What do you think is the main barrier to disadvantaged but able students in coming to the Bar?

- How do you think the Bar can best tackle those issues?

- Have you heard about the PAS?
- Will you consider applying for it once you've gone to university?
- Have you done any legal work experience yet/got any lined up?
 - How was it arranged?

Concluding Questions:

- Do you think Inner Temple is doing enough through Pathways and PAS etc to encourage students from non-traditional backgrounds?
- If not, what else should they do?

Is there anything else that you would like to tell us about your perception of the profession, and your hopes for entering it?

A.2 – Focus Group Schedule – PASS

Individual Biographical Details

- Stage of university/subject

- Careers decisions yet?

- What has influenced those decisions?
- What has made you want to be a barrister?
- What has put you off?
- How have your friends/parents/lecturers/tutors reacted to your desire to go to the Bar?
 - Have they encouraged you?

- Which (if any) other programmes have you participated in? (i.e. SMF etc)
- Who encouraged you to take part?
- Why did you choose to take part?

Role and Purpose of the programme:

- Why did you apply for PAS?

- Which chambers were you placed with?

- What did you learn from participating in PAS?

- To what extent has the programme helped you feel that you understand what being a barrister is like?

- Do you think participating in PAS has improved your chances of getting pupillage in the future?
- Why/why not?

- To what extent do you think participating in PAS has improved your understanding of the Bar?
- Why/why not?

- What most surprised you about your PAS experience?

- Did you get on well with the people at the chambers you were placed in?

Other work experience

- Have you done any legal work experience yet/got any lined up?
 - How was it arranged?

- Why do you think work exp is important?

Students from non-traditional backgrounds

- Does the Bar need to do more to encourage those from non-traditional backgrounds?
- What else should it do to encourage those people?
- Do you think PAS will help those students?
- How could it be improved?
- What do you think is the main barrier to disadvantaged but able students in coming to the Bar?
- How do you think the Bar can best tackle those issues?

Concluding Questions:

- Do you think Inner Temple is doing enough to encourage students from non-traditional backgrounds?
- If not, what else should they do?

Is there anything else that you would like to tell us about your perception of the profession, and your hopes for entering it?

A.3 Interview Schedule – Chambers’ Representatives

Individual/Chambers Biographical Details

- How many barristers form chambers?
- How many pupils do you take on each year?
- Could you describe your role within chambers?

Role and Purpose of Legal Work Experience:

General Background:

a) Informal mini-pupillages within your chambers:

- How regularly are they offered (if at all)?
- What’s the process by which a student secures an informally arranged mini-pupillage at your chambers?
- What are the principal differences (if any) between those who have secured mini-pupillages through this route, rather than the formal schemes?
- Could you describe a typical student on such a mini-pupillage?

b) Formal/assessed mini-pupillages:

- How many do you offer each year (if at all)? Typical student?
- Could you explain what you see as the primary role and purpose for mini-pupillages?
- How important are mini-pupillages to your recruitment strategy?
- In what ways does it support recruitment?
- Are students who have done mini-pupillages with your chambers more likely to be considered for full pupillage at your chambers if they apply?
- If so, what value is attached to the different kinds of mini-pupillages that applicants may have undertaken?

Selection for mini-pupillages

- Could you take me through the selection process for mini-pupillages?
- What are you looking for when first reviewing applicants?
- How are applications assessed?
- By whom are they assessed?
- How difficult do you find it to identify the strongest candidates?
- How confident are you in your current selection processes?
- All things being equal, how might you change the practice (if at all)?

Activities on mini-pupillages:

- What activities will students typically participate in during a mini-pupillage?
- How (if at all) are the mini-pupillages structured?
- What are you looking for from a student on a mini-pupillage?
- How is a student's performance assessed during/at the end of the mini-pupillage (if at all)?
- If the mini-pupillage is not assessed, does chambers keep notes regarding the mini-pupil's performance which may be referred to if an application for pupillage were received from that candidate?

Students from non-traditional backgrounds

- Does your method of selecting mini-pupils take into account disadvantage that might stem from educational disadvantage etc?
 - If so, how?
 - If not, why not?
 - Do you think there's a role for this?
- What do you think are the main barriers to disadvantaged, but able, students in coming to the Bar?
- How do you think the Bar can best tackle those issues?
- What is done within your chambers to tackle those issues?
- Where do you see the principal responsibility lying, in relation to addressing social mobility at the Bar?
- How dependent do you think success at the Bar remains on contacts etc?
- Is there anything else you'd like to tell me about this chambers' access/social mobility activities/participation?

Concluding Questions:

- What would you describe as the principal strengths/weaknesses of mini-pupillages as a process of identifying the best possible candidates?
- And as a process for addressing social mobility/for delivering the aims that you identified earlier?
- How might you improve (if at all) your chamber's activities in this area?
- What would you describe as the most difficult aspects of your work in recruitment?

- To what extent will current market conditions shape the nature/structure of your activities in this area?

A.4 Interview Schedule – salaried staff

Individual Biographical Details

- How long have you been a member of staff?
- What is your professional background?
- How did you come to be at Inner/other prof. assoc.?
- What made you want to be involved in the Outreach angle of Inner's/other prof. assoc.' work?

Role and Purpose of Widening Access schemes

- How important do you feel the widening access/increasing social mobility agenda is, in the context of the other challenges that the Bar faces?
- Why is widening access important?
 - o For the Bar as a profession
 - o For Inner Temple particularly?
- How will these schemes contribute towards that widening?
- Why do you feel that Inner Temple has chosen to focus on the widening access agenda (in general) and the individual schemes it has chosen to prioritise (specifically).
- How do you think Inner's efforts in terms of widening participation initiatives compare to the other Inns and chambers?
 - o What are the reasons for these differences?
- How do you feel Inner and its efforts are perceived?
 - o By the other Inns
 - o By chambers
 - o By students?

Specific Schemes

- What was your involvement in setting up Inner's access schemes, particularly Pegasus or Pathways? (or other schemes undertaken by your prof. assoc.)
- How involved were you?
- What motivated your involvement?

- Any difficulties/negative feelings about the schemes?
- What works well on Scheme X?
- What works less well?
- How do you feel that could be improved?
- For you personally/for Inner Temple/for the Bar generally, what would you view as a measure of success for Scheme X?
- What do you hope will be the result of the PAS, assuming it continues in largely its current guise?
- Should participation in PAS be compulsory to all chambers, or certain types of chambers (i.e. commercial/chancery where there's the lowest proportion of non-traditional entrants).
- What is your sense of the broader engagement with the profession with these Schemes?
- Does the origin/organisational ownership affect the willingness of the profession more widely to participate in/support a Scheme?
- Do you think Inn ownership of these schemes has had a positive effect?
 - If not, what alternative origin/ownership do you think could counter that?
- If you could change one aspect of PAS/Pathways, what would it be and why?

Widening participation schemes generally

- What else could the Bar do to widen participation?
- Is the Inn well-placed to administer such schemes?
- If not, should it be done at a higher (i.e. Bar Council) or lower (i.e. individual chambers) level?
- Do you think programmes such as PAS will become widespread?
- What will be the factors that determine the likelihood of this happening?

Non-traditional entrants

- Do you think attitudes towards non-traditional entrants at the Bar changed over time?
- Can you explain how/why?
- What do you think are the main barrier to disadvantaged but able students in coming to the Bar?

- What do you think is the most difficult barrier to overcome for non-traditional entrants?
- How does that compare to barriers for traditional entrants?
- To what extent do you feel that the Bar presents different access challenges when compared to other professions, e.g. solicitors, accountants, doctors?

- How can the Bar as a profession tackle those barriers more common to non-traditional entrants?

- Do you think there's anything more/different that the Inn could do to help non-traditional entrants?

Concluding Questions:

- How might you improve (if at all) the Inn's activities in this area?

- What would you describe as the most difficult aspects of recruiting for the Bar in relation to non-traditional applicants?

- Any other observations/comments?

A.5 Interview Schedule – Benchers/Senior members of other professional associations

Individual Biographical Details

- How long have you been a Bencher/member of staff?
- What is/was your area of practice (if Bencher)?

Role and Purpose of Widening Access schemes

- How important do you feel the widening access/increasing social mobility agenda is, in the context of the other challenges that the Bar faces?
- Why is widening access important?
 - o For the Bar as a profession
 - o For Inner Temple particularly?
- How will these schemes contribute towards that widening?
- Why do you feel that Inner Temple has chosen to focus on the widening access agenda (in general) and the individual schemes it has chosen to prioritise (specifically).
- How do you think Inner's efforts in terms of widening participation initiatives compare to the other Inns and chambers?
 - o What are the reasons for these differences?

Specific Schemes

- What was your involvement in setting up Inner's access schemes, particularly Pegasus or Pathways?
- How involved were you?
- What motivated your involvement to that extent (if extensive involvement)
- Any difficulties/negative feelings about the schemes?
- What works well on Scheme X?
- What works less well?
- How do you feel that could be improved?
- For you personally/for Inner Temple/for the Bar generally, what would you view as a measure of success for Scheme X?
- What do you hope will be the result of the PAS, assuming it continues in largely its current guise?
- Should participation in PAS be compulsory to all chambers, or certain types of chambers (i.e. commercial/chancery where there's the lowest proportion of non-traditional entrants).
- What is your sense of the broader engagement with the profession with these Schemes?

- Does the origin/organisational ownership affect the willingness of the profession more widely to participate in/support a Scheme?
- Do you think Inn ownership of these schemes has had a positive effect?
 - If not, what alternative origin/ownership do you think could counter that?
- If you could change one aspect of PAS/Pathways, what would it be and why?

Widening participation schemes generally

- What else could the Bar do to widen participation?
- Is the Inn well-placed to administer such schemes?
- If not, should it be done at a higher (i.e. Bar Council) or lower (i.e. individual chambers) level?
- Do you think programmes such as PAS will become widespread?
- What will be the factors that determine the likelihood of this happening?

Non-traditional entrants

- Have attitudes to non-traditional entrants at the Bar changed over time?
- Can you explain how/why?
- What do you think are the main barrier to disadvantaged but able students in coming to the Bar?
- Do non-traditional entrants bring with them different skills?
- If so, what are they?
- What do you think is the most difficult barrier to overcome for non-traditional entrants?
- How does that compare to barriers for traditional entrants?
- To what extent do you feel that the Bar presents different access challenges when compared to other professions, e.g. solicitors, accountants, doctors?
- How can the Bar as a profession tackle those barriers more common to non-traditional entrants?
- Do you think there's anything more/different that the Inn could do to help non-traditional entrants?

Concluding Questions:

- How might you improve (if at all) the Inn's activities in this area?

- What would you describe as the most difficult aspects of recruiting for the Bar in relation to non-traditional applicants?
- Any other observations/comments?

Appendix B

B.1 Letters of Invitation

B.1.1 Students

B.1.2 Benchers/staff/chambers master copy (slight adjustments were made for each category and depending on the individual's position).

B.2 Information sheets

B.2.1 PAS

B.2.2 Pathways

B.2.3 Benchers, chambers' representatives and salaried staff

B.3 Consent forms

B.3.1 Interviews

B.3.2 Focus Group

B.1.1 – Student Letter of Invitation



Research Institute for Social Sciences,
Keele University,
ST5 5BG

DATE

Dear **(student's name)**,

I understand that you have participated in Inner Temple's Pegasus Access Scheme either this year or last year. I am doing some research, funded by Inner Temple and Keele University, into whether programmes such as Pegasus are useful in increasing access to the Bar by those who come from backgrounds which are underrepresented at the bar.

I will be holding a group discussion with students who have participated in the Pegasus Scheme on **(date/time/location)**, and would be very grateful if you would consider attending to share your views (good and bad) on the scheme. The discussion will focus on issues such as whether it was useful, whether it has influenced your opinions about the Bar and your own chances of becoming a barrister, and whether you think there are ways in which it could be improved.

It will be informal, and although the discussion will be recorded so I don't have to write notes, when the transcript is typed up everyone will be referred to by a code, and only I will know who is denoted by which code. Inner Temple will not know the identity of the maker of each comment.

The discussion will be held at Inner Temple in **(exact location)**, at **(time)** on **(date)**.

I do hope that you will come to the focus group so that you can share your views on access to the bar, and on how the Pegasus Access Scheme can be made even better for those who participate in future.

Yours faithfully,

Elaine Freer

B.1.2 - Benchers/staff/chambers letter of invitation master copy

(slight adjustments were made for each category and depending on the individual's position).



Research Institute for Social Sciences,
Keele University,
ST5 5BG

DATE

Dear **(participant's name)**,

I understand that you/your chambers have participated in Inner Temple's Pegasus Access Scheme either this year or last year. I am doing some research, funded by Inner Temple and Keele University, into whether programmes such as Pegasus are useful in increasing social mobility through promoting access to the Bar by those who come from backgrounds which are underrepresented at the Bar.

As part of this research, I will be conducting individual interviews with Benchers and staff who were involved in the establishing of the Pegasus Access Scheme, and representatives from chambers who have participated in the Pegasus Scheme on **(date/time/location)**, and would be very grateful if you would consider attending to share your views (good and bad) on the scheme.

I do hope that you will come so that you can share your views on access to the Bar, the potential of programmes such as the Pegasus Access Scheme, and on the workings of the Pegasus Access Scheme itself.

Yours faithfully,

Elaine Freer

B.2.1 - Information Sheet for Participants – Pegasus Access Scheme

Research Title: *An exploration of social mobility at the Bar, and the effect on this of initiatives of professional organisations seeking to improve it, through an evaluation of the Pegasus Access Scheme*

Researcher: *Elaine Freer*

Why have I been chosen?

You've been asked to participate in this research because you have participated in the Pegasus Access Scheme run by Inner Temple, and I want to hear what you thought about it.

Do I have to?

Before you decide whether or not you wish to take part, it is important for you to understand why this research is being done and what it will involve. Please take time to read this information carefully and discuss it with others if you wish. Ask me if there is anything that is unclear or if you would like more information.

You are free to decide whether you wish to take part or not. If you do decide to take part you will be asked to sign two consent forms, one is for you to keep and the other is for our records. You are free to withdraw from this study at any time and without giving reasons.

What's going to happen?

If you decide to take part, you'll be part of a group of students who have all participated in the Pegasus Access Scheme. I'll ask the group questions, and we'll have an informal discussion, focussing on whether PAS has been useful, what you think about the bar, and whether you're considering it as career option. If at any time you decide that you want to leave the discussion, then you're free to do so and this will have no effect on your participation in future PAS or Inner Temple events.

Why are you doing it?

This focus group is being run as part of my research into access to the bar by those who come from backgrounds which are under-represented at the bar. The aim of the research is to look at whether initiatives such as PAS do help students from these backgrounds who are academically able to go to the bar. The best way to do this is to talk to people who have been part of the initiatives, such as you. By getting your views on what's good and bad about the programme, we can learn what's helpful.

There are no risks associated with taking part.

Who will know what I say?

Only me. During the session, I'll have a recorder running so that I don't need to take notes. However, when I type up the recordings, the transcript will refer to each of you by a code which I have assigned you, so neither your university nor Inner Temple will know who said what.

All data will be stored securely; paper consent forms in a locked filing cabinet and transcripts on a password protected computer. Data will be retained by the principal investigator for at least five years, and then disposed of.

Who is funding this research?

This research is being funded by Keele University and Inner Temple.

I've got some more questions, who do I ask?

If you have a concern about any aspect of this study, you may wish to speak to me, and I will do my best to answer your questions. You should contact *Elaine Freer* on e.a.o.freer@keele.ac.uk. Alternatively, if you do not wish to contact the researcher you may contact *Prof Andrew Francis* on a.m.francis@keele.ac.uk.

If you remain unhappy about the research and/or wish to raise a complaint about any aspect of the way that you have been approached or treated during the course of the study please write to Nicola Leighton who is the University's contact for complaints regarding research at the following address:-

Nicola Leighton
Research Governance Officer
Research & Enterprise Services
Dorothy Hodgkin Building
Keele University
ST5 5BG
E-mail: n.leighton@uso.keele.ac.uk
Tel: 01782 733306

If you have found anything that we have discussed distressing the Samaritans provides a free, non-judgmental, non-directive listening service, 24 hours a day: 0845 790 90 90

B.2.2 - Information Sheet for Participants – Pathways

Research Title: An exploration of social mobility at the Bar, and the role of embedded professional associations seeking to improve it, through an evaluation of the Pegasus Access Scheme

Researcher: *Elaine Freer*

Why have I been chosen?

You've been asked to participate in this research because you have attended a Pathways to Law event at Inner Temple, and I want to hear what you thought about it.

Do I have to?

Before you decide whether or not you wish to take part, it is important for you to understand why this research is being done and what it will involve. Please take time to read this information carefully and discuss it with others if you wish. Ask me if there is anything that is unclear or if you would like more information.

You are free to decide whether you wish to take part or not. If you do decide to take part you will be asked to sign two consent forms, one is for you to keep and the other is for our records. You are free to withdraw from this study at any time and without giving reasons.

What's going to happen?

If you decide to take part, you'll be part of a group of students who have all attended Pathways to Law events at Inner Temple recently. I'll ask the group questions, and we'll have an informal discussion, focussing on whether Pathways has been useful, what you think about the bar, and whether you're considering it as career option. If at any time you decide that you want to leave the discussion, then you're free to do so and this will have no effect on your participation in future Pathways or Inner Temple events.

How long will it take?

The focus group will last around an hour.

Why are you doing it?

This focus group is being run as part of my research into access to the bar by those who come from backgrounds which are under-represented at the bar. The aim of the research is to look at whether initiatives such as Pathways do help students from these backgrounds who are academically able to go to the bar. The best way to do this is to talk to people who have been part of the initiatives, such as you. By getting your views on what's good and bad about the programme, we can learn what's helpful.

There are no risks associated with taking part.

Who will know what I say?

Only me. During the session, I'll have a recorder and video camera running so that I don't need to take notes. However, when I type up the recordings, the transcript will refer to each of you by a code which I have assigned you, so neither your school/sixth form college nor Inner Temple will know who said what. Only I will see the videos – they're to help me work out who is saying what when more than one person is speaking, and to make sure I don't confuse people when I type up the transcripts.

All data will be stored securely; paper consent forms in a locked filing cabinet and transcripts and video footage on a password protected computer. Data will be retained by the principal investigator for at least five years, and then disposed of.

Who is funding this research?

This research is being funded by Keele University and Inner Temple.

I've got some more questions, who do I ask?

If you have a concern about any aspect of this study, you may wish to speak to me, and I will do my best to answer your questions. You should contact *Elaine Freer* on e.a.o.freer@keele.ac.uk. Alternatively, if you do not wish to contact the researcher you may contact *Prof Andrew Francis* on a.m.francis@keele.ac.uk.

If you remain unhappy about the research and/or wish to raise a complaint about any aspect of the way that you have been approached or treated during the course of the study please write to Nicola Leighton who is the University's contact for complaints regarding research at the following address:-

Nicola Leighton
Research Governance Officer
Research & Enterprise Services
Dorothy Hodgkin Building
Keele University
ST5 5BG
E-mail: n.leighton@uso.keele.ac.uk
Tel: 01782 733306

If you have found anything that we have discussed distressing, contact your school tutor or school counselling service.

B.2.3 – Information Sheet for Participants – Benchers/Staff/Chambers

Research Title: *An exploration of social mobility at the Bar, and the effect on this of initiatives of professional organisations seeking to improve it, through an evaluation of the Pegasus Access Scheme*

Researcher: *Elaine Freer*

Why have I been chosen?

You've been asked to participate in this research because you have been involved in the setting up or running of the Pegasus Access Scheme, either within Inner Temple or within participating chambers, or because you are otherwise involved in social mobility and access initiatives at the Bar; for example, you may be a Bencher of another Inn, or a representative of chambers which run their own access initiatives.

Before you decide whether or not you wish to take part, it is important for you to understand why this research is being done and what it will involve. Please take time to read this information carefully and discuss it with others if you wish. Ask me if there is anything that is unclear or if you would like more information.

You are free to decide whether you wish to take part or not. If you do decide to take part you will be asked to sign two consent forms, one is for you to keep and the other is for our records. You are free to withdraw from this study at any time and without giving reasons.

What's going to happen?

If you decide to take part, then I will interview you alone, asking questions about your involvement with promoting social mobility at the bar, and particular programmes if you or your chambers participate in any. If at any time you decide that you want to end the interview, then you're free to do so without having to give reasons.

Why are you doing it?

These interviews are being conducted as part of my research into access to the bar by those who come from backgrounds which are under-represented at the bar. The aim of the research is to look at whether initiatives such as PAS do help students from these backgrounds who are academically able to go to the bar, and to look at the wider engagement with social mobility issues within the profession.

There are no risks associated with taking part.

Confidentiality/Anonymity

I will record the interview and later transcribe it. When I transcribe it, and in any material I write about my research, you will be referred to by a code which I will assign you. Only I will know which code relates to which person.

All data will be stored securely; paper consent forms in a locked filing cabinet and transcripts on a password protected computer. Data will be retained by the principal investigator for at least five years, and then disposed of.

Who is funding this research?

This research is being funded by Keele University and Inner Temple.

I've got some more questions, who do I ask?

If you have a concern about any aspect of this study, you may wish to speak to me, and I will do my best to answer your questions. You should contact *Elaine Freer* on e.a.o.freer@keele.ac.uk. Alternatively, if you do not wish to contact the researcher you may contact *Prof Andrew Francis* on a.m.francis@keele.ac.uk.

If you remain unhappy about the research and/or wish to raise a complaint about any aspect of the way that you have been approached or treated during the course of the study please write to Nicola Leighton who is the University's contact for complaints regarding research at the following address:-

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Keele University
ST5 5BG
E-mail: n.leighton@uso.keele.ac.uk
Tel: 01782 733306

B.3.1 Consent Form - Interviews



CONSENT FORM - INTERVIEWS

Title of Project: *An exploration of social mobility at the Bar, and the effect on this of initiatives of professional organisations seeking to improve it, through an evaluation of the Pegasus Access Scheme*

Name and contact details of Principal Investigator: Elaine Freer –
e.a.o.freer@keele.ac.uk

Please tick box if you agree with the statement

- 1 I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions.
- 2 I understand that my participation is voluntary and that I am free to withdraw at any time.
- 3 I agree to take part in this study.
- 4 I understand that data collected about me during this study will be anonymised before it is submitted for publication.
- 5 I agree to the interview being audio recorded
- 6 I agree to allow the dataset collected to be used for future research projects
- 7 I agree to be contacted about possible participation in future research projects.
- 8 I agree to anonymised quotations from the recording of this interview being used in publications relating to this research

Name of participant

Date

Signature

Researcher

Date

Signature

B.3.2 Consent Form – focus groups



CONSENT FORM – FOCUS GROUPS

Title of Project: *An exploration of social mobility at the Bar, and the role of embedded professional association seeking to improve it, through an evaluation of the Pegasus Access Scheme*

Name and contact details of Principal Investigator: Elaine Freer –
e.a.o.freer@keele.ac.uk

Please tick box if you agree with the statement

- 1 I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions.
- 2 I understand that my participation is voluntary and that I am free to withdraw at any time.
- 3 I agree to take part in this study.
- 4 I understand that data collected about me during this study will be anonymised before it is submitted for publication.
- 5 I agree to the focus group being audio and video recorded
- 6 I agree to allow the dataset collected to be used for future research projects
- 7 I agree to be contacted about possible participation in future research projects.
- 8 I agree to keep the issues discussed within the focus group confidential and in particular, to avoid identifying any of the participants in relation to these issues/individual comments made during the session.
- 9 I agree to anonymised quotations from the recording of this interview being used in publications relating to this research.

Name of participant

Date

Signature

Researcher

Date

Signature

