

Why is female partner diversity in the legal profession still failing and what can law firms do about it?

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According to research, the majority of London law firms still have an overwhelmingly male-dominated partnership. Women have represented more than 60% of entrants into the solicitor profession since 1990. There has been a huge push in diversity and inclusion initiatives within law firms in recent years. So why is female partnership diversity still failing?

The Lawyer cited [research](#) which revealed that out of the 50 top law firms in London, 45 still have lower female representation at partnership level than the industry benchmark of 30 per cent. Of the five firms who had reached the industry benchmark, three had female partnership representation of 30 per cent, one of 31 per cent and one of 44 per cent. The overall average of female partnership amongst the top 50 city firms was 23 per cent.

One explanation may be that the solutions currently being pursued under diversity and inclusion initiatives will take time to have a meaningful impact, in contrast to more interventionist solutions.

Diversity and inclusion initiatives are the “soft arm” of lawful positive action. These initiatives (which are lawful under section 158 of the Equality Act 2010) include women only networks, women only training programs, outreach programs and mentoring schemes.

By their very nature, such initiatives can only achieve so much success in a short period of time. They rely on the

winning of hearts and minds, the shifting of entrenched attitudes and the slow redress of wider social injustices that reach far beyond the confines of the employment market.

Faster and more direct action is permitted under the positive action provision set out at section 159 of the Equality Act 2010.

This provision can be used in relatively limited circumstances, but it allows employers during recruitment and promotion processes to take positive action towards women who are disproportionality underrepresented. It can be used in recruitment and promotion in relation to a "tie-breaker". Where two or more candidates are of "equal merit" an employer may take into consideration whether one is from a group that is disproportionately under-represented or disadvantaged within the workforce.

Allowing positive action in circumstances where candidates are "of equal merit" raises a whole host of additional questions and concerns for employers. How can employers make this assessment safely? How can they avoid making subjective assessments of candidates? How often are candidates truly of equal merit?

Getting the assessment wrong could leave employers open to reverse discrimination claims. Law firms are likely to be more acutely aware of this pitfall than employers in many other industries.

The use of positive action also opens up wider social and political questions, such as whether it is really an employer's duty, as opposed to the government's duty, to tackle such pervasive and longstanding social injustices so directly. Even for those who agree that employers shoulder some responsibility in helping to redress social diversity issues, measures of the sort permitted under section 159 are still viewed by many as radical and inequitable.

Taking all these issues together, whether for good or ill, many employers are still reluctant or unwilling to implement positive action into their recruitment or promotion processes. Law firms in the City do not seem to be in any rush to buck this trend.

This seems to leave only two main ways to tackle gender diversity issues at partnership level in law firms. Law firms can wait for societal developments to trickle down into the employment market and legal sector, which is wholly unsatisfactory. Alternatively, law firms can turbo charge their efforts to push diversity and inclusion initiatives, as well as implementing and promoting policies and practices that aim to support women (such as during periods of pregnancy, demanding childcare and menopause), with the aim of accelerating meaningful cultural change and diversity improvements within the workplace. Both are bound to take time.

Whilst it may be unsurprising that female partnership diversity in law firms is still, at present, failing, it is not an option to do nothing in the hope the problem fixes itself.

If you would like to discuss positive action, diversity and inclusion or sex discrimination in the workplace, please contact Rebecca Rubin (rebeccarubin@bdbf.co.uk) or your usual BDBF contact.

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