



PROFESSIONAL PRACTICES ALLIANCE WORKSHOP REPORT

FEMALE PARTNER QUOTAS FOR LAW FIRMS

Executive Summary

1. Are quotas for female partners necessary to accelerate female partner representation in law firms or are they just as inappropriate as quotas for blue-eyed people? Should temporary quotas be adopted instead to establish a critical mass of female partners in law firms or are quotas altogether too prescriptive, unjustified and unfair? These issues and more were debated by the panel members at the Professional Practices Alliance interactive breakfast workshop workshop earlier this year.
2. The workshop considered the key practical, socio-economic, and political challenges contributing to gender disparity at partnership level which would need to be considered by law firms when evaluating how they will approach this issue, and included:
 - childcare commitments and the availability (or the lack thereof for partners and members of firms) of family friendly rights;
 - changing workplace demographics;
 - gender behavioural differences;
 - client expectations; and
 - the partnership model.

3. The panel also discussed the viability of other means of increasing female representation including:
- voluntary targets, like Allen & Overy's female partnership target of 20% by 2020, Herbert Smith's and Clifford Chance's goals set at 30% ;
 - adopting supportive workplace mentoring initiatives;
 - linking diversity targets performance with partner remuneration;
 - flexible working and use of technology;
 - family friendly rights;
 - changes to traditional partnership structures; and
 - garnering client support.

Introduction

4. *"I'm fundamentally opposed to quotas for women in the same way that I would be for quotas for blue eyed people"*: such was the opinion of one of the panellists at the Professional Practices Alliance workshop on Wednesday 23 March 2016. Sitting on the panel were: Bettina Bender of CM Murray LLP, Clare Maurice of Maurice Turnor Gardner LLP, Anne O'Neill of Orrick, Herrington & Sutcliffe, David Shufflebotham of Osborne Clarke, and Anna Birtwistle of CM Murray LLP (as panel chair).
5. Despite more women than men entering the legal profession in the last 20 years, women only make up 24% of those at partnership level.¹ These figures are lower when further divided into salaried and equity partners, with women making up just 10% of the equity partnership. This has led many firms to consider whether

¹ <http://www.chambersstudent.co.uk/where-to-start/newsletter/2014-gender-in-the-law-survey>.

it is now time to introduce quotas in law firms to increase female representation, and this was the hot topic of debate considered in this session.

6. The discussion also considered other means of increasing female representation, for example, adopting voluntary targets or workplace mentoring initiatives and arrangements that may help to retain and motivate female partners, as well as the barriers to gender diversity, particularly at partnership level, and possible ways to combat them.
7. This report summarises the key areas of discussion which arose during the workshop.

Quotas, targets and other gender parity schemes

8. Female quotas would necessitate a fixed number of trainee, associate, fixed share partner or equity partner positions to be mandatorily filled by a female; whereas voluntary targets are aspirational objectives for firms to work towards, to encourage increased female representation. In the last five years we have seen firms moving towards adopting the latter, particularly at partnership level. For example Allen & Overy have set a 20% female partnership target by 2020 and Baker & Mckenzie have set a 30% long-term goal.
9. Across the panel members, voluntary targets were also generally seen as a preferable and more feasible way of gradually increasing female representation, rather than adopting quotas which were thought to be too prescriptive. Indeed some of the panellists were staunchly opposed to quotas, with one panellist arguing that adopting mandatory quotas for women but not for men would give women an unjustified and unfair advantage. It means that candidates would be chosen for progression based on gender rather than on the basis of merit. As a law firm is a business in its own right and profit is one of its primary objectives, it was argued that to potentially have unmerited promotions to senior positions would not be commercially sound. It was therefore suggested that “gender-blind” meritocracies are far preferable to mandatory quotas.

10. However it was argued that the statistics suggest that the legal profession is not gender-blind or gender-neutral at present and to operate on that basis would be to ignore the reality that there exists a bias in men's favour, be that for example through the client-centred nature of certain roles (and the demands that come with it) or a 'boys club' culture that often excludes women. Law firms therefore need to take more proactive steps to address inequality between men and women; otherwise, as one panellist stated, we could be debating the same issues in years to come having made little progress.
11. A potential suggestion made by one panellist was to use quotas as a temporary measure to achieve a critical mass of women in senior positions, which could then pave the way for more women to progress. Yet mandatory quotas, even temporarily, were considered by another panellist to only offer an immediate solution to a macro-problem. Instead it was argued that voluntary targets, although by no means an all-encompassing solution, could potentially be the catalyst for radical change in the mind-sets and culture within law firms.
12. Following the introduction of the Government's Women in Finance Charter on 22 March 2016, it was also suggested that a similar initiative could be introduced to the legal sector. As of 11 July 2016, 72 firms have signed the Charter, under which they commit to implement four key industry actions: 1) appointing one senior executive to be specifically responsible and accountable for gender diversity and inclusion; 2) setting internal gender diversity targets for senior management; 3) publishing annual target progress on the firm's website; and 4) linking senior executive team pay to delivery against internal targets on gender diversity. One panellist highlighted that the fourth Charter action linking the firm's diversity targets performance to executive board remuneration was due to be introduced in their firm. However it was voiced by some on the panel that although financial incentives can achieve some change, a wider attitude change would also be necessary to truly make these commitments effective.
13. Another alternative to adopting quotas suggested was the setting up of workplace initiatives which encourage women to aspire to and get partnership and management positions, for example by pairing potential female

candidates with more senior male or female members of the firm who can act as mentors.

14. An audience member suggested that a further possible way to level the playing field may be through better enforcement of rights under the Working Time Regulations 1998. The Working Time Regulations provide, amongst other things, that an employer must take all reasonable steps to ensure that each worker's average working time (including overtime) does not exceed 48 hours per week. In theory this would mean that male and female lawyers would be required to work no more than the same maximum number of hours thereby reducing the disadvantages women face in not being able to commit to the same lengthy hours as men due to carer commitments for example (discussed further below).
15. Albeit a commendable aspiration, the consensus on the panel was that it is regarded as standard practice for employers (including law firms) to require workers to opt-out of the maximum weekly working hours as part of their employment contract. Further, for many firms they may not regard it as commercially viable to require strict adherence to the 48-hour week maximum.

Barriers to gender diversity and how to combat it

16. There are many socio-economic, political and other factors that contribute to the gender representational disparity at partnership level. It was further noted that as well as gender inequality, there remains a disproportionately low representation of Black, Asian and Minority Ethnic (BAME) individuals in senior positions within law firms.
17. Some of the barriers faced by these individuals, which were highlighted during the session included: childcare commitments and the availability (or the lack thereof for partners and members of firms) of family friendly rights; changing workplace demographics; gender behavioural differences; client expectations; and the partnership model.

Childcare commitments

18. There was general agreement that lawyers are increasingly now expected to reach partnership by their mid-thirties. However as one panellist pointed out, this age range also happens to coincide with the female “biological clock”, for those women who choose to have children. This makes it more difficult, both financially and practically, for women to balance childcare commitments and the demands of partnership. This may both prevent and deter women from progressing to partnership.

19. Interestingly, it was noted by some on the panel that even women who do not have children face similar difficulties with progression to partnership; and one further potentially interesting area of research for the future would be into the experiences of women across the spectrum, from those without children to those who have full-time childcare.

(i) Maternity Leave

20. Since it remains the case that women still tend to have primary childcare responsibility, it was suggested that there needs to be better awareness of the difficulties faced by female lawyers on taking or returning from maternity leave. One major challenge for many female partners remains that as partners/members they are unlikely to be considered eligible for statutory maternity leave, which is only available to employees.² They must therefore rely instead on any enhanced contractual rights provided under the partnership’s maternity policy or ad hoc agreement with the firm. It was noted that in this respect survey research derived from the Association of Partnership Practitioners had shown that female partners were predominantly being offered maternity leave benefits of three months full pay and three months half pay.³

21. A panellist also noted that often female partners return from maternity leave to find their clients have been moved to junior male partners, or that the only way to work more flexibly is to accept cuts in their remuneration. In such a case, the

² Although it should be noted that female LLP members and partners may be able to establish that they are in reality employees and should be treated as such, based on an examination of their agreed terms and arrangements in practice, and may therefore be entitled to maternity leave and pay as employees.

³ APP Newsletter Issue 43.

partner is often faced with unattractive options and difficult decisions on their next steps, including (this is not an exhaustive list and is by way of example only):

- a. to raise a formal grievance; or
- b. to seek to commence proceedings for a sex discrimination claim (which is likely to negatively impact on the partner's reputation and ability to find alternative roles in the future); or
- c. to do nothing and focus on regaining those clients that she lost, whilst also having to pay for childcare support in order to be able to commit to the lengthy hours required for the role.

22. It was emphasised by panellist members that law firms should be taking proactive steps before, during and after maternity leave to address such difficulties, for example, by adopting a formal 'Return from Maternity Leave Policy'. It was also suggested that partners who supervise matters on behalf of those on maternity leave could ensure the client is aware that they are only temporarily supervising and could intermittently remind the client about when the original partner is due to return. The proactive initiative required on the part of the partner on maternity leave was highlighted too, as she should also be making efforts to keep in contact with her clients during her leave. Further, it was suggested that on return from maternity leave, every effort should be made by the firm to return those clients to the partner. The benefit of offering coaching or individualised support back into partnership to those partners returning from maternity leave was also emphasised.

(ii) Other family friendly rights

23. Another major area of discussion by the panel was the importance of men playing a bigger part in childcare responsibilities, to secure long-term gender diversity change, for example through use of the Shared Parental Leave scheme, which was introduced for employees in April 2015 and allows men to share their partner's maternity leave. An audience member suggested that to have 50% female representation at partnership level would be futile if there was not, in

parallel, a 50% participation in childcare responsibilities by men. However, statistics show that the take-up of the Shared Parental Leave Scheme has been low so far with My Family Care and the Women's Business Council finding in a recent survey that only 1% of all male employees⁴ are applying for it, and 55% of women would not want to share their maternity leave.

24. A further suggestion was encouraging partners to use flexible and part-time working arrangements. One panellist commented that their firm offered an "alternative working programme" for which both male and females could apply. However this can raise issues of its own in relation to reduced profit share, delayed progression (particularly where firms have a business model based on achieving high volumes of billable hours, which flexible workers may struggle to attain) and high client expectations (discussed further below).

25. It was also highlighted that not all areas of law require the same high levels of input hours, for example it is commonly acknowledged that mergers and acquisitions and transactional work tends to require more intensive work over a discrete periods of time (for example, when the deal is about to close) and may require a legal team to work together over several consecutive nights to achieve this. These requirements can sometimes mean that women or other partners who work part-time and/or flexibly may not be able to be involved at such a crucial stage of the matter. One comment made by a panel member in response to this however, was that this situation was also partly fuelled by industry culture and firm expectations and that those who work flexibly could contribute just as much to the deal by working during "downtime hours", for example earlier mornings and leaving at close of business; or making use of technology by video conferencing into team meetings from home.

26. It was suggested that another way to encourage change is to extend and equalise paternity rights with maternity rights, in particular for male partners since shared parental leave entitlements (in a similar way to maternity rights) do not automatically apply to partners or LLP members who are not considered

⁴ My Family Care could only report the figures for all male employees as the majority of companies were unable to tell them the size of their male population that were eligible for Shared Parental Leave.

employees by law. However it was noted that we should act with caution when pushing to equalise all childcare entitlements so that we do not inadvertently erode the basic maternity protections and rights that were introduced to protect women who are pregnant and/or have primary childcare responsibility. It could also be commercially disastrous for some law firms to have to offer 12 months leave to both parents.

Workforce demographic

27. A recent Legal Week study showed that around 30% of millennials,⁵ both male and female, are opting not to pursue partnership, partly due to a rejection of the lifestyle and demands of the position.
28. However one panellist strongly disagreed with the idea that the cause of gender inequality within the legal profession could be reduced solely down to the effects of the new working millennial generation and suggested that regardless of gender and generation, it remains the case that those who are driven, hardworking and want to achieve partnership will inevitably do so. The legal profession is a hugely demanding one and a fundamental expectation of partnership is contribution to the growth of the business, so one should expect to have to work hard to enjoy the benefits of such growth and the very significant financial rewards it can bring.

Gender behavioural differences

29. One panellist suggested that behavioural differences between men and women could also contribute towards the gender imbalance at senior level. It was noted that research had shown that men tend to be more 'boastful' whereas women tend to be more 'self-effacing', and that men would apply for a job if they thought they could do at least 50% of the job specification whereas women would only apply where they thought they could meet at least 70% of the job specification.
30. It was also noted that women in particular are increasingly opting for in-house counsel roles and that more needs to be done to understand the impetus for such

⁵ Usually considered to be those individuals who were born in the early 1980s to the early 2000s.

choices. In this regard, an audience member from the Law Society noted that research has shown that women outperform men academically and make up 60% of entry level solicitors under 40, meaning that if women are choosing to leave the profession, in reality firms may be left selecting from a pool of less technically able male candidates.

Law firm structure and partnership

31. One panellist highlighted that some partnership structures themselves may often be a barrier for women in law firms. The panellist gave the example of a big city firm where they had worked some time ago, and where one of the male partners in a class of 45 partners had expressed that female partners would only be allowed into the partnership “over his dead body”. As this particular city firm followed a traditional lockstep model (where each partner’s share of profits depends entirely upon their seniority) and each partner had one voting point, this created an ingrained systematic barrier for women’s progression at the firm with men simply reproducing the status quo when admitting new partners and staying put for a long time. Even when women are admitted to the partnership, the lockstep system may not reward exceptional performance sufficiently quickly enough which could also perpetuate the stagnation of female partners progression as they veer towards typical child bearing age. It was suggested by an audience member that there should be a greater move towards modified lockstep models, so that any advancement within the partnership is based on performance.
32. There was also discussion around the operation of two-tiered partnerships (with salaried or fixed share partners and equity partners). This was said to be designed to allow salaried partners to build a book of business with a view to progressing to equity partnership.
33. However the panel highlighted that this two-tiered partnership structure appeared to reveal a further layer of disproportionate gender representation between equity and non-equity partners. Research has shown that of those women who do progress to partnership, the majority are promoted to non-equity partners (who are more likely to have limited voting rights and receive a fixed income), which in effect serves to mask the inequality that still exists; a much

smaller proportion progress to full equity thereafter. It was suggested that non-equity partnership is therefore in effect being used by some firms as a holding or limbo status for those who are unlikely otherwise to progress to equity partnership, whilst also perpetuating the idea that inequality is being addressed.

Client expectations

34. The panel also discussed the extent to which client expectations impact on gender diversity.
35. It is generally accepted that partners are expected to be available to their clients around the clock. One audience member who attended a panel on diversity at which clients were present, noted that clients had reacted strongly against the idea of having a part-time partner on their matter and were clear that they expect their lawyers to be “available 24-hours a day”. As one audience member put it, “the law is a jealous mistress and all we have to offer is our time”. This attitude disproportionately impacts women who still make up the majority of those who work part-time and/or have other commitments.
36. On the other hand it was recognised that there are some clients who are trying to drive change, with one panellist commenting that some of their clients had recently asked about their firm’s level of diversity in the partnership which led to a wider recognition of internal inequality and its potential implications by the firm’s leadership. Pressure from clients can be a strong incentive for law firms to address inequalities and there does appear to be a positive shift in attitudes.

Conclusion

37. This discussion brought to light issues of diversity and facilitating the creation of equal opportunity in positions of seniority within the legal profession.
38. The consensus that developed on the panel was that any solution to disproportionate male representation in senior positions would need to be multi-faceted, feasible and encourage a change in culture across the board rather than introducing mandatory quotas which is a quick and easy solution that does not go to the root cause of the issues. Further firms will have to be creative and pro-active

about encouraging women to succeed at the highest levels of the legal profession, relying on both soft support programmes and potentially making changes to ingrained systematic structures.

Session Reporters

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The views contained in this report are the personal views of the attendees of the Female Partner Quotas workshop and not those of the Professional Practices Alliance or any of its member firms, or their partners or staff.