

Women lawyers and how to improve gender balance

Rachel Brushfield
EnergiseLegal

1. Introduction

This chapter focuses on women lawyers and how to improve gender balance in the legal profession. It explores the barriers to gender balance and the conditions that law firms need to put in place to enable change.

Gender equality needs to be an integral part of a firm's strategy, with consistent commitment to progressing women that covers the whole firm.

The downturn has hindered the progression of gender balance in law firms, making it a 'nice to have' rather than 'must have' policy. Reasons such as lack of time, money and dedicated diversity and inclusion (D&I) roles are often given for lack of progress.

On the other hand, a recent and genuine concern about the lack of women in law firm partnerships has emerged, and some leading firms are now taking this issue seriously. Interesting changes are thus likely in the coming years.

Recruitment, retention, development and promotion of female partners in law firms are key strategic drivers for future success. Diversity now matters to the corporations that law firms serve. In-house counsel look at a law firm's commitment to diversity when selecting a law firm. Clients are seeking deeper insights and creative solutions – diverse thinking can achieve these. A law firm's partnership needs to reflect the target audience of its clients. Clients want diverse people on their pitch panels and firms that reflect their culture.

Influencing gender balance for sustained change in law firms requires cultural change, flexible working policies and changes beyond the direct influence of the gender balance issue.

Recent research by McKinsey into female talent in law firms and professional services shows that women are as ambitious as men to achieve partnership and see work as the number one priority; the stumbling block is their willingness to do what it takes to achieve this – that is, sacrificing work-life balance, being political and so on.

2. The business imperative of law firm gender balance

Diversity in a law firm is a business imperative and helps to create a competitive advantage. Gender balance is ideal, but what law firms and their clients want is the best talent mix for the firm to achieve its goals and provide an exemplary service.

Research by McKinsey¹ shows that women exhibit five leadership behaviours

1 *"Women matter: Gender diversity, a corporate performance driver"*, McKinsey & Company, 2007.

(‘people development’, ‘expectation and rewards’, ‘role model’, ‘inspiration’ and ‘participative decision making’) more than men; these behaviours are factors which correlate with superior corporate performance and the number of women in senior management positions. The gap increases significantly once a certain critical mass is attained – that is, when at least three out of 10 board members are women.

Mary Gallagher, the diversity and talent manager at Addleshaw Goddard, says: “A more diverse firm is a stronger business and reflects what our clients want. At Addleshaw Goddard, we are working hard, through a combination of formal programmes and informal support, to inspire women to reach the top and to give them the skills and experience they need to operate at the highest level.”

Gender balance provides many benefits to the firm:

- It facilitates improved decision making and different perspectives on a problem;
- It leads to increased productivity and fulfilment, with lawyers playing to their strengths;
- It promotes a more harmonious culture – time is spent on pulling together and being proactive, rather than on politics and factions;
- It strengthens the employer’s brand, attracting the best talent to the firm and giving a local and global competitive advantage; and
- It reflects the client target audience – the firm represents the marketplace, from the partnership to the employees.

2.1 Competencies and qualities for career success as a lawyer

Gender balance in the legal profession needs to be looked at within the context of the factors that create career success for lawyers. These are:

- commercial awareness;
- clear specialism in type of law and market;
- strong written and verbal skills;
- adaptability;
- good people skills;
- visibility (eg, via writing articles or doing speeches);
- client generation;
- professionalism;
- self-awareness
- diplomacy and courage in tackling difficult issues;
- politically savvy, with an understanding of and ability to work within a power structure;
- understanding the firm’s authority structure and operating rules;
- networking for good referral sources;
- making tough decisions for the good of the firm;
- fitting the firm culture;
- influencing and aligning with the most influential members of the firm;
- not being too emotional at work;
- choosing battles;
- keeping private life private; and
- treating others with respect.

From the point of view of the decision makers – primarily senior male partners, career success factors for women are:

- developing legal skills by working on challenging cases and receiving feedback and mentoring;
- satisfying clients' needs in a cost-effective way;
- being willing and able to develop networks and bring in business; and
- having one or more dedicated mentors.

2.2 Current gender balance in law firms

Gender balance in law firms needs to be examined against the backdrop of society as a whole. Men hold nearly 85% of corporate board and executive committee seats in the United States. They account for 90% of the world's billionaires, control most of the world's governments and continue to out-earn women with similar skills and education.²

Women make up 46% of the workforce,³ but represent only 33% of all managers⁴ and 9.6% of managers in FTSE250 companies.⁵ In the United Kingdom, female partners remain a minority in top law firms, with 23.5% of all partners and 9.4% of all equity partners across the largest 100 UK law firms (by revenue) being female. Sixty six percent of trainees are women, so the drop in numbers is significant.⁶

In a survey of the 50 best law firms for women in the United States:

- 10% of chairpersons were women;
- 12% had female managing partners;
- 19% of equity partners were women;
- 28% of non-equity partners were women; and
- 41% of of-counsel were women.⁷

Across the best 50 law firms for women, certain key factors contribute to the successful promotion of female talent:

- One hundred percent have reduced hour policies;
- Forty four percent have written full-time flex policies;
- Seventy eight percent offer full-time telecommuting;
- Ninety four percent allow reduced-hour lawyers to be eligible for equity partnership; and
- Seventy eight percent provide back-up childcare at a facility.⁸

2.3 Barriers to gender balance

A survey by the World Economic Forum found that the most cited barriers to women's rise to leadership were "general norms and practices" and a "masculine/patriarchal corporate culture".⁹

2 Research by McKinsey quoted in "The silent sex" by Alison Beard, Harvard Business Review, March 2013.
 3 Labour market statistics, November 2012, Office for National Statistics.
 4 Annual survey of hours and earnings 2012, Office for National Statistics.
 5 Professional Boards Forum, Boardwatch.
 6 The Lawyer magazine, 2012.
 7 NAFE and Flex-Time lawyers, *Executive summary Best law firms for women*, 2011.
 8 Catalyst research, Jeanine and Nancy Carter, *Impressions of men and women as leaders*, 2008.
 9 "The Corporate Gender Gap Report", World Economic Forum, 2010.

A survey by McKinsey showed that the “double burden” of work and domestic responsibilities was one of the biggest barriers to increased diversity in senior management,¹⁰ with the “anytime anywhere” model of management an additional obstacle.

The existing barriers that hinder gender balance in law firms are multi-faceted and include:

- the law firm model;
- the fee-earning primary focus, which plays to the natural competitive predisposition of men more than women;
- the long-hours culture; and
- the lack of control that lawyers have over their hours, which does not fit with having a family and enjoying a healthy work-life balance.

Gender expert Tom Schuller developed ‘The Paula Principle’,¹¹ which states that most women work below their level of competence – that is, they are underpaid and under promoted. Five factors were cited: discrimination, cost of childcare, lack of confidence, lack of connections in high places, and women actively choosing not to go for promotion in favour of less stress and more family time or better work-life balance.

The benefits that gender balance brings need to be communicated to gain the buy-in of key stakeholders. Gender balance needs to be looked at in the context of an overall integrated talent management strategy, which this book explores elsewhere.

Few firms look at talent management in an integrated way. This is surprising when talent is the only true source of a law firm’s competitive advantage. Discussing issues and options around gender balance with employees is important to secure buy-in for any changes in policy and to overcome resistance.

Law firms tend to look within the legal profession or to other professional services firms and rarely look outside. The London Olympics are a useful reference point to gain learnings about the management of gender balance, D&I in the spotlight of the world’s media. What can law firms learn from the London Olympics and how they made D&I a success before a global audience?¹²

D&I success at the Olympics was created by:

- thorough understanding of D&I in the context of the organisation’s purpose and objectives;
- strong and thoughtful leadership;
- effective delivery with limited resources, people and money;
- observance of strict deadlines as a catalyst for embedding change;
- a compelling vision supported by simple, clear messaging, which ensured that the audience engaged with and committed to it;
- D&I in combination, not isolation;

10 “Women Matter”, McKinsey, 2010.

11 “The Paula Principle”, Tom Schuller, www.paulaprinciple.com/.

12 “Game on! How to keep diversity progress on track”, Chartered Institute of Personnel Development, *A guide for employers*, November 2012.

- research, to gain an understanding of how things look through different people's eyes; and
- belief in individualism and the avoidance of stereotypes.

2.4 Hours, not output

Fee-earning capability has been the number one criterion for achieving partnership. Non-fee-earning contributions to the firm and its clients are more important now than in the past: clients are working with fewer law firms, so close client relationships are vital for a firm's success. After a period of unprecedented growth, firms have experienced a challenging time through the downturn. Employees are in need of motivation and energising, especially at associate level, where they are 'caught in the middle' – expensive to use for fee-conscious partners on client projects and less likely to achieve promotion to partner, due to fewer partner places.

Lawyers are measured on fee-earning hours generated, not on output. Historically, law firms have charged by the hour, but rankings based on chargeable hours – with targets such as 1,200 to 1,500 hours per annum – put women with children at a disadvantage, as they tend to do the lion's share of household management and childcare.

Client pressure for fixed fees is changing the commercial landscape, and efficiency and output are becoming more important. This shift may help to address gender balance – for example, working mothers who work part time in order to spend more time with their families are acknowledged to be efficient and productive during their shorter work hours, because they have to be.

2.5 Gender differences

While in the past law firms have been transactional and short term in their thinking, the focus is now shifting towards sustaining longer-term relationships and cross-selling between practice groups.

Research shows that women are different from men on a number of measures. These differences affect gender balance in law firms. The law firm model can be stressful, with tight deadlines, increased competition and pressure from the billable hour model, and are political environments where self-promotion is vital to be visible. Lawyers can be critical, rather than skilled at giving acknowledgement, and women may avoid rejection by not putting themselves forward for promotion, thus affecting gender balance.

Research into gender differences shows that, compared to men, women:

- feel uncomfortable promoting themselves and more comfortable looking after others;
- are more modest;
- are more open to feedback; and
- are more conscientious and perfectionist.

A survey of managers showed that women have lower levels of confidence and lower expectations than men. Twenty three percent of women compared with 35% of men fully expected or hoped to take a management or leadership role when they

started work. Younger women report higher expectations than older women.¹³

Women are less likely to apply for a job unless they meet all the requirements, whereas men will apply if they meet most of the requirements. Equally qualified women are less likely to apply for promotions than men.¹⁴

Providing training about gender differences increases awareness and aids the communication, motivation, deployment and engagement of talent. As D&I expert Dr Ian Dodds notes: “Lawyering is transactional in nature – task focused – and research shows that men tend to be more transactional and women relational and transformational. The smart firm will use these gender differences to their competitive advantage.”¹⁵

Women are affected by gender stereotypes and expected to have communal qualities – to be givers and sharers and to pursue the common good.

Research shows that success and likeability are positively correlated for men and negatively correlated for women. As women get more successful, they are liked less. Businesses and firms want to promote people who are both competent and liked.

Gender stereotyping can inform expectations of how men and women ‘should’ behave. For example, it may be acceptable for a man to be assertive and direct, but if a woman communicates in this way, she is seen to be aggressive. All these attitudes affect gender balance.

These gender differences provide useful assets for law firms to leverage for the benefit of clients, business development and the firm itself, especially in a more competitive marketplace:

- building relationships;
- empathy to deal with challenging situations;
- humility, when dealing with successful rainmakers ‘ruffling feathers’;
- candour and patience;
- collaboration to maximise cross-referral;
- practicality;
- desire to help others, focusing on client needs and customer relationship management (CRM);
- awareness of and sensitivity about feelings, for pay and promotion discussions;
- relationship maintenance – useful in CRM;
- bridge-building to ensure conflicts that might inhibit productive working are resolved;
- multi-tasking;
- ‘soft’ selling when promoting the firm to female decision-makers at clients; and
- connecting networks, internally and externally, and asking clients for introductions to increase repeat business.

13 “Ambition and gender at work”, Institute of Leadership and management, 2011.

14 “A business case for women”, *McKinsey Quarterly*, McKinsey, 2008.

15 “Transforming leaders – women and the vision thing”, Herminia Ibarra and Otilia Obodaru, Harvard Business Review, January 2009.