

Is unconscious bias also infiltrating NewLaw?



2018 is the year we began mandatory gender pay gap reporting in the UK, and it threw many inequalities we were already aware of into sharp relief. FTSE 250 CEOs are overwhelmingly white men; we knew this. The top-paying jobs at City law firms, accountants and consulting firms are the same; decades-old failures in diversity still persist at the Bar and in the judiciary. Again, sadly, nothing new.

Although, the unconscious bias that leads men to recruit and promote other men is well established, there are encouraging signs that the legal profession is facing up to these challenges: recent events like Thompson Reuters Transforming Women's Leadership in the Law have united mentors and pioneers determined to address a structural lack of diversity. We at Halebury resolved to #rethinklegal and challenge the gender norms that have governed the profession for so long. Diversity has become something that the best law firms are increasingly ready to talk about. It is weaved into the culture and values through which law firms attempt to define themselves; it is a language that law firms must speak if they are to attract and retain the best millennial talent at all levels, including attracting and retaining senior women. After all, 67.5% of applicants accepted to study law at undergraduate level in 2016 were female.

But has this new-found commitment made any difference to the transactional dynamic that defines our industry, i.e. what happens when in-house lawyers instruct private practitioners? New research from Acritas suggests that when we follow the flow of money, the purported commitment to diversity has had little, if any effect on the spending habits of in-house counsel. There are two key

pieces of research undertaken by Acritas. Firstly, it found that male clients choose to instruct a male lead partner some 83% of the time, and a female partner just 17% of the time. Female clients are 50% more likely to instruct a female lead partner, but do not get your hopes up – female clients still instruct a male lead partner 3 times out of 4. That is a shocking statistic and it highlights that although many lawyers talk a good game when it comes to diversity, it seems that money talks – and for the most part, it only speaks to other men.

Secondly, the research also tells us why the genders divide as to who they instruct. For women, results are the key factor in choosing counsel. However, for men, relationships and reputation are more important, forming the basis of their decision. Let that sink in, and its consequences for unconscious bias are startling. If relationships and reputations are the decisive factors, how could any new entrants that do not conform to historical biases make a mark?

This finding should not surprise us, given the huge inertia that legal must confront in seeking to establish a more gender-diverse industry, with leaders at the top that reflect the diversity of students joining the profession and actually the diversity of our society. However, it reveals unconscious bias to be worse, and deeper-seated, than we thought.

I do however find hard is to reconcile these numbers with the innovation that is taking place in the profession; lawyers are modernizing processes, technology and training methods, reimagining the very role of a lawyer. It seems that innovation in systems, process, models, technology should result in an open mindedness should blow the old cobwebs away. However, the unconscious bias towards the status quo is so deep that even the very new innovators and models within the profession, that are expanding at a rapid rate are failing to address diversity. Just look at the leadership and ownership structures of the leaders within the Alternative Legal Service Providers (ALSP) market.

Recent research by SAID Business School/Oxford University/George Town Law 2017 mentioned a few key players within the ALSP market. From the table below, Halebury is the only company listed that is women and minority owned. It is of course important to note that there are other ALSPs that are women owned/run ALSP, such as Obelisk, but still very few and indeed very few that operate within the FTSE 250/500 space. In addition, within the other organisations listed, how many have over 30% representation at board level or women at equity level? Even in the new market, there is limited diversity.

It is essential to note that if general counsels and in-house lawyers fall into, and retain, their old spending patterns, we risk rebuilding the inequalities that weighed down the profession for centuries on top of our new, agile, tech-enabled, client-focused ecosystem. In-house lawyers have great power to guide the direction in which our profession develops by voting with their wallets, but they must ask themselves: do my choices reflect the profession I want to see, and the one that clients deserve?

If you are, or strive to be, a champion of diversity, consider supporting organizations who have diversity at all levels especially at the ownership level. As one of the original ALSP, at Halebury we have a 50/50 gender split within our legal team, and strive – through our work with Transforming Women’s Leadership in the Law, WE Connect and MSDUK – to encourage more female founders in law and more diversity, as well as the wider acknowledgement of women in society.

We now know the business case to make this change is overpowering. Earlier this year, MSCI published research to mark International Women’s Day that analyzed the gender diversity of board composition at more than 600 of the world’s largest companies. It found that average employee productivity growth was higher for companies with three or more women at board level, compared to those with one or no female directors. This translated into higher profits, as well as higher dividends.

There is no longer any excuse for legal to ignore the lessons that other professions are learning –

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albeit slowly and sometimes painfully – about gender diversity. Unconscious bias must be overcome if we are to achieve the profession we, and our clients, deserve.

Join Janvi Patel at the Thomson Reuter's GC Leadership Summit on 3rd July for an interactive discussion on how to build innovative and strategic partnerships:

<http://www.practicallawconferences.com/gc-leadership-forum/agenda/#TRGC18>

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