



Quantum of equality

LB assembled a group of litigators to chart the progress of women at the highest levels of disputes

Alex Novarese



Alex Novarese, Legal Business: Tracey, shall we talk about the background of the All Rise project?

Tracey Dovaston, Barclays: We realised we had an opportunity as part of Barclays' panel process to make some of our expectations on diversity measurable. We set out the expectations of our panel firms, which include that diverse teams work on Barclays matters. We encourage panel firms to recommend diverse teams at the tender stage and that those teams then work on the matter. We want to be introduced to people other than those we have been working with for many years.

Alex Novarese: Is that across the entire Barclays panel?

Tracey Dovaston: Yes. It does not mean that we have not been working with excellent lawyers already, but we want to encourage diversity and promote others' careers. We have not looked at this just from a gender diversity perspective.

We do not want tokenism. It needs to be the right person for the job, but it is getting that opportunity. This is particularly important at the associate and senior associate level, because if you encourage people's careers at those levels and they are the best cases, that gives them an opportunity to build their profile, which is likely to assist them in getting to more senior roles and partnership.

Elizabeth Fisher, Burford Capital: Is there anything you changed in terms of that client-to-law-firm dynamic that enables your firms to fulfil their part of the promise?

Tracey Dovaston: Knowing that it is what the client wants should already help change a mindset within the law firm. I would hope firms want to please their clients, which means they have to take steps proactively.

David Scott, Freshfields Bruckhaus Deringer: Exposure on the biggest cases is important to close the gap which



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comes at the promotion stage. Although we have brilliant women at the start of our firm, we do not have the same proportions when it comes to the partnership promotion decisions.

Alex Novarese: *How do people feel litigation does compared to other practice areas?*

Dorothy Cory-Wright, Dechert: I do not think it has been easier for women to make partner in litigation. The difficulties in getting the exposure and building the relationships were the same. There is no doubt about it; the networking relationships that were ingrained for centuries, allowing young lawyers to build up client relationships were not as strong for women. Now with more women in-house who are making the decisions and launching initiatives, litigation may become slightly better because there are opportunities in one-off pieces of litigation rather than dyed-in-the-wool relationships you find in repeat transactional work.

Kate Vernon, Quinn Emanuel Urquhart & Sullivan: The US market has woken up to this a lot. We have seen a lot more US clients recently say: ‘We simply do not want you to turn up with four men.’

Tracey Dovaston: There were 170 GCs in the US who [earlier this year] signed a letter encouraging firms to increase their diversity.

Caroline Edwards, Travers Smith: Even if that demand is not being made by your own clients, that this is now perceived as the minimum standard is important for

keeping us all honest, but if people need ammunition to wave at their management boards, it is tangible evidence that it matters.

Alex Novarese: *Five years ago there was a lot of cynicism about these requests from clients, that it was box ticking. Is it going beyond that now?*

Farmida Bi, Norton Rose Fulbright: One of the things I have noticed in going to big, global pitches is that our clients have a very diverse group of people on the other side of the table. If we were to turn up with just one set of people, we would not be reflecting our clients. That is a change at the clients as well.

Fiona Huntriss, Boies Schiller Flexner: Finance companies can be pretty bad. The tech companies coming out of the West Coast of the US are more progressive. They have a much more diverse set of people working for them. They have a very different attitude to working environments and flexible working.

Alex Novarese: *Have you seen any clients handle it and thought: ‘That’s a good way to get the advisers moving in the right direction,’ whether carrot or stick?*

Sylvia Noury, Freshfields Bruckhaus Deringer: I am a relationship partner for BP. We have quarterly relationship meetings, and diversity is always on the agenda. It forces BP’s relationship firms to say something about diversity and inclusion every time, and if you are going to start running out of things to say, you have to start doing something about it quickly, otherwise it will get



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uncomfortable. It is never the men. It is always me at the meeting who covers that particular agenda item. It always gives me great pleasure that we do have a lot to say and they really enjoy hearing it.

Susanna Rogers, Norton Rose Fulbright: I do a lot of contentious competition and regulatory work, so appeals before the Competition and Markets Authority, and it would not be credible to sit there across a panel as a team with a lack of diversity, because that would not reflect the position of the authority.

Natasha Johnson, Herbert Smith Freehills: What we see more often is a request from clients for generational diversity in the team and a by-product of that is improved gender diversity. You have a much wider gender and ethnic diversity within your associate population. That works well.

Alex Novarese: So why is this all not feeding through in partner numbers?

Caroline Edwards: It goes back to your earlier question about whether it is easier to succeed as a woman in disputes than it might be in a transactional practice.

Dorothy Cory-Wright: Dechert has its SASS [sponsorship and sustained support] programme, which is trying to address that precise issue. It is designed to take away the negative mystique that is created about what is expected of you as a partner at a more junior level. We did an

analysis to see where women were dropping off the partnership path or deciding to change career. It is interesting, the extent to which there is the idea that the requirements of partners are absolutely overwhelming. Junior lawyers wonder: how would you manage without working through the night to do all the admin as well as everything else?

There are things you can do to help people prepare earlier for the route to partnership, like training for the interviews and what your business development plan should look like. That said, Christina Blacklaws initiated the Law Society round tables examining what is happening in firms, the results of which question whether optimism about getting more women through is misplaced.

Alex Novarese: Is it not time for a little more stick and less carrot? Law firms are never going to change unless you make them.

Dorothy Cory-Wright: More female mentors, more female role models – that is what is required.

Alex Novarese: Institutions replicate themselves; male-dominated partnerships will keep replicating themselves.

Kate Vernon: That is the point. The unconscious bias of recruiting in your own image – a stick is not going to change it at all. It is not a male/female thing, it is just human nature that people gravitate towards those that they feel comfortable around. That is what the conversation needs to be around. As partners you have



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to be comfortable with the fact that you may not all be like each other, but you can still work together harmoniously.

Alex Novarese: *If you are a large law firm, is it appropriate to say that you should at least have an aspirational target? People use the phrase ‘quota’; just call it a demand-side solution.*

Farmida Bi: Targets are helpful because they are measurable. There is a lot of resistance to the idea of quotas; particularly from the women who might form a part of that quota.

If clients are saying: ‘We will not instruct you if you are not diverse,’ then that, more than anything else, is a meaningful stick, but you have to bring people along with you. It is not going to happen overnight. It will take time.

Alex Novarese: *They said that ten years ago.*

Farmida Bi: I am seeing more people going through now than I did ten years ago. Certainly in our firm, this year, 50% of our new partners were women. Whether we are able to retain all of those people after they become partners, I worry about, because that is about changing the structure.

Caroline Edwards: A structural change is needed. The way we work is the way it has always been done, by men

who had wives at home cooking and sorting everything out. Our lives have changed. We are smart people who are used to solving problems and often the way to solve a problem is to look at it in a completely different way rather than: ‘How do we tweak around the edge here?’

Tracey Dovaston: There should be some optimism if you compare to ten years ago or 20 years ago, because there has definitely been an increase in the number of women who reach partnership or senior in-house roles.

Caroline Edwards: Men at senior levels, but definitely men joining at the younger levels, expect there to be diversity. That it is really being talked about – including by the Law Society and by the Bar Council – should hopefully make change. Everyone expects there to be a change now.

Fiona Huntriss: We have got a generation of associates coming through who do not want to work the hours we have all worked coming up. We are going to be forced to change, because otherwise we will have no associates left.

Susan Bright, Hogan Lovells: The first structural change would be how you allocate work. It does not go automatically to Johnny down the corridor because Johnny did it last time.

Alex Novarese: *What is unconscious bias? Does it not just mean bias?*



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Elizabeth Fisher, Burford

Susan Bright: It is somebody trying to be kind, so they are doing it with the best of intents. So somebody is still breastfeeding, they are just back from maternity leave – somebody will sit there and think: ‘I could not possibly ask her to go on a big trip.’ That is an unconscious bias. Making sure that the women are getting just the same opportunities to be on the high-profile work – that is absolutely critical.

The second change is agile working. The words people use with me are: ‘I would like a bit more control over my life.’ So the ability for people to leave the office without having to ask consent or not come in at all makes such a difference, and that is true for everybody.

The third issue is sponsorship: from an early stage in people’s career, sponsoring your high-talent females through, in the same way that more naturally happens with men.

Where is the power in a law firm? It lies with the client relationships. If I did only one thing, it would be to get the women onto the big client relationships, leading them.

Sophie Nappert, 3 Verulam Buildings: You get some resentment from the people who are not included – male and female – and one of the things nobody talks about is the female-female tension. Not all females are supportive.

Susan Bright: We have got 28% female partners in London, but that is still only just over a quarter and so when we want to lead a diverse training programme –

with one man, one woman – it means that all the women are doing double duty, which is fine provided an organisation values that as much as the client relationships.

Jane Wessel, Arnold & Porter Kaye Scholer: Law firms need to get away from putting women in charge of the ‘women’s things’ like diversity and pro bono and training – all of those things which are typically regarded as girls’ work – and less rewarded.

Elizabeth Fisher: McKinsey has done this study across thousands of companies and has demonstrated with nice, quantitative output the benefit to profitability on organisations that have got a higher percentage of diversity across their executive boards. That’s the point at which people start to think about it.

Alex Novarese: *Why do we need to construct a business case for it?*

David Scott: The business case is accepted. The only problem is how you practically change the number of women partners. No one wants to have anything other than a meritocratic decision at that critical stage. The question is, how do you maintain the right women at that stage?

There are two problems. One is: ‘I do not think I am good enough’ or ‘I do not think I will get there.’ The second one is: ‘Even if I do, is that what I want?’

The answer to the first problem is communication with the individual. ‘Do you realise how good you are



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and how respected you are? If you want to stay and do this, we will help you get there.’

Sylvia Noury: Timing of partnership can be the problem. You look at the age at which you are supposed to be putting in the hours and the energy and focus. At that point I wanted to put energy into starting a family and I’m not the only one. You need someone telling you that you are brilliant and you can do both, to communicate that to you quite directly.

Susanna Rogers: Having a brave sponsor helps. I was fortunate enough to have a fantastic sponsor in Peter Scott, our head of disputes, who said to me: ‘Do not feel constrained by the normal fee-earning model. If you want to do this differently, we can construct a path to partnership which works for you.’

So I have worked in a hybrid role for the last five years. I have basically had a fantastic time going around the City, meeting with my clients, giving all sorts of value-added training, building relationships, while doing a bit of fee-earning on the side. I was able to be promoted on that basis.

Susan Bright: One of our most successful partners was promoted on a 60% work pattern. For years she did that and she was probably our highest-performing partner. The most successful.

Sylvia Noury: I came back from my second maternity leave on 90%, which is perfect for me because I just want to have one day when I can pick my daughter up from school and make her think that that day is about her,

even though I spend the rest of the day frantically working. If we can just work out what people need to feel like they are striking a balance, then we can make it work for them.

Tracey Dovaston: Barclays’ Mindful Business Charter is about being mindful about the way we work with others, for example, thinking when you are giving instructions. If I send something on a Friday afternoon saying, ‘Please can you advise?’ I may have people working all weekend and sending it to me on a Sunday morning, when I am not going to have the chance to read it until Wednesday.

Alex Novarese: *Burford has worked on something called The Equity Project. Could you give us a couple of minutes on that?*

Elizabeth Fisher: We observed that under 10% of all the cases we had funded were women led. So we set up the Equity Project, which is an initiative designed to close the gender gap in law by earmarking an initial \$50m pool of capital for financing litigation and arbitration matters led by women.

It gives women a competitive edge by enabling them to pitch to clients knowing that they can offer attractive alternative fee arrangements, and to demonstrate both financial and commercial savviness to those clients and internally. It eases the pathway towards origination and client relationship credit.

Craig Arnott, Burford Capital: We very deliberately chose the metric ‘led’ in the sense that it is not just rocking up to a meeting or putting down on paper that we have got some women. It has to be led by women.



Raising the number of women in partnership is not the sole answer. There has got to be ownership in firms.

Dorothy Cory-Wright, Dechert

Elizabeth Fisher: It will be interesting to see the outcomes of those particular cases – whether they settle earlier or get a better outcome.

Alex Novarese: *There has been renewed debate this year about attitudes at the Bar. Do you see much progress?*

Chantal-Aimée Doerries QC, Atkin Chambers: My own set has 25% female silks and that is better than average. The number of female silks among all the silks is roughly 14%. It is still very slow compared to where we would like to be. I was involved in two cases in the last two years where both silks were female on either side, and the arbitral panel had one woman out of three, and there were female solicitors. Maybe not 50/50, but distinctly different to what one might have expected to see a few years ago. Has it improved overall? There is no doubt. We have more women staying, but the Bar as a whole is still poor in terms of retention.

Some of it does relate to earnings. It is much harder to juggle things if you are earning very little.

Caroline Edwards: It is one place that we can make a difference and we can say to the clients: ‘Why have you not got any women on this list?’ and ‘I want to see X’ or ‘X is coming back from maternity leave. Great. This is a big case. We can easily find a role for her, ease her back in and she has then got a long-running case.’ We have that responsibility.

Chantal-Aimée Doerries: That is right and I have certainly noticed clients asking now, when it comes to tribunal appointments, to at least have women on the list.

There are not enough female silks or female heads of chambers at that level. Showing it is possible to take those top roles and to lead is important.

I was not quite aware how important that was, but when I was chair of the Bar, the number of young women who would come up to you and start a conversation, and wanted to know how you got there, why you had achieved what you had...

Alex Novarese: *Sylvia, you mentioned your project [The Pledge]. Arbitration is certainly a very old-school environment. What is it like trying to get the dinosaurs to evolve?*

Sylvia Noury: We started from a low benchmark in the number of women on arbitral tribunals. When I first looked at the available statistics in 2014, I saw that, on average, some 10% of tribunals were women. I started trying to figure out why it was that arbitral tribunals were particularly bad. One of the key reasons is because of the autonomy in the arbitral appointment process and the fact that there is no regulator.

When you are appointing one arbitrator, there is no option of 50/50 and so people have historically veered towards appointing a man. In London there is such a great Bar of talented women. I thought, why is it that every time I put forward a list or I ask people for recommendations, the list each time would be variations on the same ten men?

There were some eminently qualified women who were just not being picked and the reason is they are not as visible as male counterparts. In the arbitration community, profile is very important to make it onto the lists in the first place. And so an important part of The Pledge relates



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**Chantal-Aimée Doerries QC,
Atkin Chambers**

to improving the profile and visibility of women in arbitration, with a view to more women being appointed to arbitral tribunals. The Pledge lists steps that we should each take to ensure this. And you can start by making sure that there are enough women on your lists of arbitrator candidates. After we launched The Pledge, I heard that clients started saying: ‘If there are no women on a list sent to me, I will just send it back.’

Susan Bright: In the States they have something a lot of people sign up to called the Mansfield Rule. The idea is that you must have at least 30% diversity on shortlists for appointments.

David Scott: There has been an uptick in flexible working, but at partner level. We have a very cynical group of associates – men and women – and they are probably completely unaware of that. They may know that there is a policy about it and they will think: ‘That is the last thing I would do.’

Dorothy Cory-Wright: I was at the Bar for nine years. I have been in law firms for 27. I sense a change. The focus on the issue, the fact that I see male partners buying in not just because they have to do all the ‘wimmin’s stuff’. It will be slow. We must not lose sight of the fact that raising the number of women in partnership is not the sole answer. There has got to be ownership in firms. We have to focus on equity arrangements and that is another step away, to my mind.

Farmida Bi: One of the things I push against is the head-girl syndrome. It is fine to make up 30%, 40% of people who fit one particular mould, but what we need is a broader level of diversity among the men and the women.

Chantal Aimée-Doerries: Certainly in chambers, or at the Bar, it is one of the things we are all guilty of and yet it is so important. It ticks every box because if I am looking at a legal problem, if I am only talking to someone who is going to agree with me the whole time, I am unlikely to get to the best result.

Sylvia Noury: The way to make a real change is by ensuring accountability. There are lots of initiatives going around, but we have to hold every individual to account and I just do not think enough of that is being done. Firms are not going around to each individual and saying: ‘In your business plan, how have things changed and what have you done personally to make it change?’ Until people are held to account, we may not be able to effect lasting change.

Kate Vernon: It is accountability, but getting a level of understanding and appreciation as to why that matters. The two things together will make a difference.

Alex Novarese: *Thank you for your time.*

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The panellists



- **Farmida Bi**, *chair, Europe, Middle East & Asia*, Norton Rose Fulbright
- **Susan Bright**, *regional managing partner – UK and Africa*, Hogan Lovells
- **Dorothy Cory-Wright**, *partner*, Dechert
- **Chantal-Aimée Doerries QC**, *head of chambers*, Atkin Chambers
- **Tracey Dovaston**, *managing director, head of litigation investigations and regulatory*, Barclays
- **Caroline Edwards**, *partner*, Travers Smith
- **Fiona Huntriss**, *partner*, Boies Schiller Flexner
- **Natasha Johnson**, *partner*, Herbert Smith Freehills
- **Sophie Nappert**, *3 Verulam Buildings*
- **Sylvia Noury**, *London head of international arbitration*, Freshfields Bruckhaus Deringer
- **Susanna Rogers**, *partner*, Norton Rose Fulbright
- **David Scott**, *partner*, Freshfields Bruckhaus Deringer
- **Kate Vernon**, *London co-head of competition litigation*, Quinn Emanuel Urquhart & Sullivan
- **Jane Wessel**, *partner*, Arnold & Porter Kaye Scholer

- **Elizabeth Fisher**, *senior vice president*, Burford Capital
- **Craig Arnott**, *managing director*, Burford Capital
- **Alex Novarese**, *editor in chief*, Legal Business
- **Anna Cole-Bailey**, *research writer*, Legal Business