

## Access to employment (*Law and the work-life balance*)

This paper was inspired by the research I completed this year for my MBA dissertation. Taking a wide view of access to employment, it attempts to relate the ongoing efforts of European legal systems and those involved in the employment sphere in seeking equality with recent management research on work-life balance. It examines the synergies in this relationship that can work to promote a faster speed of change.

### Access in reality

“Access to employment” is a term whose meaning is elastic. Simple access is rarely all we mean. Achieving entry is a prerequisite to a hierarchy of employment goals. Equality of progression through a structure is important, so is the ability to sustain employment, without finding the working conditions unsustainable.

#### An example

The solicitor’s profession in England and Wales provides an example of a situation where this widely defined access could be described as illusory for some.

The recent past has seen a huge increase in the numbers of women solicitors. In the last ten years, the number of women in practice has increased by 128%. More newly qualified solicitors are women than men and have been for the last seven years. Women are unquestionably gaining entry.

However, on average, women solicitors earn less than *equivalent* men (see Table 1 below, source Law Society Omnibus Survey 2001).

Table 1. Gross remuneration per annum by grade and gender  
Total basic salary [or drawings]

	Equity	Partner	Salaried	Partner	Assistant	/Associate	
	Female	Male	Female	Male	Female	Male	Total
Percentile 25	35582	46225	32811	39804	24000	28288	28000
Median	48813	70000	51416	63354	29049	41580	41574
Percentile 75	99253	116209	92357	88715	37592	55427	70000
Mean	59606	93405	57148	62559	34285	62300	61215

They are also less likely to reach the top of their profession (Law Society's Regis database). This is not just because they have not been in practice long enough; 88% of men in private practice with 10-19 years of experience achieve the pinnacle of private practice, i.e. partnership, compared with 63% of women (Law Society Factsheet 2 [www.lawsociety.org.uk](http://www.lawsociety.org.uk)).

The position of women who chose not to return after having children was examined in depth in 1995 (Thomas and Bradshaw 1995). My own experience in running a confidential Helpline for women solicitors since 1992 has given ample anecdotal evidence of poor and illegal treatment, many women forced out of employment as a result of maternity.

Women are also more likely to have a career break than men. There has been no specific empirical research into the impact of career breaks on a solicitor's career. The closest empirical research is that into failure to renew practising certificates (Thomas and Bradshaw 1996). The Association of Women Solicitors commissioned this work in the mid-1990s.

No solicitor can work as such without a Practising Certificate; they cost between £650 and £850 per person in the current year. Those who are not practising may choose not to renew their certificates, and some of these never return to practise. The research concentrated on these leavers, and attempted to find patterns to leaving. It found that women were just over half of those leaving, a significant over-representation compared with their incidence in the overall population. The bulk of women leavers were of child-bearing and -rearing age, and for them family concerns (both childcare and following spouse's job moves) dominated the reasons for exit. Whether such exiting was seen as temporary or permanent, they were accompanied in the survey by critical comments on "the place of women at work, the difficulty of part-time and career break working and the general problems of childcare in professional life. ... These are not problems which prompt men to quit the profession." (Thomas and Bradshaw – conclusions p21).

This huge waste of talent and training is not confined to the legal world, we know.

### **Change through the law**

Lawyers need to believe in the power of law to bring about change. But we should not ignore the fact that it can be ineffective. Here is an example of this, drawn from the English experience.

In 1970 England introduced an Equal Pay Act. Its aim was to bring about equal pay between men and women within *five* years. By 1976, when the first full assessment of progress was undertaken, in both full and part time working, women's earnings were on average 60% of men's (Government statistics). Last year (2001), whilst full time employed women earned 80% of male earnings, part-

time women workers *still* only earned 60% of their male counterparts' wage (Equal Opportunities Commission - [www.eoc.org.uk](http://www.eoc.org.uk) ). This speed of change is unlikely to bring about equality of pay in our lifetimes.

It can be convincingly argued that part of the reason for this is business resistance. In the UK, *and* throughout Europe, many businesses see both domestic and, increasingly, EU equality legislation as an unwelcome burden in their freedom to pursue profits. The new Equal Treatment Directive may well be seen the same way. New members of the Union will sometimes have painful adjustments to make to their ways of work to comply with these requirements. Whilst change is unlikely to occur without the force of law behind it, there may be a way of increasing the speed of change. Lawyers may benefit from increased knowledge of spheres beyond their own expertise to assist in dissolving some of the resistance that is impeding progress. Many of the goals we are working towards involve cultural change, which is legendarily slow, but an examination of relevant management research may provide useful insights.

### **The management research**

This element of my article uses words such as “business” and “profit” throughout. This does not mean that the research findings only apply to commercial organizations that have to ensure their owners are kept satisfied. *Wherever* people work for pay (such as law firms, universities, government, the judiciary, not-for-profit organizations), these concepts have relevance.

The research begins by calling many of the practices this article advocates “family-friendly” (Bevan et al 1999, Dex and Schiebel 1999). More recent and forward-thinking studies consider the concept of “work-life balance”. Whilst the former focuses on practices that affect those with families, exclusively, the latter widens the debate to consider the non-working lives of all workers (De Groot 1998). Work-life balance describes much better the approach that brings about the best results, for reasons that are set out below.

There are two contexts here for the word results – the first is that of social and economic equality; the second is that of better profitability for businesses. It is important that neither employee nor employer see them as conflicting. When *both* parties appreciate the benefits achievable from implementing such policies, progress towards both goals speeds up (IRS May and February 2000).

### The policies

There *is* a very strong business case for family-friendliness. Some big companies have known, and made use, of this for years and there is ample published research substantiating their reasoning in this (Dex and Schiebel 1999). Smaller businesses can feel that it would not work for them; the costs of changing the

way they do things would outweigh the benefits, or their ability to run the business may be impaired by an increase in formality, something small businesses dislike, in general.

However, UK research (Bevan et al 1999) has shown that where small and medium-sized firms make use of family-friendly practices there are very significant business benefits to be gained. Examples of the kind of practices involved are

- ❑ Part-time work
- ❑ Job sharing
- ❑ Parental leave
- ❑ Flextime
- ❑ Home working
- ❑ Career breaks
- ❑ Childcare facilities

Some of the slightly more imaginative practices that are less common include

- ❑ Phased return from maternity leave
- ❑ Guaranteed Christmas leave for those with families
- ❑ Adoption leave
- ❑ Term time working or unpaid leave during school holidays
- ❑ Childcare allowances, or elder care assistance

### The results

The small and medium sized enterprises who took part in the study (undertaken by Bevan et al 1999) and who had adopted these types of policies reported that they enjoyed certain basic business advantages. Essentially, these were found to be

- ❑ Reduced casual sickness absence
- ❑ Improved retention (lower staff turnover)
- ❑ Improved productivity
- ❑ Improved attraction of staff
- ❑ Improved morale and commitment

All of these can have a positive impact on the bottom-line profitability of a business.

### The wider picture

It is possible to illustrate each of these points in greater depth to explain in detail how they can affect the efficiency of a business. However, mindful that this is to

be read by lawyers not management scientists, one example will suffice. The issue of improved retention of staff is a good example.

If a business's employees stay longer it does not have to spend time and money recruiting replacements and training them to do the job. That much is easy to see, and most businesses could put a price on it (although a surprising number don't – see Bevan et al 1999).

There are other, subtler points to consider.

- The effects on the morale of remaining staff if their colleagues keep leaving? These are not good, and this affects how remaining staff work, their productivity and the quality of what they produce. Commitment to the organization will be less if its staff has the impression they are expendable or unappreciated. This is unlikely to mean the business is able to attract new customers – it may have trouble keeping those it has (Beardwell and Holden 2001).
- Many businesses rely on the knowledge of their staff – not just their formal qualifications but their implicit understanding of how the business works; what the clients or customers expect of it; all the unspoken things that go to make up a really first class service. If employees leave they take that with them. Replacing it takes time, if it can be replaced at all. The service suffers; this may induce clients to go elsewhere. Existing clients are less likely to recommend the business's service or product to others. Expensive marketing and promotions to attract custom is worse than wasted if customers are disappointed with the reality what they receive from the staff meet (*Marketing Management* 2000).
- High staff turnover is expensive in any industry, but much more so in those requiring high skill and knowledge levels. With globalisation meaning that many traditional European industries are moving to cheaper countries, Europeans will rely more and more for their prosperity on superior education, training, skills and knowledge, so this has particular relevance for us in Europe.

Better employment practices can help to avoid these pitfalls of poor staff retention.

### **Potential drawbacks (and solutions)**

There are some drawbacks to family-friendly policies and justice requires a balanced picture (Employers for work-life balance – [www.EmployersforWork-LifeBalance.org.uk](http://www.EmployersforWork-LifeBalance.org.uk) ).

If alternative working practices are only available to employees with families, this can easily cause resentment amongst the rest of the workforce. The policies

need to aim to satisfy everyone, or the gains made in one place will be lost in another. Here the distinction between work-life balance and family-friendliness becomes relevant.

It could be said that family-friendliness is only one aspect of a wider whole and that *work-life balance* is a more fully inclusive version of these ideas. By extending policies to cover everyone, the opportunities for employees' resentment are very much reduced.

*Employment practices that take account of the wider aspects of employees' lives will also bring us closer to what our legislation, such as the new Equal Treatment Directive, requires of employers, too.*

It may help to illustrate this proposal with some non-family examples of where work-life balance practices could apply: -

- ❑ A worker whose disability means they would really appreciate a later start on their journey to and from work, to avoid the rush hour and make traveling easier for them.
- ❑ A worker who needs to leave work early on Fridays to be home by sunset, for religious reasons.
- ❑ A worker whose partner has a terminal illness and who wants a career break to be with them in their last few days or weeks.

There are certain other "ground rules" to be observed if these practices are to achieve maximum impact (Industrial Society; now Work Foundation, [www.theworkfoundation.com](http://www.theworkfoundation.com)) .

First, they work best if employers avoid ad hoc arrangements. Employers prefer these to formal written policies; they give them the comfort of being able to say "no", to pick and choose who benefits. They provide a sense of being in control. However, commitment to the policies needs to be open and well communicated to all levels within an organization. If there is transparency, there is less room for misunderstandings and resentment. Transparency should not mean loss of control. It does need more careful thought about the detail of these transparent policies, though.

Also, the whole organization, not just those at the top, must back the policy and use it. There should be no sense that "high achievers don't need it" or that it only works for some departments or under some managers within the organization. Opting out is not a viable option. If employees feel guilty or awkward about asking to be included in these policies, they are not functioning as they should. In such a case the benefits will not flow.

## **Summary of the research and its implications**

Implementing such policies successfully does require considerable imagination and organization to match reasonable employee needs on the one hand with the work that has to be done on the other. It will need employers to move beyond rigid views of how work is organized; one person working less does not inevitably mean others have to work harder to compensate. There are alternatives. Initially there is a cost, but the research shows that this cost is outweighed by the benefits in the overwhelming majority of cases (Bevan et al 1999, De Groot 1998, IRS 2000). These may not be totally guaranteed, or immediate, but they are well worth pursuing.

The law continues to work towards changing employment culture towards equality. Embracing work-life balance has the potential to bring about a very similar result. It is, in its own way, another culture change. This one carries with it the prize of greater business efficiency, however. Is it cynical or realistic to suggest that this may mean it happens faster?

## **Implications for lawyers**

As lawyers, the evidence that the benefits outweigh the costs when implementing work-life balance policies is also valuable. Under the above analysis, the defence of "It would be uneconomic, I can't afford it" looks far weaker.

If our organizations already have such policies we can endeavour to ensure that they are implemented fully, in acts not mere words. We can take pride in making the practice comply with the written policies.

As employers, lawyers can introduce these policies, if necessary.

Lawyers often work at the decision-making level within their organizations, where they can lobby for such change. Legal work, with its highly trained staff and need for high quality service is well suited to seeking the benefits of low staff turnover and high staff morale. Introducing different working practices has the potential to bring these benefits, and also to enable the organization both to come closer to complying with equality legislation *and* improve the lives of its staff.

## **Future developments?**

It would be exaggerating greatly to claim that this analysis provides a universal cure for inequality, but it can contribute to the debate in a positive way. It represents a small link between Law and Management. Further dialogue

between Law and other disciplines could develop this and deepen our understanding of the world the law lives in.

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