

# Law Society Gazette

## Flexible working patterns



Thursday 26 April 2012 by **Marialuisa Taddia**

In the legal profession's workaholic culture, achieving work/life balance has always been a struggle - and still is. The term 'work/life balance' has such negative connotations in private practice that some firms have banned it from their vocabulary. At Ashurst, for example, they refer to 'work/life fit'. Speaking at the International Women in Law Summit last month, Ashurst senior partner Charlie Geffen said how one 'fits home life into work' was 'a more honest' description of what was realistic in law firms, particularly in transactional work.

One young female partner who attended the summit - jointly organised by the Law Society and US-based National Association of Women Lawyers (NAWL), and supported by the Association of Women Solicitors (AWS) - told the *Gazette* the term 'flexible working' was misleading as work was a big part of her life; another said it made women feel 'inadequate' as in practice it was an impossible balance to achieve.

Flexible working practices are central to achieving work/life balance or work/life fit. Yet, resistance to compressed hours, job sharing, working remotely, zero hours or other flexible working patterns remains the 'single most significant obstacle' to women reaching senior roles, according to the findings of the Law Society's survey of women in the law published in 2010.

Flexible working practices were also seen as 'critical to women keeping careers on track and achieving senior roles' by 86% of women in a Law Society and LexisNexis UK survey published last month. The research highlighted that many firms do not encourage flexible working and even when they permit it, the cost to the employee can be sacrificing their partnership.

The gender gap at the top is huge: while nearly 63% of trainees are women, they only account for 21% of partners in private practice law firms in England and Wales. If it is any consolation, the UK

is not the worst offender. In the US, at junior level, women account for almost 50% of positions in large firms, but just 15% are partners, according to NAWL.

In response to the persistent laggard status of women, the Law Society has launched a Flexible Working Protocol for legal firms. This is essentially a statement of best practice illustrated through case studies of successful lawyers in a variety of practice areas, including transactional work, at firms such as Pinsent Masons, Allen & Overy and Addleshaw Goddard. Although driven by gender-based research, the Society stresses that the protocol can also apply to men with caring responsibilities and observers of religious practices requiring flexibility.

The Law Society expects that all 230 firms - or over a third of all solicitors in private practice - signed up to its Diversity and Inclusion Charter will adopt the commitment to flexible working outlined in the protocol. Law Society president John Wotton said: 'It makes sound business sense for firms to offer flexible working and we are confident that this protocol will help with the implementation. Ultimately, we want flexible working to become mainstream practice.'

## Virtual reality



Lucy Scott-Moncrieff (pictured) is the Law Society's vice-president and the managing partner of Scott-Moncrieff & Associates LLP (SCOMO), a 'virtual' firm acting for legally aided and privately paying clients. Lucy established SCOMO after the birth of her first child.

The firm's 60 fee-earners are all self-employed consultants who either work from home or from their own offices. They must bring into the firm a minimum of £30,000 annually and from that SCOMO will retain 30% to cover the costs of running the business. The consultants, although supervised and supported by the firm, choose their own level of involvement and working hours and, says Scott-Moncrieff, 'as long there is no conflict in relation to a particular client they are free to work for other law firms'. Some also sit as judges, are developing their portfolio careers, and pursue other life aspirations such as writing a book or singing in a choir.

Scott-Moncrieff observes of some new recruits that, after a few months, they were 'unrecognisable', sporting 'woolly jumpers' and a healthy, cheerful aspect. One of them told her: 'It's so fantastic working like this, if I want to go out with my grandson and play golf on a Friday afternoon I don't have to ask anyone for permission.'

Scott-Moncrieff says: 'We have tapped into a group of people who haven't been catered for terribly well in traditional practices because they don't want to be partners and they don't want to be managers, but nor do they want to be assistant solicitors clocking in and in a subservient role. Nor do they want to be sole practitioners. They just want to be really good lawyers.'

### **A constant disconnect**

Most legal firms of a certain size have formal flexible working policies and some have had these in place for a long time. Magic circle firm Allen & Overy, for example, introduced them in 2001. But there appears to be a gap between what the profession puts on paper and what actually happens.

Elaine Aarons, a senior equity partner at Withers, which boasts a healthy proportion of female equity partners (40% in London and 33% globally) notes that, as an employment lawyer acting for senior executives including partners, she sees 'a constant disconnect between the sales pitch of organisations about what they are doing in diversity and the reality'. She adds: 'I have seen people who have been employed in organisations who are lauded as being at the top of their game in diversity or best place to work, and absolutely horrific stories going on on the ground.'

At Withers, 13% of partners and 16% of fee-earners work flexibly. Denise Jagger, a fixed-share partner at Eversheds where 24% of female lawyers work either part-time or in other flexible patterns, has been working three days a week since joining the firm in 2004. She argues that 'just tinkering around the edges and having a few flexible working policies' is not the answer to the problem. Sometimes policies work quite well, but in other cases the policies exist but nobody takes them up.'

Take-up is particularly poor among those starting out in the profession. For a two-year qualified solicitor who trained at a magic circle firm and recently moved to a smaller City-based practice, 'there is no expectation, at junior level, that you will try and apply for flexible working'. She said that in magic circle law firms in particular, 'there is no recognition whatsoever that people may want to have a work/life balance. There is an expectation that you are dedicated to your work 24/7, 52 weeks a year, if necessary', adding that junior female lawyer colleagues tell her it is a struggle in

other firms too. So why is that? 'The more you are in the office and the more deals you work on, the more experience you get and the quicker you become useful to the firm,' she says.

At Withers, there are no junior lawyers on flexible working arrangements, although Aarons says 'there is no barrier to this happening in the future as circumstances permit'. Junior lawyers are not among the flexible workers at Allen & Overy either. As head of HR Alli Dawson notes: 'Generally it is the mid- to senior level. It is relatively unusual for junior lawyers to want to work less than full-time.' At this stage in their career people are often more focused on investing time in developing their professional skills and abilities, the firm observes.

With the aim of retaining more junior lawyers through to partnership, in 2010 A&O launched a scheme for partners permitting a four-day week or up to 52 days extra leave a year. The firm now has 11 part-time partners in the UK. Still, A&O female partners account for a below-average 18% of total UK partners (with 57% of women trainees). Despite the efforts of some firms, the general picture is one of reluctance to introduce flexible working patterns. Why? A number of factors, but top of the list is 24/7 client expectations, the long hours culture, the billable hour model and poor management, according to the Law Society 2010 survey. And what can be done about it? Eversheds' Jagger says: 'The legal profession is very traditional. It has been run by men for many years.'

'There needs to be a real paradigm shift in the way lawyers operate in the legal profession as a whole if we really are to embrace the differences that exist within the great range of lawyers,' she says.

First, firms need to drop the 'excuse' of 'client demands', says Jagger: 'We are a service industry, of course, but most clients recognise that they are not our only clients, so to expect to have 24/7 access to an individual is wholly inappropriate.' Jagger, who was general counsel at Walmart's Asda prior to joining Eversheds, adds: 'No sensible business would ever have their customer relationship reliant on one person - you have to have a team.'

Second, firms need to address the 12-14 hour days. Says Jagger: 'People are required to put in long hours, and if they do they can charge for them and so are rewarded. This completely misses the point that somebody who is very efficient and very bright and very organised could do the job in half the time that it takes somebody who is slow and disorganised. It is against the client's interest.'

Withers' Aarons concurs that the billable hour model is part of the problem, but she notes: 'At partner level it is possible for women, if they focus on their ability to attract and retain clients, to demonstrate that they are as valuable as a full-timer.' Aarons hasn't typically been working on Fridays since 1989. She says: 'What has made my own journey as flexible as I have needed it to be has been the fact that I have a profile and I attract work in my own right. If you have clients who speak highly of you, then when another client comes along and discovers you don't come in one day a week they are not going to worry.'

Of course, not all lawyers are going to be high-flyers. And for some, including a number of female lawyers the *Gazette* talked to, part-time work on part-time rates ends up being a full-time job because workloads are not suitably adjusted. Law firms' traditional business model has another downside: if you are spending time managing people including their flexible working arrangements this can cut into billable hours. This was 'an unacknowledged reason for requests for flexible working to be refused', the 2010 Law Society survey found.

Nina Barakzai, EMEA Privacy & Ethics Counsel at Dell Corporation and a chartered accountant who has worked for KPMG, suggests the problem goes deeper: 'We had billable hours and we had client challenges, but that didn't mean we didn't spend any time developing managers. Why do some professions manage to get full management development and others don't?' she asks.

For Julia Chain, managing director of Huron Consulting, as long as firms can recruit staff easily due to the economic climate, or are 'making so much money', or even conversely operating on very tight margins, work/life balance takes a back seat. In some areas like corporate law, part-time is a non-starter because you have to follow the rhythms of the corporate deal. You can negotiate a commitment to a smaller number of transactions across the year, for example, but says Chain: 'This requires firms to employ more people to share the workload. Of course that will impinge upon your pocket.'

But firms should take a longer-term view. Emma Clark, a senior associate at boutique City law firm Fox, which specialises in employment, partnership and discrimination, works four days a week, a pattern she started on while at A&O where she qualified. Clark says a number of law firms would see high-achievers like her working flexibly 'as a role model. It depends on how open-minded and progressive law firms are and, of course, there are many law firms that are not. But ultimately they are not doing their clients any justice because they are failing to retain their best talent'.

**Time saver**

At divorce and family law specialists Rayden, a small St Albans firm founded in 2005, only 20% of employees work full-time and before April 2011 all worked part-time.

Managing partner Katherine Rayden says: 'It has been a deliberate strategy to employ part-time staff, particularly in the early stages of the firm's growth. Also, it was my belief that in order to attract high-calibre candidates I would have to offer something that the London firms could not; as I could not compete with salary, I offered something that money cannot buy - time.'

Rayden works in a part-time pattern that allows her to combine her supervisory role in the office with collecting her children from school every day and also attending other school events.

She estimates part-time employment has had a number of benefits: it allows the firm to grow incrementally without running the risk of cost overrun; it boosts efficiency; and it raises the commitment and satisfaction of staff.

### **The scenic route**

So is work/life balance really compatible with a high-flying career? Clark 'balances' the competing demands on her time by trying to leave the office in good time in order to spend an hour or so with the children before logging on back to work for a few hours. 'It can result in long hours, but that's the price that I am willing to pay for a stimulating career.'

Clark says she is 'ambitious' and does not see her commitment to her young family as a 'bar to any career progression. I see no reason why one couldn't be a partner on four days a week'. However, she adds: 'There can be a tendency in some firms for people who work part-time to get poor-quality work.'

Sarah Austin, principal at Austins Solicitors and AWS Council member and national treasurer, notes that female lawyers have traditionally been left doing work that is paid less or has less status such as criminal or family law, rather than corporate and commercial or personal injury. Of course, there are exceptions to this picture, but if women do not want to end up going down that route it is not clear what systems firms are putting in place to address this imbalance, she argues. For Aarons, there should be options within a firm to take 'scenic routes', slow down or accelerate people's career progression for a period.

Chain concurs, adding: 'Often during their lifetime people work at different rates and they have different priorities. I know myself, over a 35-year career my priorities changed dramatically several

times. Firms should cut women lawyers a bit of slack for a few years and they will be paid back 10 times,' she says.

Some larger firms, including Baker & McKenzie, Allen & Overy and Herbert Smith offer alternative career options to partnership like non-fee-earning roles such as professional support lawyers (PSL) which tend to focus on a lawyer's technical legal skills. Hours are generally more controlled and the role is better suited to flexible working.

At A&O, for example, PSL is seen as a legitimate alternative career and not just a sideways step. PSLs can progress from junior PSL to senior PSL and then to PSL counsel. Although there are examples where PSLs have been promoted to partner status, this is not the norm and, as Chain notes, the role generally takes you out of the partnership track.

Smaller firms do not offer this range of options and it is generally up or out. However, Austin notes that sometimes they are more receptive to accommodating flexible working requests as personal relationships are more developed and they are less formal with the arrangements. 'The smaller firms are actually better at flexible working; they just don't tend to formalise it,' she says, adding 'in a large firm your line manager may not even know you.'

### **Not just gender**

Flexible working has principally been a childcare debate up to now, Chain argues. Men, as carers and parents, are clearly part of the equation: 'Young men want to go home and see their kids and not just on Friday evening.' But the issue is wider still, she adds. Employers have a statutory duty to consider flexible working requests from employee parents and carers, but must also consider the needs of staff who practise religions under the Equality Act 2010. And that can include requests for flexible working.

'Firms are now having to adapt far more to recognising that people with religious beliefs need to have specific times off,' says Chain. She cites observant Muslims who pause work five times a day to pray, or practising Jews who must leave early on Friday afternoons in winter to avoid working on the Jewish Sabbath.

To accommodate religious observance, A&O has prayer rooms for use during working hours, says Dawson, who adds that part-time or other flexible working patterns have been granted to staff for certain periods of the year. The statutory right to request flexible working may be extended to all employees, the government proposed in last year's Modern Workplaces consultation to which it is due to respond in 2012.

Clark, an employment lawyer, supports this and says this should include people who have extra-curricular commitments such as sports. 'It makes that person more organised, more efficient and happy at work,' she says.

## Part-time player

Mother-of-three Vicky Hosking is training to become a solicitor on a three-day-a-week contract at Michael Smith & Co, a high street firm in Ipswich that specialises in family law and conveyancing.

'As a mother I didn't really want to work full-time,' says Hosking, a former businesswoman who is now on a 60% training contract that will take her 40 months to qualify. 'I have always been pro part-time because I have seen the benefits. I think there is a lot of time-wasting in full-time work.'

Hosking worked as a paralegal at the firm while doing her LPC, and that gave her an insight into the firm's needs that she fed into her proposition to do a part-time training contract. 'They had never taken a part-time trainee before, but I sold my idea on the basis that it would be about half the cost.'

The fact that it was a small practice meant Hosking could approach the firm's owner directly to argue her case rather than through a faceless HR department.

The different work ethos may have been a further factor in securing the part-time contract. 'On the whole, people work 9 to 5, and they all value their own private lives,' she says.

## Happy at work

'Work/life balance' is commonly defined as the balance of working hours and leisure time. But some argue for a wider interpretation. 'It is about life balance full stop because work is an enormous part of people's lives and so that ought to be enjoyable,' says Jagger.

'There are a lot of things going into the mix,' says Aarons. 'At the end of the day women aren't only looking for a firm where they can work flexibly. Hours are only part of the picture. What you need is a culture that is going to help women to progress their careers,' she says.

One way is through sponsorship, in which a senior member of staff champions a less-experienced colleague, for example by talking about them to big clients in order to assist in their promotion (it should not be confused with mentoring). But the vast majority of high-performing women do not

have a sponsor, or for a number of reasons sponsorship fails to work effectively, according to a recent study launched by New York-based Task Force for Talent Innovation, of which Aarons is a member.

The study concluded that sponsorship 'confers a statistical benefit of up to 30% in terms of more stretch assignments, promotions and pay rises.' But 64% of men in leadership positions avoid sponsoring junior women for fear of speculation of an affair.

Large corporations have responded by putting sponsorship on a formal footing, says Eleanor Tabi Haller-Jorden, general manager of Catalyst Europe. In 2009 Deutsche Bank introduced a scheme dubbed Atlas to improve the gender balance at senior levels and increase the pool of women eligible for the most senior positions in the firm. Law firms have not yet followed suit and under-the-radar arrangements persist.

Getting that balance is also about having an environment that helps lawyers manage stress, argues Dell's Barakzai. That includes full support from her manager in what she does and the ability to talk through things, for example when she feels uncomfortable because she has too much work.

Life at work after maternity can be very stressful and uncomfortable, and Clark is enthusiastic about A&O's Maternity Coaching Programme, offered through the Executive Coaching Consultancy, which is designed to help lawyers in the transition back into work. 'That was an incredibly supportive thing that A&O does, and I still find that very helpful,' says Clark.

Perhaps more importantly, work/life balance should be about recognising that you cannot have clear-cut lines between work and leisure, says Eversheds' Jagger, who has a number of non-executive roles in the commercial and charitable sectors. 'This rigid "one moment I am at work, one moment I am not, and never the twain shall meet" - it's a bit unrealistic,' she says.

## Corporate world

Is the corporate world any better than the legal sector when it comes to work/life balance? For Nina Barakzai, EMEA Privacy & Ethics Counsel at Dell Corporation the answer is yes - much better. Barakzai, who qualified in-house with NTL Group, and has worked for over nearly 30 years for a variety of companies including British Gas, BT and KPMG, says law firms 'are in the dark

ages in employment terms. They need to understand that the world of employment is light years ahead'.

Barakzai finds the world of business 'professionally very rewarding', and is surprised when she hears of the dissatisfaction among women in private practice at the lack of genuine flexible working options.

Barakzai notes that in solicitors firms 'the focus is to bring in billable hours regardless of whether the billable hour target hits your sweet box of things you find professionally challenging or intellectually stimulating'. Instead, Dell encourages lawyers to either progress 'sideways' by becoming involved in different areas within the legal team, or to step up the ladder through 'operational roles' as any other employees of the business.

Furthermore, Barakzai says that at Dell 'nobody watches the hours you are working. As an in-house lawyer you are deemed to have a sense of professional conduct and competence and the focus is on getting your output - not when you do it or whether you sitting at your desk from 9 to 5'.

And because she is servicing clients within her own company, there is also greater scope for managing client expectations, thereby reducing a major source of stress common in private practice where solicitor-client relationships tend to be at arms-length. 'You will invariably have some understanding of the business context within which you are providing advice. It is quite permissible to say to your client: "I know you wanted it yesterday but I have an absolute mountain of things that I really have to get out. Can you live with this if I get it to you in two days' time?"'