

# Raising the Bar: Legislating to Achieve Diversity in the Professions is Only Half of the Story

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In recent years huge strides have been taken to promote equal treatment in employment and thus more diverse workforces. Yet whilst statutory anti-discrimination instruments such as the 2010 Equality Act which harmonised existing legislation and consummated employers' obligations to respect the nine protected characteristics are to be welcomed; the business and societal benefits of teams that are more representative of their customers will only be celebrated if the advantages of employment diversity are comprehensively understood by managers, employees and the public. Failure to do so often results in such endeavours being cynically greeted as "skin-deep", box-ticking exercises to be applied in the name of Corporate Social Responsibility. With a focus on the professions -where the stakes are especially high- in this article we argue firstly that merely complying with legislation is not sufficient to accomplish genuine diversity and secondly that, rather than assuming its benefits will naturally be derived and accepted, diversity must be approached strategically and its advantages communicated effectively to stakeholders to ensure desired outcomes.

## *The business case for diversity*

When demographic workforce homogeneity or weakly-communicated diversity messages stifle the individual creativity, uniqueness and independent thinking that different perspectives bring, it can lead to poor decision-making and actually increase costs. Unconscious biases and stereotyping against those from particular backgrounds may lead to resentment and tension in teams from employees who believe that colleagues have been recruited or promoted because of their minority status. Meanwhile, the failure to separate the business case for diversity from its CSR aspects or legal obligations may lead managers themselves to do so for the wrong reasons. Among more homogenous workforces irrational or dysfunctional decisions that result from groupthink -where there is a desire for harmony or conformity in the team due to a lack of evaluation of alternative viewpoints – are more likely. That is bad for business. When occurring among teams of lawyers, doctors, accountants, policy-makers or educators, the financial and social costs may be especially severe because it can generate serious impacts for individual service-users and society.

Research from the American Sociological Association found that for every 1 percent rise in the rate of gender and ethnic diversity in a workforce, there is a respective 3 and 9 percent rise in sales revenue. Meanwhile, the Centre for Talent Innovation investigated the effect of "two-dimensional diversity" (inherent characteristics like gender and race), together with "acquired diversity" (such as global experience and language skills) and discovered that those companies with the former increased their prospects of expanding market share by 45 percent and of capturing a new one by 70 percent compared to those without. When teams included members who fell into the same diversity category as their target end-user, they were 158 percent more likely to understand that them and innovate accordingly.

In today's increasingly competitive global business environment, firms have little option but to enact "fight or flight" responses under which the heterogeneity of their differentiated customer bases is reflected in their staff composition. Young people in European and Anglo-Saxon countries are increasingly demanding to work with colleagues from varied ethnicities, nationalities and sexual orientations who are similar to the peers they socialise with. Diverse workforces have thus become central to talent attraction.

Managers must therefore consider the nature of their internal workplace context and its external environment. Only then should they convey the sector-specific importance of achieving such objectives to employees, contracting firms and newly-qualified entrants to bring them onside with the idea, whilst also devising tailored policy responses.

*But what of the professions? Barristers as a case study:*

As the UK Government's Department for Business Innovation and Skills recently concluded, there is no one-size-fits-all solution to equality and diversity. End-users of the professions, especially those in the public sector -whether hospital patients, crime victims or elected officials' constituents- do not purchase goods or services from companies as they would from private-sector businesses. Instead, for a variety of reasons ranging from the need to maintain personal dignity and cultural sensitivity regarding medical care, procedural justice in the courts and the democratic legitimacy of the parliamentary system respectively; the need for a diverse workforce that is representative of end-users becomes paramount to ensure the integrity of the professions in the eyes of their stakeholders and the public. Crucially, despite the robustness of the Equality Act in tackling discrimination's various manifestations (direct, indirect, harassment and victimisation), legislation is not sufficient to foster diversity when industry-specific and contextual external factors mitigate against it.

Take the legal profession. In 2012 the Bar Council reported an elitist (a third of barristers are Oxbridge educated) and male-dominated (two-thirds are men), sector. Although 12% hail from Black and Minority Ethnic (BME) communities, they are only slightly underrepresented compared to the general working population. However, the apparently acute underrepresentation of barristers with a disability (1%) may be less motivated by direct discrimination and more due to the overwhelmingly self-employed nature of the profession, meaning that they tend not to declare disability for fear of being overlooked for work contracts in a conservative environment.

Yet the profession is currently facing serious challenges in terms of access, retention and progression that are deepening its diversity crisis. The financial expense of qualifying for the Bar and cost incurred by law firms of taking on newly-employed barristers have risen sharply. These are deterring those from working-class backgrounds from applying, whose fear of debt acts as a greater impediment. Such trends have resulted in the profession becoming an increasingly closed world in which employment depends on one's contacts rather than ability or potential. Female retention rates are low due to childcare issues and non-family friendly working hours.

Moreover, the UK's coalition government's cuts to legal aid in 2012 have not only increased the possibilities of serious miscarriages of justice by denying less-wealthy and vulnerable citizens equal access to the courts, but also had the unintentional effect of sparking a mini-exodus of female and BME barristers from the profession. These groups have been disproportionately affected by the subsequent loss of clients, having previously taken on the vast majority of publically-funded areas of the Bar that are now subject to these cuts. The profession is no longer financially viable for many.

Perhaps most concerning of all is the issue of progression into the judiciary. Just 12% of all QCs are women and 5% BME. This is worrying because as an experiment by Tufts University, Massachusetts found, mixed-race juries reached more accurate decisions than those comprising of only white or black jurors when mock court-based trials were conducted. For public confidence to be upheld in the justice system, our judges must look and sound more like the defendants and victims in the trials that they preside over. The repercussions could otherwise become very dangerous indeed.

The business case for diversity is being made at the Chambers level and in recognising this; a new *Judicial Mentoring Scheme* has been developed. This addresses under-representation of women and BME lawyers and encourages greater socio-economic diversity. This complements the 80 *Diversity and Community Relations Judges* who already create and maintain links with local communities to increase trust in the justice system. Time will tell if these measures prove sufficient to reverse these worrying trends.

#### *The role of the National Equality Standard (NES)*

To accompany Equalities legislation, this strategic approach to ensuring genuine diversity must also be buttressed by obtaining buy-in from professional firms and employees. A project to promote cross-industry standards must be organised nationally to advance a coordinated approach that extends beyond the confines of individual sectors. It is hoped that the creation of a National Equality Standard (NES) will address this gap and help revolutionise how diversity is managed. Developed by EY in partnership with the Equality and Human Rights Commission (and supported by the Home Office and CBI), the aim is to foster a significant and lasting impact on the way equality, diversity and inclusion (EDI) is integrated into organisations' day-to-day activities. What provides the impetus is that it is an entirely voluntary initiative that businesses sign up to themselves.

A NES Assessment provides companies with an extensive and quality review of their EDI policies and practices, then identifies areas for improvement. Importantly, in line with the issues observed in the Barrister case study, as part of its 'core standards', it contextualises the assessment by recognising and reflecting specific EDI priorities that are unique to their organisation or profession in order to promote talent attraction, management and retention. A range of companies linked to the professions have already affiliated, including global law firm, Linklaters, MSD which supports healthcare professionals and Pearson UK which works with teachers and educators.

However, the initiative's success in encourage genuine diversity and avoiding simply being perceived as yet another attempt to merely project a positive brand image externally, is dependent on the following. Firstly; how engaged employees feel in the process. Secondly; how far the leaderships of affiliated firms are prepared to advance the case for diversity themselves so that employees fully understand the personal, business and societal benefits. Finally; given that EDI-aware firms have traditionally had a lens on developing equal opportunities for women, those minority groups that have been comparatively less well catered for -LGBT, people with disabilities, and ethnic minorities- must be given equal priority in the pursuit of diversity. For example, when gay people remain in the closet, they are 10 per cent less productive than when they feel able to be themselves.

In conclusion, multi-layered approaches to diversity are essential for its successful implementation if its benefits are to be enjoy by all. Legislation is important, but on the shop floor attempts to achieve heterogeneous workforces may prove counter-productive unless supported with strategic measures to improve stakeholder awareness of its universal advantages. These must be underpinned by national industry standards that obtain buy-in from employers and employees alike.