



Cass Business School
CITY UNIVERSITY LONDON

Cass Centre for Professional Service Firms

Working Paper CPSF-001

2010

**Making a difference?
The use (and abuse) of diversity management at the
UK's elite law firms**

Louise Ashley

louise.ashley@city.ac.uk



Do not cite or quote without the author's permission

www.cass.ac.uk/cpsf

Abstract

The UK's elite law firms have recently seen a shift from talking about equality of opportunity alone to the adoption of a diversity discourse as well. This article examines this transition for what it can tell us about the value of diversity strategies as a means for widening access to the corporate legal profession on the basis of social class, focusing on five elite law firms based in the City of London. A number of studies have demonstrated how cultural practices within the legal sector maintain exclusionary mechanisms based on class. There has been less attention to how this is sustained within an amended institutional framework which outwardly 'celebrates' difference. This research suggests that though diversity strategies do little to change organisational cultures, those that recognise both the depth of professional prejudice within the sector and the reality of educational inequality across the UK may prove relatively progressive nonetheless.

KEYWORDS: Class, Diversity Management, Equal Opportunities, Ethnicity, Inequality, Law Firm

Introduction

The corporate legal sector has seen a shift in the last ten years from talking about equality of opportunity alone to the adoption of a diversity discourse as well. This article reports on research which examines this transition for what it can tell us about the value of diversity strategies as a means for widening access to the legal profession on the basis of social class, with a particular focus on five elite law firms based in the City of London. Four of these are in the UK's top 20 (by turnover) and one is amongst the leading US firms. Though the legal sector is struggling on a

range of diversity variables, issues surrounding social class have proved intractable and this is a problem that has proved particularly acute in the firms that are the subject of this study (Nicholson, 2005; Sommerlad, 2007).

In 2005, educational charity The Sutton Trust published a report examining the educational backgrounds of the UK's top barristers, judges and solicitors. The sample group for the latter comprised partners at three of the City's five leading 'magic circle' law firms, for which data was available. This found that the profile of leading lawyers is becoming less rather than more diverse in educational terms. In 1988 59 percent of UK-educated partners in this sample group younger than 39 years old had attended fee-paying schools compared with 73 percent of those 40 or older. However, in 2004 71 percent of the younger partners were independently educated compared with 51 percent of the older group. A number of previous studies have demonstrated how cultural practices within the legal sector maintain exclusionary mechanisms based on social class (Shiner, 1997, 1999, 2000; Rolfe and Anderson, 2003; Sommerlad and Sanderson, 2002; Sommerlad, 2007; Vignaendra, 2001). However, there has been less attention on how this exclusion is achieved within an amended institutional framework which explicitly and outwardly 'celebrates' difference.

Bearing these points in mind, the current study has sought to develop a detailed understanding of the impact of diversity strategies in five elite law firms through inductive, in-depth qualitative research examining their impact from both a practitioner and stakeholder point of view. Though the introduction of a diversity agenda was marked by a relatively non-critical acceptance of its philosophical stance

and practical benefits, more recently it has been subjected to a sustained attack (Lorbiecki and Jack, 2000). In his influential article Noon (2007: 773) suggests that the business case for diversity is particularly problematic especially as it applies to ethnic minorities, to the extent that diversity has 'fatal flaws'. He suggests that the allure of the business case has prompted a call that diversity should replace equal opportunities but that this is misguided since there is no evidence that the former will deliver on core equality objectives in ways that the latter has not. Noon (2007: 781) acknowledges that for 'ground-level activists' and other stakeholders diversity is seen as a useful way of encouraging managers to talk about and act on equality issues and that they believe this 'pragmatic' approach means that the equality agenda is driven forward. In his view however, the problems associated with the diversity agenda outweigh these marginal benefits and he concludes that 'the argument for the moral case based on the human rights of all employees and job seekers must not be abandoned for the current fashion of diversity and the business case.'

This article argues that diversity policy has not challenged entrenched negative attitudes to social class within the legal sector which are put into practice by individuals and enshrined within institutional structures and procedures. However, this research would suggest that whilst the diversity agenda is substantially flawed, in the context of social class it is not 'fatally' so. A number of scholars have argued that diversity's claim to represent something entirely original is undermined in practice (Liff, 1996; Kirton and Greene, 2007). Whilst demonstrating some original features, the programmes introduced within the legal sector under a diversity banner tend to reflect many aspects of a traditional equal opportunities approach. This dual approach is often considered problematic yet it can also bring some useful benefits.

Most importantly, despite its failures, the introduction of a diversity agenda has at least permitted a continued focus on group-based disadvantage and facilitated a renewed emphasis on social class. This focus has led to some positive action despite the absence of any clear business case to do so. This article argues that given the depth of professional prejudice within the sector and the reality of educational inequality in the UK there is room for pragmatism in relation to how policy is both devised and assessed in this context. This point is demonstrated specifically with regard to The Sutton Trust's programme 'Pathways to Law.'

The article begins by examining the transition from equal opportunities alone to the addition of a diversity agenda in the UK and summarises key criticisms of both strategies. It then describes the design of this study into five law firms implementing a diversity strategy. Following this it looks at the main strategies ostensibly designed to tackle relative disadvantage, which focus on changing negative attitudes towards 'difference' and widening access to the corporate legal sector. The main empirical section examines how 'diversity' on the basis of social class is resisted and rejected at both the institutional and personal level. The article concludes by returning to the original question, namely, what is the value of diversity strategy as a means to widen access to the corporate legal profession? In the final part of this article the issues raised are examined against a backdrop of growing inequality and lower social mobility in the UK during the past twenty years. This analysis underlines the necessity to theorise processes of social closure happening within elite law firms not in isolation, but by explicitly situating them within their social, cultural and economic context.

From equal opportunities to diversity management

Attempts to reconcile the competing claims of equality and difference have been the hallmark of liberal political theory over the past three decades or more. The introduction of ‘formal equal rights’ in the UK has been one result of this historical legacy, culminating in the 1970s with the implementation of a range of legislation which is based on an understanding that discrimination occurs when social group characteristics, such as gender or race, are taken into account when they are in fact irrelevant to the requirements of the job (Liff, 1999: 66). However, though equal opportunity has delivered some success its critics argue that it is only partially effective. For example, as a largely procedural approach equal opportunities is said to place undue emphasis on changing behaviour, leaving attitudes and beliefs comparatively untouched (Liff, 1996, 1999; Jewson and Mason, 1986). Regardless of the strength of the legislation, scope remains for associated procedures to be evaded or entirely ignored (Webb, 1997).

An alternative criticism suggests that by focusing on sameness practitioners have been able to sidestep or ignore the fact that people are unequally endowed with human and social capital as a consequence of pre-market discrimination (Kirton and Greene, 2007). One of the most important critiques of existing equality structures surrounds the ‘myth of merit’ (Young, 1990). Focusing on merit is said to have the dubious effect of forcing an individual competing on these terms to hide or suppress his or her differences arising from social group membership in order to get on. In turn, this process of assimilation allows a situation to perpetuate in which difference becomes a problem for the individual not the organisation and the ability to ‘fit-in’

continues to be judged against the norm of the 'ideal' worker – usually, male, white, able-bodied, heterosexual and middle-class (Liff, 1999; Young, 1990).

Diversity has been introduced as an alternative approach in UK workplaces and is designed ostensibly to overcome these deficiencies. Its introduction has been seen as partial recognition that although legislation is necessary, it is not sufficient to counter what Kochan et al (2003: 4) call 'entrenched organizational cultures' which do not welcome traditionally underrepresented groups. The actual definitions in use vary dramatically (Jones and Clements, 2002; Jewson and Mason, 1986), though Kandola and Fullerton (1998) have been particularly influential for a practitioner audience in the UK. They suggest that equality comes from recognising the needs and potential of individuals, rather than making assumptions on the basis of group membership. As such, diversity involves a wider range of people than the social groups covered in EO's legislative approach (Kirton and Greene, 2007). In theory at least diversity also represents a move away from the idea that different groups should be assimilated in order to meet an organisational norm and instead suggests that difference should be nurtured and rewarded rather than suppressed (Liff and Wajcman, 1996; Kirton and Greene, 2007). The substitute of the business case over a sole focus on regulation has been central to diversity's power to persuade and is particularly prominent in texts for a practitioner public (Zanoni and Janssens, 2004).

For critics of diversity management there are many problems with the developments outlined above. A number of commentators have called diversity a 'verbalist' approach, which is mistakenly preoccupied with changing attitudes at the expense of achieving more fair outcomes. Diversity's exponents claim that this approach is a

means to depoliticise related issues, to assist both managers and employees suffering from so-called equity 'fatigue'. Others have shown that diversity merely reflects existing power relations between management and employees in an organisation (Zanoni and Janssens, 2004). Diversity's notional individualism is said to result in a type of relativism in which because we are all different, we are all the same in our difference. This relativism means that the need to reduce discrimination against disadvantaged social groups is diminished and the obstacles encountered by members of these groups are underestimated (Kirton and Greene, 2007). The business case has been called both economically contingent and highly variable according to the particular organisation and its strategy (Dickens, 1999; Barmes and Ashtiany, 2003). In some analyses it has been feared that the wholesale ousting of equal opportunity by diversity's business case would deny the legitimacy of the moral agenda (Noon, 2007).

Certain advocates have characterised diversity as an entirely original approach (Kandola and Fullerton, 1998). Others though refute this view (Liff and Wajcman, 1996). For example, Liff (1996) has described four possible types of diversity strategy which exist in practice, though arguably only one of these is clearly differentiated from equal opportunities. Liff (1999) argues that this dual approach to equality and diversity is worrying since notwithstanding the failures of equal opportunities, there is little to suggest that diversity's flawed business case will encourage managers to find new ways to welcome and empower diverse employees. In the remainder of this article these arguments are examined in relation to social class leading to the conclusion that though flawed, there is in fact room for pragmatism both when devising and assessing related policy.

Methodology

The intention of this research was to assess the value of diversity strategies as a means to widen access to the corporate legal profession. As such, it had two core objectives. The first involved an analysis of diversity policy adopted by leading corporate law firms, in order to understand how diversity and equality is written about and the type of strategy the sector deems important in order to secure key goals (Liff, 1999). The second involved an analysis of how these policies are experienced and understood in the organisational setting. In order to examine both areas a case study strategy was adopted. Initially, ten of the top twenty UK firms by turnover and one leading US firm were approached, all of which are based in the City of London. These firms were not chosen on the basis of their approach to diversity and equality or to represent 'best practice' in this area but primarily for their status as elite organisations, given that in this sector of the legal profession issues surrounding social class are particularly acute.

Of this initial group access was secured to five, all on the condition of anonymity. The firms are therefore identified here as Firms A – E. Access was granted on a *quid pro quo* basis. In addition to the detailed critical analysis presented in this article each firm was supplied with a report describing the findings at their organisation with recommendations where appropriate. All but one are international firms, four of which have their headquarters in the UK. Firm A belongs to the 'magic circle', shorthand for the UK's most prestigious five firms. Firm D is a North American law firm with a significant operation in London. The case study firms ranged in size from between 1,000 to over 3,000 employees on a worldwide basis. In total, 130 participants across the five firms agreed to be interviewed, between 21 and 37 at

each firm. They were purposively selected working with a single gatekeeper at each firm who was either a senior member of the HR team or a diversity practitioner.

Interviewees were sampled to be as representative as possible of the corporate hierarchies to identify any differences between managers' and employee perspectives. Gatekeepers were asked to slightly over-represent the diversity of their organisation with regard to social class and ethnicity, particularly with regard to fee-earners with whom this article is primarily concerned and where the problems are arguably most acute. This approach resulted in a total sample group which included 22 percent ethnic minorities. Class though was difficult to target since this is a slippery category, is not measured and is not necessarily 'visible.' As a result, using socio-economic classifications of the father's occupation as a crude measure the achieved sample included over 90 percent of lawyers at all five firms whose fathers were managers or senior officials or were classified as an associate professional or professional, with a heavy concentration on the latter.

Once the initial sample group had been invited to participate they were contacted directly by the researcher and the gatekeeper had no further contact with them in relation to this project. In order to protect confidentiality the responses of individuals have been anonymised. All interviews were conducted by the author face-to-face using the same semi-structured questionnaire which covered areas including the participants' knowledge of equal opportunities and diversity policy and approach, and their own experience within the workplace in relation to these issues. Interviews took place on the organisations' own premises during 2006 and 2007 and all were

recorded for transcription. In addition, the researcher took detailed field notes. Interviews took approximately one hour.

This article is based on the interview notes and full interview transcriptions, taking a 'grounded theory' approach to the analysis of the data (Glaser and Strauss, 1967). This approach is considered appropriate for investigating organisational cultures (Martin and Turner, 1986; Locke, 2001) as it captures participants' intentions and actions, provides a holistic account of the organisational context itself and is indicative of values and assumptions (Callan, 2007). The transcriptions and notes were coded, first using higher level categories such as mention of 'social class', 'knowledge of diversity policy' and 'organisational culture', which emerged from analysis of the transcripts. These codes were further sub-coded into core themes and categories such as 'working class as risk.' The framework was designed to reveal how assumptions about social class, underlying values and behaviour, were justified and explained and the extent to which these were affected by the emergence of a diversity discourse within the legal sector. Also treated as data were relevant documentary evidence provided by the firm and other agencies which was publicly available in corporate media and this is discussed in the section below.

Diversity policy and approach at case study firms

At the time this research took place all five firms had incorporated elements of a diversity approach in their recruitment and other practices. Most relevant here, three of the five case study firms had introduced training of which one, Firm D, could be said to represent 'best practice.' Here, diversity training was mandatory for all staff, was face-to-face and focused explicitly on helping staff to understand and address

their conscious and unconscious bias. This training had been well received by employees. Diversity training at Firm A was not compulsory and was largely conducted through e-learning programmes. Firm B provided training for all staff, though this was focused on the application of equal opportunities legislation, particularly in relation to avoiding discrimination claims.

All five firms were involved with one or more of a range of organisations aiming to dismantle barriers to entry into the legal sector and encouraging school pupils and university students from under-represented and disadvantaged groups to apply. In most cases ethnicity was prioritised. A particularly popular programme is City Law for Ethnic Minorities run by Target Chances. This programme aims to reach potential applicants through university careers fairs and other similar events and encourage candidates who might not otherwise consider themselves welcome in this environment to apply. Target Chances offer networking opportunities with representatives of a City law firm. Students take part in legal case studies and develop key skills and interview techniques prior to applying for legal jobs. A second popular programme was run by Global Graduates, which was active at the time this research took place. Global Graduates' 'Diversity in Law' had similar objectives to Target Chances overall, whilst 'Young Graduates for Lawyers' worked with students at an earlier stage in their academic career.

A more recent programme, which is as yet untested in terms of outcomes, is educational charity The Sutton Trust's 'Pathways to Law.' This programme is not explicitly targeted at ethnicity or race but relative disadvantage. It is designed to attract up to 750 students to the legal profession from state schools, who will be the

first in their family to attend university and whose parents are in non-professional occupations. These students will then be provided with careers advice and guidance on university applications in the sixth form, provided with mentoring whilst at school and university and provided with contacts in the legal world, which it is hoped will lead to work experience and placements with law firms and chambers. Though devised and run by The Sutton Trust and The College of Law, this policy is supported by seven firms who provide financial assistance and a further nineteen firms who provide placements for students. Case study firms are represented within this group.

Findings and analysis

Elitism and exclusivity

The specific programmes described above play an important part in corporate rhetoric and often comprise the flagship of a firm's diversity agenda. Yet this research would suggest that knowledge of these diversity strategies is largely confined to the Human Resources (HR) department and as such they have limited impact. This point can be demonstrated when considering that this study included thirty-seven people outside HR who had direct responsibility for recruitment decisions. Most were unaware whether or not their firm had a diversity policy in place and almost none were able to point to a specific strategy to support this. This sample group included the partner with direct overall responsibility for graduate recruitment at Firm B who professed almost total ignorance with regard to the firm's diversity policy and strategy. He said:

I am aware that as a firm we are involved in diversity...there's that programme offered by Global Graduates training ... and there's also the Legal Chances thing that we do. Do I participate in those two programmes? No. Is it part of my portfolio as the graduate recruitment person? Yes. Is it something I initiated? No. But I am aware that it is current ... I do have an awareness but not an understanding.

Whilst this example is relatively extreme, it is not atypical and this may be a factor of diversity's relatively recent adoption by the sector. However, further evidence that this is a weak approach relates to the fact that diversity strategies are implemented alongside a range of competing policies that seem perfectly designed to perpetuate existing forms of discrimination against non-traditional and less privileged candidates.

Previous studies have found that one of the key barriers to diversity on the basis of social class is the tendency of law firms to recruit primarily from a limited set of old universities and to overlook candidates from new universities. This approach results in a less diverse intake because students at older universities are more likely than their counterparts at new universities to be white and middle-class (Rolfe and Anderson, 2003). A number of studies have argued that the preference amongst these firms for more 'traditional' employees is misguided and economically irrational (Centre LGS, 2005; Vignaendra, 2001; Sommerlad, 2007). Nonetheless, the continued explanation for this preference within the sector is the perceived quality and calibre of recruits at old universities, combined with a belief that higher entry requirements will deliver more demanding courses and that graduates will therefore be 'better' (Halpern, 1994; Shiner, 1997, 2000). This definition relates ostensibly to

academic qualifications yet may also refer to more subjective judgements. Rolfe and Anderson (2003: 332) found that though some participants in their research recognised the impact of this approach ‘tradition and prejudice’ continue to play a more important role. The current study would suggest that this continues to be the case despite a new diversity discourse.

A specific example of the contradiction between good intentions and actual practice can be found at Firm D. This firm was closely involved with Global Graduates and provided mini-internships for its students. It had also established its own programme to sponsor a small group of less privileged students at school, helping them to develop the skills required for a career in an elite law firm. However, whilst the firm had recognised the difficulties faced by non-traditional students it was simultaneously engaged in an active strategy to recruit more of its new graduates from elite universities, particularly Oxbridge. This latter approach was presented as a positive improvement on its previous position where as a newcomer to London it had been partly forced to recruit its graduates from (marginally) less prestigious institutions. According to a minority of interviewees the earlier approach had played an important role in the firm’s success as it had made room for lawyers with a less academic and more entrepreneurial approach which was valued by clients. However, there was no consensus here and overall more participants at the firm focused on the relatively poor ‘quality’ of previous intakes. A more recent boost to the firm’s reputation was therefore welcomed partly because it enabled a more selective recruitment strategy. As a partner at the firm explained, “there’s been a tendency since the firm has got better known...to recruit on the basis of academic qualifications, and the fact that someone got a first from Oxford or Cambridge.”

This strategy was replicated at Firm E. Firm E is an established City firm, which had experienced a dip in both its reputation and profits during the previous ten years.

These problems were related to several issues but again, the quality of its staff was one. A subsequent policy to recruit graduates almost exclusively from Oxbridge had been highly successful on its own terms and was explicitly related by participants not just to its bid to become a better (and more profitable) firm but also as several partners put it, to become a “smarter” firm. As one partner said, “we did suffer in terms of recruitment...we were losing out to rival firms...we changed our strategy and that’s helped with quality. We’re just a much smarter firm now.” Firm E had the lowest proportion of ethnic minority trainees of all the case study firms and overall 80 percent of the lawyers in this sample group had received a private education.

Though the situation at Firm E and Firm D was relatively pronounced, at the time this research took place none of the five case study firms had active relationships with new universities.

Fitting in and filtering out

This emphasis on social class does not relate only to the choice of from where candidates should be recruited, but to how they are assessed by the firm. In addition to the range of professional qualifications and hard skills a candidate must bring to a firm they are also expected to have a more subjective range of attributes, many of which are tacit and involve insider knowledge (Sommerlad, 2007). Class is also a cultural practice (Savage, 2000) and thus the system of informal barriers and benchmarks erected by the legal profession is also said to turn on the resilience of other signifiers such as dress, speech and manner (Bourdieu, 1984; Sommerlad, 2007). As a result, ‘*all*’ signs of working-class identity must be internalized in terms of

lack, intrinsically illegitimate forms of identity for a solicitor to inhabit' (Sommerlad, 2007: 215). In theory at least, a diversity agenda said to welcome 'difference' would address this expectation. In practice, even where this is the objective it has not been successful.

As noted, the diversity training implemented at Firm D could be said to represent 'best practice.' Nonetheless, partners and senior assistants with responsibility for recruitment continued to frame discrimination on the basis of social class as a rational choice. Again, this attitude is related to the brand image of the firm, and is posited as a choice between either quality *or* diversity, as the following quotes demonstrate:

I have had diversity training and there were some interesting points...[but] I mean I go back to this...you've got to be able to speak properly and be able to express yourself otherwise you're not going to be a decent lawyer...I think there's a limit to what you can do without lowering your standards. (Senior Associate, Firm D)

There's no point promoting diversity to the extent that it encourages people to become lawyers who are not lawyers...image is everything in the law...it's all we've got, our product...What's the point of bringing these people along who are not lawyers to bring your diversity figures up? You're only going to end up firing them. (Senior Associate, Firm D)

In almost all examples, the necessity to exclude otherwise qualified candidates on the basis of social class was ultimately externalised as a means to protect the client and therefore the law firm itself from 'risk.' In the words of one partner at Firm A:

There was one guy who came to interviews who was a real Essex barrow boy, and he had a very good CV, he was a clever chap, but we just felt that there's no way we could employ him...I just thought, putting him in front of a client...You just couldn't do it.

She went on to say, "I do know though that if you're really pursuing a diversity policy you shouldn't see him as rough round the edges, I should just see him as different." The potential difficulties faced by ethnic minority candidates from a less privileged background were put in similar terms by a partner at Firm B during a discussion on the intersections between ethnicity and class:

...there are limits to what we can do and what we can be because ultimately we have clients...I'm not saying that people from certain ethnic backgrounds are not...but there is a question of, inevitably, there is a question of does the face fit...that's the world we live in and compete in...that does have...a restraining impact, when you get into this all singing, all dancing diversity game.

In all these responses, 'diversity' was acknowledged to be the 'right thing to do.' However, this attitude is contrasted with a deliberate decision not to do it. The centrality of this imperative was further emphasised since all five case study firms continued to assess new candidates on the basis of whether they would 'fit-in' to that

firm's culture. This assessment was made using several methods, one being a judgement made during the interview whilst another is the use of events at which potential recruits mix with current employees. Though often billed as informal, these events form an important part of the recruitment process. However, as an assistant lawyer at Firm D said:

Clearly if the people that you're meeting are viewing you in terms of social context and you have someone from a poor working class background who hasn't been exposed to that kind of thing before...people will lose out purely on the basis of that final part of the thing.

The issue here is not simply that managers are unable to disentangle a candidate's suitability from ethnic or class stereotypes as suggested by some literature (Collinson, Knights and Collinson 1990), or necessarily that these attributes are so intrinsic to professional and organisational narratives that employers may not be aware of them (Sommerlad, 2007). Instead, in the face of a firm's 'diversity agenda' these policies are knowingly and specifically designed to formalise the salience of this particular difference.

Typically, this approach has been related to a strong incentive towards professional closure whereby traditional elites strive to maintain control of finite rewards by limiting access to outsider groups (Sommerlad, 2007; Abel, 2003; Bolton and Muzio, 2007). In a parallel argument relating to knowledge transfer in professional service firms, Empson (2001) argues that resistance to 'downmarket colleagues' can only be fully explained by bringing together the individual and the organisational level of analysis.

The continuing emphasis on elite universities makes sense if one considers that this is considered an essential part of providing the type of ‘upmarket’ brand thought most likely to build trust between clients and professionals. With regard to individual orientations towards difference, Empson (2001: 856) has named this a ‘fear of contamination’ whereby professionals believe that they ‘risk diminishing the perceived value of their service if they allow their image to be called into question by association with apparently ‘downmarket’ colleagues.’ Though space does not permit a detailed discussion of this topic the key point here is that whatever the motivation, these attitudes are highly resistant to change (Sommerlad, 2007; Rolfe and Anderson, 2003).

The validity of visible difference

As noted, many diversity strategies have taken their lead from the legislative agenda and as such prioritise ethnicity over social class. A related impact of the diversity agenda within elite law firms has been to encourage a focus on the measurement of visible difference. This approach is most obvious in the Black Solicitors’ Network (BSN) Diversity League Table, which is designed to provide a snapshot of diversity at the UK’s leading law firms. The categories measured in this report include ethnicity, gender and the uptake of flexible work, but not social class. This tendency is also demonstrated by the ‘Diversity Charter’, a joint initiative between the Law Society and a number of FTSE100 organisations which will require that signatories force firms to provide diversity data before giving legal work to panels. This emphasis on statistics is often considered a more progressive element of a diversity agenda. Whilst ostensibly not aimed at naming and shaming poor performers, it means that these firms are exposed to a higher degree of transparency and more public scrutiny.

However, the strong consensus in this and other research was that middle-class ethnic minority candidates with the right education – and the right accent - would not necessarily experience discrimination, at entry level at least (Sommerlad, 2007). Of the sixteen ethnic minority lawyers who took part in this research who had been educated in the UK, eleven had received a private education, and two had attended a leading Grammar school. As a result, their upbringing, background and education had almost certainly already equipped them with the same set of cultural practices as their white (middle-class) peers. This point was underlined by an Asian senior associate at Firm C with what she considered to be realistic partnership ambitions who said “I never feel in any way different...but that comes from the point of view that I come from a traditional background, I speak in the traditional way.” A black junior associate at Firm D said “if you go into a room full of commercial directors...they draw solace from the fact that we are the way we are, we talk a certain way and look the way we look.”

There was no suggestion here that the colour of their skin would mark ethnic minority candidates out as irretrievably different, yet a diversity agenda which insists on benchmarking firms primarily on the basis of their attitude to visible difference raises a number of issues. One of these is that it encourages tokenism, either perceived or real, and this may undermine the position of ethnic minorities within an organisation. More importantly in this context, focusing on ethnicity enables law firms to boast excellent or at the very least improved diversity outcomes despite the fact that they have continued to recruit using precisely the same types of class privilege that have always been in operation.

Though the diversity agenda originates from a focus on identity politics this system of measurement falls into a trap more closely associated with equal opportunities, since it mistakenly assumes a commonality amongst groups and individuals perceived either as traditional or otherwise (Fraser, 1997). With its implication that non-white people are by definition both different *and* disadvantaged, it also perpetuates a circular logic which suggests that the colour of an individual's skin is in some sense indicative of their very essence. Rather than destabilise established norms, this is a position which paradoxically re-centres the 'unmarked' white figure as the norm against which otherness is positioned (Dyer, 1997). Though diversity's notional individualism is often the most important focus of criticism in academic literatures, the example above suggests that in operational terms its focus on those social group categories currently prioritised within legislation is at times equally problematic. Furthermore, a diversity agenda does not necessarily suppress the significance of ethnicity within the workplace as Noon (2007) suggests but arguably places a relatively heavy emphasis on this area, with some negative effects.

Discussion and conclusions

The question posed at the beginning of this article was, what is the value of diversity strategies as a means to widen access to the corporate legal sector in terms of social class? This research would suggest that to date their impact has been limited. However, this finding is not necessarily related to the adoption of a radical or oppositional new approach (Noon, 2007) but to the continuing close alignment of diversity strategies such as Target Chances' City Law for Ethnic Minorities, with an existing equal opportunity agenda. For example, though this programme is distinctive in its belief that differences should be acknowledged and responded to in

order to overcome past disadvantage, it has no impact on negative attitudes towards social class which are held by individuals and enshrined within organisational processes. The requirement that non-traditional candidates should assimilate to existing organisational norms therefore remains unchanged. These findings are perhaps not surprising. On either a personal or collective basis, individuals within the profession have little incentive to introduce a more progressive approach which would genuinely recognise and reward difference on the basis of social class since the inclusion of lawyers who are visibly or audibly working class is perceived to threaten both their brand and their bottom-line.

These attitudes are deeply entrenched and are likely to remain so whether the preferred strategy to address this issue is procedural and legislative, voluntary and persuasive, or a combination of both. Bearing these points in mind, this research would suggest that despite the difficult practical questions this may raise, one way to assess diversity strategies is on the basis of an acknowledged pragmatism (Noon, 2007). As such this article will end with a partial defence of a particular approach, namely The Sutton Trust's Pathways to Law. This programme exhibits several differences compared to its predecessors such as Global Graduates and City Law for Ethnic Minorities. For example, it is both larger in scale and more proactive, since it aims to reach pupils at an early stage in their academic career. Of course, there is no guarantee that these individuals will eventually be employed by leading firms, and there is considerable doubt as to whether students as young as fifteen can be sure of their future career choice.

However, though by no means without fault Pathways to Law can be called relatively progressive on three main counts. First, it recognises the strength and depth of professional prejudice within the sector, yet does not tackle this directly given the likely slow progress of any policy that attempts to do so. Second, it accepts that the groups currently prioritised within the legislative agenda are insufficient and therefore puts relative disadvantage rather than race or ethnicity at the heart of its approach. Third, it engages with the reality of external structural factors, namely differential access to educational advantage within the UK and aims to compensate, in part, for this failure. In analytical terms this approach looks contradictory since it suggests that non-traditional candidates should be treated differently, in order that they may receive 'equal' treatment upon entry to the firm (Liff, 1999). Yet by doing so it arguably sidesteps the sameness versus difference debate in order to focus more productively on the most acute problem faced by working class students, namely their relative disadvantage in the professional labour market (Bacchi, 1990).

Liff (1999: 74) has argued that an agnostic approach to equality and difference is worrying since it potentially leaves a vacuum in which 'equal opportunities approaches will be replaced by a new orthodoxy which ignores all the evidence that people's experiences of work is, at the macro level at least, strongly correlated with their social group membership.' Yet Pathways to Law is a diversity programme which focuses explicitly on group-based disadvantage. Critically, it is a strategy based on social class that may not have gained ground without the development of a diversity discourse within the legal sector. Furthermore, just as a nominal diversity agenda forces no absolute choice between sameness versus difference, or groups versus individuals, the current study does not suggest that morality and the business

case are necessarily polarised (Noon, 2007). Certainly, law firms may wish to protect against reputational damage or gain PR points by being seen to engage with disadvantage in this manner. However, where this does provide the business case it is not necessarily one that is entirely at odds with social justice, since in this example the latter directly informs the former (Dickens, 1999, 2000; Liff and Dickens, 2000). Since there is no clear financial, commercial or legislative imperative to practice this type of positive action, those organisations that have become involved in and committed funds to this more recent diversity strategy are in fact signalling an implicit concern for social justice, albeit one that is partial and potentially contingent (Dickens, 1997).

To what extent commercial organisations can and indeed should be responsible for social justice is a related question. Though space does not permit a detailed discussion of this aspect, one theme that emerged in this research was that an equality agenda framed solely in moral terms is perversely in danger of undermining the dignity and self-respect of those it aims to assist. A second point was not that individuals were unsupportive of equality or social mobility, merely that they did not believe the law firm is the prime site for the realisation of these egalitarian goals (Barnes and Ashtiany, 2003). Clearly, the protestations raised by some participants that the law firm bears no responsibility here are disingenuous. However, to some extent these organisations are as much a reflection of our classed society as its cause. In this respect, it is useful to focus briefly on the fact that inter-generational social mobility in Britain has been falling quite dramatically during the past thirty years at precisely the same time that income differences have widened.

Wilkinson and Pickett (2008) have argued that growing inequality has a consistent negative impact on social mobility. It is surely not a coincidence that both the UK and the US, the most unequal societies in the Western world, have seen these specific issues impact particularly heavily within the elite professions despite an extremely strong ideology of equality of opportunity. Whilst this argument does not absolve the legal sector from responsibility for the decisions it continues to make, it is undoubtedly instructive to situate these choices in this wider social and cultural context. This research would suggest that the elite institutions which are the subject of this article are themselves implicated in these processes. However, a radical approach to diversity might only originate in a holistic agenda which tackles not only the barriers to equality which exist within the legal sector, but also the far deeper structural issues which lie at the heart of the UK's economy and society. This approach would include a more active focus on differential access to educational advantage from an early age, a factor which continues to limit the life chances of less privileged people quite as effectively as the value judgements made by managers within elite organisations, if not more so.

References

Abel, R. (2003) *English Lawyers between market and state: the Politics of Professionalism*. Oxford: Oxford University Press.

Bacchi, C. (1990) *Same Difference: Feminism and Sexual Difference*. Sydney: Allen & Unwin.

Barnes, L. and Ashtiany, S. (2003) 'The Diversity Approach to Achieving Equality: Potential and Pitfalls', *Industrial Law Journal* 32 (4): 274 – 296.

Bolton, S. and Muzio, D. (2007) 'Can't Live With 'Em, Can't Live Without 'Em: Gendered Segmentation in the Legal Profession', *Sociology* 41 (1): 29-45.

Bourdieu, P. (1984) *Distinction: A Social Critique of the Judgement of Taste*. London: Routledge and Kegan and Paul.

Callan, S (2007) 'Implications of family-friendly policies for organizational culture: findings from two case studies', *Work Employment and Society* 21 (4): 673-691.

Centre LGS (2005) *Response to the DCA's Consultation Paper: Increasing diversity in the judiciary*, Kent: Centre LGS.

Collinson, D., Knights, D., Collinson, M. (1990) *Managing to Discriminate*. London: Routledge.

Dickens, L. (1997) Gender, race and employment equality in Britain: inadequate strategies and the role of industrial relation actors. *Industrial Relations Journal*, 28(4): 282 – 289.

Dickens, L. (2000) 'Still wasting resources? Equality in employment?', in S. Bach and K. Sisson (eds.) *Personnel Management: A Comprehensive Guide to Theory and Practice* 3rd edn.

Dickens, L. (1999) 'Beyond the Business Case: a Three-Pronged Approach to Equality Action', *Human Resource Management Journal* 9 (1): 9-19.

Dyer, R. (1997) *Whiteness*. London: Routledge.

Empson, L. (2001) 'Fear of Exploitation and Fear of Contamination: Impediments to Knowledge Transfer in Mergers between Professional Service Firms', *Human Relations* 54 (7): 839-862.

Fraser, N. (1997) *Justice Interruptus: Critical Reflections on the 'Postsocialist' Condition*. New York: Routledge.

Glaser, B.G. and Strauss, A.L. (1967) *The Discovery of Grounded Theory: Strategies for Qualitative Research*. Chicago: Aldine.

Halpern, D. (1994) *Entry into the Legal Profession – The Law Student Cohort Study, Years 1 & 2*. London: Law Society.

Jewson, N. and Mason, D. (1986) 'The theory and practice of equality policies: liberal and radical approaches', *The Sociological Review* 34 (2): 307-34.

Jones, J. and Clements, P. (2002) *The Diversity Training Handbook*. London: Kogan Page.

Kandola, R. and Fullerton, J. (1998) *Managing the Mosaic: Diversity in Action* (2nd ed). London: Institute of Personnel Development.

Kirton, G. and Greene, A.M. (2007) *The Dynamics of Managing Diversity*. (2nd ed). Oxford: Butterworth-Heinemann.

Kochan, T., Bezrukova, K., Ely, R., Jackson, S., Joshi, A., Jehn, K., Leonard, J., Levine, D., Thomas, D. (2003) 'The effects of diversity on business performance: Report of the diversity research network', *Human Resource Management* 42 (1): 3 – 21.

Liff, S. (1996) 'Two routes to managing diversity: individual differences or social group characteristics?', *Employee Relations* 19 (1): 11-26.

Liff, S. (1999) 'Diversity and equal opportunities: room for a constructive compromise?', *Human Resources Management Journal* 9 (1): 65 – 75.

Liff, S. and Dickens, L. (2000) Ethics and equality: reconciling false dilemmas, in D. Winstanley and J. Woodall (eds.) *Ethical Issues in Contemporary Human Resource Management*. London: Macmillan.

Liff, S. and Wajcman, J. (1996) 'Sameness' and 'Difference' Revisited: Which way forward for Equal Opportunities Initiatives?', *Journal of Management Studies* 33(1): 79 – 94.

Locke, K. (2001) *Grounded Theory in Management Research*. Thousand Oaks: Sage.

Lorbiecki, A. and Jack, G. (2000) 'Critical Turns in the Evolution of Diversity Management', *British Journal of Management* 11 (Special Issue): S17 – S31.

Martin, P.Y. and Turner, B.A. (1986) 'Grounded Theory and Organizational Research', *Journal of Applied Behavioural Science* 22(2): 141–57.

Nicholson, D. (2005) 'Demography, discrimination and diversity: a new dawn for the British legal profession?', *International Journal of the Legal Profession* 12 (2): 201 – 228.

Noon, M. (2007) 'The fatal flaws of diversity and the business case for ethnic minorities', *Work Employment and Society* 21 (4): 773-784.

Rolfe, H. and Anderson, T. (2003) 'A firm choice: law firms' preferences in the recruitment of trainee solicitors', *International Journal of the Legal Profession* 10(3): 315 – 344.

Savage, M. (2000) *Class analysis and social transformation*. Buckingham: Open University Press.

Shiner, M. (2000) 'Young, Gifted and Blocked! Entry to the Solicitors' Profession', in P. Thomas (ed.) *Discriminating Lawyers*. London: Cavendish Publishing.

Shiner, M. (1997) *Entry into the Legal Profession: The Law Student Cohort Study, Year 4*. London: Law Society.

Shiner, M. (1999) *Entry into the Legal Profession: the Law Student Cohort Study, Year 5*. London, The Law Society.

Shiner, M. (2000) Young, Gifted and Blocked! Entry to the Solicitor's Profession, in P Thomas (ed.) *Discriminating Lawyers*. London, Cavendish Publishing.

Sommerlad, H. & Sanderson, P. (2002) 'Exploring the limits to the standardization of the expert knowledge of lawyers: quality and legal aid in the United Kingdom', *Syracuse Law Review* 54 (4): 987- 1016.

Sommerlad, H. (2007) 'Researching and theorizing the processes of professional identity formation', *Journal of Law & Society* 34 (2): 190 – 217.

The Sutton Trust (2005) *The Sutton Trust Briefing Note: The Educational Backgrounds of the UK's Top Solicitors, Barristers and Judges*. London: The Sutton Trust.

Vignaendra, S. (2001) *Social Class and Entry into the Solicitors' Profession*. London, The Law Society, Research Study 41.

Webb, J. (1997) The politics of equal opportunity. *Gender, Work and Organisation*, 4(3): 159 – 167.

Wilkinson, R. and Pickett, K. (2009) *The Spirit Level: Why more equal societies almost always do better*. London, Allen Lane.

Young, I. M. (1990) *Justice and the Politics of Difference*. Princeton, Princeton University Press.

Zanoni, P. and Janssens, M. (2004) 'Deconstructing Difference: The Rhetoric of Human Resource Managers' Diversity Discourses', *Organization Studies* 25 (1): 55 – 74.