Power, Prizes and Partners: explaining the diversity boom in City law firms.
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Power, Prizes and Partners:
Explaining the diversity boom in City law firms

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Thesis submitted for the PhD degree
Declaration

The work presented in this thesis is my own.

Joanne Braithwaite
Abstract

Power, Prizes and Partners: Explaining the diversity boom in City law firms.

The thesis is a qualitative study of the diversity boom in City law firms. The central research question asks why there should have been such a number of diversity policies implemented in recent years by these firms. The findings are based on interviews with diversity staff and lawyers in eleven of the fifteen largest U.K. law firms, with two global law firms and with the Minister responsible for diversity in the legal profession at the (then) Department of Constitutional Affairs. Interviews were also conducted with diversity staff in three investment banks in order to triangulate data about the role of clients and provide a comparative perspective.

The key finding of the research is that certain outside parties play a critical role in pressurizing City law firms to take action on diversity. The most important parties for these purposes are clients, the legal press and interest groups who each leverage power over law firms in highly effective ways, such as by inventing and awarding prizes. The Government and the Law Society play surprisingly low key roles, choosing to act as persuaders rather than to exert decisive exogenous pressures. However, notwithstanding the key role of outsiders in explaining these policies, power relations within firms are also very important, and partners in particular play a key role in decision making. Overall, the study finds that the diversity policies which get made are those which powerful outsiders demand and of which powerful insiders approve. The thesis concludes with a discussion of the implications of these findings.
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Part 1: Preliminary issues

Chapters:

1. Introduction
2. The context to the research (1): The diversity literature
3. The context to the research (2): The legal profession
4. Research goals and method
Chapter 1
Introduction

"...we can never be complacent about diversity and inclusivity... Inclusivity is a permanent item on my agenda"
David Gold, Senior Partner, Herbert Smith LLP

"fostering a more diverse organisation is now high on the agenda for most large businesses and law firms both in the UK and the US."
Pamela Henry, Partner, Latham & Watkins

This research aims to further our understanding of the diversity policies which have been recently implemented by City law firms in London. Its particular focus is on the drivers behind such policies as the setting up of diversity committees and staff affinity groups, and as such it explores both the exogenous pressures on City law firms in relation to diversity, and the internal policy-making processes within these firms.

This is a piece of interdisciplinary research and it draws on socio-legal scholarship and on the diversity literature. Therefore, before presenting the findings of the research, the academic context of the work is considered in some detail. Chapter 2 reviews the diversity literature, in particular exploring the debates about the conceptual shift from an equal opportunities to a diversity approach and considering the literature about diversity policies and practice. Chapter 3 reviews the literature about the legal profession in England and Wales, focusing the fragmented nature of the solicitors' profession in this jurisdiction, the effects of post-Big Bang changes to the organisation of City law firms, and the scholarship about the experiences of particular social groups in the profession. Chapter 4 locates this research in the context of the fields of work considers in chapters 2 and 3 and explains how it hopes to contribute. It also discusses briefly the methodology underpinning the research, while Appendix A considers the planning conduct of the interviews and the analysis of the resulting data in more detail.

1 http://www.herbertsmith.com/AboutUs/DiversityAndInclusion/
Having addressed these preliminary issues, the main findings of the research are presented in Parts 2 and 3 of the thesis. Part 2 considers the role of certain ‘outsiders’ in pressurizing City law firms about diversity. It addresses in turn the role of the Government (chapter 5 considers both Government initiatives and the relationship between legislation and diversity policy-making), the Law Society, clients, interest groups and the legal press. The structure of Part 2 affords consideration of the actions of each of these parties, the effectiveness of their exogenous pressures on City law firms and allows a comparative analysis of the relative importance of each outsider. This is undertaken in chapter 10, which offers some preliminary conclusions. Part 3 turns to the decision-making process within City law firms. In turn, the role of partners, associates, trainees, support staff and diversity managers are considered. Again, this structure allows an examination of each group’s particular role as regards diversity policies but also the construction of an analysis about City law firms’ organizational structures as a whole.

The concluding part of the research consists of two chapters. The first, chapter 14, links back to the aims of the research defined originally in chapter 4 and draws out how the findings of the research have contributed to the underlying scholarly debates. The second, chapter 15, takes some of the findings of the research further by considering their implications for policy debates which are ongoing, inter alia, at the Solicitors’ Regulatory Authority, the Ministry of Justice and among diversity campaigners.
Chapter 2
The context of this research (1): The diversity literature

Introduction
1. The “equal opportunities” and “diversity” approaches to equality management
   1.1 Focus on the individual
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Introduction:
Over the last three years City law firms have increasingly begun to express their commitment to ‘diversity’ and this study aims to further our understanding of the diversity policies which have been implemented in the 2000s. The purpose of the following two chapters is to set out the context of the research and define key terms before the findings and analysis are discussed in Parts 2 and 3.

Two points need to be made at the outset of chapters 2 and 3. First, it is recognised that the bodies of literature about diversity in organisations considered in this chapter and the work of scholars on the legal profession considered in the next overlap. However in the interests
of constructing the background to this study incrementally, it is preferable to address these areas of work separately though the overlaps are acknowledged where it is important to this study to do so. For example, work like McGlynn’s which cuts across the two areas is considered in both chapters. Secondly, it is also recognised that the discussion below engages only with those parts of a huge range of scholarly work about diversity and the legal profession which are the most relevant to this research. In mitigation, the parameters of the discussion are made clear throughout these chapters.

This chapter therefore considers certain debates within the ‘diversity literature’, namely that generated by academics (but also some practitioners) concerned with equality and diversity within organisations. It draws on some literature from North America, but concentrates on that relating to this jurisdiction. This reflects the fact that much of the research and writing about equality and diversity in the workforce is intended to be jurisdiction-specific. First, this chapter examines the emergence of the diversity approach as a conceptual framework with which equality goals may be pursued. It then examines the debates about diversity policies in practice.

1. The ‘equal opportunities’ and ‘diversity’ approaches to equality management.

Within diversity literature, reference is made to the “equal opportunity” and “diversity” approaches to what Kirton and Greene have called “equality management”. However, while there is consensus that a diversity approach has emerged more recently, there is otherwise significant variation in how each term is used. Indeed, Dickens concludes that “this is an area where the use of particular terms can be problematic and not necessarily illuminating as to practice”. With this caveat in mind, this section considers some of the features which may be said to characterize the “equal opportunities” and “diversity” approaches to equality management and reviews the literature about the relationship between the two.

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Observing that the equal opportunities approach is rooted in Enlightenment rationalism, Webb regards the concept as “derived from liberal political philosophy which asserts the rights of the individual to universally applicable standards of justice and citizenship”. The liberal egalitarian agenda gives rise to the understanding of equality as equality of opportunity, where the goal, described by Squires, is to treat people as equals rather than equally. As Squires puts it, effort and ambition rather than talent have become central to this approach; accordingly, “equality has become something which one must earn- and whether one does so will depend on one’s choice”. In turn, the linked understanding of inequality under the equal opportunities approach:

is considered in relation to individual acts rather than institutional arrangements.

This understanding of equality emphasizes “freedom and choice and repudiates special treatment”. It is important in practice in this jurisdiction because it dominated campaigns for anti-discrimination legislation in the 1970s, subsequently helping to shape the Equal Pay Act 1970, the Sex Discrimination Act 1975 and the Race Relations Act 1976 introduced by Labour governments of this era. As McColgan has put it

The debates about equality on the grounds of sex, sexual orientation and race have, to a very significant extent, been shaped by a notion of formal equality which, concerned as it is with treating like alike, has resulted in a failure fully to grapple with the accommodation of difference.

While the policies which are linked to the equal opportunities and diversity approaches are considered separately below, it is relevant to note at this point that in the latter part of the 1970s and early 1980s equal opportunities policies were implemented by many employers (though Webb notes that they were “notably in the public sector”) in response to legislation. However, equal opportunities policies were typically limited to a compliance focus aiming “to ensure that the employer stays within the law, but [doing] little actually to

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7 Squires, n 6 above, 8-9
8 ibid 3
10 Webb, n 5 above, 160 and see Squires, n 9 above
12 Webb, n 5 above, 160
promote equality or diversity" and they focused on the formalization of procedures on the basis that this would present "identical choice sets" to all. In turn, these sort of policies were criticized in the literature (as discussed in more detail below) as ineffective and narrow. Webb, for example, has argued that change is unlikely to flow from such policies because "formal procedures can be evaded by neglect or by design". Liff and Wajcman challenge both the conception of the problem under the equal opportunities approach ("seeing it as a managerial failure to treat like as like") and the solution (which suggests that "equality" can be achieved by treating women the same as men).16

In the late 1980s and 1990s, the prevailing direction of broader political and regulatory debates shifted. As Webb points out, "bureaucratic control and constraint" were falling from favour in the face of the "more vigorous application of market principles". Deregulation, flexibility and efficiency became the key political ideas of the moment.17 Webb correlates these developments with changes in the management literature which saw a "need to revolutionize thinking" about competitiveness and efficiency, in order that organizations in North America and Europe could compete in a more fiercely competitive, global market. In relation to what the ensuing changes meant for employees, Richard Sennet has addressed in his work the damaging effects that this "new capitalism" has had on workers' lives, especially in terms of their independence and sense of worth.19

As part of the debates about how to make organisations more competitive, and influenced by trends in North America,20 the prevailing approach of the debate about equality management also shifted. Notably, "sameness" came to be downplayed in light of a shift

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13 Kirton and Greene, n 3 above, 199. See also L. Dickens, "The Business Case for Women's Equality: Is the Carrot better than the Stick?" (1994) 16(8) Employee Relations 7
14 Squires, n 6 above, 10. See also N. Jewson and D. Mason, "The theory and practice of equality policies: liberal and radical approaches" (1986) 34(2) The Sociological Review 307, Webb n 5 above, 160 and Kirton and Greene, n 3 above, 116 and 214
15 Webb, n 5 above, 160
17 Webb, n 5 above, 161-2
18 ibid 162
20 For example R. R. Thomas, "From Affirmative Action to Affirming Diversity" (1990) 68(2) Harvard Business Review 107
towards valuing "difference", with the goal of helping every individual reach their full potential within the organisation. Thus, Squires talks of the emergence in the late 1990s onwards of a "wider equalities framework" in which the separate strands of equality have been "replaced by a more integrated concern with ‘diversity’". Liff and Wajcman in turn note that a key feature of this new approach was greater participation from managers; managers now should "be trying to actively manage and value diversity".

Several accounts tracing the development of this "diversity" approach to equality management in U.K. organisations take Kandola and Fullerton’s 1994 work as a starting point. This analysis sets out some of the distinctive features of the diversity approach, and certain of its key features will be explored below. Their influential analysis clearly differentiates the diversity approach and equal opportunities on the basis (inter alia) that equal opportunities is narrowly focused on avoiding discrimination and the status of particular groups and is an issue confined to personnel and human resources departments.

It is important to note that the components of the diversity approach remain controversial some thirteen years after Kandola and Fullerton’s work. The absence of a fixed definition of the diversity approach means that those scholars who do identify a more substantive conceptual framework behind the diversity approach often begin their work by setting out their understanding of its terms. However, across various definitions of the diversity approach within the literature it is possible to identify three main features which are commonly implicated. It is useful to consider these features below.

1.1 Focus on the individual

21 Liff and Wajcman, n 16 above
23 Liff and Wajcman, n 16 above, 80
25 Kandola and Fullerton, n 24 above, 167
26 Ashtiany and Barmes, n 24 above, 4 and Kirton and Greene, n3 above, 124
Individual focus... can be conceived as the overarching principle of all actions in a diversity orientated organisation.\textsuperscript{27}

A central feature of the diversity approach is its focus on the individual. Barmes and Ashtiany write that the focus of what they call the diversity perspective is to investigate "what arrangements are needed to maximize the capacity of each to realize their potential".\textsuperscript{28} Dickens also notes the claim that diversity is preoccupied with the individual and she observes how Torrington et al, amongst others, have used this feature to distinguish the diversity approach from that of equal opportunities, with its focus on the experience of particular social groups.\textsuperscript{29}

The individualistic focus of the diversity approach underpins the claim that it implicates everyone. Thus, Kandola and Fullerton regard all differences as relevant including "personality and workstyle"; far beyond those differences of sex, age, gender, race, etc. covered by anti-discrimination law.\textsuperscript{30} As Thomas puts it in an important early account of the diversity approach, the goal is "create an environment where no one is advantaged or disadvantaged, an environment where "we" is everyone".\textsuperscript{31} He argues, in the U.S. context, that this approach can help transcend what he calls the "self-defeating" problems of the group-based approach.\textsuperscript{32} Cooper, however, has argued that it is misleading to proceed on the basis that all groups may be celebrated equally, and in particular that this feature of diversity politics "comes unstuck when confronted with less attractive ways of living".\textsuperscript{33} She argues for a new type of equality politics which recognises hierarchical differences as inevitable, but which distinguishes between inequality and "acceptable or necessary forms of difference".\textsuperscript{34}

\textsuperscript{27} Kandola and Fullerton, n 24 above, 154
\textsuperscript{28} Barmes and Ashtiany, n 24 above, 4
\textsuperscript{30} Kandola and Fullerton, n 24 above, 8. For a discussion of the current framework of anti-discrimination law and an explanation of which groups are protected by it, see chapter 5 of this study.
\textsuperscript{31} Thomas, n 20 above, 109
\textsuperscript{32} ibid 110
\textsuperscript{33} D. Cooper, Challenging Diversity: Rethinking Equality and the Value of Difference (Cambridge: Cambridge University Press, 2004) 40
\textsuperscript{34} ibid 42
Kirton and Greene agree that regarding every type of difference as included within the diversity approach is impractical, and they are concerned that there is a risk that the realities of unfair discrimination will be neglected by adopting a strictly individualistic approach in practice. They suggest that race and gender are particularly salient\(^\text{35}\) while elsewhere, analyse inequalities in organizational culture from the perspective of five groups; women, homosexuals, minority ethnic workers, disabled workers and older workers.\(^\text{36}\) Thus, while they recognise that categorizing individuals in reference to their social grouping may be “constraining”, the argument here is that “social group membership needs to be recognised as a fundamental contributing factor to patterns of disadvantage”.\(^\text{37}\) Liff and Wajcman also express concern that moving away from a social group focus may have disadvantages. They argue that the “naming” of specific types of discrimination “has been an important spur to understanding the process of discrimination”. Thus, if particular social groups are not named as part of the approach, our understanding of how discrimination works may, they worry, be stalled.\(^\text{38}\) Squires acknowledges the concern amongst feminists that the diversity approach may displace equality initiatives which had focused on gender. However, she sees value in both opening up equality considerations to other “oppressed social groups” (though she acknowledges the difficulties with ensuring an integrated rather than additive approach)\(^\text{39}\) and in “considering the differences among individuals within these groups”.\(^\text{40}\)

In practice, Barmes and Ashtiany assert that even when the diversity approach is engaged, group identity still plays an important part in the framing of effective policies because of the strong connection between group identity and the obstacles for individuals in the workplace.\(^\text{41}\) It has also been pointed out that in practice, “the legislative context is bound to have an effect on which kinds of diversity are pursued”.\(^\text{42}\) Significantly, the EU has explicitly recognised six equality strands as “requiring measures to combat discrimination”

\(^{35}\) Kirton and Greene, n 3 above, 129  
^{36}\) ibid 88 et seq.  
^{37}\) ibid 129. For a discussion of the concern of some feminist scholars about the shift to diversity, see Squires, n 9 above, 514.  
^{38}\) Liff and Wajcman, n16 above, 89  
^{39}\) Squires, n 22 above, 167  
^{40}\) ibid 160  
^{41}\) Barmes and Ashtiany, n 24 above, 4  
(being sex, racial and ethnic origin, disability, age, religion and sexual orientation). Group identity therefore remains an influential concept despite the individualistic focus of the diversity approach, and this will be explored further during this study. Individualism, meanwhile, is a distinct feature of the diversity approach but one which is contested and which gives rise to tensions in terms of policy orientation in practice.

1.2 The business case

..harnessing these differences will create a productive environment in which everyone feels valued, where their talents are being fully utilized and in which organizational goals are met"^44

The diversity approach is also distinctive from that of equal opportunities in its aim of "harnessing" the benefits of difference. Accordingly, that individual differences are to be valued rather than downplayed has become one of the hallmarks of the diversity approach. Indeed, Webb has described the diversity approach as a "market-orientated notion of the accommodation of differences". ^45

The 'business case' for diversity is the collective term for the claimed advantages of the diversity approach in terms of an organisation's performance. As Liff has noted, "there is no single business case for equality"^46 and much will depend on context. Nonetheless, business case arguments commonly address the themes of recruitment, improving employee performance and minimizing litigation risk and saving other costs, and these claims are considered briefly below. ^47

43 Article 13, E.C. Treaty, discussed in Squires, n 22 above, 157
44 Kandola and Fullerton, n 24 above, 8
45 Webb, n 5 above, 163
Recruitment

The recruitment strand of the business case may be broken down into three claims. The first emphasises the benefits for organisations of recruiting a workforce which is more representative of a certain population, which may be the local, national or customer population.\(^48\) One claim here is that teams which are 'representative' in this way will offer improved customer service, and this is considered in further detail under the next heading. However, it should be noted that Webb is particularly wary of this aspect of the business case. She argues that some business have taken these sorts of steps as a way of defusing charges about the exploitation of local workers.\(^49\)

The second argument about recruitment stresses the benefits of seeking out meritorious employees with different backgrounds and different perspectives to those usually recruited. For example, the Government's consultation paper "Increasing diversity in the judiciary" states that one of its goals is that "our judicial system benefits from the talents of the widest possible range of individuals... to ensure that talent, wherever it is, is able to be appointed".\(^50\) This strategy is often presented as common sense; As Kandola and Fullerton put it, "it goes without saying that organisations which continue to rely on the traditional pool of white, able-bodied males will be ignoring valuable potential in the remaining population and will thus run the risk of losing out to competitors".\(^51\)

Finally, another recruitment-related argument suggests that demographic shifts will mean that an organisation inevitably recruits employees of different backgrounds,


\(^{49}\) Webb, n 5 above, 163

\(^{50}\) Department of Constitutional Affairs, *Increasing diversity in the judiciary* (Consultation Paper CP 25/04, 13 October 2004) 14

\(^{51}\) Kandola and Fullerton, n 24 above, 37
and that it must therefore adapt to benefit from these new circumstances. Thomas and, referencing his work, Kandola and Fullerton, base their work on diversity on demographic shifts in the labour market. Thomas cites the fact that "white males will make up only 15% of the [U.S.] workforce of the increase in the workforce in the next ten years" and he argues that organisations will have to change to maintain their performance levels in the light of the increased diversity of their incoming staff. As he analogises, if the "fuel" coming into an organisation changes, "unless we rebuild the engine" then its performance will fall off. He argues that with the right approach the "new heterogeneous workforce" can match that of the "old homogenous workforce" or even deliver "a bonus" in terms of improved results.

**Improving performance**

The central claim here is that valuing the difference between individuals in teams can lead to their improved performance. This is explained in a wide variety of ways, including on the basis that the quality of work will improve in diverse teams, that there will be enhanced innovation, faster staff learning and better customer service, in part (as noted above) on the basis that teams that ‘resemble’ the customer base are more effective. For example, Rutherford and Ollerearnshaw in a survey of eighty four public and private sector organisations, found examples in both sectors where organisations had “leveraged the increasing diversity of their employees in order to better understand these diverse markets”. Moreover, some organisations in their sample had specifically identified a “need to align employee profiles more closely with [customer] diversity” in order to improve service. Applying this argument to the legal context, Sheila Wellington of Catalyst (the North American

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52 ibid 31
53 Thomas, n 20 above, 107
54 ibid 109
55 ibid 112
56 Rutherford and Ollerearnshaw, n 48 above, 12
58 Rutherford and Ollerearnshaw, n 48 above, 5
59 ibid 11-12, citing their findings from research of Ford, Barclays’ Bank and Middlesex University.
not-for-profit research and advisory group which works to advance women in the workplace) has drawn attention to the implications for law firms:

Women are not only a greater percentage of law students, they are also an increasing percentage of the client base for law firms.60

Advocacy groups have developed these arguments by asserting that the link between the make-up of staff and improved organizational performance may be empirically proven. For example, in its 2004 “Bottom Line” report Catalyst drew on financial data for 353 Fortune 500 companies for the period 1996 to 2000. On the basis of return on equity and total returns to shareholders measurements, it found that the group of companies with the highest representation of women on their “top management teams” outperformed peers with the lowest women’s representation.61

However, this is perhaps the most controversial aspect of the business case and claims about the performance of diverse teams have been unpacked in detail empirically and conceptually in the literature. Kandola and Fullerton, for example, regard these as “debateable benefits” of the diversity approach, as opposed to what they call the “proven benefits” connected to recruitment and staff turnover.62

Further work on this aspect of the business case is considered later in this section.

Minimizing litigation risk and other costs

Much is made in the literature of the cost of replacing workers who leave an organisation and of the commensurate savings which the diversity approach offers by increasing retention rates. Catalyst, Opportunity Now and Deloitte and Touche all estimate that the cost of replacing an employee is 150% of that employee’s salary because of headhunters’ fees to find replacement staff, and the cost of management time spent on the recruitment and training of new staff.63 Indeed,

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62 Kandola and Fullerton, n 24 above, 51
63 Catalyst, n 61 above, 24, Opportunity Now, n48 above, 9 and E. Demby, “Does your family program make cents?” (January 2004) HR Magazine 78. According to the latter, Deloitte & Touche estimates that it saved at least $41.5 million in turnover costs in 2003 by introducing flexible working arrangements.
Kandola and Fullerton conclude, using classic business case language, that “failure to retain and develop valuable talent means a failure to secure any reasonable return on investment”. The EOC also cite “reduced staff turnover savings in recruitment costs and training” as an advantage for employers putting equality opportunities policies into practice (though citing the business case while retaining the language of equal opportunities is an example of the blurring between the different terminology in practice). Significantly for this study, Lee’s work suggests that City law firms may have a particular problem with staff turnover; his research found that some City law firms has turnover rates in excess of 25% per annum for established, qualified staff.

It is also suggested that the diversity approach may help organisations comply with their obligations under anti-discrimination law or, failing that, provide useful evidence to defend part of a claim or lower damages. As McGlynn points out, though the median award for sex discrimination claims is relatively low “the publicity surrounding a number of high profile cases has portrayed a different picture”. There is also an argument that avoiding these claims is more important for P.R. purposes than because of the financial implications. Rutherford and Ollerearnshaw found that the bad publicity attached to employment discrimination claims as well as the costs of litigation “have undoubtedly played a part in making employers take diversity and equality more seriously”. They suggest that “City” businesses are particularly likely to be mindful of these risks, citing a number of recent high-profile (and high-cost) discrimination cases against banks.

65 Equal Opportunities Commission, n 57 above.
67 Dickens, n4 above, 192 et seq.
68 McGlynn, n 47 above, 163
69 Rutherford and Ollerearnshaw, n 48 above, 22
Business case arguments of the sort discussed above have been embraced widely by a wide range of parties on both sides of the Atlantic on the basis, as one writer put it, that "the most powerful internal impetus [for businesses] is one that comes not from self-defence but desire". For example, Stonewall, the U.K. gay, lesbian and bisexual lobbying group (considered in chapter 8) sets out business case arguments in detail on its website, addressing "reputation", "recruitment", "productivity" and "risk aversion". Under the last heading, the document makes the point that "tribunals can cost £35,000 upwards" and "Approximately 20% of gay employees facing discrimination at work will consider suicide". Similarly, as noted above, Catalyst reinforces its advocacy by publishing reports firmly rooting its advocacy in the business case. It has stated that it takes this approach because it:

repeatedly finds that the most successful efforts to advance women begin with clarity about the business case for so doing.

The U.K. Government’s 2007 consultation paper discussing the future of equality law also included a chapter on the private sector which opens by setting out the "clear business case for diversity". Here the Government offers the familiar arguments about the benefits of a diverse workforce, including understanding a wider customer base, attracting all talents and improved employee relations.

Why has the business case been so widely embraced? Liff makes the important point that these arguments are:

arguably a more persuasive way of encouraging organisations to take action in this area than is available through moral censure or a legal system which relies on individual claimants pursuing cases and for the most part low levels of fines.

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72 Catalyst, "The Bottom Line: Corporate Profit and Women’s Representation on Boards" (Catalyst, 2007) at http://www.catalyst.org/knowledge/bottomline2.shtml finds "a link- a connection, not causation" between high numbers of women in companies’ top management teams and financial performance.
73 Catalyst, Women in Law: Making the Case (New York: Catalyst, 2001) 58
75 Liff, n 46 above, 426
Other scholars have also explained the attraction of the business case in terms of its the persuasive power.\textsuperscript{76} David Wilkins, a U.S. scholar of the legal profession, has charted the increasing use of the business case arguments by diversity campaigners trying to improve the position of black lawyers in U.S. law firms. He argues that the shift from “trying to convince firm leaders that integration is ‘the right thing to do’” to “market-based diversity arguments” came about because change has been “frustratingly slow”\textsuperscript{77} in the fifty years from the landmark case of \textit{Brown v. Board of Education}.\textsuperscript{78}

In respect of the legal profession in England Wales, the business case has also become highly prominent part of the debate. For example, various business case arguments are set out at length in the Law Society’s (undated) publication called “Delivering Diversity and Equality: A handbook for solicitors”, which is examined in more detail in chapter 6 below. McGlynn has described the different strands of the business case as it has emerged in this context,\textsuperscript{79} and she has charted the increased use of such arguments by parties including the Law Society and the affiliated Association of Women Solicitors.

However, scholars of the legal profession have drawn attention to disadvantages of business case advocacy in this context. Wilkins warns that the central claims have not been thought through properly:

\begin{quote}
  Whether linking progress on diversity to the demands of the marketplace will produce greater opportunities for black lawyers in corporate law firms, however, depends upon closer examination of the connection between “diversity” and “business” than most proponents of the business case for diversity in the legal profession have been willing to undertake or even acknowledge\textsuperscript{80}
\end{quote}

In respect of this jurisdiction, McGlynn goes further, calling the business case is “a wholly misconceived campaign”,\textsuperscript{81} identifying two specific concerns. First, she draws attention to the empirical failings of the business case arguments, meaning the difficulty of showing

\textsuperscript{76} See Dickens, n 13 above, 8 et seq.  
\textsuperscript{77} D. Wilkins, “From ‘Separate is Inherently Unequal’ to ‘Diversity is Good for Business’: The rise of market-based diversity arguments and the fate of the black corporate bar” (2004) 117(5) \textit{Harvard Law Review} 1548, 1554  
\textsuperscript{78} 347 U.S. 483 (1954)  
\textsuperscript{79} McGlynn, n 47 above, 163  
\textsuperscript{80} Wilkins, n 77 above, 1558  
\textsuperscript{81} McGlynn, n 47 above, 160
that diversity is, in fact, profitable. Indeed, since this article, Kochan et al have undertaken a case study of four Fortune 500 companies over five years in an attempt to study if the business case could be supported by hard data. They found that neither race nor gender diversity had a significant direct positive or negative effect on its own. The study concluded on the basis of the research that there is “virtually no evidence to support the simple assertion that diversity is inevitably good or bad for business”\textsuperscript{82}. In terms of the legal profession, there have been no empirical studies to the author’s knowledge which have attempted to gather data to support the business case. Indeed, Cheryl Thomas has written as part of a 2005 report that “the business case for diversity has yet to be examined in any systematic way or fully embraced by the legal profession”\textsuperscript{83}. Meanwhile (in more general contexts) others scholars have contended that even if there were persuasive data to back up the business case, it may not have any effect on organisations; Webb, for example, calls into question the assumption that the management of organisations proceeds on the basis of “functional rationality”\textsuperscript{84} which would reflect any empirical data about the business case in its decision-making. She suggests the persistence of entrenched bias in organisations (examined in more detail below) is reason enough to be skeptical about the business case’s efficacy.

McGlynn’s second reason for concern about the business case is that it “fails to take into account and confront the complexity of the gendered nature of the reasons behind women’s marginalized status”\textsuperscript{85}. In other words, the business case arguments fail to challenge entrenched norms in organisation, for example (in the context of the solicitors’ profession) the gendered notion of commitment within the solicitors’ profession described by Sommerlad and Sanderson and considered further in chapter 3 below\textsuperscript{86}. There are therefore


\textsuperscript{83} C. Thomas, \textit{Judicial diversity in the UK and other jurisdictions: A review of research, policies and practice} (Her Majesty’s Commissioners for Judicial Appointments, 2005) 32, at \url{www.cja.gov.uk/reports.htm}

\textsuperscript{84} Webb, n 5 above, 167

\textsuperscript{85} McGlynn, n 47 above, 169

"inherent limitations in pursuing an economically-based strategy" because business case arguments for diversity are not underpinned by justice or fairness but rather are driven by the organisation's needs. Indeed, Dickens argues that business case arguments may even "thwart" the adoption of equality measures. She has argued that organisations may in fact benefit from discriminatory practices, or the absence of equality policies, for example if they undervalue women's labour or exploit them as "a cheap, numerically flexible (easily disposed of) workforce". She also points out that there may also be non-economic perceived organisational gains from continued discrimination, such as recruitment practices which consolidate managerial control. In some cases, therefore equality policies may in fact "appear to be a liability" rather than a means to increasing profit. McGlynn points out a further hazard of the business case, in the threat that it may pose to existing legislative protection for workers. She argues that that emphasizing the economics of (in the case of her work) sex equality “may eventually lead to a situation in which the existing protection of women against discrimination is reduced” on the basis that is it unnecessary in the light of the business case.

In conclusion, there seems to be an ideological gulf between, as Webley and Duff put it, "those of us who believe that equality of opportunity is a social and moral right" and those campaigners for whom diversity is “a means to short term profit maximization". However, this is a matter on which positions can be more nuanced; for example, some scholars such as Wilkins recognise the existence of this gulf, but admit the tactical value of the business case. Dickens has gone further and sought to identify middle ground; she has argued that the business case could be part of a state-led “multi-pronged approach to change”, where government could “facilitate the positive reception of business-case rationales or lessened their perceived attractiveness.”

88 Dickens, n 4 above, 191
89 Dickens, n13 above, 13
90 ibid
91 McGlynn, n47 above, 169
93 Wilkins, n 77 above, 1610
94 Dickens, n 13 above, 15
However, for those who do not agree that this ideological gulf can be breached, the problem of how to persuade organisations to take meaningful action remains paramount. Each of Wilkins, McGlynn and Webley and Duff recognise that the crux of the problem is how, on the basis of justice and fairness, to persuade organisations (law firms, in the case of these scholars work) to disrupt a highly profitable way of existence and rethink long-standing assumptions about their work. Wilkins' account of fifty years of campaigners' post-

**1.3 Transformative potential**

*Merely tolerating the presence of difference within a given group does little to ensure its diverse credentials. Rather, diversity requires the usual to be transformed by the remarkable, and the extraordinary to become the norm. It is as much about looking at that which difference itself is different to-the everyday or the mundane-as it is about looking for difference itself.*

A third feature of the diversity approach is its potential to transform organisations by challenging the status quo. As Squires has put it, the diversity approach is “transformative” rather than “integrative.” Accordingly, the diversity approach is not about helping employees from certain groups cope better within the existing structures but about rethinking those structures themselves. This is an attractive and optimistic-sounding goal, and one which has proven compelling in the literature.

Rackley’s work illustrates how intuitive conceptions of the judge and judging may be challenged by the transformative potential of women judges. She offers the example of Navanethem Pillay who sat on the International Criminal Tribunal for Rwanda panel which found Jean Paul Akayesu guilty of crimes against humanity and acts of genocide. Rackley highlights Pillay’s actions inside the courtroom, especially her connection with the victims' testimony, as well as her public speaking tour and general comments about sexual violence. She traces the influence of Pillay’s approach through to the Court’s finding that “rape and

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95 E. Rackley, “Judicial diversity, the woman judge and fairy tale endings” (March 2007) 27(1) Legal Studies
94
96 Squires, n6 above, 14
sexual violence... constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy in whole or in part, a particular group targeted as such". Rackley argues that an outsider judge can therefore "act as a catalyst for disruption" by forcing us to reassess our understanding of the role of judges. Elsewhere, Rackley has used myth and fairy tales to develop further such a critique of "the powerfully attractive, yet ultimately suffocating image of the Herculean judge of our legal imagination".

In practice, however, two issues seem to constrain the transformative potential of the diversity approach. First, the measurable progress of certain groups rather than wholesale transformation still exerts an overwhelming pull on a great deal of the diversity literature, diversity politics and diversity policies. This is understandable; as seen above, group membership remains critical both to understanding disadvantage and complying with the law so it remains a persistent feature of the debate despite (as seen above) the individualistic thrust of the diversity approach and the associated project of wholesale transformation. Nor is this group-based approach, of course, necessarily inconsistent with the transformative goals of the diversity approach; Rackley's analysis, for example, is constructed via the perspectives of women judges holding senior positions such as Pillay on the ICTR and Brenda Hale in the House of Lords. However, the danger is that measuring the progress of particular groups may come to define an organisation's diversity efforts. In the judicial context, Rackley criticizes those (including the Department of Constitutional Affairs) who are preoccupied with which she calls "an evening up of the numbers on the bench to ensure a kind of numerical aestheticism". She argues that this policy orientation leads to little more than "securing the resigned acceptance of the status quo". Defining diversity solely by reference to "evening up the numbers" therefore risks leaving the underlying status quo intact.

97 Prosecutor v Akayesu Case No. ICTR-96-4-T (2 September 1998) paragraph 37.1, cited in Rackley, n 95 above, 89
98 Rackley, n 95 above, 91
99 E. Rackley, "Representations of the (Woman) Judge: Hercules, the Little Mermaid, and the vain and naked Emperor" (2002) 22(4) Legal Studies 604
100 See, for example, E. Rackley, "Difference in the House of Lords" (2006)15(2) Social & Legal Studies 163
101 Rackley, n 95 above, 94
102 Ibid
A second obstacle is the negative implication which a transformative strategy may carry about an organisation's performance thereto. In the context of the judiciary, for example, it has been pointed out that is politically and constitutionally undesirable for the Government to argue that the past and current judiciary is in need of transformation; Malleson’s work unpacks the resulting dilemma between the concept of merit and the promotion of diversity in the judicial context. In fact, it seems that the recent initiatives which have been launched with the aim of increasing diversity in the judiciary (see chapter 5 below) have had little impact on the underlying structures of careers on the bench. Indeed, Rackley calls the Department of Constitutional Affairs’ initiatives as regards the judiciary “diversity light” because they leave the existing understanding of judges and judging “unscathed”.

In the private sector, the issue of threatening the status quo (especially if highly profitable) may also be problematic. Webb, for example, has argued that the model of diversity which results in practice in the private sector is about “corporate image building” more than transformation and that certain diversity policies in fact reaffirm rather than challenge the status quo. This is confirmed by her empirical work in a technology company, which is considered in more detail below.

Thus, while this may be a compelling element of the diversity approach at a conceptual level, scholars of the public and private sectors appear to have reached similar conclusions about a failure of the transformative element of the diversity approach in practice.

1.4 Working definition of diversity

While acknowledging the complexities of the debates about each aspect of the diversity approach noted above, and the overall inconsistency in the use of terminology across this literature, it is nonetheless useful here to set out a basic, working definition of the diversity approach which will be referenced in the later discussion. Drawing together the features

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104 Rackley, n 95 above, 93
105 Webb, n 5 above, 166
discussed above, the diversity approach is here taken to mean a theory of diversity management concerned with valuing the differences between all individuals in the workforce, not limited to those differences covered by law. The goal is that the differences between people will be harnessed to transform the organisation concerned, most importantly to improve business performance in some way.

This is the working definition of diversity for the purposes of this study. However, as mentioned above, diversity policies may still be framed in organisations in the public and private sectors in terms of different social groups, or of separate “equality strands” though this may give rise to tension in respect of the individualistic orientation of the diversity approach. It is therefore useful to set out an alternative framework to the definition above in order more effectively to critique the group-orientated policies present in some organisations (i.e. to permit a more profound analysis than would be afforded by simply noting that group-oriented policies diverge from the individualism of the diversity approach). In this case, the equality strands identified by the E.U. will be used as a benchmark with which to consider group-orientated policies. As noted above, these six equality strands are: sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. It is also noted that these are the same six “aspects of equality” the new Commission for Equality and Human Rights states that it has responsibility for.

2. Diversity policy and practice in organisations.

2.1 The background: Equal opportunities policies

Kirton and Greene point out that equality policies have a long history in this jurisdiction, dating back to the enactment of the Sex Discrimination Act 1975 and Race Relations Act 1976. They observe that formal approaches to equality management have been standard

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106 EC Treaty, Article 13(1), as amended by the Treaty of Nice, the text of which reads:

"Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."


108 Kirton and Greene, n 3 above, 115 et seq
practice for large organisations (in some form) since the 1980s. They therefore define "equal opportunities policies" as "the traditional approach to equality policy implementation taken by most employers from the late 1970s onwards". In turn, they use the term "diversity policy" to refer to "the more emergent policy approach" which is more closely associated with the business case. These definitions are a useful framework for this discussion; the former definition is adopted in this study and in the case of the latter, this definition is taken as a starting point and it is developed below.

As noted above, equal opportunity policies tend to reflect a liberal theory of equality and are conventionally focussed on compliance and formalized, procedural fairness, particularly in terms of recruitment, appraisal and promotion. In practice, however, it has been recognized that, even before the widespread emergence of the diversity approach, some employers went further than this in their equality policies. Liff and Wajcman, for example, argue that "organisations which are proactive on equality issues have stretched and reinterpreted the equal treatment model in a number of ways". Nonetheless, despite these exceptions, organisations' equal opportunities policies have generally been "widely criticised" for being "bureaucratic [and] formalized" and, crucially, having "had limited impact on outcomes". In particular, Kirton and Greene argue that while classic equal opportunities policies included producing an equal opportunities statement or sometimes a fuller policy with more detailed aims, these formal policies were a poor indicator of "actual organizational practices, beliefs and values towards equality outcomes". Research has shown that of workplaces with formal equal opportunities policies, 27% had not implemented any of six related practices such as keeping records of employee ethnicity or of promotions by gender or ethnicity. Webb agrees that often the "paper commitment" of organisations to equal opportunities did not translate into effective implementation. She cites a number of reasons here, including the belief of those responsible for policies that

109 ibid 199
110 ibid
111 Dickens, n 13 above, 7
112 Liff and Wajcman, n 16 above, 82
113 Kirton and Greene, n 3 above, 199
114 ibid
their "organisation was already operating meritocratically" or policies goals being met spuriously; for example, men being sacked in an economic downturn leading to an apparent, but illusory, improvement in the position of women.116

2.2 The shift to diversity policies

It is commonly accepted in the literature that, in broad terms, there has been some sort of shift across U.K. organisations towards diversity and away from equal opportunities policies (even at just the level of the dominant language) and this shift is considered in this section.

As a starting point, it is widely acknowledged that there has been a change in the terms with which organisations have engaged in equality management, especially the Government and larger organisations in the public and in the private sectors. In particular, across the literature it is recognised that organisations are increasingly expressing their commitment to diversity (including the business case for diversity) and difference rather than equal opportunities and sameness.117 For example, in 2002 work, Rutherford and Ollerearnshaw conclude that "the past five years has seen private and public sector organisations refocusing their energies on diversity and making it a business priority",118 and they found that 33% of their 84 public and private sector respondents reported that equality and diversity had become a business issue in the last 3-5 years and 15% in the last two.

It has been suggested that this shift has been more that superficial, and that "diversity thinking" has taken a "deep hold.. on Governments, employers and the wider world".119 Linking back to the features of the diversity approach discussed earlier in the chapter, Rutherford and Ollerearnshaw found that this "refocusing" on diversity in both the public and private sectors has involved a "move away from a narrow interpretation of equal opportunities", a more proactive approach "designed to reach all sections of the

117 Webb n 5 above, Dickens, n4 above, 179 et seq, Liff and Wajcman, n 16 above, Kirton and Greene, n 3 above
118 Rutherford and Ollerearnshaw, n 48 above, 19
119 Nabarro, n 42 above, 3
community” and overcome existing barriers to participation, and the “popularity” of linking of policies with “corporate strategy and backed up by the business case”. It has been pointed out, by way of example, that since 1997 the U.K. Government has been active in pursuing a diversity approach both as an employer and as regards the judiciary. As an employer, the Government has been called “active in developing a diversity strategy” on the basis, inter alia, of the Cabinet Office’s Delivering a Diverse Civil Service, A 10-Point Plan which embraces the individualism and transformative possibilities of the diversity approach in bringing about “fundamental cultural change”. The Government has also been active for a number of years in pursuing a more diverse judiciary as will be considered below, in chapter 5.

In terms of the private sector, quoting the organizational diversity statements of BT, JPMorgan, British Airways, HSBC and Shell, Kirton and Greene are clear that “many organisations have moved away from the traditional language of EO [equal opportunities] to describe their equality policy towards the language of diversity” and they note a parallel shift towards deploying the language of the business case which is also a key finding of the Rutherford and Ollerearnshaw research. Indeed, the latter found that 80% of their respondents believed that there is a link between “equality and diversity performance and overall business performance”.

However, it has also been pointed out that there has not been a ‘clean break’ between equal opportunities policies and individually-orientated, difference-valuing, business-driven diversity policies. Kirton and Greene, for example, note that businesses still make reference to the social justice arguments as part of their diversity strategies, though these type of arguments are traditionally more associated with equal opportunities. They suggest that this may be an indication that U.K. employers have understood diversity policies as a

120 Rutherford and Ollerearnshaw, n 48 above, 18
121 Nabarro, n 42 above, 3, citing The Cabinet Office, Delivering a diverse civil service, A 10 point plan (London: The Cabinet Office, 2005)
122 Kirton and Greene, n 3 above, 199-200 and 205
123 ibid
124 Rutherford and Ollerearnshaw, n 48 above, 9
supplement to (rather than replacement for) traditional equal opportunities policies. It is suggested that much of what now goes on in organisations under the label of diversity “would once have fallen under the heading of ‘equal opportunities’ or simply ‘equality policy’ and that organisations often develop policies containing a mix of the different elements which are neatly distinguished at a theoretical level by academics. On the overlap between equal opportunities and diversity policies Dickens goes further, seeing no clear distinction between the types of policies in organisations in this respect, though she does acknowledge that the business case has become “the dominant mobilizing vocabulary” in the 1980s and 1990s. Accordingly, she uses the term “equal opportunities” policies as a broad term to cover a wide range of differently orientated policies found in practice including those linked to the business case. Liff and Wajcman seem to agree about the lack of a clean break between equal opportunity and diversity policies. They review a 1988 description of measures in a typical “valuing diversity programme” finding that “most of these would not be out of place in any broadly based equality policy”, though they acknowledge that at the time of their 1996 article, “managing diversity’ strategies are still in their infancy”. They also do recognise a move “from the conventional approach to equal opportunities towards initiatives which are more individualistic and line manager-based” though they remain unconvinced that this amounts to a model with which to manage access to “scarce resources (such as a job)”. Any consideration of apparent changes at a policy level linked to the diversity approach needs, therefore, to proceed with caution. Chapters 3 and 4 below begins to considers the extent to which it could be said that City law firms have embraced this shift to the diversity approach and this is a theme running throughout this research.

125 Kirton and Greene, n 3 above, 205
126 ibid 2
127 ibid 199
128 Dickens, n 4 above, 187
130 Liff and Wajcman, n 16 above, 84
131 ibid
132 ibid 85
A further implication of this debate is that care is needed about the use of the term "diversity policy". This work aims to make it clear if the term is used (as Kirton and Greene put it) to refer to "the more emergent policy approach", i.e. the policies which follow from the diversity approach discussed above or to refer to the actual policies to which organisations have applied the label diversity, but which may in fact combine elements of the diversity and equal opportunities approaches. While the nature of the research will mean that it is more concerned with the latter, i.e. the actual policies in place in City law firms, every effort in made in this work to distinguish the two, if necessary in the context.

If it is accepted that there has been a shift in equality policies in many organisations reflecting the influence of diversity thinking, it is significant to consider why such a shift has come about. As suggested already in this chapter, it has been argued that the broader political, economic and management debates are a vital part of this explanation. Webb, as seen above, explains the shift in the context of broader political and economic discourse in the late 1980s and early 1990s which promoted the new models of efficiency and competitiveness for organisations. More specifically, she points out that ideas about market-orientated diversity policies have "filtered to Europe from the United States, often via the influence of US-owned multi-national corporations". It has also been suggested that the failure of traditional equal opportunities policies to make a substantive impact on organisations helps to explain this shift; Kirton and Greene suggest that the recent trend for organisations to switch to explicitly diversity-orientated policies is a response to the ineffectiveness of traditional equal opportunities policies. In 2005 work, and elsewhere, Dickens considers that the drivers for organisations to pursue equality policies fall into two categories:

*The positive pursuit of organizational benefits (the business case for equality and diversity) and penalty avoidance through legal compliance.*

Rutherford and Ollerearnshaw acknowledge the influence of the wider political debates, but also point to the specific impact of the 1997 change of Government in the U.K., and

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133 Webb, n 5 above, 163
134 Kirton and Greene, n 3 above, 199
135 Dickens, n 13 above
136 Dickens, n 4 above, 187
ensuing initiatives such as the Modernising Government agenda, launched in 1999.137 However, they also cite the impact on the public and private sectors of the effects of “community perceptions and pressure”,138 litigation risk and internal factors such as the arrival of a new chief executive and corporate mergers triggering programmes to roll out “wider cultural change”.139 As discussed in chapter 4, the triggers for the diversity policies in City law firms are the primary focus of this research, which will explore in particular the impact of exogenous pressures from a broad range of parties, and, it is hoped, contribute to this aspect of the literature.

To conclude the discussion of this shift to diversity policies, it is important to note that the literature also highlights the variations in how different organisations may have proceeded in practice. Healy has produced, and Kirton and Greene updated, a typology of four types of organisation, categorising them (inter alia) on the extent to which they produce a written equal opportunities or diversity policy, embrace the business case and/or social justice case, comply with the law, put measures into practice and monitor outcomes.140 On a sliding scale, from an organizational approach that perpetuates inequality to one that promotes equality and values diversity, these models have been called the negative organisation, the minimalist/partial organisation, the compliant organisation and the comprehensive proactive organisation141, all of which serve to emphasize how different organisations even within the same sector (such as City law firms) may take very different approaches to equality management.

2.3 The effectiveness of diversity policies
There have been many attempts to assess the overall effectiveness of actual diversity policies. Some scholars are straightforwardly dismissive; Roth, for example, has considered the position in the Wall Street banks; she describes policies in these organisations as “window dressing” and concludes that successful women still “emulate male work

137 Rutherford and Ollerearnshaw, n 48 above, 20
138 ibid 21
139 ibid 18-24
141 Healy, n 140 above, Kirton and Greene, n 3 above, 207, 214
Taking an empirical approach, Webb uses a case study of an international computer systems manufacturer as the basis of a more general critique of a corporate shift to diversity policies. This work contrasts the company’s express commitment to diversity with the failure of its policies to challenge the entrenched gender patterns in this organisation. On the basis of her research in the company, Webb identified five underlying problems which explain this failure. This is a usefully structured analysis which merits further consideration.

The first two problems which Webb identifies link back to the diversity approach as a model of equality management. First, Webb refers to the negative effects of linking diversity to profitability; in this case study, for example, she found that profit was used to justify the company’s lack of provision of childcare. This seems to support the concerns of academics about the prominence of business case within the diversity approach, which were considered earlier in this chapter. Secondly, Webb finds that there are also negative consequences of the diversity approach’s emphasis on individualism. On this basis, women’s complaints were seen as requests for special treatment and as a sign that they were unfit to compete on merit. Moreover, as the emphasis is on competitive individualism, Webb found that women were discouraged from making representations collectively about problems at work.

The further reasons which Webb gives for the failure of this company’s diversity policies arise from the difficulty of effectively implementing the diversity approach. First, Webb found that the company being organized as a “teamwork system” meant that “fitting in” (i.e. sameness) was still prioritized over difference, even though the latter was central to the company’s commitment to diversity. Thus, women seeking jobs traditionally filled by men, such as graduate engineer roles, were still required to show that they were “one of the boys”. As has also been shown elsewhere, even the most determined and career-orientated

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143 Webb, n 5 above, 164
144 ibid 165-166
woman is thereby put at a disadvantage. In practice, therefore, difference was still seen as rendering a women candidate as "a riskier bet" than a man.  

Secondly (and relating the preceding point) Webb finds a failure on the part of the policies in this company to disrupt the traditional division between public and private spheres of life. The model for the ideal employee therefore remained the unencumbered male with no domestic responsibilities. One symptom of this enduring norm was that requests for parental leave and flexible working arrangements were regarded as deviations and, tellingly, only available at the discretion of an individual's line manager. Perhaps counter-intuitively, but echoing the findings of Webley and Duff on the solicitors' profession, Webb concludes that any meaningful challenge to this aspect of the status quo would have to come from men, on the basis if it were pursued by women workers it would confirm the perception that they were unfit to compete on 'merit'.  

The final strand of Webb's explanation is the continued discretion afforded to line managers (e.g. to approve flexible working) and nature of this discretion, including the lack of bureaucratic controls which make it difficult to hold decision-makers to account. The (predominantly male) line managers' assumptions about the ideal employee and their belief that they were already recruiting on merit were therefore permitted to continue unchallenged. Therefore, despite a company policy which talked of the value of using "our diversity to realize our full potential", women's progress was still being blocked as before.

Cutting across several points which Webb makes, it is clear that line managers are critically important as regards the implementation of diversity policies. This has been explained elsewhere in terms of the business case-orientation of the diversity approach which, in theory suggests that "managing diversity must pervade the entire organisation if it is to be

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145 For a discussion of similar findings being reached by empirical researchers of the legal profession, see chapter 3 below.
146 Webley and Duff, n 92 above
147 CommCo company policy as set out by Webb, n 5 above, 164
effective" and in practice, is likely to shift responsibility for diversity objectives away from human resource practitioners to line managers. Diversity policies may therefore boost line managers' influence over recruitment, training and promotion processes, as highlighted in Webb's case study. Liff and Wajcman agree; as referenced above, they point out that the diversity approach requires managers to try "to actively manage and value diversity".

However, traditionally, research has found that line managers generally act in ways that reinforce inequalities and have been able to ignore or undermine equality policies because they have more power within organisations than human resources practitioners. For example, a personal case study by an equality and diversity specialist reports his having "experienced many fears from middle managers about equality and diversity and I have found them the hardest to convince of the benefits [of diversity]". Todd attributes these difficulties to middle managers being too busy and their regarding diversity and equality as low priority and "too difficult to tackle". Scholars like Meyerson and Scully, and Parker have studied how the imbalance between line manager and human resource practitioner may play out in practice, and have each suggested tactics which the latter may use to improve their bargaining power in organisations.

Therefore, as Liff stresses, managerial support for policies within organisations is critical, "not just a desirable extra" but, at the same time, difficult to secure. In recognition of

148 Kandola and Fullerton, n 24 above, 144
149 Kirton and Greene, n 3 above, 218. Citing case studies from two multi-national companies in support, Kandola and Fullerton argue that the emphasis in the diversity approach should be on management and how it manages, rather than on diversity. Kandola and Fullerton, n 24 above, 150
150 Liff and Wajcman, n 16 above, 80
151 Kirton and Greene, n 3 above, 218 citing D. Collinson et al, Managing to Discriminate (Routledge, 1990)
152 J. Woodall et al, "Organizational Restructuring and the achievement of an equal opportunity culture" (1997) 4(1) Gender, Work and Organisation 2
156 Parker, C., "How to win hearts and mind: Corporate compliance policies for sexual harassment" (1999) 21(1) Law & Policy 21
157 Liff, n 46 above, 441
this, some practical ideas about how to secure such support within organisations have emerged. These have included the suggestions that equality and diversity aims may be integrated into line managers’ appraisals and even affect managers’ bonuses. Indeed, Rutherford and Ollerearnshaw found that 27% of their 84 respondents (from the public and private sectors) agreed that “diversity performance would affect a manager’s pay”. Nonetheless, this issue of the discretion, assumptions and accountability of those in authority within organisations remains a significant problem in the way of effective diversity policies and as Webb shows, these perceptions are one of several possible reasons why diversity policies may fail to live up to their potential in practice.

Todd’s first-hand account is also one of many sources which draws attention to the importance of very senior management or leadership support for diversity policies. This is because a senior manager’s name on a project “sent a very positive message to others” and more junior staff were more likely to take initiatives seriously. Recognizing the same point, the EOC in its Code of Practice on Sex Discrimination states that an equal opportunities policy “must be seen to have the active support of management at the highest level” and that a key part of ensuring that any policy is effective is that “overall responsibility for implementing the policy should rest with senior management”. Rutherford and Ollerearnshaw also found that having committed leadership was a key factor for the success of diversity and equality policies in practice. Their research found that 65% of all respondents “cited personal leadership commitment as the main driver for the implementation of equality and diversity initiatives”.

However, this vital leadership support appears hard to come by. Rutherford and Ollerearnshaw found that the lack of high profile support was cited as a reason why some initiatives had not worked by their respondents. At board level, Todd reported that securing commitment for equality and diversity policies was “difficult and slow”, and he

158 Kirton and Greene, n 3 above, 220
159 Rutherford and Ollerearnshaw, n 48 above, 39
160 Todd, n 154 above, 270
162 Rutherford and Ollerearnshaw, n 48 above, 44
163 ibid
considered himself fortunate if there was even one “champion” who supported these policies on any board he worked with.\textsuperscript{164} His analysis was that the reluctance of senior management came from fear of being able to justify the expense of such policies to shareholders and from a concern about a negative effect on the bottom line because policies would detract from core management activities. This is ironic in light of the central claim of the diversity approach, discussed above, to benefit an organization’s performance. It also confirms that the business case for diversity is difficult to make in practice (as McGlynn and Dickens have suggested). But Todd also highlights more personal factors which deter senior management from supporting diversity policies. He points to a concern that managers who became champions of diversity policies will “come under the spotlight” and will find it difficult to be a “role model” because they lacked expertise in the area.\textsuperscript{165} Senior support is therefore a critical to effective policies in organisations but for reasons relating to the diversity approach itself, and because personal factors, it appears to be problematic for practitioners to secure. Thus, it is another obstacle to the effective implementation of diversity policies, and as such will be considered in more detail in chapters 11 and 13 below.

2.4 Cause for optimism about diversity policies
As seen above, it may be problematic in practice for diversity policies to tackle entrenched inequalities in organizational culture or change the basic assumptions about domestic and caring work which affect workers’ lives.\textsuperscript{166} However, despite these disappointments outlined the literature there may be other grounds for optimism. For example, as seen above, as a matter of simple pragmatism there may be opportunities presented by the diversity approach,\textsuperscript{167} for example, because advocates can more easily attract the attention of organisations by invoking the business case.

\textsuperscript{164}\textsuperscript{164} Todd, n 154 above, 269
\textsuperscript{165}\textsuperscript{165} ibid 270
\textsuperscript{166}\textsuperscript{166} Webb, n 5 above, 166
\textsuperscript{167}\textsuperscript{167} ibid 167, for a pragmatic view of the outcomes of a shift to the diversity approach for feminists.
However, a more substantial ground for optimism may be found in the literature which analyses effective diversity policies. For example, recent work by Susan Sturm (a U.S. legal scholar) analyses a number of sophisticated, structured policies by which organisations, including large companies and university science departments, have challenged entrenched ways of working and meaningfully increased the participation of women and/or ethnic minority employees. Sturm’s work significantly advances key parts of the debate about effective diversity policies, for example by addressing the criticisms which have been made about their lack of capacity to challenge the underlying structure of organisations and, more specifically, about the absence of accountability.

On the basis of case studies, Sturm advocates a “problem solving” approach, which encourages organisations to diagnose problems, collaborate, experiment and capacity-build while being overseen by an effective system of external accountability. The analysis is furthered in Sturm’s later work by framing the shared credentials of these effective schemes in terms of ‘new governance’. The new governance approach is often defined in contrast to “command and control” regulation rather than more positively, which reflects the lack of a settled definition. However, common features of this approach have been said by de Búrca and Scott, to include: the emphasis on the accommodation and promotion of diversity; the importance of provisionality and revisability and the goal of policy-learning; the participation of affected rather than merely representative actors; an emphasis on ongoing evaluation and review; less hierarchical arrangements; and the voluntary or non-binding nature of norms. This is the theoretical framework within which Sturm has located and developed her analysis and within which, she argues, lie the means for designing effective problem solving processes. Thus, work such as Sturm’s is advancing

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168 For example, Rutherford and Ollerearnshaw, n 48 above, 44  
170 ibid. On other means of introducing new, sustainable practices and routines which, like Sturm’s more formal workplace schemes aim to disrupt practices which perpetuate social inequalities, see also Cooper, n 33 above, chapter 7.  
172 de Búrca and Scott, n 171 above, 3
our understanding of how diversity policies may be more effectively framed and for this reason it is one of the more promising areas of current work about diversity policies.

3. Conclusion

Having considered certain debates about the equal opportunities and diversity approaches to equality management and examined some of the central issues surrounding diversity policies and practice, this section has set out part of the broader context for this study.

By describing the core features of the diversity approach, this chapter has highlighted how this framework differs from the equal opportunities approach and considered the controversial nature of some aspects of the diversity approach, especially the central position of the business case. Turning then to practice, this chapter has discussed how organisations including the Government and the private sector in the U.K. have embraced the diversity approach, but noted the suggestion that they seem to have done so as a supplement to, rather than a total replacement of, equal opportunities policies. It has also highlighted interesting questions about why organisations have shifted the focus of their equality policies in this way and discussed a range of factors put forward by way of explanation in the literature. Finally, it has identified the important obstacles which have been found to hinder organisations' effective pursuit of diversity policies. However, it has noted that there are also grounds for optimism, as evidenced in the work of Sturm on effective workplace problem solving schemes.

Chapter 4 will locate this research's goals in the context of this literature. First, however, chapter 3 furthers the discussion of the context to this study by considering the literature about the legal profession.
Chapter 3

The context of this research (2): The literature about the legal profession and City law firms

1. The legal profession in England and Wales
   1.1 The structure of the legal profession in England and Wales
   - 1.2 Diversity in the legal profession

2. City law firms
   2.1 The "Premier League"
   2.2 Diversity policies in City law firms
      2.2.1 The historical background to current exogenous pressures
      2.2.2 Equal opportunities and diversity policies in City law firms

3. Conclusion

This chapter considers certain aspects of the extensive literature about the legal profession in England and Wales and provides another part of the background to this study. It first addresses the legal profession as a whole in England and Wales, considering the structure of the profession and the profession-wide literature about diversity. It then turns to City law firms specifically. This section explores the literature about the emergence of this group of City law firms, focusing on the effects of post-Big Bang changes to their organisation. The chapter then considers equal opportunities and diversity policies in City law firms, providing some historical background to this research.
1. The legal profession in England and Wales

1.1 The structure of the legal profession in England and Wales

The legal profession in England and Wales is a 'split' profession with two main branches; barristers and solicitors. As at July 2007 there were 108,407 solicitors with practising certificates in England and Wales, regulated by the Solicitors' Regulatory Authority ("SRA") and represented by the Law Society. (Further discussion of the roles of the Law Society and SRA is found in chapter 6 below). Solicitors undertake both contentious and non-contentious legal work, and, if they practice as sole practitioners or in partnerships, are retained directly by clients. However, they may also be 'in-house' solicitors, for example, employed by a company or public authority and, in this case, their responsibilities may include not only providing legal advice to that organisation but instructing external solicitors as necessary.

There are far fewer barristers than solicitors; 15,030 as at December 2007. The vast majority of barristers are self-employed (12,058 as at December 2007) and are organised in practice groups called chambers, in order to share the expenses of administrative staff and marketing. The alternative to self-employment is to be an employed barrister, for example practising in a solicitors' firm or in a public authority on a similar basis to that described above. The professional body for barristers is the Bar Council and they are regulated by the Bar Standards Board. The former describes barristers as being "specialist legal advisers and courtroom advocates" and with a few exceptions, clients may not instruct a barrister directly but do so through an instructing solicitor.

Definitions of the 'legal profession' are, however, sometimes more broadly drawn. For example, the Department of Constitutional Affairs ("DCA")'s 2005 report "Increasing

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176 For example, see the website of Matrix Chambers: http://www.matrixlaw.co.uk/whoweare_members.aspx
177 The Bar Council http://www.barcouncil.org.uk/
diversity in the legal profession"\textsuperscript{178} covered not only barristers and solicitors but also legal executives, who are regulated by the Institute of Legal Executives. There are 24,000 trainee and practising legal executives who may undertake much of the same work as solicitors but who work under the supervision of solicitors as their "principals".\textsuperscript{179} Furthermore, in academic work, the term "lawyer" has been used to cover not only solicitors and barristers but also legal academics and judges as well.\textsuperscript{180}

This research is concerned with the firms which occupy a particular part of the solicitors' profession, which as the next section shows, is highly fragmented. However, the chapter turns next to the broader debates about diversity in the legal profession, meaning for these purposes solicitors and barristers in England and Wales. Reference to work on the judiciary is also made by way of comparison.

1.2 Diversity in the legal profession

The scholarship considering the diversity approach, as defined in chapter 2, in the context of the legal profession, is relatively limited when compared to that which focuses on the position of particular groups in the profession, especially women and (to a lesser extent) ethnic minorities. This reflects the prominence of feminist-influenced research into the legal profession.

There is extensive feminist-influenced research into the experiences of women in the legal profession. Its findings are important in themselves but also because they have helped to establish a framework for research into the experiences of other groups. The starting point of this area of research is the continuing evidence that women are under-represented in the legal professions' upper ranks. For example, the Law Society's data for 2006 show that just under one-fifth of women solicitors in private practice were partners, compared with almost two-fifths of men. The same data confirm that for each of the last ten years, women have formed the majority of new admissions to the profession, and in 2005-6, were 63% of

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\textsuperscript{178} Department of Constitutional Affairs, \textit{Increasing diversity in the legal profession: A report on Government proposals} (Department of Constitutional Affairs, November 2005)
\textsuperscript{179} The Institute of Legal Executives \url{http://www.ilex.org.uk/about_ilex.aspx}
\textsuperscript{180} For example McGlynn, n 47 above which covers these roles in addition to solicitors and barristers.
trainees. The Queen’s Counsel selection panel (responsible for promoting barristers to the top rank in their profession) reported in January 2008 that fewer women were appointed in 2007-2008 than in the year before, (20 compared to 33) and that proportion of successful women applicants to all women applicants was also down, from 49% the previous year to 39%. By way of comparison, Government figures show that, as at 1 April 2007, there were fourteen women judges of a total of 108 High Court judges, 37 Lord Justices of Appeal, 5 Heads of Division and 12 Lords of Appeal in Ordinary.

Taking this data as a starting point, scholars have comprehensively challenged the ‘trickle-up’ theory of women’s progress, which holds that women will work their way up the career ladder over time in proportion to their numbers at entry level. Scholars like McGlynn and Sommerlad have concluded that the under-representation and the marginalization of women in the profession is not a problem that will be cured by the “mere passage of time”. Most recently, reflecting on data which shows that the progress of women in the solicitors’ profession “remains slow” Duff and Webley confirm McGlynn’s warnings about the business case (considered in chapter 2 above) by demonstrating that despite years of prominence, it “is still not bearing much fruit in the mid-2000s”.

Trainee solicitors undertake a two-year training contract, usually in a law firm but sometimes in a legal department in a company or local authority. After the completion of the training contract, they become qualified solicitors and in City law firms are then usually referred to as ‘associates’. For more details on the career structure in City law firms, see chapter 12 of this study.


184 McGlynn, n 47 above, 160
186 Webley and Duff, n 92 above, 375
187 ibid 379, 381
How, therefore, have researchers explained this continuing marginalization of women in the profession? A important part of the explanation lies in the persistence of entrenched norms in the profession with which women struggle to conform but against which they inevitably deviate. For example, fifteen years ago, Thornton used more than 100 interviews to research the position of women law students, academics, barristers, employed solicitors and other practitioners across Australia. She concluded that:

women who enter the legal profession are still represented as 'not-men' as 'others' to the benchmark man, the paradigmatic incarnation of legality who represents the standard against whom others are measured and against whom others are measured and who is invariably white, heterosexual, able-bodied, politically conservative and middle-class

Similarly framed explanations of women’s marginalized status have been offered by scholars including Hunter, having researched women barristers in Victoria, Australia, Sommerlad and Sanderson, in respect of women solicitors in the North of England, Rackley (as discussed above) in respect of women judges and Rhode, examining the status of women lawyers in the U.S. This is also a prominent part of the account of women’s experiences as lawyers in Helena Kennedy’s seminal work, “Eve Was Framed”.

This body of work also yields insights into the positions of other groups in the profession. Some of the most recent work to consider the exodus of women from the solicitors’

188 In a vivid example, H. Sommerlad quotes a City lawyer interviewee who discussed the need to work full time “plus postponing child bearing- otherwise one is not taken seriously as a woman”, H. Sommerlad “Can women lawyer differently? A perspective from the UK” in U. Schultz and G. Shaw (eds) Women in the World’s Legal Professions, (Oxford: Hart Publishing, 2003) 197
190 ibid 2
192 Sommerlad and Sanderson, n 86 above (see discussion of the sample of participants at 304) and Sommerlad, n 188 above, 196-197
193 Rackley, n 95, n 99 and n 100 above.
profession has explicitly linked some of their experiences of marginalization with the experiences of men in the profession. Thus, in their 2007 article, Webley and Duff, having found that the problems (connected especially to work-life balance) voiced by female solicitors in their research interviews echoed the findings of Collier’s research on male solicitors’ views, suggest that “women’s experience [may be] symptomatic of a wider problem facing the whole profession”. Women are therefore, in Sturm’s memorable phrase, the “canary in the miner’s lamp”, or in Webley and Duff’s “a barometer for how the profession is faring”.

Less empirical work has been conducted into the experience of ethnic minorities in the legal profession in England and Wales than that of women lawyers, though some data has been collected about ethnic minority lawyers’ numbers within the profession. As Nicolson points out, Law Society data from 2000 shows that (of those whose ethnicity was known) ethnic minorities represented 19% of solicitors admitted, 8.8% of solicitors on the Roll and 7.0% of those with practising certificates. In 2007, 10.5% of the self-employed bar and 15.6% of the employed bar were from an ethnic minority. Nicolson compares this with census data for one year later which shows that 7.9% of the general population were from an ethnic minority. Therefore, he concludes that the number of ethnic minorities in the legal profession “substantially exceeds their general social presence” in the country.

However, more detailed data suggests that ethnic minority lawyers are not evenly represented throughout the profession. A recent joint Black Solicitors’ Network (“BSN”) report


198 Webley and Duff, n 92 above, 382

199 S. Sturm, “From Gladiators to Problem-Solvers: Connecting Conversations about Women, the Academy and the Legal Profession” (1997) 4 *Duke Journal of Gender, Law & Policy* 119, cited by Webley and Duff, n 92 above, at footnote 6

200 Webley and Duff, n 92 above, 381


203 D. Nicolson, n 196 above, 206
and Commission for Racial Equality ("CRE") survey published in 2006 showed that an average of 3% of partners and 8% of trainees at the top 100 solicitors' firms were from an ethnic minority. The Chair of the CRE has been quoted as saying that the report confirmed his suspicions of "institutional complacency in the legal profession when it comes to racial equality". Moreover, at 1 April 2008, a total of 4.08% of the judiciary were "of ethnic minority origin", though the percentages are smaller in the higher ranks of the judiciary; 4.56% of District Judges are of ethnic minority origin, as are 7.18% of Deputy District Judges but only 2.72% High Court judges (or three out of 110) are of ethnic minority origin, while none of the Lord Justices of Appeal, Heads of Division or Lords of Appeal in Ordinary (Law Lords) are.

The literature confirms that while ethnic minority lawyers may be relatively numerous, they tend to practice in "exclusively or predominantly ethnic minority 'ghetto' chambers, which draw much of their work from their own community and specialized in areas like criminal defence and immigration". Moreover, because of their size, type of work and funding, this type of practice is likely to be much less secure and lucrative than that in larger and corporate law firms. Outside these small, specialist and predominantly ethnic minority firms and chambers Nicolson concludes that ethnic minority lawyers will find it harder to be recruited, and if they are, will be more closely monitored, and struggle to receive mentoring. However, he admits that there is a lack of detailed research on these points.

The work of Vignaendra, Williams and Garvey in 2000 focuses on the nexus between ethnic and occupational identity and there is some overlap with their and Nicolson's conclusions. For example, having conducted interviews with 15 solicitors and barristers of African, African-Caribbean and Asian descent, the authors find that "the stereotypes held

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204 The Lawyer, "Ethnic minorities make up only 3 per cent of UK 100 partners" (The Lawyer, 3 April 2006) at [http://www.thelawyer.com/cgi-bin/item.cgi?id=119388&d=122&h=24&f=46](http://www.thelawyer.com/cgi-bin/item.cgi?id=119388&d=122&h=24&f=46)


208 D. Nicolson, n 196 above, 208
by others about their ethnic group was at the heart of their challenges”. Interviewees were perceived by others to be “aggressive” and “exotic” which qualities were thought to imply “irrationality” and “ineffectuality”. Overall, this research found that group identities “do exist [in the legal profession] but in highly contested forms that sit outside the individual Black or Asian solicitor”.210

It is worth noting that Nicolson’s conclusions also co-incide closely with the findings of David Wilkins who has conducted long-term, interview-based research into the position of black lawyers in U.S. corporate law firms. Wilkins and Gulati (whose work will be considered in more detail in chapter 12 below) draw on the work of Galanter and Palay in order to consider the effects of the “promotion to partner” tournament in large law firms.211 They argue that only a few, select lawyers (who are less likely to be minorities) are given access to valuable mentoring and the best clients, which are both necessary to building up the ‘capital’ required to successfully present oneself for partnership, and that this helps to explain the disproportionate exodus of minority lawyers from corporate firms.212

Scholarship about the legal profession has therefore shed light on the position of women in the legal profession, and started to explain the experience of ethnic minorities. However other social groups’ experiences in the profession are very much under-researched. The 2007 Annual Statistical Report by the Law Society is also limited. Detailed statistics are provided about the breakdown of solicitors by gender, ethnicity and age but data for other groups is not provided.213 Looking back to the E.U.’s six equality strands discussed in Chapter 2, which were sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation, this means that little is really known about the experiences of the latter

210 ibid 144
212 D. Wilkins and G. Gulati, "Why are there so few black lawyers in corporate law firms? An institutional analysis." (1996) 84 California Law Review 496
213 B. Cole, n 173 above, provides data by gender (page 9), by ethnicity (page 17) and by age (page 12).
four groups in the context of the legal profession in England and Wales in terms of raw data\textsuperscript{214} or detailed research.

However, a number of scholars of the legal profession in England and Wales have begun the complicated task of accounting for the intersection\textsuperscript{215} of different group-identities, though this work still has a long way to go. Vignaendra, Williams and Garvey overlay their study of Black and Asian lawyers with a consideration of sex (focusing the different perceptions faced by black women and men, with interesting findings that the latter were often perceived to be more “militant” or more of a “threat”\textsuperscript{216}), sexuality and sexual orientation, age and class. Nicolson considers the separate experiences of lawyers by race and gender and then overlays a discussion of class in the legal profession, concluding that the dominant culture in the legal profession is “middle-class, masculinist and Eurocentric”.\textsuperscript{217} He goes on to argue persuasively that class

\textit{is not only the most tenacious source of disadvantage, but it reinforces other forms of discrimination and disadvantage such as those flowing from race.}\textsuperscript{218}

In taking account of class issues in this way, Nicolson is following authors like Abel who have long pointed out that, while solicitors have traditionally had a less “exalted” class background to barristers,

\textit{strenuous competition for entry to law departments and the high cost of professional education create new barriers that may accentuate class advantage.}\textsuperscript{219}

\textsuperscript{214} There is not only a shortfall of data about particular groups but of the progress of groups up the career ladder. As the report of the Diversity in the Legal Professions Working Group (“DLP working group”) stated in November 2006:

\textit{The working group found that the lack of research showing the progress of individuals from entering the profession to retirement made it difficult to identify indicators that a particular group of individuals were facing barriers. The working group was interested in encouraging fuller research.}


\textsuperscript{215} Intersectionality theory was originally developed by Kimberlé Crenshaw in the late 1980s in the U.S. who argued that when people experience multiple forms of disadvantage, for example black women, this produces a unique experience of discrimination, which cannot simply be explained as ‘double’ discrimination. K. Crenshaw “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” (1989) \textit{University of Chicago Legal Forum} 139

\textsuperscript{216} Vignaendra et al, n 209 above, 126-8

\textsuperscript{217} Nicolson, n 196 203-211

\textsuperscript{218} ibid 213

\textsuperscript{219} R. Abel, \textit{The Legal Profession in England and Wales} (Oxford: Basil Blackwell, 1988) 171. See also M. Shiner (2000) Young, Gifted and Blocked! Entry to the Legal Profession in P. Thomas (ed) \textit{Discriminating Lawyers} (London: Cavendish) who considers the impact of a range of factors on law students’ success at
Sommerlad and Sanderson’s work considers in an ad hoc way the intersectional effects of gender, race and class, though their focus is very much on the position of women lawyers. However, Sommerlad’s more recent work explicitly addresses “intersections of class, gender and ethnicity” in order to consider the position of “non-traditional” entrants to the profession. It therefore seems that the effects of class (while outside the E.U.’s six equality strands) have engaged more scholarly attention in this context than age, sexual orientation, disability or religion or belief. Indeed, Nicolson calls class, gender and race “the ‘big three’” in summing up the focus of scholarship about the legal profession. However, others disagree that there has been extensive analysis of class in the legal profession. For example, the Diversity in the Legal Professions working group found that there was “little or no information showing the status of [members of the legal profession] according to social background”.

As discussed in chapter 2 above, there has been a shift in the broader debate about equality and increasing engagement with the diversity approach, including in the debates about the legal profession. In this context, some scholarly work has been done on the diversity-related initiatives which various groups have introduced. For example, Nicolson considers at length the 2004 publication by the Bar Council and The Law Society of detailed documents about increasing equality and diversity in their respective parts of the profession. He concludes that these documents are disappointing because of their failure to consider class disadvantage or to address traditional gender roles. The content of the Law Society’s document is considered further below in chapter 6 but it is also relevant to acquiring a training contract, including at 93, educational background at a secondary school level. He shows that 44% of 4,053 law students surveyed in 1995 attended independent or grammar schools (citing M. Shiner and T. Newburn, Entry into the Legal Professions: The Law Student Cohort Study, Year 3 (London: The Law Society, 1995). He concludes that “the social class profile of the cohort was highly predictable. There can be little, if any, doubt that law students tend to be recruited from well qualified families with a tradition of employment in high status occupations” (92).
note here Nicolson's criticisms of its focus on the business case for diversity and the lack of consequences of non-compliance. Abel also discusses the increased (but not unopposed) concern at a policy-level with the legal profession being "representative" by tracing the initiatives in the 1980s and 1990s of the Bar Council, Law Society and successive Lord Chancellors.

A further way in which the legal scholarship has engaged with the diversity approach is by contributing to the work which has critiqued the different conceptual parts. Thus, in chapter 2 above the powerful analyses of the business case for diversity by McGlynn, Webley and Duff (and in the context of the U.S. profession, Wilkins) were considered. In the context of the discussion of the transformative potential of the diversity approach the work of Rackley on the judiciary was also considered. However, it is striking that there has been little engagement with the individualistic focus of the diversity approach in the legal scholarship and, as discussed, research conducted into the legal profession in England and Wales is still predominantly framed around the experiences of marginalisation of certain social groups.

2. City law firms

The solicitors' profession is highly fragmented, and therefore the focus of this research needs to be explained more precisely. Specifically, this research focuses on "City law firms" which are distinct in terms of their size, turnover, workforce, focus on commercial and banking law and geographic reach. This section explains how these law firms broke away from the rest of the solicitors' profession, in order to define their common features in more detail.

2.1 The "Premier League"

Hanlon describes how, in the 1980s, "state policies.. created a clear group of winners among lawyers and tied them into, or perhaps further into would be more accurate, the ideology of the New Right. This group is mainly comprised of large, usually City-based

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226 ibid 216, 214
law firms."\textsuperscript{228} In this period London's commercial law firms were buoyed by the prevailing state ideology of entrepreneurialism and competition and they thrived as a result of what Flood calls "the Thatcher Revolution".\textsuperscript{229} The state policies in question included privatisation (of British Gas, British Telecom, British Steel, British Airways, and so on) and the Big Bang deregulation of 1986, which Flood observed "swept away the artificial restrictions on the provision of a variety of financial services".\textsuperscript{230}

The Big Bang reforms opened the floodgates for international financial business to pour into London and they have been described as "a turning point in the City's postwar history, securing its position as a centre for trading international equities"\textsuperscript{231} and the point at which the "City burst from its former boundaries".\textsuperscript{232} At this time foreign banks and securities houses descended on London (there were 100 foreign banks in London in 1961 and 450 in the late 1980s\textsuperscript{233}), in particular American banks fleeing the restrictive regulations of their home jurisdiction. Flood argues that in addition to these political and economic factors, there were two critical geographic factors behind the richness of opportunity for City-based law firms as the financial markets boomed. First, the smallness of the City of London, with "virtually all major corporations, banks (investment and clearing), insurance companies, accounting firms, law firms and the various exchanges... based there" and, secondly, the City of London's "midway position between the financial centres of New York and Tokyo", allowing participants in each market to be based here.\textsuperscript{234} For all these reasons there was, therefore, a surge of corporate and finance work which provided unprecedented opportunities for growth for law firms based in the City of London, the effects of which were decisive in creating the fragmented profession which exists today. As at 2007, for example, 7.4% of the law firms in England and Wales were based in the City of London, but these represent over 50% of the law firms with over 26 partners.\textsuperscript{235}

\textsuperscript{228} G. Hanlon, Lawyers, the State and the Market (Basingstoke: MacMillan Press Limited, 1999) 93
\textsuperscript{230} ibid, 574
\textsuperscript{231} The Economist, "London as a financial centre" (21 October 2006) The Economist 96
\textsuperscript{232} ibid
\textsuperscript{233} Hanlon, n 228 above, 103
\textsuperscript{234} Flood, n 229 above, 574-5
\textsuperscript{235} Cole, n 173 above, 23, 24
At the same time as unprecedented opportunities allowed this group of law firms to break away from their peers, Hanlon and others have shown how the solicitors' profession in England and Wales was fragmenting in other respects. In particular, Government policies cutting back legal aid and undermining solicitors' monopolies were creating increasingly difficult conditions for High Street solicitors' firms. Sommerlad has vividly described the "increasing impoverishment" of the legal aid sector and its effects, including the "creation of a quasi-proletariat"\(^{236}\) in the profession. Thus, from this perspective also, it is inappropriate to generalize about matters in solicitors' firms in England and Wales.

As High Street firms struggled to remain viable, the rise of a few commercial and banking law firms throughout the same period continued, and these law firms exploded in size. Fuelled by their growth, the solicitors' profession doubled in size between 1976 and 1996.\(^{237}\) In the process of taking these opportunities and growing exponentially, the characteristics and structure of City firms and how the lawyers in them worked came to be transformed and in attempting to understand all of these changes, the concept of "mega-law" has proved useful. First identified in 1983 by Galanter in respect of the U.S. legal profession\(^{238}\) the symptoms of mega-lawyering include "practice in much larger units",\(^{239}\) the increased specialization of lawyers, high levels of internal stratification and increased geographic reach of the firms.\(^{240}\) Lawyers in mega-law firms also work in a different ways. As Galanter noted, and as will be relevant in chapter 7 of this study "The range of specialties cultivated within ["mega-law"] firms reflects the needs of a particular client",\(^{241}\) namely large corporate and banking clients, and very rarely individuals. As Flood shows, this type of work "requires highly developed skills wrought in a specialist environment, such as provided by City firms".\(^{242}\) Across these client-driven specialties, Galanter shows how, while it may involve occasional innovation, more commonly "mega-lawyering often

\(^{236}\) Sommerlad, n 227 above, 74
\(^{237}\) Hanlon, n 228 above, 103
\(^{238}\) M. Galanter, "Mega-Law and Mega-Lawyering in the Contemporary United States" in R. Dingwall and P. Lewis (eds), The Sociology of the Professions (Basingstoke: The MacMillan Press, 1983)
\(^{239}\) ibid 153
\(^{240}\) ibid 154
\(^{241}\) ibid 155
\(^{242}\) Flood, n 229 above, 583

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involves meticulous and exhaustive research, painstaking assembly of data and generous use of experts". 243

The concept of mega-law has been shown to fit British as well as American law firms by Flood244 who argues that "Anglo Saxon"245 mega-law firms have evolved in similar ways. He shows that British and American mega-law firms have together come to dominate corporate and finance legal work in the three “super-regions” around the world, namely North America, Europe and the Pacific Rim. 246 He describes, by way of example, how “in Eastern Europe, privatisation has become an international sport” for such firms. 247 The Lawyer magazine’s most recent ranking of “global” law firms reinforces Flood’s thesis by showing how dominant U.S. and U.K. mega-law firms have become. According to this ranking exercise, the top firm, Clifford Chance, has an annual turnover of over a billion pounds. (Its own websites states the firm has 27 offices in 20 countries, 3,800 legal advisers248 and 6,700 employees249) and of the top 25 global firms by turnover, 5 are from the U.K and 20 from the U.S. 250

The U.K. “mega-law” firms which have emerged from this period of dramatic change in the profession therefore share various characteristics with each other, and with their U.S. peers, particularly in terms of size, turnover, organisation, type of work, location and geographic reach. On this basis, Lee emphasises how cut off City firms are from other law firms in England and Wales. He calls these City law firms the “Premier League” and claims that they are no more representative of the game played by the rest of the profession than superstar footballers are of their sport. 251 However, Flood has argued that the implications of this transformation go further than creating a splinter group at the top of the legal

243 Galanter, n 238 above, 157
244 Flood, n 229 above, and J. Flood, “The cultures of globalization: professional restructuring for the international market” in Y. Dezalay and D. Sugarman (eds), Professional Competition and Professional Power (London: Routledge, 1995)
245 Flood, n 244 above, 153 et seq
246 ibid 144
247 ibid 143
248 http://www.cliffordchance.com/about_us/about_the_firm/?LangID=UK&
249 http://www.cliffordchance.com/careers/our_people/?LangID=UK&
profession. Emphasizing these law firms' strong horizontal links to the largest accountancy practices, investment banks and management consultancies together with their much weaker links to the rest of the legal profession, he argues that, together with their City peers, City law firms form "elite stratum" of professional services firms. This, according to Flood, is the "postmodern model of the professions". 252

Limiting the study to City law firms therefore accords with scholarly precedent which has identified them as a splinter group, separate to the rest of the profession. Moreover, there is further cause to limit this study to City law firms because it focuses on diversity policies. While some work, for example by Abel253 and Nicolson254 and initiatives by the Law Society255 and the DCA256 do examine broad issues relating to diversity across the whole of the solicitors' profession, and while the profession-wide discussion about diversity does form useful background to the study, this approach is not suitable for a in-depth qualitative study of this sort. There is also evidence which suggests that City law firms have had different experiences of diversity issues. For instance, as chapter 5 will explore, in November 2005 the DCA wrote only to the top 100 law firms by sizes (as well as the top 30 barristers' chambers) asking that they publish data about the diverse make-up of their organisations.257 Other chapters will consider pressures targeted at City firms specifically, which accords with Lee's work about how the Premier League firms attract not only "high earnings, big stakes, much glitz" but also "lots of attention from the press". 258

However, this study does have some relevance for the profession more broadly. This is because the policies in place in City law firms cast a long shadow over the rest of the profession through the sheer number of trainees who pass through such firms. Sommerlad observes that the commercial sector of the profession recruits nearly 60% of all trainees259 and Lee points out that the top ten law firms account for 10% of the solicitors employed in

252 Flood, n 229 above, 590
253 Abel, n 227 above, 149 et seq
254 Nicolson, n 196 above, 201
255 The Law Society, Delivering Equality and Diversity: A handbook for solicitors, n 224 above
256 Department of Constitutional Affairs, n 178 above
257 ibid 9-10
258 Lee, n 38 above, 2-3
259 Sommerlad, n 23 above, 72
private practice. Because of changes in mega-law firms which mean that "promotion [to partner] comes to fewer and it comes later", City law firm alumni fan out through the public and private sectors, to work in industry, in-house legal departments and smaller law firms. City firms have a wide influence on the profession and society, in other ways too. For instance, partners from City law firms have become (in a small number of cases) High Court judges, and in one case, a Lord Justice of Appeal, while chapter 5 will show that the Government is currently encouraging more solicitors to apply to the judiciary. The importance of the policies which are the heart of this study therefore transcends the narrow band of Premier League firms which have put them in place.

Appendix A (Planning and conducting the research) discusses in detail how a sample of City law firms was selected for the research. In brief, the sample consisted of the top 15 U.K. law firms by turnover, as identified by the Lawyer magazine’s 2006 rankings. However, because of the “mega-law” characteristics shared by those law firms occupying the elite stratum as described by Flood and others, it is submitted that these firms are broadly representative of the wider class of City law firms.

2.2 Diversity policies in City law firms

This section is divided into two parts. The first discusses the historical background to the exogenous pressures with which this study is concerned, and the second considers past and current equality and diversity policies in City law firms.

2.2.1 The historical background to current exogenous pressures

The history behind the current external pressures about diversity in City law firms with which this study is poorly charted in the literature, but appears to follow the structure laid out in chapter 2, in particular by initially having focussed on equal opportunities, compliance and the experiences of certain social groups.

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260 Lee, n 251 above, 3
261 Galanter and Palay, n 211 above, 755
262 The Honourable Mr Justice Lawrence Collins, appointed a Lord Justice of Appeal in 2007, was a partner at City law firm Herbert Smith from 1971 to 2000. See Her Majesty's Court Service website at http://www.hmcourts-service.gov.uk/cms/1287.htm
The origins of pressure across the private sector about equality could be said to be found in the early work of the (then) equality commissions- the Equal Opportunities Commission ("EOC") and the Commission for Racial Equality ("CRE") which were set up under the Sex Discrimination Act 1975 and the Race Relations Act 1976 respectively. Until their merger into the new Equalities and Human Rights Commission ("EHRC") in October 2007, each of the EOC and CRE published Codes of Practice to explain the legislation and provide guidance about developing and implementing equal opportunities policies. Thus, at this stage, pressures focussed on the position of certain social groups and on compliance with the law. Consistent with the discussion above, the data available even about the position of women and ethnic minorities in City law firms in this period is thin, and does not lend itself to an analysis of the possible impact of these pressures. However, by way of context, as Abel points out, there were very few women in City law firms in the 1970s and 1980s, and in these years the first women partners were just being made up by these firms; Freshfields, for example, made up their first woman partner in 1979 and Allen & Overy in 1985. It is also interesting to note that in the late 1970s and early 1980s research was already being conducted which specifically highlighted the position of women in these law firms. For example, a 1978 survey by the Equal Opportunities Commission ("EOC") found that in the mid-1970s, women were 5% of the solicitors at the 15 leading City law firms, and a 1982 study of the top 15 firms found that there were 5 women out of 555 principals (meaning qualified solicitors) in these firms.

In the 1990s, pressure on City law firms about certain equality issues increased as part of growing market and state-led pressures on the legal profession as a whole. As Abel has observed, the legal profession in England and Wales in this period generally:

found itself subject to unprecedented pressures from both the market (members and those who sought to enter, consumers, third party payers and internal and external

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263 The Disability Rights Commission was set up in April 2000 and was also merged into the EHRC.
competitors) and the state (the three branches- Parliament, Cabinet and courts and tribunals- and as employer, regulator and paymaster of lawyers)\textsuperscript{268}

Thus, the growing number of campaigns and initiatives about equality targeted at law firms (their impact on City firms in particular will be considered in the next section) must be seen in the context of the broader market- and state-led changes to the environment in which firms practised, as well as part of the wider political debates of this era about equality which were discussed in chapter 2 above.

In the 1990s, the business case was becoming a more prominent part of the debate about diversity, especially in the context of campaigns by parties including the Government, business, and interest groups. Opportunity Now (formerly Opportunity 2000) was launched in October 1991 as a “business-led campaign” to increase the “quality and quantity of women’s participation in the workforce”. Race for Opportunity was set up in 1995 by “leading UK companies” to encourage employers to “invest” in ethnic minorities and the “two ticks” campaign awarded a logo to organizations who agree to interview all disabled applicants who met the minimum job qualifications for a vacancy.\textsuperscript{269} As regards the legal profession specifically, the Law Society adopted a practice rule, a code of practice and a model anti-discrimination policy in 1995, the latter of which included in its first clause a classic business case statement that:

\textit{It is good business sense for the firm to ensure that its most important resource, its staff, is used in a fair and effective way.}\textsuperscript{270}

Other initiatives came from organizations representing particular groups in the legal profession, notably the Association of Women Solicitors which in 1999 launched a campaign urging law firms to make work more compatible with family responsibilities.\textsuperscript{271} Overall, Webley and Duff could note in 2007 that the business case for women’s advancement in the solicitors’ profession has been made “for over ten years” (though, they suggest, to no great effect).\textsuperscript{272}

\begin{itemize}
\item \textsuperscript{268} R. Abel, “The Professional is Political” (2004) 11(1&2) International Journal of the Legal Profession 131
\item \textsuperscript{269} Dickens, n 4 above, 179
\item \textsuperscript{270} The Law Society, The Law Society Model Anti-Discrimination Policy (1995) cited in McGlynn, n 47 above, 159 and 164
\item \textsuperscript{271} McGlynn, n 47 above, 165
\item \textsuperscript{272} Webley and Duff, n 92 above, 379
\end{itemize}
In the 2000s City law firms became the focus of a growing number of diversity and equality initiatives from new parties, or of new initiatives from existing parties such as the Government and the CRE, and it is these developments which this research explores in particular. Each chapter in part 2 constructs an account of the exogenous pressures generated by the party concerned in some detail, looking in turn at the Government, Law Society, clients, interest groups and the legal press. By way of example, in 2005 the Black Solicitors’ Network and CRE launched their first joint “Diversity League Table”, which was published in March 2006, ranking the top 100 law firms (or at least the 60 which had co-operated with the survey). The table was based on the gender and ethnic diversity of these firms lawyers and was analyzed in detail in the legal press. In May 2005, the Law Society and CRE joined forces to recognize, with newly created “Solicitors’ Race Equality” prizes, “the outstanding achievements of eight law firms and legal departments in promoting equality and diversity”, rewarding Simmons & Simmons in the large law firm category. In November 2005, the DCA followed up a report called “Increasing Diversity in the Legal Profession” by writing to the largest 100 firms and 30 barristers’ chambers, requesting that they display various diversity data on their websites.

Thus, in keeping with the analysis of in chapter 2, the earliest manifestations of equality-related pressure on the legal profession seemed to have had a compliance-orientated approach and were linked to the passing of anti-discrimination legislation. However, from the 1990s the business case arguments have become prominent, as has the ‘diversity’ label while in general, exogenous pressure on the solicitors’ profession have increased in this period. In the 2000s, as this research will explore, pressures on City law firms relating to diversity have appeared to increase even further and to have been exerted by a growing number of parties.

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273 S. Hoare, “Ethnic minorities make up only 3 per cent of UK 100 partners” (The Lawyer, 3 April 2006) at http://www.thelawyer.com/cgi-bin/item.cgi?id=119388&d=122&h=24&f=46
275 Department of Constitutional Affairs, n 178 above
2.2.2 Equal opportunities and diversity policies in City law firms

There is a lack of detailed research about the equal opportunities and diversity policies implemented by City law firms both now and in the past. Nonetheless, there is some anecdotal evidence which sheds some light on the type of policies which were implemented in the 1990s by certain City firms. For example, McGlynn cites Freshfields' pioneering, in 1997, of flexible partnerships, allowing partner to reduce their working time\(^{276}\) and the 1999 implementation of the same policy by another City law firm. Furthermore, it was reported in the legal press in 1994 that City firm Cameron, Markby, Hewitt (as it then was) reformed its trainee recruitment process to take account of a "new equal opportunities policy". This report also noted that in 1990 this firm had set up a 'career break' policy for women and began to monitor the progress of ethnic minority applicants, and was, in 1994, in the process of drafting an equal opportunities policy. These measures, according to this article, marked the firm out its "progressive personnel approach".\(^{277}\) Furthermore, in an early mention of the business case in this context, an article in the legal press noting a forthcoming 1996 Women Lawyer conference announced that one of the speakers would be Anne Gillian, a partner at City firm Denton Hall (as it then was) who "will explain her firm's cost benefit analysis of good equal opportunities practice".\(^{278}\)

There is also some evidence that in the 1990s some City firms were slow to implement equal opportunities policies, or did so only after losing employment cases. Therefore, in 1997 it was reported that City firm Sinclair, Roche and Temperley had paid £30,000 to a former assistant solicitor to settle a sex discrimination case and was facing a further two claims by secretaries for alleged sex discrimination and unfair dismissal. The managing partner stated that the firm "had introduced an equal opportunities policy, senior staff training and a harassment complaints procedure as a result of the cases" [author's emphasis].\(^{279}\) Further, a survey by a legal recruitment company received attention in the press for its findings that "few" law firms have proper employment practices or have


\(^{277}\) The Lawyer, "Youth takes helm at City firms" (10 November 1994)

\(^{278}\) The Lawyer, "Women's law event presses for equality" (19 March 1996)

\(^{279}\) The Lawyer, "City firm that settled sex discrimination claim out of court faces two new suits" (28 January 1997)
embraced the EOC's code of practice or complaints procedure for sexual and racial harassment and that they generally treat employees "poorly".\textsuperscript{280} Following-up the report, The Lawyer newspaper's journalists approached the "top 10" law firms, of whom "most" claimed to have introduced both an equal opportunities policy and a complaints procedure for sexual and racial harassment. Indeed, Simmons & Simmons were cited as having recently "strengthened" theirs. However, few of these firms were found to have a formal training programme for partners to recognize and deal with harassment.\textsuperscript{281}

Overall, the anecdotal evidence available seems tentatively to suggest that in the 1990s most City law firms may have had a equal opportunities policy and some related procedures, and that a few firms were implementing certain 'ground-breaking' initiatives. However, it also suggests that there was a shortfall between written policies and measures to back this up, such as partner training, and in some cases where this was implemented, it was in response to high-profile discrimination litigation. This tentative pattern fits in with the more general scholarly criticisms of equal opportunities policies, as described in chapter 2, and of course with the discussion earlier in this chapter of the persistent marginalisation of women and ethnic minorities, and pervasive effects of class in the profession which are still the starting point for the most recent legal scholarship.

Turning to the 2000s, it becomes more straightforward to build up a picture of equality management in City law firms, and is possible to identify an increasing range of policies which have been implemented across a number of City firms. On this basis, it is argued that not only has diversity begun to be named in relation to certain of these initiatives but also that the diversity approach (as defined in chapter 2) has, in some ways, become influential. Some prominent examples of diversity-related 'firsts' in City law firms include, in mid-2006, Herbert Smith becoming the first law firm to appoint a full-time diversity manager and in the same year, Allen & Overy launching its first "diversity week". Also in 2006, Freshfields became the first law firm to publish an account of its corporate social

\textsuperscript{280} The Lawyer, "Time to practice what is preached" (28 January 1997) citing a report by Reynell legal recruitment agency, "The Law at Work", though this report now appears to be unavailable, meaning that the report of the findings must be treated as having anecdotal value only.

\textsuperscript{281} The Lawyer, "'You really wouldn't expect it of law firms'" (28 January 1997)
responsibility activities, in which it included its diversity statistics, now common practice amongst City law firms.\textsuperscript{282} So, as Wilkins wrote in 2007, discussions about diversity have by this point become “a staple of modern law firm life”\textsuperscript{283}.

Unsurprisingly, in the light of the diversity literature’s inconsistent use of key terms, only a few policies introduced by City law firms are uniformly linked to diversity in a consistent and explicit way on their websites. These include the publication of a diversity statement, setting up of a diversity committee and disclosure of the firm’s workforce “diversity” statistics. Other policies may be explicitly linked to diversity in some cases, but this may vary from firm to firm. Nonetheless, something of a consensus emerges from a review of firms’ websites about certain policies which always or often come to be linked with diversity. This finding was reinforced by the interviews conducted for this research which will be analysed fully in parts 2 and 3, but will be used here in a limited way to consider the extent of the responsibilities of City law firms’ diversity staff. Therefore, in the list which follows, it was found that the measures listed at i-iii. inclusive were explicitly linked with diversity on City law firms’ websites, while items iv. onwards are included here because they are sometimes (but not always) associated with diversity and are policies typically overseen by City firms’ diversity staff:

i. publication of a diversity statement;
ii. setting up a diversity committee;
iii. disclosures of staff diversity data;
iv. encouraging non-traditional candidates at recruitment level;
v. running staff diversity training;
vi. offering affinity groups or networks for staff;
vii. offering support for parents;
viii. having in place retention/flexi-working policies;
ix. partnering with specialist diversity organisations.

These nine measures are offered individually as examples of actual diversity policies in place in City law firms, and together as a working, but flexible, outline of what is covered

\textsuperscript{282} A. Spence, “Become less straight, white and male- or go out of business” (The Times, 4 May 2007) at http://business.timesonline.co.uk/tol/business/law/article1743732.ece
\textsuperscript{283} Wilkins, n 47 above, 37
by the term "diversity policies" when used in this study in reference to the actual policies in place in City law firms.

In order to give a more detailed description of these individual diversity policies and to generate some comparative data while preserving the anonymity of the interviewees who participated in this research, the diversity policies in place at the top five U.K. law firms are now considered. Table A below presents the information about these five firms' diversity policies set out on their websites as at the beginning of July 2007, and (to link into chapters 8 and 9 below) it also displays any diversity related awards on these websites for 2006 and 2007. To prepare this table, the whole of these firms' websites were searched, to reflect the fact that references to these policies appear on various parts of the websites, including careers, corporate social responsibility and the "About the Firm" pages.

It is important to note that while Table A gives a useful picture of the policies in place in the top five law firms according to their websites at a particular point in time, the websites were the only source used to prepare this table. It should not, therefore, be regarded as a complete description of any of the firms' activities.

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284 According to The Lawyer magazine's survey: The Lawyer, "The Lawyer UK 100- the top 1-25" (2006) at http://www.thelawyer.com/uk100/archive/2006/tb_1-25.html . This choice of firms is not related to whether or not interviews were conducted with these firm, as the interviews were conducted on the condition of anonymity.
Table A: A comparison of information on the diversity webpages of top 5 U.K. law firms according to their websites, as at July 2007:

<table>
<thead>
<tr>
<th>Firm</th>
<th>Clifford Chance&lt;sup&gt;285&lt;/sup&gt;</th>
<th>Linklaters&lt;sup&gt;286&lt;/sup&gt;</th>
<th>Freshfields&lt;sup&gt;287&lt;/sup&gt;</th>
<th>Allen &amp; Overy&lt;sup&gt;288&lt;/sup&gt;</th>
<th>Lovells&lt;sup&gt;289&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diversity policies:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diversity statement</td>
<td>Under ‘Our Areas of Expertise’ see Global diversity statement (“Dignity, Diversity and Inclusiveness”)&lt;sup&gt;280&lt;/sup&gt; and on ‘Careers’ page a Diversity Statement covering equal opportunities, dignity and responsibility.</td>
<td>Under ‘Careers’ is a page setting out “Our Commitment to Diversity” about their people being as diverse as their clients and communities and about promoting an inclusive culture.</td>
<td>Under ‘Firm/diversity’ is a statement headed “Equality and Diversity” including a commitment to “eliminate discrimination and promote equality and diversity”. Under ‘Careers’ is a diversity page referring to the equal opportunities policy.</td>
<td>Under ‘About Us’ is a statement headed “Equal Opportunity and Diversity” pertaining to every aspect of employment, advertising of jobs etc.</td>
<td></td>
</tr>
<tr>
<td>Diversity committee</td>
<td>None mentioned on the website</td>
<td>Yes: international diversity committee chaired by senior partner</td>
<td>None mentioned on the website</td>
<td>None mentioned on the website</td>
<td>None mentioned on the website</td>
</tr>
</tbody>
</table>

<sup>285</sup> [http://www.cliffordchance.com/home/?langID=UK](http://www.cliffordchance.com/home/?langID=UK) (All the websites referenced in Table A were last accessed in July 2007)


<table>
<thead>
<tr>
<th>Firm=&gt;</th>
<th>Clifford Chance</th>
<th>Linklaters</th>
<th>Freshfields</th>
<th>Allen &amp; Overy</th>
<th>Lovells</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recruitment: support for less privileged candidates?</td>
<td>Yes: through own initiatives and working with other organisations.</td>
<td>Yes: a number of events and schemes discussed including an open day for students of an ethnic minority/deprived background with an interest in a career in the law.</td>
<td>Yes: states involved with organisations and programmes to encourage people from non-traditional backgrounds to apply to law. A target for 2006/7 is policies for the recruitment of minorities</td>
<td>Yes: involved in initiatives to encourage applications to the firm and access to the profession as a whole. Initiatives include visiting wider range of campuses and sponsoring the Sutton Trust’s Pathways to Law project.</td>
<td>Yes: describes many initiatives, sponsorship arrangements and other assistance to encourage ethnically diverse students to apply.</td>
</tr>
</tbody>
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291 Most diversity information contained in firm’s CSR report, n 287 above
<table>
<thead>
<tr>
<th>Firm</th>
<th>Clifford Chance</th>
<th>Linklaters</th>
<th>Freshfields</th>
<th>Allen &amp; Overy</th>
<th>Lovells</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff training</td>
<td>Yes: for partners and to be developed as e-learning tool by HR.</td>
<td>Not mentioned on the website</td>
<td>All new people trained in &quot;professional conduct&quot; which includes equal opportunities. Separate training for HR and interviewers.</td>
<td>Not mentioned on website</td>
<td>Not mentioned on website</td>
</tr>
<tr>
<td>Affinity groups</td>
<td>London employee forum to share information and to promote engagement.</td>
<td>The formation of special interest groups (e.g. nationality or ethnicity focused) is supported by the firm.</td>
<td>Not mentioned on the website</td>
<td>Not mentioned on the website</td>
<td>Not mentioned on the website</td>
</tr>
<tr>
<td>Support for parents</td>
<td>Yes: including childcare vouchers and emergency childcare</td>
<td>Mentioned as a possible special interest group</td>
<td>Not mentioned on the website</td>
<td>Initiatives include emergency childcare, maternity coaching and lunchtime parenting seminars.</td>
<td>Not mentioned on the website</td>
</tr>
<tr>
<td>Retention: flexible working</td>
<td>Yes: many informal arrangements and a working party to review issues for transactional lawyers.</td>
<td>Yes: all eligible to apply and there are a variety of options including working from home.</td>
<td>Yes: under CSR/benefits. Formal policy and variety of arrangements possible. Also mentions mentoring. Target for 2006/7 is the development of policies to encourage women to become partners.</td>
<td>Yes: flexible and part time working encouraged and on the increase.</td>
<td>Not mentioned on the website</td>
</tr>
<tr>
<td>Firm =&gt;</td>
<td>Clifford Chance</td>
<td>Linklaters</td>
<td>Freshfields</td>
<td>Allen &amp; Overy</td>
<td>Lovells</td>
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</tr>
<tr>
<td>Awards 2007/2006</td>
<td>Most Effective Diversity Programme Award at the inaugural The Lawyer HR Awards Feb 2007</td>
<td>None for diversity mentioned under Awards.</td>
<td>Legal Business 2007 CSR Law Firm of the Year.</td>
<td>FT Innovation 2006 Award for initiatives supporting working parents. Most popular graduate recruiter for law in Target National Graduate Recruitment Awards 2006.</td>
<td>Law Society and Commission for Racial Equality Award for the Best Race Equality Initiative for law firms of over 25 partners. October 2006. This award is for the firm’s pro bono support of a Muslim Youth Helpline, but statement by head of Graduate Recruitment that this helps breakdown barriers to entering the profession and a link to the award is displayed on the Equal Opportunity/Diversity page.</td>
</tr>
<tr>
<td>Partnerships with outside organisations</td>
<td>Yes, many mentioned including in the recruitment field, Global Graduates, Legal Chances and Afro Caribbean Diversity and in other contexts, Aurora.</td>
<td>Yes, many mentioned e.g. AC Diversity, Disabled Law Service, Opportunity Now and Global Graduates.</td>
<td>Yes, including Global Graduates.</td>
<td>Yes, many mentioned including in the recruitment field, Legal chances, CRAC, Legal Eagles and in other contexts, Aurora, DisabledGo, Stonewall.</td>
<td>Yes, including Legal Chances, support for the Black Solicitors’ Network, City Brokerage, Target 10,000 and CRAC.</td>
</tr>
</tbody>
</table>
This simple survey of the information on the websites of the largest five U.K. law firms is useful as a snapshot of steps each had taken by July 2007. It also underpins the following discussion, which suggests that the phenomenon which this study calls the “diversity boom” in City law firms in the 2000s has three features; first, the increase in the number of equality management policies of any sort implemented when compared to the position (as best it can be established) in previous years, secondly the increased use of diversity language, and thirdly, the increased, but not wholesale, influence of the diversity approach on these policies, as defined in chapter 2.

The “diversity boom”

The table shows that there is now a range of equality management policies in place across these City law firms, and that the diversity label is widely used. All five law firms have written and displayed a diversity statement, published a variety of information about the make-up of their partners and staff (something which investment banks, for instance, do not do), set up schemes to encourage less privileged candidates to apply for entry level jobs and display their links with a variety of outside organisations linked to diversity issues. Indeed, as at January 2008, all bar one of the 15 City firms in this study’s sample display statements expressly referring to “diversity” on their websites (though the other terminology used varies). All but three of the same 15 firms display diversity statistics relating to their workforces, (though as chapter 12 will discuss, these vary in content and in other ways which make comparison difficult). In addition, Table A shows that, according to the information in the websites, two of five these firms state that they train staff in matters relating to diversity or equal opportunities and certain of the five involve employees in the formation of policies and encourage them to “engage”

292 Kirton and Greene’s term, which is used to cover equal opportunities and diversity policies. See Kirton and Greene, n 3 above, 2

293 As at January 2008, Eversheds did not have a diversity statement on its website which was apparent by using the search function, nor was diversity explicitly mentioned in the firm’s six “core values”, though “mutual respect” was. See http://www.eversheds.com/uk/Home/Why_choose_Eversheds/index.page?
The firm’s website did, however, have diversity statistics available on the careers pages. See http://www.eversheds.com/uk/Home/Careers/Diversity.page
Diversity statements and other policies are examined in more detail with reference to the top 5 law firms by turnover later in this chapter.

294 As at March 2008, a review of the websites of the 15 law firms in this sample found that Ashurst, CMS Cameron McKenna and Pinsent Mason did not display any diversity statistics for their workforces.
through forums, offer support for parents. Four state that they offer a variety of part-time and flexible work arrangements. Also, a different combination of four firms have been given, and chose to display, awards related to their diversity activities. Thus, there seems to have been a range of policies implemented across the firms in this sample in connection with diversity, which in both scale and language seems to be a new development since the 1990s.

From this initial survey, it also seems that the diversity approach has had some influence on policy-making within these firms, though as suggested in chapter 2, there does not seem to have been a wholesale shift to the diversity approach. As discussed, Kirton and Greene use the language of company’s diversity statements as the indicator of the impact of the diversity approach and accordingly, extracts from the diversity statements of the five firms considered in Table A are set out below:

1. Clifford Chance:
(extract from “Diversity, Dignity and Inclusiveness” statement)

We believe that being an equal opportunities firm means going beyond mere compliance with anti-discrimination legislation.
We believe that promoting diversity means creating an inclusive work environment where everyone has the opportunity to succeed without obstacles based on their gender, marital status, race, colour, national or ethnic origin, disability, religious belief, sexual orientation, age or any other basis prohibited under applicable law.
We recognise that people from varying backgrounds can bring a full range of worthwhile ideas and innovations to our working practices and business. Encouraging everyone at the Firm to respect the individuality of their colleagues and to feel comfortable in making their own contribution is a fundamental aspect of our values and critical to our business success.

2. Linklaters:
(extract from “Our commitment to diversity”)

Linklaters is proud of the challenging work it does for its clients around the world. We are renowned for achieving what other law firms find difficult to do because we are committed to hiring, developing and keeping the best people no matter what their

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295 Kirton and Greene, n 3 above, 200

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background or experience. We believe our people should be as diverse as our global client base and the communities in which we work. We know that having multiple perspectives and different backgrounds allows us to create innovative solutions for our clients.

Ask anyone at Linklaters and they can tell you that we are promoting an inclusive culture in which people from different backgrounds and perspectives are valued and have equal opportunities to succeed in this firm. We aim to provide everyone with the opportunity to realise their full potential as part of our determination to have the very best people working here.

To ensure the continuous promotion of an inclusive culture, the firm has an international Diversity Committee chaired by the senior partner - the most senior person at the firm. In order to leverage the global nature of the firm the committee oversees, assesses and makes recommendations in relation to the firm's performance in all matters associated with diversity including issues related to age, gender, race, religion, sexual orientation and disability.

3. Freshfields:
(extract from “Diversity” statement)

One of our strengths is our ability to draw on talent from an exceptional range of cultures, backgrounds and jurisdictions. We encourage our people to learn from the views and experiences of their colleagues with different backgrounds or who work in different markets. Having the opportunity to test and improve our thinking in this way allows us to bring our clients more innovative and relevant solutions.

We believe that it is possible to achieve consistency of quality while at the same time fostering individuality. We want our lawyers to flourish as individuals. Our job is to create an environment in which experts, from a range of backgrounds and with a great diversity of skills, can share their strengths and knowledge.

The firm is committed to maintaining this type of environment through the recruitment, retention and advancement of lawyers and staff of all backgrounds and beliefs.

As an equal opportunities employer, we treat individuals equally and with the same attention, courtesy and respect regardless of their race, racial group, colour, ethnic or national origin, nationality, religion or belief, sex, sexual orientation, disability, marital status or age.

The firm's equal opportunity policy applies to all applicants, lawyers and support staff. It also applies to all daily interactions within the work environment and in other work-related settings such as business trips and business-related social events.
4. Allen & Overy:
(extract from “Diversity and Inclusion” statement)297

Our commitment to the people that work at Allen & Overy and those who potentially could work with us is a central part of our corporate responsibility policy.

Diversity and inclusion at Allen & Overy is a business imperative in order for us to be a successful practice in today's competitive global market. Our objective is to attract and retain the most talented people, and to benefit from the varied talents of a diverse workforce. To do this, we aim to provide rewarding careers and a supportive working environment, allowing all our people to maximise their potential and fulfil their ambitions.

5. Lovells:
(extract from “Equal Opportunity and Diversity” statement)298

We treat all members of the firm, client personnel and suppliers and anyone visiting our offices equally, regardless of their age, race, disability, religion or belief, marital status, gender, race, colour, nationality or ethnic or national origin, or sexual orientation.

The policy applies to: the advertising of jobs and appointment to them; recruitment generally; training; promotion; conditions of work and pay; and every other aspect of employment.

All appointments and promotions within the firm are based solely on merit.

Chapter 2 identified three key features of the diversity approach: the focus on valuing difference of all kinds between individuals, the use of the business case and the transformative potential of diversity. The apparent influence of these features in the statements is considered below.

In terms of the individualistic focus, there is evidence of this in the statements above, but it is mixed in with a focus on certain groups. Clifford Chance’s statement speaks of creating an “inclusive work environment where everyone has the opportunity to succeed” [author’s italics], but this is followed by references to the absence of “obstacles” for staff on the basis of certain named categories and “any other basis prohibited by law.” This is a narrower and more compliance-focused approach than would be suggested by the diversity approach’s goal of valuing all differences. As with each of the five statements,

the lists of groups here covers all of the six categories discussed in chapter 2 and set out by the E.U. and EHRC.

Significantly, however, elsewhere in the Clifford Chance statement there is reference to upholding “individuality” which is, again, broader in scope than the groups listed in the statement and strongly shows the influence of the diversity approach. This is consistent with the goal at the beginning of the statement of going “beyond mere compliance”. Overall, this pattern is borne out by most of the other statements. The exception is Lovells’ statement which is still dominated by equal opportunities approach in its list of protected groups and lack of diversity language implicating the whole workforce.

The business case also features prominently throughout the first four statements. Clifford Chance recognizes “worthwhile ideas and innovations” as flowing from “varying backgrounds”. Linklaters states that it is able to achieve “what other law firms find difficult” because of hiring and keeping “the best people” who are “as diverse as our global client base and communities in which we work”. It also links “multiple perspectives and different backgrounds” in the workforce to “innovative solutions”. Freshfields notes that diversity is “one of our strengths” and also links it to generating “innovative and relevant solutions” for clients. Allen & Overy is particularly explicit; here diversity is a “business imperative”. However, Lovells does not include business case language and is more focused on compliance; it even lists the aspects of its business in which equal treatment is ensured, including recruitment, training and promotions.

In contrast, the third (and as argued in chapter 2, most problematic) feature of the diversity approach- its transformative potential- is absent from all of the statements. Indeed, some seem to have as their goal the strengthening of the existing ways of doing business by opening them to new groups, as also observed by Webb in the case study considered in chapter 2. Thus, the goal at Linklaters is to have “the very best people work here”. Freshfields states its belief that the “individuality” it intends to foster is consistent with “quality” though it does mention that colleagues with “different backgrounds” will “test and improve our thinking”. Allen & Overy’s goal seems to be that its workforce
“maximise their potential and fulfil their ambitions” rather than any change to the workplace itself, while again Lovells shows the influence of equal opportunities thinking by stating that merit is the sole criteria for appointments and promotions.

Based on these statements therefore, four firms show the influence of the diversity approach except as regards transformative potential. One firm, despite stating that it has a “Equal Opportunity and Diversity” statement still seems to be very much in the equal opportunities tradition. Indeed, all the firms are still focussed on groups to some extent, and seem in their choice of groups to be mindful of anti-discrimination law (see chapter 5 below). Thus, the term ‘diversity boom’ is used in a way which is mindful of these underlying complexities, which will be explored further in through this research.

3. Conclusion

This chapter has addressed certain aspects of the extensive literature about the legal profession in England and Wales and about equality and diversity therein, as well as considering City law firms specifically. The goal of the chapter has been to establish the second part of the background literature to the study, to define key terms such as ‘City law firm’ and ‘diversity boom’ in a way which acknowledge the complexities underpinning both terms, and to describe the historic developments behind the study.

This chapter has reviewed the literature about the persistent marginalisation of certain groups in the profession. As section 1.2 above explained, the literature shows that male, Euro-centric and middle-class norms (as Nicolson puts it) still dominate the profession and the marginalisation of other groups persists. This section also drew attention to the paucity of data about the experiences in the profession by sexual orientation, religion and belief and disability, and of research which takes an intersectional perspective.

The chapter has also argued that there is a history of City law firms being pressurized in respect to equality and suggested that some equal opportunities policies have been in place in some of these firms since at least the 1990s. However, it has also argued that in the 2000s the numbers of these pressures seemed to have increased and that City law
firms have implemented a greater number and range of equality management policies in this period. It has also argued that the language of diversity has become more prominent and that in certain respects, the diversity approach has become influential (though not universally) in terms of firms' policy-making.

The next chapter sets out specifically how the research intends to investigate the diversity boom, how it is located in the broader literature, and where it aims to make a contribution to the debates considered in chapters 2 and 3.
Chapter 4
Research goals and method

This chapter addresses two outstanding preliminary issues. Section 1 of this chapter sets out
the goals of this research, relating back to the literature examined in the preceding chapters.
Section 2 considers the method underpinning the research and particularly focuses on the
question of why interviews were used.

1. Research goals
This study aims to deepen our understanding of diversity policies in City law firms and in
particular it seeks to explain why these policies have been implemented. The preceding
chapters 2 and 3 have suggested that this research touches on a number of under-explored
areas as well as being rooted in some extensively debated ones. This section sets out the
goals of the research, explains how these goals related to this literature, and considers the
limits of the research.

This primary goal of this research as it relates to the diversity literature considered in
chapter 2 is to investigate in detail the drivers behind the implementation of diversity
policies in City law firms. It aims to yield detailed information about the factors which
drive City law firms' policy-making, in particular by shedding light on the role of external
parties, including the Government, Law Society, clients, the legal press and interest groups.
It will examine the exogenous pressures which City law firms found persuasive and those
which they did not. These findings will link back to the discussion in the diversity literature
about the reasons behind a shift towards diversity policies in practice and the specific
arguments which have been developed (e.g. by McGlynn, Wilkins and Dickens) about the
impact of anti-discrimination legislation and the business case as drivers for policy-making.

In terms of the debate about the extent of the shift from an equal opportunities to a diversity
approach, the research takes as its starting point the position that there has been a 'diversity
boom' in City law firms. This terms was discussed, defined and qualified in chapter 3 and
where the term was specifically linked to the increase in number and range of policies, the
increased use of diversity language and the influence of the diversity approach. However, the research will consider in more detail what this shift has actually meant within City law firms, the firms’ use of the diversity concept and the extent to which the diversity approach has been influential in practice. In terms of the extent of the implementation and effectiveness of diversity policies in City law firms, while the research is not designed to audit these policies it may reveal patterns of variation across this sector; as shown in the consideration of five firms’ diversity statements above there is already signs of a varied approach between firms. Any findings about the variation between firms will be considered against the typology suggested by Healy and updated by Kirton and Greene. The research may also shed some light on factors that are associated with more effective policies in practice, thereby linking into the case study work conducted by Sturm. In particular, because of its focus on the perspective of diversity staff, this research may yield findings relevant to the literature about the importance of line managers for diversity policies, and of senior leadership support. Through the interviews with diversity staff, it will also shed light on the internal decision-making processes in City law firms as it relates to diversity policy-making, and also on how diversity staff fit into and navigate the hierarchies with these organisations.

The limits of this study are considered in more detail below, but at this point, it is important to emphasise that this research does not set out to assess the effectiveness of the diversity policies in question, as, for example, Webb has in work discussed in chapter 2. Nonetheless, by examining the role of diversity staff in City law firms (who, as discussed in the following section were the main interviewee group) the research aims to build up our understanding of some of the issues which Webb and others have identified, such as the important role played by managers and business leaders, the effects of their discretionary powers on the implementation of diversity policies, and the persistence of powerful and entrenched norms. It may also, in this respect, contribute to the case studies developed by Sturm of workplace problem solving schemes in the U.S.

As established by chapter 3, the literature about diversity in the legal profession and City law firms also forms a critical part of the background to this research. In this respect, the
research’s goal is to develop our understanding of the distinct group of City law firms by examining the decision-making process behind their recent implementation of diversity policies. This research will shed light on the relationship between City law firms and a range of outside parties, including their clients, with whom scholars like Flood have argued these law firms occupy an elite stratum in the City. It will also examine the extent to which City law firms are influence by statute, by Government initiatives and by the Law Society. Furthermore, as discussed in chapter 3, while this research focuses on City law firms, because these firms cast a shadow across the rest of the profession, it follows that that this work will have relevance beyond the confines of its sample.

Beyond this central goal, the research also relates to the extensive literature about the experiences of particular groups such as women and ethnic minorities in City law firms, because it will develop our understanding of certain policies aimed at them, such as employee affinity groups. As discussed above, this is a fresh perspective on the topic which conventionally has taken the experiences of women or (more rarely) ethnic minority lawyers as its starting point and it addresses a gap in the literature by investigating these policies in City law firms. By analyzing the drivers of these policies, and in particular the impact of the business case arguments, the warnings of McGlynn and others about this “misconceived campaign” in the solicitors’ profession can also be considered from a new angle. Moreover, the research will also have a bearing on Wilkins’ argument that moral arguments about equality have failed campaigners, and that the business case has proven a more effective way of persuading law firms to act on issues relating to diversity.

The research therefore aims to develop the scholarly debates in which it is rooted, but it is important to be explicit about its limits. In particular, there are three ways in which the aims of this study should be distinguished from the aims of some of the scholarship about diversity and the legal profession which has been referenced. First, this study does not aim to expand upon either the business or justice-based reasons why law firms should act to address inequality; it is not the aim of the study to make a case for action but rather to explain actions observed to date. Secondly, the study does not aim to follow Sommerlad
and Sanderson, Wilkins, McGlynn, Webley and Duff\textsuperscript{299} and others who have approached this topic by investigating the lived experiences of the women and minorities in law firms. As stated, the research for this study focused on the policies and policy-makers, rather than the (intended) beneficiaries. Thirdly, the study does not aim to audit these law firms’ diversity policies to conclude whether they are ‘working’ or not, or how they might be improved, though interviewees’ comments in this regard will be drawn upon in the discussion. Such an audit would require not only much larger scale qualitative analysis, but quantitative work too, and this was not the aim or the methodology of this work.

Finally, this research might also form a useful foundation for further empirical work. For example, it may prove to be a useful first step towards the larger scale project focusing on the diversity policies which are the subject of its inquiry. In the meantime, it is designed to further the scholarship in its own right, and the methodology and method which it uses to do so is examined below.

2. A note on methodology and method

The empirical data underpinning this study consists primarily of seventeen interviews with diversity staff and lawyers from City law firms, diversity staff in investment banks and a Government Minister from the Department of Constitutional Affairs.

In any piece of empirical research, it is imperative that the data-gathering and analysis are carried out on a sound basis. It is therefore right that some space is dedicated to describing both the underlying theory and actual research experience. The discussion of methodology and method used is therefore detailed, and unlike the other parts of this study, largely in first person. Out of concern for the readability of the study as a whole, the bulk of this discussion is therefore set out in Appendix A. However, this section discusses some of the key issues linked to method and methodology, and in particular explains why interviews were considered to be an effective way of researching the issues at the heart of this study, and why those interviews which were conducted can be considered a good source of data.

\textsuperscript{299} Sommerlad and Sanderson n 86 above, Wilkins, n 212 and n 77 above, C. McGlynn, \textit{The Women Lawyer: Making the Difference} (London: Butterworths, 1998), Webley and Duff n 92 above
2.1 Why interviews?

Silverman offers a useful definition of methodology ("A general approach to studying research topics") as opposed to method ("a specific research technique"). This chapter will adopt these definitions.

This research was conducted using qualitative methodology, because it offered the best opportunity to explore the reasons for the diversity boom in City law firms in an in-depth manner. Furthermore, the methodology was used in an inductive way, i.e. rather than beginning with a set of hypotheses tested by the empirical research, the aim was to build up a theory about the diversity boom from reviewing the research data. As discussed in chapter 3, while many scholars have focused on the implications of the different arguments about why law firms should take action on diversity, the aim of this study is to explore the issues from a new perspective, by trying to understand City law firms’ actions to date, and an inductive approach is well-suited to this aim. Most importantly, this approach minimizes the risk of imposing the researcher’s own assumptions or expectations on the evidence and this is particularly important when trying to construct an explanation for certain decisions and actions. Webley and Duff, for instance, used qualitative research methodology (in their case, the method was focus groups) to explore the reasons why women are leaving the solicitors’ profession. Using this approach not only allowed women solicitor participants to set out their reasons for themselves but also permitted the researchers to observe the how and how frequently participants offered certain reasons, itself a finding of value. For instance, Webley and Duff observed that:

the issues to which women repeatedly returned were lack of flexibility in the workplace, the long hours culture, the difficulty of fitting their work patterns into a male working paradigm, less favourable promotion prospects.... These were not universal but were shared by the majority

Qualitative methodology used in this way can therefore yield multi-dimensional data. For example, the researcher may note if an individual participant makes a point frequently, rarely or reluctantly, or if the conversation returns to a key point, or if the same findings are

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301 Webley and Duff, n 92 above, 382
borne out when different participants’ responses are compared. As demonstrated in the substantive parts of this study, parts 2 and 3, these features of the research data proved highly valuable in this case, for instance when noting in chapter 8 how different interviewees’ accounts kept returning to the role of clients or in chapter 13, revealing the emphasis all of the diversity staff interviewees gave to the role of partners.

The specific research technique, or method, used in this study was semi-structured interviews. There are advantages and disadvantages with the method, but overall, this was judged to be the most appropriate research method to use. Most of all, it offered the best way of balancing the opportunity to gather full and detailed accounts from the interviewees with the researcher’s desire to cover a number of different issues connected with diversity policy-making in City firms (see also the discussion of preparing for the interviews in Appendix A and the interview topic guide itself at Appendix B).

Interviews have been deployed very effectively to research issues relating to diversity and/or the legal profession by, inter alia, Sommerlad, Wilkins and Barmes and Ashtiany, Hunter, Lee and (alongside quantitative methodology) by diversity consultants attempting to explain how companies are “integrating equality and diversity”. Accordingly, there is strong academic precedent for interviews being a highly effective way to build up in-depth and nuanced data both about the position of certain individuals within organisations and about wider, contextual themes. Wilkins, for instance, has interviewed over 200 lawyers, over the course of his research and uses individuals’ stories both in their own right and collectively to challenge fundamental assumptions of the business case for diversity. He writes, for instance, of the Japanese-American litigator who told him she was summoned by partners, on the basis of her appearance, to a meeting where the firm was soliciting work from a Korean company, and black lawyers’ accounts of being “dragooned”

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302 For example, Sommerlad, n 221 above, Wilkins n 47 above, 39 (noting his interviews with over 200 lawyers), Wilkins and Gulati, n 212 above, 543 et seq, Wilkins, n 77 above, 1595 et seq, and Barmes and Ashtiany, n 24 above and Hunter, n 191 above. Lee, n 66 above, 186 discusses using semi-structured interviews in the “top 10” law firms to investigate the promotion to partner process.

303 Rutherford and Ollerearnshaw, n 48 above
into defending employment discrimination cases against their wishes.\textsuperscript{304} Collectively, he uses these accounts to build up an important thesis that there is "danger" inherent in the business case arguments that minority lawyers will 'add value' to law firms, because minority lawyers find their race used as a "significant credential", and become "trapped inside a 'black box' that severely limits their ability to broaden their horizons".\textsuperscript{305}

Moreover there is precedent that the data gathered using interviews may be powerful because, overall, it reveals patterns which are invisible even to the participants. For example, Hunter writes that none of the women barristers in Australia whom she interviewed for a Victorian Bar Council study "specifically identified the structure or environment of the Bar as obstacles to advancement". However, "from the interviews as a whole, it was clear that the Bar culture has a systematically adverse impact".\textsuperscript{306} As Hunter notes, "the fact that the effects of the Bar culture were invisible to these women says something about its operation".\textsuperscript{307}

Therefore, the advantages of using interviews for this study were threefold. First, the method offered the chance to build up a detailed set of data from individual interviewees about themselves but also their wider settings, for example enabling conclusions to be drawn about the day to day role of diversity staff within City law firms, and also about the wider forces affecting such firms and how they may interact. Secondly, the method also lent itself to constructing a thesis from the evidence taken as a whole, maybe revealing patterns which were unexpected for participants (or even the researcher). For example, as will be shown in parts 2 and 3, interview data analyzed collectively enabled patterns to emerge about the relative importance of different exogenous forces and of different insiders within firms. Thirdly, on a more practical note, another advantage of this method was that the researcher in this case had good contacts in some of the law firms which were in the sample, and was optimistic about being able to secure participants. From 1998-2000 the researcher was a trainee solicitor in a firm in the sample, and from 2000-2002 worked as a

\textsuperscript{304} Wilkins, n 77 above, 1595-6  
\textsuperscript{305} ibid 1595  
\textsuperscript{306} Hunter, n 191 above, 105  
\textsuperscript{307} ibid
solicitor in the litigation department of the same firm. While none of her contacts were interviewed for this study, in several cases she was able to find out from contacts about whom to approach in sample firms for interviews, and in these cases secure an introduction to potential interviewees. (Reviewing the effect of this aspect of the researcher’s background, and other matters connected to securing interviews are dealt with in more detail in Appendix A).

Despite the multiple advantages of using interviews for this research, there were also some potential disadvantages with this method which had to be considered in advance. In particular, the scholarship on research interviews draws attention to potential problems relating to the impact of the interviewer on the data collected and the use to which the data is put. In terms of the interviewer’s effect on the data, most recent literature acknowledges that the relationship between interviewee and interviewer alters the data which is gathered, but challenges the assumption that the data is therefore imperfect and unscientific. Miller and Glassner, and others, have offered new accounts of the interaction between interviewer and interviewee, describing it as justifiable part of the way in which the “stories are produced”.

This more modern approach is persuasive, though in light of inevitable effect that the interviewer has on the material collected, the role of the interviewer does still have to be considered advance. Silverman, for example, regards his own prejudices about his topic as so important he lists them in the epilogue to his book. This researcher decided against that approach but planned to reflect both before the interviews and as they went on about how aspects of her identity, especially her career history and gender, might impact upon the interviews (as discussed in Appendix A). Meanwhile the researcher planned to keep the emphasis on the interviewees’ accounts during the interviews and to try to play as neutral a role as possible, for example, trying to avoid or minimize discussion about the researcher’s own views on the topics being discussed.

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309 Silverman, n 300 above, 283
From the outset, the researcher planned to take a “realist” approach to the interview data. Layder has described how “a central feature of realism is attempt to preserve a “scientific” attitude towards social analysis at the same time as recognizing the importance of actors’ meanings and in some way incorporating them into the research”. As discussed more fully in Appendix A, the data was to be analysed using grounded theory which aims is to develop theory and concepts in a flexible way from the data as the research unfolds. However, Layder argues persuasively that Glasner and Strauss offer too narrow a conception of grounded theory. Layder argues that this narrow approach cuts off the possibility of cross-fertilization between different theoretical frameworks and specifically risks the researcher becoming pre-occupied with the “close-up features of social interaction” and neglecting “structural or macro” analyses. Thus, the realist approach allows the researcher to consider how “social structure interweaves with activity”. Layder argues that the realist approach, by preserving certain, useful aspects of the scientific approach within a grounded theory method stimulates innovative forms of theory building. This, he suggests, is particularly appropriate approach for research investigating causal links and power relations. In these cases, there is a need to account not only for observable aspects of relationships between people or groups but also the structural dimensions, which

underpin and secure control over collective power resources. It also overlooks the way in which relations of power between groups based on ownership or possession of various resources are reproduced over time and establish the conditions which enable particular individuals to exercise power (60)

This corresponds well to the focus of this study, being the drivers behind City firms’ diversity policy making and the relationships between those firms and certain key outsiders. It was therefore appropriate to be mindful of Layder’s “wider definition of GT [grounded theory]”. In the context of this research, this particularly meant being aware of the

311 Layder (1993), n 310 above, 19
313 Layder, (1993), n 310 above, 55
314 ibid 56
315 ibid 60
macro-influences of factors such as the hierarchy of City law firms' organizational structures and the importance of client relationships in order to better understand the data and avoid unduly focusing on the personal activities of interviewees.

It was naturally anticipated that the interview data might also cover interviewees' internal experiences, (for example, feelings of frustration if it proved difficult for diversity staff to get things done in a firm) but it was anticipated that this would be a less substantial part of the data in these interviews and that this could be balanced by using an approach to the data analysis influenced by Layder's wider version of grounded theory. In order further to investigate structural factors, and to triangulate the interview data, it was also decided to triangulate the external accounts of interviewees at City law firms by comparing them to the data from interviews with investment banks (clients of the City law firms) and the Government Minister, as well as with documentary data from the legal press and firms' own publications. For example, in chapter 8, law firm diversity staff interview evidence about the importance of client pressure about diversity is considered alongside the many press articles about its significance, and also alongside interview data from three banks, in their capacity as City law firm clients.

On balance, therefore, semi-structured interviews used in an inductive way, analysed according to Layder's wider version of grounded theory were considered to be the most appropriate method to investigate the complex reasons behind the diversity boom in City law firms. It was recognised that there were disadvantages to this method, but the researcher was mindful of the limitations before commencing the research. Appendix A deals in detail how the interviews were conducted, reviewed and analyzed and argues that the interviews conducted produced reliable and valuable research data. Parts 2 and 3 which follow this chapter set out the findings which were built up from the data generated and analyzed in this way.

2.2 A note on the currency of this study
The interviews for this study took place between February and June 2007. However, where important developments to the law or new initiatives by the outsiders considered in part 2
occurred after the interviews, these have been noted, for example, the coming into force of the Legal Services Act 2007. However, it is made clear in the text where events being discussed occurred after the interviews. Every effort has been made to ensure that this study presents an accurate account of matters outside the interviews as at 1 March 2008. Unavoidable exceptions to this general rule are clearly indicated in the text, for example where information has been gathered over an earlier period as in the case of Table A in chapter 2 above. Finally, where websites are offered as part of a reference, these should be considered last visited on 1 March 2008, unless the reference indicates otherwise.
Power, prizes and partners: Explaining the diversity boom in City law firms

Part 2: Explaining the role of outsiders

Chapters:

Introduction
5. The Government
6. The Law Society
7. Clients
8. Interest groups
9. The legal press
10. Preliminary conclusions
Introduction to Part 2: Explaining the role of outsiders

A scholar of organisational theory suggests that the context in which an organisation operates may be understood as follows:

"Organisations exist in a world where changes are happening all the time. One way of trying to make sense of these pressures is a PESTLE analysis [Political, Economic, Social, Technological, Legal, Environmental pressures to act]. Each of these headings can be used to analyse the external environment within which the organisation operates, identifying what pressures for change exist and the likely effect they will have." 316

The chapters in part 2 do not methodically go through each element of a "PESTLE analysis", but they do follow the same logic, by considering the exogenous pressures on the City law firms which are the focus of this study. This approach is also influenced by Abel, as discussed in chapter 3, and his identification of two types of pressure on the legal profession, emanating from the state and market. Work by scholars like Dickens, McGlynn and Wilkins has also considered the factors, or "equality drivers" 317 which trigger diversity policy-making.

Chapters 5 to 9 examine the nature of the exogenous pressures exerted on City law firms by looking at the particular parties which are considered most relevant to the diversity boom. The Government, the Law Society, clients, interest groups and the legal press are examined in turn and an account of their influence, informed by the academic literature, is constructed from an analysis of the evidence generated by this research.

The overall goal of each of these chapters is to answer the same two questions: what is the perspective of the party generating exogenous pressure about law firms' diversity and secondly, what influence has is had on City law firms? However, the questions are not imposed on the data, rather each chapter reflects on the findings of the data collected. As a result, the structure of the analysis varies slightly from chapter to chapter. Detailed conclusions are drawn out in each chapter in turn, while the overall findings are discussed.

317 Dickens, n 4 above, 186
in chapter 10 (Preliminary conclusions) and, in the light of the findings in part 3, in chapter 14 (Conclusions).
Chapter 5

The Government

1. Anti-discrimination legislation (1): The current landscape
   1.1 Current anti-discrimination legislation
   1.2 Protected grounds
   1.3 The approaches of the legislation
   1.4 Tension between legislation and diversity policies

2. Anti-discrimination legislation (2): The effect on City law firms
   2.1 A ‘chilling effect’ within City law firms?
   2.2 The role of law in driving the diversity boom in City law firms

3. The Government’s initiatives to increase diversity in the legal profession
   3.1 The Government’s initiatives as regards the legal profession
   3.2 The Government’s letter-writing initiative and its effect on City law firms

4. Conclusion: The Government’s dilemma

Summary:
The first two sections of this chapter consider the impact of anti-discrimination legislation on diversity policies in City law firms. The first section describes the current landscape of anti-discrimination legislation and some of the related scholarly debates. The second section turns to consider its effects on City law firms.

The third part of this chapter examines the Government’s initiatives which have been aimed at increasing diversity in City law firms. It discusses the Government’s case for increasing diversity and the measures which it has taken to trigger change. The chapter concludes by arguing that the Government is caught in a dilemma about how it should promote diversity in the legal profession.
1. Anti-discrimination legislation (1): The current landscape
This section reviews the scope of anti-discrimination legislation in England and Wales as it comprises a further aspect of the background to the policies which are the subject of this research.

1.1. Current anti-discrimination legislation
In a 2007 consultation document on discrimination law, the Government expressed pride in Britain’s forty year record of “delivering on equality to create a fairer and more successful society” and in particular in its own achievements over last 10 years, during which time “increasing equality has been at the heart of this Government’s policy”. Illustrations such as a drop in the pay gap, fall in number of pensioners in poverty and support for working families under this Government were all cited in support of this record.

However, it is now widely recognised, including by the Government, that anti-discrimination legislation in this jurisdiction is in urgent need of reform. Indeed, replacing the current patchwork of legislation with a Single Equality Bill was included as a manifesto pledge by the Labour Party in the 2005 general election. Pending such changes, the law remains voluminous and piecemeal and this complexity has two origins. First, it has arisen because this area of law has developed in a piecemeal way over a period of more than thirty years, overseen and directed by different Governments. Secondly, domestic legislation in this area has been passed not only incrementally but also as part of the U.K.’s obligation to implement E.U. legislation such as the Race Directive (2000/43/EC). Thus, at present, anti-discrimination law is found in a large number of different Acts, regulations and other sources. More importantly perhaps, the law also embodies a number of different approaches to pursuing equality, such as equal treatment (the most prevalent), positive duties and reasonable adjustment.

318 DLR, n 74 above, 9
319 ibid 11 et seq
Pending an overhaul, therefore, the current legislative framework remains replete with instances of what has been called “mind-numbing, frequently irrational, complexity”. Accordingly, this survey does not claim to be a complete review of this highly technical area of law (the effects of the Human Rights Act 1998 are, for example, beyond the scope of this discussion), but rather it aims to describe the main features of the legislative background to the issues in this research, and as a secondary matter, to convey something of the complexity and inconsistency which has driven calls for reform.

1.2 Protected grounds

Current anti-discrimination law dates back to the Equal Pay Act 1970 ("EPA"), Sex Discrimination Act 1975 ("SDA") and the Race Relations Act 1976 ("RRA") which were each passed by Labour Governments. The SDA covers discrimination on the grounds of sex and also covers married (but not single) people, civil partners, transsexuals and, following a 1996 case in the European Court of Justice, gender reassignment. The SDA complements the Equal Pay Act 1970. The latter deals with contractual terms in employment, (including wages, bonus, holiday entitlement etc.) and protects an employee doing substantially similar work to a member of the opposite sex but under worse terms. (Article 141 of the EC Treaty (formerly Article 119) also provides that men and women should receive equal pay for equal work. It is directly enforceable by claimants against employers and in some respects offers a broader scope for a claim than is possible under the Equal Pay Act 1970). Meanwhile, the SDA covers all other aspects of employment, including recruitment, promotion, training and dismissal.

The RRA protects people from discrimination on the basis of “racial grounds” which is defined in s.3 as covering “colour, race, nationality, ethnic or national origins”. In *Mandla v Dowell Lee* [1983] ICR 385 the House of Lords held that “ethnic origin”, being a wider category than race, included the Sikh community. The test applied here was whether the group seeking inclusion in the definition distinguished itself from other segments of the

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320 Nabarro, n 42 above
31 L. Johnson and S. Johnstone, “The legal framework for diversity” in Kirton and Greene, n 3 above, 43 et seq. and DLR, n 74 above, 27-8 and chapter 1
population through shared customs, beliefs, traditions and characteristics derived from a shared or common past. The Sikhs, Jews and those of the Romany race have been held to be ethnic groups; Rastafarians are not. The RRA applies not only to the aspects of employment covered by the SDA such as recruitment, but also to contractual terms. It should be noted that following the implementation of the Race Directive (by means of the Race Relations Act 1976 (Amendment) Regulations 2003) the definition of race has become more complicated as regards indirect discrimination.

Legislation has also been passed to prohibit less favourable treatment of people on further grounds, and there has been particular activity in this respect since 1997 when the Labour Party came to power. The further groups protected from discrimination are considered below.

The Disability Discrimination Act 1995 (the “DDA”) as amended by the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (SI 2003/1673) and Discrimination Disability Act 2005 protect disabled people from discrimination in the employment context and in other areas of life. For these purposes, disability is defined as a mental or physical impairment which has a substantial and long-term adverse effect on the ability to carry out normal, day-to-day activities.

The Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660) covers discrimination on the basis of religion or belief (including a lack of religion or belief) in the employment context. The Equality Act 2006, Part 2 extended protection against discrimination on these grounds to the provision of goods and services.

The Employment Equality (Sexual Orientation) Regulations 2003 (SI 2003/1661) cover discrimination on the basis of sexual orientation in the employment context. These have been supplemented by the Equality Act (Sexual Orientation) Regulations 2007, which

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324 ibid paragraph 32.41
325 ibid.
326 McColgan, n 11 above, 565
327 s1(1), Schedule 1 DDA.
extend protection against discrimination on this basis to the provision of goods and services.

The Employment Equality (Age) Regulations 2006 (SI 2006/1031) covers discrimination on the basis of age, in the context of employment only.

1.3 The approaches in the legislation

As discussed in chapter 2, the predominant approach of anti-discrimination law is that of equal treatment. The same understanding of equality is evident in legislation protecting people from discrimination on the grounds of sex, race, religion or belief, age and sexual orientation. Though there are important variations in the technical definitions of discrimination across these statutes (and therefore the discussion which follows is in simplified terms), they are also framed around the same concepts of direct and indirect discrimination, victimisation and harassment. It has been said, for example, that in the SDA and RRA, the definitions of discrimination, defences and burdens of proof are "substantially the same".328

Direct discrimination occurs when someone is treated less favourably on the basis of a protected ground than another person without the protected characteristic is, or would be, treated in the same circumstances.329 Claims on the basis of direct discrimination therefore involve the claimant’s referencing a comparator (unless the claimant is a pregnant woman where no comparator is necessary330). This is a real or hypothetical person in the same circumstances as the claimant, bar the protected characteristic. As the Discrimination Law Review notes, “concerns have been expressed that whether a direct discrimination claim succeeds or fails depends too much on choosing the right comparator. It is sometimes difficult to identify a suitable comparator”.331 In respect of sex (but not martial/civil partnership status or gender reassignment) race, religion or belief, sexual orientation and age, there can be a defence to direct discrimination where there is a genuine occupational

328 Brown et al, n 323 above, para 32.35
329 For example, ss 1(2)a, 3 SDA and s1(1)a RRA. See discussion at Brown et al, n 323 above, 516-517
330 s3A SDA
331 DLR, n 74 above, 33 and Johnson and Johnstone, n 321 above, 155 et seq.
requirement for the job, which is proportionate to apply, in the case in question.\textsuperscript{332} In the case of the SDA and the RRA the statutes provide lists of circumstances where employers may differentiate because meeting a particular criteria is a genuine occupational qualification for the job, e.g. for dramatic authenticity.\textsuperscript{333} In respect of disability, a defence is available if the employer can show that the direct discrimination was objectively justified.\textsuperscript{334} Notably, the defences to claims of discrimination on the basis of age are wider than those in respect of other grounds; for example the genuine occupational requirement and objective justification defences are available in respect of both direct and indirect age discrimination.\textsuperscript{335}

Claims of direct discrimination on the basis of age, race, sexual orientation and religion or belief may be brought on a wider basis than those on other grounds. In these cases, people are also protected from discrimination on the basis of another person’s perception of their having a protected characteristic (whether the perception is right or wrong) and (in all but the case of age) they are also protected on the grounds that they associate with a person with a protected characteristic.\textsuperscript{336} 

In simplified terms, indirect discrimination occurs when a provision, criteria or practice which, prima facie, applies equally to everyone actually has a disproportionate adverse impact on a protected group.\textsuperscript{337} For example, a job requirement that applicants be 25-35 years old has been held to constitute indirect discrimination because it excluded many women with young children.\textsuperscript{338} However, in some cases if an employer can show that the provision, criteria or practice in question is a proportionate means of achieving a legitimate aim, the indirect discrimination will not be unlawful.\textsuperscript{339} It is important to note that there is currently inconsistency as to the definition of indirect discrimination between and within the SDA and RRA and legislation covering sexual orientation and religion or belief, and as

\textsuperscript{332} DLR, n 74 above, 44-5
\textsuperscript{333} s7(2) SDA and s(5) RRA
\textsuperscript{334} s3A(3) DDA and Brown et al, n 323 above, paragraph 32.56
\textsuperscript{335} Brown et al, n 323 above, paragraph 32.74 and 32.78
\textsuperscript{336} See Johnson and Johnstone, n 321 above, 155 and DLR, n 74 above, 35
\textsuperscript{337} DLR, n 74 above, 36
\textsuperscript{338} Price v Civil Service Commission and the Society of Civil and Public Servants [1978] IRLR 3
\textsuperscript{339} ss1(2)(b)(iii) and s1(1A)(b)(iii) SDA
to the objective justification test across the different statutes, which the Government has again consulted about harmonising. \(^{340}\)

Indirect discrimination covers all the protected grounds except gender reassignment and disability (though the Government is in favour of extending legislation to provide protection against indirect discrimination on the former ground). \(^{341}\) The DDA does not include indirect discrimination in its definition of discrimination. Instead, the approach of the DDA is to place on employers or providers of a service a duty to make "reasonable adjustments" to accommodate a particular disabled person. The Government has asserted that this duty, taken with the concept of unjustified less favourable treatment for a reason relating to a person's disability, "deals with the same situations" as indirect discrimination. \(^{342}\)

Claims may also be made for victimisation and harassment. Victimisation arises if an employer treats any person less favourably than others because that person threatens to bring proceedings, to give evidence or information, to take any action or to make any allegations (in good faith) concerning the employer with reference to all strands of discrimination. \(^{343}\) Harassment is where, on the basis of protected grounds, a person engages in unwanted conduct which has the purpose or effect of violating another person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. \(^{344}\) There are further grounds for harassment in the case of sex discrimination set out in s4A(1)(b) and (c) SDA.

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\(^{340}\) For example, where the discrimination relates to the employee's racial group, the test is whether the 'requirement or condition' leads to the indirect discrimination and justification is not subject to the 'legitimate aim/proportionate means' requirement. Brown et al, n 323 above, paragraph 32.35. Arguments about harmonization are made at DLR, n 74 above 39-40

\(^{341}\) DLR, n 74 above, 37

\(^{342}\) ibid 37

\(^{343}\) For example, s4(1) SDA, s2(2) RRA discussed at Brown et al, n 323 above, paragraph 32.23 and s55 DDA discussed at Brown et al, n 323 above, paragraph 32.56 and Johnson and Johnstone, n 321 above, 158

\(^{344}\) For example, s4A(1)a SDA, s3A(1) RRA discussed at Brown et al, n 323 above, paragraph 32.17 page 517 and s3(B)(2) DDA discussed at Brown et al, n 323 above, paragraph 32.57
In important ways, the DDA’s approach is differs from that of the other statutes described hereto. Under this statute, in addition to a prohibition of direct discrimination,\textsuperscript{345} there is a positive duty to make reasonable adjustments, though it is triggered at different points in the contexts of employment and education on the one hand, and goods, facilities and services on the other. Reasonable adjustments include making changes to premises, altering working hours and acquiring or modifying equipment.\textsuperscript{346} The DDA thereby requires different treatment of disabled people whereas other legislation is framed around the equal treatment principle, i.e. prohibiting unequal treatment.

The Fair Employment Treatment (Northern Ireland) Order 1998 ("FETO") also differs from the prevailing equal treatment approach. This statute goes far beyond other statutory regimes in permitting positive discrimination as it allows employers in Northern Ireland to engage in affirmative action with a view to achieving “fair participation” on the part of either Catholics or Protestants.\textsuperscript{347}

As will be discussed in more detail in chapter 7 below, recent amendments to the RRA, DDA and SDA also evidence an approach which differs from the traditional equal treatment principle by imposing statutory race, disability and gender equality duties on public authorities in England and Wales, which came into force in May 2002, December 2006 and April 2007 respectively.\textsuperscript{348}

This brief survey of the main anti-discrimination legislation in England and Wales confirms that the law in this area has grown more comprehensive in recent years, but at the price of becoming “complex and at times lacking in coherence and consistency".\textsuperscript{349} The Government has recognised that the “tangle of acts and regulations whose variety owes

\textsuperscript{345} S3(A)2 DDA discussed at Brown et al, n 323 above, paragraph 32.53
\textsuperscript{346} Brown et al, n 323 above, paragraphs 32.54-55, citing Disability Rights Commission, Code of Practice: Employment and Occupation (Disability Rights Commission, 2004)
\textsuperscript{347} McColgan, n 11 above, 137
\textsuperscript{348} See s71 RRA 1976 (inserted by the Race Relations (Amendment) Act 2000), s.49(A) DDA 1995 (inserted by the Disability Discrimination Act 2005) and s.76(A) SDA 1975 (inserted by s.84 of the Equality Act 2006) and subordinate legislation made under these sections. See discussion of this legislation at Nabarro, n 42 above, 13 and footnote 32, and the DLR, n 74 above, 82 et seq
\textsuperscript{349} McColgan, n 11 above, 9
little to principle and much to happenstance\textsuperscript{350} is ripe for reform and, as discussed, has consulted on harmonising the law in a Single Equality Bill in the future.

1.4. Tension between legislation and diversity policies

It has been said that there are "deep tensions\textsuperscript{351}" between anti-discrimination law in England and Wales and the increasing interest in the public and private sectors in diversity initiatives. As discussed, the starting point of anti-discrimination law is equal treatment (though it was noted that there are some important "deviations from a simple equal treatment principle\textsuperscript{352}"). Therefore, preferential treatment of persons on the basis of race, sex, sexual orientation, and religion or belief is unlawful unless it falls into a category of permissible positive action. These include:\textsuperscript{353}

- where legislation mandates different treatment e.g. the Disability Discrimination Act 1995. As discussed in the previous section, this statute does not adopt a symmetrical approach and at times requires people with disabilities to be treated differently;\textsuperscript{354} and

- where preferential treatment for protected groups is expressly allowed, or saved from unlawfulness,\textsuperscript{355} by the legislation, to redress prior history or disadvantage, for example, the exceptions for positive action under ss.47, 48 SDA and ss.37, 38 RRA. Broadly these sections allow training bodies and employers in prescribed circumstances to offer training and encouragement

\textsuperscript{350} ibid
\textsuperscript{351} Nabarro, n 42 above, 9
\textsuperscript{353} While the scope of permissible positive action does not differ between the public and private sectors, the public sector are subject to three equality duties prescribed by law. The effects of these equality duties are considered further in chapter 7.
\textsuperscript{354} McColgan, nII above, 139
\textsuperscript{355} Nabarro, n 42 above, 10
“to take advantage of opportunities for doing that work at that establishment”\textsuperscript{356} to women or men, or a particular racial group, in order to redress imbalance in the workforce. It has been pointed out that while the analogous provisions in the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003 seem less constrained, “a narrow approach to construction is still to be expected”\textsuperscript{357}

An organisation contemplating positive action is therefore, as a matter of law, confined to narrow exceptions to the principle of equal treatment. Barmes, considering the ways in which diversity thinking “countenances differential treatment... so long as this is required to enable people to compete on equal terms” has warned that “much of U.K. anti-discrimination law leaves very little scope for measures of this kind”.\textsuperscript{358} Indeed, she argues that the underlying law is likely to “chill organizational innovation that is designed to accommodate and promote diversity”.\textsuperscript{359}

Barmes and Ashtiany have argued that there are two distinct ways in which the “diversity perspective deviates from the traditional model” of the equal treatment principle.\textsuperscript{360} First, the diversity perspective is much less focused on the individual, and measures are not triggered by individual complaints or past wrongs. Secondly, the focus of the diversity perspective is to “enhance inclusiveness”\textsuperscript{361} by accommodating difference, which stands in contrast to the traditional emphasis on equal treatment. While Barmes and Ashtiany argue that these sites of tension correspond to weaknesses in the traditional legal framework, they point out that “anyone adopting the diversity perspective needs to have systems in place for ensuring that their initiatives do not stray outside the limited confines of lawful positive action”.\textsuperscript{362}

\textsuperscript{356} s.48(1)(b) SDA.
\textsuperscript{357} Nabarro, n 42 above, 11-12
\textsuperscript{358} Barmes, n 353 above, 200
\textsuperscript{359} ibid
\textsuperscript{361} ibid
\textsuperscript{362} ibid 282
Elsewhere, Barmes points out a further complicating effect of the existing legislative model; she regards it as "only a matter of time before there will be a direct clash between two or more of an employer’s duties not to discriminate"^{363}. By way of example, she contemplates the situation where an employee’s religious convictions limited their capacity to feel at ease working closely with women or homosexuals. She also argues that the situation seems to be getting worse: "if judges continue on their current path they will hamper still further the law’s already limited capacity to play a meaningful role in combating egregious discrimination"^{364}. Accordingly the case for legislative guidance is "irresistible", lest the current legal landscape “derail the efforts of organisations” such as investment banks already taking action.^{365} Indeed, a study of U.K. investment banks’ diversity policy-making conducted in 2003 by Barmes and Ashtiany concluded that banks should take measures to minimise the possibilities of a clash with the underlying legislation. These recommendations included that “those engaged in developing diversity initiatives be made fully conversant with the scope for lawful positive action”.^{366}

However, despite the complex and potentially problematic effects of underlying anti-discrimination legislation, there is recognition that the possibility of a clash may not be constraining diversity policy-making in practice; one law firm warned in 2007 that the complexity of the underlying law and the narrow scope for positive action means that:

> the more energetic employers are in pursuing the diversity perspective, the more they risk falling foul of prohibitions on direct discrimination."^{367}

The same briefing cites examples where well-meaning employers have initiated a “homegrown diversity strategy” which ran into difficulties with the underlying law, concluding that this is “a growing and disquieting trend”.^{368}

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^{363} Barmes, n 353 above, 212
^{364} ibid 213
^{365} ibid
^{366} Barmes and Ashtiany, n 24 above, 2
^{367} Nabarro, n 42 above, 12
^{368} ibid 15-16. See also the example based on a hypothetical diversity policy in an investment bank offering only one ethnic minority group in the workforce extra flexibility at Barmes and Ashtiany, n 24 above, 15
2. Anti-discrimination legislation (2): The effect on City law firms' diversity policies

As noted at the beginning of this section, the Government claims a number of specific achievements in respect of increasing equality, and has extended the protection of anti-discrimination laws to a number of new social groups. Meanwhile, new approaches to framing anti-discrimination legislation have been evidenced in the DDA and the legislative amendments which impose equality duties on public authorities. In chapter 2 it was discussed that scholars such as Dickens had identified the "agenda-setting role" of legislation and "influence of legislation on employer practice".369

To what extent, then, has the anti-discrimination legislation discussed above encouraged the implementation of diversity policies, or has it had the chilling effect which some scholars are concerned about? The following section considers the effect of legislation on City law firms' diversity policies, beginning with a consideration of whether legislation has "chilled" diversity policy-making.

2.1 A 'chilling effect' within City law firms?

As discussed above, the suggestion has been made that underlying anti-discrimination law risks having a chilling effect on diversity policy making. However, the interview data generated by this research did not suggest that the potential for a clash with the underlying law is a significant influence on diversity policy makers in City law firms in practice. Moreover, this research found no evidence of measures to make sure diversity staff were "conversant" with the underlying law or to ensure that measures did not "stray outside" the scope for lawful action, as Barmes and Ashtiany have recommended. Indeed, not one of the interviewees expressed concern that their diversity policies would themselves run into difficulties with the underlying law in this jurisdiction. One interviewee even suggested that the courts would only welcome action on diversity:

from a purely legal angle [taking notice of diversity issues] was a good thing to do. You know, you couldn’t be told off for actually dealing with it [2-2]

There was no evidence found in this research to suggest that problematic terms of the underlying legislation act as a brake to diversity policy-making in practice. This contrasts

369 Dickens, n 4 above, 194
with the frequently expressed anxiety that certain policies were difficult to implement because they may cause "misunderstandings" [5-8] or offence amongst staff. One such policy which several interviewees explained to be difficult to implement because of concern about staff reactions was monitoring for sexual orientation, and this is considered further in chapters 12 and 13.

The finding that anti-discrimination legislation does not have a 'chilling effect' on diversity policy-making in practice in City law firms may have several possible explanations. First, because diversity policies in City law firms were still regarded as being in their early stages by participants (as discussed further in chapter 13 below) the difficulties of the interaction with the underlying law may have yet to be considered (or litigated). Secondly, it may be the case that other people in the firm in the sample, apart from the interviewees who participated in this study, monitored these aspects of compliance. However, the absence of evidence suggesting the constraining effect of the underlying law cannot be explained simply on the basis that only the minority of interviewees were lawyers (see Appendix A, Table D) because diversity staff interviewees did, on several occasions, express concern about the effects of laws in other jurisdictions, for example one said that:

> the monitoring of diversity is only for London because in France for instance you are not allowed to ask all sorts of things, and clearly in South East Asia you couldn't be asking about sexual orientation [1:8]

Another firm also worked on the basis that "recording [or] monitoring" the workforce in some jurisdictions “can’t happen” because of legal restrictions. [8-21]. A former senior partner of another firm in the sample explained:

> if you’re looking at an international firm you’ll find that the gathering of statistics between jurisdictions is completely different. There are some jurisdictions where they gather different statistics,. There are some jurisdictions where it is illegal to even ask for them. So, if you’re an international firm, your stats, if you are going to do them internationally, are going to be distorted [2:8]

Moreover, the same former senior partner interviewee spoke of how the firm’s diversity statement had to be drafted very carefully to “work in every single country in which we practice” [2:15] and another observed that diversity policies varied widely from office to office because “there’s different legislation in different areas, and I think that there are also
different pressures" [4:23]. Indeed, most firms had not yet done anything about diversity beyond the confines of their London office and many interviewees indicated that very little thought had been given to this to date. Some thought that this was "too difficult" [1:44] to tackle at the moment, with the exception of certain one-off locations overseas where a partner was personally keen on implementing a particular policy. All seemed to agree that rolling out diversity policies to overseas offices would be "a minefield" [8-29].

Interviewees therefore seemed more mindful of the legislative "minefield" overseas than at home. This is perhaps because wariness of foreign law is just one of a many problematic issues for London based staff contemplating the launch of diversity policies in the foreign offices. (An interviewee, whose firm had tried to asked certain personal questions of staff in the firm's Paris office, described how local staff "were up in arms" [15-3] in response). In the U.K., on the other hand, this research has shown that the deep tension between the underlying legislation and diversity policy-making does not seem to influence those who manage diversity policies day to day. This study will suggest that this is, in part, because powerful pressures from outsiders have driven forward the diversity boom for reasons which have no connection to the underlying legislation.

2.2 The role of law in driving the diversity boom in City law firms
While interviewees did not suggest that the tension between diversity policies and underlying legislation had constrained the former, some did refer to the law as one reason why their firms had become interested in diversity policies. This echoes Dickens' argument that the legislation had an "agenda-setting role".370 However, interviewees' explanations about the role law had played were not straightforward, while, overall, none suggested that the law was any more than a background factor in driving diversity policies compared to, say, pressure from clients. This inconsistency about the role of law confirms Barmes and Ashtiany's findings that in the investment banks of their study:

there is no clear consensus regarding the impact of anti-discrimination law on the decision actively to promote diversity. On the one hand the JPMorgan text includes the law as a motivating factor... [on the other] the Lehman Brothers text indicates

370 ibid 194
that a diversity strategy is less likely to be successful if it is seem as responding to legal requirements.

Consistent with these findings, some interviewees who took part in this research regarded the law as setting a certain standard for HR policy making of all kinds (albeit one that was seen as a low bar). Several times in interviews, reference was made to “the legal minimum requirement” for workplace policies and practice. One interviewee described legislation dealing with equal opportunities as “a low common denominator.” In this capacity, observing the “minimum” legal standard is associated with avoiding being sued. One interviewee explained why this was important:

> these cases are very high profile, they do a lot of reputational damage, even if you don’t actually lose them. .. the front page of the Evening Standard it’s not what we want, it’s not where we want to be for bad reasons

Another interviewee, was worried about the chance of a discrimination claim, in particular because they felt there very little diversity training for staff in their firm. The interviewee “just hope[d] that they were aware” of the requirements of the legislation.

However, consistent with the position set out in the Lehman Brothers text, discussed in Barmes and Ashtiany’s findings above, other law firm interviewees in this study seemed dismissive of the idea that it was useful to think of diversity policies in terms of legal compliance. Some expressly stated that the threat of being sued was not particularly relevant for City law firms when it came to setting the diversity policy agenda. One interviewee thought that prominent cases were driven by economics not principles, implying that even the best diversity policies would not necessarily mean avoiding litigation:

> legal cases which hit the headlines are often not the ones which make you aware of a big diversity issue, they’re more sort of somebody getting paid a lot of money. being paid even more money

Another interviewee speculated that City lawyers were not very likely to sue for discrimination anyway, for two reasons:

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371 Barmes and Ashtiany, n 24 above, 6
I guess that they don't earn the same kind of money, so they don't want to ruin their careers. [but also] I don't think it's such a macho culture so I don't think that we have the same issues as the investment banks [7-3]

This finding is echoed by Barmes and Ashtiany who seem pessimistic about the potential for of litigation to improve inclusion in the workplaces of their investment bank study because:

many City workers occupy high trust positions, shouldering significant responsibility and commanding high salaries. The more this is the case, the more the individual has to lose by challenging their status quo, let alone by suing their employer.372

Therefore there is some evidence that diversity policies are seen by firms as part of their belt and braces defences against the risks of employee claims, and their potential "assistance" in defending claims has been considered elsewhere by Barmes and Ashtiany.373 But some interviewees for this study were skeptical that there is much to connect high-profile discrimination cases and matters of principle, or indeed that the threat of such cases is very high in practice. Therefore, while, this research found that the law was though of by some as representing a "minimum standard" it did not suggest that legal risk was a significant trigger for diversity policies in City law firms.

However, interviewees did suggest that when new legislation came into force, it might trigger a burst of policy-making on a particular issue within City law firms. Several interviewees described how the coming into force of new legislation such as the Employment Equality (Age) Regulations374 had directly led to new policies. For example, one interviewee said that "ad hoc things" had been going on in the firm "with the age legislation that came out last year" [18-9]. Another interviewee said that her firm’s flexible working policy came “in response to the legislation” [17-8]:

For some interviewees, new legislation was welcomed because it forced the partners in the firm to address a particular issue. One interviewee (from a global firm) described how she had benefited from this effect:

372 ibid 14
373 Barmes and Ashtiany, n 360 above, 286
374 SI No. 2006/1031, in force 1 October 2006
I was responsible for ensuring that we were complying with the legislation for the Age Regs and that's helpful; it was helpful having that, I've got to say, because you are forced. you just turn round at the interview [with the partners] and say, well, you've got to do it right. [3-27]

Other interviewees agreed that tying diversity policies into legal requirements could be an effective strategy for diversity staff to employ in their negotiations with partners:

We [the diversity team] have talked endlessly about how do we get the message across.. and I think you have to talk to lawyers in the language they understand, so perhaps it is regarding the employment laws and .. a compliance angle [8-33]

But only one interviewee suggested that more legislation would be helpful, because:

there's so many things to think of in diversity, it can be quite woolly and it's quite difficult to specifically pinpoint what you need to do so if there was some sort of structure in place and legal requirements ... just almost focusing people's attention a little bit more into it, I think that would make it easier, because at the moment it's just..., well, it's nice to have isn't it? [6-23]

Interviewees were unanimous that while current legislation might occasionally trigger action and could be very useful in getting leaders' attention, there was much more driving the current range of diversity policies than a concern about the law or about legal risk. Several expressed the same idea that diversity policies need to go beyond the standard required by the law and were proud about how their firms policies did so. One spoke of how

the companies that are doing really well are the ones that go above and beyond, no the ones that just kind of scrape through with what they have to do [4-15].

One interviewee commented that “diversity is not really a legal thing” [15-4] and many interviewees made similar comments suggesting that legislation was seen as a limited and anachronistic tool for the exciting and novel tasks connected to diversity. As one put it,

you can legislate all you like, but that's not going to make women with two kids want to come and work here every day, so I don't think that legislation is the way to go [7-27]

Another interviewee expressed the same, commonly-held view that the matters in firms would not be helped by more law:
at this point in time, I do not think that more legislation would be helpful as I think to force organisations down a certain path can create resistance [16-3]

Another thought that legislation generated ill-will in return for only superficial compliance:

with legislation, you have got no choice and therefore I think, psychologically partners are saying, or whoever is saying, we have to do this; I don't particularly want to do it and therefore in their minds I don't think often they've bought into it. [17-18]

According to interviewees, therefore, existing law plays only a minor role in influencing diversity policies (though it should, in theory, even act to chill them) while legislation itself has been widely rejected as a means of guiding diversity policy-making. This goes along way to explain the remaining findings of this study, that the most important drivers of the diversity boom lie elsewhere.

3. The Government's initiatives to increase diversity in the legal profession

In addition to the legislative activity discussed above, the post-1997 Labour Government has been active in other ways in terms of initiatives relating to equality and diversity, and a number have targeted the legal profession specifically. This section turns to consider these initiatives and what they display about the Government’s approach to equality and diversity. The first section (3.1) considers those initiatives which have targeted the legal profession. The second section (3.2) considers a particular Government initiative which targeted large law firms.

3.1 Government initiatives: The legal profession

The post-1997 Labour Government has pursued a range of initiatives with the purpose of investigating, consulting on and promoting diversity in the legal profession (under which heading it considers the solicitors' profession and the Bar and also legal executives375). This section outlines some of these initiatives, making reference, for comparative purposes, to the Government’s concurrent work in respect of the judiciary. The next section critiques these initiatives, examining in particular the Government’s definition of diversity and the justifications which it offers for pursuing ‘diversity’ on this basis.

375 DCA, n 178 above.
The key document in respect of the Government’s policy of increasing diversity in the legal profession is the 23 November 2005 Department of Constitutional Affairs (the “DCA”) report “Increasing Diversity in the Legal Profession: A report on Government Proposals” (the “2005 report”). The 2005 report was a response to the May 2005 recommendations of the Legal Services Consultative Panel (“LSCP”), which was, in turn, set up by the Access to Justice Act 1999. The 2005 report is important because it explains the Government’s case for increasing diversity in the legal profession, reviews the current position of various social groups in the profession and sets out how the Government intended to provoke change in the profession.

The 2005 report refers to a number of measures which the Government planned to increase diversity in the legal profession, and detailed some already in place. For instance Annex B sets out details of two ongoing Government initiatives, a Crown Prosecution Service bursary scheme which supports clerical and administrative employees of the CPS to pursue legal education and Legal Service Commission’s Training Contract Grant Scheme, which provides funds to LSC contracted firms or not-for-profit organisations to support a trainee solicitor. The report noted that the Government currently funded 234 CPS law students and provided grants to 387 organisations under these schemes.

Elsewhere in the 2005 report, in response to the Legal Services Consultative Panel’s recommendations, the Government states its intention to pursue a number of issues further, including consulting at the LSCP’s legal education conference about sharing good practice and monitoring, and gathering further information and views about diversity in the profession. The report also cross-refers to the Government’s on-going reforms of the Queen’s Counsel and judicial selection processes. Indeed, following the publication of the 2005 report, the Diversity in the Legal Professions Working Group was set up and it published its report in November 2006. This contained a number of specific recommendations for the DCA, including an audit of conduct rules and training regulations.

376 The responsibilities of the DCA were transferred to the new Ministry of Justice on 9 May 2007
377 For example, paragraph 36 of the 2005 report states “as a first step we will seek views from attendees representing [higher education institutions and the professional bodies] at the [Legal Services Consultative Panel] conference on legal education” (2005 report, n 178 above, 9)
378 2005 report, n 178 above, 7-8
of professional bodies “that may be unnecessarily restrictive and discriminatory”. However, despite the indications that the 2005 report would be the precursor to other Government initiatives, to date, there has only been one Government intervention relating to diversity directed squarely at City law firms. This was mentioned first in the 2005 report and was notable for its unusual approach by which the DCA would write to large law firms and chambers (as the Black Solicitors Network and CRE had recently done), and it is considered in more detail in section 3.2 below.

The 2005 report can be usefully read in conjunction with the October 2004 consultation paper also published by the DCA, “Increasing Diversity in the Judiciary”, (the “2004 paper”)

and the follow-up report outlining the substance of the 101 responses received, published in March 2005. The purpose of the 2004 paper was to examine “why people for diverse backgrounds and with disabilities are not applying for judicial appointments in the numbers we might expect” and to consult on proposals aimed at dismantling barriers to judicial appointment. The 2004 paper and 2005 response paper focused on six issues: increasing awareness of, and information about, judicial office among potential applicants; the effect of the current qualifications for judicial office; possible improvements to the selection procedures; possible changes to judicial working practices; the legal profession as a talent pool for the judiciary; how progress should be monitored. The 2005 response paper, having analysed the comments submitted by different parties, set out the steps which the Lord Chancellor would consider for the future. These were mainly concerned with conducting further reviews of particular issues in the light of submissions, such as the eligibility criteria for judicial office. However, some initiatives were announced at this stage (such as the DCA’s work to spread information about judicial office more broadly among potential applicants and consulting with the Disability Rights Commission on increasing applications from disabled people).

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380 Department of Constitutional Affairs, n 50 above, (the “2004 paper”)
382 2004 paper, n 50 above, Foreword, 8
383 2005 response paper, n 381 above, 78-79
In the two years following on from this consultation exercise on diversity in the judiciary, a variety of further initiatives were announced by the DCA, and on some occasions by the DCA, Lord Chief Justice and new Judicial Appointment Commission acting jointly. Soon after the 2005 response document, then Lord Chancellor and Secretary of State for Constitutional Affairs, Lord Falconer gave a speech to the Women's Lawyer Forum announcing a number of initiatives aimed to increase information about judicial posts, to encourage qualified candidates to apply (such as asking organisations to put forward names to enable reaching out to suitable candidates) and to explore career breaks for serving judges.384 (From February 2006, career breaks became available for sitting judges at the level of circuit court or below). In July 2005, the Lord Chancellor announced changes to eligibility criteria for some judicial posts designed to increase diversity and in November 2005 further measures were unveiled to encourage solicitors to apply for judicial office.

The Constitutional Reform Act 2005 (“CRA”) was an important new constitutional statute with wide-ranging implications, including in the context of the judiciary and judicial appointments. Included in its provisions were important changes to the role of the Lord Chancellor, for instance removing him as the Speaker of the House of Lords and the head of the judiciary, and the setting up if the Judicial Appointments Commission (“JAC”), a non-departmental public body sponsored by the Ministry of Justice. The JAC was officially launched in April 2006, and is made up of 15 commissioners, including lay and judicial members. It now plays a central role in the selection of judges though they are still formally appointed by the Lord Chancellor. Significantly, while “merit” remains the sole criteria on which judges are to be selected (s.63 CRA), s.64 (1) provides that:

*The Commission, [the JAC] in performing its functions under this Part, must have regard to the need to encourage diversity in the range of persons available for selection for appointments.*

In the May 2006, a tripartite diversity strategy was published jointly by the JAC Chair, Lord Chief Justice and Lord Chancellor discussing how each would contribute to the shared overall goal of increasing diversity in the judiciary. The goal of this paper was to set out an

integrated strategy for increasing diversity by considering every stage of judicial office-holding, from encouraging diversity in the eligible pool (the JAC’s job), to reviewing the work environment for judges (the DCA’s). Following on from this strategy document, the Lord Chancellor, the Lord Chief Justice and Chair of the JAC jointly published a further document in July 2006 called “Judicial diversity strategy: A measure for success”. This short document set out four “strands of strategy” and the respective measures that they would be assessed against. Overall, the document stated that statistics in relation to ethnic origin, gender, disability status and professional background would be collected in respect of those eligible to apply for judicial office, those applying, those appointed and those in post.385

Also in May 2006, the Lord Chancellor announced various new diversity-related initiatives, including an extension of the Judicial Work Shadowing scheme to ten new tribunals, meaning that prospective applicants had greater opportunities to gain insights into judicial work.386 Other on-going aspects of the DCA’s strategy have included setting up assessment centres for certain judicial selection processes, commissioning independent research into why certain groups are not applying for judicial posts in the expected numbers, producing a DVD and booklet on becoming a judge, taking steps to make the judicial posts more flexible (e.g. by introducing career breaks and part-time working for judges at circuit court level and below), and publicizing the Lord Chief Justice’s monthly diversity statistics published in respect of the judiciary.387

There is therefore a range of evidence, including from the interview conducted for this study with Bridget Prentice M.P.388 that this Government regards increasing diversity in the legal profession and the judiciary as important. However, a critical review of the Government’s initiatives suggests that the meaning which has been given to “diversity” in this context is narrow, and does not sit easily with the theoretical framework identified as

385 Department of Constitutional Affairs, Judicial Diversity Strategy (17 May 2006) and Department of Constitutional Affairs, Judicial diversity strategy: A measure for success (July 2006) 2
386 Department of Constitutional Affairs, Written Ministerial Statement by the Lord Chancellor and Secretary of State for Constitutional Affairs (17 May 2006)
387 For an overview of these activities, see the Department of Constitutional Affairs’ website at http://www.dca.gov.uk/judges/diversity.htm
388 The then Parliamentary Under Secretary of State, Department of Constitutional Affairs
the diversity approach in chapter 2. Moreover, the reasons which have been offered by the Government to for pursuing ‘diversity’ are wide-ranging and not always consistent with one another. Below, it is argued that these two factors have contributed to a lack of clarity about the actions that the Government intends to take and the goals it is trying to achieve.

Critiquing the Government’s initiatives

The Government’s actions to date in respect of both the legal profession and judiciary suggest that it defines diversity for these purposes in terms of both groups’ ‘representativeness’ of society at large. Therefore, in the Foreword to the 2004 paper, the Lord Chancellor writes of his priority being:

_That the diversity of the nation should increasingly be represented in the diversity of its judges._ 389

Also in this foreword, the Lord Chancellor reiterates that his concern is to change “the make-up of the people who hold judicial office in England and Wales”. Similarly, in the foreword of the 2005 report, Bridget Prentice explains that legal profession should be more diverse, by which she explains that it “is, and is seen to be, representative of those it serves” adding that “in order to be diverse, talent must be drawn from all sections of society” 390

However, on further inspection, the scope of the Government’s efforts to secure diversity on the concern with representativeness seems to be confined to certain groups. The 2004 paper on the judiciary is explicit:

_This paper focuses particularly on the issues of gender, ethnic origin and disability. It also looks at how lawyers’ professional backgrounds might affect whether they can and should seek judicial office. This paper does not cover such other aspects of diversity as sexual orientation, religion and belief or wider educational and social background._ 391

Overall, the 2004 paper focuses on the position of women and ethnic minorities, while all the statistics appended to the report which deal with social groups’ representation in the judiciary refer to either women or ethnic minorities. Recognizing this narrowness, the report’s chapter on future monitoring of the judiciary states that the Senior Steering Group

389 2004 paper, n 50 above, Foreword by the Lord Chancellor, 8
390 2005 report, n 178 above, Foreword by Bridget Prentice M.P., 4
391 2004 paper, n 50 above, 13
will ensure that a review is undertaken of the diversity of the judiciary in term of sexual orientation, religion and belief and wider educational and societal background, in recognition of the fact that very few data on these groups in the judiciary are currently available.392 In the 2005 response document notes that there was

"strong support [in the responses submitted] for a programme of work for the collection of data relating to sexual orientation, religion and belief and wider education and social background."393

The detail of the 2005 report on the legal profession is similarly confined to only a few social groups. Again, references to women and ethnic minorities “attempting to enter or progress within the legal profession”394 dominate the report, though it also discusses that the profession should be open to all, regardless of “social or educational background”.395 In this context, the report makes reference to research which shows an over-representation of lawyers who went to “Oxbridge or old red brick universities”.396

Defining diversity as numeric representativeness therefore leads the Government to become entangled in two problems. The first relates to a lack of data. All the Government’s work considered in this section focuses on women and ethnic minorities in part because the lack of current data (its own, or as discussed in chapter 3, anyone else’s) about certain social groups in the legal profession, notably the groups outside Nicolson’s “big three”, for example disabled people or according to religion, belief and sexual orientation. However, the second problem with this definition of diversity is that any attempt to list definitively the groups concerned in making, say, the legal profession, representative of society will, inevitably, be incomplete and also fail to account for patterns of intersectionality (as discussed in chapter 3). In sharp contrast, the diversity approach, as framed by scholars like Thomas, and as discussed above in chapter 2, takes the individual rather than groups as the starting point and, from there, attempts to harness the value of difference in order to transform the organisation concerned. Significantly, Rackley has shown how intuitive notions of judiciary and judging may be transformed by considering the perspective of

392 ibid 54
393 2005 response paper, n 381 above, 74
394 2005 report, n 178 above, 4, Foreword by Bridget Prentice M.P.
395 ibid.
396 ibid, 5 citing Law Society Research Study 42 (2002).
women judges, but she has argued that this potential is lost if Government focuses its diversity efforts on simply changing the numbers of different social groups represented (see chapter 3 above). It therefore seems that, in respect of the judiciary and the legal profession, the Government’s approach to diversity leads both to practical problems and lost opportunities.

The justifications which the Government offers for attempting to increase ‘diversity’ are also revealing. In the 2005 report’s Foreword, Bridget Prentice M.P. explains that the legal profession should be more diverse because first, “it is essential that the legal profession is, and is seen to be, representative of those it serves”, secondly that “greater diversity contributes significantly to the quality of that profession and will increase public confidence in it” and thirdly, because the profession should be “open to the most talented people in our society, regardless of social or educational background”.

The terms of this justification are almost identical those offered four months before the publication of the 2005 report by the then Constitutional Affairs Secretary and Lord Chancellor, Lord Falconer for increasing diversity in the judiciary:

> It is critical that the judiciary is reflective of the society it serves, in order that the public can have full confidence in the justice system. Judicial diversity is a priority because it makes a real and positive difference to the administration of justice. It means harnessing the talent and ability of all those who would make good judges if they were able or willing to apply, enabling us to be sure that the best are being appointed. It will enable every person with the right qualifications and qualities to be certain that they have an equal opportunity to be appointed on merit, whatever their background. It will also assure the public that the judges have a real understanding of the problems facing people from all sectors of society with whom they come into contact. [author’s emphasis]

In the 2004 paper, the case was made on similar terms that:

> It is a matter of great concern that the judiciary in England and Wales- while held in high regard for its ability, independence and probity- is not representative of the diverse society it serves.

397 2005 Report, n 178 above, 4
398 Department of Constitutional Affairs, Written Ministerial Statement by the Lord Chancellor and Secretary of State for Constitutional Affairs (13 July 2005) at http://www.dca.gov.uk/pubs/statements/judicialdiversity.htm
399 2004 paper, n 50 above, 12
Therefore, in the 2005 report, the Government argues that diversity in the legal profession is important for reasons parallel to those offered in the context of the judiciary, i.e. by reference to a set of arguments which focus on the perspective of clients, potential entrants, and society as a whole. Bridget Prentice expanded on how these justifications apply to the legal profession in the research interview:

*I think the goal [of diversity policies in the profession] is to achieve a legal profession that truly reflects the society in which it resides and that goes right back to the way that they’re taught the academic side of things, the opportunities for entering and also the way that they relate to clients, the people, the customers, the consumers which they’re dealing... if you think of the diversity of problems or issues that are brought to legal professionals that in a sense there is a parallel in the way that they should be, that the profession should be reflecting that.* [4]

These arguments, and their emphasis on clients in particular, clearly tie into the Government’s more general vision of change in the legal profession. In a February 2007 speech Bridget Prentice placed clients (here, “consumers”) at the heart of the wider debate about the future of the legal profession:

*Consumers must have clear rights... they have the right, it seems to me, to expect a legal services market that is consumer driven- and one that is suitable for the modern, dynamic world we all live in.*\(^{400}\)

But though there is precedent for the 2005 report’s justifications, these arguments remain underdeveloped in the new context, especially from the perspective of City law firms. For instance, in the 2005 report, the Government does not account for the highly stratified nature of U.K. law firms, (as clearly set out in the literature and discussed in chapter 3) or the distinct nature of the clients whom different parts of the profession serve. These firms’ corporate clients may themselves have a poor record in respect of equality and diversity.\(^{401}\)

In interview, a question was put to Bridget Prentice about what the Government’s suggestions would mean for a firm whose clients were all white, male bankers. She responded

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401 See for example, the discussion of women’s position in Wall Street banks in Roth, n 142 above, considered further in chapter 7 below.
if their clients are all white, male bankers perhaps a more diverse legal firm might help the white male banker to realise that they’re the ones that are behind the times [5]

This comment suggests that the Government does recognise that there is more to diversity in City law firms than mirroring clients or “society at large”, yet this, to date, remains an undeveloped part of its strategy about diversity in this part of the profession.

Outside the 2005 report, the Government has made other arguments to promote diversity in the legal profession. In 2006 Vera Baird Q.C., M.P. of the DCA made a speech which explicitly linked increasing diversity in the legal profession with improving diversity in the judiciary. She stated that “to get a pool from which to draw the judiciary, it is imperative that there is diversity in the legal profession"[402], and referred directly to the recommendations in the 2005 report. In interview, Bridget Prentice confirmed that making the legal profession more diverse was “an important way” of “trying to make sure that we have a more diverse judiciary”. She added that she saw a link between increasing diversity in the solicitors’ profession and tackling the problem of diversity in the judiciary:

while we’re encouraging solicitors to be more diverse that widens that pool of talent at the same time as being able to give the judiciary a slightly wider pool of talent as well [10]

The 2004 paper on the judiciary also strongly emphasizes the link between diversity in the legal profession and in the judiciary. Chapter 6 of this report focuses on the legal profession as a “talent pool” for the judiciary and considered what could be done to “increase and maintain” diversity in the legal profession, and to encourage more applications for judicial office, for example by promoting judicial work shadowing schemes for solicitors.403 In the responses to the 2004 paper, the Law Society, the Commissioner for Public Appointments and the Bar Council, amongst others, agreed that in the context of increasing diversity in the judiciary more should be done to encourage women and ethnic minority entrants in the legal profession, and to encourage solicitors to apply for judicial office.404

403 2004 paper, n 50 above, Chapter 6: “The role of the legal profession”
404 2005 response paper, n 381 above, 69 et seq.
It is clear, therefore, that the Government (and others) regard the solicitors' profession as an increasingly important part of the talent pool for the judiciary, this may explain why the arguments offered in the Foreword to the 2005 report echo those used elsewhere about the judiciary itself.

Elsewhere, however, the Government has linked increasing diversity in the private sector to business case arguments rather than to the needs of society as a whole or the judiciary. As discussed in chapter 2, the idea than an organisation stands to benefit is central to the diversity approach, and has been keenly adopted by parties including the Government. For example, in the 2007 Discrimination Law Review, a consultation paper on a future Single Equality Bill, (the “DLR”), the chapter on the private sector is based on the “clear business case for diversity”. On this basis, the DLR proposes that the new Single Equality Act would aim to “help all businesses to comply more easily and to take this positive approach”. In interview, Bridget Prentice also spoke of increasing diversity as one way in which City law firms could better serve their clients:

*I suppose with the big firms, given that if they’re dealing with big multinational organisations who are now much more conscious, or some of them are much more conscious, of their social responsibility both at home and abroad, I think that... the legal profession that will be advising them needs to understand all of those issues too and needs to be aware of the things that are going to make people make choices and one of them will be whether they reflect the kind of people that are in the organisation that’s asking for their advice* [6]

Overall, therefore, the Government has offered a range of reasons why the legal profession should be more diverse. On the one hand, some of these reasons relate to the high-profile business case, emphasizing the perspective of clients, the need to select the best talent, and the “modern, dynamic world”. In this respect, the arguments echo the diversity approach, discussed in chapter 1, whereby diversity (there, as discussed, understood differently to the Government's approach) can be harnessed to benefit the organisation concerned. That said, this section has argued that certain of these arguments put forward by the Government seem underdeveloped, especially when applied City law firms. On the other hand, other reasons

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405 DLR, n 178 above, paragraphs 6.1 and 110
406 ibid

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have also been offered by the Government as to why the legal profession should become more diverse, which have stressed the need to improve the judiciary, boost public confidence and serve society as a whole. It has been suggested in the review above that the latter set of reasons have been more prominently advanced by the Government in respect of the legal profession, echoing its arguments about the judiciary.

The problem for the Government is that these different sets of reasons have different implications for the action that it should take in respect of law firms. The former imply that the legal profession should be encouraged, unencumbered, to harness the benefits of diversity as best befits, say, each City law firm and its clients. Meanwhile, the latter imply that in the interests of the greater good, more decisive action should be taken by the Government, for example by means of statutory intervention. This tension, it is argued, helps to explain why the Government has been less proactive in respect of promoting initiatives to increase diversity in the legal profession than it has in respect of the judiciary and why those measures which have been launched have not been followed up effectively.

The following section describes the measure in the 2004 report which specifically targeted City law firms, describing what it involved and analyzing its effects. This measure is discussed in some detail in order to show the effects in practice of the tensions in Government policy identified in this section.

3.2 The Government's letter-writing initiative and its effect on City law firms

According to paragraph 42 of the 2005 report, Ministers would be writing to law firms and barristers' chambers (starting with the top 100 firms and 30 barristers' chambers as identified by The Lawyer magazine) asking that they:

\[ \text{publish data about the diverse make up of their organisations on their websites and/or in their publications}^{407} \]

The 2005 report went on to promise that such a request would, "thereafter" be made of smaller firms and chambers, though the Government was mindful of the need for "flexibility" in the case of smaller organisations, for instance if they did not have websites

\[ ^{407} \text{2005 report, n 178 above, 9} \]
“or only a small number of people”. However, the “long term goal is for the vast majority of firms and chambers to collect and publish this data”.\footnote{ibid, 10, para 47}

The 2005 report also provided two tables as the suggested format for the publication of data. The pro forma table for law firms had “Position/job title” down the vertical axis, providing the options of (to quote); partner, solicitor (associate), solicitor (assistant), trainee solicitor, non legal management staff (e.g. human resources, estate management), legal executive, trainee legal executive, secretarial, other non-legal, barrister (QC), barrister (non-QC). Across the horizontal axis it is suggested that data be presented in “Numbers (%)” format, and in the categories of; male, female, declared non-minority ethnic, declared minority ethnic, declared disability, and “works flexible hours”. Finally, the 2005 report also states that:

\begin{quote}
 as well as asking firms and chambers to publish data on the diversity of their organisations, the Department will also ask that they publish details of their diversity, equality and training policies\footnote{ibid, 11}
\end{quote}

To find out how the Government followed up the announcement of this unusual measure in the 2005 report, it is instructive to look at subsequent speeches by DCA ministers. In a June 2006 speech to the Black Solicitors’ Network, Vera Baird confirmed that the DCA had indeed written to the 100 laws firms and top 30 chambers asking recipients to publish the requested information by the end of March 2006.\footnote{Baird, n 402 above} Bridget Prentice stated in a different speech that these letters were sent on the same date as the 2005 report was published, i.e. 23 November, 2005.\footnote{Bridget Prentice, “Speech to Diversity in Law Firms Conference” (25 July 2006), at \url{http://www.dca.gov.uk/speeches/2006/sp060725.htm} accessed January 2007}

However, ministers’ speeches suggest that the response rate to these letters was low. Vera Baird indicated that when her officials checked the top 100 law firms’ websites in early April 2006, only 19 firms had published the data. Though she did not list these firms in her speech, according to a footnote in a DCA news release about a later speech by Bridget Prentice, they firms being referred to were; Eversheds, Field Fisher Waterhouse, Herbert
Smith, Lawrence Graham, Norton Rose, Olswang, Bir cham Dyson Bell, Charles Russell, Freshfields, Allen & Overy, Berwin Leighton Paisner, Clifford Chance, CMS Cameron McKenna, Cripps Harries Hall, DMH Stallard, Slaughter and May, Trowers & Haml ins, Ward Hadaway and Weightmans (i.e. including eight of the fifteen firms in the sample for this study). This list was then published by The Lawyer magazine under the headline “Firms fail to meet DCA deadline” on 22 May 2006 (which also serves to illustrate the thesis offered in chapter 10 about the legal press’ role in publicizing pressures which others exert on law firms).

Bridget Prentice has had strong words to say about the low response rate to the DCA’s letters. In her 25 July 2006 speech, she said of the response rate:

*My speech says that it is “disappointing”. I think that it’s quite appalling... I have to say that I’d hoped for a better response.*

She explained in this speech why she regarded the publication of diversity data and information about diversity policies as so important:

*I believe that it is important that firms make public the make up of their organisation and the policies which the firms operate by. This isn’t about quotas or league tables; it’s about showing a real and lasting commitment to diversity. So what is there to be afraid of?*

In the interview with the Minister, she reiterated that she was “absolutely disgusted by the response” rate of law firms and chambers generally.

Both Vera Baird and Bridget Prentice in their speeches of 8 June and 25 July 2006 respectively did offer the caveat that some of the November 2005 letters had apparently not reached their intended recipients. Therefore both ministers stated that DCA officials had written again to the law firms and chambers involved, on 11 May 2006, asking this time for the information to made be available by the 31 May 2006. Bridget Prentice added in her speech that that following the resending of the letters, the Department had received a total

412 Department of Constitutional Affairs, “Action to encourage diversity in the legal profession” (News Release 193/06, 25 July 2006)
413 The Lawyer, “Firms fail to meet DCA diversity deadline” (The Lawyer, 22 May 2006)
414 Prentice, n 411 above
415 ibid, and Baird, n 402 above
of 34 responses and 32 firms had published their data and policies. On this occasion, Ms Prentice said that she was tempted to list the firms who had not responded, but had chosen not to, expressing hope that she would get further responses as a result of the speech (However, as noted above the 19 firms which had responded within the first deadline were made public in the news release accompanying this speech). In the speech, she also added that the DCA had written to further 100 law firms asking them to publish further information by 4 August 2006.

However it is difficult to determine what happened about this initiative since these speeches in mid-2006. According to a search of the DCA website (including the ministers’ speeches and news releases archived there as at October 2007) no further list of the law firms which have or have not replied has been made public by the DCA, though the numbers of firms responding has been announced in speeches from time to time. In a news release of 4 December 2006, about Ms Prentice’s speech of that date to the Law Society’s Equality and Diversity Forum in London, a footnote stated that as at the end of September 2006, 37 firms and 6 chambers had published their diversity data (though this time, unlike in July 2006’s news release, there is no mention of publishing their diversity policies as well). The latest update which seems to be available came on the occasion of Bridget Prentice’s speech on 16 May 2007 to The Lawyer magazine’s second annual Diversity Conference. Footnote 2 to the Government news release which accompanied this speech, stated that by the end of April 2007, 40 law firms and 7 chambers had published their diversity data. However, there was no indication in this news release or, apparently elsewhere in Government publications, of which law firms and chambers these were.

Bridget Prentice has described the DCA’s letter and monitoring responses as “a first measure” and suggested that it was “relatively crude”. As noted above, data was only

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requested relating to women, ethnic minorities and by flexible working arrangements. However, the DCA’s letters have represented the only direct attempt by the Government to engage with large law firms about diversity to come out of the 2005 report to date. Moreover, to the extent that figures are available from the Government, they suggest that 20% of firms have complied (40 firms out of 200 addressees) and published their data. As discussed in chapter 2 above, of the fifteen City law firms in this sample, all but 3 have published diversity data, though the interview evidence considered below suggests that a number of firms would have taken this step in any event. A survey of the data on the websites of the top 5 firms also suggests that there are questions about how useful the data published by firms actually is, especially to outsiders attempting to compare the relative position of firms.

While the 2005 report gave a pro forma table in practice the format, content and date of the published information has varied widely, which seems to be beyond the Government’s control to in these circumstances. Table A in chapter 2 shows that while the largest five firms that have each published their diversity data, they have chosen to do it differently both to the DCA’s suggested format and to each other. For example, these firms have taken different approaches to including foreign offices as well as London in the exercise and, perhaps most importantly, have chosen to breakdown their workforce by a differing set of criteria. Only three of the firms in Table A, for example, include information as to the percentage of staff who are “declared disabled”. One has gone further by including GLBT” (gay, lesbian, bisexual, transsexual) data, but for their U.S. staff only, and two provide information about how the firms’ worldwide workforces breaks down by age. Some promise to update the information regularly, others are silent on the matter. Each firm gives the dates of the information displayed, but these are different in each case and vary from May 2006 to June 2007. All of these factors make it problematic for outsiders (on whose behalf the Government claimed this as an important issue, according to the 2005 report) to use this information to compare firms in a meaningful way.

In conclusion, the letter-writing initiative set up by the 2005 report seems to have been difficult for the Government to enforce both in terms of ensuring that comparable
information is provided and in terms of holding firms which have not published accountable. Deadlines have now begun to slip by (such as 4 August 2006) unmarked by the Government, or the legal press and the response rate seems to remain low. Moreover, it is not clear if or when there will be a further round of letters sent out and there has been no indication about how policy may develop from here. There seems to be a danger that what little momentum was created by the initial round of letters will fade in long run. Overall, therefore, the evidence does not suggest that this initiative has sufficient substance to justify it being the only initiative the Government directs at City law firms on a matter the DCA has declared to be so important. Indeed, it admits that the approach was borrowed from the Black Solicitors' Networks' own diversity survey of the top 100 law firms and its diversity league table. This is implied in the 2005 report, and confirmed in Vera Baird's 2006 speech to that organisation.

It is possible that the Government's failure to take more decisive action in this regard is a result of the influence of the business case logic, which as discussed in chapter 2, holds that organisations should be attracted by the benefits of increased diversity rather than compelled to take action. As Bridget Prentice put it in interview, she sees it is her role and that of her department, the Government, the Law Society, the Bar and "some of the big firms" to act together:

as persuaders, that it is in [firms'] interests to do this and that they will fall by the wayside if they don't [12]

Therefore, perhaps more significant than the fate of this particular initiative set out is the broader finding is what is shows about the Government choice to pursue a role as a "persuader" rather than to intervene more decisively to increase diversity. The consequences of this decision in its narrow terms are examined below, in a discussion of the City law firms' responses to the DCA's letters, but more broadly, the consequences are illustrated throughout the rest of part 2 of this study. This is because as the Government has restrained itself from intervening to increase diversity in City law firms in decisive ways,

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418 2005 report, n 178 above, 9, paragraphs 39 and 40
419 Baird, n 402 above
other parties have moved to fill the vacuum and have exerted pressures themselves on City law firms.

City law firms’ responses to the DCA’s letter-writing initiative

Of course, we cannot make any of the firms or chambers that we have written to publish this information if they do not wish to. But, with some firms publicly demonstrating a real commitment to diversity, plus a strong push from the Law Society, those firms that do not will become increasingly marginalized.  

All the law firm interviewees who participated in this study had taken note of the DCA’s letter of November 2005. Only eight of the firms in this sample were in the list of the 19 firms which met the deadline of the end of March 2006, but by March 2008 all but three of the firms in the sample of fifteen had some sort of diversity statistics on its website. Table A in chapter 3 further indicates the diversity information which the top 5 U.K. firms display on their websites, both in terms of diversity data and policies, as discussed in the preceding section.

To what extent can the collection and display of such information be said to have been a response to the DCA letter? This research found that interviewees’ awareness of the 2005 report and the background to the DCA’s request was fairly limited. One interviewee (from a global law firm) said that “I haven’t read the Government report that this is based upon” [3-15].

In particular, it was clear from all of the interviews that the DCA’s request had been interpreted by those in firms as a call for the publication of statistics rather than anything more extensive, though in fact the 2005 report indicates that it was a call for information about diversity policies as well. One interviewee’s description of the Government’s initiative as “a move to put statistics online” [8-17] was typical. Therefore, with the caveat that the perceived request (statistics) was in many cases different to the DCA’s actual request (statistics and policies), the research found that interviewees expressed different views on its importance.

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420 Baird, n 402 above
421 2005 report, n 178 above, 11, paragraph 47
Several interviewees directly related their firm's publication of diversity statistics to the DCA's letter. One interviewee described his firm's publication of the data as following naturally and promptly from the Government's request:

Certainly we were in the first cohort of firms to go public with data... It was something that was requested of us, we thought that it was a good idea and therefore had no hesitation in putting it forward. [18-1]

Other interviewees indicated that while their firms were already actively setting up diversity policies anyway, they probably would not have got round to collecting and publishing diversity statistics without this letter:

I guess it does mean that we have actually gone out and done it [collected data from staff] whereas we might have been still pussyfooting around saying 'Oh well, no one wants to give us this, whatever' [7]

Furthermore, this interviewee thought that the process had been useful, as the data could be used to plan policies, and updating it would be a good way of tracking progress, "which perhaps we couldn't have done in the past". [7-14]. In one case an interviewee thought the DCA's letter had focused the firm as regards collecting their workforce statistics:

there was a call from the DCA with regard to statistics and at the time we didn't actually collate or really do anything terribly pro-active about it, so we decided that we would respond to the DCA and we went through a complete exercise, in terms of, you know, being able to pull together all of that data [18-1]

In the same vein, another interviewee stated that the Government's letter was a decisive factor in leading to the publication of the firm's statistics, though in this case, it was something that her firm was considering already:

Yes, we did it [published their statistics]. I think that what finally decided us was the letter from Bridget Prentice... I don't suppose it was something we would spontaneously have thought of doing ourselves [5:1]

The interviewees, however, tended to see the Government's initiative as a specific request to publish statistics. Only one interviewee, while still linking the Government's letter to the publication of their firm's statistics, also saw the Government's interest in diversity as wider than this one-off request. In this case, the DCA's letter was just one aspect of the Government's work on diversity which they had taken note of, perhaps because this interviewee was a former senior partner in a City law firm:
At the same time [as other developments which encouraged the firm to think about diversity] there was a push from the DCA for greater diversity in the judiciary which was running at the same time as the panel looking at legal services, who in the course of their investigations came across the same thing, which was diversity problems over career management and so on. And so therefore then that culminated in the letter saying, how about it? And how about publishing your stats? In some ways that letter was quite helpful because where there was resistance in firms to publication of stats it gave a basis for saying, you know, let's publish them. Because we're being asked to publish them, let's do it [2-7]

However, in contrast to the view that the DCA's letter was “quite helpful” a number of other interviewees disapproved of the focus on statistics, though they had complied with the request (as they saw it). One interviewee commented that statistics only have a very limited meaning, and they are

very difficult to investigate in detail, then nobody [does] investigate, the box was ticked, everything was alright but of course it wasn't about widening access or anything like [5-3]

One interviewee, who had had experience of working with diversity policies in a numbers of sectors apart from law, stated that:

Bridget Prentice has got her priorities wrong and that [focus on statistics] is not the most important thing that people could be doing. She's really not a very good advocate for diversity, from my point of view. She's doing it with the best intentions I think but I'm not sure that her focus is really where it should be [1-9]

Another interviewee agreed and found the fact that the DCA had been asking for statistics “quite confrontational, and it's sort of disappointing”. This interviewee did not find it easy collecting the information requested by the Government. It had been:

a challenge because I don't think people feel they want to give that information. It's like, well, why do you care if I'm white or Bangladeshi or whatever, and particularly disabled- people don't want to say, or sexual orientation. We haven't asked that yet. [7-14]

However, when it was put to Ms Prentice in interview that surveying staff to gather diversity data triggered concerns about staff privacy, she responded:

Let's abolish that argument pretty rapidly. First of all, have [firms] asked their staff? You know, if they are worried about describing the ethnicity of their staff, have they actually asked their staff whether they are worried about that? I suspect that most of their staff will not mind [12-2]
Nonetheless, several interviewees thought that the Government’s request to publish statistics was misguided. This seems in part because the DCA’s letter has become characterized as a request just about statistics, or as several interviewees put it, a “box-ticking exercise” [1-30]. This seems an unfortunate characterization, because this was not what the Government seemed to have intended. When asked about firms seeming to engage in wider diversity policies, apart from publishing statistics, Ms Prentice said that she was very encouraged by more creative diversity policies. She added that the aim of the DCA’s letter was not to focus on firm’s statistics, which she recognised were “a very crude measure” [12-3] but to get firms to indicate that they were taking the issue seriously. To show that she cared about much more than statistics, she said that “if necessary, I would go back and say, I don’t need to know that one in ten of your partners is gay or female or black or a combination of those things.” Rather, she said that she saw the publication of statistics as an expression by firms that they “recognise diversity of society in which we’re living and that your company reflects that and appreciates it”. [12-3] She spoke approvingly of broader diversity policies, especially some firms which “are doing absolutely fantastic things, really innovative” [12-3].

However, some interviewees objected to the Government’s initiative not just because of its perceived focus on statistics, but also on principle. One interviewee felt that diversity had to “stand on its own”:

_and if it has to take legislation or the weight of Bridget Prentice or the DCA behind it, then it’s not doing that and instantly it becomes diminished [1-36]._

According to this analysis, the Government’s intervention, was “hectoring and finger wagging” [1-36] and a distraction from the proper work that diversity policy makers should be engaged in. Another interviewee thought that it presupposed

_hostility to, or at least indifference to, the diversity question and I think that’s where it breaks down, because I don’t think that people need bullying [5]_

In part this response to Government initiatives directed at City law firms seemed to arise from the view that diversity issues were not their fault because this is:

_where the schools come in, and you know a lot more needs to be don’t further down the educational chain.. it does start in schools[2-9]_
It was therefore felt to be inappropriate to expect law firms to achieve a certain level of diversity on their own. Moreover, Government initiatives aimed at City law firms were partly seen as the Government passing its own responsibilities onto others:

*I don't think it's [City law firms'] job. I mean, you know, they haven't got time. It's lovely if they had time to do it, but you know, they're not the Government and they're busy running businesses. And I think they can only work with what's presented to them... Obviously lawyers do have a role to play in saying 'it's great to be a lawyer' and trying to stop all the stereotyping imaging that goes on about lawyers. But I think there's a lot to be done [by the Government]*

There was also a suggestion in some interviews that the Government “seem to be targeting the legal profession in a way that they’re not targeting others” [7-2]. This interviewee speculated that this was because of the impact of Sutton Trust research which looked at access to medicine, law and politics as “sort of worst” in this respect.422

Overall, while there seems to be acceptance in City law firms of the importance of open access to the profession, some interviewees suggested that there was a limit to what City law firms are willing to be held accountable for in the Government’s place. For these interviewees, the DCA’s initiative went beyond those limits. Meanwhile, others thought that diversity should evolve within organisations, and should never be imposed from the outside. For all these reasons, while the research found evidence that some in law firms publication of their diversity statistics was triggered, or catalyzed by the DCA’s letters, the initiative triggered quite strong disapproval from others, even though their firms had published their data. It is noteworthy that if the DCA’s letter-writing initiative was an attempt to intervene with City law firms, while avoiding the opposition that more decisive, formal regulatory methods might provoke, it has not been entirely successful. A number in City law firms regarded even this very limited Government intervention with no enforcement mechanism as “hectoring”, “finger wagging” and “bullying”.

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422 The Sutton Trust supports projects that provide educational opportunities for “young people from non-privileged backgrounds” as set out on its websites: [http://www.suttontrust.com/index.asp](http://www.suttontrust.com/index.asp) The interviewee may have been referring to The Sutton Trust, “Briefing Note: The educational backgrounds of the U.K.’s top solicitors, barristers and judges” (2005) at [http://www.suttontrust.com/reports/Comparison_educational_backgrounds.pdf](http://www.suttontrust.com/reports/Comparison_educational_backgrounds.pdf)
4. Conclusion: The Government’s dilemma

This chapter has shown that the legislation in this area is complex, highly piecemeal and currently allows only very restricted scope for positive action by employers. Its chilling effects seem to have little bearing in practice, but academics are concerned about the potential for more ambitious diversity policies to run into difficulties and lawyers have concluded that “it is certainly not a safe option to continue as we are”. In practice, new legislation and legal risk may have some bearing on diversity policy-making but generally, those involved in diversity policies in practice think of the law as limited and out-dated with few connections to their own sphere of activities. Indeed, this research has found that diversity staff regard their work as having moved on from this approach of equal treatment enshrined in the bulk of they law, which they regard as very limited. Scholars like Barmes and Ashtiany therefore seem right to warn about the consequences of this uncoupling of law and practice.

At the same time as considering how to reform the underlying law, the Government has pursued a range of initiatives which suggest that it regards increasing diversity in the legal profession and judiciary as important. However, the initiative which followed up the 2005 report aimed at large law firms was limited in multiple ways, including by its focus only on particular groups. This initiative did seem to encourage some City law firms to publish some diversity data, primarily about women and ethnic minorities (as might be expected in the light of group headings in the pro forma table provided in the report) but it also seems to have been ignored by a high number of firms and now seems to have lost momentum. It is also significant that even this measure, which was not backed up by any enforcement mechanism and which deliberately sought to “persuade”, still provoked talk of “bullying” by some City law firm interviewees.

Overall, this chapter has reached two findings of particular importance for the rest of this study. The first is that the Government has had little impact on the diversity boom in City law firms, beyond encouraging the publication of certain statistics by some firms. This is important because it sets the scene for other parties like clients, interest groups and the legal

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423 Nabarro, n 42 above, 17
press to be able to pressurize City law firms in ways which are described in the chapters which follow. Secondly, examining the 2005 report and its aftermath in some detail, and placing these measures in the context of the underlying legislation, has revealed a larger dilemma that seems to afflict the Government in this area. On the one hand the Government appears to regard increasing diversity in the legal profession as an important and worthy policy goal, linked to increasing diversity in the judiciary and as a means of increasing public confidence in the legal system. On the other, the business case arguments embraced in the context of the legal profession point to a ‘hands-off’ role as a “persuader” and in this respect, they are reinforced by the opposition of the vast majority of City law firm interviewees to any intervention from the Government, especially in the form of legislation. This research even found some strong reactions to the very limited letter-writing initiative in 2005. For the time being, the latter set of arguments relating to the business case seem to have proved the more compelling for the Government in framing its interventions with the larger solicitors’ firms. This is important because the limited nature of the Government’s actions to date help to understand the developments considered in the following chapters.
Chapter 6
The Law Society

1. The Law Society (and SRA)'s approach to diversity in the solicitors' profession
   1.1 Recent changes to the regulation of the solicitors' profession
   1.2 The Law Society's diversity initiatives
      1.2.1 Law Society guidance on the implementation of diversity policies
      1.2.2 The City firms Equality and Diversity Forum
      1.2.3 The Law Society Awards
      1.2.4 The Diversity Charter
   1.3 The SRA's Code of Conduct
   1.4 The Law Society and SRA's cocktail of measures

2. City law firms' responses to the Law Society and SRA's diversity initiatives

3. Conclusion: Diversity is "an internal thing"

Summary:
The theme of this chapter is the gap between the official representative and regulatory functions of the Law Society and the overwhelming evidence from interviewees that the institution was of the most marginal significance to their diversity policies. The key finding is that in practice, despite the Government's faith in the Law Society's capacity to provoke and manage change in City law firms, the latter feel negligible pressure from the organisation as regards diversity, and see it, if anything, as a facilitator of their own policies.

The chapter first examines the approach that the Law Society and the spun-off Solicitors Regulatory Authority have taken as regards diversity in the profession, and then moves on using the interview data to explore City firms' views of the Law Society's role.
1. The Law Society (and SRA)’s approach to diversity in the solicitors’ profession

In an interview for this study Bridget Prentice M.P. dismissed the possibility of the Government using dramatic measures (the analogy in the question was the all-women shortlists for Labour parliamentary candidates) to increase diversity in law firms:

*Well, it wouldn’t be for me to do that. That would be something that, if anyone was thinking of doing it, it would be something for the Law Society to think about.* [12]

This comment is suggestive of the limits which Government perceives for its own role in this area, but also in its reference to the Law Society. The Minister’s suggestion that the Law Society might take a central role in leading change in the profession in this way contrasts strongly with the position expressed by the interviewees, who consistently described the Law Society as all but irrelevant to their diversity policies. This chapter therefore attempts to explore the measures which the Law Society has implemented about diversity in the profession, and their effectiveness. Ultimately, it seeks to find out whether the Government’s faith in the Law Society’s transformative potential is misplaced. However, before this exercise is possible it is necessary to put its diversity-related initiatives in the broader context of the recent changes to the regulation of the solicitors’ profession and to the Law Society’s role itself.

1.1 Recent changes to the regulation of the solicitors’ profession

In 2003 the Government announced that a review of legal services was to be undertaken by Sir David Clementi (as he is now). The Clementi report was published in December 2004 and it dealt primarily with how legal services were regulated and complaints and discipline handled. It also concluded that certain, limited forms of “Alternative Business Structures” (where lawyers from different parts of the profession might be partners, and firms owned by outsiders) should be permitted. After a period of further consultation, the Legal Services Bill was published by the Government in May 2006 and, after further amendment, became law on 30 October 2007. According to Cordery on Solicitors (the leading practitioners’ work on the solicitors’ practice):

broadly speaking [Clementi’s] recommendations have been accepted and indeed, in some respects the Government has taken a bolder approach than he recommended. 425

There are many changes which have flowed or will flow from the new legislation which affect the solicitors’ profession, and as chapters 14 (conclusions) and 15 (further thoughts) will also consider, much about the new regulatory regime remains in flux. However, there is one change arising from this review of legal services and the new legislation which particularly affects this chapter. This is the separation of the Law Society’s regulatory and representative functions, which took place in January 2006, as the Law Society looked ahead to the requirements of a future Legal Services Act. At this time the Law Society delegated all its regulatory functions to the Solicitors Regulatory Authority (“SRA”) and its complaints handling functions to the Legal Complaints Service (“LCS”). The Law Society retained its functions as a representative body, including offering solicitors’ business support, organizing members services and groups and representing the profession in collective discussions. 426

The SRA is not formally independent of the Law Society, which ultimately retains legal responsibility for regulation the profession; 427 The Law Society, for example, is responsible for funding the SRA. 428 The Law Society, therefore, has delegated its regulatory function to the SRA, but important legal and practical links between it and the SRA remain. As a result of this structure, both the Law Society and the SRA are bound by the regulatory objectives set out in s.1 Legal Services Act, including at s.1(1)(f) the objective, highly relevant to this study, of:

encouraging an independent, strong, diverse and effective legal profession.

The complex relationship between the Law Society, SRA and LCS may give rise to some confusion about terminology. Cordery acknowledges that “the term ‘the Law Society’ applies in the legal sense to totality of the three organisations [the Law Society, the LCS

426 ibid, A2 paragraph 4
427 ibid A21, paragraph 126
428 ibid A5
and the SRA] and in a functional sense to the representative organisation. This chapter attempts to limit the scope for confusion by distinguishing in which sense the term “Law Society” is being used on each occasion, but it will primarily use the term in the latter sense, i.e. in distinction to the SRA. However, this chapter reviews the role of the Law Society as a whole, i.e. including the SRA, in influencing diversity policy-making in City law firms.

In pursuit of the responsibilities delegated to it by the Law Society, the SRA published a new Solicitors’ Code of Conduct in June 2007 which replaced the Guide to the Professional Conduct of Solicitors and governs all relevant conduct after 1 July 2007. Rule 6 of the new Code (Equality and Diversity) will be considered below. However, it is important to note that both the Legal Services Act 2007 and the new Code of Conduct came into force after the interviews were conducted for this study. Therefore the interview evidence does not address with the new rule 6 or other developments under the Act, though it was collected after creation of the SRA and LSC (in January 2006). Nonetheless, the first part of this chapter, which sets out those measures which the Law Society and SRA have implemented which may affect diversity in City law firms, does cover the new rule 6 for the sake of completeness.

1.2 The Law Society’s diversity initiatives

This section addresses the initiatives which the Law Society (in the narrow, representative sense) has taken which relate to diversity in City law firms.

Information on the Law Society’s website reveals that there are a very large number of measures which the Law Society has put in place to address equality and diversity generally. Responding to the different ways in which complex anti-discrimination law and diversity issues affect the Law Society has generated many committees, reports and initiatives- for instance there no fewer than 58 different items on the Law Society’s 2005-6

429 ibid A7, paragraph 114
diversity and equality Action Plan\textsuperscript{432} (though as noted above, there have been significant changes to the Law Society's functions since this document was published). However, this section concentrates only on the measures by which the Law Society has sought to influence law firms generally, and in some cases City law firms specifically, in their diversity policy-making.

1.2.1 Law Society guidance on the implementation of diversity policies

The Law Society has issued best practice guidance for solicitors about equality and diversity, and the most relevant for this study is the publication "Delivering Equality and Diversity: A handbook for solicitors" (undated, but predating the 2007 Code of Conduct discussed above)\textsuperscript{433} (the "Handbook").

The Handbook is quite detailed. The first sections set out the various reasons why firms should act on equality and diversity. These reasons fall into two types, first connected to legislative and regulatory requirements (now a partly outdated account) and secondly to the business case for equality and diversity. The introduction to the latter (section 3 of the Handbook) is worth quoting at length:

\begin{quote}
There is a steady shift away from minimal compliance with the legislation to a more proactive stance which positions equality and diversity as a key organizational policy as more Firms recognise the business benefits of equality and diversity practices.

There is of course the avoidance of the risk and cost of discrimination, but more importantly, there is are (sic) potentially many business benefits for Firms in the form of access to a wider client base, access to public funding and being in a position to comply with clients' corporate social responsibilities as part of the tendering process\textsuperscript{434}
\end{quote}

This section of the Handbook goes on, under text that states:

\begin{quote}
Beyond this "in principle" drive to "do the right thing" on equality and diversity there are a number of more commercial benefits that Firms can realize\textsuperscript{435}
\end{quote}


\textsuperscript{433} ibid 14

\textsuperscript{434} ibid 34

\textsuperscript{435} ibid 35
to list benefits including attracting and retaining the best people by “fishing” in “particular pools”, and increased innovation, creativity and staff satisfaction. It also discusses the “increasing diversity of the UK’s population” and concludes that “the UK’s population is increasing in its diversity and this will have significant impact [sic] the way Firms do business”. 436

Here are two pages of evidence of the extent to which the business case, as considered in chapter 2 above, and a fundamental part of the diversity approach, has been embraced by the Law Society. 437 The combined effect of the two sections of the Handbook, one on legislative and regulatory requirements and the second on the business case is to portray the former as a “a baseline, a set of minimum requirements”, 438 which the latter should convince readers to exceed. Indeed, the Handbook has been criticised by scholars like Nicholson for being “swamped by references to the commercial benefits of equality and diversity”. 439 As discussed in chapter 2 a range of other scholars dispute the effectiveness of the business case. It is, according to McGlynn, “a wholly misconceived campaign” in part because it lets regulators like the Law Society off the hook. 440

Though the business case is presented in the Handbook in unequivocal language, the evidence provided in support is extremely thin. There are no sources cited for five of six “potential benefits of investing in diversity policies” listed on page 35 of the Handbook and the sixth cites the average pay out on cases of sex discrimination from the Employment Tribunal Service Annual Report and Accounts for 2002/3. On page 36 more business benefits are listed, and the references state that these have all been taken from European Commission research. 441 Therefore there is no evidence cited in section 3 of the Handbook which is specific to law firms, nor any facts or figures which would give any real, empirical ammunition to diversity staff in a City law firm who may be conducting the sort of

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436 ibid
437 ibid 35-6
438 ibid 34
439 Nicholson, n 196 above, 201
440 McGlynn, n 47 above, 160-1
441 European Commission, The Costs and Benefits of Diversity (2003). An email link to this report is referenced at The Law Society, n 224 above, page 36
negotiations with partners discussed in chapter 13 of this study. Section 3 offers so little hard evidence it would be difficult to imagine it in practice persuading cynics that action was necessary.

The Handbook also gives practical and detailed advice in sections 4 and 6 about various aspects of equality and diversity policies. Section 4 considers practical steps a firm might take to develop and adopt an anti-discrimination policy. Section 6 sets out ways in which firms might assess the progress of the policies described in section 4. This highly detailed, practical advice is designed to be of assistance to firms in implementing workplace policies which comply with and exceed the legal and regulatory “minimum standards”. As such, the Handbook is not so much a source of pressure on firms and more a acknowledgement of the reality that, having been pressurized by a combination of law, regulation and business case arguments, some practical and detailed advice on this new area would be useful. This fits in with the representative functions of the Law Society. However, as discussed below, for all its detail none of the interviewees in this study mentioned the Handbook, suggesting that it is of very little significance in City law firms in practice. As a result, the Handbook’s real significance may be not its effect on solicitors’ practices, but in demonstrating the extent of the Law Society’s commitment to the business case arguments for diversity.

1.2.2 The City Firms’ Equality and Diversity Forum

The City Firms’ Equality and Diversity Forum (the “Forum”) has a low profile. There is virtually nothing about this forum on the Law Society’s website. Indeed, it seems some law firms do not even know about it. In her July 2007 report, “Engaging the Top 100 firms in England and Wales” the Law Society President noted:

*Overall, there is a low level of knowledge about the work of the Law Society amongst the partners I met and what it can do to support them and their firms. The existence of the City Equality and Diversity HR Forum... as a surprise* 442

The existence of a specialized forum for City firms contrasts with the common criticism of the Law Society’s failure to engage with the largest firms in the profession (though

interview data showed that this view was still widely held). However, the interview evidence will also show that while a number of City law firm diversity staff had attended the Forum's sessions, most thought that it was much less useful than the informal groups they organized themselves.

1.2.3 The Law Society Awards

In 2005 and 2006 the Law Society, together with the Commission for Racial Equality organised the Solicitors' Race Equality Awards. There were three awards on offer within the scheme: best employer; best race equality initiative and the judges' award for outstanding contribution to promoting race equality. For the first two awards there were three entry categories: small and medium firms (25 partners or fewer) and not-for-profit organisations; large firms (over 25 partners); and in-house legal departments and the public sector. According to the 2006 publicity materials about the awards:

The scheme rewards solicitors who are outstanding in the ways they use recruitment and employment practices, engage with local communities and develop and implement ground-breaking initiatives that promote race equality and diversity.

In 2007 the Race Equality Awards seemed to have been subsumed into a larger event, now called the Law Society Excellence Awards. The awards under this new scheme include The Law Society Quality of Life Award and the Excellence in Equality and Diversity Award and according to the information leaflet, the latter:

will showcase the most innovative and successful examples of best practice in the promotion of equality and diversity in the solicitors' profession. The aim is to highlight the importance of being proactive in embracing diversity policies and practices, both as employers and as providers of legal services to clients.

Like all such awards, these annual awards promise good publicity opportunities for the applicants and winners alike. The 2007 awards information sheet anticipates this incentive to take part:

The winners will be presented with a trophy and a certificate and will receive a winner's logo for use on marketing materials. We expect the awards to receive a good level of media coverage, including in the Law Society's Gazette.  

Such awards fulfill many functions (see chapter 9 below for a discussion of prizes as a source of "cultural capital") including exerting pressure on law firms to act, or perhaps more accurately, to act in a certain way, as regards diversity. While it seems unlikely that awards alone would persuade a firm to act on diversity, some awards do, as examined elsewhere in this study, provide diversity staff with specific targets to work towards, with power in negotiations within firms, and through publicizing the winner's schemes, perpetuate peer pressure between City law firms.

1.2.4 A Diversity Charter

According to an August 2007 article in The Lawyer magazine, "The Law Society will launch a diversity charter in October that will make FTSE 100 companies force law firms to provide diversity data before being appointed to panels".  

This article reports meetings on this matter between the Law Society, Baker & McKenzie, Clifford Chance, Eversheds, Slaughter and May and companies who retain City law firms, including British Airways, National Grid and Royal & SunAlliance amongst others. The aim of the Charter, according to the administrator of the Law Society's career development and diversity department is:

*to promote and encourage diversity when purchasing legal services.*

According to the Chief Executive of the Law Society, the Diversity Charter is about encouraging "buyers of legal services to use leverage of procurement process [sic] to promote diversity in the legal profession". At the time of writing, however, no further details of the Charter were available, though an article in the Law Society's Gazette in November 2007 implied that the launch date of October 2007 has been missed.

445 ibid
446 K. Williams, "FTSE100 set to demand diversity stats for panels" (*The Lawyer*, 20 August 2007) at http://www.thelawyer.com/cgi-bin/item.cgi?id=127935&d=11&h=24&f=46 accessed August 2007
447 Hock Lim, the administrator of the Law Society's career development and diversity department, quoted in Williams, n 446 above.
Pending further details, this initiative is interesting because the parties involved appear to be acknowledging that clients have played a dominant role in shaping the diversity policies of City law firms rather than the Government, or Law Society, and to be endorsing this as a means to encourage change in the future. This is significant because, despite the Minister’s view that it would be for the Law Society to take any drastic steps to improve diversity in the profession (as expressed in the quote at the beginning of this chapter), with this initiative the Law Society seems to be pursuing a role as a facilitator of client pressure about diversity, rather than seeking to exert pressure itself.

1.3 The SRA’s Code of Conduct


Rule 6451 applies to all law firms, though rule 15.06 makes it clear that it does not apply to overseas practice. The introduction to rule 6 states that it is “designed to prevent discrimination within your firm or in-house practice” and the majority of the mandatory rule and the non-mandatory guidance which accompanies it, is designed to supplement solicitors’ obligations under anti-discrimination legislation. For example, paragraph 4 of the guidance sets out a range of circumstances when solicitors should refrain from discriminating against persons on specified grounds (set out in rule 6.01(1)452) which coincide with the legislative protected grounds considered in chapter 5 above and cover the six equality strands discussed in chapter 2. However, the circumstances in which discrimination is prohibited are wider than the statutory prohibitions. In relation to age

450 The previous rules can be accessed at http://www.lawsociety.org.uk/professional/conduct/guidance/view=article.law?POLICYID=158987
451 SRA, n 430 above. Rule 6 can be accessed at http://www.sra.org.uk/code-of-conduct/216.article
452 Rule 6.01(1) states that “You must not in your professional dealings with employees, partners, members, directors, barristers, other lawyers, clients or third parties discriminate, without lawful cause, against any person, nor victimize or harass them on the grounds of (a) race or racial group (including colour, nationality and ethnic or national origins), (b) sex (including marital status, gender reassignment, pregnancy, maternity and paternity), (c) sexual orientation (including civil partnership status), (d) religion or belief, (e) age, or (f) disability.”
discrimination, for instance, statute currently only applies in relation to employment and vocational training, while rule 6.01(l) covers all of a solicitor's professional dealings, including those with barristers, other lawyers, clients and third parties.

Even though most of rule 6 reflects the underlying anti-discrimination legislation, it does deal with diversity as well. Specifically, rule 6.03 requires the principals of firms to:

> adopt and implement an appropriate policy for preventing discrimination and harassment and promoting equality and diversity within your firm. [author's emphasis]. You must take all reasonable steps to ensure that all employees, partners, members and directors are aware of, and act in compliance with, its provisions and that it is made available to clients, the Solicitors Regulation Authority and other relevant third parties where required.

However, the guidance to this rule puts the obligation in slightly different terms and does not mention diversity, stating that:

> it is a requirement that your firm adopts and implements an appropriate written policy for promoting equality, preventing discrimination and dealing with any instances of discrimination which might arise. (Guidance to rule 6, paragraph 22(a))

The guidance then goes on, in paragraph 22(b), to give advice about the contents and form of an “appropriate” policy and three aspects of the guidance about the contents of the policy seem directly to impact the policies which City law firms may put in place. First, in order to be “appropriate” the firm’s written policy must “include such provisions as are relevant to your firm (having regard to its nature and size)” (paragraph 22(b)(ii)), implying that City law firms’ written equality (and diversity) policy would be expected to be particularly comprehensive. Secondly, a firm’s written policy is expected to deal with “how the firm intends to ensure equality in relation to employees, partners, members, directors, clients and third parties and the means by which it will monitor, evaluate and update any procedures and policies in relation to this” (paragraph 22(b)(iii)(B)). Thirdly, a firm’s policy must show “a commitment to the principles of equality and diversity and to observing legislative requirements” (paragraph 22(b)(iii)(E)). Paragraph 22(c) gives guidance on how the policy should be adopted and implemented. This makes it clear, again, that this will depend on “the size and nature of your firm” (paragraph 22(c)(i)).
Rule 6, therefore, is dominated by provisions which have sprung from underlying equality law and diversity is only mentioned in the context of a firm’s written policy. While there are detailed requirements in terms of this written policy, this is the limit of the Code of Conduct’s coverage of diversity policies. Indeed, a firm might have a whole programme of diversity policies and still be in breach of rule 6 if its written policy is not deemed appropriate.

Furthermore, it is possible to argue that in terms of substantive guidance on diversity the new Code of Conduct represents a retreat. The old rules included a very detailed pro forma policy for firms to use (the 2004 model anti-discrimination policy in Annex 7A to the old Professional Conduct rules), and Annex 7B of those rules (dated 18 July 1996, updated in February 1999) which gave firms actual targets for the employment of ethnic minority fee-earners. For large firms (defined as 11 fee-earners or more) the target was that the firm employed “at least 10% of their trainees and 5% of other fee-earners of ethnic minority origin” and, as discussed below, it was this provision which the interviewees found more memorable than anything else the Law Society or SRA had published about equality or diversity since. It therefore could be portrayed as a backward step that the new Code of Conduct includes neither a model code, nor specific targets for firms to work towards.

1.4 The Law Society and SRA’s cocktail of measures

Having looked the most significant ways in which the Law Society and SRA seek to influence diversity policies in law firms generally, and City law firms specifically, what is striking is both the number and the nature of different measures in place.

The Law Society and SRA together have created a cocktail consisting of a rule, guidance, a Forum, a Handbook and prizes, possibly to be added to by a Diversity Charter. As chapter 5 showed, this array of multiple measures needs to be seen in the context of the already challenging and piecemeal legislation underlying diversity policy-making.

It could be argued that the Law Society’s approach to diversity is all the more powerful for the complementary strands within it. However, the evidence collected in this research
suggests that the package of measures is largely ineffective because it is, for the most part, overlooked by City law firms. The next section investigates the interview evidence about City law firms’ responses to the Law Society’s and the SRA’s initiatives.

2. City law firms’ responses to the Law Society and SRA’s diversity initiatives

The Law Society needs to represent the large firms effectively or they will either restructure themselves to avoid being regulated by the SRA [Solicitors’ Regulatory Authority] or will look to the City of London Law Society to represent them. 453

It is common currency amongst both scholars and practitioners that the largest law firms tend to see the Law Society as an irrelevance. This extract from the Law Society President’s 2007 report on the Society’s relationship with the top law 100 firms sets out what is at stake, and hints at the bargaining power that such firms wield.

Lee, in a 1999 study for the Law Society, conducted interviews with lawyers at seven of “what is generally regarded as the top ten” law firms with offices in the city of London 454 to find out more about their attitudes to the Law Society. His central conclusion was that the partners whom he interviewed felt that, bar a possible role in helping to open up other jurisdictions to their firms, the Law Society was “otherwise .. of absolutely no relevance whatsoever to my day-to-day life”. 455 Lee’s interviewees spoke of how the Law Society was, in their minds, over-bureaucratic, out of touch with the larger firms, and of little practical value in return for the significant financial contribution which these firms made (the current standard fee for a practising certificate is £1020 456 which City law firms pay for each of their solicitors). Some partners recognised the Law Society’s role in helping to train solicitors, but still resented it as “archaic”. One even described getting involved with the Law Society (e.g. by standing for office) as a “death wish” as it would suggest that you were not pulling your weight in the firm.

The alienation from the Law Society which Lee found in law firms has more recently become the focus of attention from the Law Society President. In 2007 the President herself

453 The Law Society, n 442 above, 24
454 Lee, n 251 above, 5
interviewed partners and others in the largest 100 law firms over a series of meetings and her findings were written up in a 2007 report called "Engaging the Top 100 firms in England and Wales". After conducting meetings with managing partners from the top 100 firms, the President echoed Lee, in her finding that:

*there is a low level of knowledge about the work of the Law Society amongst the partners I met and what it can do to support the and their firms... Whilst the Society is seen as having a leadership role for the whole profession, it is not currently a place that would naturally go to look for membership services.*

Most relevant for this study are both Lee and Woolf’s findings about the City law firms’ views on the Law Society’s role as a regulator. From Lee’s interviews with City partners (prior, to the creation of the SRA), he concludes that there are deep concerns about whether the Law Society is competent to regulate of the profession. One partner, for instance, gave the example of the Law Society’s rules on solicitors’ advertising, which he said were simply not practical in the context of the modern “beauty parade” process which commercial clients demanded, and which were breached on a daily basis. Another interviewee commented that the “rules on conflicts (as applied in strict form) would stop the City stone dead”. Aside from attitudes about compliance with the Law Society’s rules, Lee also asked his interviewees about the content of those rules. He found an overwhelming number of interviewees thought that the Law Society’s rules were uncommercial and inferior to law firms’ own standards. A case in point was conflict searches (the process which establishes whether, in the light of its previous work, the firm is able to act for a new client, or on a new matter for an existing client or whether it is prevented from doing so by a conflict of interest). In this case, City law firms have their own protocols and teams devoted to enforcing them, therefore regarding their own standards as more rigorous and commercial than the Law Society’s.

During Woolf’s research (which came after the SRA was set up in 2006), one firm made a written submission that particularly echoed Lee’s findings about views on the Law Society’s regulatory approach. This submission contrasted the Law Society’s approach with that of the Financial Services Authority:

457 The Law Society, n 442 above, 7
458 Lee, n 251 above, 26
The FSA has a much more collaborative, risk-based approach to regulation and works in partnership with the larger companies and firms that it regulates. It does not attempt to adopt a formulaic, one-size fits all approach. Woolf records that similar opinions were expressed to her by other top 100 firms, including that:

the conflicts and confidentiality rules were often mentioned— they go beyond the general law (to no obvious benefit) and are not clear in their application.

Albeit in the absence of research post-dating the new Code of Conduct, City law firms' common criticism of the Law Society's rules seems to be that are out of touch because they do not reflect the commercial realities for such firms or their sophisticated clients. Ideally, law firms told the Law Society President that "We should move to a lighter-touch regulation for 'sophisticated' clients (in the style of the financial services sector)."

This, then, is the background against which City law firms' reception of the Law Society and SRA's initiatives about diversity must be considered.

Overall, this research confirmed Lee and Woolf's findings that City law firms regard the Law Society as out-dated and out of touch. It also suggested the same preference in the diversity context for City law firms to build up a bespoke set of rules in-house and the same hostility to the suggestion of more "over-regulation" from the Law Society. However in the case of diversity there seems to be even less acknowledgement of the Law Society's rules and guidance related to diversity than Lee found in areas such as conflicts of interest. A typical response from interviewees to questions about the role of the Law Society (in this case, from an interviewee at a global firm) was:

They're more benign [than the DCA]. They do have their diversity network and they're associated with the black lawyers' directory, they help publish certain things, but I don't feel any pressure from them. It's more clients and the press, the legal press. So I don't think that they're particularly awe-inspiring.

Another interviewee commented that "The Law Society wouldn't be top of my list to turn to" for guidance about diversity as she felt it was "too bureaucratic and small minded" and

459 Comment from a list of issues one top 100 firm "felt would impede law firms' consolidation and growth" submitted to Fiona Woolf and attached to The Law Society, n 442 above, at Annex B
460 ibid 14-15
461 ibid 12
(echoing Lee’s findings) and it did not have a feel for the “forward thinking nature of the sector”. This interviewee added that she would not even “rush to read the guidance which they put out”. Overall, this was partly explained by the interviewee’s perception that “diversity is not really a legal thing” but was about managing organisations more generally and therefore beyond the remit of the Law Society. As regards diversity, the interviewee thought that it was more appropriate for firms to do their own thing, possibly with reference to their clients than to consult the Law Society. [15-4].

Another interviewee, by contrast, thought that the Law Society did have a limited role to play in encouraging firms to take action on diversity:

> I think because they talk to the profession as a whole, I think they probably create a groundswell more quickly than if they weren’t, you know, sharing their particular views and actively encouraging people to move forward on that agenda [4-19]

However, it is telling that even when an interviewee sees a more substantial role for the Law Society, reference is made to the Law Society having “particular views” rather than as a source of binding professional rules, or guidance.

Few interviewees addressed any specific measures which the Law Society had introduced in relation to diversity, and, indeed, a common view was that the Law Society was not doing anything in this area. For instance, one interviewee said:

> [I’m] not really aware that they’re doing a huge amount, to be honest. I know that they hold statistics and they release statistics every now and again and whatever, but I don’t necessarily get the impression that they are doing a massive amount [18-16]

One of the two interviewees who did mention the previous solicitors’ conduct rules pertaining to diversity was highly critical of them claiming that the requirements were:

> unachievable... having nothing to do with managing diversity policy [5-15]

On this basis, this interviewee thought that new rules would be an improvement. The only other person who mentioned the conduct rules at all talked about the target for “large” firms that 10% of the trainees should be black or from an ethnic minority. The specificity of the
targets was something that the interviewee found memorable and it had clearly proven to be a standard against which the firm was mindful of its performance:

*I know that we exceed the Law Society's requirements for ethnic minorities, within trainees... 10%, yes, so I don't think that we exceed it by a huge amount, but we do exceed it [6-3]*

Apart from these two cases, no one in any of the interviews mentioned the conduct rules (in any version) at all. Furthermore, none of the interviewees mentioned the Law Society’s Handbook, even though this seems to have been directly addressed to people who ran diversity policies in solicitors’ firms day to day, like the majority of the interviewees for this study.

By contrast, a large number of the interviewees were aware of, and had attended the Law Society’s City Forum on Diversity and Equality. In one case, an interviewee had decided that the Law Society’s Forum would be “the only forum that we are a part of which I attend regularly... other than that, I’ve tended not to [deal much with outside organisations about diversity]” [17-10]. The reasons offered as to why the Forum was useful were all related to the value interviewees found in talking to their peers in other City law firms, or finding out about what other City firms were doing about diversity. Indeed, one interviewee described it as “a useful chamber for discussing diversity issues and sharing experiences/thoughts etc.” [16-2]. Another interviewee, whose firm was doing little about diversity at the time of our interview said:

*I've only been to one so far, and it was quite helpful, just purely in terms of what other law firms do at the moment [6-12]*

This interviewee particularly valued the opportunity to find out about what steps other City law firms had taken in this area; “it was useful to have a good chat about it” [6-13]. A further interviewee said she found it useful because of how the Law Society ran the sessions, with a focus on what attendees wanted to talk about:

*there’s generally a set agenda where the Law Society identifies issues of common interest; they’ll consult with us on what are the topical issues and then they’ll get speakers themselves or get external speakers to come in and speak about those issues. So it’s a very helpful forum and it’s good that the Law Society’s taking a lead on that [17-11]*
A different interviewee, whose firm had a particularly comprehensive range of diversity policies in place also found the Forum worth taking part in but of limited impact in practice:

*it's useful, you know, quite a bit group, it's quite mixed, because it's not just the very big firms, and they get some useful people in for discussion, and they do take stuff back, but it probably doesn't drive change in any great way, as you can imagine the Law Society wouldn't really, but you know, it's always useful to talk to other people and see what they're doing and to get any ideas*[7-17]

As will be discussed in chapter 13, this interviewee, along with a few others, also took part in smaller, invitation only forums to discuss diversity which they found more valuable than the Law Society’s Forum. This was, therefore, something which interviewees participated in and seen as useful by the majority of the interviewees but regarded as of more limited use by those who also participated in smaller and more exclusive groups.

One interviewee, however did not find the Law Society’s forum useful and said:

*I've not been brilliantly impressed by the sort of diversity events the Law Society's organized... It doesn't seem to me people take a huge amount of notice of the Law Society... compared with client pressure, it's negligible*

This interviewee also added that of the Law Society’s prizes (mentioned in section 1.2.3 above):

*I don't think that they have influenced a lot of people and I suspect that they influenced fewer people the second time round than the first time round [5-16]*

As mentioned, firms’ responses to the glut of diversity prizes on offer will be discussed more generally in chapter 9. However, though this was the only reference in the interviews to the Law Society’s prize specifically, it is notable that the winners of the 2005 and 2006 Race Equality awards do still display the prize’s logo on their websites.

Beyond responses to the individual aspects of the Law Society’s approach to diversity, interviewees also spoke about the general role of the Law Society in this area. Several interviewees, echoing the findings about the Forum, thought the Law Society’s could offer value by facilitating communication between firms and keeping them up to date:

*Law firms, you know, want to kind of move together when they do things which are different for them and I think that the Law Society does have a role to play in*
helping, I guess in a way holding a mirror up to law firms and letting them know what sort of trends are out there that, you know, they may need to consider or may come and surprise them [4-19]

But when it came to the detail of a City firm law firms’ diversity policies, even this interviewee though that the Law Society:

wouldn’t be the first port of call, because I think, in terms of what do we want to do as an organisation, I think that’s an internal thing.

Another said that if they needed to seek guidance in relation to diversity they was more likely to contact the new Equality and Human Rights Commission than the Law Society.

On the basis of this research, it seems that the Law Society is valued, if at all, as a means of facilitating communication between City law firms about their diversity policies, but not as a sources of guidance itself.

3. Conclusion: Diversity is “an internal thing”.

In his work, Lee found considerable alienation between the largest law firms and the Law Society. This research echoes his findings, in that those responsible for diversity policies in City law firms widely regard the Law Society as behind the times, and would not refer to it as a source of advice in this area. This is consistent with the work of Flood and others on mega-law firms, discussed in chapter 3, which suggested that these firms have splintered away from the rest of the profession and identify strongly with their City peers.

Lee’s findings seem to be particularly applicable in the area of diversity, where the multiple initiatives generated by the Law Society seem to have barely registered with interviewees, apart from the City Forum. There may be two reasons for this. First, diversity seems to be regarded in City law firms as an especially cutting edge, business-related issue and therefore beyond the scope of the Law Society (and of course, the Law Society itself reinforces that diversity is a ‘business’ matter in its Handbook). This seems to confirm McGlynn’s warnings about the effects of the business case for diversity outlined in chapter 2, and suggest that the persuasive power of the business case (identified by Wilkins) should be deployed with caution. Secondly, Lee’s research, compared to this study, involved a greater number of lawyer interviewees, and focused on issues in which lawyers are more
directly involved (e.g. conflict searches). This also help to explain the even greater remoteness with which the Law Society was regarded by this study’s research interviewees.

Overall the Law Society’s initiatives seem to have made little impression on City law firms. From the Law Society’s point of view, this approach may have been influenced by concerns about securing its relationship with large firms. The President’s quote above reveals a stark new truth for the Law Society; it is at least possible that as the changes within the Legal Services Act 2007 become established, the largest law firms will choose opt out of the Law Society entirely. Thus, the Law Society’s actions as regards City law firms have to be understood in this light. Overall, this raises questions about the Minister’s confidence that the Law Society is the better party to take decisive action on diversity (as set out in the quote at the beginning of this chapter).

There are interesting parallels between the findings of this chapter and chapter 5. Both the DCA and Law Society, according to their publications, attach much importance to the cause of increasing diversity in law firms. Both express commitment to the business case. Both have refrained from decisive intervention, or have intervened in very limited ways. Both express concern about over-burdening the legal profession. Both aim to persuade rather than prescribe. Collectively this approach is welcomed by City law firm interviewees, who express the view that diversity works best as “an internal thing” [4-19] because this means they can focus on harnessing the benefits of diversity as best suits them.

However, the problems with the combined effects of the DCA and Law Society’s approaches is two-fold. First, they have created a patchwork of initiatives (on top of an already confusing array of underlying legislation) which show no sign of co-ordination. This point is returned to in chapter 15 (Further thoughts) which argues that it there is currently an opportunity to address this problem. Secondly, by holding back the DCA and Law Society do not, in practice, leave City law firms to act unencumbered on diversity on the basis that it is “an internal thing”. This study will show that they in fact create a vacuum which powerful outsiders like clients, interest groups and the legal press move to fill; the Law Society even shows some signs of recognizing how powerful clients have become.
with its own Diversity Charter initiative. Later chapters in this study will show that certain powerful outsiders exert influence over City law firm diversity policy-making, while the key finding of chapters 5 and 6 is that DCA and The Law Society do not.
Chapter 7

Clients

1. The clients' perspective
   1.1 Clients' demands about diversity
   1.2 Why do clients care about the diversity of City law firms?
      1.2.1 The balance of power between City law firms and their clients
      1.2.2 Diversity questions and clients' own businesses

2. The perspective of City law firms

3. Conclusion

Summary:

So far this study has argued that the Government and Law Society regard diversity in the legal profession as important but that neither has exerted decisive pressure on City law firms to act. Furthermore, there is evidence that both the Government and Law Society see themselves as 'persuaders' of City law firms as regards diversity and approve of firms internalizing this issue as a business matter.

This chapter adds another layer to the thesis by factoring in the role of City law firms' clients. Certain clients have grown powerful as regards City law firms and, as part of a shift in the traditional relationship between them, are likely to exert pressure on their lawyers in a number of respects. For some clients this has extended to requests for information from City law firms relating to workforce diversity or about the firm's diversity efforts.

The question of why clients should pressure City law firms about diversity is approached in this chapter from two angles. One explanation is linked to the growing power of clients as regards their external lawyers and the second to a range of pressures on clients themselves,
which can usefully be analyzed using the same framework as this study employs for law firms. The chapter goes on to consider the evidence that City law firms, operating in a highly competitive environment, have responded swiftly and at the highest levels to clients' demands about diversity. Overall, this chapter argues that pressure from clients has been a decisive driver of diversity policies in City law firms to date.

1. The clients' perspective
A recent trend in the U.K. has seen certain types of clients ask their lawyers (here, meaning external lawyers from the firms they retain, as opposed to their in-house legal teams) about the make-up of their workforce and in-house diversity policies. Seized upon by the legal press (as discussed in chapter 9), this trend seems to involve an increasing number of clients, particularly banks and U.S. based companies operating in this jurisdiction. It is an important development for a number of reasons, not least because many of the interviewees regarded these questions from clients as the foremost pressure on City law firms to take diversity seriously. It is also significant for what it reveals about the clients themselves, and about the how balance of power has tipped in favour of corporate clients and at the expense of their lawyers.

This section on the clients' perspective is divided into two parts. The first (1.1) looks at what clients have been asking their external law firms about diversity, and it attempts to draw out some of the nuances between different sorts of demands. Having established exactly how this pressure manifests itself, the second part (1.2) looks at why clients might be exerting this pressure on their lawyers, taking into account the scholarship on client-firm relations generally, as well as the interview evidence from City law firms and diversity staff in three banks.

1.1 Clients' demands about diversity
The trend for clients to make diversity-related demands of their lawyers is a new one in the U.K, and as such it has not been discussed at any length in the scholarship. However, Wilkins has discussed the U.S. position, where a similar phenomenon is several years older. His work shows that clients may attempt to put pressure on their lawyers in two ways - as a
group lobbying together, or individually, by targeting firms with which they have pre-
existing relationships. As regards the first type of pressure, Wilkins makes a special note of
the 2004 “Call to Action” issued by the general counsel of Sara Lee Corporation, Rick
Palmore.462 This initiative took the form of a Commitment Statement which “Chief Legal
Officers” are invited to sign, to “hereby reaffirm our commitment to diversity in the legal
profession”. The statement is powerfully worded:

we pledge that we will make decisions regarding which law firms represent our
companies based in significant part on the diversity performance of those firms. We
intend to look for opportunities for firms we regularly use which positively
distinguish themselves in this area. We further intend to end or limit our
relationships with firms whose performance consistently evidences a lack of
meaningful interest in being diverse.463

In a U.S. diversity journal’s article Mr Palmore explains that the purpose of the Call to
Action is:

to take the general principle of interest in advancing diversity and translate that
into action, into a commitment to act on, to make decisions about retaining law
firms based in part on the diversity performance of those law firms.464

The Call to Action website, as at September 2007, states that approximately 90 general
counsels have signed up to the statement (including Halliburton, American Airlines, Shell
Oil Company and Microsoft Corporation)465 and that it has been endorsed by the Associate
of Corporate Counsel and the Minority Corporate Counsel Association.466

Wilkins, however, sounds a note of caution about the effectiveness of such tactics. He
points to two similar letters in 1987 and 1996 from corporate general counsel in U.S.
companies, also designed to pressure law firms to hire and promote more “minority”
lawyers, and also supported by hundreds of other companies. He argues that
“notwithstanding the fact that both initiatives received substantial attention and support,

462 Wilkins, n 47 above, 38
463 Call to Action, Commitment Statement at http://www.tools.mcca.com/CTA/commitment.shtml accessed
September 2007
464 M. Lasoff Lewis, “Call to Action: Sara Lee’s General Counsel: Making Diversity a Priority” (January-
February 2005) Diversity & the Bar 20, 20
465 A list of signatories can be found at http://www.tools.mcca.com/CTA/signatories.shtml accessed
September 2007
466 Lasoff Lewis, n 464 above, 22
neither produced lasting change".467 One problem seems to be the absence of any particular agenda attached to these statements, and the connected difficulty of monitoring the effects of signing up. For instance, bar a mention in the article referred to above that “most companies that signed the Call to Action are sending a survey or letter to each of their law firms, requesting them to take diversity seriously”468 there seems to be no follow-up information available about whether, or how, this initiative has had an effect on law firms used by the signatories. This seems consistent with Wilkins’ verdict on the transient effects of the previous two initiatives.

Therefore, it seems to be with good reason that Wilkins is more optimistic about the potential of individual client action, as opposed to group campaigns.469 The most prominent case of an individual client addressing law firm diversity in the U.S. is Wal-Mart, the U.S. based retail company which employs 1.9 million people worldwide, is the largest private employer in the U.S. and Mexico470, and spends over $200 million a year on external legal fees.471 In June 2005 Wal-Mart announced that it would be reviewing its relationships with its 100 top-billing law firms in terms of diversity because, as the company put it on its own web-site, “we believe we’re in the unique position to be not just a leader for change but a driver of change”.472

Wal-Mart’s own publicity473 states that the company took a three-pronged approach bringing diversity concerns to bear on its law firm relationships. First, it wrote to the 100 firms stating that it would “end or limit our relationship if they failed to demonstrate a meaningful interest in the importance of diversity”. In a move demonstrating the demanding nature of this initiative, it then

467 Wilkins, n 47 above, 47
468 Lasoff Lewis, n 464 above, 23
469 Wilkins, n 47 above, 39
473 ibid
began to measure the firms' institutional diversity performance by checking the following:

- Number of minority and women attorneys/partners/associates in the firm
- Retention rates for minority and women lawyers
- Percentage of minorities and women promoted to partner
- Diversity promotion activities within the firm and legal profession
- Firm and attorney participation in diversity organisations
- Leadership positions held by women and minorities

Secondly, according to the same publicity material, the company asked each law firm to submit a slate of candidates to be considered for appointment as the new relationship attorney at each firm, which had to include "at least one female and one attorney of color." Thirdly, it announced that it planned to "ask all of our outside firms to participate in the diversity review, which we will continue to conduct annually".

What effect did this three-pronged Wal-Mart diversity initiative have? The company reported that as at September 2005, the initiatives resulted in the changing of 40 relationship attorneys at their top 100 law firms, representing a shift of $60million worth of legal work to women and minority attorneys, and that the company had "ended our relationship with two law firms for failing to meet our diversity expectations". The initiative was also noted in the U.S. media, and as discussed below, by a number of interviewees.

To what extent, then, have law firms' clients replicated either the Call to Action, or Wal-Mart's more targeted initiatives in the U.K.? Neither the interviews nor a survey of the U.K. legal press indicates that there has been any joint action by large groups of clients in the U.K. equivalent to Mr Palmore's Call to Action (at the time of writing, only a few details about the forthcoming Law Society's Diversity Charter are available; it may be that this does represent joint client action of this kind). On the other hand, this research did indicate that certain types of clients in the U.K. are increasingly likely to raise diversity with their lawyers on an individual basis. However, with some exceptions, clients who

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474 ibid
475 Hobbs, n 471 above
476 See chapter 6 of this study
chose to raise diversity with their law firms in the U.K. usually seem to do so as part of the highly confidential pitching process, with the result that only a few of these initiatives have received attention in the press (typically when the clients have chosen to talk about them), while the fall-out from such initiatives never becomes public.

Each of the interviewees from City law firms mentioned that their firm had received requests about diversity from clients in the pitching process, and many of them described how this phenomena was “increasing” [18-12]. It was difficult, however, to get a sense of the precise number of clients who were asking about diversity because it requests seemed to be dealt with in an ad hoc way as and when they were made. However, one interviewee described the increase in requests as:

gradual, I’d say. It’s not been a sort of explosion. I suppose for every, I don’t know, seven or eight pitches we’ve put in, one or two firms, organisations will be asking for diversity information [17-4]

Another interviewee said that she felt busy with the number of requests she had to deal with:

for example, over the last six to eight week period I’ve contributed information in one form or another into over six pitches, which is a lot really... You know, in one week I had three coming through all at the same time [18-14]

Several agreed that the trend had not increased exponentially but that more requests were coming in, and that they could arrive fits and starts. One interviewee said that she had not been asked for diversity information for a pitch for a while, but before that lull:

we had a spate of the business development managers coming through and saying ‘we’ve been asked for stats’ [6-5]

All interviewees mentioned clients’ requests about diversity in context of the pitching process. This was by far the most frequent sort of client pressure mentioned, and though one interviewee explained that some clients wanted to do more than just ask questions, for example inviting their lawyers to take part in diversity events. Nonetheless the same interviewee added:

What is more common is that clients will send out equality questionnaires so that when we’re pitching for business we have to answer these questions, or at least give an idea of what our diversity policies are and where our initiatives lie within that [8-12]
Several interviewees described the trend of asking about equality and diversity during the pitch process as having originated with their public sector clients and only later been adopted by the private sector. One interviewee explained that the first questions the firm received about equality were “often from public sector type clients” and were the same two “brief” questions, being:

- do you have an equal opportunities policy?
- Have you ever been taken to a tribunal for race or sex discrimination? [17-3]

However, he noted that:

- we started to see the trend changing, as I say, probably three or four years ago, when actually more organisations started asking us for more data, including statistical data. So it went beyond just those two basic questions that we used to have originally [17-3]

Another interviewee, when asked whether she had received diversity questions as part of the pitching process replied:

- it’s already coming through, with public sector and local government bodies and you know some of our larger commercial clients are starting to ask the question[4-17]

Another interviewee noted that while such information used to be requested only by public sector clients, in her experience “it’s clearly become much more mainstream” [5-7]. The mainstreaming of the trend from the public to parts of the private sector will be examined in further detail below, where the possible motivations of clients asking these questions are explored. However, it is interesting to note that in the U.K., these diversity-related questions currently seem to be limited to U.S. based companies, banks and, the parents of the trend, public sector clients.

It is not only the number and identity of clients asking City law firms about diversity which seems to have altered recently; the trend seems to be evolving in other ways too. While the majority reported receiving standard questions, interview evidence suggested that in a few cases, the questions were becoming more demanding.
Most interviewees suspected that the questions they received from clients about diversity were part of a pro forma document sent to all the client's prospective lawyers. One interviewee spoke with some frustration of a U.S. client who "want to know how many Hispanics we've got working on our cases" [1-9], suggesting that this question was largely irrelevant to workforce diversity in the U.K. Another said that they had to provide replies dealing with numbers so often that completing these questions had become a routine form-filling exercise:

Here's our ethnic minority mix, here's the number of trainees, you know, whatever [7]

Sometimes a fixed statement was prepared by the person responsible for diversity in the firm and just cut and pasted into pitching documents in response to very similar client queries. One interviewee said that:

Generally we have a set blurb, the things we do, the things that we get involved in, that we then past through to them [the business development team in the firm], and they keep, you know, they put forward as part of the pitch [6-5]

However, plugging numbers into a client request was not always a straightforward matter. In addition to the experience described above of receiving requests for inappropriate statistics, there were other complications that arose trying to provide data to clients. One interviewee [8] said that the firm could not provide information which was requested about the statistics of its workforce along sexual orientation lines, because it did not gather such data. Another interviewee, from a firm headquartered in the U.S., found that responding to U.S. clients' questions about the European offices of the firm was difficult because of "different European laws" on "data protection" [14-2] and this echoes interviewees' concerns about monitoring staff in overseas offices, discussed in chapter 5.

Several interviewees indicated that requests for numbers were just one type of question about diversity which came up in clients' pitching documents and that some had starting asking for a range of much more detailed information. The diversity manager at Herbert Smith has been quoted in a Legal Week article on this shift:

the questions are getting harder and some clients will now do spot-checks once firms have been appointed. It is making sure people are going beyond ticking the
box and is driven by making sure people are not saying one thing and doing another

One interviewee agreed that while the equality questionnaires which she had seen were usually about numbers, some had become more sophisticated:

*often they’re quite general, but you know I’ve seen some becoming slightly more specific on proportions of trainees, lawyers and partners.* [8-12]

Another interviewee explained that she also had to deal with a pitch document that went far beyond a request for numbers, which she suggested was part of a general trend towards greater complexity in the forms:

*these pitches have increasingly large sections in them for stating what you do around diversity, so for instance we’re dealing with one recently that had 22 diversity questions in it... What do you have for this? What do you do for that? Have you had any tribunals against you for this? Have you had any tribunals against you for that? If so, what were the findings? What have you done as a result? What are the specific actions? ’So it’s a very high level of detail to diversity [1-27]*

It was suggested that more demanding questions signified genuine client interest in the diversity, whereas “box-ticking” [7-6] questions about numbers showed that the client felt it had to ask, but was not really passionate about diversity. An interviewee observed, however, that for some clients the process of asking about diversity was “evolving”, and these clients seemed “increasingly genuinely really committed and are asking more questions”. She identified certain clients by name who have established a particular reputation for pushing diversity and who put special pressure on their firms, by asking “more questions”, and questions along the lines of “tell me what you are doing rather than just give me the numbers” [7-7]). Having linked more complicated questions with client commitment to the issue, this interviewee welcomed them, even though, as others pointed out too, they caused more work for staff in firms who were already very busy.

If particular clients have a reputation for asking more complex questions in the pitching process, certain general counsel were singled out by interviewees for being particularly

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477 Carolyn Lee, diversity manager at Herbert Smith, quoted in M. Madsen “Banking giants in adviser diversity drive” (*Legal Week*, 9 August, 2007) at http://www.legalweek.com/Articles/1043659/Banking+giants+in+adviser+diversity+drive.html
evangelical about diversity in the law firms they retained. These ‘diversity evangelists’ have become well-known for raising diversity outside the usual, narrow confines of the confidential pitching process, thanks in part to press coverage of their speeches and announcements about diversity. These diversity evangelists sometimes directly challenged their law firms. One general counsel, who was described by a diversity staff interviewee as “genuinely committed” to the issue [7-7], raised diversity in a relationship meeting with the City law firms’ senior partners, which was regarded by the interviewee as remarkable. It was apparently rare for discussions about diversity take place at such high-level meetings. Other diversity evangelists were mentioned by a number of the interviewees, singled out for posing more difficult, involved questions for their lawyers such as “what does my client team look like?” and “tell me what you are doing rather than just give me the numbers” [7-7]. Clients raising diversity in high-level meetings was a positive development, according to diversity staff, because it focused partners’ attention on the issue, but it was also a challenge, because these are not the sort of meetings which diversity staff would routinely attend. Therefore, diversity staff had to make sure that the lawyers who might met detailed diversity queries in a client meeting were fully briefed, a task which was taken extremely seriously by diversity staff interviewees. As one said:

One of our challenges is equipping people to have the conversations [7-8]

It was made clear by City law firm interviewees that, while they might seem quite few and far between, client approaches about diversity beyond the pitching process did have an effect on law firms’ diversity policies, in a variety of ways. One interviewee described that her firm had:

an increasing number of clients who will come to us and say things like, our women’s network wants to do a joint event with your women’s network. I’m like, um, we don’t have a women’s network. So hence, we had better get one, so this is part of the reason why we got funding to set up the employee groups. [1-27]

In addition to direct challenges to their own lawyers, corporate general counsel who are diversity evangelists also put pressure on City law firms generally by making speeches and announcements signaling the importance of diversity. While, to date, there has been no group campaign like Mr Palmore’s, these individuals’ well publicized actions had a profound impact on law firm interviewees. It was striking how the same companies kept
coming up in the law firm interviewees, sometimes coupled with reference to their speeches in public:

the head of legal at Reuters is a woman, and she has been quoted quite a lot about I don’t want a roomful of men [7-7]

The Lawyer Conference... had a panel of clients there talking... and they had the guy from Diageo, and this woman from Reuters there talking about diversity and... I think they’re individuals who are genuinely committed to it, rather than just ticking the box. I see them a lot in the press, and there’s the guy from Tyco as well. [7-7]

Tyco and Du Pont are on the record that they are impressed by diversity, and this is something which the American [law] firms have recognised [15-2]

High profile general counsel, including as Tim Proctor (the General Counsel of Diageo), Trevor Faure (Europe, Middle East and Africa General Counsel of Tyco, featured in the Commission for Racial Equality/Black Lawyers’ Directory leaflet profiling black and minority ethnic individuals in the legal profession478) and Mark Harding, Group General Counsel of Barclays were therefore well-known amongst law firm interviewees as diversity evangelicals. These general counsels’ public comments about City law firm diversity, or press stories reporting such comments, were invoked frequently by interviewees to supplement their firms’ own experiences of client pressure about this issue.

Another way in which law firm interviewees conveyed how much importance clients attached to diversity was by repeating anecdotes about business which had been lost because of diversity. However none of these anecdotes were about law firms; for example:

Anecdotally, from elsewhere in the professional services generally, there are a number of stories that go around about a firm who presented a pitch to Marks and Spencer to get some business from them and they sent in their four white male, heterosexual [team] and they didn’t get beyond the introductions because Marks and Spencer said your group of people does not reflect our organisation [1-28]

I think Accenture... they deselected one of their suppliers because of diversity issues [3-4]

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In conclusion, this research showed that it is important not to over-simplify the trend of clients asking their law firms about diversity. While it is clearly no longer confined to public sector clients and ‘cut and paste’ questions about numbers, only a few clients are, at the moment, throwing their weight behind the issue. They do this through the conventional route of the pitch, but also by raising diversity in high level relationship meetings, by posing more challenging questions, and by making public statements targeting City law firms. These developments are used by diversity staff across City law firms as evidence that diversity is becoming an issue which partners in those firms must address, reinforced by general anecdotes from across the diversity world. Law firms’ responses to these pressures will be analyzed in more detail in part 1.3 below, after considering what is driving these clients to take action relating to the diversity of the law firms they retain.

1.2. Why do clients care about the diversity of City law firms?

Describing how certain clients in the U.K. are raising diversity with their City law firms begs questions about why they should be doing so. The scholarship, as well as the interviews with those in law firms and banks suggests that the drivers for this trend fall into two categories: those linked to the overall balance of power between law firms and their clients and those linked to the clients’ own businesses.

1.2.1 The balance of power between City law firms and their corporate clients:

_The winds of change have been blowing through the law firm market for the last decade... Gone are the days of unfailingly loyal clients._

It has been well documented that the modern U.K. legal profession “is undergoing rapid and dramatic transformations,” one feature of which is emergence of elite “mega-law” firms which have little in common with the rest of the profession. Galanter showed that one feature of mega-law firms was an overwhelmingly corporate client base (i.e. to the almost complete exclusion of individuals as clients) which he explained in the following terms;

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479 B. Uzzi, R. Lancaster and S. Dunlap, “Your client relationships and reputation: Weighing the worth of social ties- Embeddedness and the price of legal services in the large law firm market” in L. Empson (ed), n 47 above, 91
480 Lee, n 251 above, 7
481 Galanter, n 238 above, and see chapter 3 of this study
they are so confined in the obvious sense that they are immensely costly because the product is labour-intensive custom work. These costs do not diminish with the size of the matter at stake so that thorough treatment of smaller matters may be forbiddingly expensive.\(^\text{482}\)

The argument will be made below that, since this work by Galanter, the corporate clients of City law firms have become even more powerful as regards their lawyers. Seen in this context, diversity becomes the latest of many ways in which increasingly “traditionally demanding, high-end”\(^\text{483}\) clients put pressure on City law firms.

Why has the balance of power between City law firms and their clients started to shift in the latter’s favour? These clients’ power has increased for a number of reasons, which overall, meant that they have become more sophisticated and demanding purchasers of legal services from large firms. First, in-house law departments have increased “size, budget, functions, authority and aggressiveness”.\(^\text{484}\) They have thus become capable of conducting more legal work in-house and of supervising work more closely when it is sent out. As Hanlon shows, when corporate clients send work out to large firms, in-house lawyers have become much more involved in supervising its execution including, for example, monitoring the build up of fees very closely.\(^\text{485}\) In a related development, the most basic, repetitive legal work required by corporate clients (such as debt collection or pro forma syndicated loans), if not conducted in-house, now tends to be dealt with in bulk by less expensive, regional firms, with only the most complicated, novel work being reserved on a “less exclusive and ad hoc basis”\(^\text{486}\) for the more expensive, City firms.\(^\text{487}\)

Moreover, when complex matters do require the specialist services of a City law firms, clients increasingly put the work out to a panel of firms for tender, creating a competition between City firms and ensuring that the client secures the best lawyers for each job while

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\(^{482}\) Ibid 157

\(^{483}\) J. Gabarro, “Prologue” in L. Empson (ed), n 47 above, xvii

\(^{484}\) Galanter and Palay, n 211 above, 751

\(^{485}\) Hanlon, n 228 above, 120

\(^{486}\) Galanter and Palay, n 211 above, 751

\(^{487}\) Hanlon, n 228 above, 115

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striking the best possible bargain. This, in turn, weakens the bonds between client and particular firms, as vividly described in the U.S. context by Regan:

Rather than rely on the same firm for all their outside work, in-house counsel now tend to act as savvy-consumers who shop around for representation on each matter... with clients now tending to shop for representation on discrete, often specialized high-stakes matters, the emphasis is on obtaining lawyers with the most expertise, regardless of what firms they may call home.\(^{488}\)

Depending on the practice of a client and the matter involved, the procurement process may now involve inviting firms to pitch for the work (as seen above in the context of requiring firms to complete pitch documents), beauty parades (presentations by a team from each hopeful law firm) and negotiation on every aspect of fees.\(^{489}\) As Regan observes, taking advantage of the competition between law firms for work, “corporations aggressively negotiate alternatives to hourly billing such as incentive based fee structures and discounts”.\(^{490}\)

In an even more drastic development, some corporate clients have abolished the pitching and negotiation process entirely in favour of near permanent relationships with a handful of firms. These relationships are radically different to the “comprehensive and enduring retainer relationships”\(^{491}\) between key clients and large law firms, where the client “chose a law firm to marry for life”.\(^{492}\) Those traditional, marriage-like relationships were epitomized by the history between U.S. law firm Milbank Tweed and Chase National Bank, (later Chase Manhattan Bank). This relationship went back to 1930\(^{493}\) and as late as 1985, the law firm received 40% of its revenues solely from the bank.\(^{494}\) In its heyday, the bank was effectively a “locked-in client”,\(^{495}\) dependent on Milbank lawyers' specialized knowledge, derived from the life long service of key lawyers in the firm, of whom many had spent time working at the bank during their careers. Significantly, these secure client

\(^{489}\) Hanlon, n 228 above, 110
\(^{490}\) Regan, n 488 above, 33
\(^{491}\) Galanter and Palay, n 211 above, 751
\(^{492}\) ibid 797
\(^{493}\) Regan, n 488 above, 31
\(^{494}\) ibid 43
\(^{495}\) ibid 31
relationships were also important for U.K. corporate law firms; indeed, on Milbank Tweed’s recommendation, Allen & Overy became Chase’s U.K. lawyers in the late 1960’s, which itself become an important and long-term relationship. 496

However, these new deals are different to the traditional model described above in that it is more a case of the City law firm being “locked-in”. The U.S. company Tyco497 recently struck a deal of this sort with Eversheds (seventh in The Lawyer’s ranking of top 100 U.K. firms,498 and therefore within this research sample), in the process cutting Tyco’s external legal providers from 250 firms to just one for Europe, the Middle East and Africa. The deal was made as part of a programme Tyco called SMARTER (“segment and subject management, regional teams and external resources”), aimed at delivering “quality legal services” across multiple jurisdictions but also making “substantial savings which will be released in various ways”499. The Lawyer magazine reports that part of the model is a “ground breaking $10m flat-fee arrangement”500 and elsewhere it describes the general counsel, Trevor Faure as a “stormtrooper for Tyco” (and also, as will be discussed below, a “champion of diversity”).501

City law firms are therefore subject to unprecedented pressure from corporate clients generally as the latter reinvent their relations in these new and dramatic ways. As the Law Society President has pointed out after her talks with lawyers from the top 100 law firms:

*Large buyers [of legal services from the top 100 law firms] are putting relentless pressure on fee rates and structures, and requiring many ‘soft’ benefits in return for their business (e.g. training, secondment, etc.). Pure ‘relationship’ business is rare*502

496 Allen & Overy, n 266 above, 33 et seq.
497 Tyco International Ltd. (“Tyco”) is a US based company in the electronics, fire and security, healthcare and engineered products and services businesses. Its revenue in 2006 was $41 billion.
Eversheds, “Tyco International and Eversheds LLP announce innovative corporate legal and governance initiative” (News article, 10 January 2007) at http://www.eversheds.com/uk/Home/Articles/index.page?ArticleID=templatedata\Eversheds\articles\data\en\Tyco International and Eversheds LLP announce innovative corporate legal and governance initiative
498 The Lawyer, n 284 above
499 ibid
502 The Law Society, n 442 above, 3
Such is the pressure being exerted on large firms by their clients, some of the Law Society President’s interviewees called for the Law Society to act to bolster the position of the law firms. She was told that:

*We [the Law Society] need to emphasize the value for money that large consumers now get, including the quality, expertise and project management from the profession and that there are no real complaints about quality of service. We should also make the point that fees are very competitively set because of the sophistication of the procurement processes and the buying power of clients.*

Walker et al describe why keeping clients, especially key clients, happy is so important. They calculate 80% of a law firm’s revenues come from 20% of its clients. Of these, the most important are called “Crown Jewel” clients who:

*if they took their business away tomorrow would have a significant and long-term effect on our business... we may never be able to replace this income from a single substitute client*.

There is no doubt, therefore, that the pressures clients exert from this positions of power are having an impact on City law firms. Hanlon argues that “through a more aggressive management of the professional-client relationship, powerful clients are demanding that law firms change”. It seems that trends which Galanter first observed in 1983 have been exacerbated as client pressure has increased over time. For instance, while Galanter argued that mega-law firms “are organized to co-ordinate the work of various specialists on the problems of the client”, Hanlon showed in 1999 that not only departments but also marketing efforts, in-house training and appraisals have been remodeled in City law firms to reflect clients’ requirements. The SMARTER agreement entered into by Tyco and Eversheds LLP exemplifies some of the effects of client pressure on firms. An Eversheds news article speaks of how the client and firm have entered a “partnership”, of Eversheds lawyers who will work “full-time” for Tyco across different regions linked into Tyco’s “regional teams”, of the law firm providing Tyco with a “24 x 7 x 365 multi-lingual

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503 ibid 12
505 Hanlon, n 228 above, 121
506 Galanter, n 238 above 155
507 Hanlon, n 228 above, 117-118
508 ibid 135
legal hotline” as well as “contract automation, business process redesign and a legal extranet integrated into Tyco’s business by Eversheds”\textsuperscript{509}. The latter services have been described by Paul Smith, partner and board member of Eversheds as “informational and productivity enhancement tools that Eversheds is providing as part of our partnership with Tyco”.\textsuperscript{510} Nor is this example a one-off: the Tyco deal has been described as following the “DuPont model”, on the basis of that company’s similar deal, which made Eversheds a “DuPont Primary Law Firm”\textsuperscript{511}

In terms of this research, these developments in client-firm power relations are important because they form the background against which clients raise diversity with their City law firms. Understanding this bigger picture shows that, with these various requests about diversity, clients may have done something newsworthy, (partly because of the content and partly because they have gone where the Government and the Law Society fear to tread), but, in terms of tactics, not something new. Client questions about diversity are in this respect, merely the latest adaptation of an increasingly sophisticated procurement processes, which has already created a heightened sense of competition between City law firms that works in clients’ favour. From the firms’ perspective (which is examined below), these questions are therefore merely the latest adaptation expected of them in order to win and keep valuable clients.

1.2.2 Diversity questions and clients’ own businesses

Though diversity demands make better sense seen as part of an already listing balance of power between City law firms and their clients, that alone does not fully explain the development. After all, not all clients are asking questions about diversity and nor do already powerful clients necessarily need another way of flexing their muscles in the crowded legal services market. It is only by closely examining the types of clients which

\textsuperscript{509} Eversheds, n 497 above
\textsuperscript{511} ibid
the research showed were asking lawyers about diversity that the patterns of who is asking what, described in section 1.1, can be fully explained.

The interview data suggest that three types of clients were particularly likely to ask City law firms about diversity, being public authorities, investment banks and companies based in the U.S. Though there is some overlap, each of these categories of clients has its own reasons for asking external lawyers about diversity. This are examined these below.

Public authorities
As discussed above, public authorities seemed to have been the first clients in the U.K. to ask lawyers about the diversity of their firms as part of the procurement process. However, several of the interviewees commented that the public sector asked only basic questions about diversity, and it was the private sector clients who had taken questions further. Neither did any of the interviewees comment that the public sector had exerted pressure as regards diversity on their law firms outside the procurement process (e.g. by suggesting joint events or longer term monitoring).

Why should the public sector be asking law firms questions about diversity in the first place? The answer to this is found in the statutory race, disability and gender equality duties on public authorities in England and Wales, which came into force in May 2002, December 2006 and April 2007 respectively. While these equality duties do not refer explicitly to procurement, the Government is unequivocal that:

*the obligations under the general duties apply to a public authority's functions as a whole. This means that, in carrying out procurement, public authorities need to have due regard to the need to eliminate unlawful discrimination and promote equality as well as continuing to ensure compliance with the legal and policy framework for public sector procurement*.

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512 See s.71 Race Relations Act 1976 (inserted by the Race Relations (Amendment) Act 2000), s.49(A) Disability Discrimination Act 1995 (inserted by the Disability Discrimination Act 2005) and s.76(A) Sex Discrimination Act 1975 (inserted by s.84 of the Equality Act 2006) and subordinate legislation made under these sections. See discussion of this legislation at Nabarro, n 42 above, 13 and footnote 32, and the DLR, n 74 above, 82 et seq.

513 DLR, n 74 above, 85, footnote 49 describes the effects of these different start dates on the requirement for three-yearly reviews of equality schemes.

514 ibid 106, paragraph 5.92
Therefore, the statutory equality duties appear to explain public authorities’ questions to law firms about diversity, and also why these questions pre-date the private sector’s. The highly complex nature of the public sector procurement process, affected not only by the equality duties but also “European legal requirements, the Government’s policy of achieving value for money and best value legislation”\textsuperscript{515} may also explain why law firms found the public sector’s questions about diversity basic.

In what form public authorities’ questions about diversity will continue in the future is uncertain, as the Government has proposed replacing the three separate equality duties with a single duty and suggested other changes in the 2007 Discrimination Law Review ("DLR"). It is perhaps surprising that the Government makes the case for reform so soon after these duties came into force, but its case is strongly made in the DLR. The race equality duty, for instance, is criticised as “too weak in the extent to which it requires action to be taken and too unspecific about the outcomes which it seeks to achieve”.\textsuperscript{516} While the DLR states that the two later duties were designed to be “less prescriptive” it still makes the case for a new, “single, streamlined approach” which “would be simpler and more practical for public authorities to implement”.\textsuperscript{517} It acknowledges that there is currently some confusion about the extent to which the equality duties can affect public authorities’ procurement and flags the need for clearer guidance on this point from the Equality and Human Rights Commission and the Government itself.\textsuperscript{518} In the future, therefore, there may be more, or at least different, questions about equality and diversity from public authorities posed to their external lawyers (and other suppliers) and the answers might have a different bearing on procurement decision making.

At the moment, however, the public sector remains noteworthy as the source of the first U.K. client questions to City law firms about diversity. However, this research suggests that while diversity-related questions from the public sector are complied with by City law firms, the private sector is regarded as having taken these inquiries further.

\textsuperscript{515} ibid 108
\textsuperscript{516} ibid 83
\textsuperscript{517} ibid 85
\textsuperscript{518} ibid 109
U.S. companies

The interview data suggested that the second category of clients most likely to ask diversity questions of City law firms is U.S. companies. Interviewees frequently cited U.S. corporate clients as a source of pressure, for example:

*I think what's changed is that clients, particularly U.S. clients have indicated that diversity is for them an issue by reference to which they will judge their lawyers.* [2-2]

*I suppose one obvious factor is those [corporate clients] who have a North American parent seen to be much more worried* [5-8]

The interviews conducted with a global firm (headquartered in the U.S.) revealed the same pattern:

*clients require it [diversity initiatives]- particularly in the U.S. but increasingly in the U.K. businesses want to ensure that the firms they hire have a commitment to diversity* [14-1]

Tyco and Wal-Mart, companies repeatedly mentioned by interviewees in this context, are both based in the U.S. Furthermore, those general counsel singled out by interviewees were sometimes American even if their companies were not, for example, Tim Proctor, General Counsel of Diageo, who was referred to by name by several interviewees and who is a regular speaker at diversity events such as the Lawyer Diversity Conference held in London in 2006

Why are U.S. clients, or American individuals from global companies, particularly likely to ask diversity questions of U.K. law firms? In part there are factors pressurizing large companies generally to take action about diversity (including being seen to ask their lawyers about it) which can be explained using the same framework of power relations that is central to this study of law firms. Furthermore, there are reasons why these exogenous pressures seem to be particularly acute for U.S. companies.
Large companies like Wal-Mart are exposed to exogenous pressures which are even greater and more numerous than those on City law firms. As Martin argues, in a Harvard Business Review volume on corporate social responsibility:

*corporations don't operate in a universe composed solely of shareholders. They exist within larger political and social entities and are subject to pressures from other members of those networks, be they citizens concerned about environmental pollution, employees seeking to strike a balance between work and family or political authorities protective of their tax bases.*

Amongst the many pressures being exerted on a company which Martin describes, some are related to diversity, and it is those which are relevant to explaining the questions put to City law firms. Diversity-related pressures are exerted by campaign groups (like DiversityInc and Catalyst in the U.S., Stonewall in the U.K., and the Rev. Jesse Jackson's Equanomics movement), statutory bodies capable of bringing legal action (such as the EEOC in the U.S.) or even investigative journalists (like Barbara Ehrenreich who worked undercover to highlight the plight of low-paid women workers in a variety of companies, including Wal-Mart).

In addition to the sheer number of parties who may hold a company to account, the notion of accountability itself is broadening. Large companies are starting to be held accountable not only for their own actions, but for those whom they retain. The roots of this concept lie in the environmental movement rather than with diversity campaigners (for example, campaigning journalist George Monbiot's recent newspaper article discussing holding newspapers to account for the environmental policies of advertisers), but it is an argument which has caught on in the new context of diversity. Thus companies come to be judged by, and in turn express concern about, the diversity of their suppliers and their lawyers. However, Wilkins discusses, and expresses concern about, the actual effects this approach may have when extended to lawyers. Minority lawyers may, for example, be

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seen as “adding value” in only certain areas of the law firm and may become trapped in a “black box”. 523

There are at least three reasons that these exogenous pressures as regards diversity are more severe for large U.S. companies than their U.K. counterparts. First, companies with U.S. links have felt these pressures for longer and much more acutely than their European counterparts because of affirmative action legislation in that jurisdiction. While in the U.S. Executive Order 11246 imposes the obligation to make an written affirmative action plan only on businesses of over 50 employees (in the non-construction sector) doing $50,000 or more work for the federal government, the total workforce covered by the Executive Order is 22% of the civilian workforce or 26 million people. 524 However, in addition, there is a long-history of voluntary affirmative action plans in U.S. public and private organisations, dating back to the 1970’s which means that at least some U.S. companies have a long tradition of implementing policies to address equality and diversity issues. 525

Secondly, U.S. companies are made acutely aware of the need to address diversity by the threat of huge employment discrimination class actions and punitive damages, neither of which are features of litigation in this jurisdiction. Companies which have been, or are being, sued for discrimination often become the most passionate about diversity. Wal-Mart, for instance, is currently facing the largest class action in history in *Dukes v Wal-Mart Inc.* 526, brought by a claimant class covering all the women employed in Wal-Mart’s U.S. stores from 26 December 1998 to the present, (estimated to include more than 1.5 million women). The effects of such litigation on companies are not straightforward. Roth discusses how out of court settlements made on a “no-fault” basis have allowed banks to deny that sex-discrimination occurs, at the same time as a number have each paid over $100

523 Wilkins, n 77 above, 1595
For construction firms contracting with the Federal Government, the Government will itself write the affirmative action plan and specify the goals which need to be taken.
525 See for example *United Steelworkers of America v Weber* 443 U.S. 193 (1979) where the U.S. Supreme Court in a 5-2 decision upheld an employer’s voluntary affirmative action plan.
526 222 F.R.D. 137 (N.D. Cal. 2004)
million to settle discrimination cases with women since the 1990s. However, either through a pressure to manage this risk, or thanks to the terms of the judgments (which can be far more creative than those in this jurisdiction) litigation has a profound effect.

Thirdly, the combination of the legacy of slavery in the country and the civil rights struggle means that the issue of racial and ethnic diversity has traditionally been a much higher-profile and more controversial issue in the U.S. than in this country, and it remains so today. Bell wrote in 1992 that "the fact of slavery refuses to fade" while Terkel subtitles his work on race of the same year "How Blacks and Whites think and feel about the American obsession". Moreover, recent demographic changes also mean that racial and ethnic diversity will continue to be an urgent issue in the U.S. According to the U.S. Census Bureau, one in three people in the U.S. is now a minority (100.7 million people as at May 2007) and the Hispanic community is the fastest growing group in the population; four states in the U.S. are now "majority-minority".

For all of these reasons U.S. companies are particularly likely to ask diversity questions of their lawyers, including (as this research shows) those in the U.K. Moreover, there is evidence that the answers will have an impact on U.S. general counsel's decisions about which law firm to use; the fall-out from Wal-Mart's initiatives was discussed above. Furthermore, at a 2005 conference in Atlanta about diversity in the legal profession, the powerful general counsel of Wal-Mart, Visa, Del Monte and Pitney Bowes all described their "determination... to pressure outside counsel" about diversity. According to the Del Monte general counsel, failing to address questions about diversity "dramatically lowers a [law] firm's chances of reaching the interview stage" in the procurement process. Therefore in the process of doing business with U.S. clients and prominent U.S. individuals

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527 Roth, n 142 above, 1-2. The banks she names as having paid over $100 million to settle such cases are Citigroup's Smith Barney, Merrill Lynch and Morgan Stanley.


530 Hobbs, n 471 above
working for clients, it seems that City law firms in London are experiencing second-hand diversity-related pressures whose origins can be traced back to the U.S.

**Banks**

Banks are the final type of client which, according to this research, are a major source of diversity questions for City law firms. Mark Harding, the general counsel of Barclays, received particular attention from the legal press in 2006 for announcing a policy of asking for "staff diversity statistics from every law firm it uses"\(^{531}\). Many of the interviewees during this research mentioned him, or Barclays, by name. Mr Harding’s decision to, in the words of The Lawyer magazine, “follow US-style trends” by launching this policy, had particular significance because at the time he was chair of the General Counsel 100 Group, the committee of legal heads of the FTSE 100 companies. He seems to have succeeded in persuading this group of the importance of this policy, as his successor, Helen Mahy of National Grid, has been quoted as saying in 2007 that:

*diversity will be among the key criteria for appointing law firms during the National Grid's next panel review along with "harder" criteria such as price, depth of knowledge and relevant sector experience.*\(^{532}\)

Other banks have received publicity in 2007 for their policies of asking law firms about diversity. Deutsche Bank, Goldman Sachs and Morgan Stanley were reported in Legal Week (one of the media discussed in chapter 9) as having “asked for firms pitching for business to give diversity statistics relating to their employee’s backgrounds in recent adviser reviews.”\(^{533}\) This article added that JP Morgan and Barclays already ask these questions, and that HSBC is planning to.

Interviewees from law firms confirmed that they received many queries about diversity from banks. One said that in her experience the source of such questions was “typically investment banks” [2-2]. It was a banking client who raised diversity in a relationship meeting with a senior law firm partner, as noted above [7-7] and another interviewee stated

\(^{531}\) D. Middleton, “Barclays ups the ante on panel firm diversity” (*The Lawyer*, 13 February 2006) at http://www.thelawyer.com/cgi-bin/item.cgi?id=118755&d=122&h=24&f=46

\(^{532}\) Spence, n 282 above

\(^{533}\) Madsen, n 477 above
that “It seems to me that it’s the investment banks who are pretty much all asking for diversity information in their pitch documentation” [7-8]. An interviewee from a global law firm, said that she felt that the trend of asking questions about diversity “is starting with banks and financial institutions” [14-3] and another added that “historically it used to be primarily public sector organisations who requested data, but increasingly most of the banks now do” [17-4]. Further interviewees agreed with these comments. [8-12]

In terms of the reasons for banks to be at the forefront of this trend, much of the preceding section about U.S. companies applies here too, in particular for those banks which are U.S. headquartered. A further factor which may make banks particularly likely to ask about City law firms’ diversity is that they may be particularly common employers of lawyers leaving City law firms. Currently, there seems to be a shortage of data about the subsequent careers of alumni from City law firms and research on in-house lawyers generally, though McGlynn notes that women solicitors make up a greater proportion of solicitors outside than in private practice: 4/10 to 3/10 respectively.\(^{534}\) However, the leaking pipeline’s disproportionate effect on women has been documented\(^{535}\) and banks, in turn, need to hire qualified lawyers for their growing in-house legal terms. Few banks offer training contracts (trainee solicitors’ two year training period in a firm) in-house, and it seems logical that they would favour candidates whose large firm experience means that they are familiar with the specialist legal work required by the bank (perhaps even having completed a secondment in the bank).

In 1998, McGlynn quoted data from The Law Society Gazette that showed 21% of in-house legal departments were headed by women, and speculated “if there are more women seeking legal services from firms, perhaps this will exert change”.\(^{536}\) In 2003 Siems found

\(^{534}\) McGlynn, n 299 above, 94

\(^{535}\) See data referenced in chapter 1 and chapter 13 of this study, and also J. Siems, *Equality and Diversity: Women Solicitors. Research Study 48, Volume 1, Quantitative Findings* (London: The Law Society Strategic Research Unit, 2004). Amongst the findings of this extensive survey are that as a proportion of solicitors holding practising certificates in 2002, 1.6% of men and 2.4% of women failed to renew and that three fifths of female non-renewers were aged between 31-40 compared to just over one fifth of men (100).

\(^{536}\) McGlynn, n 299 above, 112-113, citing N. Rose, “In-house teams in growth boom” (Law Society Gazette, 9 July 1997)
that nearly half the solicitors working in the employed sector were women.\(^{537}\) Siems' data also shows that women solicitors in private practice were more likely than men in private practice to say that a move to the employed sector was "very likely" or "likely" (29.7% compared to 15.2%), and that the relationship between gender and the likelihood of moving to the employed sector was "highly statistically significant".\(^{538}\) Further analysis by Siems showed that the relationship between being a woman solicitor in private practice and the appeal of the employed sector being the better hours and conditions was statistically significant.\(^{539}\) In this context, it is suggested that in-house lawyers at banks may be likely to have detailed, first hand knowledge about the workings of City law firms and personal experience of the leaking pipeline effect in City law firms. In these circumstances, diversity-related pressure from banks (and perhaps other organisations with a high number of alumni) may become more pronounced.

There is some anecdotal evidence to support this 'alumni effect'. For example, Tim Hailes, now managing director and assistant general counsel at JP Morgan, heads his bank’s 14-strong gay and lesbian steering committee. He trained at City law firm Denton Wilde Sapte (17th in The Lawyer's ranking of U.K. firms by turnover\(^{540}\)) as well as a U.S. firm and in a recent special report on diversity in The Lawyer magazine, Mr Hailes was described as having gone "back in the closet" during his training contract, having been out at Law School, because "of nervousness about how the partners would react".\(^{541}\) He is now reported as having has strong views on the lack of "resources and opportunities" for gay and lesbian staff in banks compared to City law firms, and has been quoted as saying;

*Would gay and lesbian staff know where to go in one of the magic circle firms if they wanted mentoring and networking? Where are the role models? The support?*\(^{542}\)

\(^{537}\) Siems, n 535 above, 35
\(^{538}\) Siems, n 535 above, 36
\(^{539}\) ibid
\(^{540}\) 'The Lawyer, n 284 above
\(^{541}\) C. McLeod-Roberts, "20 years of The Lawyer: Diversity" (thelawyer.com, 5 December 2007) at http://www.thelawyer.com/cgi-bin/item.cgi?id=130281
\(^{542}\) C. Griffiths, "Out and About" (The Lawyer, 8 November 2006) at http://www.thelawyer.com/cgi-bin/item.cgi?id=122896&d=11&h=328&f=46
The tentative suggestion, in the absence of research data on this point, is that having worked in, and left, City law firms may make certain in-house lawyers more likely to exert pressure large firms about diversity if they can. If there is such an alumni effect, then it may help to explain the patterns of client pressure observed in this research.

But why should banks be more advanced in terms of their diversity policies than City law firms in the first place? This research did find evidence that banks seem to have much better developed all-round diversity strategies than City law firms (or as one law firm interviewee put it, they are “a bit more clued up” about diversity [6-10]). Most interviewees attributed the difference to the fact that banks were “massive organisations” [4-13]. Clifford Chance is the largest U.K. law firms with, it has already been noted, 6,200 employees worldwide. By contrast, in 2005 Barclays had 110,000 employees in 60 countries while Citigroup has 340,000 employees in over 100 countries. Banks and Ashtiany in their 2003 study of diversity initiatives in investment banks observe that JPMorgan has Diversity Councils which cover 800-1,200 of its workers, out of a total U.K. workforce of over 12,000. These issues of scale matter. For example, in banks of this size, the “HR function” [14-41 is commensurately larger and better resourced, and dedicated diversity staff are part of a global network of peers across the organisation. For example, Ashtiany and Barses found at UBS Warburg that:

*there is a dedicated unit within the human resources department, whose manager reports to the Global Head of Diversity and to the Regional Head of Human Resources in the UK. There is a close working relationship between the global diversity team and those working on diversity regionally, which means that while initiatives can be taken forward globally if appropriate, no one region dominates the agenda*

One bank interviewee starkly contrasted the position in banks (“we have teams or individuals, but more often teams who focus on this, so we are experts in certain topics”) with law firms (“sometimes people have it [diversity] as a passion or a part-time job” [10-

544 http://www.citigroup.com/citigroup/corporate/values/index.htm
545 Barses and Ashtiany, n 24 above, 23
546 ibid, 30
Chapter 13 will discuss further how there are usually only one or two staff with day-to-day responsibility for diversity in law firms, with no peers in the firm’s overseas offices.

The difference in size between City law firms and banks also affects how many employees are interested and available to take part in diversity initiatives. One law firm interviewee commented that this made it more difficult for law firms to launch certain policies successfully:

_We're not that big, you know, if you're [lists two banks] who've got great gay and lesbian networks, stuff like that, they're big enough. I don't know whether we've got enough people to have networks, actually [7-25]_

The interviewee also noted that external ranking exercises nevertheless judged law firms and banks as peers, despite the effects on diversity policy-making of the differences in their size.

A few interviewees also commented that banks (and other professional services organisations like accountancy firms) had responded to the globalization of their businesses in different ways to law firms. One (from one of the two global law firms) said that the banks and big accountancy firms have been "for a longer period more global and the globalization of law firms only started relatively recently. Therefore this influence from the U.S. has impacted later in law than other sectors" [14-4]. Another interviewee, from a U.K. law firm, reinforced this view, saying that "law firms operate internationally, whereas banks operate globally" [1-25], also suggesting law firms were less likely to pick up on new initiatives about diversity from the U.S. than banks.

If the alumni effect and integrated, global nature, and huge size of certain banks makes them more likely than the City law firms in this sample to have highly developed diversity policies, there are also reasons relating to the broader law firm-client relationship which may help explain why banks might be at the forefront of pressurizing City law firms about diversity.
One bank interviewee explained that there was an “increasingly big” [9-13] trend in the U.K. to have U.S. style “supplier diversity” programmes, where work is channeled to minority and women-owned business. The purpose of this policy as he saw it was the:

education process for our suppliers, so this is something that's very important to us, therefore this should be very important to you [9-14]

As with the U.S. companies discussed above, banks have argued that the state of diversity in the law firms they hire reflects back on them. One bank interviewee said that it would be “hypocritical of us” [13-3] not to worry about the diversity of their suppliers, including law firms and recruitment agencies. However, more broadly, asking suppliers (including lawyers) about diversity also seemed to be part of the overall commitment expected by the bank in return for their business. The sheer power of the banking client over (in this case) its law firms lurked close to the surface of various comments in the interviews with banks about law firm diversity, surfacing occasionally as in this reply to the question of why banks would ask law firms about diversity:

Because it's very important to us, we spend an enormous amount of money and we think it should be very important for those people who want to partner with us. Commercial relationships should be about building partnerships, and if an organisation or institution is culturally at odds with us, in a very competitive marketplace, that information is actually very useful to us, as part of an overall decision making matrix [9-14]

Despite their arising in the context of “decision making matrix”, banks did not always acknowledge that these diversity questions were a form of pressure on City law firms. One bank interviewee downplayed the importance of the trend, saying that that bank mainly monitored clients and vendors alike for “things which are legal” and he was more concerned about spreading best practice by working with law firms by speaking at conferences, organizing seminars and sharing training programmes [10-15]. Another bank interviewee did not agree that law firms were being “pressured”:

I don't think that the banks are putting direct pressure on the law firms. I think that law firms are perceiving the banks are putting direct pressure [9-14]

Of course, from the City law firms’ perspective, in a highly competitive market with lucrative client relationships at stake, there may be very little difference between real and
perceived pressure in practice; it would be too risky to ignore either. Moreover, bank interviewees downplaying the importance of diversity questions to law firms contrasts with the line taken newspaper articles by some banks’ lawyers, like Mark Harding and Tim Hailes, who, as seen above regularly emphasize how important the trend is to them.

Those responsible for diversity in City law firms agree that their firms lag behind their banking clients in terms of diversity policies. However, these banks dwarf City law firms, and may be more integrated global organisations, able to tap into new developments from, say, the U.S. more easily. Banking clients may not always think that they are exerting a great deal of pressure on firms by asking about diversity, and in the context of their own complex and wide-ranging diversity initiatives, this may seem a small matter. But because of who is asking, it is an important matter for City law firms.

2. The perspective of City law firms

*The client says X, the lawyer will do X*


*It’s not unlike asking about a firm’s pro bono work. It’s an increasing trend and, if the client demands it, they will get what they want*

David Frank, practice partner, Slaughter and May, quoted in The Lawyer

*it’s increasingly clear that you will not win friends among your clients if you are seen not to be progressive in the right way [5-7]*

Unsurprisingly, given the discussion above about the increased buying power of clients, City law firms are determined to keep their corporate clients happy, so the immediate, instinctive response to questions from them about diversity is to comply as best they can. As discussed above, diversity questions are novel in some ways but in others, are merely one more way in which firms experience pressure from certain types of clients. It is unsurprising that no evidence was found in this research that any diversity questions from clients had ever been boycotted or ignored. As one interviewee summed up “we’re a service institute” [1-27].

547 D. Middleton, n 531 above
Staff in law firms work diligently to complete clients’ questions about diversity as best they can (even when the questions seem not to make sense, as in the example above). Sometimes the information provided goes far beyond that which firms would make publicly available, or which would be available from public sources on the basis that “we know that if we start being shady about what we disclose, we wouldn’t get the business anyway” [1-29]. One interviewee described how that the firm provided information to clients which would be withheld from other parties who approached them:

*if in a pitch document, if [clients] were asking generally about diversity, that’s fine. With this particular [interest group] organisation, it wasn’t a pitch, it was something completely different and I didn’t feel comfortable giving that information over [3-15]*

Law firm staff were therefore concerned that their submissions to clients were “complete and authoritative” because, even though they were not on the front line meeting and working for clients, they were mindful that “it could have an impact on whether we secure a client or not” [17-15]

Despite the time and effort required to get these submissions up to standard, the staff in charge of diversity policies in law firms typically welcome clients’ approaches about diversity. According to these interviews, they appreciated that clients’ actions and the press they received were making diversity topical within the firm. These developments created momentum which they could harness for their own purposes within the firms, especially in negotiations with more powerful partners (see chapter 11 and 13). Therefore, power relations outside the firm are brought to bear on power relations inside the firm, with both affecting the diversity policies which get made.

On many different occasions across different firms in the sample, client inquiries had proven to be an effective way of boosting diversity staff’s powers of persuasion over partners. Sometimes clients’ requests were expressly linked to proposals when diversity staff presented them to the firms’ leadership:

*we get a lot of requests from banks and large, global corporates. This is one of the arguments we can use to put forward new diversity initiatives/policies[16-2]*
Another member of staff in a law firm responsible for diversity said that “the most significant way” he convinced partners to support diversity policies was by “educating them about client information and client requests”. This seemed to add gravitas to a discussion which the partners may otherwise not have taken seriously:

they then see that actually this is not something that we in HR are creating and making a big song and dance of; it is something which we need to be doing. And if we’re not able to complete a request in a proper and informed way than that can have an impact on our ability to secure work from a client. So what we try and do is, when we get information in from a client asking for bid information, then we try and communicated it to as wide a number of partners as we possibly can [17-5]

Clients’ requests therefore help law firm staff responsible for diversity with their job of “pushing, communicating and educating” [17] as this interview put it.

Clients’ interest in City law firms’ diversity policies was also useful to law firms’ diversity staff in other ways too: it allowed them to tap into the more experienced diversity teams at clients for ideas, training courses and guidance and to build links with others in the diversity world, particularly useful if they are a diversity department of one (see chapter 13). It is very effective to harness the energy and expertise of clients in these ways; for example one law firm interview spoke of a joint event with a client’s gay and lesbian network to kick start a similar network in that law firm [7-23], and another described seminars and training organized with clients as clients “stretching a hand out to the legal community” [8-12]. What may be perceived as pressure by some in law firms may then represent welcome support for others. These issues about the internal power relations, and how this means exogenous pressures are received differently by different parties in City law firms will be explored further in part 3 of the study.

However one law firm interviewee regarded clients’ interest in diversity and firms’ own responses as of superficial importance only, necessary for appearance’s sake. They are:

having to sort of conform with something being imposed on them... sort of primary stakeholders in the diversity issue [5-7]

The same interviewee discussed how the pressures on clients about diversity force them to be seen to take diversity seriously, for example by making sure that there are articles in the
legal press about their views on diversity and their company's initiatives. For instance, a recent story in the legal press about a diversity network at a large company was not, as they saw it "about the way that people are recruited at [that organisation] it was about [that organisation] saying 'We take diversity seriously'" [5-19]

However, this interviewee was in the minority. Most law firm diversity staff interviewees, welcomed pressure from clients about diversity and generally failed to speculate about their motives. Most took this sort of action by clients at face value and focused instead on the question of how it affected their firms. However some skepticism did creep into the interviews in other respects. For instance, there was some frustration expressed with the terms of the questions asked (especially with standardised kind) and some doubt about the actual weight given to the responses which were so carefully provided. A number of people in law firms who doubted that firms' responses were pivotal to firms winning work:

> generally the diversity stuff is dealt with by the business development team or me... I suspect that [partners making presentations to clients for work] wouldn't deal with it in the body of their presentations, they would deal with it from a crib sheet[1-29]

On several different occasions, law firm interviewees, particularly those who were more senior in the firm agreed that diversity was "an element of the pitch but not make or break" [15-2]. Even Tim Hailes of JP Morgan has been quoted as saying that law firm diversity information "is a relevant factor, if not a determining one".548

Most diversity staff though, had no time for skepticism about clients' motives or doubts about the weight given to firms' responses:

> we can't second guess the motives of the client. The bottom line is that they've asked for the information from us as someone whose services they're potentially going to be using and therefore they expect us to complete the data that they've asked for.

[17-6]

548 Madsen, n 477 above
No one from a law firm, to the knowledge of the author, has questioned this trend publicly. Moreover, this private skepticism seemed to have no effect on the inevitability of firms’ responses to clients about diversity. All agree that what clients want, they get:

Do we argue with clients? The answer is no, we don’t argue with clients [2-4]

3. Conclusion

Client questions about diversity are completed diligently by diversity staff in City law firms, given the information at their disposal and the misplaced nature of some of the standardized questions. This fits into a long history of City law firms attaching great significance to client service and into the more recent history of heightened competition where firms have had to respond to a variety of pressures exerted by savvy clients determined to get the best possible value out of their legal advisers. It also links back to the drivers of the growth by which City law firms have splintered away from the rest of the legal profession in terms of wealth, size and geographic reach, outlined in chapter 3.

However, behind the automatic compliance with “whatever the client wants”, this research has shown the effects of these client interventions to be complex. For instance, most diversity staff welcome the opportunity to link their work directly to the core activity of the firm—winning and keeping clients—and the commensurate boost to their negotiation position in the firm. Meanwhile, a minority of City law firms interviewees expressed private doubts about the worth of the exercise for either party and the views of partners seem to be more mixed than those of diversity staff. As chapter 11 will show, some partners endorse diversity policies wholeheartedly, especially when they can be linked into clients’ needs and the firm’s larger strategies for winning business, but others see this as one more client demand and comply with gritted teeth and a request for a crib sheet.

In the longer-term, despite the public pronouncements from clients about their ambitions to change law firms for the better, the effects of this tactic seem fragile, as will be discussed further in chapter 14 (Conclusions). Under pressure from clients, law firms inevitably become preoccupied with meeting that client’s expectations in the short-term (for instance, in providing a breakdown of staff by numbers), at the expense of thinking about diversity in
their firms in its own terms or in ways which do not fit in with the client's request (for example, in more individualistic terms). Thus, fulfilling client requests may become a form of displacement activity; as Wilkins puts it, by attaching diversity initiatives to clients' requests, law firms get to:

transfer responsibility for the law firms' own failure to hire and promote black lawyers to their clients, whose demands for increased diversity are now supposed to provide a reason for firms to improve their own dreary records.\(^{549}\)

Moreover, a diversity boom fuelled by clients' demands may prove to have poor long-term prospects. One law firm interviewee anticipated that "if there were no external driver, I think interest would diminish... the client side of it is quite significant" [1-12]. Wilkins' work on the short lives of some U.S. initiatives involving groups of law firm clients reminds us that the ebbing of client pressure about diversity in the future is not impossible. The suggestions in this chapter about the reasons behind client pressure from banks and U.S. companies also imply that it may disappear or alter depending on the clients' own interests and the pressures they are experiencing. For the public sector, in turn, much depends on the upcoming review of equality law.

\(^{549}\) Wilkins, n 77 above, 1597
Chapter 8
Interest Groups

1. Techniques for leveraging power
   1.1 Rankings and league tables
   1.2 Offering services to City law firms

2. Conclusion: Power and its price

Summary:
The interest groups which are the subject of this chapter offer a case study in the dynamic nature of relations between City law firms and outsiders. In contrast to the giant banks and U.S. companies of the last chapter, interest groups are tiny in terms of their size and budgets. Nonetheless, certain interest groups have leveraged power over firms by inventing and administering league tables or by offering firms alliances of imaginative types. Some even strike up partnerships with City law firms and offer them memberships of complicated and mutually beneficial schemes. Having acquired power in these ways, interest groups then find themselves in a position to exert surprising levels of influence over Goliath-like law firms. However, the price may be a loss of independence; interest groups may become neutralized, having lost the outsider status essential to pursuing a radical agenda.

1. Techniques for leveraging power
The sources of power over City law firms for each of the parties examined in part 2 so far has been obvious. The Government wields prestige and power through its dominance of Parliament and the executive function of the constitution. The Law Society is the representative body for the profession and has ultimate responsibility for regulatory matters. Clients, particularly those banks and U.S. companies with millions of pounds in their legal budgets, are the lifeblood of City law firms. Interest groups, however, are comparatively tiny organisations with limited resources and no immediate claim to any
authority over law firms. It is therefore important to look at how they have leveraged themselves into positions of power.

However, before looking at the techniques that interest groups have used to acquire power, it is worth defining what is meant by the term. “Interest group” is not used here as a technical term but rather as a useful label for a broad range of organisations set up with the mission to campaign, lobby, advise and/or, in some instances, research different issues. The label is applied in full awareness that there are important differences between the groups so-branded, for example in founding philosophy, charitable status, tactics or sphere of activity. Nonetheless it is a useful label because the interest groups in this study share sufficient common features (e.g. size, some tactics) and engage with issues like power and pressure in similar ways, therefore permitting them to be usefully discussed together.

The interviews established that a number of diversity-related interest groups are important for City law firms. Stonewall, a London-based charity which works for “equality and justice for lesbians, gay men and bisexuals”\(^550\), was by far the interest group mentioned most often in the interviews. The Black Solicitors’ Network, a group recognised by the Law Society\(^551\) and formed in 1995 “to promote the interests of black solicitors”\(^552\) was also mentioned by interviewees, particularly in relation to the diversity league table which it runs annually. Opportunity Now, a “membership organisation created for employers who are committed to creating an inclusive workplace for women”\(^553\) was also mentioned as was Catalyst, a U.S. based organisation which conducts research and lobbies to improve the position of women in the workplace.\(^554\) Law firm graduate recruitment was also found to be a particularly rich area of interest group engagement with City law firms. In this context, law firm interviewees mentioned Global Graduates, an organisation which mentored law students from non-traditional backgrounds\(^555\), AC Diversity, in its own words “the leading


\(^{551}\) Marks, n 425 above, A/231, paragraph 502

\(^{552}\) [http://www.blacksolicitorsnetwork.co.uk/default.asp](http://www.blacksolicitorsnetwork.co.uk/default.asp)

\(^{553}\) [http://www.opportunitynow.org.uk/about_us/index.html](http://www.opportunitynow.org.uk/about_us/index.html)

\(^{554}\) [http://www.catalystwomen.org/](http://www.catalystwomen.org/)

\(^{555}\) Though the future of Global Graduates seems to be in some doubt, according to an article in The Lawyer: J. Parker, “Firms hold key to Global Graduates future” (*The Lawyer*, 8 November 2006) at [http://www.thelawyer.com/cgi-bin/item.cgi?id=122923&d=122&h=328&f=46 accessed October 2007]
organisation delivering programmes of excellence for the benefit and advancement of people from the African-Caribbean community" and other organisations which helped law firms organize one-off events such as GTI Target Chances. Several other organisations are mentioned on individual law firm's websites, as noted in Table A in respect of five firms, but these were not mentioned by name in interviews.

Stonewall's 2005-6 annual accounts show that in 2006 it had 37 employees, ten unpaid trustees and total incoming resources of £2.2 million (with net incoming resources of £230,000). Elsewhere on its website, the charity records its dependence on its volunteer supporters and encourages new volunteers to apply. According to AC Diversity's website, the chair of that organisation, Brenda King MBE, works as a change management adviser and has (or has had) roles on the European Economic and Social Committee, and as a commissioner on the Women's National Commission. The organisation also has a Secretary, Trustee and Treasurer who, from the information on the group's website, all appear to have jobs elsewhere as well, and two members of staff. Whether dependent on volunteers, unpaid trustees or a small number of staff, even the most significant interest groups' means are therefore clearly dwarfed by those of City law firms. The importance attached by interviewees to certain interest groups therefore requires an explanation.

The research found that there are two main strategies variously used by interest groups to leverage their power over City law firms; inventing and running league tables and rankings, and offering alliances, and these are considered below.

1.1 Rankings and league tables
Inventing a 'diversity league table' or a rankings exercise has proved to be a highly effective way to increase an interest groups' power over the City law firms. The research showed that influential examples include the Stonewall's Workplace Equality Index (though the top 100 workplaces announced in January 2007 included no law firms, the

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556 http://www.acff.org/index.html
557 http://www.targetchances.co.uk/home/
559 http://www.stonewall.org.uk/about_us/11.asp
January 2008 version included the first, Pinsent Masons, a City law firm in this sample, which came joint 67th\(^{560}\) and the Black Solicitors’ Network’s Diversity League Table.

This strategy offers an interest group multiple opportunities to make contact with, and leverage power over a City law firm. For instance, on setting up the exercise, the interest group may use the exercise to initiate contact with powerful firms, collect data from them and ultimately pronounce judgment, according to the interest group’s own criteria. Ultimately, the set of results yield valuable data in a newsworthy way, attracting attention to the winners, laggards and those who refused to participate, and also the interest group itself. After announcing the results, insights can be shared by the interest group on a confidential basis. League tables and ranking exercises therefore bring interest groups access, data and information, all of which they can use to acquire power in respect of (amongst others) City law firms.

Unsurprisingly there has been an explosion of diversity league tables both in the U.S. and U.K. In the U.S., large law firms may find themselves ranked and rated by The Minority Law Journal’s Diversity Scorecard\(^{561}\) or in the Top 100 Law Firms for Diversity as calculated by MultiCultural Law Magazine. A U.S. law firm may feature in rankings exercises conducted by the Human Rights Campaign Foundation, DiversityInc Magazine,\(^{562}\) Working Mother Magazine, including their “best law firm for multicultural women” list\(^{563}\) (to name a few), or may even find itself one of “Working Mother/Flex-Time Lawyers LLC’s 2007 Best Law Firms for Women in the United States”. The U.K. legal profession has far fewer diversity league tables to contend with at present, but as seen below, they still generate a great deal of work for those in City law firms responsible for diversity, at the same time as successfully leveraging the interest groups concerned into more powerful positions.

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\(^{561}\) http://www.law.com/jsp/mlj/PubArticleMLJ.jsp?id=1177578273940&hubtype=Scorecard

\(^{562}\) http://www.diversityinc.com/public/department160.cfm

\(^{563}\) http://www.workingmother.com/web?service=vpage/797
According to this research once an interest group has set up a ranking or league table exercise and approached a City law firm to take part, firms generally do co-operate because they worry about bad publicity if they do not. One interviewee drew a distinction between award schemes such at that run by The Lawyer magazine (discussed in chapter 9 below) and interest groups’ league tables, on the basis that it was a “personal decision” to apply for the former, but more of an obligation to take part in the latter, because of the risk of bad publicity:

the league tables... there is definitely an issue about not being seen to be in them, so the Black Solicitors’ Network, you definitely feel you don’t want to be named and shamed for not being there. That’s my reading of it. I don’t want there to be a headline [name of firm] aren’t prepared to submit. Whether there would be or not, I don’t know, but that’s definitely not a good thing [7-23]

However, in the case of the some interest groups the pressure to participate in their league tables or rankings exercise may be resisted by law firms, especially if there is skepticism about the methodology some groups use or concern about the transparency of the calculations.

we tend not to take part [in a particular exercise based in part of staff completing a survey] on the basis that ... we’re a bit skeptical, often the results reflect the 15% response rate which they seem to think is good [5-18]

One group’s league table was criticised by an interviewee as “utterly absurd” because the methodology was “pretty questionable”, specifically because, as two interviewee commented, too many factors were rolled into a single ranking [5-3 and 13-20]. Another agreed that it was a “pretty crude” exercise but still took part [17-13]. One, however, interviewee declined to co-operate with a repeat of a survey which the firm had previously completed, on the basis of its methodology being “misleading” and had recently had a meeting about declining another similar request from another group. Another said of one league table “I’m not quite sure what they did with all those figures” [4-22].

Given that completing the information for the rankings exercise was “quite a lot of work” for the staff responsible [4-22], something which many law firm interviewees commented on, there was real disappointment and frustration if a particular exercise was not conducted in a rigorous way. It was not just disappointment about a low ranking which lead to doubts
about some league tables’ methodologies, sometimes the skepticism arose for exactly the opposite reason. Several interviewees expressed doubts about the methodology of surveys where their firms did well because they knew that the firms had no “programmes or initiatives” in the areas allegedly being tested [5-19]. One said that their firm’s good performance in a recent league table was “more by luck than judgment, because we know there are many other law firms who are doing as much as we are, if not more” [17-13]. On the other hand, frustration was, of course, also expressed where firms had come lower than was thought to be fair. One interviewee commented that “you can labour long and hard over many programmes and not get a better position [in a ranking]”, suggesting that the league tables were futile exercises. [5-20]. Some interviewees felt that the interest groups had put firms in a no-win situation:

if [firms] don’t participate then they are vilified for not doing so, but when they do, then they come further down the ranking [than they ought] and then they’re vilified for that, I don’t think it’s necessarily helpful [4-22]

Usually, despite some misgivings, a City law firm will take part in league tables and ranking exercises so long as it has confidence in the interest group concerned and their methodology. However, there was evidence that a high rates of involvement with such exercises was not solely driven by concerns about publicity. At least one interviewee (who was a former senior partner of a law firm in the sample) suggested that it would be a mistake to exaggerate firms’ fear of bad publicity from league tables:

they’re just out there along with the whole other commentary that goes on about running law firms. I mean, what you’re really worrying about is what’s happening inside the four walls and how you’re doing [2-10]

Another interviewee suggested that the good publicity from doing well should also not be over-estimated, commenting of a league table where her firm had done relatively well:

I suppose from a publicity point of view, yes, it can’t do any harm, it doesn’t look bad at all, but... it’s just another statistic [6-17]

In terms of the capacity for publicity, different league tables should also be distinguished. Exercises like the Black Solicitors’ Network’s league table which focused solely on law firms clearly has a greater capacity to “name and shame” City law firm non-participants or lower ranked firms than, say the Stonewall Equality Index which is a much larger exercise covering a wide range of public and private sector organisations. However, notwithstanding
the variations between different exercises, neither fear of bad publicity, nor the promise of good publicity seem fully to explain why City law firms spent time and money taking part in interest groups’ rankings exercises.

The evidence suggests that there are other powerful, positive reasons for City law firms to co-operate with these exercises, though these, of course, vary depending on the terms of each exercise. This research showed that, sometimes, participating in league table exercises may be of great assistance to City law firms, in particular to their diversity staff. The process may affect a firm’s approach to diversity in three ways which are discussed below.

First, several ranking exercises mentioned by interviewees involved the application of detailed, fixed criteria to establish a firm’s ranking. Sometimes diversity staff used the criteria as “a good indication of how you’re doing” [8-18]. Scrutiny of a law firm’s progress according the interest group’s ranking criteria did not always require entry into the league table exercise itself (which would be public). One interviewee spoke enthusiastically about an arrangement where they could produce a confidential “mock submission” for Stonewall’s league table which the group would review:

\[\text{they’re going to tell us well, you fall down on this, you fall down on that… they’ll say to us, do you know, you’re really weak on this and these are our ideas, this is what other organisations do, because part of it is like, what should we be doing?}[7-24-25]\]

There is, therefore, interview evidence that in some cases City law firms take the league table criteria as a useful set of standards about diversity, and even seek advice from some interest groups about diversity policies out of concern to meet those standards. Moreover, the interviews suggested that some firms consider shaping their policies in order to do well in some of these surveys, or are at least very aware of what will push them, and their rivals, up in the rankings. As an interviewee noted of a rival law firm:

\[\text{Well, A&O’s LGBT [Allen & Overy’s lesbian, gay, bisexual, transsexual] group will boost their Stonewall rating next year… because the affinity group networks is key to Stonewall as a benchmarking tool, but by that time we’ll also have one and we’ll be doing monitoring. So, you know, I’m quite content with that- but it does help to build a rivalry}[1-23]\]
The Stonewall equality index was frequently referred to by interviewees, as (at the time of the interviews) no law firm had featured on it and many interviewees had thought about how their firm might be the first. One interviewee went so far as to say that the publicity generated in the legal press about diversity generally “has been fallout from Stonewall’s equality index, where law firms just didn’t feature” [8-2].

Another interviewee recounted how, following a visit to the firm by a Stonewall representative, the firm’s diversity forum discussed forming a lesbian, gay, bisexual, transsexual (“LGBT”) network even though it was not immediately obvious “what to do with” such networks [2-17]. This particular issue of a LGBT network and the effect that it would have on the firm’s placing in the Stonewall ratings was on the mind of a number of interviewees at the time of this research (in part because at that time no law firm had been ranked in the top 100). One spoke of how “if it’s not right for us, we won’t do it” even though she was aware that her firm might not get into the Stonewall top 100 in the ranking as a result “but we’re not going to beat ourselves up if we’re not in the top 100 because of that one thing”. However, the same interviewee added later that “by the end of the year, I would be very surprised if we don’t have a LGBT network actually” [3-19]. She contrasted her position, of not being driven by the rankings with another firm’s, where the person in charge of diversity said that “they want to be the first law firm in the top 100, and you think, fair enough” [3-19].

Another interviewee spoke of how they set themselves targets each year which are then reported to the firm’s leadership:

*what I’m trying to do at the moment is put together what our priorities are for the next year and ... under all the key areas of diversity [set out] what is our target for the year [7-15]*

However, this interviewee noted that in fact “it’s quite difficult to set yourself targets” of this kind. In this regard, this interviewee found the Stonewall and other league tables helpful, with a particular ranking in these tables being a clear goal in itself which staff could set for the coming year. Setting a goal relating to a ranking was also useful because it was shorthand for introducing those measures into the firm on which a high ranking (or
entry at all) would depend. For example, one interviewee set herself targets in relation to
two interest group’s criteria:

*I'd like to be the first law firm in the Stonewall index of gay-friendly firms... so
that's a target, for example. There's something about Exemplar Status for Women
and that's another target that I think we should aim to get in, so there are various
things like that* [7-15]

Issues about resistance in firms to diversity policies like these will be examined separately
in Part 3, but whether firms or not chose to pursue them at this time, it is clear that
Stonewall’s equality index has managed to get particular policies like LGBT networks,
along with the wider topic of diversity connected to sexual orientation, firmly on the
agenda of a number of the City law firms.

The second way in which the diversity boom in City law firms has been affected by these
league tables, is by boosting the influence of diversity staff and others trying to advance
diversity policies within firms. Here, as in the case of exogenous pressures from clients
discussed in chapter 7, power relations outside City law firms interact with those inside it.
One interviewee, a former senior partner, commented that the range of parties prepared to
"name and shame" firms about diversity, including interest groups, has "given management
the ability to say, unless we do this then X will follow, so please let us do it" [2-8]. Some
diversity staff also reported a league table was useful because “it raises the profile of
diversity issues in the minds of staff and partners” [17-13]. Furthermore, if the firm
eventually does well, diversity staff interviewees reported getting praise from the firm’s
leadership. Certainly, the follow-up of Pinsent Mason’s success as the first law firm to be
included on the Stonewall Index seems to confirm that potential benefits of success in such
league tables; for instance an article in The Lawyer made note of the achievement564 and
shortly thereafter, in February 2008, the magazine awarded Pinsent Mason’s HR director
the “HR director of the year award”.565 Interviewees also suggested that if a law firm did
badly in a league table this might be helpful too, by motivating partners to take action.

564 J. Parker, “Stonewall names Pinsents the most gay-friendly firm in UK” (*TheLawyer.com*, 9 January 2008)
at
http://legalweek.com/Articles/1042201/British+Legal+Awards+raises+bar+with+elite+judging+panel.html
http://www.thelawyer.com/hrawards/winners.html
Therefore, regardless of the outcome, participating in a ranking exercise can be an empowering process for diversity staff in City law firms.

Thirdly, completing league tables was perceived by diversity staff interviewees as a positive process because it helps unlock information about the firm and its peers. One interviewee said that the diversity league tables could produce flawed results, but did have some value because “it helps us understand whether or not we have an issues or what areas to concentrate on” [3-7]. Similarly, league tables facilitate peer pressure between City law firms by showing how peers compare in the rankings, and also by shedding light on what other firms are doing about diversity. As this interviewee (from a global law firm) said, this is:

really helpful... you know what lawyers are like, they do listen to that, whether it's good or bad. You know, they are always talking about differentiating themselves from the competition but generally, if everybody else is doing it, oh, we've got to do it too [3-17].

Firms, therefore, usually co-operate with these exercises, often having perceived some benefit from so doing beyond simply avoiding bad publicity, and the process does seem to have a number of important effects on diversity policy-making within firms. The league table and ranking exercises run by interest groups are therefore an important influence on the diversity boom.

Finally, it should be noted that the empowering effects of inventing and running a league table or ranking exercise are such that other parties, apart from interest groups, have begun to use similar tactics. The Government has explicitly linked its own policy of writing to firms for information to the tactics of the Black Solicitors' Network.\textsuperscript{566} Similarly, the legal press (to be discussed in the next chapter) has been particularly enthusiastic about setting up and running league tables of various kinds, and have proved themselves highly inventive in this regard. Both The Lawyer magazine and Legal Week regularly publish, quasi-editorial ‘surveys’ (e.g. The Lawyer’s annual survey of the “Hot 100” individuals in the legal profession\textsuperscript{567} and the annual HR survey\textsuperscript{568}). The combined effect, from the perspective

\textsuperscript{566} Baird, n 402 above
\textsuperscript{567} The Lawyer, n 500 above
of City law firms is that, as one interviewee put it, “there has been a lot of name and shame tactics going on from various sources” [2-7].

1.2 Offering services to law firms

Those in charge of the running of diversity policies in City law firms are regularly approached by interest groups not only to take part in invented league table exercises, but with offers of services of various kinds. The services offered in this case were found to range from the offer of expert consultancy-type services, to paid-up membership of a diversity “champion” scheme, to a one-off sponsorship opportunity for an event a group is running, which are each considered below.

Expert, consultancy-type services

Many City law firms purchase expert, consultancy-type services about diversity issues from interest groups. This seemed much more common than firms buying services from professional diversity consultants, which only two of the interviewees mentioned having used (7-25 and 15-1) and another described as “horrendously expensive”. [6-3]

Some City law firms arrange for interest groups to come and talk to them as and when a particular diversity-related issue arose. For instance, one interviewee said that they had considered setting up a LGBT network and had recently made contact with Stonewall; “they’ve been to talk to us about that... We will contact organisations on an ad hoc basis” [ref]

On other occasions a long-term relationship between City law firm diversity staff and a particular interest group had developed. Some firms, for instance, consistently take part in the same organisation’s benchmarking surveys year on year because (rather like the league tables discussed above, though these surveys were conducted on a private basis) “it lets us know where we are” and enables comparison “within the sector generally” [1-21]. Other interviewees had good personal relations with particular interest groups; sometimes

partnerships of a kind emerged, with law firm staff effectively outsourcing certain tasks relating to measuring, monitoring and training, gaining in return expert services, advice, support, and a window into how their peers are doing.

Certain factors made an interest group attractive to a City law firm in terms of a long term working relationship. Stonewall was mentioned by almost all the law firm interviewees as having "definitely upped their approaches to law firms" [2-7] and for being particularly "professional", having "the best understanding of the commercial environment" [1-20]. As was explained by an interviewee, because Stonewall's leadership includes former lawyers and business people, they "come across very well" [1-21] when addressing law firms, the suggestion being that the relationship was likely be more successful if the organisation was represented by people who were, or could at least think like, lawyers. A similar observation was made, albeit in a slightly different context, of the maternity coaches whom one firm had employed. The interviewee was full of praise for these particular maternity coaches, partly because:

*They [the consultants] are a whole load of working mothers who were in professional roles... So they're great* [7-21]

On the one hand, therefore, there are interest groups whose representatives have professional backgrounds, and who present their material in a clear, corporate way, (Stonewall, one interviewee said, "get to the commercial side of it" [1-21]). On the other some interest groups were criticised by interviewees for "altruistic and... fuzzy" thinking. Diversity staff in City law firms indicate that visits from interest groups to their law firms had the potential to affect their own reputation in the firm. One interviewee described the importance of being able:

*to rely on them to present the information in a way that was meaningful to the people here*[1-21]

This echoes a comment made by a participant in Parker’s study of financial services firms in Australia, which focused on the roles of equal employment opportunity ("EEO") officers. In this case, Australian legislation provided incentives and encouragement of companies to develop their own sexual harassment policies and Parker’s study of a number of firms renowned for their best practices will be referred to in later chapters. However, in
this context, it is relevant to note that an EEO officer reported to Parker that she had arranged for a consultant to conduct a training session with senior managers from the company, but it was “pretty disastrous because she [the consultant] pushed her feminist thing”.\textsuperscript{569} This helps to understand the concerns of diversity staff in this study that they could be embarrassed by outside consultants who were not ‘commercial’ enough in their approach.

There are other reasons why a firm might be put off from taking up an interest group’s offer of services. One interviewee commented that she taken part in three organisations’ benchmarking exercises this year, including Stonewall, and Opportunity Now, but was not participating in an exercise which had been proposed to her by a further interest group. This exercise was resisted on the basis of the price the interest group was charging to conduct the exercise, and the complex, time-consuming nature of the questions:

\begin{quote}
\textit{it's simply come down to cost- they want far too much money to do it, and it's far too complicated... at least 152 questions and I do not have the time or inclination to be sitting down and answering at least 152 questions. I've got other priorities and working my way through that kind of morass of questions is just not what I prefer to do. [1-22]}
\end{quote}

Having established that an interest group was commercially-minded and worth spending time and money on (which process one interviewee described as checking that “the fit is good” \textsuperscript{[3-18]}), many interviewees regard them as experts in its chosen field. There is an enormous appetite in law firms for information of all kinds about diversity (which has been noted before, for example in the context of the opportunities to glean information from peers at the Law Society’s City Forum) and interest groups are used as a reliable, expert source of information of three sorts.

First, interest groups provide City law firms with information about their own workforce. The ‘benchmarking’ exercises offered by interest groups were popular amongst interviewees. Sometimes these exercises were highly complicated and the firm’s performance according to various criteria (quantitative but also qualitative) would be monitored on a confidential basis, sometimes annually. Interviewees suggested that having

\textsuperscript{569} Parker, n 156 above, 30
outside groups conduct these surveys was useful because of the level of detail involved and due to the expertise required. Overall, the reports were valued as a snapshot of where the firm was at any given time and as a basis for future policy-making. One interviewee said of such benchmarking exercises that:

\[
\text{we find taking part in benchmarking surveys a useful exercise as it allows us to pinpoint areas we might wish to concentrate on and provides us with suggestions for how we can move things forward } [16-2-3]
\]

The second type of information which law firms acquire from interest groups is about their peers both inside and outside the legal sector\(^{570}\). Interest groups may even put peers in touch with one another to discuss their experiences of diversity policy-making. Coming back to LGBT networks, which Stonewall has been discussing with law firms, one interviewee commented that her firm would set one up in the near future and:

\[
\text{when we come to that stage, what Stonewall will do is say, oh, you must talk to X at this firm or that firm so you can share ideas } [3-19]
\]

Similarly, interest groups with a large network of business relationships, like Stonewall, are in an excellent position to discuss with a City law firm measures that their peers in the City have put in place. One interviewee valued the fact that Stonewall provided suggestions along the lines of “these are our ideas, this is what other organisations do, because part of it’s like, what should we be doing?” [7-25]. Another noted:

\[
\text{We find it very useful to work with external organisations who have a feel for what is happening in other areas of industry or with other organisations who may be further along the diversity journey that we currently are. } [16-2]
\]

Every interviewee who spoke about peer pressure agreed in terms that law firms are willing to share ideas about diversity. Against this background, interest groups offer a useful conduit for sharing information either confidentially (through anonymised case studies), publicly (through league tables and publicity which accompanies them) or by informally putting people in touch both within and beyond the legal world. They therefore usefully supplement the informal networks which some (but not all) diversity staff have with their peers (see chapter 13 below for a further discussion of co-operation between City law firms generally, and between their diversity staff specifically).

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\(^{570}\) See chapter 3 above, in particular the discussion of Flood’s work on the formation of an elite stratum, comprising City law firms, banks, large accountancy practices and management consultancies.
The third type of information which interest groups provide City law firms is general information and advice about diversity issues, particularly those which were perceived to be especially difficult. Interviewees spoke of having bought “best-practice” advice and training services from interest groups. It was suggested by interviewees that the best interest groups offer an package of support for firms dealing with difficult or novel aspects of diversity, or on aspects where diversity managers had less experience, such as sexual orientation. Accepting support from an interest group might also have the linked benefit of helping the firm do well in the interest group’s own league table exercise, and this was welcomed by diversity staff in law firms. Indeed, the ranking may be the driver for the firm’s request for advice in the first place:

we had a meeting with our Stonewall rep only last week. I invited him to talk ... about how we could improve our score in the workplace equality index that they run. And that was very useful and we had very open discussions about monitoring and about the network and whether or not that was right for our organisation and what other law firms were thinking. So that was a very positive discussion, actually.

[3-18]

The most successful interest groups, therefore, present themselves to law firms in a professional way and offer firms access to a range of information which their diversity staff cannot access any other way (because it is about peers or because it is highly complex to process). In the most successful cases, a long-term working relationship may develop between the firm and the interest group. One interviewee expressly stated that such partnerships were much “better” source of advice about diversity than the Government and many implied that this was their main source of information about certain difficult, diversity-related issues. However, the successful, close working relationship between interest group and law firm is not universal for all interest groups. The time and budget of diversity staff can only stretch so far, and some groups find themselves in the cold while others thrive.

Sponsorship and assistance

Some interaction between firms and interest groups is, of course, less involved than the described above. City law firms may simply sponsor an interest group, or offer assistance
with a one-off event, for example by providing a function room. One interviewee described an event held jointly with an interest group:

which [involved] inviting people in from schools and universities that we perhaps wouldn't normally go to, and sort of talking them through what they need to do to become a lawyer [6-8]

Another spoke of a networking event organized with an interest group, which the firm hosted, which was also attended by one of the ‘diversity evangelists’ mentioned in chapter 7 above. [7-8]. A further interviewee described a scheme set up by a group of firms and an interest group “reaching out to those from backgrounds that may not initially think about law” [8-5].

Interviewees were prepared to organize joint projects and events like these because they saw value in schemes concerned. As one put it, “we would like to engage somewhere further down the line as to how we make it a fairer playing field” [8-5]. Firms also, of course, benefit from these events, by spreading their name among those potential applicants who might not have otherwise thought of applying, by using them to build closer links with powerful clients and by attracting good publicity for having been associated with certain interest groups. On their side of the bargain, the interest group associated with such an event or scheme gains credibility by association with a City law firm and, of course, access to a wealth of resources in support of its cause, which may included funds, rooms, event management, printing and staff.

However, some disappointing experiences of alliances with interest groups have also made some in City law firms more wary about automatically complying with requests from them. One interest group was mentioned by several interviewees in this respect: “everyone was rushing to sign up... without really investigating too much what was behind it” [2-7]. Having felt let down by this organisation, the implication was that some interviewees would be more careful about these sorts of alliances in the future.
**Membership schemes**

As well as offering close working alliances, and sponsorship opportunities to firms, some interest groups have membership schemes which organisations pay to join. For example, several City law firms (along with many other public and private sector organisations) have taken up membership of Stonewall and Opportunity Now’s schemes and this part examines these two, successful schemes in more detail. This is not to suggest that these two schemes are typical of all interest groups. Indeed, this research suggests that these schemes are fairly distinct in terms of how well established and popular they are. However, looking at these two schemes in more detail reveals their effects in practice, and suggests that this is a trend that may develop in the future.

Stonewall offers public and private sector organisations membership of their “Diversity Champions” programme. “Champion” is a highly effective word to have chosen for a scheme, which has become important for City law firms. This is because, as the Oxford English Dictionary states, it means both “a person who fights or argues for a cause” and “a person (esp. in a sport or game)... that has defeated or surpassed all rivals in a competition, etc.” There is therefore considerable appeal for subscribers, even just in terms of the title which membership brings.

Stonewall’s website states that there is “just one criterion for joining”, that the organisation ticks a box confirming that it is “committed to improving the workplace environment for lesbian, gay and bisexual staff”. The form also indicates that the annual membership fee is £2000 plus VAT for private sector organisations and £1,500 plus VAT for public sector or “third way” organisations. A nearby list of Diversity Champions shows that there are over three hundred members, including a number of City law firms such as Allen & Overy, Ashurst, Addleshaw Goddard, Baker & McKenzie, Berwin Leighton Paisner, Clifford

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573 Stonewall, “Apply now to become a diversity champion” at [http://www.stonewall.org.uk/workplace/1439.asp](http://www.stonewall.org.uk/workplace/1439.asp)
Chance, Herbert Smith, Lovells, Norton Rose and Slaughter and May. The Royal Navy, various NHS organisations, police forces and The Law Society are also on the list.\textsuperscript{574}

Under its scheme, Opportunity Now sells three levels of membership: Associate membership (for employers with under 1,000 employees), Core membership and Corporate Champion (the useful word deployed again) membership, requiring (according to the application form) “an investment” of £1,000, £2,500 and £10,000 plus VAT per year, respectively.\textsuperscript{575} The most expensive level of membership is suggested “if your organisation is particularly committed to gender equality in the workplace” and brings the most comprehensive package of benefits, including “a dedicated page on our website profiling your champion status” and the opportunity to:

\begin{quote}
complete up to five benchmarks [in Opportunity Now’s survey of workplace gender equality and diversity] which can be extremely useful for comparing progress by business unit or region\textsuperscript{576}.
\end{quote}

Opportunity Now’s list of members includes several large law firms, including Addleshaw Goddard, Allen & Overy, Clifford Chance, DLA Piper Rudnick Gray Cary UK LLP, Freshfields Bruckhaus Deringer, Herbert Smith and Slaughter and May.\textsuperscript{577}

This research suggests that there are several reasons why City law firms may pay to join such schemes. First, joining brings the a title which can be used in publicity by the member in addition to inclusion in a published list of members, and more general association with the interest group. One interviewee listed a number of “motivating factors” for getting involved with interest groups, such as receiving expert advice and benchmarking services but also stressed that:

\begin{quote}
It’s good from a reputational point of view, because it’s good to lend our name to organisations that, you know, get reported in the press [1-21]
\end{quote}

\textsuperscript{574} Stonewall, “Diversity Champions Programme> Member List” http://www.stonewall.org.uk/workplace/1481.asp There are 362 members as at March 2008.
\textsuperscript{575} Opportunity Now, “About Opportunity Now and joining form” (undated) at http://www.opportunitenow.org.uk/about_us/membership/corporate_champion.html
\textsuperscript{576} ibid

Membership schemes have adapted to satisfy this demand. Stonewall, for example, lists as one of the key benefits of joining its Diversity Champion scheme that it offers “Joint Branding, including free and exclusive use of the Stonewall ‘Diversity Champion’ logo for internal and external communications”.578

Moreover, there are various ways to boost the value of a firm’s association with interest groups even further. Two different interviewees spoke of the extra prestige of being an “early sign up” to a particular scheme [1-24], [3-18] (the latter being one of the global law firm interviewees) and Opportunity Now, as seen, offers graded, increasingly prestigious levels of membership to organisations. Opportunity Now also offers members the right to apply for an “prestigious annual award”: (“celebrate your success... The awards are only open to Opportunity Now members”579) and Stonewall offers members “tailored benchmarking to help in the Stonewall Workplace Equality Index”, linking into the league tables discussed above.580 However, even for law firms who do not sign up early or apply for awards or rankings, the simple presence of a respected diversity interest group’s logo on the firm’s website carries weight in the context of diversity policies, especially as this is a novel area which lacks any more official way to be seen to be doing the right thing.

Interestingly, one interviewee suggested that the fact that “massive organisations” like “HSBC and Barclays” were members of Stonewall’s scheme had also an impact on City law firms’ decisions to join. As the schemes attracted powerful clients, law firms were more likely to take action on the issue. As she put it,

_there are not normal two bit companies, there are massive organisations who are happy to have their names associated with, with Stonewall as an example... so I think there’s a reputation piece... there’s a perception from our clients of how diverse and inclusive we are seen to be [4-13]_

On top of all these reasons to join certain membership schemes, they also provide a further opportunity to acquire information about diversity and diversity polices. Membership schemes are, in this respect, another means of acquiring the guidance which may otherwise

579 Opportunity Now, n 575 above
580 Stonewall, n 578 above
be bought through consultancy-type arrangements. Both the Stonewall and Opportunity Now schemes offer access to materials, research, events, experts, benchmarking services and (in Opportunity Now’s case) “thought leadership” and a 25% discount on conferences. Stonewall also offers best practice seminars, a dedicated point of contact at the interest group, in-house training, definitive workplace guides (including “the latest research”) and discounts at their Workplace Conference and Leadership programme.

Due to the appetite in law firms for guidance about this new and difficult area, interest groups (particularly those with a reputation for professionalism and expertise) may end up playing a significant role in shaping City law firms’ diversity policies. Whether delivered as part of a membership scheme, or under a consultancy-type agreement, their advice and materials are likely to influence the content of firm’s policies, especially in difficult and novel areas. This is more even likely when the advice is backed up by prizes and league tables designed to reward those firms who take it. This link between joining a membership scheme and performing well in the same interest group’s league table seemed to be illustrated by a comment by the HR director of City law firm Pinsent Masons, the first law firm to be placed in Stonewall’s league table, and recipient of Stonewall’s “Most Improved” award:

_We feel a great sense of pride and accomplishment that we’re the first law firm to be recognised as one of the top 100 gay-friendly employers. We’d not have been able to come this far without the support provided by Stonewall’s Diversity Champions programme._

2. Conclusion: Power and its price

Unlike clients, interest groups have to persuade City law firms to engage with them. Certain interest groups have built up influence by inventing league tables and rankings, and by securing alliances with City law firms. There is even evidence that some groups repackage themselves to make their services as compelling as possible for firms. One, more experienced interviewee (who had moved into law from another sector) commented on her close working relations with Stonewall but also reflected:

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581 Opportunity Now, n 575 above
582 Stonewall, n 578 above
583 Parker, n 564 above
Interestingly, I think that they have become a lot more commercial... They used to be quite radical [7-24]

While Stonewall may be one of the most influential and, in this research, most talked about interest groups, it is clear it is other groups use similar strategies with City law firms.

This research is clear that interest groups do have a significant influence City law firm’s diversity policies. They provide information and promote certain new initiatives through best practice advice, rewarding certain measures through their league tables. They also facilitate peer pressure by making firms more aware of how they compare with peers in the legal and other sectors and they help boost diversity staff’s standing in the firms. Indirectly, therefore, they may help to construct arguments which persuade partners to support a particular diversity initiative such as setting up a LGBT network, or introducing staff monitoring. Overall, the most successful make diversity a more prominent issue within and outside firms. However, they may also contribute to the continued group-orientation of City law firms’ policies as interest groups (and certainly those shown in this research to be the most influential) campaign on behalf of particular groups such as gay men and lesbians, or women.

The strategies of interest groups may have other side-effects. As interest groups grow dependent on access to businesses like law firms, they may become commensurately less likely to risk alienating them; insiders cannot be outsiders too. A powerful illustration of the way that insider status may affect what McCrudden has called being “truculent” arises in the context of league tables. Here, some groups have set up exercises to rank organisations publicly while offering potential entrants advice or a confidential dry-run to mitigate the risk involved in participating.

One journalist recently described how Wal-Mart, having been hit by a wave of negative publicity, hired public relations experts to join the “reputation management” team at its headquarters in the U.S. who specialize in working with interest groups (or “co-opting”

them). Goldberg’s article discusses this co-option policy, citing a news release issued in 2000 by a public relations firm (where one of Wal-Mart’s hires worked previously) outlining how it works:

You’ve got an environmental disaster on your hands. Have you consulted with Greenpeace in developing your crisis response plan? Co-opting your would be attackers may seem counterintuitive but it makes sense when you consider that N.G.O.’s (non-governmental organisations) are trusted by the public nearly two to one to ‘do what’s right’ compared with government bodies, media organisations and corporations.

The position is clearly different in the context of City law firms but there are useful lessons in this article. First, while no interviewees suggested any deliberate policy of trying to neutralize interest groups by making alliances with them, it was striking that groups were often described as “strategic partners” or in other terms which conveyed a mutually beneficial partnership rather than critical relationship. No one in this study suggested that those interest groups with whom good relations had been forged were “would-be attackers”, though some expressed fears about the bad publicity that might result from doing badly, or not participating, in a league table. Secondly, the issue of public “trust” of NGO’s raised in the article chimes with the value City law firms seen in partnering with interest groups for joint sponsorship events, or having their membership logo to display. Overall, while there is no evidence of deliberate co-option in this context along the line that Goldberg describes, the same effect may be achieved, as interest groups build closer links with City law firms.

This chapter has described how certain interest groups have developed a ‘David and Goliath’ relationship with City law firms. Interest groups do not have a formal claim to power over City law firms and are dwarfed in terms of their resources, but some have leveraged power using innovative and highly effective tactics. The chapter has described how the interaction between certain interest groups and City law firms on these terms has the potential to shape the latter’s diversity policies in a variety of ways. However, the chapter has also suggested that such influence may come at a price, namely the interest

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groups' ability to exert radical, campaigning, exogenous pressures. In this sense, these power leveraging tactics deployed so effectively may have a neutralizing as well as empowering effect.
Chapter 9
The legal press

1. Background issues
   1.1 Criticism of City law firms on diversity grounds
   1.2 Coverage of the role of outsiders
   1.3 The legal press' own initiatives
   1.4 Coverage of diversity policy-making in City law firms

2. Conclusion: City law firms' responses

Summary:
The chapter suggests that the legal press affects diversity policies in City law firms in complex ways which are discussed in the context of the four different types of coverage given to these issues.

Overall, the legal press plays important roles both as a conduit and a source of pressures on City law firms about diversity-related issues, which serve its own interests well. For the most part, the legal press' detailed coverage of diversity issues in the context of City law firms is regarded as helpful by diversity staff but as a result of its capacity to generate negative publicity, the press is kept at an arm's length.

1. Background issues
The term 'legal press' is used here to refer to two weekly magazines, 'The Lawyer' and 'Legal Week' which are widely read in City law firms. In material aimed at potential advertisers, Legal Week describes itself as targeted "exclusively at business lawyers" with

a circulation in May 2006 of nearly 35,000.587 The Lawyer claims a broader focus as the "leading source of news, jobs and training for the legal profession" and states that it has over 84,000 registered users for its website.588 Other, more general newspapers and magazines may turn their attention from time to time to City law firms, for example the Financial Times, or The Times in its weekly Law Section. However, while these other publications are used as a source of reference for this study generally, they are not included in the discussion in this chapter.

This research does not aim to generate or analyse detailed quantitative data about the frequency with which these two magazines publish diversity-related articles which relate to City law firms. However, several interviewees suggested that the legal press produced one item about diversity every week and this seems to be confirmed by a basic search on the two magazine’s websites. A search for the term ‘diversity’ on Legal Week’s online archive (conducted on 25 February 2008) yielded twenty five pages of results, with about twenty articles on each page. Seventeen of these articles were published in the seven weeks between the 1 January and 21 February 2008. TheLawyer.com (The Lawyer magazine’s website comprising the current and back issues of the magazine, as well as special reports and other features) also seems to confirm interviewees’ estimates about the frequency of diversity-related articles. From the 1 January to 25 February 2008 inclusive, the same search on TheLawyer.com yielded 23 articles, with at least one article referring to diversity every weekly issue in that period. Moreover, this search produced a further 75 articles which referred to diversity in 2007 and 471 in total for the period from 25 February 2008 to 26 January 1980.

Of course, not every article which mentioned diversity in Legal Week and The Lawyer is about City law firms. However, within the significant subset of articles which is, the variety of the type of coverage reveals something of the complicated relationship between the legal press and the diversity boom in those firms. Articles in the legal press about diversity and City law firms fall, for the most part, into four categories which are discussed below. For

588 http://www.thelawyer.com/advertise.html
illustrative purposes, certain articles are cited in each category. These are drawn predominantly from The Lawyer magazine, which on the basis of this informal survey, for 2007 and 2008, has more articles about diversity and City law firms the Legal Week. However, each type of article may also be found in the latter magazine, and at least one Legal Week article from 2007 or 2008 is cited in each of the four categories.

1.1 Criticism of City law firms on diversity grounds

The first type of article in the legal press relating to diversity in City law firms openly criticizes those firms or reports developments which show those firms in a negative light.

Some of these articles concern alleged discontent about diversity matters within City law firms; others detail actual discrimination claims against them. For example, an article published by The Lawyer on 25 February 2008 reports that an email has been sent by Herbert Smith's Indian associates to the chair of the firm’s India Group complaining about "condescending" treatment. Legal Week published an article in January 2008 discussing the findings of its own survey of law students, in which it concludes that "ethnic minority and female students are still struggling to make their way into the UK’s top law firms", which the magazine declares will be "grim reading" for those firms. An example of a recent article reporting a discrimination claim is the December 2007 piece in The Lawyer about a former associate from Allen & Overy’s New York office who is suing the firm for race discrimination.

However, while both magazines provide recent examples of critical or negative articles, these seem to be a relatively small share of all of those which address diversity issues in City law firms; far more articles are generated which fall into the three remaining three categories. Nonetheless, interviewees in law firms were understandably anxious about the prospect of this sort of negative publicity:

589 S. Hoare, “Herbie’s Indian uprising” (TheLawyer.com 25 February 2008) at http://www.thelawyer.com/cgi-bin/item.cgi?id=131369
590 P. Hodkinson, “Minority students still hindered at top firms” (legalweek.com 24 January 2008) at http://www.legalweek.com/Articles/1088883/Minority+students+still+hindered+at+top+firms.html
these cases are very high profile, they do a lot of reputational damage, even if you
don't actually lose them... The front page of the Evening Standard; it's not what we
want, it's not where we want to be for bad reasons [1-10]

Interviewees' concerns about the bad publicity from employment litigation is another
element of the findings discussed in chapter 5, namely that the underlying legislation in this
area was regarded as unhelpful and detached from the work of diversity staff. It will be
argued in the conclusion of this chapter that diversity staff remain wary about the legal
press' capacity to generate negative publicity, and as a result, keep the press at an arm's
length, despite finding many other sorts of articles helpful.

1.2 Coverage of the role of outsiders
A second category of article in the legal press about diversity in City law firm covers the
role of outsiders and their efforts to influence City law firms. By reporting these other
outsiders' pressures, the legal press broadcast individual developments to a wide audience
in City law firms, help to suggest that certain trends are emerging, and ultimately, may
make certain pressures more influential.

A number of articles of this type track the developments discussed elsewhere in part 2 of
this study, and some have been drawn on in those chapters. Some of the exogenous
pressures from outsiders which have been reported, and it is argued, exacerbated, by the
legal press include those exerted by clients, and by certain interest groups.

Articles in the legal press have done much to draw attention to what one called the "recent
trend" of clients, especially banks, asking for diversity statistics during "beauty parades"
where City law firms pitched for work. Legal Week, for example, published a recent
article about Wal-Mart's recent criticism of its external law firms' granting associates "pay

592 For example M. Velaiagam, "Beauty parade" (TheLawyer.com 21 November 2007) at
http://www.thelawyer.com/cgi-bin/item.cgi?id=130786 citing, amongst others Tim Hailes of JP Morgan (see
chapter 6 above).
"hikes", which put this development in the context of the company's 2005 request for diversity statistics from its lawyers, as discussed above in chapter 7.\footnote{M. Madsen "Wal-Mart slams associates' pay hikes" (legalweek.com 8 November 2007) at http://www.legalweek.com/Articles/1068193/Wal-Mart+memo+slams+associate+pay-hikes.html}

It is also notable that the legal press has made regular mention of the individual ‘diversity evangelists’ discussed in chapter 7, general counsel of companies and banks who have shown a special interest in law firm diversity. Multiple articles have named Trevor Faure of Tyco, Tim Proctor of Diageo, Mark Harding of Barclays and Tim Hailes of JPMorgan, particularly in connection with the statements made by each about law firm diversity. By way of illustration, coverage of Mr Faure in The Lawyer includes articles noting that the Black Solicitors’ Network ("BSN") had named him “Outstanding Solicitor of the Year”,\footnote{The Lawyer, “People Moves” (TheLawyer.com 14 January 2008) at http://www.thelawyer.com/cgi-bin/item.cgi?id=130739} describing his attendance as VIP guest at a BSN event, and quoting his speech at The Lawyer’s own 2007 Diversity Conference.\footnote{N. Goswani, “Outside the box” (TheLawyer.com 28 May 2007) at http://www.thelawyer.com/cgi-bin/item.cgi?id=126136} He also featured in The Lawyer’s “Hot 100” list of 2007\footnote{The Lawyer, n 243 above} and came second in the “In-house Lawyer of the Year” category in The Lawyer's 2007 Awards. Mark Harding of Barclays received coverage in the legal press in respect of the importance his bank attached to law firm diversity, but also because he won the “Editor’s Award for Outstanding Achievement” at The Lawyer's 2007 Awards\footnote{http://www.thelawyer.com/lawyerawards/2007/cat_editors_award_for_outstanding_achievement.html} and as a speaker at The Lawyer’s 2008 Diversity Conference.\footnote{The Lawyer Third Annual Diversity Conference and Masterclass is to be held on 19-20 May 2008, at http://www.centaurconferences.co.uk/conference.aspx?conferenceid=f204b9e0-50d1-4d8e-b8d2-4eadfa287b87} Tim Procter of Diageo received coverage, inter alia, because of his appearance at a July 2006 conference organized by The Lawyer. The legal press has therefore contributed to the emergence of certain individual diversity evangelists, in part by publicizing their comments and in part by generating fresh publicity through its own initiatives.

This coverage made an impact on law firm interviewees. As discussed in chapter 7, a number of interviewees mentioned these diversity evangelists and their companies by name.
and one interviewee specifically noted of the general counsel of Diageo, Tyco and Reuters that “I see them a lot in the press” [7-20]. As discussed in chapter 7, this press coverage of the importance certain companies and banks attach to law firm diversity has co-incided with the actual diversity requests firms have received, overall helping to convince many interviewees that client pressure about diversity is a growing and important trend. A number of interviewees, for instance, when speaking of the importance of clients as a driver of diversity polices, referred to the same anecdotes drawn from articles in the legal press as supporting evidence. However, while the majority of interviewees did find this press coverage persuasive of a wider trend, one interviewee did distinguish the press coverage of this trend from the trend itself:

[pressure from clients] is not a kind of massive groundswell of, 'if we don't do this, then there'll be a significant impact'. I think it's just been, even in the last three to six months- you've probably seen the amount of press inches that diversity is picking up. [4-10]

Recent articles in the legal press have also publicized the strategies used by interest groups, including Stonewall, which were discussed in chapter 8. For instance, in November 2007 The Lawyer reported that eighteen law firms, which it listed (including Allen & Overy and Ashurst from this sample) have “been added to Stonewall’s diversity champions programme”599. Furthermore, in January 2008, several articles in The Lawyer discussed City law firm Pinsent Mason’s ranking of joint 67th in the 2008 Stonewall Workplace Equality Index, the first time a law firm has featured in this league table.600 Such coverage adds to the significance which interest groups are able to claim for their membership schemes and league tables, and therefore the influence which they wield with City law firms overall. As one law firm interviewee said “it’s good to lend our name to organisations that, you know, get reported in the press” [1-21], and she cited as an example of this benefit, a report which Stonewall released “that generated quite a lot of press attention and Stonewall named its supporters, and of course, we were one of those”. [1-24].

600 J. Parker “Only law firm in top 100 gay-friendly table” (TheLawyer.com, 14 January 2008) at http://www.thelawyer.com/cgi-bin/item.cgi?id=130721
It is a sign of the thoroughness of the legal press’ coverage of this issue that these two magazines prove to be a useful source of information about the pressures outsiders exert on City law firms about diversity. For example, articles in The Lawyer prove a good resource for information about the follow up to the DCA’s November 2005 letter to the top 100 law firms, as discussed in chapter 5, not least because on one occasion, Bridget Prentice M.P.’s comments were made at the Diversity Conference organized in 2007 by The Lawyer magazine.\footnote{C. Griffiths, “Prentice slams firms’ ‘disgraceful’ response to diversity reporting” (TheLawyer.com, 21 May 2007) at \url{http://www.thelawyer.com/cgi-bin/item.cgi?id=125909}}

The legal press, and in particular The Lawyer magazine, therefore cover the diversity-related pressures which outsiders exert on City law firms with great detail. Moreover, the legal press itself contributes to those pressures by providing additional opportunities for coverage through its listings (like the Hot 100), its awards and its conferences. The overall effect is not only to keep diversity in the news for the City law firm readers, but to fuel certain of those exogenous pressures, by highlighting them to a wider audience and encouraging the suggestion of certain trends.

### 1.3 The legal press’ own initiatives

The third category of articles about City law firms and diversity sees the legal press reporting its own initiatives.

There is some overlap here with the preceding section which discussed The Lawyer’s own diversity conferences, awards and listings and suggested that these initiatives helped to fuel certain exogenous pressures on City law firms. A further way in which the legal press generate its own pressures about diversity is by producing detailed reports on the issue, for the “Special Report on Diversity” published in December 2007 in The Lawyer\footnote{G. Westacott, “Diversity” (The Lawyer.com 10 December 2007) at \url{http://www.thelawyer.com/cgi-bin/item.cgi?id=130398}} or Legal Weeks’ survey of law firms about corporate social responsibility issues (including diversity), written up as an online special report in January 2008.\footnote{C. Ruckin, “Online special CSR winning more lawyer converts” (legalweek.com, 31 January 2008) at \url{http://www.legalweek.com/Articles/1090741/Online+special+CSR+winning+more+lawyer+converts.html}}
However, on the basis of this research, by far the most important strategy used by the legal press to generate its own publicity about City law firms is the creation of its own awards; Legal Week, in 2007, established The British Legal Awards, which replaced the Legal Week Awards while The Lawyer has organized its annual awards since 2003 and annual HR Awards since 2007. In respect of this study, the most directly relevant of these awards are the Lawyer HR Awards, and in particular, the category for the “Most effective diversity programme”, won in 2008 by Allen & Overy and in 2007 by Clifford Chance.

The use of prizes is a highly effective and increasingly popular strategy used in the context of diversity mainly, but not only, by the legal press. Chapter 6 saw prizes deployed by the Law Society in form of its Excellence Awards and chapter 8 noted that interest groups made use of prizes too. Indeed, each of the top 5 firms (in Table A above) has a special part of its website devoted to displaying its prizes and awards, and this table shows prizes relating to diversity had been bestowed on these firms from, amongst others, The Lawyer at its HR Awards, Legal Business magazine and the Financial Times. The increased use of prizes in this context seems to be part of a general proliferation. As a crude indication of the increase in the number of prizes on offer generally for City law firms, Clifford Chance’s awards webpage (which states that it lists all its awards from 2001-2007 inclusive) lists two awards in each of 2001 and 2002, six in 2003, fourteen in 2004, twenty in 2005, twenty five in 2006 and twenty seven as at October 2007. The recent invention by the legal press of prizes for City law firms relating, inter alia, to diversity therefore seems to be part of a wider trend. It is therefore worth examining why this strategy has proved so popular, and how prizes allow the bestowing party to increase its influence while creating value for a number of different parties involved.

605 Legal Week, “British Legal Awards raises the bar with elite judging panel” (legalweek.com, 2 August 2008) at http://legalweek.com/Articles/1042201/British+Legal+Awards+raises+bar+with+elite+judging+panel.html
606 http://www.thelawyer.com/awards/
English (a professor of English at the University of Pennsylvania) has written about prize giving in the sphere of literature and the arts, taking as his starting point of its "feverish proliferation in recent decades".\(^{607}\) Expressly influence by Bourdieu, English sets out a theory of prize-giving based on what he calls the "cultural economics of prizes and awards... what may be called the economics of cultural prestige". According to this theory of prize-giving, the prize may be understood as an "instrument of cultural exchange" and the awards ceremony as a site of transaction "a "full contact marketplace"\(^{608}\) where different parties engage to create value for one another. English's work helps to explain the recent frenzy of prize-giving in the arts, and may be applied usefully to prize-giving in other spheres, including that initiated by the legal press. English argues that there are three ways in which prizes generate value for those involved; socially, institutionally and ideologically, and all can be usefully applied in this context to explain to understand better the benefits that each party accrues during the transaction of prize-giving.

1.3.1 Social value production

English argues that the prize-giving creates social value because it "functions as a rallying point... it introduces special excitements and special opportunities for mass spectacle".\(^{609}\) The prizes create "genuinely transactional sites"\(^{610}\) for winners, sponsors, judges and presenters, and indeed the legal press' awards seem to generate value in this way for participants. One law firm interviewee observed that the spectacle of prize winning could boost morale for staff, even though they were skeptical about the impact on clients:

> my personal view and I suspect a view that a lot of people here would hold is that they are a sort of froth going on, I mean that's because [prizes] are associated with show business really, they're a sort of froth going on which I suppose one has to think aren't going to influence sensible clients. They may be more to do with how people feel about working [in firms] actually. [5-17]

Other interviewees agreed, suggesting that even being shortlisted for a prize was good for staff morale, because it confirmed the firm's commitment to diversity:

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\(^{608}\) ibid 11-12

\(^{609}\) ibid 50

\(^{610}\) ibid 288
for staff, it's great... we're recognised... we're up there. I think [it's useful] also for showing them that actually, we're committed to this, you know, if we're short listed, whereas if they saw it was [two other firms] it's like, 'Well, why aren't we there?'

Some staff at City law firms may get to experience what The Lawyer describes as the "glamour" of its HR awards611 or attend The Lawyer Awards 2008 on 24 June at the rate of £2500 plus VAT for a table of 10,612 or Legal Week's black tie awards ceremony, which was, in 2007, hosted by a famous comedian. However, it is clear from the comments of a number of interviewees that the "froth" of prizes bestowed by the legal press is also important for the morale of staff more broadly, even if there is skepticism in some quarters that they have much influence on clients.

1.3.2 Institutional value production

English describes how prizes are:

a claim [by institutions] to authority and an assertion of that authority. It provides an institutional basis for exercising, or attempting to exercise, control over the cultural economy over the distribution of esteem and reward on a particular cultural field. 613

English's theory fits well into this thesis because it suggests that the invention, administration and giving of prizes may allow the legal press to leverage power over law firms, as league tables and membership schemes did for interest groups. This research suggests that prizes create the opportunity for the legal press to claim authority over City law firms in various ways. For example, The Lawyer and Legal Week's awards both require that law firms prepare and submit entries, in the former case, of no more than 1,000 words,614 and in the latter often requiring an accompanying fee of £95 + VAT.615 One diversity staff interviewee produced a bound booklet with a glossy cover that they had prepared for one such competition during the interview and commented on the significant

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613 English, n 607 above, 51
length of time it had taken to prepare. Awards therefore involve the legal press setting
deadlines for and making demands on the time of diversity staff in City law firms.

However, despite the hard work involved, City law firm diversity staff felt that it was worth
entering for the prizes offered by the legal press, because the legal press could offer the
prospect of good work being recognised in public:

> *it's equivalent to a gold star when you were at school and there's no shame in that. I think that if firms are motivated to put their processes and their activities forward for awards then I think it makes them public, it means that more people get to hear about them. I think it also gives a nudge to their competitors. They're doing a good thing and they've been awarded for it with all of the publicity that goes with that.*

The legal press therefore control the distribution of honors amongst City law firms, having
assumed responsibility for passing judgment on their diversity policies. The interviews
showed that City firms, for the most part, have recognised the legal press' authority to
reward and publicize good work through their prize schemes, regard their prizes as worth
entering. The empowering effect is particularly striking when, as English points out, there
are no Government-sanctioned awards, or official signs of approval available, as is the case
here,

Prizes do not, however, just create institutional value for the givers (and indeed, they would
not have proliferated if they did). In this context, there is also strategic value in winning
prizes for City law firm diversity staff both in their relations within the firm and with
outsiders:

> *it gives you a vehicle to communicate internally and externally about how you're doing. I think if you've won an award, you can say internally that we've won an award and this is because of the following things, and it just gives you another opportunity to put forward information which people may not necessarily get the time or have the interest to find*

> *I'm sure that these awards, you know, they're just about keeping names in the public eye in a way*

Prizes are, therefore, give the legal press a basis on which they may claim and exercise
authority over powerful City law firms. They also represent another way in which diversity
staff may improve their negotiation position within the firms, because of the promise of good publicity for the firm as a whole.

1.3.3 Ideological value production

English suggests that the prizes serve as an act of "collective make-belief", reassuring participants that the object in question can be judged and its special value agreed upon (even if the outcome is hotly contested, he argues, few contest that a decision about value is possible). In the context of law firm diversity, prizes may have the same reassuring function, because they suggest that, with a prestigious enough judging panel, it is possible to judge which law firm is 'doing' diversity better than others. Prizes, like the league tables discussed in chapter 8, imply that worth can be defined and measured.

Many interviewees commented on the difficulty and novelty of diversity issues and the lengths they went to in order to seek guidance features in several of this study's chapters (see, for example the discussion of the City Forum in chapter 6 and of the role of informal networks in chapter 13). Prizes may therefore be valued by participants because they make complicated, controversial spheres of activity, like the arts in English's case, or diversity in this, more manageable by showing participants how to improve, compete and, possibly, win. Beyond providing a focus for diversity staff, these interviews also showed that most diversity staff in City law firms attached significance to the outcome of prize-giving exercises conducted by the legal press; some expressed disappointment that their firm had not won in the past and set themselves the goals of winning in the future.

1.3.4 The future

Diversity prizes have proliferated along with all manner of prizes for which City law firms now compete. There is already a suggestion of what English calls the "struggle of prize against prize" which he argues leads to further proliferation. Legal Week, for example, has launched its British Legal Awards on the promise of "elite judging panel" of "senior business figures" promising "transparency and authority... with an independent and
rigorous judging process". The Lawyer in turn, called its awards “unquestionably the biggest night of the year for the legal profession.. the first legal magazine to put together a senior advisory judging panel taken from the great and the good in City institutions and the media”.

According to English’s theory, legal prizes, including those relating to diversity, have proliferated and now compete for prestige because they are efficient at producing value for the different parties involved. English’s arguments help to explain how prize-giving has helped the legal press gain influence over City firms, while providing a range of incentives for those firms to participate. It follows that the rise of prizes is set to continue in the coming years.

1.4 Coverage of diversity policy-making in City law firms

The final category of legal press articles about diversity in City law firms covers the new policies and initiatives implemented by those firms. It is argued below that by reporting these developments regularly and in detail, the legal press facilitates peer pressure between City law firms.

Examples of detailed coverage of diversity policy-making in City law firms are plentiful, with several such articles sometimes appearing on the same day. Recent articles of this type include The Lawyer’s coverage of Evershed’s appointment of a director of diversity, Freshfield’s publication of a corporate social responsibility report (which, inter alia, discussed diversity), Herbert Smith’s creation of diversity sub-groups, flexi-working initiatives at Linklaters, and a joint initiative between several firms, including eight in this sample, to set up a summer scheme to encourage applications from students at non-

618 Legal Week, n 345 above


621 K. Ganz, “Freshfields pledges international commitment in CSR report” (The Lawyer.com, 4 February 2007) at http://www.thelawyer.com/cgi-bin/item.cgi?id=131024

622 M. Taylor, “Herbert Smith creates diversity sub-groups” (TheLawyer.com, 17 December 2007) at http://www.thelawyer.com/cgi-bin/item.cgi?id=130451

Russell Group universities. Legal Week, in turn, recently ran an article about the launch of Simmons & Simmons’ scheme to give careers advice to students from Tower Hamlets and Herbert Smith’s launch of a new emergency care service for employees’ dependents.

It was noted in chapter 8 that interest groups facilitate peer pressure between law firms, and that City firms are keen not to be seen to lag behind their peers in terms of diversity policies. A number of interviewees made it clear that the legal press also has a role in facilitating peer pressure, though it did so in a slightly different way to interest groups.

Interest groups may facilitate peer pressure by providing a law firm with information about its law firm peers, privately putting diversity staff in touch with one another, or publicly ranking law firms in a league table. The legal press, on the other hand, facilitates a very public and less co-operative sort of peer pressure compared to interest groups, which can lead to more of a scramble as City law firms try to keep up with the implications. One interviewee (a former senior partner) suggested that even the upper ranks of a firm’s management would read and act on the basis of the legal press’ coverage of what peers were doing about diversity:

*the legal press has a very clear role to play here, because law firm management rightly or wrongly, and no matter what they say, they read the legal press. And if another firm is doing something, they are waiting for the partner who will walk into the room and say, ‘I see so and so is doing that, why are we not doing it?’ or ‘Should we be doing it?’ and it’s a game of almost catch up, to be honest*

Others with day to day responsibility for diversity in another firm agreed that the lawyers in their firm were definitely influenced by what “competitors” were doing:

*it is really helpful: they turn round and say, why aren’t we doing it? Everybody else is. Yes, and you know what lawyers are like, they do listen to that, whether it’s good or bad*

people in the Magic Circle and other people in the Top Ten, Top Twenty are actually already doing this and in a way I think they impetus is partly, well,
"actually, 'we're not doing it, we should be doing it as well, we should be doing at least as much as our competitors are doing' [4-10]

*I think if there are certain law firms, particularly ones in the Magic Circle, which start to do things on the whole diversity for flexible working agenda, then I think it'll catch on [4-20]*

Many interviewees reinforced the suggestion that there was "a game of catch up" between City law firms about diversity policies, and agreed that articles in the legal press about other firms could dictate which diversity initiatives were discussed within their firm. Here one interviewee (from a global law firm) described how the importance of the press may influence diversity policy-making in the firm:

> the press is very important here; the people are reading about diversity initiatives in other firms, they want to know what their response is, or you know, what our response is. [3-7]

> I'd be the person who keeps abreast of what's going on out there in the market and would bring ideas and initiatives forward for the [diversity] committee to decide upon. [3-1]

Peer pressure matters; this held true for all interviewees, even though some firms responded to peer pressure differently (largely because, as part 3 will argue, of the attitudes of key partners). Even interviewees from firms with no intention of being pioneers of diversity policies acknowledged that:

> we'd be worried if we were seen to be not keeping up with the perceived acceptable standard of conduct in this area, even if to an extent we were doing it through gritted teeth because we weren't convinced it was the right direction to be going in. [5-15].

Collectively, the extracts above show that peer pressure had the potential to influence firms' overall approach to diversity issues at the highest levels. The research also suggested peer pressure may encourage City law firms to address specific issues on the basis that competitors have done so, including flexible working, LGBT networks and maternity coaching. There was further evidence that peer pressure even influenced less obvious matters within City law firms, like diversity-related job titles. One interviewee highlighted the a problem for diversity staff in firms who, unlike their peers in other firms, did not have 'diversity' in their job titles:
I was talking to [one of the media] yesterday, they wanted to talk about diversity and he was like, 'Oh, so you don't have somebody that does diversity like Herbert Smith' ... so it's definitely a bit of an external perception point. [7-29]

Overall, the legal press facilitate peer pressure between City law firms and, along with interest groups, play an important role in the emergence of what one interviewee called “the perceived acceptable standard of conduct in this area”. The compulsion to keep up with the perceived acceptable standard affects even those firms where partners do not attach particular importance to diversity policies in their own right, and has certainly helped to fuel the diversity boom. However, chapters 14 and 15 will explore whether it also has implications for the long term future of the policies so generated.

2. Conclusion: City law firms’ responses

Chapter 3 suggested that diversity thinking had become influential relatively recently in City law firms, in terms of the increased use of diversity language and the increased influence of the diversity approach. Because of the relative novelty of diversity thinking in this context, the press cycle of highs and lows, in which breaking news, special reports, naming and shaming and prize-giving all feature has seemed to be influential. This chapter has argued that as the legal press publishes different types of articles about diversity in City law firms, at this time they have some impact on those firms’ diversity policy-making.

This research found that the legal press generates both first and second-hand pressures on law firms about diversity. It widely reports exogenous diversity-related pressures exerted by other parties, such as clients, on City law firms drawing attention to these pressures and increasing their effectiveness. However, the legal press is also a source of its own pressures on City law firms, primarily through its schemes of prize-giving. Finally, the legal press also plays a vital role in the emergence of a “perceived acceptable standard” of diversity policy-making, with which even those firms with no intention of being diversity pioneers feel pressure to conform. Overall, the effects of the legal press on City law firms’ diversity policies are complex, but significant; as one law firm interviewee put it:

we've come to the understanding that there are certain hot topics that appear in the press from time to time and maybe we have to be quite flexible and we have to react to those. [8a-29]
However, once again, it would be misleading to over-simplify City law firms’ responses to outsiders’ pressures, which must be understood in terms of the hierarchy within those firms. For example, the legal press’ coverage of these issues was regarded as especially helpful by those trying to win support for diversity policies within firms. One diversity staff interviewee described that

what’s happened historically has been that there’s been engagement [with diversity issues] at the senior level and nothing’s filtered down [to associates].

This ‘filtering down’ to associates has, however “been helped enormously by the press coverage” [1-13]. Another law firm interviewee said that the press’ regular coverage of diversity was useful, in part because it highlighted that it was being taken seriously by much larger businesses than law firms:

I am really heartened by the amount of airspace diversity has had in the last six months, because I think to me, that demonstrates that it’s coming on the agenda and that are some very big supporters who don’t feel it is a disadvantage, who don’t feel that it’s diluting the quality of what they do by any means and they’re not doing lip service to it. [4-15]

One interviewee commented that favourable coverage of their efforts by these two legal magazines was helpful in both highlighting and justifying their work to partners in the firm:

Most of [the law firm staff] read The Lawyer and Legal Week and often, it’s probably most issues now, there’s a feature on diversity in some form. Where we feature, where we do well, it’s an acknowledgement of the work we’ve done internally and shows the partnership that actually, this was worthwhile, it was necessary. [17-13]

Articles and surveys in the press can therefore be of assistance, especially to diversity staff in City law firms keen to add weight to their own arguments for the importance of diversity policies and to gain recognition for their work from powerful partners. However, even diversity staff in firms are not entirely positive about the legal press. Sometimes they find the press coverage of diversity and equality issues frustrating, especially when it seems misleading or confirms the opinions of cynics within their firms. One interviewee gave the example of the coverage of the recent age discrimination legislation:

having seen the reaction [in the firm] to age discrimination legislation, which was only six months ago: ‘Political correctness gone wrong’, ‘Why do we have to
The legal press has contributed to the consensus between interviewees that diversity had become a topical and important issue and certainly is used by diversity staff in law firms in the negotiations which are part of their jobs. However, ever bearing in mind the legal press' capacity for negative or unhelpful publicity, interviewees seemed to keep it at arm's length while using the coverage to assist them where possible. This sense of wariness contrasts with the close alliances interviewees had built up with favoured interest groups.

Thus, this chapter has argued that the role of the legal press on the diversity policies in City law firms is more complex and important than previously suggested. As discussed in chapters 2 and 3, the diversity literature has confined its consideration of the press to its role in publicizing high-profile discrimination claims and scholars of the legal profession used it as a source of material rather than as an important actor in its own right. This chapter argues that the legal press has been under-estimated to date because in fact it has a central role in understanding the world in which City law firms operate and in this case it has acted both as a source and conduit of exogenous pressure about diversity.
Chapter 10

Preliminary conclusions: How exogenous pressures put diversity on the agenda in City law firms

Part 2 has shown that power relations between certain outsiders and City law firms are key to explaining the diversity boom. This section outlines three preliminary conclusions, which have arisen in this discussion. They are outlined in this chapter, and will be developed in detail in chapter 14, in the light of the findings set out in part 3.

First, part 2 suggests that certain exogenous pressures are critical to explaining the shift to diversity policies in the context of City law firms. Moreover, these findings suggest that the role of outsiders may have been under-estimated in broader diversity literature. Thus, part 2 has found that exogenous pressures from certain parties, particularly clients, were the "galvanizing force" (as one interviewee put it) behind City law firms' policy-making. The legal press and interest groups were also found to be key in terms of exerting their own pressure on City law firms, and in helping to generate peer pressure between firms. To some extent, this finding was unexpected in the light of the diversity literature and scholarship about the legal profession which suggested that the threat inherent in anti-discrimination legislation and the pull of the business case arguments would have been the significant drivers behind law firms' diversity policies. In fact, this research has shown that the legislation has had only a weak impact on policy-making in firms. Moreover, while the business case arguments have been widely deployed by Government and the Law Society, pressure from clients, interest groups and the media were found to be a more significant influence on the diversity boom in City law firms. This research suggested that this was the case not because these parties have convinced City law firms on ideological grounds about the merits of a particular approach to equality management, but because of the nature of their power with regards to City law firms and how they have used it.

Secondly, part 2 has also shed light on the motivation behind these key exogenous pressures. It explained that in most cases, the actions of those outsiders who were found to have the most impact on City law firms (clients, the legal press and interest groups) have
generated tangible benefits for those parties. Thus, clients’ actions can be understood in terms of a broader shift in client-law firm relations, which has been marked by the fracturing of long term “marriage” like relationships and a more demanding and competitive environment for law firms. However, by unpacking client pressure into its component parts, examining in turn the role of U.S. companies, banks and public authorities, chapter 7 showed the complexity of the drivers behind client pressure. Thus, legislative equality duties had a role in driving the public authorities. On the other hand, U.S.-specific pressures (such as class litigation), shareholder activism, P.R. and the growing trend for “supplier diversity” better explained the actions of the other types of clients. The legal press has also benefited from its intense coverage of diversity-related issues, not least by increasing its “capital” through the invention, control and circulation of prizes. Some interest groups have also grown in prestige, profile and means by developing their links with law firms in a commercially-minded way. At the same time, however, the strategies deployed by such outsiders have benefited law firms too. Part 2 showed that these parties could be said to have benefited City law firms by generating helpful publicity, awarding logos, rankings or prizes or by providing the means to fortify valuable client relationships. Thus, the exertion of exogenous pressures discussed in part 2 amounts to more than a zero-sum game between outsiders and City law firms.

Thirdly, the findings in part 2 also help to reveal the effects that exogenous pressures have had on the diversity policies implemented by firms. The analysis so far (which will be developed further in part 3) has suggested that pressure from outsiders may actively shape the policies which City law firms have put in place, especially in terms of driving forward the implementation of policies in respect of certain social groups in the workforce, particularly ethnic minorities, women and, more recently, LBGT staff. For example, as discussed in chapter 5, the Government’s request for statistics focused on gender and ethnic minorities. Opportunity Now and Stonewall, the two most influential interest groups, focus respectively on women and gay men and lesbians. In turn, the Black Solicitors’ Network and CRE request data from firms about gender and ethnic minorities, and use it to compile their diversity league tables. Clients also request data by social group. Commensurately, other equality strands included in the EHRC and E.U.’s definitions discussed in chapter 2
(being age, religion or belief and disability) seem to be far less prominent in terms of the pressures exerted by outsiders. For instance, no interest groups acting on these groups’ behalf were mentioned by interviewees and no outsiders, including clients and the legal press, were found in this research to be exerting significant pressure in relation to these groups.

Finally, chapter 2 also discussed the individualistic focus of the diversity approach and how this differed from a group-orientated approach. Again, this was not found to be a particular concern of those parties behind the key exogenous pressures highlighted in this research. Rather, these parties were found to prioritise a few, particular social groups as discussed above. Part 2 suggested this may well have had an impact on the policies which City law firms pursue and part 3 and chapter 14 will develop this further.

These preliminary findings are an important starting point from which part 3 will build, and these conclusions themselves will be developed further in part 3 and as conclusions in chapter 14. Part 3 now turns to power relations within City law firms, and in particular, it considers the importance of the relative positions of partners and diversity staff. It is argued that only by considering two sets of the power relations, those between outsiders and firms, and those between insiders within firms, is it possible fully to explain the diversity boom in City law firms.
Power, prizes and partners: Explaining the diversity boom in City law firms

Part 3: Explaining the role of insiders

Chapters:

Introduction

11. Partners

12. Associates, trainees (and support staff?)

13. Diversity managers
Introduction to Part 3: Explaining the role of insiders.

Part 2 showed that certain outsiders play a critical role in persuading City law firms that they have to take action on diversity issues, and that this role is best understood in terms of power relations between those outsiders and City law firms. Part 3 adds another dimension to the analysis analyzing how the action which City law firms take on diversity issues is also influenced by power relations within firms, in particular the relationship between partners and diversity staff. Therefore, while accounting for the importance of internal power relations adds complexity, it is a vital part of explaining the diversity boom.

Internal power relations are an important part of understanding how exogenous pressures play out within law firms. It is important, for example, to consider how diversity staff may leverage exogenous powers, and how partners respond. This part will build up the analysis of the internal hierarchy of City firms incrementally, by considering the position of partners, associates, trainees, support staff and diversity staff in turn. Through this analysis, the interaction of exogenous pressure and the internal hierarchy in City law firms will be considered. The research will also examine the response of each of these groups to those diversity policies which are already in place, considering in particular the evidence about the levels of support demonstrated in each group. This part will also shed light on the role of diversity staff in City law firms which is important because they occupy a pivotal position at the point of interaction between these two sets of power relations.

Therefore, parts 2 and 3 of this study together attempt to account for the interaction two sets of power relations; between outsiders and law firms, and within law firms themselves, and to consider how this interaction shapes the diversity policies in place in City law firms. The conclusions of parts 2 and 3 together, the consequences of these findings for the long-term future of the diversity boom and for various parties involved in it, will then be considered in the conclusion to this study in chapter 14.
Chapter 11
Partners

1. Partners’ power over diversity policies

2. Powerful allies: senior partner support for diversity policies

3. Support, resistance and non-cooperation in the wider partnership
   3.1 Why is the support of the wider partnership important?
   3.2 Why do partners support diversity policies?
      3.2.1 Good for business
      3.2.2 Highly visible problems
      3.2.3 The right thing to do
   3.3 Resistance and non-cooperation in the wider partnership
      3.3.1 Ambivalence about the business case
      3.3.2 The threat to the status quo
      3.3.3 The threat to “covering” behaviour

4. Conclusion

Summary:
City law firms are hierarchical organisations and power of all kinds is concentrated in the partnership. Partners therefore have a huge influence over the creation and application of diversity policies. However, there is a hierarchy even within the partnership structure and, though this is less obvious to outsiders, it means that not all partners wield equal power within firms. The support of a senior partner becomes a ‘make or break’ precondition for diversity staff to be able to work effectively, because the support of one or a number of senior partners sets the tone for the entire firm’s response to diversity policies. In the absence of such leadership, diversity policies are likely to languish.
In the lower ranks of partners in City law firms, there are pockets of supporters and opponents of diversity policies, though the interview evidence suggested that the majority was indifferent. Most diversity staff interviewees find it challenging to negotiate with partners as they are in a much less powerful position than those they are trying to persuade. The research suggests that in this case, some negotiation tactics work better than others.

1. Partners’ power over diversity policies

These organisations are stratified in that status differences between junior, mid level and senior professionals are clear and significant. The status differences between a second year associate and a senior associate or a partner, for example, are clear, with partners being in a class of their own.\(^{627}\)

The scholarly literature about City law firms makes clear that they are highly stratified and hierarchical organisations. Lee has described how internal hierarchies within firms are “clear and marked”, with divisions between associates and the partners “obvious and inevitable”.\(^{628}\) This is because ownership, management responsibilities and liability, and important aspects of client work are all centralized in partners’ hands. While some firms have begun to employ professional managers to advise partners in the running of the business-side of the firm, even in these cases, ultimate decision-making powers remain with the partners. As Gabarro puts it, an important difference between the law firm model and the corporate model is that there is a “lack of separation between producing and managerial roles”.\(^{629}\)

The centralized power structure means that in City law firms, partners wield a huge degree of control over diversity policy-making. It is the partnership which, collectively or acting through committees (depending on the specific arrangements within the firm in question\(^{630}\)), makes strategic decisions about the firm’s overall approach to diversity and usually decides which diversity policies should be adopted. Interviewee evidence indicated that in the firms in this sample, it was the partners who decided whether to hire a diversity

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\(^{627}\) Gabarro, n 483 above, xx

\(^{628}\) Lee, n 66 above, 190

\(^{629}\) Gabarro, n 483 above, xxi

\(^{630}\) This study does not use exact labels for senior partner roles, or for partnership committees in order to avoid identifying any particular firm which took part in this research. For the same reason the terms “diversity committee” and “diversity staff” are used throughout even though the exact titles varied slightly in practice.
manager, to set up a diversity committee or to approve an equality and diversity statement or particular policy. Even once diversity staff are appointed, they seem to have very limited autonomy with all important matters being channeled through a particular partner or a partnership committee at some stage. Interviewees, for example, spoke of having to pitch ideas for new diversity policies to groups of partners and vigorously defend the evidence offered in support in order to get policies approved. While the procedure for reaching a decision about diversity policies varied from firm to firm, one interviewee described how diversity policies in their firm had to pass through a number of committees, each headed by senior partners before a decision was made [4-8]. Moreover, even once a policy such as an affinity group or mentoring scheme is approved by the partnership, partners will be highly influential in terms of putting diversity policies into practice. The evidence therefore suggests that, for this reason alone, it is of the utmost importance for the viability of a particular diversity policy that a partner is seen to be associated with it.

Diversity staff in City law firms therefore have to negotiate with partners in all the important aspects of their jobs, and in this respect, some interviewees felt that having so much power concentrated in the hands of the partners was problematic. In particular, several interviewees noted the lack of professional managers in law firms and the absence of separation of powers compared to companies (where some had worked previously). One interviewee directly compared working in a company and partnership from first hand experience, drawing out how the organisation of power in each affected employees:

it's far easier to work in a corporate organisation than a partnership. It makes a huge difference, because in the corporate you've got, first of all, you've got somebody who is paid to make decisions. They have people who are paid to make things happen, and you have a board who is remunerated or not, but who gives direction to the firm and you've got shareholders who, if they don't like what's happening will pull their money and walk away. Here, you don't really have any of that [1-40]

Gabarro defends partners' "producing manager role" on the basis that "it provides the credibility needed to deal with sophisticated clients and the technical knowledge and legitimacy needed to lead other professionals". However, the convergence of so much

631 Gabarro, n 483 above, xxi
power in the hands of partners also means that winning and keeping partner support becomes an important part of the role of diversity staff.

This research found that the partner support which City law firm diversity staff need in order to be able to operate effectively comes in two distinct forms. First, the support of a senior partner or partners is an essential precondition for successful diversity policies, and secondly, general support from the wider partnership is important as policies are rolled out across the firm. Both types of support are crucial, though one or another was, in fact, lacking for several interviewees who took part in this research.

2. Powerful allies: senior partner support for diversity policies

I'm working very closely with the senior partners, it couldn't be more senior really, which is great [8-17]

I have the ear of the senior partner [15-2]

This research suggested that the support of senior partner support is an essential precondition for successful diversity policies in City law firms as was suggested in the EOC guidance and other literature reviewed in chapter 2. Almost all interviewees agreed that the involvement of senior partners is vital because:

it drives the agenda. You have influence behind any decisions that are taken, and I think that if [the senior partner] says 'This is what we're doing' then people tend to take notice [17-2]

Diversity staff interviewees were unequivocal: for diversity policies to be implemented in a meaningful way across the firm, an alliance of some sort with senior partners was crucial. This echoes Todd, referenced in chapter 2, and the experience of other practitioners. For example Kotter, having worked with over a hundred companies, concluded that; "no matter how capable or dedicated the staff head, groups without strong line leadership never achieve the power that is required".632

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This finding about the importance of "people of influence" [15-2] in the firm serves as a reminder that not all partners are equal. In part this is because of the creation of "salaried" or "local" partners, who may not have a share of the equity in the firm. The hierarchy is also exacerbated by the extra power and responsibilities senior partners have being, as Lee puts it, "the few partners voted in by the firm as a whole"633 to take key management responsibilities.

In practice, only some of the interviewees felt that they actually had the support of senior partners in any form, and only one felt that that support they received was unequivocal and active. Of those diversity staff interviewees who did enjoy "leadership commitment" [4-27], most meant that their firm's senior partner, or one of the senior partners, was involved on the diversity committees. This type of involvement was offered by several interviewees as a sign of the firm's overall commitment to diversity [4-2] and was identified as a critical factor for winning staff support for diversity policies:

that [a senior partner is chairing the diversity committee] does send a signal to people, that actually, it is important... [the diversity committee] will obviously have leadership at the highest level and I think that's going to be absolutely key because people generally, when it comes to diversity, believe what they see and what they hear [4-12]

The same interviewee added:

we have established a diversity committee and it's headed by [a senior partner]... I think it gives an indication of the level of commitment. [4-26]

In one instance, an interviewee said that a senior partner in her firm went further in his support for the firm's diversity policies, not just attending diversity committees but also making public his personal commitment to diversity issues in various ways, including by making speeches and participating in diversity events. The interviewee suggested that this open, direct and active support was highly valuable in a number of ways, including because his "sponsorship" helped to protect diversity policies from the criticism of others in the firm:

[name of senior partner] is absolutely committed to it, understands why we need to do it and so that's great. So with his enthusiasm, that makes it much easier, because I do think one of the challenges we have is that there are those that are committed

633 Lee, n 66 above, 190
to it and other who are like, why are we bothering to waste our time or our money or effort on it, so you really need somebody to kind of help you get it off the ground and he is a great sponsor... and is prepared to stick his neck out [7-1]

By “sticking his neck out” to express commitment to diversity issues openly and enthusiastically, despite the views of others in the firm, this senior partner evokes one element the definition of good leadership of Pardey (another management theorist):

leaders make decisions, particularly difficult decisions where there is great uncertainty or even danger or when the choices they make are unpopular.634

This level of senior partner support was only found in one firm in this research. Significantly, as a result the interviewee in this case felt that they had been able to do “some things that are probably a bit more scary than other firms have done” [7-2]. On the basis of this interview it seems that if senior partners are seen not only to support diversity staff but also to associate themselves with the underlying cause, diversity staff acquire power within the firm and are somewhat insulated from criticism. As a result, the interview evidence suggested that they are able to oversee pioneering policies rather than simply keeping up with peers, as discussed in chapter 9.

However, not all diversity staff interviewees enjoyed the support of a senior partner either directly or even through their participation in diversity committees. The support of less powerful partners, described in section 3 of this chapter, was not an adequate substitute for that of a senior partner, regardless of how passionate other partners were about diversity. This is because they lacked the qualities for which senior partners were valued; they had less influence over the firm as a whole, and less power to insulate diversity staff from criticism.

One interviewee responsible for diversity in the firm (as part of a larger HR job) did not feel that they had the support of any partners. In this firm, there was no diversity committee and few diversity policies beyond the superficial activities of responding to clients’ questions about diversity, putting up a diversity statement on the website and attending the Law Society’s City Forum. In this case the interviewee was interested in diversity issues

634 Pardey, n 316 above, 11
herself and wanted to do more about it within the firm, but felt the absence of partner support, stating that “it would be quite nice to have a designated partner sponsor [diversity policies]”. The absence of partner support was a sign that “I don’t think it’s taken completely seriously here yet” [6-2].

One further interview with a member of law firm staff suggested that direct senior partner support for diversity was absent in that firm, but in this case, it was not regard as problematic. In this case, diversity issues fell within the general remit of other partnership committees, and the interviewee suggested that this system worked well [5-5]. However, in this case, diversity was the day to day responsibility of a member of staff with much wider responsibilities who appeared agreed with the overall approach of the firm (as they explained it) namely that there was no desire to “make headlines” about diversity. Therefore, this interviewee’s job did not center on implementing diversity policies, nor did they seem personally committed to implementing such policies, with the result that the absence of senior partner support did not really hinder their work. This case contrasts with that described in the preceding paragraph, where the interviewee was more committed to diversity policies themselves and hoped to do more within the firm.

Overall, the interview evidence suggests that senior partner support is an essential precondition for diversity policies to be successfully implemented. Most interviewees had some form of senior partner support, which usually manifested itself as participation in their firm’s diversity committee. In the one case where a senior partner went further and enthusiastically associated himself with the firm’s diversity agenda the effects were dramatic; diversity staff became empowered within the firm and more adventurous policies could be rolled out.

However, it is not just senior partner support that was a precondition for effective diversity policy-making, but the wider partnership also play an important role in approving and supporting policies. All interviewees were therefore mindful of the attitudes of the wider partnership in addition to the value of senior partner support.
3. Support, resistance and non-cooperation in the wider partnership

I think the key is to get it to be taken seriously, you've got to demonstrate that (a) management is behind it and (b) there is a substantial amount of interest within the partnership for it to move forward because if you've just got one or two partners who put their hands up... you won't get anywhere, you really won't [2-12]

The quote above from a former senior partner of a firm in the sample reflects the importance many interviewees attached to support from both senior partners ("management") and support from a critical mass of the wider partnership. Clearly the relationship between the two may be complex and vary from firm to firm: the former can act as a catalyst for the latter, or even insulate diversity staff from paying so much attention to the latter. However, with that caveat, this section considers the evidence about the attitudes of the wider partnership and analyzes the findings about support and resistance in their ranks. For the most complete examination of these issue, the discussion which follows should be read together with that in chapter 13 (diversity managers) which looks at many of the same issues from a different perspective.

3.1 Why is the support of the wider partnership important?

Kotter writes that any new measure being implemented in a company is more likely to fail in the absence of a powerful enough guiding coalition. Amongst the leadership, there must be "a minimum mass" of supporters and:

\textit{in the most successful cases, the coalition is always pretty powerful- in terms of titles, information and expertise, reputations and relationships}\footnote{Kotter, n 632 above, 6}

This research confirmed Kotter's thesis in the context of diversity policies in City law firms; interviewees agreed the support of a broad range of partners was essential to the viability of diversity policies for a number of reasons.

Several diversity staff interviewees described the complex series of formal, partner-led, stages which a policy had to pass through before it could be implemented. One interviewee spoke of a series of consultative, advisory and management committees, headed by partners, which made up the "decision making mechanisms" in the firm [4-8], with further committees involved if "it seems that it might have an impact outside London". Only "once
those groups have got the green light, then we tend to be able to go ahead" [4-9]. Another
interviewee described how working groups of partners and other members of staff reported
into a diversity committee of senior partners, which in turn reported to the management
committee of the firm [15-1] and several other interviewees described similar committee-
based reporting lines. While the exact decision making process varies between firms,
partners are always key because of the “lack of separation between producing and
managing roles” which Gabarro describes. 636

It was also apparent from the evidence that partners played a highly important role in
determining how diversity policies worked in practice, especially those which were
designed to affect work-life balance. The management theorist Pardey writes that a lack of
leadership is “the biggest barrier of all” for organisations coping with change, because “if
people are not well led and supported, they will feel uncomfortable about what is expected
of them and how they are supposed to respond to change”. 637 This was borne out by the
interview evidence, which suggested that diversity staff regard it as vital that partners were
seen to embrace diversity policies themselves. As one interviewee, (who had been involved
in designing diversity training for the senior partners with the intention that it would then
be rolled out to all partners) explained:

*I feel that the culture of the organisation comes from the partners and the leaders [7-12]*

It was therefore argued by interviewees that changing the “culture” of a firm was a top-
down process, and that partners therefore play a critical role as the most powerful group in
firms. One interviewee stated that changing behaviour within a firm comes not only when
partners set an example as “role models” but also from “partners challenging what they see
as not appropriate” [7-12]. However, interviewees who described the dependence of
diversity policies on partners’ support also acknowledged that this could lead to patchy
results across the firm’s different practices. One interviewee spoke of how some partners in
the firm championed flexi-working but other partners were less supportive of the policy:

*the challenge that we have is to convince those partners who aren’t making it work,
or who are not prepared to even give it a go [17-8]*

636 Gabarro, n 483 above, xxi
637 Pardey, n 316 above, 229
Other interviewees suggested that it was important to have role-models amongst the partnership for more junior staff. One interviewee joked that a significant “win” for diversity policies would be to have a senior partner who was male and who had a job share [8-31]. Diversity staff on another occasions referred to some of their firms’ female partners and female flexi-working partners by name and to their histories in some detail as evidence of how open their firms were. One interviewee cited three female partners who work on a flexible basis, and they stressed that one was “actually promoted to partnership working on a flexible, part-time basis” [18-5]. Another flexi-working female partner was mentioned by name and described as “very successful... one of the rising stars” [18-5]. The interviewee summed up the success of these women was a sign of how fair the firm was, which should be publicized more broadly:

*there have been opportunities for people to advance and still work in a different way, but we perhaps haven’t been so open about what’s been happening* [18-5].

Diversity staff interviewees therefore found the presence of women and part-time partners who might be offered as role models by diversity staff or who might be supportive of diversity policies personally very helpful. However, this was not the same as having the active “coalition” of partner supporters of which Kotter writes, and with many interviewees were preoccupied. Active partner support from the wider partnership was sought by most interviewees for the two reasons provided above, namely to ensure that new policies would be supported through the firm’s decision-making processes and that existing policies would be implemented rather than ignored. However the evidence was that this was not a straightforward exercise. What, then, explains the patterns of support and resistance that diversity staff encounter when trying to build up such coalitions within the wider partnership in City law firms?

### 3.2 Why do partners support diversity policies?

The evidence which underpins this study is primarily drawn from interviews conducted with diversity staff, but also with lawyers, including three partners (and the sources are differentiated in this part, as throughout this study, where it is relevant in context). This section does not claim, therefore, to be based on a statistically significant survey of partners
about their own attitudes. Nonetheless, the evidence collected throughout this research about partners in City law firms was remarkably consistent about the reasons for support and resistance in the wider partnership.

Primarily, as argued in part 2 above, the pressure to address diversity issues has been exerted upon firms by powerful outsiders. These exogenous pressures have meant that all the City law firms in the sample have had to consider what to do about diversity, though as argued in this part, the eventual approach of each firm is, for a large part, dependent on the decisions of the partners. This research found that (in addition to the need to comply with the pressures outlined in part 2) partners may be supportive of certain diversity policies for three further reasons; first they may see potential in some diversity policies to improve business performance; secondly support may be explained because certain issues have become to stark to ignore; and thirdly certain policies connected to diversity may seem to be ‘the right thing to do’.

3.2.1 Good for business

The business case for diversity was considered in chapter 2. In broad terms, the business case suggests that improving the diversity of the staff in an organisation is ‘good for business’, meaning ultimately that there is an underlying link between diversity and better financial performance (though as discussed, empirical data to support this link remains elusive for researchers\(^638\)).

Some interviewees suggested that, diversity having been put on the agenda by powerful outsiders, partners made decisions about individual diversity policies after having scrutinised them through a business lens. Several diversity staff interviewees explained that this is how partners, in their experience, talked and made decisions and therefore that potential diversity policies had to be presented in these terms. One explained that in her experience, this meant setting out:

\[\text{what is the reason for doing it, and how we could benefit as an organisation from.. putting those things in place.. You know, what’s it costing us at the moment, what’s it going to cost us in the future and what is it going to save? So there really always}\]

\(^638\) Kochan et al, n 82 above.
has to be some reason and you have to chose your language to talk to them [partners] in something that they actually really understand. [8-28]

The research found evidence that these business case arguments were more successful in persuading partners of certain types of diversity policies than others. There is evidence, for example, that business arguments were effective in the context of graduate recruitment policies aimed at enlarging firms’ pools of candidates for training contracts. In this context, arguments could invoke the “war for talent”, whereby many employers are forced to compete for a shrinking group of potential employees. Diversity staff were fluent on the topic of this war for talent; employers, as several diversity staff interviewee put it are all “fishing in the same very small pond” [4-29]. As one put it:

we certainly get many hundreds of applications at that point [at the training contract stage]... The challenge is getting the best ... we all want the best, of course [8-16]

Another diversity staff interviewee commented that in the future, more ethnic minority candidates would chose to study law and more women would want to return to work meaning that

if we’re going to stay ahead of the game we’ve got to understand the demographics [8-11].

There were signs that these arguments were effective in persuading partners of the merits of diversity policies connected to graduate recruitment. One lawyer interviewee at a U.S. based global firm noted that as regards policies designed to attract a wider range of graduate recruitments, for example by making links with a broader range of universities, there was:

no resistance in the firm to these efforts... because a different cross section means a better trainee group. [14-2]

Many interviewees, including a former senior partner of a firm in the sample, suggested that firms remained interested in the ‘best’ candidates above all else:

in reality, the firms really do want the very, very best candidates. I mean they don’t care if they are ethnic minority or they’re male or female, or whatever they are, they want the very best candidates... they really, really do.[2-8]

There is, therefore, evidence that some partners use business case logic as a means of making decisions about individual diversity policies which come before them for
consideration. Accordingly diversity staff sometimes chose to present new policies in business case “language” (see chapter 13 for further discussion of how diversity managers negotiate with partners) which tactic worked particularly well in the case of policies intended to widen the pool of graduate job applicants.

3.2.2 Highly visible problems

There was some evidence that diversity policies connected to the retention of women by City law firms attract partner support simply because the underlying phenomenon has become too stark to ignore.639

It seems that across the solicitors’ profession, women are outnumbering men at a trainee level but are failing to reach the upper ranks in proportionate numbers. In a Law Society study, Siems states that 62.7% of all trainees registered in 2002-3 were female640 but found, looking at the profession as a whole;

\[
\text{the increase in the proportion of partners who are female is not proportionate to the rate of women's entry into the profession... Some 78\% of male solicitors with between 16-20 years of post-qualification experience were partners or sole practitioners, compared to only 45\% of women with the same level of experience.}^{641}
\]

While there is a shortage of data about City firms specifically, especially of the type which enables the career progress of different cohorts to be studied, the anecdotal evidence from interviewees, and data from law firms in this sample themselves point to an outpouring of women lawyers from City law firms, especially between 4 and 6 years of post-qualification experience. The data displayed on the websites of the top 5 law firms considered in Table A (where references to the webpages concerned may be found) shows that women make up the following percentages of the different ranks in those firms:

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639 For example, Freshfields' diversity webpage states that “just 14\% of our partners are female [though the data which the firm displays shows 16\%]. We have introduced a mentoring scheme for female associates to address this”, at http://freshfields.com/csr/ourpeople/diversity.shtml accessed July 2007 (see Table A for further details).

640 Siems, n 535 above, 22

641 ibid 22-3
This data shows that while City law firms now recruit more women at trainee level than men they make up a far smaller proportion of associates and partners. While interpretation of this data is limited by the lack of historic records about City law firms specifically, the pattern in the data which is available seems consistent with data from across the profession as a whole which suggests that women have been outnumbering men at an entry level since the end of the 1990s, but leave the profession in disproportionate numbers to men.\(^{645}\) Thus, Webley and Duff conclude in a recent article, having reviewed Law Society gender data on the renewal of practising certificates:

*female progression into senior positions appears to be a slow trickle-up rather than a constant and widening stream of advancement*\(^{646}\)

As Webley and Duff argue, referencing the work of Sturm, women are more visible than many other groups within the legal profession because of their greater numbers and because they provide “more accessible indicators of problems within the profession” than, for example solicitors with disabilities, gay solicitors and solicitors from lower socio-economic

\(^{642}\) The 58% women figure is in respect of Allen & Overy’s “other fee-earners” apart from partners and associates i.e. the figure may refer to paralegals as well.

\(^{643}\) Linklaters’ diversity statistics only show percentages for partners and associates, with trainees being included in the latter category.

\(^{644}\) Figures taken from London or U.K. statistics, apart from Freshfields, which does not indicate if its figures are for the London office or worldwide.

\(^{645}\) McGlynn, n 47 above, 160

\(^{646}\) Webley and Duff, n 92 above, 375.
groups.\textsuperscript{647} This argument seemed to be confirmed by this research, which suggested that the difference between the numbers of women trainees compared to partners has attracted attention within City law firms, for example:

\textit{I think, in line with probably most firms, you have this figure of around 50\% of your trainees are coming in female, but currently something around 20\% of your partners are female. So... is our career track working correctly, what do we need to be doing to ensure that we are sort of more in line with what's coming in...?} [18-2]

Accordingly, diversity policies connected to the retention of women were frequently spoken of by interviewees as the first sort of diversity policy which their firm had adopted. A former partner of a firm in the sample stated that after a group of partners came together to draw up diversity issues which they were concerned about:

\textit{the one issue which came out top was retention of female lawyers} [2-12]

The historical background section in chapter 3 suggested that at least some City firms had been implementing equal opportunities policies and flexi-working arrangements since the 1990s which were targeted at women. That chapter also noted that in the mid-1990s there had also been a model policy and guidelines introduced by the Law Society. Thus, there seems to be a longer history of discussion and some action about women lawyers than other groups in City law firms. However, it was interesting that little sense of continuity with earlier equal opportunities policies was expressed by interviewees in this research, who suggested that diversity policies were being drawn up from scratch. Thus, another diversity staff interviewee, talking of the firm’s recent engagement with diversity issues said:

\textit{there was very much a sort of recognition that diversity is a huge topic, covering a myriad of different areas, but for us gender was an area where we just felt that we needed to [do something] really at first} [18-2]

Not only was the retention of women the expressed as the first diversity issue which several firms addressed, but there was also evidence that in some firms that it still remained the main priority. A written response from diversity staff in City law firms, to the question asked “Does the firm have a particular priority within diversity?”, stated that:

\textit{In London probably our current main focus of attention would be on the retention of associates, especially female associates} [15-1]

Another diversity staff interviewee said that:

\textsuperscript{647} ibid, 382, referencing Sturm, n 199 above
the biggest issue, I think, for us and probably most law firms, is the retention and promotion of female associates [the interviewee the reviewed the % of women at entry and partner levels in their firm]... We have a big issue to contend with. As I say, most of the other firms have as well [18-7]

However, in contrast to the majority of firms where partners seemed compelled to take action due to the sheer visibility of women leaving, a diversity staff interviewee described how, in this firm the partners “are absolutely adamant that they don’t need to do anything about gender because it’s not a problem and we are a meritocracy” [1-38]. This was the one exception to the general finding that retention of women was a common and usually uncontroversial diversity issue for partners to rally round on the basis of the statistics described above.

As noted already, the disparity between the number of women entering the profession, and the numbers becoming partner has been the subject of considerable academic attention. This research has suggested that when City law firm partners also prioritized and supported policies connected to the retention of women because the numbers leaving had become too stark to be ignored, however there was little acknowledgement that this issue had been a relatively high-profile one in the profession for some time, and that some City law firms at least had been implementing policies in this area since the mid-1990s. In these interviews, discussions about diversity had seemed to start from scratch, suggesting that the adoption of diversity language and the influence of the diversity approach did represent something of a clean break for policy making in City law firms.

3.2.3 The right thing to do

This research found evidence that some partners support certain diversity policies on the basis that they are seen as the ‘right thing to do’. On closer examination, this seems to be linked to ideas that partners hold about the professional responsibilities incumbent on lawyers, and about the wider duties which flow from membership of a profession, even if these ideas have been shown to conflict with the reality of client service in large law firm practice.648 However, the diversity policies which are supported on this basis may become

648 For example R. Greenwood, “Your Ethics: Redefining Professionalism? The impact of management change” in Empson (ed), n 47 above, 186 et seq. See also A. Boon, “From public service to service industry:
blurred with a firm’s pro bono or charitable activities. Some interviewees thought that this blurring was a positive development because diversity policies, like other forms of good works, arose from the same sense of the firm’s place in the wider world, but others were concerned clearly to delineate diversity and the other sorts of ‘community’ or ‘corporate social responsibility’ activities which the firm undertook.

A former senior partner of a firm in the sample said that “obviously” lawyers have a special duty to challenge myths and “stereotyping” [2-9] about the legal profession, (though from a practical point of view, this interviewee felt that what lawyers could achieve in this respect was limited, for reasons of the scale of the task and the ultimate responsibility of Government for such matters as education). Another diversity staff interviewee explained the motivation behind a particular diversity policy, where local school children were invited into the firm as part of their studies, was the firm’s “very strong moral commitment to the community and to giving back” [7-11]. This sense of duty to address diversity issues arising from membership of a profession was heightened by the work of outsiders. Several interviewees mentioned the Sutton Trust research which, as one perceived “picked medicine, law, or journalism or politics as worst” in terms of access to the profession for non-privileged young people [7-3].

Boon and Abbey have studied the patterns of pro bono publico legal work649 undertaken in large law firms in the U.K. and concluded that those firms “which are apparently the most wealthy [are] apparently taking the lead”.650 They conclude that “a new culture” of pro bono is in formation, driven in part by “the perception of public duty” but also by other motives too, including:

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The impact of socialisation and work on the motivation and values of lawyers” (2005) 12(2) International Journal of the Legal Profession 229 which argues that high levels of associate discontent with legal practice “conveys a sense of betrayal of their motivation for entering the profession and their values” (230) and suggests that this may be particularly acute in City firms where the relationship between lawyer and clients “appears more commercial than professional” (245).


Pro bono publico (“pro bono”) work was historically legal work undertaken without charge on behalf of the poor (632) but as Boon and Abbey show, partly because large firms are poorly prepared to deliver traditional welfare advice and assistance, (637) pro bono activities have broadened out to cover a wide range of activities including advising on death row cases in the Caribbean and working with charities like Liberty (643 et seq)

650 ibid 648

249
a desire to reverse the perceived decline of the public service ethic or an attempt to pre-empt measures to tackle the inequalities ... which the presence of large firms in the marketplace accentuates

Boon and Abbey find that, while the multiplicity of motives is “confusing”, the reinvigoration of pro bono suggests that “large firm lawyers are taking responsibility for the image of the profession into their own hands” and their work is highly relevant in this context. For example, one diversity staff interviewee commented that lawyers had a sense of “professional pride” and that “professional status is important to them” [5-13]. The interviews also produced evidence that concern about the public good generated partner support for certain diversity policies, including those where firms planned to co-operate with each other. One interviewee suggested that the senior partner of her firm thought action to address fundamental problems, such as encouraging school children to consider going into the legal profession, were so important that “we should be doing it as a profession, as a whole” [7-9]. On this basis, it is important to note that here, as with the reinvigoration of pro bono, a sense of professional duty does seem to be a relevant motivating factor.

It was also notable that whenever professional duty seemed to be a motivating factor the resultant diversity policies tended to blur with the firms’ pro bono, corporate social responsibility or charitable activities, though this seemed more significant in some firms than others. In one firm, a diversity staff interviewee described how diversity meetings were attended by a representative from human resources and someone with responsibility for corporate social responsibility [6-9] because diversity was regarded as part of a broader corporate social responsibility agenda. In this interview, it was suggested that pro bono work and corporate social responsibility activity “goes hand in hand a little bit with diversity” [6-7]. In another firm, diversity was just one committee amongst several making up an overall “structure of corporate social responsibility” [4-11] within the firm.

Most interviewees did not regard this blurring as problematic, but one was concerned that:

651 ibid 650
652 ibid 654
from my point of view as a HR professional, I don't want diversity to be seen as some sort of pro bono, it's a nice thing to do, you know, we've got to be fair and politically correct etc. etc. I don't want to be put into that category. I want it to be seen as something that is really quite important to the business for its own reasons.

[18-19]

The blurring between pro bono and diversity policies therefore may weaken a diversity manager's position, especially if their strategy is to present diversity policies in terms of the business case.

A further concern about the blurring of diversity policies and pro bono is the nature of the policies which result. As seen above, professional pride, and a related notion of "moral commitment" usually came up in interviews in association with diversity policies about "doing programmes for children in schools and that sort of thing" [5-12]. Other such initiatives, according to interviewees, included those intended to make City law firms less intimidating for school children from inner-city schools, to encourage older children to apply to university and to consider the legal profession as a career, and to help children with their school work. As one interviewee put it, these are policies designed from "a sort of social mobility, CSR point of view" [18-19]. Another described how this kind of diversity policy:

is kind of almost emerging from the pro bono work which we do and some of the community work that we do... with local schools [4-3]

Thus when the justification for diversity starts to blur with that of pro bono, the policies which result tend to be outward-looking, and focused on local schools and children in particular. By contrast, there was hardly any suggestion in interviews that the spirit of the 'the right thing to do' had inspired diversity policies which addressed the working lives of those within law firms. Indeed, one diversity staff interviewee having described the firm's outward looking diversity policies which had grown out of the firm's pro bono work acknowledged the next challenge for the firm's diversity committee as:

building on some of those things. I guess the challenge for us is really starting to look inside the firm, what do we do, what could, should we do, internally [4-3]
Therefore, some interviewees at least were worried about the broader implications of this connection between pro bono and diversity.

In conclusion, there are a number of different motivations suggested by these interviews as to why partners may demonstrate supportive attitudes to particular diversity policies. The economics-driven business case seems to motivate some partners to support individual policies designed to broaden the pool of candidates from which the firm recruits. The sheer scale of the highly visible outpouring of women from the middle ranks of all City law firms seems to have encouraged a number of firms to make a priority of policies connected to the retention of women. Finally, some partners do seem inspired to address certain diversity issues because of a sense of professional pride and community-mindedness, though the policies which result blur with pro bono and risk diverting attention away from the state of affairs inside firms. Overall, while pressures from outsiders play a vital role in pushing City law firms to address diversity, the explanations behind how partners proceed are clearly complex and vary even within each firm.

Having looked at some of the reasons for pockets of support for certain diversity policies in the wider partnership, this chapter turns to discuss the non-cooperation and resistance to diversity policies which were also reported in the wider partnership.

3.3. Resistance and non-cooperation in the wider partnership

we probably haven't got all of [the partners] yet. I will be completely honest and say that we haven't. We still have a lot of work to do in terms of talking really and convincing... We're not 100%. I don't think that we'll ever get to 100% either [18-12]

Partners who are indifferent to diversity policies seem to form the majority in the wider partnerships in City law firms. This issue is considered together with the pockets of actual resistance to diversity policies which interviewees reported.

The issues of non-cooperation and resistance within the wider partnership (as well as within the rest of the firms' ranks, which is addressed in Chapter 12) came up in some form in every interview. No interviewee claimed that diversity policies in their firm had active
support from the every partner. In those interviews where the levels of partner support were discussed in more detail, it was made clear (explicitly or by inference) that in fact the majority of partners were indifferent or resistant to diversity policies or to diversity staff as representatives of those policies. In an extreme case, a diversity staff interviewee said of the partners’ attitudes towards diversity generally “it’s still not on their radar really” [6-18]. However, most firms seemed to fit into the description offered by one diversity staff interviewee who said that patterns of partner commitment were “mixed” and “sort of patchy” [7-11] throughout the firm, while noting that there were certain “mini sub-cultures” [7-13] of resistance in the firm.

Only one interviewee had quantitative evidence about the levels of partner support in their firm. This interviewee explained an invitation had been extended to the partnership for “people to come forward and be part of what’s going on... [to be] actively involved in diversity work” [18-13] and in this case, eleven percent⁶⁵³ of the partnership had responded positively. Her view was that this was “a good number of partners to have actively involved”. She was optimistic about winning over the remainder but admitted that it was “coming slowly” [8-13]. Therefore, even in this firm which had a number of high profile awards for its diversity initiatives, where the diversity staff could point, as this interviewee did, to examples of women who had risen through the ranks to partnership, it seems that there is still much work to be done to win over the majority of the partnership.

All diversity staff struggled with non-cooperation and resistance from partners towards diversity policies and towards them as representatives of those policies, though interviewees (diversity staff and lawyers alike) reported a range of experience in different firms. In some firms, the diversity staff seemed to enter into detailed negotiations with partners to justify every diversity initiative. Typically in such firms, diversity staff would be required to assemble “proof” [1-14], for instance in business case “language”, for each new diversity policy. They would then have to present that proof to the partners, who

⁶⁵³ The interviewee gave the number of partners who came forward and the total number of the firms partnership, which have been converted into a percentage for the sake of confidentiality.
sometimes cross-questioned diversity staff on the details. One interviewee found these negotiations difficult because partners could be stubborn:

if they don't like the proof, the will do what they can to deconstruct it, rationally or not... With lawyers... they have their opinions and their opinions are their opinions and there is very little you can do to change them [1-14,15].

The same interviewee felt that these discussions were not constructive but about “the nitty gritty of semantics” [1-16], that some partners had a “destructive” [1-16] attitude, and as a result it became very difficult to get anything done. Another interviewee agreed that sometimes these discussions could be difficult because “sometimes [partners] focus in on the wrong things” [17-12]. Another diversity interviewee talked of her tactics for dealing with:

the conservative, with a small c, band of people going ’Why are we wasting our money?’, so you need to have a reason and a rationale about it, is that the right thing to be doing? [7-20]

A further diversity staff interviewee thought that for HR staff, working in a law firm was especially difficult because:

the partners do want to have a say... it [raises] all sorts of issues such as when you do something, you have to consult more widely, and you have to build in time for that consultation to take place... lawyers want to know all the detail as well, so that's the other aspect, so you have to have all the answers to all sorts of questions that they've got... You really have to prove that you do know what you're talking about, and you're constantly having to do that [8-27]

Even when diversity staff were not expected to deal with difficult cross-questioning from the partners, some partners’ resistance to, or cynicism about diversity policies became apparent in other ways. A number of interviewees discussed their tactics for dealing with “cynical partners” [2-6] which are explored in more detail in chapter 13. Several diversity staff used the word “cynical” to describe the attitudes of the partners and lawyers whom they dealt with in the firms, for example when discussing diversity training (“lawyers are a cynical bunch” [7-11]). Another interviewee described the general background of complaints about diversity policies which she was aware of as “chuntering” [7-2].

More specifically, several interviewees reported incidences of partners refusing to cooperate with certain diversity polices. Some reported that they knew of partners refusing to
take part in staff surveys on the basis that the matters asked therein were private [1-7], with some making the point that the surveys were less private for partners because of their relatively small numbers [6-4]. One diversity interviewee said that “it was amazing how many partners” refused to give their details for diversity statistics purposes on the basis that it was “private information” [6-5]. As mentioned in chapter 5, one interviewee spoke of how the letter from Bridget Prentice M.P.

was quite helpful because where there was resistance in firms to publication of stats it gave a basis for saying, you know, let’s publish them [2-7].

One diversity staff interviewee stated also that they had failed to secure partner support for affinity groups they were setting up within the firms [1, 2-17]. Another diversity staff interviewee described how, contrary to the majority of the interview evidence, she struggled to persuade the leaders in her firm of even the most widely pursued diversity policies, connected to recruitment from a wider range of universities:

it’s getting partners and management to trust that actually, you’re not wasting your time, there are good people out there in places that perhaps we wouldn’t normally look [6-7]

On the other hand, a former senior partner of a firm in the sample noted the “amazing response” from “a huge range of partners right across the international firm” to a call to set up a meeting about diversity.

Overall, diversity staff are acutely aware that only a minority of partners actively support diversity polices, and that this impedes their work. One spoke of:

the barriers which I think we will come across in terms of making diversity an agenda that people want to talk about, want to contribute to and as the leaders in the firm, actually want to commit to [4-7]

Why do partners resist or fail to co-operate with diversity policies within their own firms? The evidence suggests that there are a variety of reasons, some the inverse of the reasons for support discussed above and some distinct, but together they confirm the concerns of interviewees who perceived formidable “barriers” to wide partnerial support. These varied reasons are not straightforward to separate out, but various explanations which were suggested by the interview evidence are considered below.
3.3.1 Ambivalence about the business case

As discussed above, this research found that some diversity staff interviewees were asked to present the case for individual diversity policies to the partnership in business case terms, while others found this an effective "language" with which to engage partners. However, interviewees also suggested that this was a demanding task, especially where interviewees reported that they had to prepare 'proof' of the business case for each potential policy. One interviewee, for example described how:

the onus is on the HR team, primarily to identify what those issues and initiatives and projects are and how they impact the bottom line, how they can impact the bottom line and then persuade and influence first of all the diversity committee and secondly the rest of the partnership [17-13]

The highly challenging nature of constructing this sort of proof is all the more apparent when other parties' attempts to set out the business case arguments are considered. For instance, the Law Society's Handbook was considered in chapter 6, where it was noted that very little empirical evidence was offered in support of any of the business case arguments made therein, while the failure of Kochan's five year study to generate conclusive empirical proof of the link between diversity and profit has been noted earlier in this study. The absence of convincing empirical data about the business case had been noted by the skeptics among the interviewees, who argued that:

I think if there were a pure business case, bluntly, the competitive market would have found it and we wouldn't have to be talking about it [5-12]

Skeptics also argued that the business case "could just as well be the other way round" [5-11], for example used to justify a homogenous workforce. Because of the lack of supporting empirical data, supporters of the business case arguments are left to argue that it is "intuitively correct" [5-12]. However, compounding the difficulties for those charged with assembling a proof of the business case, it seems that partners were generally too busy to read into the literature about diversity or the business case, ("that's probably not going to be top of their list" [7-5]) which made it more difficult to discuss the details with them. Overall, even after work attempting to detail the benefits of change in business case terms, some interviewees suggested that it was difficult to win over cynical partners in this way. One diversity staff interviewee said that:
I have yet to meet anybody who has been swayed by the business case for diversity. [1-14].

Not all diversity staff were required to put diversity policies in business terms to begin with, with one (from a global law firm) explaining that “our financial pull on the business is not significant enough at the moment for those questions to be asked” [3-6]. However in these cases, there was some evidence that disassociation of diversity from the business case was itself seen as a disincentive for partners to take it seriously. As a one put it:

The focus for so many years and still is, of course, is profitability, and other initiatives whatever they may be, whether it’s diversity or whether it’s something else, are seen as taking time, [and] maybe a bit soft and fluffy and therefore aren’t that important [8-4]

Therefore in firms where business case arguments are not so prominent, cynics may be encouraged to argue that diversity policies are outside the firm’s core activities. Overall, it seems that in City law firms it remains in any event difficult to persuade cynics. Its empirical fragility means that the business case is no cure for cynicism, but without it, it is possible to argue that diversity is not genuinely important for the firm. This may explain some of the lack of enthusiasm in the wider partnership, but also confirms that the pressures exerted by outsiders are important in explaining the diversity boom. The combined effects of the pressures described in part 2, and the lack of convincing evidence about the business case means that a degree of uncertainty seems to surround the diversity policies implemented to date, as will be explored in chapter 14 (conclusions). As one interviewee put it:

I do have this sense that people are being asked to do things not really knowing what it is that they’re being asked to do, or why they’re doing it or understanding why it’s a good thing in the first place... it’s a bit like, take this medicine without knowing why you’re taking it. I am not sure the case has been made out, to be honest [2-18]

3.3.2 The threat to the status quo

According to the interviews, diversity staff were required to ‘sell’ diversity policies to partners, the majority of whom:

are absolutely convinced that this is a meritocracy [1-18]
It was clear from the interviews that partners sometimes saw diversity policies and the implications of transformation (which as noted in chapter 2 is a key feature of the diversity approach) as a threat to the status quo in their firms. As one diversity staff interviewee put it, some of their work is

challenging the fundamentals of years of a successful story... at the moment it's like 'Everything's working really well, and why should we change a winning formula?'[8-32]

In particular, interviewees suggested that some partners were concerned to defend the meritocracy they thought was currently in operation from incursion by these measures. For diversity staff, it was difficult to persuade people who believed that their firm was already a fair place that change was necessary. Consequently, a common way for diversity staff to explain the need for change was in terms acknowledging a fixed, unchanging notion of merit, along the lines of:

we want merit, but merit doesn’t have to be white and male and privately educated [7-28]

However, there was evidence that these remained challenging discussions for diversity staff. One diversity staff interviewee referred to “a lot” of discussions conducted with partners about the fact that “diversity does not have to equal a dilution of skills” [3-23]. Others reported that conversations about some aspects of diversity were easier than others. One interviewee, for instance, had found that the debates around gender “[are] quite long established” with the result that they “tend not to raise too many hairs on the backs of people’s necks”. By contrast when the discussion was broadened out to other categories, the view “in some quarters” was:

we only discriminate on, you know, the quality of our staff[4-6]

The research found that partnerial reactions to particular diversity policies varied from firm to firm. For example, another interviewee recorded that partners in their firm were willing to discuss diversity issues apart from gender where it was felt there were no problems because the firm was a “meritocracy” [1-38]. In all firms, therefore, there were strong feelings about the status quo, but a variety of opinions about whom, if anyone, may be disadvantaged within it.
Several interviewees (including lawyers) suggested that the perceived threat posed by diversity policies to the status quo was compounded because lawyers were, by nature, a conservative “breed” and this echoes Rackley’s work on the “diversity light” policies introduced in the judicial context. It was reported (and discussed further in chapter 9 and earlier in this chapter) that most firms prefer not to pioneer diversity policies, but follow peers. In this context, a former senior partner suggested that this was because:

*they [partners] will always think in terms of ‘Well, I’m not sure we should do this unless someone else has done it’... so they are naturally extremely conservative, they naturally like to be the last in the queue, not the front of the queue [2-6]*

Other diversity staff interviewees commented that:

*partners are quite a funny breed... I think [putting diversity policies in] business terms does help but even so, you know, you still have people who just can’t grasp the whole thing. They don’t understand how it is going to help them [6-10]*

*Lawyers are trained to be lawyers rather than trained to be managers... I think their training is such that you get trained to think in a particular way and so getting them to buy into something is quite challenging [18-12]*

Several interviewees made comments about law firms themselves being steeped in history, and as a result slow to adapt, suggesting that this was an explanation why diversity policies would take longer to find favour in this setting than elsewhere. One diversity staff interviewee commented that:

*Law firms are embedded in history and traditions and the way of working. Embracing new ways of doing things, new initiatives, new projects takes a long time.. and so that doesn’t happen overnight [17-11]*

Another interviewee made a comment, in strikingly similar terms to the one above, that:

*the legal arena is... steeped in traditions and history and ways of doing things. For us, for example, [flexi-working] is not so easy to do, to do quick and easy wins. It’s actually more about changing culture and it’s over time. It just doesn’t happen overnight [8-27].*

The idea that lawyers and City law firms are steeped in tradition and therefore slow to respond to pressures to change came out strongly in interviews in the context of diversity issues. However this contrasts with the scholarship which suggests that City law firms owe much of their success to an extraordinary capacity to adapt quickly to new opportunities, for example post-1986’s Big Bang as discussed in chapter 3. Lee, for instance, has
commented on the "breathtaking rate" with which City law firms expanded overseas. There seems to be a contrast, therefore, between these findings about the conservatism of City law firm partners when it comes to embracing diversity policies and their willingness to make other changes rapidly and decisively. However, this contrast is compatible with the finding that the majority of City law firms' partners remain unenthusiastic about diversity policies, and certainly do not see them as presenting classic business opportunities.

Some partners therefore perceive diversity policies to be a potential threat to a "winning formula" while others have a cautious, conservative approach which makes them wary about this sort of change. In some extreme cases, this leads some partners to undermine diversity policies by describing them in very charged terms, such as "political correctness gone mad" [6-19]. When the person making these sort of comments occupies a position of such power as a partner in a law firm, this strategy tends to shut down the debate about diversity policies, or at least make them more difficult to pursue.

3.3.3 The threat to "covering" behaviour

For those who achieve promotion, the meaning of partnership has changed. The prospect of an orderly procession to unassailable eminence has been replaced by an arena of pressure and risk amid frenetic movement

There was mixed evidence from the interviews about the levels of support received for diversity policies from women, ethnic minority and gay partners. On the one hand, several of the partners whom interviewees discussed as being passionate about diversity and who gave a great deal of time to diversity committees and similar projects were women partners [3-1]. A number of these supportive women partners who themselves were reported to have had some sort of flexible working arrangement or had given up fee-earning work [18-4].

However, a number of interviewees suggested that partners who, because of certain aspects of their identities, might be the most obvious choices to lead certain diversity initiatives sometimes refused to do so because they were reluctant to be singled out, despite the fact

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654 Lee, n 251 above, 9
655 Galanter and Palay, n 211 above, 755
that they had already achieved partnership status. This links into Galanter and Palay's work, cited above, which shows that the nature of partnership in large law firms has changed, and is now pressurized, risky and frenetic and also the first-hand account of Todd (discussed in chapter 2), which suggested a reluctance of senior management to put themselves in the spotlight by championing diversity policies. As discussed earlier in this chapter, partnership itself is a hierarchy; as Wilkins and Gulati confirm, there is an increasing pressure on partners, exacerbated by the creation "multi-tiered partnership systems", including salaried, part time and local partnerships. These pressures on partners have eroded traditional structures such as lifetime tenure, lock-step compensation and autonomous working conditions, and effectively create another "tournament" for lawyers once they have been elevated to the partnership, which recreates the one they competed in to get there in the first place.656

The evidence which suggests that some partners may see diversity policies as a threat to their own privacy must be seen against the context of the hierarchy and pressures within the partnership. Against this background, diversity policies may be unpopular with certain partners because they represent a threat to their work of "covering" aspects of their identities in ways which the work of Yoshino helps explain. Yoshino writes powerfully how his own professional success (as a professor at Yale Law School) was in part secured by downplaying both his gay and Asian-American identities. Professional success, as he puts it "is white and bland"657 making what he calls the "covering" of stigmatized aspects of identity the "price of admission" for those outside the mainstream.658

These findings are echoed in a variety of empirical work on minorities' attempts to fit in with hegemonic norms in the legal profession specifically, which also shows how futile such attempts to cover can be. Sommerlad and Sanderson have described how in the U.K. there is a "dominant model of [legal] professionalism which continues to be characterized by excessively long hours, generating an 'ideal worker' who is not only free of caring

656 Wilkins and Gulati, n 212 above, 535
658 ibid 140
responsibilities but will have domestic support". Sommerlad has shown how women solicitors trying to succeed on this basis have to prove themselves by working harder and performing better but even on making heavy investment, for example in order to work full time after having children, can find their efforts questioned. Hunter, researching the position of women barristers in Victoria, Australia found that one strategy for trying to succeed was for women barristers to become what she called "honorary blokes", in what Yoshino would call an attempt to cover. In both Hunter and Sommerlad and Sanderson's research the "price of admission" for women included not having children, or delaying pregnancies until their practices were established, or completely subordinating family to work with the help of nannies and grandparents.

These studies suggest that downplaying difference is an important strategy for successful professionals who are outside the mainstream. This work on "covering" may help to understand to the interview data about certain City law firm partners' reluctance to support diversity policies. For instance, on separate occasions, one diversity staff interviewee and a partner interviewee both described their experiences of partners refusing to participate in diversity initiatives designed to benefit staff with whom they shared key characteristics (including gender, ethnicity and sexual orientation). These interviewees each described how certain partners did not even want to participate in the discussions of these policies in partner meetings, and one described how a partner made it clear with their body language that they did not even want to be addressed in the meeting in that context. The work of Yoshino and others above suggests that this reluctance may be explained because of the risk open support for diversity policies presents to partners' own covering strategies.

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660 Sommerlad, n 86 above
661 Hunter, n 191 above. See also Roth, n 142 above, who findings about the strategies used by successful women in Wall Street banks are strikingly similar. Roth found evidence of what she called "superwoman syndrome" (153) whereby women "accepted institutionalized cultural injunctions to prioritize work over everything else". These superwomen bankers, "worked long hours, endorsed the myth of meritocracy, remained childless and played golf" (168). Echoing Yoshino, Roth found that "professionals who succeed tend to look and think alike so those who succeed despite looking different usually minimize the difference between themselves and the majority" (167).
Nor are white, male partners who seem to be part of the hegemonic groups themselves always comfortable with implementing diversity policies which would effectively “uncover” others. One interviewee described how silence fell over management meetings when sexual orientation is raised because:

they’re really very, very uncomfortable about it and there is a large body of people who says, well, you know, we shouldn’t be doing it because sexual orientation is private and you know, it’s a choice [1-23]

Thus the concern not to “uncover” oneself, or others, sometimes appears under the guise of respecting someone’s privacy. However, Yoshino’s work suggests that it would be a mistake to see this clear reluctance to uncover as entirely benign, but rather it helps to uphold the “social contract of assimilation”. 662 The demand to cover together with the hierarchy within partnership, therefore, seem to explain some partners’ reluctance to support diversity policies. It also helps to explain why this reluctance is found even (or especially) amongst those who may be the intended beneficiaries of those policies. Chapter 12 below will argue that this may also be a factor deterring associates from rallying to diversity policies.

4. Conclusion: The importance of internal power relations

Management theorists are clear about the importance of good leadership in organisations, particularly when those organisations are adapting to change, such as that caused by exogenous pressures on City law firms to address diversity issues. The literature in chapter 2 also was clear that, though it may be hard to come by (as Todd explained) senior leadership support for diversity policies is vital to their success. This research has confirmed that because of the hierarchy of power in City law firms that without partnership support, diversity staff can achieve nothing meaningful.

The chapter has argued that the support of key partners is a vital precondition for diversity staff to be able to implement effective diversity policies, and also that they need a supportive “coalition” from the wider partnership to make policies viable. It has been shown that while most senior partners are prepared to get involved to some extent, it is

662 Yoshino, n 657 above, 130
exceptional for a senior partner to go further and “stick his neck out” by becoming personally associated with the firm’s diversity agenda. Most of the time, the partners who volunteered to assist with diversity policies were highly committed but did not have senior roles within the partnership and therefore lacked the capacity to insulate diversity staff from “chuntering” from the other partners.

Supplementing the pressures forcing City law firms to pay attention to diversity issues, the wider partnership includes pockets of real support for diversity policies. However, the majority of partners, on the basis of this evidence do not support diversity policies actively and some may even to use their power to oppose them, leaving the much less powerful diversity staff in a difficult position. Nonetheless, only diversity staff interviewee completely cut off from both the senior and the wider partnership. Most diversity staff had, or acquired, sufficient support to work effectively and their tactics in this respect will be explored more in Chapter 13. The subsequent chapters will elaborate further on these themes in the context of discussing associates, diversity staff and others.
Chapter 12
Associates, trainees (and support staff?)

1. Associates, trainees and diversity policies
   1.1 Associates' responses to diversity policies
   1.2 Trainees' responses to diversity policies

2. Support staff

3. Conclusion

Summary:
Associates (meaning qualified lawyers who are not partners) and trainee solicitors (who are in the process of completing a two-year training contract in these firms prior to becoming qualified solicitors) are the intended subjects of many of the diversity policies making up the diversity boom and as such, they represent the 'hearts and minds' which diversity staff hope to win over.

Interviewees suggested that the pattern of associates' responses to diversity policies had much in common with that seen in the partnership: pockets of enthusiasm from the associates in their firms for diversity policies were reported but more frequently associates were reported to be reluctant to get involved. Interviewees suggested that there was some cynicism amongst associates about diversity issues but also a reluctance to invest time and energy on supporting diversity policies when it was unclear how this would be helpful in terms of reaching the goal of partnership. In fact, there is evidence that becoming involved in diversity policies may even have the potential to be harmful to longer term career prospects and this may be the described as the 'diversity disincentive'.

663 This term was used by an interviewee and also by Parker, n 156 above, who analysed strategies deployed by equal employment opportunity ("EEO") officers in certain financial services companies in Australia to "win hearts and minds to anti-harassment values" (24)
Trainees were mentioned less often by interviewees, though some suspected that younger people in the firms were much more comfortable talking about diversity than those who had been there for a while. Some speculated that, as a result, diversity policies would be much more widely accepted in the future.

Finally, interviewees rarely mentioned the support staff in the firm in the context of diversity policies (though most of the interviewees were support staff themselves). This raises important issues about the division within firms between support staff and lawyers, and questions about the extent to which support staff are, and should be, included in City law firms' diversity thinking.

1. Associates, trainees and diversity policies
   
   our goal is to win over hearts and minds [15-2]
   (Partner with responsibility for diversity issues in U.S. based law firm)

   Once a diversity initiative has been approved according to the decision-making process within any given City law firm, the attention of the diversity staff responsible for that policy shifts from persuading the partners of its merits, to winning over the intended beneficiaries. Very often the intended beneficiaries are primarily the firm's associates and trainees, as seen, for example, with mentoring and networking schemes, affinity groups, parental coaching, flexi-working and other retention policies. Associates and trainees therefore represent the 'hearts and minds' which diversity staff aim to win over, and they are the main focus of this chapter.

   The same methodological caveats apply in this chapter as the previous one, as regards the research sample. The majority of the interviewees were diversity staff rather than lawyers, and of the lawyers interviewed; only one was an associate, who took part in an interview concurrently with a partner in the same firm and no trainees were interviewed (see Appendix A, table D). Therefore these findings speak to others' experiences of associate and trainee support for diversity policies. However, this evidence was pertinent because they reveal the extent of these groups' demonstrated support for diversity policies in their
firms, i.e. support which takes practical form through expression to the diversity staff. It is therefore argued that this evidence is a meaningful way of exploring how diversity policies fare within these different groups in City law firms.

1.1 Associates' responses to diversity policies

Some interviewees had experienced signs of support amongst their firms' associates for diversity policies, but there were far more reports which pointed to a lack of enthusiasm.

Signs of support and enthusiasm for diversity policies included, in one interviewee's account, the firms' lawyers spontaneously setting up a women's network and holding ad hoc women's events with clients [15-1]. Another interviewee described how the diversity workshops she helped to run were well-attended, but on the other hand noted that it was always the same people who came, so that staff with responsibility for diversity were left "preaching to the converted" [6-9] while the "partners" and other "people who perhaps aren't so keen" [6-9] persistently avoided the sessions. In another firm, recent diversity events had been also been well-attended, though the interviewee had been worried about attendance levels beforehand. Following on from the events the interviewee reported that there was some "appetite" [7-23] in the firm for setting up a affinity group. In another firm, which had a particularly extensive range of diversity initiatives, and where (as noted earlier) a relatively high eleven percent of partners expressed an interest in diversity policies, the diversity staff interviewee reported that an invitation had been extended to the whole firm to "get involved in diversity" [18-7]. The response to this invitation had been "great" and a series of diversity groups were formed as a result.

The evidence about associates' support for diversity policies echoed the findings of small pockets of highly committed supporters among the wider partnership. Similarly, within the body of associates, several interviewees mentioned that they had a number of very keen supporters who regularly attended events (the "converted"), or who took part in workshops with partners and support staff to discuss out issues related to diversity and "build links and understanding" [3-11]. Several interviewees reported that they had successfully put together working groups on various themes on the basis of these committed supporters in
the firms, including associates, for instances on work-life balance [1-5]. One interviewee, from a global firm, even reported that the trigger for setting up a diversity group around ethnicity was the "constant" phone calls from staff who had read about diversity initiatives in other firms and wanted to know what was going on in their firm in this respect. This level of interest gave the diversity committee the "confidence" to start such a group in their firm [3-7]. Overall, however, (like in the wider partnership) it seemed that these committed supporters were exceptional and the majority seemed to lack real enthusiasm for diversity policies.

The more frequent reports in interviews were of a lack of enthusiasm amongst associates, though diversity staff differed in the extent to which they allowed this to affect their efforts. One interviewee had "not picked up on there being a real big interest within the firm, at the moment, on diversity" [6-6] though there was significant interest in this firm in corporate social responsibility and pro bono initiatives. No groups in this firm, for example, had expressed an interest in affinity groups or employee networks, with the result that there were none in place [6-11]. In another firm, a diversity staff interviewee was concerned about sending an email round the whole London office about setting up a gay and lesbian network. They were particularly concerned that the possible negative reaction of some people (anticipated to be along the lines of "What the bloody hell's that?" [7-23]) may put off those interested in participating. Many interviewees agreed that reaching out to their firm as a whole, particularly on issues to do with sexual orientation, was "very difficult" [7-23].

Examining the reported lack of enthusiasm amongst associates for diversity policies more closely, it seems that there are two related issues in play. First, some associates (like some partners) seem cynical, particularly about diversity policies’ capacity to change the most engrained aspects of the culture of the City law firms. Secondly, associates may be reluctant to support diversity policies because there are no perceived long-term career benefits from so doing, and indeed it may even damage their prospects. These findings are examined in turn, drawing on the evidence from the interviews, and making links with parallel findings in the previous chapter on partners.
As many interviewees agreed, and the scholarship reiterates\(^{664}\) the dominant culture in ‘mega-law’ firms, including those City law firms which are the subject of this study, is “distinctive” in terms of:

\[
\text{the kinds of services lawyers provide, the sorts of clients they have, their relations with these clients, the way they relate to legal institutions and to the larger economic and political order}^{665}
\]

Central to this distinctive culture is the importance attached to long-hours, the availability of lawyers and client service generally.\(^{666}\) As already noted, one interviewee (a former senior partner of a firm in the sample) remarked in interview that:

[lawyers’] main focus is getting out results. Getting results for the clients. The client says X, the lawyer will do X [2-7]

As another interviewee put it:

It's the legal culture of billable hours, client focused... Clients want something, so we work 24 hours to get it out for them [8-32]

Some of the consequences of the importance attached by law firms to client service in an increasingly competitive market were explored in chapter 7 above, where it was argued that clients' demands about diversity have a significant effect on their law firms. Here it is argued that associates may be cynical about the prospects of diversity policies addressing these fundamental facts of life in City law firms.

Some interviewees recognised that certain diversity policies directly conflicted with the distinctive culture of City law firm life. One diversity staff interviewee said that, to some extent, her job involved “challenging the fundamental of years of a successful story... it's a mammoth task really” [8-32]. Unsurprisingly, there was evidence that diversity policies which appear to challenge the entrenched way of doing things are met with some skepticism and even opposition by associates. When one interviewee conducted a monitoring exercise in the firm, for instance:

\(^{664}\) For example, Galanter, n 238 above, Flood n 229 above, Galanter and Palay, n 211 above, and Wilkins and Gulati, n 212 above.

\(^{665}\) Galanter, n 238 above, 154

\(^{666}\) Sommerlad, n 86 above
there were some views, 'You can't ask those kinds of questions of people'... 'Why do we need this monitoring stuff anyway' and there were some people who said this is political correctness gone mad... it's bad for our business, it's bad for our profile

There was also a suggestion in interviews that some lawyers may have decided that diversity policies are not worth supporting because of the futility of challenging the fundamental ways in which the firm is currently organized. As one (non-lawyer) interviewee put it, there is a concern that “you can labour long and hard over many programmes and not get in a better position” [5-20]. However, while cynicism about the capacity of diversity policies to change the distinctive (and highly profitable) workplace culture may afflict associates and partners alike, there are also factors connected to the career structure in City law firms which means that associates may be particularly reluctant to support diversity policies.

Associates occupy a precarious position in the City law firm hierarchy. As these firms have grown, associates have been required in greater numbers while the firms have become increasingly “highly leveraged”, i.e. the ratio of associates to partners has gone up in order to increase profitability. 667 It is clear from the scholarship on lawyers’ careers that the position of associates within this pyramid-shaped staffing system is particularly precarious because under the promotion to partnership “tournament” only a tiny proportion of associates will be successful, while those who are not quickly “pass their sell by date” and have to leave the firms promptly under the “up or out” policy which Lee describes. As Lee shows, there are great rewards on offer for those who make partner, but “the price for failure is high” as the associate’s investment in the firm is lost and it will be obvious when the associate moves to another firm that he or she was passed over for partnership. 670

Galanter and Palay have explored the process by which associates in large law firms compete for partnership in some detail. They have show that the rules of what they call the “promotion to partner tournament” work to lock in associates and benefit the firms.

667 Wilkins and Gulati, n 212 above, especially 543 and Lee, n 66 above
668 Galanter and Palay, n 211 above
669 Lee, n 66 above, 192
670 ibid 193
Therefore, while lawyers work as associates they are incentivised to stay because “the firm implicitly tells [them] that it constantly evaluates them for a ‘super-bonus’ paid in the form of promotion to partner”.\textsuperscript{671} In other words, associates accept that their salaries represent only a fraction of the income they bring into the firm on the basis that they competing for much larger prize in the form of partnership. As a result, associates are motivated to work hard and acquire the “human capital” valued in the tournament, and partners are assured that associates are incentivised “not to grab or leave prematurely”.\textsuperscript{672} Lee points out that in addition to the financial reward, the deferred gratification of partnership also involves occupying the prestigious “central position in the organisation”. As he puts it, the distinction between partners and solicitors within large law firms “are there for all to see and is reflected in many aspects of the work of the firm”.\textsuperscript{673} Empson agrees on the significance of being made up to partner:

\begin{quote}
the lure of partnership persuades junior professionals to make personal sacrifices for the prospect of future rewards in the 'heaven' of partnership (i.e. the principle of 'deferred gratification' embodied within a legal structure).\textsuperscript{674}
\end{quote}

Therefore, according to the rules of this tournament, associates in City law firms are incentivised by the prospect of “heaven of partnership” to work long hours, be available round the clock, and also to get involved in marketing aimed as potential clients; as Sommerlad puts it, to try and show “commitment”.\textsuperscript{675} However, as Wilkins and Gulati argue, there is not only an incentive for associates to demonstrate their worth in this way, but also an incentive not to do anything which might jeopardize their prospects of promotion. Their research shows how this aversion to risk might affect the career decisions of minority associates particularly profoundly. They argue that because black lawyers in U.S. corporate law firms are already less likely to be on a track which would lead to partnership, and face diminishing opportunities in the lateral job market, they are particularly likely to:

\begin{itemize}
\item \textsuperscript{671} Galanter and Palay, n 211 above, 781
\item \textsuperscript{672} ibid 780
\item \textsuperscript{673} Lee, n 251 above, 190
\item \textsuperscript{674} L. Empson, “Your Partnership—Surviving and thriving in a changing world: The special nature of partnership” in L. Empson (ed), n 47 above, 17
\item \textsuperscript{675} Sommerlad, n 86 above
\end{itemize}
chose career strategies that either minimize the danger of sending a negative signal or conversely maximize their opportunity for being regarded as a superstar. Wilkins and Gulati show that the latter strategy is high effort and high risk, meaning that the black associate attempting to stand out has a greater chance of “failing big”, but the former strategy of “minimizing danger” is the more relevant here. The authors give a number of examples of strategies which black associates may deploy to reduce the chance of making damaging mistakes, for example avoiding projects which are likely to be closely scrutinised by partners or taking fewer risks when completing work. However, this research in City law firms suggests the same strategy of minimizing danger may also deter associates from giving their support to diversity policies. Therefore, not only is there is no incentive under the tournament’s rules for associates to invest time and energy in supporting diversity policies, but there is also a risk from being associated with novel and controversial policies about which a good number of partners are unenthusiastic.

Supporting diversity policies may therefore be a deviation from low risk strategies for associates in two ways. First, support may have the effect of flaunting aspects of identity (e.g. gender, sexuality) which would otherwise be expected to be covered in order to fit in with hegemonic norms, as discussed in chapter 11 above in the context of partners. Secondly, because diversity policies are regarded by so many partners with ambivalence, or even opposition on the basis that they threaten to unsettle the firm’s “winning formula” (also as shown above), there is a risk of appearing disloyal or radical by supporting them. It is clear from this research that diversity policies do have the capacity to attract fierce criticism, to the extent that even a senior partner’s open support was regarded as “sticking his neck out”, as discussed in chapter 11. As one interviewee put it, associates often found it more straightforward to work within the organisation as they found it rather than to try and bring about change:

  there’s something quite strong around comfort and not wanting to put their head above the parapet [1-19]

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676 Wilkins and Gulati, n 212 above, 574
677 ibid 577
678 ibid 574-5
For both these reasons, the potential for harming associates' performance in the "promotion to partner tournament" is so high, it could be thought of as a 'diversity disincentive', whereby associates are unlikely to lend their support and may actually do better to distance themselves from diversity policies.

As argued, the diversity disincentive is particularly likely to deter minority and women associates who are more likely to be concerned to avoid taking risks in their careers. The result is, of course, something of a Catch-22 situation. While minority and women associates are more likely to be concerned to “minimize the danger of sending a negative signal"679 they are also the focus of many of the diversity policies which City law firms attempt to implement. Therefore, the strategies by which minority and women associates attempt to succeed in the promotion to partner tournament operate to undermine the very policies which are designed for their benefit.

There was evidence from this research that those who had chosen to become involved in diversity policies were aware that there was a potential risk of seeming disloyal. As a former senior partner interviewee put it, during discussions on forming a women's network some years ago, participants expressed concern that it would be regarded by male partners as a “trade union” or “subversive” [2-16]. Another interviewee, commenting on the need for negotiations over flexi-working arrangements to be conducted carefully and thoughtfully by staff and the firm alike, said that “the more it becomes like a trade union negotiation, the less appetizing it gets” [5-22].

Even though this research was not designed to test associates’ views, there was indirect evidence to suggest that when choosing whether to respond to an invitation to get involved in diversity initiatives, associates were deterred by the potential effects on their standing in the firm. For instance, there was evidence that while associates were prepared to confide in diversity staff, or off the record in other ways, there was anxiety about becoming known by more powerful parties in the firm as someone who complains. One diversity staff interviewee described how lawyers in the firm came to speak to them about “bad

679 ibid 574
experiences because of their gender or sexual orientation or the school that they went to" in
the firm:

*I am the recipient of a lot of stories from other people because I am seen as
somebody who is relatively neutral*

The implication behind these comments is that those confiding in diversity staff do not
want their “bad experiences” recounted in a way which would identify them to those with
power over the careers, because this would risk sending the “negative signal” of which
Wilkins and Gulati write. Diversity staff, however, are seen as “relatively neutral” for these
purposes because they can, presumably, be trusted keep stories confidential. In this sense,
diversity staff can be a pressure valve within the firm, allowing the airing of bad
experiences in a potentially useful but safe and anonymised way that does not bring risk to
any one associate’s chances in the “tournament”.

Associates’ concerns about the risk of being thought of by partners as a complainer were
even recognised institutionally when, in one firm, it was thought preferable for a workshop
convened for women associates to be conducted under:

*Chatham House rules... You know, very much sort of come into a room, you know,
everything that’s discussed in this room is private, no names, etc, etc., the idea
being that we want to understand where are the issues*

However, associates were not only wary about publicly airing issues connected with
diversity, but also about supporting diversity policies when they were offered. There was
several examples of associates in the firms categorically rejecting certain diversity
initiatives designed to benefit them, much to the concern and surprise of diversity staff. One
diversity staff interviewee (from a global firm) described how they had raised the
possibility of a “female networking or mentoring scheme” about 18 months previously but
that “there was a resounding ‘No’” from women in the firm, on the basis (the interviewee
paraphrased) that:

*We don’t want this, we don’t want to be treated any differently to our male
colleagues*
The interviewee had been surprised by this reaction, and intended to test the water again "to make sure that we are still in the same place". However, at the last inquiry, the response was unequivocal:

*that was something I'd automatically thought we could start, but it was really very much a case of 'No' [3-12]*

Interestingly, in a different firm, at the time of the interview, women's networks were thriving while with regard to an ethnic minority network there was "absolutely no interest at all" [1-19] and as a result one had not been established. In another firm, there were women's and ethnic minority groups in place but members self-limited the groups to narrow fields of activity, for similar reasons given in other firms for not setting up groups in the first place. In this case, the women's group had told diversity staff that "they don't want special mentoring programmes" while the ethnic minority group (according to the diversity staff interviewee)

*were very much of the opinion that [recruitment] was the area of concern. Once someone is recruited, the group was saying they weren't treated any differently and they wouldn't want to be treated any differently, which is an interesting one. [3-9]*

These fears about the receipt of 'different' or 'special' treatment clearly spanned a number of firms and different groups within them. As such, groups of women or ethnic minority associates do seem to be discouraged from supporting the measures suggested by diversity staff on the basis that even the hint of different treatment would affect their standing within the firm's hierarchy.

However, this research did also find evidence of different initiatives faring well in one firm but not in another and this pattern may reveal that diversity staff tactics are very important in attempting to overcome this diversity disincentive. There is, for instance, evidence from the interviews of diversity managers repeating calls for participation after disappointing initial reactions, in some cases rethinking how the question is asked, and getting different types of responses. One interviewee described an email designed to generate interest in setting up a women's group, initially sent to all fee-earners in the firm. Due to a poor response, the group ended up with a single figure number of women taking part. According
to the diversity staff interviewee this low level of support was explained by the fact that "most people" had responded:

*We don't want to be treated differently because we are women* [1-5]

In this case a second email was sent a few months later to everybody in this firm (i.e. not just lawyers but all staff) with the more flexible options of volunteering to be on a committee or simply joining a distribution list for information. This time, the committee ended up being twice as large as after the first call, having been selected from a group of volunteers over twice the size, while:

*the mailing list in the first week was over 200 people* [1-5]

In this firm, successful social events are now held bringing together women “to start getting to know each other” [1-5], including women from levels of the firm. The repeated email, expanded list of recipients and differently structured options all may have contributed to the higher response rate the second time round. However, regardless of the explanation, it is clear from this example that while the diversity disincentive seems to be a powerful pressure on associates, tied in as it is to the career structure based on “delayed gratification”, low levels of interest in diversity policies are not necessarily immutable. This example shows that generating support for policies should be seen as a dynamic process of negotiation, albeit against a challenging background, rather than a one-off inquiry. Other diversity staff interviewees confirmed this when they spoke of their tactics to kick start diversity policies including holding high-profile events with outside speakers, running staff training or holding joint events with clients and pressure groups [7]. Furthermore, it has been shown above that securing senior partner support and support in the wider partnership are also crucial in helping to change attitudes throughout City law firms to diversity policies.

As far as associates are concerned, this section has drawn three main conclusions. First, it has argued that winning associates’ hearts and minds is a challenging task, and there is much work left to do. Secondly, it has pointed out that this task will have to proceed on two fronts: winning over the cynics who dismiss policies as powerless in the face of entrenched norms and also reassuring sympathizers that supporting diversity policies like group
networks will not feel like “putting their head above the parapet” or jeopardize their investments in their careers in the long run. Thirdly, it has argued that initial responses to diversity policies, whether they be a vehement “No”, or a rejection of ‘different treatment’, are not immutable, and there are ways of managing such exercises in order to elicit more supportive responses from associates. This latter finding will be explored further in chapter 13.

1.2. Trainees’ responses to diversity policies

Between them, the firms in the sample receive thousands of applications for training contracts and recruit hundreds of trainees every year. In 1999, the top ten City law firms sought to recruit 930 trainees, or 20% of the training contracts registered for that year.680

Interviewees suggested that diversity policies connected with the graduate recruitment process were the longest-standing in City law firms. For example, graduate recruitment teams have been monitoring gender and ethnicity of applicants and new recruits for longer than the data has been collected for the rest of the firms. Moreover, graduate recruitment teams have, since before the more general diversity boom, been engaged in initiatives such as holding recruitment fairs at a wider range of universities and events and schemes to encourage applications from groups outside the traditional pools of candidates (see Table A for more details of such schemes in the top five firms). Several interviewees explained that as a result, the graduate recruitment teams in their firms had the longest experience of certain diversity policies and that as a result, there were now close links between the graduate recruitment and diversity staff. For example, at least one diversity staff interviewee who participated in this research had previously worked in the firm’s graduate recruitment team and many other diversity staff interviewees work closely with them.

Once recruited to the firm, trainees join associates in constituting the ‘hearts and minds’, or targets of many core diversity policies, such as networks and mentoring schemes, and it would be easy to regard these two groups as indistinct for the purposes of analysing how policies are received in the wider firm. Indeed, very often interviewees talked of “fee-

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680 Lee, n 251 above, 183, citing The Lawyer, “Student Special” (February 2000)
earners” and while they did distinguish partners from other lawyers in the firm, they rarely distinguished between associates and trainees. Nonetheless, two points of distinction between trainees and associates could be detected in some of the interviews, and they merit mention here.

First, it was suggested by some interviewees that trainees are much more familiar with diversity issues and policies than those who were recruited to City law firms some time ago. This was explained as a consequence of the fact that younger people (who make up the vast majority of incoming trainees) “have come through an educational system where diversity is much higher on the agenda than it has been here” [1-46]. Some interviewees thought that diversity issues were important enough to applicants for graduate jobs that they may even influence applicants’ choice of firms. As one diversity staff interviewee (with experience of graduate recruitment) put it:

associates coming out of law school take a great interest in some of these initiatives that different firms do, and will evaluate firms based on that [8-19]

In other words, being seen to have diversity policies in place may be an important part of recruiting the best training contract candidates for City law firms, and attempts to make particular firms stand out by using league tables, links with interest groups and prizes from the legal press, have already been discussed. Another diversity staff interviewee said that they had seen applicants record on their application forms that they are attracted to the firm because of its diversity policies and “structures”, but they also suggested that they were usually referring here to the possibility of “flexible working” [1-46]. Another confirmed that when it came to persuading the “best” candidates to come and work at the firm, “we’ve got to be seen to be ticking all the right boxes for those individuals” [17-17]. When it comes to attracting recent graduates who may be more familiar with diversity issues than those who left education some time ago, the importance seemed to be

to be perceived as an organisation... at which people want to work... Diversity has an important role to play in selling us as an organisation [17-17].

The follow-on issue is, of course, whether these priorities endure as trainees work their way up the firms’ career ladders, or whether trainees would eventually end up conforming with the existing norms of law firm life, as discussed with reference to associates above. This
was a matter of speculation for interviewees. That a number of trainees had been asking about working “flexibly from day one” [1-46] was noted by one interviewee, but as a brand new phenomenon. However, one interviewee wondered if the importance of flexi-working would pale besides the pressures to earn a full salary. Another interviewee thought that the demands, for instance about working hours and holiday allowances from junior staff were a function of the current “sellers’ market” and that “when the market loosens, some of those social trends may suddenly be reversed” [5-23]. This was because demands which limit the hours someone works effectively make them “even more expensive to employ” [5-24]. Boon’s work on trainees’ intentions of engaging in public service work as lawyers has implications relevant to these findings, and it suggests that rather then triggering change from within, trainees who arrive with values which clash with the traditional norms in large law firms simply grow discontented the longer they work there.681

The second possible point of distinction between applicants and trainees on the one hand and associates on the other was that diversity staff and others in City law firms who make decisions about diversity policies seem bolder about rolling out policies which affect the former. This may reflect the views above, that more recent graduates were felt to be more ‘comfortable’ with these matters, but it also may be a consequence of these groups less powerful status in the firms’ hierarchy. Interviewees did not discuss this point frequently or at length, but some suggested that there were not the same misgivings about certain policies being implemented in this context. For example, one interviewee explained that questions about sexual orientation were first asked only of those coming to the firm for “vacation placements and graduate placements” [1-7] though they were later included in a survey for all the firm’s employees. Another interviewee explained that some of the “really good” initiatives first set up by graduate recruitment have “permeated automatically to the other type of recruitment we do, the practices we do on [the] lateral hire side” [4-2]. Policies that went well in the trainee/applicant context were sometimes, therefore, rolled out later to the workforce as a whole. This seems to link back to the perception that new recruits were more open-minded about these matters, but also to their standing in the firm’s hierarchy.

681 Boon, n 648 above
2. Support staff

It has already been established that City law firms are highly stratified organisations, with one highly visible and important division being between partners and other lawyers in the firm and other more subtle hierarchies found, for example within the partnership. A further aspect of the City law firm hierarchy is the division between what may be described as ‘lawyers’ and ‘support staff’. This division is so stark and so entrenched that one City law firm has referred to it as the “fee-earning fault line” and is attempting to take action to address the consequences. Interviewees reflected this binary thinking, though it was significant that the terminology they used varied, indicating that two categories are less clear cut that may be assumed. Acknowledging the central importance of revenue generating in the traditional distinction, some interviewees referred to “fee earners” and “non-fee earners” basing the distinction on the billing of a client for time. Following this terminology, staff such as secretaries or those in human resources, public relations, graduate recruitment, marketing, information technology, the post room, business development etc. fall into the latter category. However, other labels were also used to describe the parties either side of the fault line, including “lawyers” and “support staff”. While apparently a minor difference, the variation in terminology hints at the presence of some complicated underlying issues, including the categorization of lawyers who move into management and therefore stop billing for their time, or into roles supporting fee-earning lawyers. Furthermore, paralegals, who are sometimes charged out at an hourly rate equivalent to trainees, would fall into the ‘fee earning’ but not the ‘lawyer’ category. Mindful of these complexities, this section uses the term ‘support staff’.

Support staff do not just present complex issues relating to definition; they also present some challenging issues for diversity policy makers in City law firms. A key issue is that while a large proportion of support staff will be secretaries (there are 271 secretaries in the firm, according to Lovells’ diversity statistics and 327 according to Clifford Chance’s), there are many different other jobs within the category as noted above. When examined more closely the different employees within the category of support staff may in fact

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present a huge range of diversity issues spanning gender, ethnicity and flexi-working which are different to the issues which arise in the lawyer population.

These complexities may be drawn out from a review of the diversity statistics of three of the firms examined in Table A (see chapter 2 above, including for links to webpages displaying staff data cited below). In this case, the statistics of three firms are examined out of five because the sole purpose of this exercise is to show how firms differ from each other according to the terminology used to describe support staff, and to give an illustration of the complexity of diversity issues presented within support staff categories:

<table>
<thead>
<tr>
<th>Categories used to breakdown the London office workforce</th>
<th>Clifford Chance</th>
<th>Allen &amp; Overy</th>
<th>Lovells</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partner, Solicitor, Trainee, Business service management, Secretarial, Other non legal, Paralegal, Non-legal fee earner.</td>
<td>Partners, Associates, Other fee earners, Support staff-management, Other support staff.</td>
<td>Partner, Solicitor, Trainee solicitor, Other legal, Secretarial, Non-legal management, Other non-legal.</td>
<td></td>
</tr>
<tr>
<td>Secretarial data</td>
<td>99% female (N=381)</td>
<td>Other support staff (includes secretaries) 70% female (N=691) 14% flexi working</td>
<td>98% female 59% ethnic group “unknown”</td>
</tr>
<tr>
<td>42.6% flexi working (N=126)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Selected data about other support staff categories</td>
<td>Paralegal 80% female (N=51) Non-legal fee-earners 25% female (N=3) Business service management 9% declared minority ethnic (N=30)</td>
<td>Support staff-management 62% female 22% flexi-work</td>
<td>Non-legal management 59% female 78% ethnic group “unknown” Other non-legal 75% ethnic group “unknown”</td>
</tr>
</tbody>
</table>
The review of the data relating to support staff on these three firms' websites raises a number of interesting issues. First, the inconsistency of the categories used to breakdown the firms' London office workforces confirms the definitional difficulties surrounding support staff, as discussed above, and hinders straightforward comparison between firms. Secondly, the data shows how diversity issues presented themselves differently in support staff categories than in the fee-earning parts of the firm. For example, the data shows that secretaries in these firms are almost always women (99% and 98% in those firms above which provided data exclusively about secretaries), as are a high proportion of other support staff such as the paralegals at Clifford Chance (80%) or the "support staff-management" at Allen & Overy (62%).

The data suggests other differences between support staff and the fee-earning parts of the firm. For example, the data suggests that the rates of flexi-working in support staff categories are much higher than for lawyers. At Allen & Overy, for example, as set out above 14% of "other support staff" and 22% of "support staff-management" flexi-work, compared to 2% of the partners and 3% of the associates in the firm. Finally, it seems that the patterns of ethnic minority representation are also different among support staff compared to the rest of the firm. The Lovells data (which is only broken down by gender and declared ethnic status, being minority or non-minority) suggest that in this firm the proportion of declared non-minority support staff is very low, and even lower than in the fee-earning roles apart from the partnership. In this firm, only 1% of partners, 4% of solicitors, 10% of trainees, 14% of associates, 1% of secretaries, 1% of non-legal management and 1% of other non-legal groups are declared minority ethnic. This is a similar pattern to Clifford Chance, where only 9% of business service management and one of the non-legal fee earners were declared minority ethnic (lower than the 15% of associates and 16% of trainees). However, this data needs to be viewed with caution, as the
percentages of support staff for whom ethic status was "unknown" are higher than in other parts of the firm where this data is available (Lovells). Here, the percentages of "ethnic group unknown" for the support staff categories are very high: 59% for secretaries, 78% for non-legal management and 75% for other non-legal. This is compared to 13% of partners, 42% of solicitors and 23% of trainees for whom this is also the case.

This basic snapshot suggests that diversity policies may need to be tailored to address support staff separately to the firms’ lawyers rather than simply including them all in the same policies. However, the interview evidence suggested that currently support staff are included in diversity policies rather than being considered separately. For example, some interviewees suggested that invitations to launch new initiatives like employee networks were emailed to the whole firm, including support staff, and that a small number of support staff did indeed take part. Another interviewee explained that staff groups in their firms were open to support staff too, and in one case a general staff committee included a representative from amongst the personal assistants in the firm [6-6]. Indeed, one diversity staff interviewee was particularly determined that diversity networks and working groups should be rolled out to the firm as a whole, without drawing a distinction between, as the interviewee put it, “fee-earners and support” [1-5] (which had been made in the past).

On the practical side, the point was made by this interviewee that if support staff were excluded it would be hard to get sufficient numbers of people to constitute a flourishing minority ethnic or LGBT network. From a more principled perspective, this interviewee felt that it would be wrong to launch policies designed to encourage “inclusion” to just a section of the firm [1-5]. Elsewhere in this interview reference was also made to diversity training that had been conducted for “all of the partners [and] all of the senior support staff” [1-4].

However, beyond these efforts at inclusion, when support staff were mentioned in interviews, it was often to express some wariness about how certain firm-wide diversity initiatives would be received:
You might have a contact to talk about what it's like to be gay in a law firm but you might not have a contact within IT, or within other areas, you know, the mailroom or other areas of business services where I have no idea about how people are perceived or how a gay person would be perceived in that environment. So I think we feel that we need to go slightly steady on this [8-2]

It is indicative of the distinct sub-groups within the support staff category that even though diversity staff are support staff themselves, interviewees felt unable to predict how initiatives would be received by parts of the firm like the mailroom. This also suggests that diversity staff seem to have better contacts with lawyers than support staff; the concern about the lack of contacts with certain support staff contrasting, for instance, with the report from one interviewee of their confidential talks with lawyers, discussed above.

Overall, this is another area which merits further and more detailed research, and which seems to have been overlooked by the scholarship on City law firms. This preliminary investigation suggests that support staff need to be accounted for separately in discussions of City law firms, but that it would be an error to adopt the traditional binary thinking between lawyers and everyone else when the reality is more complex. Moreover, while some City law firm diversity policies include support staff, it is argued that this may not be efficient as diversity issues may present very differently even across the various categories comprising support staff. Overall, this research suggests that both academics and practitioners may need to focus more on support staff within law firms.

3. Conclusion

It is tempting to over-simplify the responses of associates, trainees and support staff in City law firms to the diversity initiatives which are addressed to them. However, this research has highlighted some of the complex ways in which diversity policies interact with groups at different parts of the hierarchy within City law firms.

In the case of associates, the pattern of responses to diversity policies seemed to have much in common with that amongst partners. There was evidence in both groups of pockets of supporters, but also of more general cynicism about diversity policies and wariness about the associated risk of drawing attention to individuals' "covered"
characteristics. However, this chapter has argued that associates have an extra disincentive, due to their precarious position on the law firm career ladder. Associates are in the midst of a highly competitive tournament for promotion in which women and minorities are especially mindful of sending negative signals. Diversity policies, with their whiff of disloyalty are therefore viewed with caution, particularly by those they are designed to benefit.

Trainees and support staff were discussed much less by interviewees than either partners or associates. As diversity policies are so novel, it seems that interviewees’ primary preoccupation was winning over powerful partners and then bolstering support amongst associates. The impact of diversity policies on trainees and support staff would therefore merit further, detailed research. However, the evidence from these interviews did raise some interesting suggestions. First, it appears that diversity staff may be more inclined to try out bolder policies on the trainee or vacation scheme groups first (for instance the collection of more ‘controversial’ statistics) and some are emboldened further by the belief that younger people are more comfortable with these issues.

The category of ‘support staff’ is, in itself, much more problematic than that of ‘associate’ or ‘trainee’ and covers a huge range of work within the firms. Most interviewees were mindful of including support staff in firm-wide invitations, and one or two support staff were mentioned as members of firm diversity groups, but the bulk of diversity work seemed directed at lawyers. The danger seems to be that law firms may be lulled into a false sense of security by support staff statistics on gender, ethnicity and flexi-working which could be read as “better” than the equivalent for lawyers. However, this would be to miss the possibility of different, complex issues for these staff. More needs to be done to investigate the range of cultures and individual experiences within the category of ‘support staff’.

While this chapter’s focus has been associates, trainees and support staff in City law firms, the secondary finding has been to show how diversity staff are required to interact with people at every level of law firms, in addition to the firms’ leaders as highlighted in
Chapter 11. This chapter has shown that in addition to conducting negotiations with partners, diversity staff may well act as confidants for associates, organize firm-wide diversity training, become involved in the recruitment of trainees and vacation scheme students and be required to judge the mood in the mailroom. Diversity staff therefore have a wide-ranging and pivotal role in implementing and managing diversity policies within law firms which brings them into contact with every part of their firms' hierarchy. The role of City law firm diversity staff and their navigation of insider and outsider power relations are explored in the next chapter.
Chapter 13
Diversity staff

1. What do diversity staff do and how successfully do they do it?
   1.1 The ranking of diversity staff in City law firms
      1.1.1 ‘Official’ factors affecting the ranking of diversity staff
      1.1.2 ‘Unofficial’ factors affecting the ranking of diversity staff
   1.2. Four tried and tested negotiation tactics
      1.2.1 Tactic One: Leverage every exogenous pressure possible
      1.2.2 Tactic Two: Win over the partners first
      1.2.3 Tactic Three: Make the most of contacts
      1.2.4 Tactic Four: Be realistic

2. Conclusion: Differences between the diversity policies in City law firms

Summary:
Diversity staff are essential to understanding the diversity boom in City law firms. This is because the implementation and management of diversity policies depends on the ability of diversity staff to navigate the outsider and insider power relations which define those firms' actions.

Negotiation lies at the heart of the work of these diversity staff, though in practice, the effectiveness with which they could carry negotiations with others in their firm out was found to vary widely. The differing levels of accomplishment could be explained by the relative bargaining power wielded by diversity staff in each case. These levels of power were the product of two connected factors. First, the ‘ranking’ of the diversity staff within their firms and secondly, their ability to use a series of widely-endorsed negotiation tactics.
On closer examination, diversity staff in different firms seem not only to have varied success in negotiating with others within their firms, but seem to be conducting negotiations about a range of different matters as diversity policies are better established in some firms than others. Accordingly, diversity staff are an important subject of study in their own right, but also provide an insight into the degrees to which diversity policies have developed in different City law firms.

1. What do diversity staff do and how successfully do they do it?

It is different and difficult sometimes. There’s certainly a big challenge for us as HR professionals to influence and persuade. If you can do that effectively then you’re fine. But if you can’t, you’re going to struggle [17-11]

The majority of the interviewees for this study were diversity staff in City law firms, though interviews were also conducted with others (see Appendix A, Table D). These others included diversity staff in investment banks, whose evidence provided another angle of the work of diversity professionals.

Though their backgrounds and exact job descriptions varied (as examined in 1.2 below), the diversity staff from City law firms were largely in agreement about the nature of the tasks that fell within their remit. Interviewees agreed that, above all, the focus of their jobs was to “influence and persuade” those within law firms of the merits of certain diversity policies. This, of course, may be explained as a matter of pragmatism: diversity staff work in lawyer-owned and lawyer-managed organisations and for this reason, they could not dictate policy, even if they wanted to. However, there was also a hint in some of the interviews that negotiation ought to be central to advancing a diversity agenda because persuasion was the key to effecting lasting change in this sort of policy area. Therefore by necessity and perhaps also by preference, interviewees agreed that central to the job of diversity staff was the ability to “influence and persuade”. This echoes Parker’s findings in her study of EEO officers in Australian companies. Despite the legal context of Parker’s study being different to that for City law firms in the U.K. (because Australian sexual harassment law has been designed to incentivise companies to implement policies), it is significant that Parker found EEO officers reported that:
strategies of persuasion must be used to ensure senior management support for [sexual harassment policies'] initial development, resourcing, and effective implementation

As discussed below, a number of the strategies which Parker reports the most effective EEO officers using have much in common with those described by the interviewees for this study.

Negotiation is therefore key to the work of diversity staff in City law firms. However, the interview evidence also suggested that not all diversity staff in the sample were equally successful negotiators because they enjoyed differing levels of bargaining power. Their bargaining power affected the ability of diversity staff to negotiate with others in their firms, particularly with powerful partners (whose critical role is described in Chapter 13 above). This research suggests that in practice, the levels of bargaining power enjoyed by diversity staff is a product of two, connected factors, first their 'ranking' within firms and secondly their ability to use certain widely endorsed negotiation tactics. These two factors are explored further in sections 1.1 and 1.2 below.

1.1 The ranking of diversity staff within firms

The 'ranking' of diversity staff is used here to describe their position within the hierarchical structure of City law firms. This ranking is important because it represents the starting point from which diversity staff negotiate. As discussed below, this ranking is largely out of the control of diversity staff themselves, i.e. as opposed to the negotiation tactics they might chose to adopt, which are examined in part 1.2 below. In practice, on the basis of this interview evidence, this ranking seemed to depend on the interplay of certain 'official' and 'unofficial' factors.

1.1.1 'Official' factors affecting the ranking of diversity staff

The 'official' factors affecting the ranking of diversity staff firms refer to factors which arise from the organisation of diversity staff jobs in City law firms. Thus, official factors relate to the office held by diversity staff within these organisations, and are distinct from

Parker, n 156 above, 34
any ‘unofficial’ factors relating to diversity staff as people such as their gender or part-time work arrangements, which are considered in section 1.1.2 below. Section 1.1.1 will therefore consider the importance to ranking of job title, location of diversity staff within the firms’ organizational structure, and the experience of those given responsibility for diversity policies in law firms.

As currently arranged, there strong links between human resources (‘HR’) and diversity staff in City law firms. Typically, diversity staff in City law firms are based within HR the departments, usually even if they have hold a title along the lines of ‘diversity manager’. Being based in a ‘support’ department (as discussed in chapter 12 above), and being non-fee earners in lawyer-led organisations has a significant impact on their bargaining power within firms. Chapter 11 discussed evidence from the interviews that diversity staff found lawyers difficult to negotiate with across this “fault line” because they could be conservative, cynical about diversity and demanding when it came to ‘proving’ a certain diversity policy’s worth.

It is also important to remember that few of the interviewees worked in diversity issues full-time. Only three firms which participated in interviews for this research at the time of the interviews had a designated ‘diversity manager’ or job with a similar title. In most firms in the sample diversity policies were instead one part of the responsibilities assigned to one or two members of the HR team. (The exceptions were one of the global firms based in the U.S., where diversity issues in the London office were the sole responsibility of one of the firms’ partners and also one of the U.K. firms in the sample, where a partner currently had responsibility for diversity policies in the firm, and it was not clear the extent to which HR supported this function. The comments about diversity staff being non-lawyers clearly do not apply in these cases). On the majority of occasions, therefore, diversity policies were the day to day responsibility of members of the HR team working alone or with one other member of staff and with some secretarial support. There were therefore very small numbers of people in each City law firm with responsibility for diversity policies on a day to day basis. This contrasts with the position in other types of businesses, including banks which are discussed in more detail below. As a bank interviewee put it, contrasting the
position of diversity staff in banks and law firms, “we have teams or individuals, but more often teams who focus on this, so we are experts in certain topics” while in law firms, “sometimes people have [diversity] as a passion or a part-time job” [10-5].

The finding that most law firm diversity staff have a range of HR responsibilities as well is significant, not only because some clients see their own arrangements are superior. The finding highlights the fact that diversity staff in City law firms do not have unlimited time to work on diversity issues. In fact, most work under a great deal of time pressure because they are juggling a range of tasks both connected to HR and to diversity. As one interviewee put it:

\[
diversity\text{ for me is just a small part of my other role... so it's something that I think we try and fit into our every day role but obviously sometimes it gets forgotten about because you are fire fighting and you're doing stuff that could potentially end up costing us money now, rather than thinking about in a few year's time } [6-10]
\]

As a former senior partner of a firm in the sample said of diversity staff, on the assumption that they also have HR responsibilities:

\[
they are in the middle of the salaries round and a [diversity] questionnaire comes in, it's about the last thing that they want [2-11]
\]

As noted above, interviewees commented that surveys and applications for diversity prizes were valuable, but a “time consuming old business, so you have to pick your moments” [7-21]. Another added that it was “frustrating” only having a limited amount of time to devote to diversity:

\[
My\ role\ is\ a\ generalist\ role,\ diversity\ is\ only\ one\ aspect\ of\ that\ and\ therefore\ you've\ got\ to\ be\ very\ selective\ in\ what\ you\ can\ get\ involved\ in [17-14]
\]

At least some of those interviewees with other HR responsibilities thought that the diversity element of their jobs merited a full-time commitment. One said “I could do it [diversity] all the time” [7-28]. In reality, they have to prioritize tasks, sometimes, as noted above, on the basis of “fire fighting” those that seem most urgent.

On the basis of these findings about the links between City law firm diversity staff and HR functions, it is unsurprising that the typical career history for the staff responsible for
diversity policies in City law firms was dominated by HR experience, as confirmed for at least six of the interviewees. However the research also found that there was a split in the interview sample between those who had worked in different roles within the same City law firm for most of their careers before assuming responsibility for diversity policies, and those who had been laterally hired into their current roles, usually from other sectors outside law. Of the former group, their careers had always included HR, but had also included work in areas like graduate recruitment and knowledge management. In the latter group, six diversity staff who participated in this research had come to work in City law firms from other sectors outside the law (usually from finance or professional services) and one partner interviewee had also worked in another sector. While all of these lateral hires (apart from the partner) worked in HR related roles before moving in the legal sector, two stated that this had included extensive experience of diversity policies.

The significance of the split between laterally hired and 'long term law firm' diversity staff on their ranking within firms is difficult to express accurately, partly because (as noted above) it is not simple to compare the ranking of most interviewees to one another. For example, of the three interviewees who were called 'diversity managers' (or similar) two were lateral hires but one had worked in the law firm in other capacities previously, so there did not seem to be a clear pattern even for this part of the sample.

However, even if previous experience did not obviously seem to affect the types of diversity jobs staff occupied within firms, prior experience of other sectors did seem to benefit interviewees and may have had an effect on their ranking in practice. For example, those interviewees with experience in other sectors often deployed it in interview to give a comparative view on the position in City law firms. Those who did so universally suggested that the legal sector was lagging behind other sectors they had worked in, in terms of addressing diversity, for example:

*diversity generally in [the other sector] has been a long way ahead of here* [1-25]

One partner (from a global firm based in the U.S.) admitted that, compared to other professional services firms and banks "we are way behind the curve" [14-4]. One diversity staff interviewee said that, were they looking for advice about diversity policies, their "port
of call” would be “our clients and other professional services firms... rather than other legal firms, because they’re further ahead” [8-27]. Another interviewee used their experience of another sector to comment that:

I think one of the benefits of coming to diversity late, for the legal sector, is that there’s a lot of best practice in place, so nobody’s having to trail blaze. We’re in a position where we can take the experience and then move it on [1-26]

An implication of having been laterally hired from a sector widely regarded as more advanced in terms of diversity was that such staff regarded themselves (and may well have been regarded by others) as being in a good position to manage the diversity policies in law firms. One put it this way:

I guess I have the advantage of having done diversity the first time it came round [4-12]

However not all had positive accounts of how issues like diversity had played out in these other sectors in their experience. One interviewee said that they were “hardened or scarred” [5-2] by their experience in another sector of faddy “flashes of interest” in different topics, which clearly affected this interviewee’s attitudes to the exogenous pressures about diversity in the legal sector. Nonetheless, for a job for which there is no formal qualification or certification yet available (which itself worried some interviewees, who would have liked this), previous experience and the perspective that it brings seems to be regarded as valuable. It is perhaps unsurprising that to find evidence that lateral hires claimed an advantage in this respect.

This research also found that those diversity staff who were lateral hires gave an account of their dealings with others in City law firms which made them seem bolder when compared to the accounts offered by staff with law firm backgrounds. If these lateral hire accounts were accurate, this may be explained because, as a number implied, having already moved between sectors at least once, they were not planning on spending the rest of their careers in the law, and they therefore felt less of a need to be cautious. Furthermore, several lateral hires spoke of the benefits of having contacts in other sectors and suggested that they were in regular communication with them. As one put it, they were “well-connected” in the diversity world. [1-12].
Laterally hired diversity staff also sometimes expressed frustration with how law firms were managed, in particular drawing differences with how companies are organized. In particular, some commented that lawyers were difficult to work with, or too slow to change their minds. However, the challenges of negotiating with lawyers were commented on with equal frequency by long term law firm staff. Both sets of diversity staff seemed acutely aware of these problems and of the tactics (to be discussed in part 1.2) which might be adopted to overcome them.

Experience of another sector, therefore, does not seem to have a discernable effect the official job titles and ranking of diversity staff in law firms, or help overcome the gulf between lawyers and non-lawyers in firms. However, it may affect how diversity staff who have been laterally hired do those jobs and how they are regarded. From these interviews, there is evidence that such experience seems to bestow confidence, contacts and the ability to make comparative insights, which may all be useful for the difficult in-house negotiations diversity staff have to undertake.

It is interesting briefly to compare the position of diversity staff in banks at this point.\textsuperscript{684} From the small number of interviewed for this study, the tentative conclusion is that in banks, the situation of the diversity staff seems to be very different to their peers in law firms. In banks, diversity staff work in larger, more established and specialized teams rather than on their own. This research also suggested that bank diversity staff work closely with other teams based in the banks' overseas offices, particularly the U.S. In contrast, their law firm peers, as discussed above, usually work, day to day, on their own or in teams of two or three (at the most) within HR and no interviewees mentioned that any of the firms' overseas offices had diversity staff based there. Furthermore, from the three bank interviews conducted for this study, it is a tentative finding that those responsible for diversity policies in banks seem to have more varied career histories compared to diversity staff in law firms, in two cases having moved into current roles from entirely different (and

\textsuperscript{684} See also the discussion about the relative size of banks and City law firms, and the impact on the number of staff who are covered by diversity policies in chapter 7 above, which draws on the work of Barmes and Ashtiany, n 24 above
in once case, notably prestigious) areas within the firm and in the third having had a long standing career in an different sector first. Therefore, diversity staff in investment banks seem to enjoy more prestige and support and have better contacts overseas than their peers in City law firms. This serves as a useful reminder that there is nothing inevitable about the way that diversity staff in City law firms work and the ranking which they have within the firms, as described in this part.

1.1.2 ‘Unofficial’ factors affecting the ranking of diversity staff

It is important also to consider the ‘unofficial’ factors which may have an impact on the ranking of diversity staff. These include factors connected to the identity of diversity staff such as gender and personal politics, but also flexi-work status and the time pressure many work under.

As the negotiation experts Fisher and Ury remind readers of their classic text:

A basic fact about negotiation, easy to forget in corporate and international transactions, is that you are dealing not with abstract representatives of the “other side” but with human beings. They have emotions, deeply held values and different backgrounds and viewpoints; and they are unpredictable. So are you.685

As discussed elsewhere in this study, the most important negotiations which diversity staff conduct are those with the partners in their firms, and these negotiations take place in the context of an official hierarchy which creates a great imbalance of power in the partners’ favour. But what about Fisher and Ury’s reminder that people, not offices, conduct negotiations? This suggests that the identity of partners and that of diversity staff may also affect their negotiations. Partners, according to the top five firms’ own metrics as well as other data referred to in chapter 11 are overwhelmingly likely to be white, male and to work full-time.686 In contrast, though it was not a statistically significant sample, the diversity staff who participated in this research were mostly women and several worked

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686 Statistics on partners’ gender are discussed in chapter 11 and ethnicity in chapter 3. For the five firms’ considered in Table A, the rates of flexi working amongst partners in the London offices according to the published diversity statistics were 0% (Clifford chance, London office), 6% (Linklaters, U.K. office), 2% (Allen & Overy, U.K. office), 1% (Freshfields), and not given for Lovells.
part-time. Appendix A, Table C shows that twelve interviewees from the U.K. and global law firms were women while three were men. (Two of the three bank interviewees were men and one a women). While work status was not formally investigated as part of this research, it emerged during the course of three interviews with U.K. law firms and one of the bank interviews that the interviewees worked part-time. Indeed, for at least one interviewee, the move into their present diversity role was in part driven by a desire to work in a job which was itself "quite flexible" [18-3] for family reasons. Gender and work-status may, therefore, contribute to the sense in which diversity staff are outside the mainstream in City law firms, and these differences with the vast majority of partners may exacerbate the one-sidedness of negotiations already being conducted within a formal hierarchy.

Regardless of whether they worked part-time or not, nearly all the diversity staff explained in interview that they were very busy. This was partly explained to be because they many had other HR responsibilities as well as diversity, as discussed above. However, it was also suggested that there had been an explosion of activity in the 'diversity world', meaning that interviewees received many questionnaires, media requests, applications for prizes and requests to appear at conferences. Particularly time-consuming jobs which fell to some included completing clients' questionnaires about diversity and preparing submissions for surveys and applications for awards. However, interviewees also had responsibility, as already noted, for (inter alia) staff training, preparing memos on potential diversity policies and pitching them to the partnership, sitting on diversity committees, implementing policies, dealing with interest groups, liaising with overseas offices and reviewing and digesting the latest literature on diversity issues.

Despite being extremely busy, the majority of interviewees expressed high levels of commitment to their work and to diversity issues generally, even in those cases where the partners were not entirely supportive of diversity policies in the firms. Many diversity staff interviewees seemed to share a personal commitment to improving equality and diversity in their firms. Indeed, some interviewees indicated points during the interviews when they were speaking from a personal viewpoint (rather than as an office-holder), which involved the expression of frank views, for instance, about law firms lagging behind other sectors,
or about the difficulties of negotiation with lawyers. One interviewee (from a global firm), for example, did not think that more legislation was the answer from her perspective as someone working in diversity in a professional capacity, but she could see the arguments for strongly framed equality law (and even quotas) if she shifted her viewpoint:

If I was 49 now and wasn't getting through the door, I would want legislation to force employers to see me... if I was a female associate thinking 'I'm going to have to leave this profession that I have loved and I'm very good at, because this firm will not allow me to work flexibly', I would want some serious pressure tomorrow, and if that has to come from the Law Society, or legislation, you might want to do it... as a black graduate who can't get a foot through the door, you might want quota systems [3-27]

It was also common amongst interviewees for them to talk of their 'passion' for diversity-related issues. The interviewee quoted above also said “I love talking about this stuff to people” [3-21], and several spoke of how they had moved into the diversity area out of personal interest; for example one interviewee spoke of how their role shifted as:

I gradually began to get more and more interested in the diversity slant [2-1]

Diversity staff in this sample were, therefore, predominantly women, who as a group worked part-time at higher rates than the lawyers in their firms, busy, enthusiastic about the issues and, in several cases, holders of strong personal views about diversity and equality, which they expressed in terms indicating that they diverged from the official line associated with their job. At least a good number are, therefore, perfect candidates for the group Meyerson and Scully have called “tempered radicals”, being:

individuals who identify with and are committed to their organisations and also to a cause, community or ideology that is fundamentally different from, and possibly at odds with, the dominant culture of their organisation

As Meyerson and Scully observe, tempered radicals often do work they feel high levels of personal commitment to but in a workplace which “often reflects norms that make sense to and derive from the historical experience of white, middle class, fairly conformist, male employees”. They work to preserve their legitimacy within these conservative contexts while also trying to maintain their hopes for social change:

687 Meyerson and Scully, n 155 above, 266
688 ibid
they do not want to become so captivated by fitting in that they forget who they are and why they want to make changes. Nor do they want to rock the boat so hard that they risk not being heard or taken seriously, or even being shown the door. 689

Meyerson and Scully’s description of the tempered radical also seemed to fit at least one of Parker’s Australian EEO officer interviewees, who described herself as "a little bit of a social change agent in the business world." 690

It is, of course, likely that not all diversity staff in this study’s sample would be comfortable thinking of themselves as tempered radicals. Only a number, for example, expressed strong personal views about diversity and equality while others did not refer to any underlying ideology connected to their jobs at all. Nonetheless, any member of staff in a law firm whose job involves implementing diversity policies and is ambitious about effecting change within the organisation is likely to be seen as a radical, regardless of their personal politics, as discussed in preceding chapters, because of some lawyers’ view that these policies are designed to destabilize the traditional “winning formula” in City law firms. Diversity staff, therefore, include those for whom Meyerson and Scully’s term is an excellent fit, but also those who, because of their work rather than their personal views, perhaps have to resort to the same tactics as these tempered radicals in order to do their jobs well.

In terms of the tactics which tempered radicals and other successful diversity staff use, the findings of this research are discussed below in part 1.2. The tactics which this research found that successful diversity staff in City law firms use in their work fit well with uncovered by Meyerson and Scully’s research on tempered radicals, as well as with those recommended by negotiation experts, Fisher and Ury. There is also some overlap with the findings of Parker’s research, about the tactics deployed by the most effective EEO officers in Australian financial services firms. However, it is important to note that in this case, the EEO officers were involved in implementing a particular Australian law which incentivised companies to develop their own sexual harassment policies, and therefore the context is different to that of this study.

689 ibid
690 Parker, n 156 above, 36
1.2 Four tried and tested negotiation tactics

Part 1.1 discussed how the ranking of diversity staff within the hierarchy of law firms is affected by official and unofficial factors. Understanding this ranking is important because it is the starting point for diversity staff in those negotiations which form the core of their job. This section complements part 1.1 by looking at those tactics which diversity staff deploy, from their position within the hierarchy in their firms hierarchy, in order to negotiate successfully. These four tactics were distilled from the interview data as a whole and should therefore be regarded as an account of ‘best practice’ rather than any one interviewee’s actual approach. Nor are the four tactics set out below a comprehensive survey of all the tactics which interviewees described, but rather they represent an attempt to identify some of the most recurrent. In practice, some interviewees were not able to use any of these tactics and had achieved little to date in their firms, while other interviewees used a combination of them to great effect. The outcome of the work of diversity staff across different firms will be considered , in the conclusion to this chapter. However, the four tactics below were widely endorsed by interviewees, whether they got to use them or not.

1.2.1 Tactic One: Leverage every exogenous pressure possible

In keeping with Part 2 of this study, diversity staff interviewees emphasised, above all else, the importance of leveraging every possible exogenous pressure in order to make firms’ leaders pay attention to diversity issues. One interviewee, for instance, identified the enthusiasm which prominent client companies showed for diversity issues as “a persuading factor” [4-15] which would help generate support for diversity policies within the firm.

There is no need to repeat here the different exogenous pressures that are in play, or the reasons why partners find certain of them compelling. However, it is interesting to note that while partners may well become aware of these pressures direct for example raised by their client contacts in relationship meetings, diversity staff were aware of creating extra impact by ensuring that these pressures receive as much publicity as possible within firms. Tactics of this sort included circulating emails and information about client pressures; one interviewee described how:
when we get information in from a client asking for bid information, then we try to communicate that to a wide as number of partners as we possibly can [17-5]

This tactic, the interviewee said, assisted greatly in his task of “pushing, communicating, educating partners about the importance of diversity” [17-6]. Finally, as noted above, diversity staff are also assisted in publicising exogenous pressures by the legal press’ coverage, which one interviewee said helped her “enormously” [1-17]. Successful diversity staff are therefore adept not only at monitoring but also promoting exogenous pressures about diversity to assist them in their negotiations within the firm.

1.2.2 Tactic Two: Win over the partners first

There is always more that we can do. But the onus is on the HR team, primarily, to identify what those issues and initiatives and projects are, how they impact the bottom line... and then persuade and influence first of all the diversity committee and then secondly the rest of the partnership to buy into them [17-13]

Successful diversity staff are not only part of, but also expert observers of, the hierarchy in City law firms and they use this know-how to help them “persuade and influence” the partners. Meyerson and Scully noticed the same phenomenon in their study of tempered radicals, commenting on how some of their research subjects “wrestle with how to use their savvy insider knowledge to advance the changes they envision” (268). Virtually every interviewee in this study showed a high level of detailed insider knowledge about the individuals within the partnerships, the partnership as a whole and emphasised the critical importance (whether they had managed it or not) of winning partner support for diversity policies. This strategy has been examined in some length from the perspective of the partners in Chapter 11; what is interesting to note here is how skillfully some diversity staff set about the task.

There is evidence that successful diversity staff use their insider knowledge of the firm and the partnership to present their message about diversity policies in terms which are as compelling as possible. Put another way, diversity staff are following Fisher and Ury’s advice to

*Put yourself in their shoes. How you see the world depends on where you sit... The ability to see the situation as the other side sees it, as difficult as it may be, is one of*
the most important skills a negotiator can possess. It is not enough to know that they see things differently. If you want to influence them, you also need to understand empathetically the power of their point of view and to feel the emotional force with which they believe in it. It is not enough to study them like beetles under a microscope; you need to know what it feels like to be a beetle.691

In practice, it is obvious from the interviews that diversity staff spend a lot of time thinking about partners’ perceptions of diversity policies, and how to present ideas in ways that they would find most compelling. As reflected in the quote that opened this section 1.2.2, and as has been discussed elsewhere, this often involved presenting potential diversity policies in ‘business case’ terms. Such negotiations also required patience; as one interviewee put it, the process of persuading partners is:

coming slowly, in terms of highlighting and reinforcing things like the business case for diversity and seeing some of the good stuff that’s happening [18-13]

The business case was commonly used in this way, and thought by some interviewees to be a powerful way of winning over cynics. One interviewee (from a global firm) described how they prepared for questions from a “cynical partner”:

I’m very conscious of trying to ensure that the deliverables are tangible... So if you have a cynical partner, or any member of staff for that matter, saying ‘What’s the point? Why are we doing this?’ we can say XY and Z [3-5,6]

Preparing the business case arguments for the partners to digest was spoke of in the vast majority of interviews, even in the few cases when interviewees did not agree with the business case themselves. One interviewee spoke of preparing arguments in terms of the business case “possibly to convince some people” [1-14] even though they thought that it was “creative writing” [1-14]. However, it remained difficult to win over partners who are not enthusiastic, even with the business case, as discussed in chapter II above.

Understanding their perspective and presenting arguments in ways which partners would find palatable resulted in diversity staff using a variety of tactics. As one interviewee put it, when strategizing in that firm about which diversity-related issues to address first, the plan was to start with gender because it:

is quite long established and it tends not to raise too many hairs on the backs of people’s necks [4-6]

691 Fisher and Ury, n 685 above, 23-24
However, there were also a number of occasions where it was clear that interviewees had deduced, but did not agree with, partners’ attitudes to diversity. One interviewee (in classic tempered radical language) explained that “I don’t really think [X situation is fair in this firm], although the partners would tell me that that is not the case” [1-11]. In other cases, interviewees distinguished between the ‘official’ line on a particular policy and their own views, which were different, often using the word “personally” as a sign when they were expressing the latter. For instance:

*Personally, I think for the firm, we need to look at retaining women* [6-11]

Nonetheless, even where staff expressed their differing, personal views, they all adjusted their approach to in-house negotiation mindful, as Fisher and Ury recommend, of empathizing with those whom they are required to persuade.

As part of this tactic, some diversity staff took a great deal of care to anticipate the different views of different partners, tweaking their message depending on which partners they were addressing. Sometimes, interviewees suggested, presenting diversity policies in terms of the business case worked well, but for other partners it was better to emphasize justice and that diversity policies were the right thing to do. One interviewee (from a global firm) used a variety of arguments to appeal to as wide a base of partners as possible:

*I have found that both [the business and the moral case for diversity are] of equal importance... there's a spread so you'll have some partners where they're going to respond more to the business case than to the moral case* [3-4]

Because of the structure of law firms, it is been argued that it is absolutely essential for diversity staff to win over key partners and sufficient numbers of the wider partnership. This echoed Parker’s findings that “savvy” EEO officers could supplement gain extra “clout” by making links with senior staff in their organisations.692 Therefore academic research, as well as expert negotiators, confirms what diversity staff already regard as a vital; winning over senior people. In the process, diversity staff in City law firms build up extremely detailed knowledge about the perspective of partners, and the most successful use this knowledge to shape their negotiations to great effect.

692 Parker, n 156 above, 39
1.2.3 Tactic Three: Make the most of contacts

As Meyerson and Scully put it, “tempered radicalism can be lonely” so supporters are “crucial”.\(^{693}\) Parker, citing Braithwaite’s study of affirmative action officers in Australia, confirms this. Braithwaite found that these officers were “the most effective when they were well networked with other affirmative action officers, and the affirmative action agency”. She also found that without such contacts, officers became less radical, and drifted towards the views of senior management.\(^{694}\)

It has already been established that many diversity staff interviewees in this study either worked alone on diversity matters day to day in law firms, or with just one or two others. Many stressed the value they attached to allies inside their firms and those individual partners and associates who are themselves passionate about diversity have already been mentioned in this study. However, interviewees also found outside alliances very helpful, particularly when contacts and networks enabled them to share their experiences. In this respect, the research confirmed one of Meyerson and Scully’s “tempered radical” interviewees who stated of being part of a discussion group that “it normalized and validated our experiences”.\(^{695}\) Interviewees for this study found it valuable to discuss what tactics had gone well or badly for a peer in another firm, and to share experiences; one, for example, said that it was “fascinating” to talk to a peer in another City law firm who was a lateral hire from another sector because “[the person at the other law firm] has done it all before” [3-29]

Some interviewees had good working relationships with individuals at pressure groups whom they talked to about difficult issues, or invite into the law firm to run training sessions. Other interviewees had developed friendships with people who worked in diversity at other City law firms with whom they met regularly (“We were keen to get together and discuss things... to sort of learn and to help move a little bit faster, in the same

\(^{693}\) Meyerson and Scully, n 155 above, 271


\(^{695}\) Meyerson and Scully, n 155 above, 271
way that we know the investment banks share information and talk together” [8-17]).
Others kept up their contacts from other sectors where they had worked before the City law firms.

Therefore, the most valuable contact for diversity staff seemed to take place outside formal forums like the Law Society’s (see chapter 6). For instance, one interviewee commented that even if diversity staff chose not to have links with an organized, professional diversity forum,

\[\text{there are still quite a lot of individual relationships as well that people use really just to get a heads up, or just get some ideas about how to make it work [4-20]}\]

Other interviewees spoke of regular, private meetings between groups of contacts. Several interviewees spoke of meetings which took place under Chatham House rules [1-33] [7-18] which allowed frank discussions about the activities diversity staff were engaged in and the problems they were facing. It was described as vital to the workings of these independently organized groups (which a few interviewees mentioned) that they were small in number and based on personal relationships and trust, allowing members to speak frankly and in confidence. [1-33], [3-17].

The vast majority of interviewees collaborated in some way with peers in other firms and found such collaboration useful. However, one interviewee sounded a note of caution. While recognizing that it was “useful” to discuss “common problems” with peers in other law firms, this interviewee felt that collaboration had:

\[\text{its limits because in the end what you need to do needs to be specific to your firm and your business and your population and your needs and we all have rather different views. [5-4]}\]

Though this was the only explicit evidence that interviewees thought that collaboration with peers had its limits, such limits were implied by others, though on the basis of competition rather than because each City law firm was different. One interviewee, for instance, mentioned that they would not broadcast an innovative policy to peers before it was launched but afterwards would be happy to discuss it [7].
The vast majority of interview evidence suggested that diversity staff in City law firms approved of collaboration and drew strength from it, especially from their more informal links with peers outside their firms, both in and outside the legal sector. As noted above, in contrast to their peers in investment banks, law firm diversity staff usually work alone on diversity policies or in very small teams, and the nurturing of a variety of contacts may well be a way of compensating for this. As one interviewee summed up:

Learning from others’ experiences can help the potential success of any initiatives that we may implement [16-3].

1.2.4 Tactic Four: Be realistic

Meyerson and Scully emphasize the importance of “small wins”\textsuperscript{696} for tempered radicals who are trying to “find a middle course between conformity and stridency”. Diversity staff in this research also spoke of the value of being realistic, of recognizing the worth of small victories. As one interviewee (from a global firm) put it:

if you try and do it all, it just becomes this enormous mountain. So we have tried to do it in bite-sized chunks, which I think has helped us enormously [3-20]

Several interviewees spoke of setting themselves fairly modest goals in the short and medium term. One said that they regarded each development in the firm as a “step” in a “journey” [8-24] and another interviewee used the same image:

we’re on that journey where we’re trying to get people to accept that diversity is just another way of working... and that doesn’t happen overnight [17-11]

Others described how in practice this meant setting “bite-sized” goals annually, including improving the firm’s performance on various interest groups’ rankings exercises. Goals were modest partly out of pragmatism; it would clearly not be effective for diversity staff unilaterally to set a goal of creating, say, a fifty percent female partnership in twelve months. However, it also recognised the importance of winning people over, which was regarded as more likely if changes happened gradually:

I think the firm needs to be comfortable with what they want diversity to do for them, because I think if it’s something radical that’s been imposed on them, then people are going to do the minimum that they need to and no more... I think that they need to be comfortable so that they actually will move forward as a group, rather than having a very large dissenting population [4-19]

\textsuperscript{696} Meyerson and Scully, n 155 above, 269-271
One interviewee (from a global firm) spoke of having to temper goals according to the appetite in the firm, for example choosing "softer" goals rather than suggesting quotas, say for the trainee intake. [3-21]. There was near universal recognition that, as noted earlier in the chapter, diversity staff saw their jobs as "to influence and persuade" rather than to force changes through. This was reinforced by the negative feedback directed at diversity staff from those who had opposed policies to date, for example brandishing "political correctness gone mad" [4-11]. However, another interviewee spoke was resigned to the fact that even when goals were set incrementally, criticism "was bound to come your way from somebody" [4-31].

The reluctance to generate negative feedback meant that diversity staff repeatedly rejected the suggestion that they could, or would, force anything on anybody within their firms. Instead, they stressed that lasting gains had to be built incrementally. In this spirit, one suggested that the disadvantage of legislation advancing diversity was that it was

   too forceful... you've got no choice and therefore I think, psychologically, partners are saying... we have to do this, I don't particularly want to do this and therefore in their mind I don't think often they've bought into it [17-18]

In the long-term, one interviewee hoped, the firm would "own diversity" [1-34] but in the short term, focusing on small wins, was the preferred and more realistic tactic. While the evidence considered in chapters 11 and 12 shows that this does not mean that diversity staff wait for unanimous support for policies to proceed, they do regard it as necessary to be incremental, empathetic, persuasive and, above all, mindful of their own bargaining position when it came to implementing diversity policies within City firms.

2. Conclusion: Differences between the diversity policies in City law firms

All the City law firms which participated in this research had someone who is responsible for diversity policies, whether they are currently called a diversity manager or not. This is one aspect of the diversity boom of recent years described in chapter 3 above.

However, this chapter has attempted to look more deeply into the roles, ranking and tactics of diversity staff and has found that whilst peers in different City law firms do have much
in common, especially in terms of how they negotiate, there is also variation behind the scenes at different firms. In particular, this conclusion will argue that there is variation about how effectively diversity staff are able to negotiate, and also what they are negotiating about. In this sense, diversity staff illustrate a more general finding about the differences between City law firms in terms of how well diversity policies are established which will be explored further in this section.

This chapter has concluded that diversity staff in different City law firms have much in common, because negotiation is at the heart of all of their jobs and because of how they fit into their firms' hierarchy. In terms of ranking, while their formal job titles and position in the firms' organizational structure vary, all share the fact that they are non-lawyers working in lawyer-led organisations. Personal characteristics and radical beliefs may further affect this ranking, but even the most conventionally minded diversity staff have responsibilities which are likely to bring them into conflict with the traditional norms in their organisations. From this starting position, diversity staff increase their bargaining power by using certain, widely-endorsed negotiation tactics, which echo those scholars have attributed to tempered radicals, EEO officers in other countries, and those recommended by expert negotiators.

However, there were also important differences between the diversity staff in this study. First, there were differences in terms of how effectively diversity staff were able to negotiate within any given firm. As discussed in this chapter, and elsewhere in part 3, this is largely determined by the attitudes of key partners and of the wider partnership. In one case where the senior partner had personally associated himself with the firm's diversity policies, diversity staff reported being protected from criticism within the firm, and able to be more adventurous and innovative. In another case, however, diversity staff rarely engaged with partners and wondered how, in other firms, the partners were persuaded to talk about diversity at all.

The second difference between diversity staff in City law firms relates to the types of diversity projects they find themselves negotiating about. While nearly all diversity staff interviewees described the issues that their jobs touch upon as difficult and novel, on closer
examination, interviewees were in fact were grappling with a wide range of problems. For instance, some diversity staff were engaged with the complex problems of adapting diversity policies for overseas offices, or strategizing about particularly challenging issues, including sexual orientation diversity policies. As one such interviewee put it:

*diversity is new in the legal sector, and within diversity, sexual orientation is a very difficult topic because people are so desperately embarrassed about it, so it's the hardest one I think because it's so totally invisible [1-23]*

Typically, City law firms which had been engaged with diversity policies for over a year seemed to have originally prioritized certain issues, and having made some progress in this regard, were now turning to address areas of diversity perceived to be more challenging, like sexual orientation, disability, or changing the wider culture. For example, in one firm where they had done eighteen months’ work on diversity, having prioritized gender and flexi-working and established a diversity committee structure, the interviewee stated that now attention was turning to new areas of diversity where policies are in their “infancy” [18-9].

On the other hand when some interviewees referred to their jobs as ‘difficult’, they were referring to much more preliminary tasks such as coming up with a working definition of diversity for their London offices or beginning the process of collecting staff diversity data. For instance, the interviewee whose firm seemed to have been actively considering diversity issues for the shortest time explained that there:

*[the diversity committee] is quite new, they’ve only met a few times... the kind of things that we’re talking about here is, you know, what is our definition for diversity?... and why do we want it, because I think that’s still a point for discussion. [4-3]*

In particular, the ‘cutting-edge’ issue of sexual orientation diversity policies brought the range of different firms’ diversity activities into sharp relief. Some interviewees, for instance, were close to setting up LGBT networks and had sought expert advice on how to do so, while other interviewees were “eager” [3-7] but had not made any real progress on the issue. Others said that in terms of both race and sexual orientation diversity policies “we’re not quite sure what to do here” [4-6] and that even in terms of monitoring staff “we have yet to have some of those debates and discussions” [18-10].
The word 'new' or equivalent was also widely used by most interviewees to describe the issues which underlay their work, for instance:

*I think it's a new thing for a lot of people* [4-26]

*This is a relatively new thing to the firm* [6-1]

*We're just in a very early conversation* [8-11]

However, again, on closer examination, there was variety between the different firms as to what this actually meant. Some staff were confident and comfortable in their roles, and had good working relations with at least some partners. They were planning for the years ahead, building on foundation of past work on related issues (in at least one case, interviewees had been working on these issues for two years [7-1] and several had a year or more's service), which themselves had grown out of long-standing graduate recruitment or pro bono efforts. By ‘novelty’, however, others meant they had been recruited recently and were currently working on preliminary issues such as defining diversity and deciding what diversity policies should be tackled first (several talked of still having to set the "agenda" [4-7]). As one interviewee put it, “this is a relatively new thing to the firm... and I’m sure that there’s lots more we could be doing” [6-1].

This section does not attempt to rank or rate law firms in terms of diversity; indeed, parts of this study suggest this is being done by many outsiders already. Instead, having explored the perspective of diversity staff it has argued that the pattern of progress of diversity policies across City law firms is complex, when considered both by firm and by issue. While to the outside observer, there may appear to be a good deal of similarity between City law firms because all have someone responsible for diversity policies and most display their diversity statistics, statements, memberships and prizes on diversity webpages, this research found evidence that behind these outward looking policies, City law firms are in very different positions. The final conclusion to this study argues that this patchy pattern of commitment is one of several, important consequences of how the diversity boom in City law firms has come about.
Conclusions

1. Conclusions relating to the diversity literature
   1.1 The drivers of City law firms’ diversity policy-making
   1.2 What the diversity boom has meant within City law firms
   1.3 The extent of the implementation and effectiveness of diversity policies

2. Conclusions relating to the legal profession literature
   2.1 City law firms as a distinct group
   2.2 Insights into legal careers in City law firms
   2.3 Insights into non-legal careers in City law firms

3. The longer term implications for the diversity boom

This chapter reviews the main conclusions of this research and explains how these findings contribute to the key areas of the underlying scholarship identified in part 1. It is not intended to duplicate the detailed conclusions presented within each substantive chapter, but rather to draw out the main findings of the research and to relate them to the scholarship reviewed at the outset of the study.

This chapter is set out in three sections: the first discusses those conclusions which most closely relate to the diversity literature addressed in chapter 2; the second addresses those conclusions linked to the scholarship about the legal profession. The final section develops the conclusions further by considering the longer term prospects of the diversity boom in City law firms.
1. Conclusions relating to the diversity literature

The central findings of this research relate to the drivers of City law firms’ diversity policy-making, and these conclusions are considered in the first section below. However the research also yields insights about the extent to which the diversity approach defined in chapter 2 has been embraced by City law firms. Moreover, though auditing the policies in place was not a goal of this research, there are also conclusions which may be usefully drawn from it which shed light on the extent of the implementation and effectiveness of diversity policies in City law firms. Each of these sets of findings are considered below in relation to the underlying diversity literature discussed in chapter 2.

1.1 The drivers of City law firms’ diversity policy-making

The diversity literature’s explanation of the shift to diversity policies in the private sector emphasises the threat of litigation and the persuasive power of the business case arguments, which some scholars, such as Dickens and McGlynn, have unpacked in detail. However, this research found that neither of these drivers adequately accounted for the diversity policies which had been implemented in City law firms. In this case, the threat of litigation and attraction of business case arguments per se were found to be less important than influence of clients, the legal press and certain interest groups. In other words, the nature of the parties pressurizing firms was found to be more significant than the type of arguments being deployed. This reflects the broader account of the drivers of diversity policies put forward by Rutherford and Ollerearnshaw, for example. As the chapters in part 2 argued, in this research, certain powerful outsiders brought diversity issues to the attention of City law firms, pressured them to take specific action and provided the means by which diversity staff could negotiate with partners in their firms. In some cases, therefore, exogenous pressure directly triggered specific action like the client which caused a law firm to set up a women’s network, or the LGBT interest group which had through its league tables and other events triggered some firms to set up LGBT groups and address the question of sexual orientation monitoring for the first time. However, more generally, the pressure created by outsiders worked as a “galvanizing force” to make sure that partners were (in most cases) prepared to implement diversity policies, if only to keep up with the “perceived acceptable standard” as set by peers.
As discussed in part 2, clients, the legal press and interest groups exert the most important influence over City law firms in relation to their diversity policies. Of the groups of clients, this research was careful to examine the particular categories of clients which were responsible for exerting pressure on firms about diversity, finding that public authorities, U.S. companies and banks were most likely to do so. This is a particularly interesting finding for three reasons. First, it shows that the equality duties which apply to the public sector by way of legislation may have an indirect effect on the private sector through the procurement process (albeit that interviewees found that the public sector’s questions about diversity were the least challenging). Secondly, it shows that developments in the U.S. may, via the client-law firm relations, have a direct effect on London law firms, which is a specific example of the U.S. influence on the U.K. which Webb mentions in general terms in her work. This research found therefore that policies which are therefore more common in the U.S., such as ‘supplier diversity’ programmes may, thanks to the globalised market for legal services which Flood, Galanter and Palay have described, be having an effect on City law firms. Thirdly, this research found that pressure which may be exerted on companies in respect of diversity, for example through shareholder activism or litigation (for example, in the case of Wal-Mart in the U.S.), may be circulated on to those companies’ professional service providers, even in other jurisdictions.

A further important finding of this research was the limited roles played by The Law Society and the Government, despite both of their public commitment to increasing diversity in the legal profession. Neither the Government’s nor the Law Society’s initiatives seemed to have a major impact on City law firms’ diversity policies in practice, though there was some evidence that certain interviewees had found the DCA’s pressure to publish certain diversity statistics helpful. Meanwhile, though the complex backdrop of anti-discrimination legislation was reflected in social groups named in the five firms’ diversity statements examined in chapter 3, overall the research found that diversity staff perceived their work as being detached from the law. Their perceptions of the underlying law were that it set a minimum compliance standard and was negatively framed because it set out the grounds on which firms may be sued. In contrast, diversity staff regarded their own work as
above and beyond the confines of the law and as a far more creative and positive project. This thinking is consistent with a shift from the equal opportunities towards the diversity approach to equality. However, the absence of thought by participants in this research about the “chilling effect” of the equal treatment principle still enshrined in much U.K. legislation confirmed the unease expressed by certain scholars about diversity policies clashing with the law.

This research also found that peer pressure between City law firms played a critical part in driving the diversity policies which City law firms had implemented. Peer pressure between City law firms must be understood as having been catalysed by the larger changes to client-law firm relations outlined in chapter 7, which mean that firms can no longer take relationships with key clients for granted and that competition for work has become more intense between firms. Thus, this research suggested that peer pressure to take certain steps as regards diversity is part of a larger shift noted in the literature, for example by Regan, Wilkins and Galanter, in the power relations between these law firms and their clients.

Other outside parties were found by this research to exacerbate the peer pressure between City law firms. Interest groups and the legal press, for example, intensify peer pressure by circulating information about firms, sometimes in forms which openly ranks them against each other, such as league tables. However, behind the façade of such public naming and shaming devices, these groups also facilitate the circulation of know-how between firms (and sometimes other organisations) which enables them to learn from each others’ experiences. This research therefore showed that while public competition for prizes and places in league tables is important, so is the private collaboration between diversity staff in different law firms which may result.

1.2 What the diversity boom has meant within City law firms

The diversity literature considered in chapter 2 highlighted different uses of key terminology, but it was argued there that it was nonetheless possible to think of distinct equal opportunities and diversity approaches to equality management. In that chapter, the equal opportunities approach was associated with equal treatment, compliance with the law
and the formalization of procedures such as recruitment and promotion. After a review of the underlying key concepts, the diversity approach was then defined as a theory of diversity management concerned with valuing the differences between all individuals in the workforce, not limited to those differences covered by law. The goal in this latter case was found to be that the differences between people would be harnessed to transform the organisation concerned, most importantly to improve business performance in some way.

This research shed some light on the substantive issues behind City law firms’ apparent shift to the diversity approach (discussed in chapter 4) and their use of these concepts. By way of background, this research found that diversity was regarded by interviewees as a new and self-contained project, distinct from any earlier initiatives relating to equality, as discussed for example in chapter 13 which described how diversity staff focussed on small wins as their initial priorities. This finding must be seen in the light of the diversity literature which clearly argues that there has been no clean break in practice between equal opportunities and diversity policies. Despite this literature, and despite chapter 3’s showing that there had been pressures on City law firms about equality dating back for some years, interviewees did not refer back to earlier equality policies in their firms in the context of discussion diversity policies. Consistently, diversity was presented as a novel project; as one interviewee noted, around the time of her “arriving here two years ago, it [diversity] suddenly started taking off” [7:1]. Looking more deeply at the extent to which the diversity approach has been embraced by City law firms is therefore instructive to understanding whether there has been a wholesale, novel adoption of the diversity approach in practice. Of the three key features of the diversity approach identified in chapter 2, this research found mixed evidence about the extent to which each had seemed to be embraced by City law firms. Each of the three features set out in chapter 2 are considered in turn below.

The focus on individuals
A key feature of the diversity approach is the valuing of difference between individuals rather than the social group focus of the equal opportunities approach. An analysis of the top five firms’ diversity statements in chapter 4 showed that in four cases there was emphasis in those statements both on valuing individualism and difference and on
particular groups. One statement however focussed solely on groups. In each of the five statements, the groups referred to reflected the six equality strands emphasized by E.U. and EHRC. Indeed, the continued importance of groups is consistent with Ashtiany and Barmes' findings in the context of investment banks discussed in chapter 2.

In addition, the research suggested that it is partly because the diversity policies in place in City law firms are driven by exogenous pressures, that they may be more likely to be group-centric and to focus on particular groups only. For example, referring to the list of diversity policies in chapter 4, this research suggested that women and ethnic minorities were the main focus of the disclosure of staff diversity data and (along with LGBT staff in the case of some firms) of employee networks, where these had been set up. This focus can, in turn, be understood in terms of the nature of the exogenous pressures on City law firms; thus, the research found that the important roles played by groups like Stonewall and Opportunity Now drove the firms to consider initiatives particularly in respect of the LGBT workforce and women respectively. Moreover, the most common request from clients was reported to be for diversity statistics (by groups) while the Black Solicitors' Network and Commission for Racial Equality have, for two years, requested information from law firms showing the percentage of ethnic minority and women lawyers, factoring these data into their high-profile league table of law firms. Indeed, the Government's request for diversity statistics, while not regarded as decisive by the majority of interviews, even set out a pro forma where statistics were set out according to gender, ethnic minority status and flex-working status. As discussed in chapter 4, almost all firms in the sample now provide data about their workforce, but they focus on these groups, plus (on some occasions) disability but only very rarely address other groups (such as Linklaters' statistics about LGBT lawyers in its U.S. offices). Thus, the main focus of monitoring and employee networks in practice was found to be women and ethnic minority staff, though other groups were implicated in some firms in the sample.

However, some policies in place in City law firms are not simply orientated to one or other of the equality strands listed by the E.U. or EHRC. For example, some policies were aimed at parents of either sex, taking the form of emergency childcare or lunchtime parenting
seminars, in addition to launch in several firms of coaching aimed at new mothers. Moreover, as discussed in chapter 3 and chapter 11, a number of firms reported having established mentoring relationships with local schools as well as other policies to encourage ‘non-traditional’ candidates to apply for training contracts. These schemes took the form of extending recruiting efforts to ‘new’ universities which do not have a history of successful applicants for training contracts, or of helping local school children gain an insight into the legal world and encouraging them to consider a career in law. As discussed, these policies may be understood in terms of the legal profession’s (and, according to Abbey and Boon, particularly City firms’) sense of its professional duty to “do the right thing”, but also in light of the preoccupation of the scholarship and certain high-profile groups like the Sutton Trust with the effects of class on the legal profession. As noted, Nicolson identified class, race and gender as the “big three” issues in terms of research into the legal profession.

Overall, out of the six equality strands identified earlier in this research, it was found that women and ethnic minorities were the central focus of a number of key diversity policies in City law firms, though LGBT staff and disabled staff were sometimes the focus of data collection or particular initiatives in some cases as well. However, here seemed to be little work done being in firms which addressed issues connected with other equality strands, being age, religion or belief. On the other hand, as discussed, some policies had a slightly different orientation, addressing the position of parents of both sex and class issues. Thus, the position seems to be more complicated than a simple shift from equal opportunities to the individualistic orientation of the diversity approach, despite the impression created by many interviewees of a clean break with the former and embracing of the latter. While the thrust of these findings may well disappoint diversity advocates like Kandola and Fullerton and Thomas who argue that individualism is the key to the diversity approach they may (in respect of the groups which are covered by the policies in place) reassure those like Kirton and Greene and Liff who express concern about the move away from a social group focus as detracting from the real sources of disadvantage.

The business case
To a certain extent this research has confirmed the position described by McGlynn in its finding of the widespread use of business case arguments for diversity in the legal profession, especially by the Government, Law Society and interest groups. However, though the business case was found to be important in that it helped to shape the dialogue outside and inside City law firms and was even expressed to be part of their diversity statements, the research also established that it would not be accurate to argue that business case arguments per se had persuaded City law firms to act in respect of diversity; rather the nature of the parties pressurizing firms better explained their respective influence.

The business case was found to be important in shaping the dialogue between diversity staff and partners, especially in terms of explaining new initiatives. There was some evidence that it helped to convince some partners of the merits of proceeding with a particular initiative and that diversity staff were encouraged to present new initiatives in these terms. Furthermore, as set out in chapter 4, business case language featured prominently in four of five law firms' diversity statements. However, the research also found that in practice the business case element of the diversity approach was not universally accepted in law firms, and indeed it could be highly problematic for diversity staff. In particular, the lack of conclusive 'proof' to back up claims that diversity improved organisations' performance was seized upon by some skeptics in City law firms, particularly amongst the partnership. This bears out McGlynn's warnings about the underlying empirical fragility of the business case. Indeed, some interviewees reported having to deal with the inverted business case logic pointed out by both McGlynn and Dickens, namely the business case justifications for a homogenous workforces and not implementing equality policies.

Furthermore, this research did not find that the arguments making up the business case for diversity per se adequately explained diversity policy-making in City law firms. In this respect, interviewees spoke instead of lawyers' deep attachment to status quo and the reluctance of the majority of partners to change established ways of doing things, which clearly evoked Webb's case study, discussed in chapter 2. The findings here link back to main conclusion of the research that the push of outside pressures is more important in explaining firms' diversity policy-making to date than the pull of the business case.
arguments. The research therefore suggests that the debate about the effectiveness of business case arguments in practice needs to be widened to take fuller account of the nature of the parties which are pressurizing law firms as well as the terms on which they apparently do so. For example, according to this analysis, the importance of meeting clients' demands clearly outweighed the impact on City law firms of the business case arguments put forward, say, by the Government or the Law Society. Moreover, while groups like Stonewall were found to be influential, this was due to the power which they had leveraged through the use of league tables, membership schemes and advisory services more than it was the result of their business case advocacy.

**Transformative potential**

The idea that diversity had the potential to open up the status quo in transformative ways was almost entirely absent from the way that City law firms have implemented the diversity approach. Indeed, this research found that diversity staff had to reassure partners across the sample that diversity initiatives were not a threat to “merit”, which was understood to underpin the existing way of doing things.

Chapter 2 identified two obstacles to tapping into the transformative potential of diversity in practice, the first being that the measurable progress of certain groups exercises more of a pull than more radical wholesale transformative goals, and the second being a reluctance to challenge the status quo. Both obstacles were found to be in operation in this research. The pull of the measurable progress of certain groups has been discussed above in respect of the focus on the individual. Meanwhile, the reluctance to tamper with the status quo was also found to be a very powerful factor in City law firms. Indeed, though diversity staff may have had personal, ‘radical’ views about the need to transform aspects of City law firms, they were often required to reassure partners that diversity project was consistent with the traditional ways of doing things. Even so, the research suggested that there was still an aura of disloyalty around diversity policies, which was found to explain the reluctance of associates and even some partners to become associated with them. This also seemed to contribute to the self-limiting tendencies of some employee affinity groups. Therefore, when Rackley suggests that in the context of the judiciary, the initiatives to date
can be considered "diversity light" because they focus on numbers not transformation, on
the basis of this research the same phenomenon could be said to be present in City law
firms.

1.3 The extent of the implementation and effectiveness of diversity policies
This research highlighted a diversity boom in City law firms in terms of the increased use
of diversity language, the increased number of equality management policies compared to
the 1990s, and the influence of the diversity approach. In respect of the latter, the
substantive parts of the research found that while the some of the participants regarded the
setting up of diversity policies as novel and a clean break compared to what had gone on
before, there was also evidence that key parts of the diversity approach had not been
embraced in the ways envisaged in the diversity literature.

This research also found that all the firms in the sample were subject to the same sort of
exogenous pressures. Nonetheless, there were signs of divergence within the sample even
in terms of the top five firms' diversity statements, where chapter 3 showed that four were
very similar in showing the influence of the diversity approach, but one remained rooted in
the equal opportunities approach. Though it was not a goal of this project to audit the
effectiveness of the policies in City firms, the findings of the research do suggest (even
though they did not explore in detail) that some firms in the sample were taking a much
more proactive approach in this area than others. Referring back to Healy's typology, as
updated by Kirton and Greene,697 many of the firms in this sample seem to share certain
characteristics of the "compliant" organisations, particularly in light of the resentment of
line managers to "HR interference", concern to comply with the law and business case
focus (in certain respects). However, many of the same firms in the sample were also
showed to be concerned with "doing the right thing" (e.g. in the case of encouraging non-
traditional applicants, where diversity efforts may blur with pro bono, as discussed in
chapter 11): Many firms in the sample were also concerned to develop and implement best
practice, at least to the extent that diversity staff were mindful of collaborating with peers to
learn what worked well and thereby of informing their own policy developments.

697 Healy, n 104 above, updated in Kirton and Greene, n 3 above 207
Furthermore, as discussed in chapter 11, diversity staff in several firms enjoyed senior partner support, but one firm in particular had a senior partner who personally championed diversity. These latter characteristics are associated in the Healy/Kirton and Greene typology with the "comprehensive proactive organisation".

However, as discussed above, in the same City law firms diversity policies tend to have a narrow focus on particular groups (especially women and ethnic minorities). It would not be accurate, therefore, to suggest that they had policies which were individualistic in the way described by Kandola and Fullerton, or which focused in a comprehensive way on all of the six equality strands referred to in this study. Indeed, even the firms which had some comprehensive/proactive characteristics, as noted above, were still in the very early stages of considering how to frame policies to cover the issue of, say, sexual orientation and had seemed to have taken no steps in relation to other equality strands such as age. Moreover, other important features of this top category of organisation in the typology were entirely absent across this sample, including the linking of equality and diversity to the performance objectives both of individuals and the organisation.

A minority of firms in the sample seemed to display characteristics of the "minimalist/partial organisation" in this typology. In particular, in one firm referenced throughout the chapters in Part 3, equality and diversity was found to have a very low profile for the partnership, with the member of staff in charge of diversity struggling to persuade partners to spend time discussing related issues at all. Unsurprisingly, this firm had not developed any detailed policies to overcome discrimination or promote equality and diversity, though this was something which the interviewee was personally keen to do.

To sum up, this research found that there was variation in terms of how different firms in the sample had implemented diversity policies in practice. In terms of the limited focus of the policies in place (predominantly women and ethnic minorities), most firms had some characteristics of the compliant and comprehensive/proactive organisation but did not display all of the characteristics of organisations in these categories. Meanwhile, one firm seemed to fit into the minimalist/partial category. In respect of the strands of equality which
even the leading firms were just turning to, such sexual orientation, all the firms in the sample fell into this last category as they did not yet have in place detailed policies backed up with monitoring.

In terms of understanding and explaining these differences between firms, chapter 13 which considered the position of diversity staff within firms' hierarchical structures is key. This found that diversity staff in some firms occupy much more influential positions in their organisations than others, which is a function of their employment history, experience, job title and other responsibilities in the firm. However, the main criteria enabling diversity staff to bring about change was found to be senior partner support, which was identified as vital throughout the research, as was expected in the light of work by Rutherford and Ollerearnshaw and the Guidance of the EOC, discussed in chapter 2.

The status of diversity staff and the levels of senior support which they enjoy directly affected their ability to deploy the tactics which were recognized across these interviews as key to the effective implementation of diversity policies. These tactics were leveraging exogenous pressures, winning over the wider partnership first, making the most of external contacts, and focusing on small wins. As discussed in chapter 13 these findings are consistent with expert work on negotiation and with the literature about the workplace practices of "tempered radicals" in other contexts. These findings are also consistent with the diversity literature about effective workplace policies. Thus, the work of Sturm on effective workplace problem-solving schemes in the U.S. highlights the importance of leveraging a broad range of actors and of capacity-building through collaboration. The importance highlighted by this research of the effective use of exogenous pressures and of diversity staff utilising their external contacts both link into this work. Moreover, the importance of winning over the partnership clearly ties into the work of Webb, Todd, Rutherford and Ollerearnshaw who (as discussed in chapter 2) all write about the importance of those with responsibility for management of the workforce buying into policies. Indeed, Webb’s case study showed how policies failed when managers were not supportive. Accordingly, this research builds both on the scholarship which has analysed
the difficulties and challenges of bringing about change in organisations (e.g. Webb) and also that which has considered what makes workplace policies effective (e.g. Sturm).

2. Conclusions relating to the legal profession literature

The goals of this research as expressed in chapter 4 also related to furthering the scholarship concerned with the legal profession, specifically our understanding of City law firms and those lawyers who work in them. This section discusses the research outcomes in this respect.

2.1 City law firms as a distinct group

This research has confirmed that City law firms are distinct from the rest of the solicitors’ profession and that they have close links to other businesses in the City. More specifically, it found that City law firms as a group face distinct, exogenous pressures as regards diversity.

In particular, Lee’s scholarship and the President of the Law Society’s findings that City law firms regard the Law Society as having virtually no relevance to them were confirmed by this research, with the exception, perhaps, of those interviewees who valued attending the City Forum run by the Law Society. This research also decisively confirmed Flood’s analysis that City firms occupy an elite stratum alongside other businesses in the City and more closely identify with these peers than other types of solicitors’ practices. The research found that City law firm diversity staff sought, utilized and highly valued links with these other businesses (such as banks and accountancy practices) as well as with other City law firms as a way of developing best practice. Indeed, the finding that there is quite considerable collaboration between diversity staff in City law firms, even though it is not well-publicized, is an important outcome of this research and suggests that the literature on the relationships between “Premier League” law firms could be developed in this respect.

However, the research did confirm that competition between City law firms remains important in other respects, particularly as part of the shifting nature of relations between clients and City law firms. Here, it found that pressures about diversity were part of a wider
shift in the balance of power to clients, which manifested itself in firms competing against each other in beauty parades and elaborate pitching processes for new work. This research also suggested that a further factor contributing to this shift in power is the increasing employment by clients of City law firms alumni as in-house lawyers. It speculated that these alumni may well be disproportionately from social groups excluded from the dominant norms in firms, and pointed out that further empirical work also needed to be done on this point.

2.2 Insights into legal careers in City law firms

This research was not designed to investigate in a direct way the perspective of particular social groups in the profession, and chapter 3 pointed out that there is extensive feminist literature on the legal profession, as well as work on the perspective of ethnic minority lawyers and some other groups. Nonetheless, having explored the background to diversity policies in City firms, the research has yielded some useful insights into the position of those outside what Nicolson has called the Eurocentric, middle-class and male norm in the profession. For example, the research found that the career structure in law firms, described by Galanter and Palay and developed by Wilkins, may operate particularly to disincentivise those outside the hegemonic norm from participating in diversity policies. This is because lawyers outside the norm do not want to draw attention to what Yoshino has called their “stigmatized” characteristics and because there is an aura of disloyalty around these policies which may harm already fragile career prospects.

The research has also confirmed and built on other scholarship about the nature of legal careers. It has resolutely confirmed the presence of highly stratified hierarchies within City law firms, culminating in the concentration of ownership and management in the hands of the partners. However, it has also highlighted the rather more hidden hierarchy within the partnership, finding in this context that the support of a junior (perhaps part-time or salaried) partner is important for diversity staff, but not as valuable a resource as the support of a senior or managing partner. At the other end of the spectrum, the research also found that diversity staff regarded trainee solicitors (who are relatively new to the firm and not yet qualified as solicitors) as more open to diversity policies and there was some
evidence of more ‘experimental’ measures (like monitoring for new equality strands) being tried out on them first.

Overall, this aspect of the research confirmed the persistence of hegemonic norms in the solicitors profession which are discussed widely throughout the literature, as well as the hierarchical organizational nature of City law firms themselves. In this respect, it confirmed the persistent difficulties in practice for those outside these hegemonic norms, and the entrenched traditions surrounding these sort of legal careers.

2.3 Insights into non-legal careers in City law firms

This research also addressed important issues relating to non-legal careers in City law firms, which are usually overlooked in the scholarship about the legal profession and which are accordingly under-researched. Though the research focussed primarily on diversity staff, it also attempted to unpack, or at least, identify, some of the complexities surrounding certain other non-legal jobs such as legal secretaries.

As regards diversity staff, the research found that these were pivotal positions within City law firms because they occupied the intersection between exogenous pressures and the internal hierarchy of the firm; diversity staff therefore have two, interconnecting sets of power relations to navigate. As chapter 13 discussed, diversity staff enjoyed different status across the sample firms, and the research identified factors which affected this. It found that, ideally, diversity staff would be able to draw on their own contacts outside the firm in order to bolster their position within it. It also found that diversity staff may typically have more radical views than are usual in their organisations, but that they temper these (as per Myerson and Scully) in order to work effectively within the organisation. Interestingly, the research also found that some legal staff in firms regard diversity staff as insider/outsiders in whom they could confide on a confidential basis in relation to equality and diversity issues.

This research departed from the traditional analysis of law firms and legal careers by also considering the position of support staff. It concluded that the general category of support
staff was extremely complex, covering a wide range of jobs which it attempted to separate out. It also highlighted the indeterminate status of some staff in law firms, for example, citing the blurring of categories as regards lawyers who no longer bill their time and paralegals who do. Nonetheless, it confirmed the suggestion in a City law firm’s own publication that there is a “fault line” between lawyers and “non-lawyers” in City law firms.

Looking more deeply, the limited evidence gathered suggested a wide divergence in cultures between, say, the post room in a City law firm, the secretaries and diversity staff which would merit further, detailed investigation. Furthermore, as regards diversity issues, the position across the different categories of support staff was shown to be complicated and also worthy of further research. On a preliminary examination of the firms’ own data, it was suggested that for some non-legal jobs such as secretaries, the rates of female employment and flexi-working were very high, therefore implying that there are likely to be different issues in respect of equality and diversity in these groups than, say, amongst associates in City law firms. However, it was also found that, at best, firms were currently simply including support staff in diversity policies designed with lawyers in mind. Interestingly, there was also some evidence that diversity staff, though they were “non-lawyers” themselves, felt very unsure about the different cultures within certain support staff categories. They expressed concern and wariness about this knowledge gap, for example in terms of the reaction of certain support staff to the collection of data about sexual orientation.

Overall, therefore, this research has attempted build upon the existing diversity scholarship, and the literature about the legal profession in an original way. In doing so, it has sought to contribute to our understanding about how and why diversity policies are implemented in practice and where the diversity approach has been influential in the context of City law firms. It has shed light on this elite group of City law firms in terms of their relationships with one another and with key outsiders. Moreover, it has scrutinized the firms’ internal hierarchical structures, particularly from the perspective of diversity staff who negotiate this web of relationships. It has confirmed aspects of the scholarship about legal careers and
made some original contributions in this respect, for example about the role of alumni and by drawing together scholarship about career structures and diversity issues. It has also drawn attention to the neglect by scholars of non-legal workers in City law firms and begun to think about how they may be poorly served by current diversity policies.

The remaining section of this chapter takes some of the findings of this research further, by considering the implications in them for the longer term prospects of the diversity boom in City law firms.

3. The longer term implications for the diversity boom

This research has argued that a number of City law firms have come to adopt shared standards of action about diversity, usually pioneered by a single firm, but then deemed acceptable by others (in the light, of course, of outsiders’ demands and insiders’ approval). As the introduction noted, in 2006, Herbert Smith was the first City law firm to appoint a full-time diversity manager, and Freshfields the first to publish a corporate social responsibility report including diversity statistics. By mid-2007, Table A showed each of the top 5 City law firms have displayed their diversity data and had a large range of other diversity policies in place, while the research interviews established that each firm which participated in this study had either a diversity manager or staff who had responsibility for the issue. A similar “domino effect” between City law firms was reported during the research in respect of several other measures, such as parental coaching and staff affinity groups. However, while the emergence of these shared standards encourages activity, it is suggested that it is no substitute for engaging with difficult questions about the persistence of entrenched norms in City law firms. In the future, this research suggests, serious problems may emerge if the diversity boom has more to do with shared standards hammered out by City law firms watching each other, than it does with addressing what McGlynn has called the “real issues”698.

If the diversity policies currently being implemented by City law firms have evolved without proper reference to these “real issues”, then it is unlikely that they will be well-

698 McGlynn, n 47 above, 169
suited to tackling them (for example, the pervasive gendered use of "commitment" highlighted by Sanderson and Sommerlad). However, chapters 11 and 12 of this study has shown that diversity policies currently being implemented in City law firms are associated by some decision-makers with these "real issues" as they play out in the workplace (e.g. the stubbornly low retention rate of women lawyers) even though they may be ill-suited for the work expected of them. There is, accordingly, a risk of "diversity fatigue", observed when leaders in organisations make an initial investment of time and money in diversity initiatives (e.g. hiring staff, setting up policies) but over time, fail to see any tangible return, and stop supporting diversity policies as a result. While this study expressly did not set out to audit the effectiveness of City law firms' diversity policies, it does suggest that the origins of those policies may eventually leave them vulnerable to the onset of diversity fatigue.

Other, related findings about the nature of the diversity boom also suggest that, in the long-term, there may be cause for concern about its durability. The research has shown that diversity staff often shoulder responsibility for persuading partners in their firms of the merits of implementing diversity policies. As reiterated earlier in this chapter, they find this negotiation much easier when there are exogenous pressures behind them, especially because the majority of partners seem unenthusiastic or cynical about diversity policies. The current diversity boom has happened despite the reported lack of enthusiasm of many partners in City law firms, but this finding begs the question about what should happen were these exogenous pressures to fade away, or shift their focus from diversity to another cause.

One factor which could significantly affect exogenous pressures about diversity is the prospect of economic recession. The definition of recession is contested, though the U.K. and global economies are currently unsettled, with a global credit crunch already meaning that banks have become much less willing to lend to businesses and individuals. Chapter 8 found that investment banks were leading the way in terms of diversity-related pressures on

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699 S. Rutherford of Rutherford Associates (Diversity and Organisation Culture), Presentation at the First Annual Lecture and Official Launch, Queen Mary Centre for Research Equality and Diversity, (18 June 2007), note on file with the author.
City law firms, and this sector has been particularly affected by the recent credit crunch. One financial commentator observed in February 2008 that "unless the banking sector solves its problems, the balance of probability points to recession". In unsettled economic times, powerful clients who have played a vital role in galvanizing the diversity boom in City law firms may come to prioritize value for money from their external lawyers above all else. Moreover, if City law firms' fee-income drops, firms may have to cut back their own outgoings as well. One diversity staff interviewee was well aware that, as a non-fee earning part of the business, "we are an overhead".

In another hypothetical, powerful outsiders may stop making demands about diversity in order to focus on other issues instead, and a possible alternative may be environmental issues. Some commentators already argue that the environment is a "meta-issue, larger and more fundamental than any other, casting the rest into shadow". The growing sense of urgency about the environment encouraged by films like Al Gore's "Inconvenient Truth" and increasingly wide-ranging attempts to mobilize public participation in green issues may have knock-on effects for all of the outsiders considered in this study, including City law firms' corporate clients. Indeed, there are already some signs that City law firms are starting to respond to public concern about green issues. Freshfields Bruckhaus Deringer, for example, has set up an environmental working group, has pledged to reduce the firms "impact on the environment by 10% by April 2008", and has been certified "CarbonNeutral® by the CarbonNeutral Company". On its climate change and the environment website, it displays that it has won the "Law Society of England and Wales' Excellence in Social Responsibility Award 2007" and that it is a founder member of the Legal Sector Alliance on sustainability and climate change, together with Business in the Community and The Law Society.

701 J. Freedland, "2008 will be a year of decision- and survival depends on getting it right" (The Guardian, 2 January 2008) 26
702 See, for example, the Environment Agency's webpage, "Your environment: What can you do?" at http://www.environment-agency.gov.uk/yourenv/639312/1361980/?version=1&lang=en which includes a range of suggestions for individuals to reduce their "climate footprint".
703 http://www.freshfields.com/csr/climatechange/
Though these developments are even more recent than the diversity boom, the similarities already seem striking, including the role of outside parties in giving advice and accreditation and the use of prizes. If it comes to the point where City law firms are widely ranked, rated and pressured with reference to their carbon footprints, cycle racks and recycling, it is not clear where this would leave the diversity boom. Would diversity staff still have the leverage to persuade unenthusiastic partners to continue with diversity efforts, if the diversity-related exogenous pressures outline in part 2 had been superseded? Would it be possible to have a boom of green policies alongside a boom of diversity policies or would budgets and partners' patience extend only to one?

In the light of a possible recession, and/or emergence of environmental issues as a “meta-issue”, events clearly needs to be watched carefully by those concerned about diversity-related issues. This thesis tentatively suggests that if, for these or other reasons the attention of powerful outsiders shifted away from diversity, City law firm diversity staff would find it much harder to negotiate with the decision-making partners. Because partners are responsible for key decisions about diversity policies and the firm as a whole, without a means to secure the attention of sufficient of their number, the diversity boom may well be at risk of falling into neglect.
Chapter 15
Further thoughts

1. The broader implications of this study
   1.1 Implications for diversity advocates
   1.2 Implications relating to the current review of equality legislation
   1.3 Implications for the Law Society and SRA

2. Further lines of inquiry

1. The broader implications of this study
With its aim of broadening out the findings, this section applies the research in a wider context than hitherto. In this section, the research findings underpin a discussion first of the strategies of diversity advocates and, secondly, of the current Governmental review of equality legislation, and finally, of the on-going changes to the solicitors' profession.

1.1 Implications for diversity advocates
As discussed in chapter 2, scholarly work by Wilkins and McGlynn has demonstrated the inherent problems with the business case for diversity. However, the scholarship has also pointed out that this is an effective way to engage law firms' attention. In light of this dilemma, it is timely to suggest that this study may have implications for parties who advocate change in City law firms. Above all, the research suggests that in order to be effective, advocates should focus on the context of their arguments as much as on the content. In other words, those hoping to bring about change in City law firms need to strategize about who makes it, and to whom.
In terms of the former, relevant considerations will be the power which those delivering the arguments leverage and how they fit into the hierarchy of outsiders attempting to influence City law firms. In terms of the latter, it will be important to consider how such demands will be received by the differently ranking parties within law firms, and how a case will ultimately be made by diversity staff or sympathetic partners to persuade sufficient numbers of the partner-decision-makers. Advocates must not assume that City law firms are acting in a vacuum as regards diversity or that the project of triggering change simply involves persuading them to do so. This underestimates the role of existing powerful outsiders, and mistakenly assumes that firms are monolithic organisations within which there will be only one response to exogenous pressure.

This study has also found that diversity staff play a pivotal role in diversity policy-making in City law firms. It has also confirmed the findings of other scholarship which suggests that diversity staff are likely to have more radical views than others in large organisations. In the context of these findings, advocates may consider ways in which to work effectively with diversity staff, and even empower them for the negotiations they face in-house, for example through a programme of training leading to accreditation for City law firm diversity staff. This would also encourage the formation of inter-firm networks of diversity staff which currently exist but rely on personal contacts.

1.2 Implications relating to the current review of equality legislation

This is a period of flux for the legislation underlying this study. As discussed in chapter 6, the Equalities Review chaired by Trevor Phillips published its findings in February 2007, and the Government’s consultation paper, the Discrimination Law Review (“DLR”) was published in June 2007. In its 2005 general election manifesto, the Government committed itself to introducing a Single Equality Bill during this Parliament in order to consolidate and improve the current patchwork of equality laws, though there has been no official follow-up yet to the DLR. In the meantime, far-reaching new legislation has recently been passed which has radically changed the system by which solicitors are regulated and the

705 DLR, n 74 above, 11
types of partnerships they may form (Legal Services Act 2007), providing another aspect in which the legislative and regulatory underpinnings of diversity policies in City firms are in flux. Against this background, it is argued that the research gives rise to implications relevant to both on-going review processes.

McCrudden has suggested that there is a dominant regulatory model running through in the DLR, which he calls “reflexive regulation”\(^\text{706}\), as opposed to, for example, command and control or enforced collective regulation. McCrudden’s suggestion is based on a long list of evidence from the DLR, including, as regards the private sector: “its emphasis on the business case for equality” and its suggestion that “spreading good practice on promoting equality (as opposed to mere ‘legal compliance’) between firms and between public bodies is encouraged”\(^\text{707}\). On the basis of these and other features of the DLR’s proposals, McCrudden finds that there has been “the partial adoption of reflexive regulation which, its proponents argue, is quite different in significant respects from those methods of anti-discrimination regulation that have gone before”.\(^\text{708}\) However, he fears that “the logic of the approach has not been fully engaged”.\(^\text{709}\)

It is suggested that this research may also usefully inform this debate about the proposed changes and their limitations. This is because, while the study does not provide evidence on which to base speculation about how City law firms might react to an (according to McCrudden) imperfect attempt to implement a reflexive regulation model as a whole, its findings do provide further evidence which may be used to test some of McCrudden’s individual warnings. For example, McCrudden argues that a pre-condition for effective reflexive regulation is that

\begin{center}
\textit{some regular requirement that private sector firms and public sector bodies have to examine what they are doing on the basis of evidence that is objective and comparable across the sectors in which they operate}\(^\text{710}\)
\end{center}

\(^{706}\) McCrudden, n 584 above
\(^{707}\) ibid citing, in respect of these examples, DLR, n 74 above, paras 6.1, 6.3, 6.5, 6.8, 6.9 and 4.44
\(^{708}\) ibid 260
\(^{709}\) ibid 266
\(^{710}\) ibid 265
McCrudden supports this assertion with an example from Northern Ireland, where firms and public bodies in NI are required by legislation to monitor the composition of their workforces and produce reliable statistics. 711

However, taking City law firms as an example of a “sector” of business, the information set out in Table A in chapter 2 showed that each of the five largest law firms already produce diversity statistics, and the same chapter discussed that this is the case with all but three of the fifteen City law firms in this sample. This research does not find, therefore, that it is always necessary to have a legislative requirement in order to have monitoring take place. The example of City law firms also shows how difficult it would be to construct a meaningful, general obligation for staff monitoring. It shows that there is (albeit imperfect) precedent for private sector organisations producing diversity statistics themselves, as a result of other pressures and without legislation requiring them to do so. In the event that the reflexive model was implemented by the Government without a compulsory monitoring requirement, this study shows that there may be other ways of making organisations monitor and generate this type of data, thereby possibly mitigating what McCrudden calls “the single greatest blow” to new regulation working effectively.

Elsewhere in his response to the DLR, McCrudden points out that a general academic concern about reflexive regulation is that:

“it may insufficiently identify and recognise the role of conflicting political and economic interests... In underestimating the importance of power relations it may allow abuses of these power relations to continue unchecked.” 712

This research has offered one case study in the private sector which has confirmed that, in this context, power relations are important and work in complex ways it therefore reinforces the argument that the new legislation should not underestimate the pre-existing power relations which it would overlay. Therefore, this study describes and analyses an area on which, for better or worse, future legislation will be imposed. Pending such legislation, it is suggested that this research may usefully contribute to the discussion about what some of those reforms should look like.

711 ibid 265
712 McCrudden, n 584 above, 262
1.3 Implications relevant to the Law Society and Solicitors Regulatory Authority

As discussed in chapter 7, the Legal Services Act was passed in October 2007 allowing for new forms of legal practice and making other changes which will affect the regulation of the solicitors' profession. In anticipation of the requirements of the new Legal Services Board (set up by the Act but “unlikely to be empowered before spring 2010”\(^\text{713}\)), the Law Society in January 2006 delegated its regulatory and complaints function to the new Solicitors Regulatory Authority (“SRA”) and Legal Complaints Service (“LCS”) respectively.

There is much yet to be settled about how the changes outlined in the Legal Services Act will be implemented in practice. With much still up in the air about the new ways in which the solicitors’ profession is organized, decision-makers should take this opportunity to re-think how the Law Society and the SRA encourage diversity in City law firms. This study has shown that at present most diversity staff in City law firms, like the lawyers there, feel deeply disconnected from the Law Society. Meanwhile, though the SRA’s new Code of Conduct Rule 6 requires each law firm to have a written equality and diversity policy and extends the grounds of discrimination covered, it also removed some of the best-known features of the rule it replaced, such as the suggested model policy and targets for BME trainees as a proportion of a firm’s intake. Though Rule 6 came into force after the interviews for this study were conducted, its predecessor was mentioned only in passing in interviews, and the Solicitors’ Anti-Discrimination Rules 2004 were not mentioned at all. Revealingly, Cordery (the authoritative, two-volume practitioners’ work on solicitors) deals with the new rule 6 in nine lines of text.\(^\text{714}\)

According to the Legal Services Act, one of the regulatory objectives of the Law Society is “encouraging an independent, strong, diverse and effective legal profession” (s.1(f) Legal Services Act 2007). This study argues that both the Law Society and the SRA could be doing far more to further that objective as regards City firms. One improvement may be to

\(^{713}\) Solicitors Regulatory Authority, “Legal Services Act: New forms of practice and regulation” (Solicitors Regulatory Authority, November 2007) 11

\(^{714}\) Marks, n 425 above, I/8, paragraph 131
have more regular meetings of the City Forum, which has already proved that it attracts participants from City firms. There also seems scope to make these sessions more participatory and include sessions for smaller groups. ‘Chatham House Rules’ sessions could be set up to share best practice, and tackle some of the more entrenched, difficult problems which interviewees reported. Some of the ideas for training and accreditation of diversity staff discussed above might also be incorporated into these sessions, which would fall comfortably within the Law Society’s post-2006 remit of supporting the businesses of members. 715

2. Further lines of inquiry
The last section in this chapter looks at several further lines of inquiry which have been suggested during this research. Three are outlined briefly below:

2.1 Are global diversity policies possible?
One interviewee commented during this research that City law firms are international, while their banking peers are global, implying that law firms do not have the same levels of integration across their international offices. If there is such a distinction, one symptom may be that law firms’ diversity strategies are much more jurisdiction specific than is the case in other global businesses. It also suggests that law firms may be more cut-off from ideas connected to diversity from other parts of the world, notably the U.S., and may feel that they are ‘behind’ other businesses as a result. Despite the internationalization of many City law firms, hitherto, much work on diversity strategies in the legal profession has focused on single jurisdictions. There is, therefore, interesting work to be done to consider if there is an appetite for global diversity policies within global law firms, and if so, whether global diversity policy-making is more constrained than it is in banks and other professional service firms.

2.2 Parallels with environmental pressures
Earlier in the conclusion, it was suggested that some City law firms may also be coming under pressure from outsiders in respect of environmental issues. One hypothesis was that,

715 ibid A1 paragraph 3
as exogenous pressures about the environment increased, those about diversity may commensurately decline, with harmful consequences for the diversity boom. However, more work needs to be done to understand the extent to which City law firms are starting to come under pressure about the environment (and other corporate social responsibility issues) and, if they are, the extent to which this will follow the model described in this research. If pressures about the environment do grow, it will also become important to conduct research in order to investigate how City law firms react to being subjected to exogenous pressures about different issues at the same time.

2.3. The long-term health of the diversity boom

As noted in the introduction to this study the diversity boom in City law firms started with a flurry of diversity-related pressures in 2005. Over the coming years, it will be important to monitor how this relatively new phenomenon develops. Extensive quantitative and qualitative work is needed to establish whether these policies have any impact on the workforce in City law firms in the long run.

It has been suggested that, because of factors identified in this study, the diversity boom may be fragile and may not yield the results hoped for. The risk of diversity fatigue has been mentioned, as has the existing lack of enthusiasm amongst many decision-makers in City law firms. In order to test these suggestions, it will be important to generate and analyse data both about the progress of the policies described in this study and their intended beneficiaries, in order to find out if the concerns expressed in this conclusion materialize or whether they were groundless. As such research yields results, it will therefore become possible to follow up this study to investigate if the diversity boom described herein was the beginning of the transformation of an important part of the legal profession, or in fact no more than a diversity bubble.
Power, prizes and partners: Explaining the diversity boom in City law firms

Appendices:

Appendix A: Planning and conducting the research
Appendix B: Topic guide for the interviews
Appendix C: Guidelines sent to interviewees

Bibliography
Appendix A
Planning and conducting the research

This appendix discusses (largely chronologically) planning and conducting the research for this study, and is organized as follows:

1. Planning the interviews
2. Conducting the interviews
3. Reviewing the interviews
4. Analyzing the transcripts
5. Other research

1. Planning the interviews
As discussed in chapter 4, after weighing up the advantages and disadvantages, I decided to use interviews as my research method for this study. There are, of course, different ways in which interviews may be planned, conducted and analyzed and this appendix sets out more details on these matters, ultimately in order to show that the research data collected was reliable and valid.

Having decided to use interviews as my research method, there were good reasons to conduct them on a 'semi-structured' basis. This was because the semi-structured technique represented the best way both to elicit interviewees' accounts in a relatively unrestricted way and to ensure that the interviews addressed a number of key topics about diversity policies, such as the use of business case arguments and the role of clients. In semi-structured interviews, the interviewer prepares in advance a list of topics which they want to discuss, rather than a fixed list of questions. Using this topic guide, the interviewee may dictate the eventual agenda of the interview, but there remains more structure than some interview methods (e.g. critical incident technique which uses a very loose framework for interviews), The aim being to elicit detailed examples, anecdotes and descriptions of...
matters from the interviewee. Above all, the interviewer needs to be flexible in such interviews, for example, the topics in the guide will not necessarily covered in order or in their entirety. Indeed, some researchers see it as critical to consider and amend the topic guide as the interviews proceed and as the interviewer’s understanding deepens.\footnote{K. Charmaz, “Grounded Theory” in S. Nagy Hesse-Biber and P. Leavy (eds) 
\textit{Approaches to Qualitative Research: A Reader on Theory and Practice} (New York: Oxford University Press, 2004) 504}

Accordingly, at the outset of the interviews I prepared a topic guide, which was refined as time went on. Influenced by Lee’s helpful inclusion of his topic guide for interviews with “Premier League” firms for the Law Society\footnote{Lee, n 251 above, chapter 2, on his research method.} this is set out at Appendix B.

1.1 Sample selection

As discussed in the chapter 2, the study aims only to explore one part of a highly fragmented legal profession, namely the largest, commercially focused firms based in London. Accordingly I decided to approach law firms within the top 15 U.K. firms by turnover according to the 2006 report by The Lawyer magazine.\footnote{The Lawyer, n 284 above} (The Lawyer also produces a Global 100 law firms list, but using this to provide the sample would be introducing too many variables, as is a mix of firms headquartered all over the world, whose London offices varied in size considerably). The sample of law firms selected was therefore purposive rather than random, i.e. chosen because they share the features in which I am interested.\footnote{Silverman, n 300 above, 104}

According to this league table, the top 15 U.K. law firms by turnover (which was listed as ranging from £1030 million pounds to £161.2 million pounds) in 2006 were:

- Clifford Chance
- Linklaters
- Freshfields Bruckhaus Deringer
- Allen & Overy
- Lovells
- DLA Piper
- Eversheds
- Slaughter and May
- Herbert Smith
- Simmons & Simmons
While the methodology behind The Lawyer's league table is not as transparent as an academic study's would be, there does not seem to be a more rigorous or transparent alternative available. Nor do scholars seem to have found a more satisfactory way of ranking the largest law firms. In his study of the "Premier League" for the Law Society, for instance, Lee approached "what is generally regarded as the top ten" law firms with offices in the City of London (no more details of the sample being given), successfully arranging interviews with seven. Moreover, The Lawyer's league tables are widely referred to within the profession, and even used the Government to inform its November 2005 letter to the top 100 firms.

However, I was mindful of some difficulties inherent in using The Lawyer's list, and especially in its underlying notion of "U.K." firms. In some important respects in this highly international sector it is artificial to impose a nationality on a law firm (as clearly demonstrated by Flood's work on the global dominance of what he calls "Anglo-Saxon" "megalaw" firms). Notably, few of the firms in the sample describe themselves as U.K. law firms. Allen & Overy's website, for example, describes the firm as "an international legal practice", while Clifford Chance describes itself as "a truly integrated global law firm" and Freshfields calls itself "a leading international law firm". Baker & McKenzie states that it is "the world's leading global law firm" but because it is considered a U.S. firm by The Lawyer, it is included in The Lawyer's Global 100 list.

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720 Lee, n 251 above, chapter 2
721 2005 report, n 178 above, 9-10
722 Flood, n 229 above, 153
724 http://www.cliffordchance.com/home/default.aspx
727 The Lawyer, n 250 above
To complicate matters further, several of the largest law firms in London have been through mergers with firms from abroad, with the merging firms’ relative sizes defining the “nationality” of the new firm. For instance, Clifford Chance merged with the U.S. firm Rogers & Wells in 2000 and is regarded as a U.K. firm for the purposes of The Lawyer’s lists. However, since U.K. firm Gouldens merged with U.S. firm Jones Day in 2003, the resulting firm has been listed in The Lawyer’s Global 100 list on the basis that it is U.S. based.

Using a U.K. list therefore risks over-simplifying how the largest law firms regards themselves and may lead artificially to excluding certain firms because of mergers or other history. Nonetheless, I did not intend the sample to be statistically significant, so limiting myself to the top 15 of a list of 100 firms which arbitrarily excluded some firms from its number does not affect the research in that respect. As Boon makes clear in the context of research which consisted of interviews with 15 recently qualified solicitors:

"The reliability of qualitative work depends on the process rather than on generating statistically valid samples." 728

Moreover, despite having used this list to identify firms, I was mindful of the global nature of the firms in the sample and addressed this in the interviews.

A related issue which also required consideration before the interviews was that four of the firms in the list of fifteen have regional offices within the U.K. (DLA Piper, Eversheds, CMS Cameron McKenna and Addleshaw Goddard) while the rest do not. Interviews were eventually conducted with law firms both with and without regional offices in the U.K. However I decided not to indicate in the analysis if data was drawn from an interview with a firm with regional offices or not. This is because the fact that a City law firm had regional offices did not seem to affect these interviews in any meaningful way. The interviews conducted with City law firms with U.K. regional offices were all conducted in the London offices of the firms concerned, bar one which was conducted on the telephone with an interviewee who was based outside London. It may be, therefore, that this data is skewed in the case of those firms with U.K. regional offices towards their London offices,

728 Boon, n 648 above, 233
but exploring the relationship between these offices was outside the scope of this research. Meanwhile, I was confident that including interviews with the (apart from in one case) London staff of City law firms with U.K. regional offices did not affect the research data in a detrimental way.

Having identified which firms I was going to include the sample, I had to decide whom I hoped to talk to within the firm. The aim was to conduct interviews with someone from the firms with day to day responsibility for diversity policies. However, any attempt to ensure that the interviewees were in identical jobs in each firm was quickly abandoned. As discussed in chapter 15, not every firm has an employee with the job title of "diversity manager", and diversity is most commonly added onto the responsibilities of a member of a firm's HR department. However, in one firm, responsibility lay with a partner and in another, with a partner and associate. Interviewees who participated were therefore most often from the HR department but were sometimes lawyers (see table D below). This lack of consistency reflected the reality of diversity policy making in City law firms which and it lead to some interesting conclusions in itself.

As mentioned above, I wanted to be in a position to be able to triangulate the interview data which I obtained from the top U.K. law firms. In order to do this, I hoped to speak to a number of investment banks, first to find out whether they confirmed what law firm interviewees said about clients' requests about diversity (I anticipated from the scholarship, media and from practice interviews that this was going to be an important theme of the law firm interviews). Secondly, I thought that it would be interesting to talk to investment banks to find out about their diversity policies in their own right. (Barmes and Ashtiany studied investment banks diversity policies in depth in 2003 and their findings show that not only were banks involved in diversity policy-making several years before City law firms but their policies are more comprehensive and globally-focused, and the teams of diversity staff much larger than the equivalent in City law firms).\(^{729}\) I also aimed to get another angle on the findings from the U.K. law firm interviews by speaking to the Minister

\(^{729}\) Barmes and Ashtiany, n 24 above
at the Department of Constitutional Affairs (as it then was). Finally, as outlined in section 5 below, I was able to use the legal press and other documentary sources to add another dimension to the data.

2. Conducting the interviews

Before planning and starting to arrange the interviews which formed the basis of this study I decided to conduct some off the record practice interviews. In 2006 I was able to conduct four practice interviews. These practice interviews were all with diversity professionals in New York; two in investment banks and two in law firms which I arranged through contacts. In each case, I made it clear to the interviewees that these interviews were “off the record” and I have treated them as confidential, drawing on them only to inform the preparation for the interviews which would provide the data for this study.

Overall, I was reassured by the practice interviews, particularly by the extent to which those working in diversity in banks and law firms were keen to talk about their experiences and were generous with their time. I also picked up some ideas which proved useful when drawing up the topic guide for the actual research interviews- for instance the difficulty of rolling out policies in overseas offices within the same organisation, and the phenomenon of clients pressurizing their suppliers, including law firms, about diversity. These interviews were also useful in a more practical way, and in particular I came to appreciate that face to face interviews were highly preferable to telephone interviews (I conducted two of these four practice interviews on the phone) as it enabled a far better rapport between the interviewer and interviewee.

I conducted the seventeen interviews which formed the basis for this study over the period from February to June 2007. I staggered the approaches to potential interviewees so I might reflect on the early interviews and refine the topic guide. Throughout I used either the snowball technique (following suggestions from one interviewee to find the next) or my own contacts within the legal profession and in investment banks to provide me with the names of those to approach within firms. This enabled me to avoid “cold-calling” and almost certainly contribute to a high participation rate amongst those I contacted. However,
in no cases were my contacts themselves the interviewees. Of the sample of fifteen City
city law firms selected from The Lawyer’s U.K. list, I ultimately approached 13 City law firms
for interviews, and conducted interviews with 10 of them. At this point, I decided not to
approach the remaining two firms in the sample because it seemed that the evidence had
reached ‘saturation point’, i.e. new interviews were converging with the previous
interviews and were reaffirming their findings in a predictable way. As discussed below,
interviews were also conducted with two global law firms and a former senior partner of
one of the law firms in the sample.

In advance of every interview, I sent out a document explaining the basis on which I would
handle the data which was generated. This document is attached at Appendix C, and the
key terms notify the interviewees that with their permission, the interviews would be
recorded and transcribed, that the data would be treated as confidential and would be
written up preserving the anonymity of the interviewee and their firm. Cownie has shown
how concerns about the confidentiality of interviews are more important when the
interviewer is regarded as an “insider”, 730 though in her case, she was interviewing legal
academics while a member of the faculty herself, while I am no longer a practising
solicitor. I was concerned to be clear about preserving the confidentiality of interviewees
for this reason but also because I was aware from the outset that the interviews might touch
on issues which were sensitive for the interviewees and the firms.

The final version of the topic guide for interviews can be found at Appendix B and
guidelines sent to interviewees at Appendix C. As noted in the guidelines where requested
by the interviewee, I arranged to provide them with a copy of the digital recording of the
interview, which I did by sending them a copy on CD after the interviews.

Data about the interviews which were conducted for this study can be broken down as in
table form as follows:

730 F. Cownie, Legal Academics: Culture and Identities (Oxford and Portland, Oregon: Hart Publishing,
2004) 14
Table B: Number of interviews by interview format and type of organisation

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Table C: Number of participants by interview format and type of organisation

(total number of participants given, followed by number of men in brackets- there were no men in the category if no figure in brackets is given)

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346
Table D: Role of interviewee, by interview format and law firm type ("DS": includes diversity staff, HR staff and diversity managers).

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<td>1 partner</td>
<td>1 partner 1 associate</td>
<td>3</td>
</tr>
<tr>
<td>In writing</td>
<td>1 DS</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>12</td>
<td>3</td>
<td>15</td>
</tr>
</tbody>
</table>

The following supplementary points can be made about the interviews which were conducted for this study:

2.1 Location and media of interviews

First, all interviews were conducted in person if possible, and in every case, 'in person' interviews took place in the interviewees' London offices. One interview with a City law firm was conducted on the telephone as the interviewee was based out of London: this was a regional firm. A further City law firm agreed to participate, but the interviewee preferred to respond to written questions.

The term "interview" and "interviewee" is used in this study to refer to the data from all the U.K. law firms, regardless of media. That means that the terms are also used in relation to the data from the one written response. This is justified because, though the answers were much shorter than transcribed answers from the interviews, they were not qualitatively different to those in the in person or telephone interviews and there was no purpose in distinguishing them in the text.
2.2 Interviews outside the sample of City law firms

In addition to interviewing those with day to day responsibility for diversity policies in City firms, I also got the opportunity to interview a former senior partner of a firm in the sample. This interview was of great assistance in understanding diversity policies generally, the firm in question and diversity and City law firms. The interviewee no longer worked at the law firm concerned, but this was a relatively recent development, and it was very useful to have a partner's perspective. The firm concerned was contacted but did not agree to an interview. In this study, where it is relevant to the context, it is made clear when this interview is cited.

Due to contacts in the legal profession, I was able to arrange interviews with two firms from the Lawyer's Global 100 list, with interviewees based in those firm's London offices. These interviews are referred to as "global law firms" in Tables B-D above. One of these interviews took place at the very large London office of a global firm (i.e. a firm with very large offices in several countries around the world), and the findings of the interview were very similar to the interviews conducted with U.K. firms. The second interview was on the telephone with a partner and associate from the smaller, London office of a firm which was headquartered in the U.S., where the majority of its workforce was based. This interview evidence was markedly different from that gathered from U.K. firms. In the analytical parts of this study, unless it does not have a bearing on the analysis, this interview data is distinguished from that from the sample of (U.K. based) City law firms.

Finally, I also used the Department of Constitutional Affairs' website to identify Bridget Prentice, M.P. as the Minister who had been involved in the publication of the 2005 report discussed in chapter 6. I contacted her office and conducted an interview with her on 19 April 2007 which was also attended by two of her staff, who did not participate. She agreed that I could refer to the interview and its themes broadly without contacting her again, but that her office would like to see quotes from the interview in context before the work was submitted. Accordingly, I provided her office with draft sections of the study where her replies were used, which were approved.
3. Reviewing the interviews

As a matter of practicality, as the interviews proceeded I made sure that I had the recordings transcribed promptly. I transcribed the first interview myself, which took 13 hours. However, because of the pressure of time as a result of preparing and conducting interviews on a rolling basis, I was not able to keep up with the transcription work in a timely fashion. Accordingly after the first interview, I used a professional transcription service to transcribe the interviews verbatim, though I made transcripts of the telephone interviews myself from notes taken at the time (which transcripts were partly in note form and partly verbatim). The transcription service completed each transcripts in a week, which meant that I could begin the review of their texts during the interview schedule. This was very valuable because it allowed me to review both the topic guide and the interview process before the later interviews took place.

When planning the interviews, the literature had emphasised the need to reflect during the interview schedule on technique and on how the interviewer’s presence might be affecting the data. As the interviews progressed, I did reflect on my technique, helped by the transcripts. The principal changes I made were ask shorter questions and to strike a better balance between following up what the interviewee had just said and moving through the topics I had wanted to raise.

Reflecting on my role within the interviews as they went along, I determined that I was building up a good rapport with interviewees. One sign of this was the frequency with which interviewees turned the conversation to quite certain, difficult aspects of their jobs (such as negotiating with partners), and this data helped shape the chapters in part 3 in particular. Another sign of good rapport was the levels of interest expressed in my work, with all interviewees offering of further assistance should I need it. Furthermore, while some of the interviews were as short at 38 minutes, others ran over the 45 minutes I usually requested and several ran to over an hour.
In addition to general reflections on the interview process and technique, I also reflected on matters raised in the literature on interviews, especially about the interviewer's effect on the data generated. In particular, before the interviews, I felt that there were two aspects of my identity which may have an effect on the data, being my background as a former litigation solicitor in one of the firms in the sample, and my gender. As the interviews progressed, I considered the extent to which these factors were affecting the interviews.

I had decided to explain about my previous career as a trainee and associate in one of the sample firms before conducting the interviews. Only one interviewee asked me to reassure her that I no longer had links with any firm, and after that I made this more explicit where appropriate. Reviewing the interviews, on balance, it seems that my career history proved to be more of an advantage than disadvantage in that it gave me an 'insider-outsider' status. For instance, the interviews were more fluent as I knew about the basic organisation of the firms which interviewees were describing and because I understood the terms about the profession which they used. There is a risk in this situation of not asking about the basics, and of making assumptions when interviewing in familiar territory, but importantly, because much of the 'diversity boom' had happened since I left practice in 2002, the risk of taking anything central to this study for granted was minimal. As a practical matter, this previous experience was also an advantage because it helped me arrange most of the interviews through contacts. Overall, my career history helped me conduct rich, in-depth interviews because I was familiar with the basics structures of the organisations in question, and I felt it helped me to engage the interviewees.

As well as my former career, my gender may also have affected the interview process. As table C shows, out of nineteen interviewees in this study, only five were men; out of 15 law firm interviewees, three were men. However, because I felt that a good rapport was established with interviewees, regardless of their gender (though they were mostly women), it is at least feasible that if there were any links between this and my gender it was not because my gender was the same as the majority of the interviewees, but because it was the same as the majority of people involved in the 'diversity world' in law firms. The interviews established (as discussed in chapters 13 and 14) that a number of the lawyers
who volunteer to participate in diversity efforts in firms are women (outside the most senior partners). Anecdotal evidence suggests that the majority of diversity staff are women, as is the Equality and Diversity Director at the Law Society and the Minister at the DCA. In other words, because of gender I fitted in with the usual type of person the interviewees talked to about diversity and this may have helped make the interviews productive.

Overall, interviewees were generous with their time despite their demanding, pressurized jobs. I was invited by an interviewee to one firm’s women’s networking event and all interviewees told me at the end of the interview that I should be in touch with any further questions. In conclusion, I felt that my gender and other aspects of my identity which were apparent in the interviews may have affected the interviews, but in ways which I tried to be mindful of, and which may well have contributed to making the interviews full and open.

4. Analyzing the transcripts

Esterberg emphasizes that data analysis is “a process of making meaning” i.e. a creative process rather than a mechanical one uncovering hidden but somehow fixed meanings in the data.731 She emphasizes that there is no single “right” way to organize and analyze qualitative data as there would be no single right way to organize any information, objects or ingredients. However, she suggests that the all analysis should involve three stages—organizing the data (e.g. chronologically), immersing oneself in the data and coding. Accordingly, during the five months when I was conducting interviews, I spent time building up and starting to review files of transcripts, which were organized according to type of interviewee (i.e. law firm, bank or other).

In terms of immersing myself in the data and coding it, I decided to employ the grounded theory method, which Charmaz has described as allowing the researcher to “explain and to understand your data and to identify patterned relationships within it”732. The attraction of this method is that it provides rigorous procedures for the checking, refining and

732 Charmaz, n 716 above, 497
developing ideas about the data, allows conclusions to be built from the ground up and that it meant the analysis could begin while the interviews were ongoing.

I therefore adopted the classic two stage grounded theory coding process to analyse the transcripts. The initial stage, called open coding, involves a line by line review of the data where I identified themes and categories of interest (e.g. “opposition”, “clients’ pressure” and “the key role of senior partners”) which I annotated in pencil in the margins of the text (having decided to use hard copies rather than computer software for the analysis). At this idea at this stage I kept an open mind about the data and the findings: as Chamaz puts it, each idea “should earn its way into your analysis”. Esterberg calls this focusing on what is in the data, rather than on what you think ought to be there and I found this a helpful principle to keep in mind. At this stage I read the transcripts several times each and I also listened again to the digital recordings of some of the interviews while reading the transcripts, to remind myself of the tone of a particular comment or part of the interview or to confirm a particular expression.

The second stage of grounded theory is to use the coding scheme to compare interview results, to observe patterns and to develop ideas about what those patterns mean. I used margin notes which I had made during the initial reviews to create a list of themes which I organized into a table with three sections called “Policy Making”, “Group wide factors” and “Key variables”. I then went through the transcripts again making notes in a document on the computer of the page number of comments and/or comments themselves which related to each theme. This produced a document where each interviewee’s comments about themes which emerged from the first review, (for example, firms’ fears about bad press or attitudes to litigation) may be easily compared, for example:

733 ibid 506
734 Esterberg, n 731 above, 158
Triggers for firms 1: Legislation/litigation

Interview 1
Page 4- want to go beyond minimum legal requirement
Page 10- legal risk as trigger...

Interview 2
Page 1- law as trigger- a low common denominator...

I created one such document for the City law firms and Global firm interviews and a second for the other interviews.

Before finishing the analysis, Esterberg\textsuperscript{735} recommends examining the findings carefully against the data gathered, to make sure that analysis is actually supported by the evidence. This involves two issues- the validity of the researchers' conclusions and the reliability of the underlying data.\textsuperscript{736} In respect of the reliability, this involves consider the shortcomings of the sample or ways in which the data might be skewed. I have begun to address these shortcomings in this section, and also do so in the main body of the study (see for example, chapter 13, for a discussion of drawing conclusions about the attitudes of partners from interviews dominated by diversity staff). In terms of the validity of findings, the scholarship about qualitative methods also warns that the researcher might give too much emphasis to certain interviews or mistake co-incidence for something more meaningful. To address the problem of anecdotalism (the danger of supporting a contention with a few well-chosen examples),\textsuperscript{737} the researcher should also look for negative cases i.e. evidence which does not sit with their interpretation and think again about the theory which they are suggesting. In addition to following this advice (negative examples being noted throughout the analysis), I also tried to address this risk by the use of triangulation ("bringing different evidence to bear on a problem"\textsuperscript{738}), as discussed previously. For example, in chapter 8, data

\textsuperscript{735} ibid 173
\textsuperscript{736} Silverman, n 300 above, 175
\textsuperscript{737} ibid 176
\textsuperscript{738} Esterberg, n 731 above, 176
from law firm interviews is triangulated by reference to interviews with banks, and material from the legal press (see section 5 below). Finally, the validity of the findings was also enhanced by including in the table of themes discussed above instances when interviewees did not deal with a theme as well as highlighting those who did. This enabled me to keep the analysis in parts 2 and 3 more balanced and to address the findings of the data as a whole.

5. Other research
While the core evidence for this study came from the seventeen interviews described above, the analysis also makes some use of other primary sources, which are mainly internet based.

Table A (in chapter 2) draws on the websites of the top 5 law firms (according the Lawyer's U.K. 100 list) to produce a snapshot of the diversity policies mentioned therein. The details and limitations of that exercise, and the date at which it was conducted are outlined in that chapter. Other chapters, notably in part 2, make use of articles from the legal press. This is particularly the case in chapter 10 which deals with the legal press itself, but also in these other chapters as a means of triangulation of other evidence. These articles are referenced as a result of regular monitoring of magazines like The Lawyer and Legal Week for articles connected with diversity. In chapter 6, Government publications, news releases and ministerial speeches were collected from the (then) Department of Constitutional Affairs website, and the Law Society and SRA websites were used in chapter 7, for example to obtain the latest copy of the Solicitors' Code of Conduct and other information about the Law Society's diversity initiatives. In chapter 9, the websites of certain interest groups, notably Stonewall and Opportunity Now were used, primarily for details of their membership schemes and, in the former case, their league table exercises. Throughout, where such references are made, a full link to the relevant website has been given, which, unless otherwise indicated, was last visited as at 1 March 2008.
Appendix B: Final version of the topic guide for interviews with law firms:

BACKGROUND
name, gender, position in firm, seniority, experience.
Who else is in the diversity team- budget?

TOPIC 1- What is being done and why.

1. Nature of diversity initiatives in place
3. Triggers for diversity initiatives
   - The business case- details (e.g. other law firms)
   - Altruism
   - Reputation of the firm- with whom? why important?
3b. Are law firms behind clients, companies?
   - appt of diversity professionals- not just someone's part time role
   - expertise
   - supplier diversity
   - monitoring and reporting
   - less "industry" collaboration

Why?

4. When doing/selling diversity initiatives how important is the business case vs the moral case vs the legal case- which persuades you, which persuades other people (and how would you define each?) Demand for proof?

5. Which policies do people get. and not? When is there resistance to diversity policies? (them and us attitude)- Reaction of senior, middle and junior people. Which are the tough parts of the firm?

6. Law firms as reluctant to lead but hate being left behind?

TOPIC 2- Role of third parties

1. Government and law society- e.g. Bridget Prentice naming and shaming-appropriate? Law society target of 10% useful? % useful targets?

2. Role of campaigning groups e.g. Stonewall- Are third parties seen as experts/strategic partners? Why do firms get help? What sort of demands do they make? Is there a negotiated process e.g. on criteria on which judge firms? Is it appropriate to name and shame or should be helping more?
3. Any less respected parts of the industry? Are firms called on to also sponsor and support studies, prizes?

4. pressure from clients? Collaborative or pressure? What form does this take? What do they want to know? % based or policy based? Do you want this to happen more? Useful to put pressure on senior partners in firms? Pitch documents/beauty parades? Lip service or a real concern?

Turn to clients for help e.g. training courses borrowed? Sharing of information?

5. Are firms working together e.g. to define difficult issues like supplier diversity, or to share best practice. Is anyone worried about the "industry's" reputation? i.e. which is more important- the firm getting good press or the industry? Why?

- having to borrow ideas from firms
- looking to firms and other third parties for guidance? conferences, training.
- struggling with some concepts?
- formal vs informal networking between diversity people- secret?

8. Which would firm prefer in the future- externally imposed rules (e.g. Norway with quotas)/ more guidance (e.g. Law Society) or being left alone to devise own approach (with firms or clients)? Repeal of existing law? Why? How does this link into persuading others in the firm?

TOPIC 3- Diversity policies in law firms

1. What are the goals of diversity initiatives? Why?
   - Numeric
   - Cultural
   - Business
   - Viewed as permanent or remedial?
   - Monitoring to back this up?

2. How diversity initiatives are "sold" internally? Is there a sense of them and us about the diversity team? Who are the difficult constituencies and why? What done to try and persuade them and what consequences might there be for them?

3. do you use what is going on at other firms to push agenda in own firm?

4. are some parts of the diversity agenda an easier sell than others e.g. inclusion and retention easier than diversity in hiring?

5. attitude to % e.g. what should compare selves to, why? When will job be done? Are "metrics" a lot of work? (also requests for information- attitudes to this and use of it). What happens when "hit the numbers" or improve? Is your job over? Is this a big driver for the firm?
6. Just London office or international offices too? Difficulty of rolling out policies in far east, in Europe. In collecting data. How are diversity efforts managed here? When does it get ridiculous/uncertain?

Is U.K behind the U.S. or is the relationship more complicated?
- e.g. U.K. has fewer rules so more creative
- but less infrastructure
- UK tradition of diversity?

7. How does this sit with idea of merit in the firm, or the confidence of staff that the best people are picked for the job? How does this affect corporate philosophy e.g. that X firm always has this type of partner?

8. What have been the problems with the policies to date?
- E.g. personnel
- Internal support?
- What is hard about diversity?

TOPIC 4- Success and prizes

1. Have the schemes been regarded as successful? If so, why?
- Prizes- Received and supported
- Publicity (or seen as a private matter?)
- Applications/Recruitment
- Reputation/clients/marketing
- Internally
- E.g. compared to other firms.

2. How are rankings used? Look at own position and competitors? How else used e.g. to get ideas from case studies? Are they used to copy other firms i.e. a knock-on effect? What is the effect of a high rank/ a low rank? Who does it matter most for? Persuading senior people in house? Students?

THE FUTURE:
- Sharing of information about what works and what does not?
- Attitude to Government intervention
Appendix C: Guidelines sent out in advance to interviewees:

**Jo Braithwaite: Diversity policies in the City of London**

**Guidelines for PhD interviews**

1. **Background**

I am conducting a series of interviews as part of my PhD research into diversity policies. I am a third year PhD candidate in the Department of Law, Queen Mary, University of London and my supervisor is Professor Kate Malleson:

[http://www.laws.qmul.ac.uk/staff/malleson.html](http://www.laws.qmul.ac.uk/staff/malleson.html)

2. **Recording**

I should ideally like to record the interview, however I will only do so with the express consent of the interviewee.

If the interview is recorded, I shall provide a copy of the digital recording to the interviewee for their records.

3. **Confidentiality**

Unless otherwise agreed, I will only use information from the interview in a way which is strictly anonymous as regards the interviewee and the firm. Any identifying aspects of my records will be treated as confidential.

I may use a professional transcription service to type up the records of the interview, but I will ensure that the service provides an undertaking to preserve the confidentiality of the information being transcribed. The transcript of (or, if not recorded, notes from) the interview will be seen only by myself and my supervisor (Professor Kate Malleson) and will be handled in accordance with the Data Protection Act 1998.

In writing up my PhD, any information given in the interview will not be attributed to the interviewee without their express permission.

**Please do not hesitate to contact me if you have any queries about the above. My contact details are below:**

Jo Braithwaite
[my contact details]
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