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The battle over transgender rights in the legal profession

Leading law firms are struggling to provide safe environments for transitioning employees, with new rules over pronouns and the overriding advice not to make assumptions

Catherine Baksi

- Transgender lawyers allegedly face discrimination from recruiters
- Solicitor watchdog chief argues that “diverse firms are successful firms”
- The gender-neutral pronoun “Mx” added to client registration forms alongside “Mr” and “Mrs”

Whether it’s the Girl Guides creating communal showers, lavatories and tents for all its members — including those who were born male — or the Church of England advising schools to allow boys to come to class in tutus and high heels, transgender legal issues are not in short supply.

The notion of gender is up for debate like never before, with some suggesting that rather than being simply binary biology, gender is more of a moveable feast and we are all on a spectrum.

Transitioning is an issue for the law, with the government, in response to a report from the House of Commons women and equalities committee reviewing the Gender Recognition Act 2004.

But gender has also become a matter that even the most conservative of law firms are addressing. Their lesbian, gay and bisexual diversity groups have become LGBT (to include transgender) or LGBT+, as one lawyer puts it, to avoid the “alphabet soup” of LGTBQIA. The latter three letters denote queer, questioning, intersex, a-sexual, a-romantic, a-gender or an ally (someone who need not fall into any of the other categories, but supports their right to equal treatment).

Rachel Reese is a transgender woman, vice-chairwoman of the Law Society’s LGBT lawyers division and chief executive of Global Butterflies, an inclusivity consultancy supporting the legal profession. She has worked with large law firms to develop inclusion policies and train staff.

A deliberate reference to a person by their previous gender expression is potentially illegal

“The Gender Identity Research and Education Society estimates that about 1 per cent of the British population are gender nonconforming to some degree,” she says. “That’s around 650,000 people. There are a lot more of us than people think.”

The training model she has developed has three strands, starting with the top team — the partners and management — to introduce them to the relevant legislation, appropriate language and the way in which general good practice can trickle down through a firm.

Next up, Reese hits the human resources personnel, looking at how to attract transgender staff, alongside training, management, business development and tackling issues such as unconscious bias.

“A lot of recruiters don't pass on trans people to blue-chip companies. Although many are highly educated, there could be up to 50 per cent unemployment in the trans space and they tend to be in lower paid work.

“Few are in management positions and there are not enough ‘out’ lawyers and no role models in senior positions,” she observes.

The third element is for all staff in client-facing roles. “Any touch points,” Reese says, from security guards to reception staff, those on the telephone exchange or call centre and other services.

Success through diversity

Understanding is a big part of transgender inclusion. The website of the Solicitors Regulation Authority (SRA), the profession’s watchdog in England and Wales, provides a list of practical tips and ways to implement a “trans-positive” workplace.

Its guidance explains that: “Trans is an inclusive term for people who may identify themselves as transgender or transsexual, but also includes identities such as a-gendered, non-gendered, non-binary or gender queer.

“Trans is an inclusive term describing all those whose gender expression falls outside the typical gender norms, including those who live continuously outside gender norms, sometimes with and sometimes without medical intervention.”

Paul Philip, the authority’s chief executive, argues that “transgender equality is an important part of creating a positive, inclusive working environment. It’s not just right in principle that law firms should reflect the communities they serve. Diverse firms are successful firms, making the most of the business benefits that diversity brings.”

To understand equality in law firms better, the SRA amended its diversity data questionnaire this year to include a question about gender with an option for people who do not identify exclusively as male or female. Its findings will be published early next year.

Following the regulator's example, some solicitors' firms have adopted an "Mx" option alongside Mr, Miss, Ms, etc. on client registration or internal personnel and recruitment systems.

Drafting a policy or statement on transgender inclusion is often a first measure in showing commitment to equality and demonstrating that discrimination or lack of respect will not be tolerated.

The national law firm Irwin Mitchell has recently introduced a transgender policy and its human resources director, Andrea Preston, explains why: "This is an important first step to demonstrating that Irwin Mitchell supports a trans inclusive workforce and reflects the communities in which we work."

The firm, she says, has 30 individuals who identify as a gender different to that at birth, although no one has formally identified themselves as trans. "Our policy is a way of highlighting the support that is available to any individual who wants to identify as transgender and would like support around transgender issues as part of our wider commitment to diversity and inclusion in the workplace," she says.

Identity over biology

The international firm Baker McKenzie has long had an LGBT policy and over the past year it has developed a specific one around transition and gender identity.

Harry Small, partner and chairman of the firm's LGBT+ strategy, says: "You do not have to transition to benefit from it. Identity is more important than biology. If you identify as a particular gender, male, female, non-gender-specific, you are entitled to be treated as that, regardless of your biology."

"There are many different ways that a person can transition. We recognise that it's an individual process and we will positively support transitioning employees to be themselves."

The firm has developed a template transition plan to cover all issues that individuals might have, from their identity, name, title and gender marker to taking time off, amending workplace records and identification documents.

Having a comprehensive policy written in supportive, positive language, rather than unfriendly employment law language is important. "It will be trans people who read it," Reese says.

Managing an individual's transition is also crucial, and Reese provides training to personnel departments and those in the person's department so that they have the confidence to deal with it appropriately.

Small says that a communications plan is a crucial part of the process, as is deciding when a person will adopt a new gender and use the appropriate lavatory. Though on the latter point, he adds, the trend is moving towards gender-neutral facilities.

Pick your pronouns carefully

Language is another issue that causes anxiety. Wherever possible, Reese's advice is to use gender-neutral language and, particularly when dealing with people on the

telephone, do not make assumptions. She says that it is especially important to make sure people are addressed by their preferred pronoun.

The point is included in the Courts and Tribunals Judiciary's Equal Treatment Benchbook, which provides guidance to the judiciary and includes a chapter on gender reassignment.

"People will make mistakes," Small says. "The best way to deal with that is to apologise and move on." But, he stresses that "a deliberate reference to a person by their previous gender expression is potentially bullying, could be a breach of confidentiality and is potentially illegal".

Reese says that law firms are trying to get this agenda right. But, she says that she has turned down working with some firms, which she felt were not sincere in their agenda and they were just ticking boxes.

Aside from the desire to do the right thing, clients encourage and demand diversity, although they may not specifically ask about trans-inclusion. According to Small, Baker McKenzie has a large technology client in the US that reserves the right to reduce the firm's fees if it fails to provide a team that is sufficiently diverse in its make-up.

Law firms can also play a role in advancing LGBT rights, although it can be difficult in less liberal countries. "If, for example, we had an office in Uganda we could not lead a gay pride march down the street, but we can ensure our office is a safe space," Small says.

"Where we can, we advocate. As a minimum, every one of our offices is a safe space internally for LGBT people."

Inclusivity in action

Simmons & Simmons The City of London law firm launched its gender identity and expression policy in November, to coincide with International Transgender Day of Remembrance. Emma Cusdin, co-founder of the Trans*formation networking group, was guest speaker at the launch event. The toolkit contains good practice for partners and others to support transgender people and individuals who are transitioning.

Pinsent Masons After implementing gender identity training, the firm introduced gender identity in its annual diversity data monitoring survey. In August 2016 it changed its client registration systems to include Mx as an option alongside Ms, Miss and Mr. The firm has run several speaker sessions with transgender role models, hosted screenings of the films *52 Tuesdays* and *The Danish Girl* and sponsored a production by the transgender Adam World Choir. The firm has also teamed up with Mermaids, a charity that supports children and young people and works to raise awareness about gender issues among professionals and the general public.

Slaughter and May The City of London “magic circle” firm launched a set of gender identity guidelines last summer, setting out the firm’s commitment to inclusion and the support employees can expect if they choose to transition. It has introduced gender identity questions to its diversity monitoring questionnaire and provides the gender neutral title Mx as an option in its internal personnel and recruitment systems. It has also reviewed its benefits policies to ensure that gender neutral language is used throughout, delivered trans awareness training to its human resources team and provides a gender neutral lavatory on each floor. The firm’s LGBT network, Prism, held a firm-wide awareness raising event to mark the International Transgender Day of Visibility in March, when it was joined by Ayla Holdom, Britain’s only openly transgender military pilot.

Hogan Lovells In 2016 the transatlantic law firm launched what is thought to be the first law firm gender transitioning policy. It aims to support any transitioning individual and their colleagues, as well as offering bespoke training and advice on how to communicate with clients. This year it launched “Pride+”, a global LGBT and allies network expanding on its existing Pride networks to raise awareness of issues facing LGBT+ communities across the firm.

RPC The firm is reviewing its trans and transitioning at work policies. It provides gender neutral lavatories and showers in its London and Bristol offices and is rolling out education around trans issues.

The End