

The General Counsel for Diversity & Inclusion

How in-house teams and law firms can work in partnership to improve D&I in the legal industry

Based on research with D&I experts in major law firms



Acritas

Executive Summary

The General Counsel for Diversity & Inclusion Statement is an independent initiative led by General Counsel committed to Diversity and Inclusion and is intended to represent a powerful statement of intent on the buy-side to improve D&I in the legal industry. The General Counsel leading on the initiative have deliberately chosen to adopt a collaborative model, recognising that clients need to work in partnership with law firms.

As a first step in co-creating this collaborative model, the GC for D&I group instructed Acritas, the leading specialist in legal market research, to interview D&I experts in major law firms. The aim was to better understand their perspective on how clients can support them with their firm's own D&I efforts, as well as capturing their thoughts on which D&I initiatives are most effective and which are more challenging to use as a barometer of progress. The intention is to use these findings, alongside additional results from a broader survey launching soon, to develop a set of key principles and objectives, as well as a framework of KPIs, that in-house teams would expect the law firms they hire to adhere to and work towards.

For now, we present in detail the findings from our initial in-depth conversations with 14 D&I experts. There was enormous engagement from the law firms and desire to contribute fully and thoughtfully to the research, and we would like to thank everyone who has contributed to our thinking so far. Four main themes emerged from these conversations:

1. There needs to be mutual commitment and cooperation to increase diversity

Law firms are engaged and supportive of the GC Group's desire to collaborate and drive change in the industry, but clients need to ensure that any new framework implemented is not overly focused on collecting stats from law firms – instead, it should introduce a more cooperative approach and begin an ongoing dialogue around D&I where both sides are expected to work to the same standards and can share success stories and best practice with each other.

2. Find a way to reduce the D&I reporting burden on firms

Stats are still important to track progress and build accountability into the framework, but clients should ask for D&I data in more intelligent ways that do not divert time and resource away from essential change-delivering initiatives. Aligning reporting requests with the data firms already compile and restricting it to gender (the easiest category for all firms to track) will make reporting more of an easy lift for D&I teams who can struggle with the volume and variety of requests from clients.

3. Clients are a powerful lever for change

Firms are clear that clients' buying behaviour needs to shift in order to drive meaningful change; clients need to 'reward' firms that make progress on D&I and 'punish' those that don't. Modifying behaviour when working together on matters can also help firms create a more inclusive environment and reduce unnecessary stress in the workplace which disproportionately affects certain groups.

4. Establish some must-have basics

To assess where a firm is on its D&I journey, there should be a set of 'must have' initiatives that all law firms and in-house teams have in place, with stretch targets to show how firms are progressing, as well as identifying the firms that are excelling. The most effective levers of change are those that seek to address systemic bias in the system, and so these should be a priority in what clients look for in their firms.

There needs to be mutual commitment and cooperation to increase diversity.

Amongst law firms, there was a groundswell of genuine appetite for closer collaboration with GCs and a strong feeling that a firm's D&I initiatives can become much more impactful if firms and clients are working more in sync.

That said, there exists some genuine scepticism among law firms about in-house departments' own commitment to diversity at the moment: many experts talked about the frustration they experience in belonging to a small, resource-limited D&I team that invests a huge amount of time in pulling together D&I reporting request from law firms, only to wonder how the figures they provide are used to inform hiring decisions, and whether the level of detail requested is necessary.

Similarly, firms talked about their frustration of investing time and effort into preparing for pitches and ensuring they present diverse teams only to see another firm appointed that is not making the same efforts into improving D&I at their firm or within the wider industry. This leads many law firms to question how influential D&I is during the selection process, and whether clients still just want to instruct the 'A' team, or are influenced by other factors, such as price point.

A more extreme form of scepticism voiced by D&I experts is that they are faced with an increasing number of requests around reporting and invites to contribute to initiatives such as this one; there is a concern that, by not truly listening to the law firm voice, GCs will commit to implementing a new framework which is simply a variation of the existing levels of reporting law firms already need to comply with – i.e. more reporting that does not consider or address the more substantial, underlying issues that can effectuate meaningful change.

This is why law firms were so enthused by this spirit of collaboration; they are eager for this new initiative to not be too overly focused on collecting detailed stats from firms and comparing notes on each firm's performance, but starting a truly productive dialogue around D&I which facilitates real positive change. Seeing in-house teams commit to reporting on the same D&I metrics would also go some way in demonstrating that collaboration on improving D&I really does go both ways.

Law firms felt there were three ways in which their clients could best support them in their D&I mission:

- ▶ Finding a way to reduce the D&I reporting burden on firms
- ▶ Clients are a powerful lever – buying in diversity friendly ways will help
- ▶ Focusing future framework and KPIs on the most effective levers for change

Find a way to reduce the D&I reporting burden on firms

First of all, clients can work to better align the metrics and reporting they request to a law firm's existing reporting requirements. For example, law firms in the UK have to report on the composition of legal staff to their regulatory body (SRA) and the same applies in the US (ABA); ensuring that the wording of requests and the timeframes you are looking for data on maps with what D&I teams have already compiled. That way, law firms don't have to divert time away from their D&I programmes to run a new set of numbers.

How often clients request metrics can also make the reporting process more of an easy lift for law firms; the general consensus was that once a year would be optimal, and twice a year reporting at the most. Clients should recognise that reporting won't change massively in short periods of time – for example, if partner promotion processes are an annual event. Figures can also fluctuate drastically if looking at the data more regularly (for example, every three or six months), whereas the focus should be on monitoring the overall direction of travel.

It is also virtually impossible for firms to collate a global response on diversity; in some jurisdictions, legislation prevents firms from even being able to ask their people about certain characteristics, as well as these requests risking an individual's right to privacy on aspects such as LGBTQ+. Another barrier is where different markets use different terminology and definitions that don't align and allow for a unified response: for example, the US captures American-specific race and ethnicity identities (e.g. American Indian and Alaska Native, Native Hawaiian) whereas the UK uses BAME. Reporting needs to be tailored to regions, with many firms saying this is something clients do not take into account currently.

Although all firms are working on improving representation across all types of diversity, gender seems a sensible category to focus reporting on. From a practical perspective, firms generally possess and can collect data around gender which makes reporting easier. But, considering women are also the largest minority, moving the needle and making progress on gender will positively impact other diverse populations. Indeed, many firms are increasingly mindful of intersectionality and that no individual belongs to just one diversity strand.

With all of this mind, some suggested metrics to focus reporting on would include:

- ▶ Headcount breakdown – leadership and partners
- ▶ Hours breakdown on matters
- ▶ Value breakdown on matters

Reporting should also be kept at a high-level – i.e. only asking about diversity on a firm-wide basis rather than asking about diversity on your own matters. The more granular reporting requests become, the more they risk identifying individuals – all of which is contrary to law firms' emphasis on inclusion and ensuring people feel safe to bring their whole self to work in the first place.

Gender pay gap reporting at firm-wide level can also be illuminating, but these figures can be skewed as lower paid business function roles (e.g. personal assistant) are more likely to be filled by women – instead, ask for gender pay gap reporting for all legal staff, or those at partner level.

Clients can also look to apply more pressure in the right way – for example, asking firms about how they allocate origination credit, or how/if they audit their compensation approach. Firms strongly felt that clients play a significant role in ensuring that work is funnelled directly into the hands of diverse lawyers, helping them as individuals progress within a firm.

Clients are a powerful lever of change

The vast majority of priority clients are actively asking about D&I, according to the firms interviewed. All firms recognised that it is the clients themselves that have the power to drive change in their firm and the wider industry as a whole. To do this, buying behaviour needs to change. D&I experts were clear that firms showing progress in D&I need to be rewarded, and there need to be consequences for lack of engagement – the most powerful incentive being to instruct work to the better performing firms, and remove work from those that fail to change.

Clients can also work with firms in more diversity friendly ways; firms felt that wellness was one growing area their clients are beginning to ask about, on top of D&I. Acritas' own recent wellbeing research found that 49% of law firm partners felt their performance had been affected by physical or mental health in the last month, with the figure being even higher for women.¹ Firms are already making efforts to respond to the pressures on their lawyers, with many committing to the Mindful Business Charter (MBC) initiative. The MBC centres on four pillars that can help clients and firms work together on practical measures that reduce unnecessary stress in the industry – openness and respect; smart meetings and mailings; respecting rest periods and mindful delegation.²

The firms we spoke to gave examples of behaviours they felt would hugely benefit individuals and help develop a workplace environment and culture that supports diversity:

- ▶ Avoid imposing unnecessary deadlines (is it okay to receive something on Tuesday morning, rather than Friday afternoon?). Let firms know at the outset of a matter that you are okay with them pushing back on requests
- ▶ Apply a traffic light rating to requests so lawyers can better understand the urgency on it and prioritise accordingly
- ▶ Hold clear conversations upfront about who is on the team and what their non-working days might be. Respect individual's working patterns by not sending emails outside of their business hours, or at least be clear in subject lines that a message doesn't need an immediate response

Bad client behaviour is also damaging to retention and promotion; a recent IBA study found that one in two female lawyers has been bullied and one in three sexually harassed. One in five of the sexual harassment incidents were by clients.³ While this signals the more systemic bias that exists within firms and companies with a more 'masculine' culture, even well-meaning efforts to address this bias can be harmful: one firm gave the example of a client that demanded a BAME lawyer attend every meeting on a matter, another related that a client only wanted lawyers with disabilities to work on

¹ Acritas Star Lawyers Wellbeing Research 2019, full report to be published in the new year

² The charter is a collaboration (initially) between leading banks and law firms committed to driving change in how we work. It was developed by Barclays, Pinsent Masons and Addleshaw Goddard. In its first year, over 20 companies have signed up as signatories with many more law firms supporting the charter too <https://mindfulbusinesscharter.com/>

³ 'Us Too? Bullying and Sexual Harassment in the Legal Profession' <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>

their matter. Forcing the issue can be detrimental, not least to the individual lawyer’s if they end up working on projects that don’t match their own career goals. Clients again pointed to the importance of considering change over time, but also of more collaboration on the initiatives that are most effective in supporting the retention and promotion of diverse lawyers.

Focusing the future framework and KPIs on the most effective levers for change

Law firms felt that some metrics (but not an overload) would be necessary to hold firms to account and ‘keep them honest’, but that they should take into account the suggestions above to ensure these figures are not too onerous to collate. Law firms felt strongly that these metrics should then support a structured conversation about what the firm is doing to address D&I in the firm, what initiatives they are working on, and find more opportunities for partnership.

“In terms of opening up the conversation, it is about moving to conversations around inclusion, rather than diversity and chasing the numbers – that’s where you see the difference. If you get the inclusion right, the diversity figures follow. If the work environment is not right, you will see bus loads leaving faster than you can bring them in. We would like to see GCs focusing on the culture rather than just the numbers. Numbers are an artificial way of meeting the diversity objective.”

As part of the in-depth interviews, D&I experts were asked about 21 different D&I initiatives, and which of the following they would welcome and which they would not as part of a D&I framework to work by. The illustration below shows those that firms were strongly in favour of, those where there was mixed support or it was felt there needed to be more structure around these initiatives to ensure they are effective, and those measures where less support existed.

Strong support:	Mixed support:	Least support:
<ul style="list-style-type: none"> ▪ Stating diversity as a strategic goal ▪ Clear and safe procedure for reporting bad behaviours ▪ Declared target for diversity at partnership level ▪ Board level representative for D&I (where D&I is significant part of role) ▪ Offering training on sub-conscious bias to all (with management responsibilities) 	<ul style="list-style-type: none"> ▪ Diversity in client relationship management (this is something that we essentially insist on with our relationship firms) ▪ Senior management sponsoring D&I initiatives ▪ Openly report diversity data within the firm ▪ Practice leaders embracing D&I initiatives and goals 	<ul style="list-style-type: none"> ▪ Reciprocal / reverse mentoring ▪ Using objective or blind work allocation techniques ▪ Secondments to in-house teams for lawyers who need more flexible arrangements on a temporary basis ▪ Agreeing reporting procedure with key clients in case bad behaviours

<ul style="list-style-type: none"> ▪ Offering sexual harassment and bullying training to all ▪ Without exception, taking a strong stance on dealing with behaviours contrary to our D&I policies and goals ▪ Adoption of D&I friendly recruitment and promotion practices 	<ul style="list-style-type: none"> ▪ Reporting gender diversity by practice 	<p>occur from client side</p> <ul style="list-style-type: none"> ▪ Annual firm-wide D&I anonymous survey; the outcome of which is shared and discussed in the firm ▪ Transparent compensation criteria ▪ Blinding CVs to hide characteristics which may lead to bias ▪ Diversity quotas for board composition
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Interestingly, what firms highlighted as being most effective generally aligned well with what Thomson Reuters’ Transforming Women’s Leadership in Law survey had identified as the initiatives which most strongly correlate with higher retention of women in senior legal roles, most notably initiatives aimed at eliminating bias and the toxic environment: taking a clear stand on behaviours contrary to D&I policies, training on sexual harassment and bullying, on subconscious bias and getting leader buy-in.⁴

Firms felt, however, that many of these initiatives – especially those that were more strongly supported – should be treated as essentials for all law firm to have in place. Progress on these initiatives, as well as additional initiatives in place, should be used as stretch-levels so in-house teams can see where firms are on a continuum and measure their progress as a firm over time and relative to others in the industry.

⁴Thomson Reuters’ Transforming Women’s Leadership in the Law programme is focused on addressing the structural barriers and creating cultural change needed at the organisational level for women to succeed and advance in the legal industry. <https://blogs.thomsonreuters.com/legal-uk/transforming-womens-leadership-law/>

As for those metrics where support was more mixed, firms felt providing more definition around these would help them become a more indicative measures of progress. For example:

▶ **Diversity in client relationship management**

Firms felt there was a risk this was focused on ‘visible’ diversity (e.g. gender and race), rather than more ‘invisible’ kinds of diversity (LGBT, social background). More clarity on what this means and what clients expect to see from their relationship teams would help, as firms want to avoid making tokenistic appointments.

▶ **Practice leaders embracing D&I initiatives and goals**

Beyond vocalising their support for D&I initiatives and goals, there needs to be some scrutiny of what partners are doing personally in their own team to elevate diverse talent. For example – can clients ask partners what three things they are doing to achieve this? Or would a better measure be looking at whether enhancing the diversity of the team is written into a practice leader’s personal objectives, or even linked to remuneration?

▶ **Openly report diversity data within the firm**

Firms, again, expressed concern that some metrics are difficult or impossible to collect, as well as making it their priority to not identify individuals in any data that is published. Keeping reporting high-level and restricted to gender would assist with this.

As for measures that garnered the least support from law firms:

▶ **Diversity quotas for board composition**

Firms were almost unanimous in their belief that aspirational targets work better than fixed quotas; quotas create unease that someone has not attained a position on their own merit.

▶ **Reciprocal / reverse mentoring**

Firms felt this may be more difficult to put in place, and Thomson Reuters’ TWLL research also found it to be an ineffective initiative – though well-meaning, mentors can sometimes give the ‘wrong’ advice or reinforce perceptions that discourage lawyers to aim for a partner position.

▶ **Agreeing reporting procedure with key clients in case bad behaviours occur from client side**

Whilst felt to be a good idea, firms struggled to see how this would work in practice and what kind of mechanism would be able to effectively address the problem without harming the

relationship or 'blowing up' an issue that could be better handled in a one-on-one conversation.

▶ **Transparent compensation criteria**

Firms felt this was too commercially sensitive to share with clients, and it could be indicative of pricing models within particular firms. Having a high-level discussion around this may be easier than asking for a detailed breakdown.

▶ **Blinding CVs to hide characteristics which may lead to bias**

Many firms have decided against this, and instead are looking how to reduce bias throughout the entire recruitment process – this may involve moving from competency-based to scenarios-based testing to look for the innate skills, or using contextual recruitment tools to source the most diverse candidates. Several firms were also re-focusing their recruitment programmes on under-represented communities and working with recruitment partners that can help them reach more diverse groups; this is an area where firms felt there was more potential to collaborate with in-house clients.

▶ **Annual firm-wide D&I anonymous survey; the outcome of which is shared and discussed in the firm**

Firms felt this would, again, create another level of reporting to comply with. If the survey was for employees to fill in, this could again create fear/risk of identifying individuals and the results may not be fully accurate depending on the response rate.

▶ **Secondments to in-house teams for lawyers who need more flexible arrangements on a temporary basis**

Firms felt this risked putting an individual lawyer's personal development plan on hold, or that they as a firm should be able to accommodate a flexible working arrangement without relying on clients. Having a team member seconded can also disrupt the rest of the team and potentially increase their workload, affecting their own wellbeing.

Recommendations for action

Based on the research to date, ten key recommendations to inform future action have emerged:

1. Maintain focus on all aspects of diversity, but limit reporting to gender
2. Report back on law firm diversity metrics (i.e. what you are looking for from firms) and show the impact on work allocation
3. Legal departments to agree to the same frameworks and report on the same D&I metrics as law firms
4. Hold annual discussion with firms to discuss approaches and share successes and failures

5. Consider funding joint initiatives to target specific groups
6. Create guide of 'must have' and 'recommended' diversity initiatives
7. Ask firms to report on both types of initiatives – this can help identify firms that are really excelling
8. Request metrics at overall firm level once a year and across matters twice per year
9. Align reporting requests with existing standard lists (e.g. SRA, Diversity Model Survey or Stonewall Index)
10. Commit to the Mindful Business Charter

Background

The General Counsel for Diversity & Inclusion Statement is an independent initiative led by General Counsel committed to Diversity and Inclusion. It is independent of any outside associations or groups and is intended to represent a powerful statement of intent on the buy-side to improve D&I in the legal industry. The General Counsel leading on the initiative have deliberately chosen to adopt a collaborative model to drive for change. Rather than criticising law firms on their track record and insisting on improvements with consequences if they don't, it is recognised that clients need to work in partnership with the law firms.

The initiative is led by Ritva Sotamaa Chief Legal Officer & Group Secretary, Unilever; Rosemary Martin, General Counsel & Company Secretary, Vodafone; Donny Ching, Legal Director, Royal Dutch Shell; Caroline Cox, General Counsel, BHP and Richard Price, General Counsel and Company Secretary, Anglo American. Signatories are primarily General Counsel at multinationals headquartered in the UK and Europe but general counsel at all companies across all jurisdictions are welcome to join the initiative.

Building on their statement of support, The General Counsel for Diversity & Inclusion would like to implement a framework for their panel firms to work to, which will include a mix of policies and KPIs. They would like to co-create this framework with the panel firms to ensure it is fit for purpose and delivers to the overall goal of increasing diversity and creating a more inclusive environment at their panel firms.