

# Why flexi works!

*Many male and female young lawyers work flexibly. Anna Kavanagh explains what makes a successful FWA*

Consider this: by 2010 only 20% of the workforce (in all sectors) will be white, able-bodied men under 45 (The Department for Work and Pensions UK Workforce Review February 2003).

What of the legal profession? The demographics mirror those for the general workforce:

- Since 1991 the total number of solicitors with practising certificates has grown by 51%; of this total growth, the growth in male solicitors has been 26% compared to 128% growth in female solicitors
- Male entrants are falling year on year
- Female entrants are rising year on year with more females than males entering the profession at every stage (and have been for the past nine years) from applications to study law and law graduates, through to trainees and newly qualified lawyers.

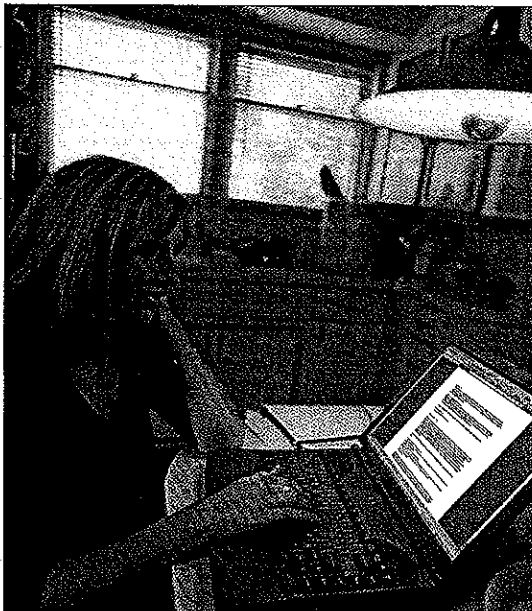
Clearly, the available labour pool is changing – fast. Traditional working patterns no longer suit this workforce, male or female, under 45s or over 55s. It's not just the demographics however. Other drivers for change to Flexible Working Arrangements (FWAs) include:

## Reduced accommodation costs

The average cost of office space per head in London is £23,500 p.a. (Office of National Statistics) with average utilisation rates for professionals falling to 40%. FWAs such as remote working and job-sharing allow a firm to "flex" in line with workflow, improve utilisation rates and reduce costs.

## Case study

*Davis & Co have worked virtually for a number of years; working 'virtually' has substantially cut overheads. Davis reckons his firm saves about 20% a year and this saving is shared with clients.*



## Increase in both performance and productivity

- Although there are no official figures to prove productivity increases, Davis & Co solicitors have found that their lawyers are 20% more productive.
- Time4Balance, which is a specialist consultancy advising the legal sector on flexible work issues, conducted a survey of lawyers, partners and HR specialists of the firms adopting flexible work who state productivity has improved as the

lawyers are more focused, and more motivated.

- Other surveys show productivity increases. The BT Workstyle Consultancy Group found productivity boosted by 20% to 40%, while the AA says working from home boosts productivity by up to 30%.

## Reduced recruitment and attrition costs

- Cost estimates of replacing a fee earner vary but a guide is £150,000 to £300,000 depending on sector and level of qualification.
- Average annual attrition rates are 26% increasing to 33% in some firms. In a firm of 200 lawyers with 26% attrition, the cost is between £7.8 million and £15.6 million per annum.
- FWAs could reduce attrition rates attributable to those lawyers leaving the profession due to lack of flexibility and the following demands:
  - long hours culture: according to the Law Society, more than half of the country's lawyers work more than 46 hours a week.
  - high levels of stress: a BUPA report shows that solicitors suffered higher levels of stress than junior doctors.
  - family/caring responsibilities: during the peak of child-caring years i.e. their 30s, almost one third (29.1%) of all female lawyers and 8% to 15% of male lawyers leave the profession.
  - lack of promotion: 52.4% of partners are men. Only 23.9% are women despite the fact that, since 1992, women have accounted for over 50% of admissions. Even in those solicitors with 10 to 19 years experience (the level normally associated with promotion) 82.9% of men are partners (or sole practitioners) compared with only 56.6% of women.

## Case study:

*Blake Dawson Waldron solicitors say that in the past five years, staff turnover has dropped from 27% to 17% which the firm conservatively estimates delivers a saving of around £630,000 per year in the cost of advertising for and replacing staff.*

## FWAs as an aid to recruitment and marketing

For firms, the marketing opportunities to encourage recruitment:

- "Employer of choice"
- Reduced attrition rates/better retention
- Career progression at all stages of a lawyer's career

For clients, perceived advantages could be:

- Continuity of relationship with lawyer
- Higher productivity
- Cost savings passed on to client
- Lawyers who are more creative, dynamic, innovative, less stressed and more refreshed.

## Compliance with "flexible working" legislation

The Employment Act 2002 imposes a duty on firms to

consider FWAs. There are also increased parental rights under new UK Regulations and European Directives, and amendments to the Sex Discrimination Act. Taken together, firms face a future where they will be obliged to accommodate time away from a regular working pattern.

#### **A request for a FWA – issues to consider:**

Under these various pieces of legislation, increasing numbers of lawyers will be making requests for a FWA. The law firm should, by now, have a prescribed form for the lawyer to complete when requesting a FWA under the Employment Act 2002. The form should ask the lawyer for the following information:

- the required working pattern
- the impact of working flexibly on the business
- the impact of working flexibly on colleagues
- how these issues can be solved

The application will form the basis for the discussions between the lawyer and the law firm under the procedure set out in the Employment Act 2002. Both parties to the discussions should consider the following:

#### **What type of FWA would suit?**

Each role/practice area will have different constraints eg court deadlines, completion dates, international time zones, working in multi-disciplinary teams. For example, a commercial litigation lawyer seeking to work a three day week should consider the need to be contactable by phone and email on the other two days and/or be prepared to swap days to be able to attend emergency meetings or court appearances.

#### **Objective v subjective analysis of the role's suitability for a FWA**

Under the Employment Act, refusal by a firm to agree a FWA is on the basis of its subjective assessment of the firms' business requirements. However, under the Sex Discrimination Act, the test is objective.

Ultimately, a firm insisting on a requirement for a female lawyer to work full-time must be able to objectively justify this under the Act's indirect discrimination provisions.

#### **Expert evidence to determine role suitability:**

As there are a number of lawyers now working flexibly, it may be more difficult for a firm objectively to justify a requirement to work full-time.

Expert evidence to show that a lawyer within another firm has been able to perform the same role on a flexible basis could be used by the lawyer. Conversely, a firm could bring expert evidence to show that the proposed FWA would not meet the business need. Time4balance has produced such expert evidence about lawyers working flexibly within the profession in recent tribunal cases.

With their legal costs covered under home insurance policies and more lawyers being prepared to dispute the issue, increasing numbers of lawyers are bringing tribunal claims. Although the compensation awarded under the Employment Act 2002 is a mere £2080, compensation under the Sex Discrimination Act has no ceiling. Given the recent claim for £7million against Sinclair, Roche and Temperley, firms need to consider the impact on their business of an adverse award and plan accordingly. Objective analysis tools are available that can analyse the components of an individual role to determine which type of FWA would be most suited to each role.

#### **Impact of a FWA on the business**

Issues to consider here are:

- Health & Safety compliance for home-workers
- Security of computer systems: viruses, confidentiality and intellectual property issues of remote workers
- Continuity of client service if job-sharing or part-time working
- Increases in some administrative costs v cost savings in office space/overheads
- Benefits of reduced commuting time: productivity increases, environmental and health/stress levels
- Other specific factors e.g. a drop in a particular client's work, a reorganisation of a department, a merger.

#### **Impact of a FWA on colleagues**

Issues to consider include:

- Internal meetings – is teleconferencing or videoconferencing viable?
- Attendance notes – are there protocols to ensure typing and filing is up-to-date to ensure team members can pick up and work with the file?
- If job-sharing, will the job-sharing partners have a day to overlap to ensure updates are shared?
- Mentoring/supervising – how will this be managed?
- Workloads – how will this be managed where there is a crisis or holiday/sickness?

#### **Solutions - successful FWAs**

Ideally, all the potential issues should be addressed with coherent, viable solutions. There are many lawyers, male and female, now working flexibly within the profession in firms of all sizes.

Time4balance has identified around 50 such lawyers and has interviewed over 20 of these and gathered data on others through a postal questionnaire. These lawyers include heads of departments, equity and salaried partners and assistants, in a variety of practice areas including:

- Corporate
- Banking
- Capital markets
- Commercial litigation
- Employment
- Commercial property
- Family
- Medical negligence
- Insurance and reinsurance
- International projects

The solutions to some of the issues raised include trial periods, flexible child-caring arrangements, ensuring there are competent junior assistants, good technology skills / training/ support and managing client's expectations thoroughly.

Time4balance will be running a series of flexible working forums for lawyers and firms, to explore some of the issues raised in this article. A flexible working conference is scheduled for the Autumn 2004.

For more details, please contact Anna Kavanagh at [info@time4balance.com](mailto:info@time4balance.com) or on 020 8549 7949.

We are also interested in hearing from any lawyer who is currently working flexibly and would be happy to complete a "Flexible working questionnaire" which can be on a "no names basis" if preferred. We respect your wish for privacy and confidentiality.



*Kavanagh: working from home boosts productivity*