



Even in 2010, some gay lawyers say coming out can damage your career

A debate is raging about homophobia among solicitors. So does sexuality matter, asks Jon Robins

AN ARTICLE counselling young gay lawyers on the tricky matters of etiquette for coming out at work includes the following advice: "Do take your significant other to the firm's Christmas party... probably best to avoid getting heroically drunk and snogging to slow numbers". Perhaps it's no surprise that it has proved a controversial New Year hit on law magazine The Lawyer's website.

"Do you come out and risk the hatred, ridicule or contempt of your colleagues and clients, or do you keep it under your hat?" opens the article. It's probably fair to say the piece has divided its audience ("... in the year 2010, it is absolutely vile that an article like this even needs to be written," reads one post).

But is being honest about your sexuality at work really such a massively high-risk strategy in these apparently enlightened times? "It depends on where you work, even in the City firms," reckons Andrea Woelke, chairman of the Lesbian and Gay Lawyers Association. "Sometimes there is a very open culture, with gay partners who are out, diversity programs and a gay group. However, even in firms where partners are out, some departments are supportive and others very homophobic. It can be a case that the first and second floors are fantastic however the fifth floor is a totally different culture."

HUGE CHANGE

Ironically, the strait-laced and conservative legal profession has lagged some way behind the spirit of the law as well as the best practice professions. You can find out just how far by checking out Stonewall's 2010 Workplace Index, published today, which benchmarks Britain's top employers for lesbian, gay and bisexual staff. Two years ago there wasn't a single London law firm in the top 100, and last year there were only four. "We have gone from a position where 10 years ago it was illegal to be gay



and a judge and where we didn't see a lot of out people in the law firms," comments Daniel Winterfeldt, a US securities partner in the international corporate practice of the London office of Simmons & Simmons. "I have seen a huge change over a decade in London."

His firm, 31 in Stonewall's top 100, is the highest ranking firm in the index

and will be hosting the launch of the Stonewall report. Winterfeldt set up the InterLaw Diversity Forum in March 2008 to encourage diversity within the legal sector. It has some 700 members and is backed by more than 60 law firms and 40 companies. Winterfeldt has mixed feelings about the Lawyer article. "It's

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humorous way but missed the mark," he says. Although he points out that the magazine has been supportive of gay rights, in particular its front page coverage of JP Morgan calling on firms to bring their diversity policies in line with the banks in May 2007. "That was quite a big moment in the City. It started the ball rolling in terms of change for lesbian and gay and transgender rights."

DEPRESSING DISCRIMINATION

Feedback on The Lawyer's site ranges from affirmations that life is, indeed, better for gay and lesbians in the profession to depressing accounts of discrimination in the workplace as well as much response to a diatribe posted by someone styling himself as Jack Vance. "I'm sorry but all of the gay men I have known... have been heavily into gay pornography, substance abuse and late night sexual encounters," writes Vance. "As a senior associate at a large US firm, I would exercise more scrutiny when deciding to hire a gay man just as I would someone with known addiction problems."

"Absolutely shocking," reckons Andrea Woelke, adding that such a view is in breach of English and European anti-discrimination laws and should possibly be investigated by the Solicitors Regulation Authority.

Another US post has attracted attention as well. "If you want to work for White & Case and want to keep your job or have any hope of being made a partner, I would not come out of the closet," writes one lawyer who claims to have been fired "because I am a gay". W&C claims to have no idea who the ex employee could be and insists that sexuality is no barrier to progression. Elaine Johnston, an anti-trust partner in New York and executive partner for diversity, cites her personal experience as evidence of the firm's credentials. "As an openly lesbian partner at White & Case I can say with full confidence that my sexual orientation has never been an impediment to my career".

Andreas Woelke thinks the debate is welcome. "Sometimes in London you can live in a bit of a bubble," she says. "There is civil partnership and anti-discrimination laws. But the reality is people still get beaten up and even beaten to death in Trafalgar Square."

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SPEAKER'S CORNER



FINES ALONE WON'T MAKE FSA CREDIBLE

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LAST year the FSA began talking the talk, with a number of policy speeches about the need for enforcement to "deliver credible deterrence". Indeed, 2009 was a record year for bank fines. FSA rules for the registration of directors and senior managers – persons holding significant influence functions – for individual accountability are being tightened. Yet the numbers of cases and criminal prosecutions remain small. Last year there were two insider dealer trials and four convictions. There were no prosecutions of organised insider dealing rings. There were no FSA rule breach cases against senior bankers or managers of large institutions. Fixing responsibility on an individual for a culture of profit-seeking without proper regard to risk is undoubtedly difficult. More worrying is that the FSA has largely relied on ever increasing fines against large

institutions. Last year saw £34.7m of fines, up from £23m in 2008, much of it the result of cases involving employee fraud and traders concealing losses by mis-marking trading positions. But there were also cases like the £2.45m fine on Barclays Capital for inaccurate transaction reporting and £3.2m of fines on HSBC companies for poor security of customer personal data. The regulator looks set to continue with this tactic.

But is this reliance on escalating fines the way to achieve the market discipline the FSA seeks? There is a risk that if tougher enforcement policy simply means high fines against banks for the generality of rule breaches (as opposed to matters directly connected with banks going bust and the credit crunch) then bank shareholders may suffer financial detriment without a commensurate increase in

market discipline in those areas of most concern. The FSA has not as yet brought cases where some banks have been found wanting, such as having enough capital, liquidity management and derivatives trading exposures. FSA proposals to further increase the scale of fines are on the table, based on up to 20 per cent of a firm's pre-tax earnings from the relevant part of the business during the period of breach. This is a serious statement, but it is not at all certain that in the absence of disciplinary actions against senior managers, fining firms more will effectively deter wrongdoing. With a solid enough enforcement record in 2009 FSA enforcement may be walking the walk but it is rather more difficult to know whether it will achieve market discipline where it matters.

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