

# Kluwer Arbitration Blog

## Unfinished business and the arbitration practice – how close are we?

Joanne Greenaway · Wednesday, March 16th, 2016

The recently published ‘Unfinished Business’ by Anne-Marie Slaughter challenges paradigms in relation to working life and looks at what could and should still be done to improve our workplaces. As a former lawyer in private practice, Slaughter went on to build a career as a law professor before becoming Director of Policy Planning to Secretary of State Clinton and, after a few months in post, leaving to focus on family demands and her full time tenure. In the wake of her move, she reflected on the ideal workplace and the effect of her career choices. She understands the working environment with which arbitration lawyers in private practice are familiar, albeit with a US slant. Slaughter’s arguments may be most strongly felt in the US where the support net and state benefits are minimal. However, much rings true in the UK also. In an age of celebrated diversity policies and entrenched flexible working, her central question is whether there is indeed any ‘business’ to finish and, if so, what and how?

Slaughter’s thesis is almost the flip side to Sheryl Sandberg’s ‘Lean In’. Whereas Sandberg’s experience was about individuals conforming to an ostensibly “male” culture, Slaughter emphasises the need to for us all create supportive cultures. She stresses that there should not be a choice between leaning in and opting out. The reality she describes is one where many people have a tipping point at which they opt out, often triggered by workplace rigidity. If you lean in too far, she argues, without “an anchoring root system ... you will tip over”. This root counterweight should be comprised of intensive support at home and lots of flexibility at work.

When discussing the issues besetting women trying to progress, she identifies some particular problems. Human nature dictates that women at the top fiercely defend their achievements and want others to succeed on their terms and along the path they have trodden, often with many sacrifices. Many stay in the game to prove they can, often without stepping back to ascertain what it is that provides them with fulfilment.

We know that women, in particular, can struggle in areas such as arbitration that require a large amount of travel. Slaughter contends that the “dirty little secret of women leaders is the necessity of a primary caregiver spouse”. Sharing domestic duties and care of children and other dependants is, she argues, just not enough to make this work. We must recognise that male CEOs have always needed a spouse to take a primary if not a full lead. Having ambition and confidence is just not enough to succeed.

In order to demonstrate that gender divisions need not be this way, Slaughter highlights the

example of same-sex couples whose decisions do not stem from gender default lines. Rather they simply play to each other's strengths and to pragmatism.

She sees a clear undervalue (verging on discrimination) of care in our culture, to the detriment of all of us. Rather than restricting care roles to women, all of us should be entitled to value and take time for care of the self and others in our lives, whether they are children, parents, siblings or friends.

As far as career progression is concerned, in Slaughter's opinion, the ideal sequence for women is to push ahead, then lean back during child-rearing years before pushing ahead once more. The problem is that law firms tend not to cater for getting off the career ladder and stepping back on. She rallies against the assumption that the 'mummy track' (ie part time, lower expectations) should be seen as an alternative to the executive/leadership track. Whilst it is understandable that women in such circumstances should be put on a slower track for promotion, why should they be taken off the track entirely? The fast track should not be the only track. The medical profession amongst others manage this much better than we do. Using a running analogy, she is surely correct in arguing that we are losing an enormous amount of talent: the distance runners with endurance, those who take different paths to the finish even if it involves uncharted territory, and even those with the perspective to see beyond the race.

More and more firms do champion flexible policies, but in practice how are these applied? Who can use them and what is the knock on effect on their career? Arguably, options are even narrower for men – whilst in theory flexible policies are open to all, do men who avail themselves of these options carry any stigma? Are they taking themselves out of the running for partnership? As such, Slaughter makes a powerful argument that flexibility “cannot be the answer to work-life issues so long as it is stigmatised”.

What we need, rather, is a shift in mind-set. For this fundamental shift to occur, we now need nothing less than a “man's revolution”. The “dichotomy of competition versus care needs to be undone”. Men need to have realistic options of career breaks and part time work – not an easy thing for law firms to take on board and invest in but Slaughter convincingly argues that this must be the way forward. She, in fact, advocates a wholesale shift in the way in which we define success and failure, which surely is beyond the remit of this post and even the remit of the workplace.

However, there are simple changes that can be made to our workplaces to start to make this shift and reflect the culture we want. These include taking care in the subtle messages we are conveying. She lambasts law firms for (in the words of one of her mentees) “tripping over themselves in an effort to showcase their family friendly policies” but not necessarily doing fundamental things such as talking to dads about having kids as part of a career conversation. When someone wants time off, that should be seen as an ‘investment interval’ rather than a lack of ambition. Plans should be made together for ramping back up.

She makes some further fundamental proposals. Most importantly, and obviously, the best leaders are those that care. They will recognise that employees need adaptability in order to meet differing demands day to day. This will be challenging, and perhaps the law firm environment has not yet found it easiest to adapt to this level of flexibility.

She implores individuals to take charge of their own careers and see them as ‘interval training’,

ramping up and down, in a series of jobs. This could potentially be within one firm or several firms or several different types of work.

Many ideas are being trialled worldwide and movements set up empowering innovation, in order to address the needs highlighted in the book. These truly provide food for thought. In workplaces in Silicon Valley a new model has been implemented which consists of ‘tours of duty’ or defined contracts which enable jobs to be customised for the employee’s stage of life. McKinsey has the ‘Take Time’ scheme offering leave for up to ten weeks a year. Deloitte provides mass career customisation. Other innovations include ‘trust based scheduling’, utilising the rhythm of semesters, ‘no set hours’ and a general discrediting of the idea of ‘face time’ because seldom is it actually required. Generally, the theme is that happy workers are more productive. “When you create space for people to put family first”, she says “work never comes second.” In order to realise these lofty aims, all need to speak up so that voices are heard and women’s issues are recognised as everyone’s issues.

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