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## Symbolism over substance? Large law firms and corporate social responsibility

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### ABSTRACT

At its core, corporate social responsibility (CSR) concerns the impacts of businesses on their surroundings. Despite their significant economic and geographic presence (and, as a corollary, their potential significant impacts), and despite the varied disciplinary and conceptual lenses used to study CSR, there is very little existing work looking at law firms and their own CSR policies. This paper fills part of that gap. In August 2014, we reviewed the websites of the top 100 English law firms, as ranked by the trade publication *The Lawyer*. We were interested in public disclosures made by those law firms on CSR. These were widespread. The majority of the top 100 firms say something to the wider world about CSR. However, what is said varies significantly. This is, perhaps, unsurprising. What is more surprising is that so few firms explain *why* they are committed to CSR. Where firms do make disclosures on CSR, these tend to group around the following three areas: (i) pro bono and community giving; (ii) diversity and inclusion; and (iii) environmental matters. For a number of firms, little or no distinction is made between pro bono (i.e. the giving of free legal advice) and wider ‘community giving’. We question whether this is the right approach. We were also concerned that, despite there being regulatory intervention by the Legal Services Board as regards the collection and reporting of diversity data by law firms (and other lawyers), the quality of disclosures (in terms of the amount, nature and breadth of data reported on) varied to such an extent that we were unable to draw any meaningful comparisons or conclusions on diversity in English law firms.

### KEYWORDS

Legal profession; CSR; big law; diversity; pro bono; sustainability

As a phenomenon and a field of scholarly enquiry, corporate social responsibility (CSR) has been a site of significant interest for the last five decades.<sup>1</sup> CSR is now ubiquitous

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<sup>1</sup>Thomas Clarke and Douglas Branson, ‘Corporate Governance – An Emerging Discipline?’ in Thomas Clarke and Douglas Branson (eds), *The SAGE Handbook of Corporate Governance* (SAGE 2012) 1–37. While the majority of the literature on CSR has been developed over the last five decades, the concept has nevertheless existed for a good deal longer. For a good account of the origins of CSR, see Harwell Wells, ‘The Birth of Corporate Governance’ (2010) 33(4) *Seattle University Law Review* 1247. In their review, Aguinis and Glavas found that more than half of the 588 journal articles they read on CSR had been published since 2005 – see Herman Aguinis and Ante Glavas, ‘What We Know and Don’t Know About CSR: A Review and Research Agenda’ (2012) 38(4) *Journal of Management* 932.

in the corporate sphere, and a Google search for the term brings back over 16 million results.<sup>2</sup> At its core, CSR concerns the impacts of businesses on their surroundings. Over these same five decades, the practice of law in England and Wales has changed significantly. We have moved from a situation in which the legal profession was a relatively homogenous guild-like institution<sup>3</sup> to a world of polar extremes in which the largest firms employ thousands of lawyers in hundreds of offices across the globe turning over billions of pounds each year, and in which the smallest firms of sole practitioners in England and Wales struggle to stay afloat in the face of significant cuts to legal aid.<sup>4</sup> These largest law firms are powerful, significant economic actors. In 2013, the combined annual turnover of just the top ten of the top 100 English and Welsh firms was over £10 billion.<sup>5</sup> This was more than a third of the turnover of the *entire* legal services sector in England and Wales for the same year.<sup>6</sup> In 2013, nine of the top 10 firms employed more than 2,000 lawyers each; the tenth and largest (DLA Piper) employed over 4,000 lawyers and 8,000 staff worldwide in 89 separate offices across 30 countries.<sup>7</sup> Despite their significant economic standing and geographic presence (and, as a corollary, their potential significant social, economic and environmental impacts), and despite the varied disciplinary and conceptual lenses used to study CSR,<sup>8</sup> there is very little existing work looking at law firms and their own CSR policies.<sup>9</sup> This paper fills part of that gap.

In August 2014, we reviewed the websites of the top 100 English law firms, as ranked by the trade publication *The Lawyer*.<sup>10</sup> We were interested in public disclosures made by those law firms on CSR, both because of the impacts referred to above, and because of the potential hypocrisy in law firms advising clients on CSR but not ‘doing’ CSR themselves. Our intention in this paper is to offer up a foundational, broad overview and critique of those CSR disclosures. We are hampered in a number of areas by the poor quality of publicly available data. Equally, what law firms say they do about CSR on their websites may not reflect what they actually do. As will be seen, we are able to say the most, and in the most depth, about law firms and pro bono. In further work, we plan to explore each of the separate elements of law firm CSR discussed below. Our review in this paper allows for three general conclusions to be drawn. First, while most law firms say something about CSR, how they do so is very ad hoc – different firms report different things about CSR in different ways. We see both a differentiation of approach and competition between firms, especially among the top 10. As a general trend, the lower the ranking of the law firm, the less they say about CSR, although there are some notable exceptions to the rule at both ends of the rankings. We would suggest that most firms are attempting

<sup>2</sup>Search performed on 29 October 2015.

<sup>3</sup>Emil A Krause, *Death of the Guilds: Professions, States, and the Advance of Capitalism, 1930 to the Present* (Yale University Press 1996).

<sup>4</sup>For a recent account of these changes, and a consideration of the future, see Hilary Sommerlad et al, *The Futures of Legal Education and the Legal Profession* (Hart 2015).

<sup>5</sup>See <<http://www.thelawyer.com/news/uk-200-2013/>>

<sup>6</sup>Law Society, *Legal Services Forecasts* (Law Society 2014) 3.

<sup>7</sup>See <<http://www.thelawyer.com/news/uk-200-2013/>>

<sup>8</sup>Aguinis and Glavas (n 1) 932.

<sup>9</sup>As we shall come to discuss, there are (separate) bodies of work on law firms and pro bono, and on law firms and diversity, but very little that brings these matters together under the umbrella of law firms and CSR.

<sup>10</sup>August 2013 rankings (as the 2014 results had not yet been published at that time). See <<http://www.thelawyer.com/news/uk-200-2013/>> We comment in this paper on data available on law firm websites. As such, we accept that we may not present the actual reality of CSR in law firms. As set out in the final part of this paper, we hope to conduct further empirical work to add depth to our website review.

(imperfectly) to map on to their businesses a model of CSR which has developed for non-legal services sectors. Because of this, we would also suggest that a number of firms struggle to articulate why CSR is, or should be, important to them. We question whether current approaches by law firms to CSR really reflect the nuances (and specific impacts and responsibilities) of law firms as organisations. As such, we ask whether law firms have simply bolted on to their own practices approaches to, and forms of, CSR that were previously, and still are, used by their corporate clients. We suggest that recent practice may have been partly symbolic; more about meeting competition and about demand-side pressures (i.e. appealing to clients), than a substantive, altruistic commitment to CSR.<sup>11</sup>

Our second general finding is that, for a number of firms, pro bono (i.e. the giving of free legal advice) and wider 'community giving' have become elided. We suggest that this is a mistake. If CSR is about the impacts a business can have, and about a sense of responsibility, then we would argue that law firms are well placed to discharge such responsibilities via a positive impact on the way in which those unable to secure legal advice receive some form of support.<sup>12</sup> While community projects (painting schools, building homes, reading with children etc) serve important functions, and express a symbolic commitment to 'the public good', such projects ignore and potentially devalue the ability of lawyers in these large firms to (part) alleviate unmet legal need.<sup>13</sup> Thirdly, despite there being regulatory intervention as regards the collection and reporting of diversity data by law firms (and other lawyers) in England and Wales, the quality of diversity disclosures (in terms of the amount, nature and breadth of data reported on) varies to such an extent that we have been unable to draw any meaningful comparisons or conclusions. This is both disappointing and frustrating, and we have suggested that regulatory reform on diversity reporting is worthy of consideration by the Legal Services Board, the overarching regulator of legal services in England and Wales.

Our paper is not concerned with 'applied' legal ethics, nor with issues of moral philosophy, but is instead part of the 'realist approach' seen in other *Legal Ethics* scholarship where 'the starting point in studying legal institutions should be as they actually are' in order that they can held up to scrutiny.<sup>14</sup> As such, this paper engages with important aspects of contemporary professional life in large law firms.<sup>15</sup> We suggest that the approach of large law firms to CSR is a useful site in which to explore tensions between the conception of professionalism as a monopolistic legal services market control device and professionalism as an ethical commitment to public service and public benefit.<sup>16</sup>

The remainder of this paper unfolds in five parts. Part one begins with an overview of why businesses engage in CSR and explores the extent to which these rationales apply to

<sup>11</sup>For a wider discussion relating to some of these trends, see Ronen Shamir, 'The Age of Responsibilization: on Market-Embedded Morality' (2008) 37(1) *Economy and Society* 1.

<sup>12</sup>In this paper, we do not engage in the debate over exactly how large firms should help to alleviate unmet legal need and acknowledge the argument that such support may, in fact, be more effective in the form of direct financial giving to third sector legal advice organisations with relevant expertise in the areas of law where there is the greatest need, rather than via the giving of time by lawyers from large firms.

<sup>13</sup>We accept that even were there not this confusion between community projects and advice and assistance with legal problems, it would not be possible for corporate lawyers to do more than offer a drop in the ocean to alleviating unmet legal need.

<sup>14</sup>Hilary Sommerlad, 'Editorial' (2014) 17(2) *Legal Ethics* iii.

<sup>15</sup>For other examples of this approach, see the 2014 Special Issue (17(2)) of *Legal Ethics*.

<sup>16</sup>Andrew Boon and Robert Abbey, 'Moral Agendas? Pro Bono Publico in Large Law Firms in the United Kingdom' (1997) 60 (5) *Modern Law Review* 630.

large law firms. This part then charts how the top 100 English law firms disclose their CSR efforts. Part two concerns pro bono and wider ‘community giving’ initiatives by law firms. In part three, we discuss equality, diversity and inclusion (ED&I) in the profession and how large law firms have reported on their ED&I efforts. Part four reviews environmental matters. The final part brings together our discussions in a short conclusion.

## Corporate social responsibility

There is no one definition of CSR. The European Commission suggests it should be understood as ‘the responsibility of enterprises for their impacts on society’.<sup>17</sup> In order for an

enterprise to fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environment, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders.<sup>18</sup>

However, despite this list, the constituent aspects of CSR also elude a common, agreed definition. Work by the Ashridge Business School identified (at least) 31 classes of possible CSR activity which businesses should, or could, consider.<sup>19</sup> For the purposes of this paper, we explore three main aspects in relation to law firms (not least because these are the aspects that those firms themselves most commonly report on): (i) community giving and pro bono; (ii) diversity and inclusion; and (iii) environmental impacts and sustainability. As we come on to discuss, the relationship between pro bono, CSR and law firms is long standing, and environmental impacts are a core aspect of how large organisations (including law firms) respond to CSR pressures, but diversity is perhaps a little different. Its inclusion here, and within CSR more generally, reflects a relatively recent acceptance that large organisations have important social roles to play in how they employ, retain and promote different groups from the communities in which they do business.

Businesses are said to engage in CSR because of institutional or reputational pressures to be good corporate citizens<sup>20</sup> and/or because of the preferences of powerful individuals within those organisations.<sup>21</sup> There is now a greater pressure for corporates to disclose data relating to their non-financial commitments and impacts.<sup>22</sup> Solomon argues, and we would agree, that transparent data disclosure by corporates on CSR matters is important, ‘to the efficient functioning of corporate governance systems’.<sup>23</sup> For some time, such disclosures have also been said to be vital to third parties to ensure the efficient functioning of capital markets.<sup>24</sup> In a post-financial crisis world, CSR transparency by businesses is

<sup>17</sup>Commission, ‘A Renewed EU Strategy 2011–14 for Corporate Social Responsibility’ (Communication) COM(2011) 681 Final.

<sup>18</sup>*Ibid.*

<sup>19</sup>Ashridge Business School, ‘Catalogue of CSR Activities’ (September 2005). See <<https://www.ashridge.org.uk/Media-Library/Ashridge/PDFs/Publications/CSRAactivities.pdf>>

<sup>20</sup>Oleg V Petrenko, Federico Aime, Jason Ridge and Aaron Hill, ‘Corporate Social Responsibility or CEO Narcissism? CSR Motivations and Organizational Performance’ (2015) *Strategic Management Journal* [early online view]; Jim Stevens et al ‘Symbolic or Substantive Document? The Influence of Ethics Codes on Financial Executives’ Decisions’ (2005) 26 *Strategic Management Journal* 181; Samuel B Graves and Sandra A Waddock, ‘Institutional Owners and Corporate Social Performance’ (1994) 37(4) *The Academy of Management Journal* 1034.

<sup>21</sup>Elisabet Garriga and Domènec Melé, ‘Corporate Social Responsibility Theories: Mapping the Territory’ (2004) 53(1) *Journal of Business Ethics* 51.

<sup>22</sup>See, Clarke and Branson (n 1); and Brian Cheffins, ‘The History of Corporate Governance’ in Mike Wright and others (eds), *The Oxford Handbook of Corporate Governance* (OUP 2013) 46–65.

<sup>23</sup>Jill Solomon, *Corporate Governance and Accountability* (4th edn, Wiley 2013) 152.

<sup>24</sup>Beginning with The Cadbury Report 1992.

said to be important because it provides a way in which institutions are able once again to rebuild the trust of stakeholders, which, in turn, is advantageous for market efficiency.<sup>25</sup> With bodies corporate, there is said to be an agency problem, whereby ownership and control of those corporates is split between shareholders, on the one hand, and directors and offices on the other.<sup>26</sup> To prevent information asymmetry, and the fraudulent and dishonest behaviour of principals, data should be disclosed in the most timely and transparent manner to stakeholders.<sup>27</sup> Agency theory's success as a means of increasing information disclosure and corporate governance in corporates, however, has been a subject of scepticism.<sup>28</sup> There is also literature to suggest that the relationship between transparency and accountability is uncertain,<sup>29</sup> and that heightened disclosure can actually lead to negative economic consequences for businesses.<sup>30</sup> We would argue that some of these drivers for CSR in corporates apply imperfectly to law firms. Only two of the 10,394 law firms in England and Wales are listed on a stock market,<sup>31</sup> and recent work suggests that Alternative Business Structures (law firms which are, among other matters, able to seek outside investment) are almost exclusively funded by their own members and not by third parties.<sup>32</sup> As such, there is no agency problem and no external shareholders looking for information or judging law firms on their performance. Equally, law firms have not (as yet) been held to public scrutiny or account for their role (whatever that might have been) in the financial crisis.<sup>33</sup> There is, however, a wealth of other stakeholders (clients, employees, potential lateral hires, law students, regulators, academics and others) who are, or could be, interested in the impacts of law firms and their corollary approaches to CSR. However, as we will see below, the approach to CSR remains in its formative stages in many parts of the legal market in England and Wales.

### English law firms and CSR

Many law firms lay claim to a long history of pro bono work, charitable giving and philanthropic activity.<sup>34</sup> However, the genesis of coherent and strategic CSR programmes in

<sup>25</sup>Mark Bandsuch, Larry Pate and Jeff Thies, 'Rebuilding Stakeholder Trust in Business: An Examination of Principle-Centered Leadership and Organizational Transparency in Corporate Governance' (2008) 113(1) *Business and Society Review* 99.

<sup>26</sup>Adam Smith, *The Wealth of Nations* (first published 1776, Penguin 1999); Kathleen M Eisenhardt, 'Agency Theory: An Assessment and Review' (1989) 14(1) *The Academy of Management Review* 57; Michael C Jensen and William H Meckling, 'Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure' (1976) 3(4) *Journal of Financial Economics* 305.

<sup>27</sup>Ross L Watts and Jerald L Zimmerman, *Positive Accounting Theory* (Prentice-Hall Inc. 1986).

<sup>28</sup>Benjamin E Hermalin and Michael S Weisbach, 'Information Disclosure and Corporate Governance' (2012) 58(1) *The Journal of Finance* 195.

<sup>29</sup>Jonathan Fox, 'The Uncertain Relationship between Transparency and Accountability' (2007) 17(4–5) *Development in Practice* 663.

<sup>30</sup>Christian Leuz and Robert E Verrecchia, 'The Economic Consequences of Increased Disclosure' (2000) 38 *Journal of Accounting Research* 91.

<sup>31</sup>Slater & Gordon and Gateleys. For statistics on the size of the English legal market, see <[http://www.sra.org.uk/sra/how-we-work/reports/data/solicitor\\_firms.page](http://www.sra.org.uk/sra/how-we-work/reports/data/solicitor_firms.page)>. See also <<http://www.cnbc.com/2015/05/12/gateley-becomes-first-law-firm-to-join-uk-stock-market.html>>

<sup>32</sup>Sundeep Aulakh and Ian Kilpatrick, 'Exogenous Jolts, Re-regulation and Change in Professional Organisational Fields: The Case of UK Legal Services' (Annual Conference on Professional Service Firms, July 2015, Oxford) – copy on file with the authors.

<sup>33</sup>On this, see Doreen J McBarnet, 'Financial Engineering or Legal Engineering? Legal Work, Legal Integrity and the Banking Crisis' in J O'Brien and Iain Macneil (eds), *The Future of Financial Regulation* (Hart 2009).

<sup>34</sup>For an account of this history, see Richard L Abel, *The Legal Profession in England and Wales* (Blackwell, 1988); and Andrew Boon and Avis Whyte, 'Charity and Beating Begins at Home: The Aetiology of the New Culture of Pro Bono Publico' (1999) 2(2) *Legal Ethics* 169.



UK law firms, which encompass these activities and more, only began in the mid-2000s.<sup>35</sup> Scholarly writing on the subject of CSR in law firms reflects this slow rise to prominence. More has been written about pro bono and there is an extensive literature on diversity and inclusion. In 1998, Wheeler and Wilson wrote about the divergence between law firms and their corporate clients in terms of pursuing a CSR agenda. They argued that whilst business generally had forged stronger links with the community by that time, law firms had ‘immersed themselves more deeply in a profit-driven agenda.’<sup>36</sup> Wheeler and Wilson show that, following the individualistic conservative politics of the 1980s, the 1990s saw a move towards inclusivity and recognition of ‘duties to community’ and that the legal profession was lagging behind its corporate counterparts in responding to this.<sup>37</sup> This work sits within a much wider body of commentary on the commercialisation of large law firm practice.<sup>38</sup> As far as we have been able to identify, the paper by Wheeler and Wilson is the only existing example of significant academic consideration of law firm CSR practice.<sup>39</sup> In 2007, Economides and O’Leary raised (but did not answer, either empirically or otherwise) the following question: ‘To what extent are law firms caught up in the wider trend toward ethicisation of modern businesses and corporate social responsibility?’<sup>40</sup> More recently, Whelan and Ziv have looked at how outside counsel guidelines (terms of engagement to which sophisticated clients make their external lawyers sign up) are impacting on law firm policies (in particular in relation to diversity and as regards the conduct of litigation),<sup>41</sup> but did not turn the lens on to wider considerations of law firms and CSR. We would suggest that demand-side pressures from clients must be exerting some (at present unquantifiable) pressure on law firms to engage in and report on CSR matters.<sup>42</sup> This would be consistent with existing empirical evidence on why and how stakeholders pressure corporates to engage in CSR.<sup>43</sup>

The majority of writing on CSR in law firms has been written by and aimed at legal practitioners. These pieces suggest that the motivations of firms in undertaking CSR reflect the business case (partly demand-side driven, via specific clauses in tender documents and law firm panel appointment processes), positive impacts on law recruitment

<sup>35</sup>Lisa Keller Glanakos, ‘Corporate Social Responsibility Programs in Law Firms’, *Practice Innovations Newsletter* (January 2011) <<https://info.legalsolutions.thomsonreuters.com/signup/newsletters/practice-innovations/2011-jan/article4.aspx>>

<sup>36</sup>Sally Wheeler and Gary Wilson, ‘Corporate Law Firms and the Spirit of Community’ (1998) 49(3) *Northern Ireland Legal Quarterly* 241.

<sup>37</sup>*Ibid.*, 254.

<sup>38</sup>For an overview, see Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan and Richard Young, *The Futures of Legal Education and the Legal Profession* (Hart, 2015).

<sup>39</sup>In a 2007 paper, Cameron and Taylor-Sands consider the impact of corporate social responsibility on the conduct of corporate litigants and propose ‘a long term approach that involves the courts, complemented by corporations as self-regulators developing internal codes of litigation conduct’: Camille Cameron and Michelle Taylor-Sands, ‘Corporate Governments as Model Litigants’ (2007) 10(2) *Legal Ethics* 154, 175.

<sup>40</sup>Kim Economides and Majella O’Leary, ‘The Moral of the Story: Toward an Understanding of Ethics in Organisations and Legal Practice’ (2007) 10(1) *Legal Ethics* 5, 19.

<sup>41</sup>Christopher J Whelan and Neta Ziv, ‘Law Firm Ethics in the Shadow of Corporate Social Responsibility’ (University of Oxford Legal Research Paper Series, 2012) 63.

<sup>42</sup>Boon and Whyte (n 34) discuss these pressures, and other pressures on firms, to undertake pro bono.

<sup>43</sup>Ruth Aguilera and others, ‘Putting the S Back in Corporate Social Responsibility: A Multilevel Theory of Social Change in Organizations.’ (2007) 32 *Academy of Management Review* 836; Petra Christmann and Glen Taylor, ‘Firm Self-Regulation through International Certifiable Standards: Determinants of Symbolic versus Substantive Implementation’ (2006) 37 *Journal of International Business Studies* 863; and Sankar Sen, CB Bhattacharya and Daniel Korschun, ‘The Role of Corporate Social Responsibility in Strengthening Multiple Stakeholder Relationships: A Field Experiment’ (2006) 34 *Journal of the Academy of Marketing Science* 158.

and staff satisfaction,<sup>44</sup> together with some suggestions that law firms adopting CSR policies can lead to increased productivity.<sup>45</sup> These pieces from practitioners fit in with wider scholarship on how lawyers perceive the extrinsic and intrinsic benefits of their employment.<sup>46</sup> In charting how law firms report their own CSR practices, we hope not only to provide an overview of current market practice, but also to lay the foundations for further studies that engage with law firms directly in order to better understand not only what they do in terms of their CSR agenda, but also why they adopt their chosen approach.

## Our data

As part of our review of law firm websites in the summer of 2014, we were interested in whether and how firms reported on CSR, whether those firms had a CSR section to their website and, if so, what those sections contained; whether (and for how long) formal CSR reports had been produced by the firms; and what the firms categorised as constituting CSR activity (pro bono, diversity, environment etc). We report our results in the sections which follow. By way of overview, Table 1 sets out the percentages of firms which had separate sections on their websites for each of CSR, pro bono, equality and diversity, and environmental matters/sustainability. What is most striking, but is perhaps also unsurprising, is the sliding scale from top to bottom in terms of which firms do what in the context of CSR.

In total, 88 of the top 100 law firms had a CSR section to their websites. However, only 21 of these 88 firms (24%) explained on those websites, or in associated CSR policies or annual statements, *why* they reported on CSR and/or *why* they felt CSR was important for them as a firm. Where firms did give reasons (and these tended to be the larger firms), these reasons varied greatly and reflected a mix of business case and moral case arguments.<sup>47</sup> For example, on the latter, Olswang (#33)<sup>48</sup> comments that:

In sharing what we have and what we know and by collaborating with others we make a positive and sustainable impact on the people with whom we do business, on the community and on the environment. In viewing ourselves in this way, we ensure that CR [corporate responsibility] influences all that we do and gain clarity of our role as a responsible business.<sup>49</sup>

Similarly, Mischon de Reya (#39) channels Mahatma Gandhi when it says that, 'In November 2013 we launched our new social impact programme, developed to inspire

<sup>44</sup>Edward Weeks, 'Why Firms Should Embrace CSR', *The Lawyer*, 4 December 2006 <<http://www.thelawyer.com/why-firms-should-embrace-csr/123341.article>>; Lisa Keller Glanakis, 'Corporate Social Responsibility Programs in Law Firms', *Practice Innovations Newsletter* (January 2011).

<sup>45</sup>Totum, 'Diversity and CSR: Why Law Firms are Committing to Change', *The Lawyer*, 29 May 2014 <<http://www.thelawyer.com/briefings/diversity-and-csr-why-law-firms-are-committing-to-change/3021149.article>>

<sup>46</sup>See, for example, Andrew Boon, Liz Duff and Michael Shiner, 'Career Paths and Choices in a Highly Differentiated Profession: The Position of Newly Qualified Solicitors' (2001) 64(4) *Modern Law Review* 563; and Ronit Dinovitzer and Bryant G. Garth, 'Lawyer Satisfaction in the Process of Structuring Legal Careers' (2007) 41 *Law & Society Review* 1.

<sup>47</sup>These two arguments are often seen (and set against each other) in the context of debates on diversity in law firms. For an overview, see Savita Kumra, 'Busy Doing Nothing: An Exploration of the Disconnect Between Gender Equity Issues Faced by Large Law Firms in the United Kingdom and the Diversity Management Initiatives Devised to Address Them' (2015) 83(5) *Fordham Law Review* 2277.

<sup>48</sup>For readers unfamiliar with the rankings of law firms in England and Wales, we use '#[rank]') to give a sense of relative positioning.

<sup>49</sup><<http://www.wearecr.com/reports.php>>



**Table 1.** Law firm website sections.

Law firm ranking	CSR section	Pro bono section	Equality and diversity section	Environment/sustainability section
1–10 <sup>a</sup>	100%	100%	100%	90%
11–25	93%	60%	93%	87%
26–50	84%	56%	72%	64%
51–100	81%	57%	72%	50%

<sup>a</sup>We have split the firms into these groupings because they largely reflect the size and turnover of the firms and because, as we will come to see, there is real variation when we compare the top 10 firms with other firms.

our lawyers to effect the change they want to see in the world.’<sup>50</sup> On its website, Clifford Chance (#2) states that they believe that they have a ‘duty to run [their] business responsibly’,<sup>51</sup> (the moral case) and then, in the firm’s 2013 CSR report we see the business case come to the fore: ‘we must align our CR and over-arching business strategies. Our CR programme is therefore focused on those areas that we believe are of greatest relevance to our principal stakeholders and where we have the greatest impact.’<sup>52</sup> A number of firms also linked CSR to the well-being and satisfaction of their employees:

Not only is helping others the right thing to do, but those involved also speak highly of the personal satisfaction they gain from their efforts. (Freshfields Bruckhaus Deringer, #3)<sup>53</sup>

As a professional practice our people are at the very core of our business. It is crucial to the overall wellbeing of our business that our people are treated fairly, with respect and are given the opportunity to nurture and develop their skills. (Clarke Willmott, #72)<sup>54</sup>

These, and similar, statements suggest that CSR is, at least in part, about keeping people at the firm happy. We also see this understanding in how the Law Society, the representative body for solicitors in England and Wales, frames CSR in terms of reinvesting ‘some of the resources located in business into the wider and less privileged community, while also internally investing in a healthier, happier, more diverse and productive workforce.’<sup>55</sup> The relationship between CSR programmes and employee satisfaction has been found in other areas of corporate activity outside of legal services.<sup>56</sup>

Some of the statements as to why law firms engage in CSR are tantalisingly vague. For example, in 2014 Pinsent Masons (#14) stated that, ‘there are many good reasons why we, as a business, need to be aware of the impact we have on our neighborhood’,<sup>57</sup> but does not go on to say what these reasons are. Though the data to support this hypothesis does not exist in the public domain, we would go so far as to question whether some law firms are engaging with and reporting on CSR simply because their competitor firms (and/or their clients) are doing so, without really asking themselves why it is a good idea. Despite the majority of firms saying something about CSR, we question whether this is a result of

<sup>50</sup><[http://www.mishcon.com/about\\_us/social\\_impact](http://www.mishcon.com/about_us/social_impact)>

<sup>51</sup><[http://www.cliffordchance.com/about\\_us/corporate\\_responsibility.html](http://www.cliffordchance.com/about_us/corporate_responsibility.html)>

<sup>52</sup><<http://www.cliffordchance.com/content/dam/cliffordchance/CR2013/CRR2013.pdf>>

<sup>53</sup><[http://www.freshfields.com/en/united\\_kingdom/careers/trainees/About-us/Pro-bono-CSR/](http://www.freshfields.com/en/united_kingdom/careers/trainees/About-us/Pro-bono-CSR/)>

<sup>54</sup><<http://www.clarkewillmott.com/Corporate-responsibility/>>

<sup>55</sup><<http://www.lawsociety.org.uk/communities/small-firms-division/advice/corporate-social-responsibility/>>>

<sup>56</sup>See, for example, David A Jones, ‘Does Serving the Community also Serve the Company? Using Organizational Identification and Social Exchange Theories to Understand Employee Responses to a Volunteerism Programme’ (2010) 83 *Journal of Occupational and Organizational Psychology* 857; and Jeremy Galbreath, ‘How does Corporate Social Responsibility Benefit Firms?’ (2010) 22(4) *European Business Review* 41.

<sup>57</sup><<http://www.pinsentmasons.com/en/about-us/starfish/>> – the website has been updated since our 2014 review and this language no longer appears.

dedication by those firms to the principles of CSR and/or a knee jerk reaction to the implementation of CSR strategies by their competitors. As such, a public commitment to CSR by some law firms may have greater symbolic than substantive weight.

Those firms which do have CSR sections on their websites vary greatly as to where those sections are found and what they are called. In some firms, CSR is one of the home page sections; for others in 'About Us' pages. This, in and of itself, is not particularly interesting, but does speak to the ease with which third party stakeholders (clients, potential clients, competitors, regulators, employees, potential lateral hires etc) can compare and contrast data. Of the top 10 firms, Slaughter and May (#10) stands out for being the firm where information on CSR is hardest to find: its data are tucked away under the 'Facts and Figures' pages of the firm's 'Who We Are' section.<sup>58</sup> Most firms use the catch-all of CSR or 'Corporate Responsibility' but others, such as Freshfields (#3) and Clifford Chance (#2), have framed these matters in terms of 'Responsible Business',<sup>59</sup> and Linklaters (#4) talks of 'Collective Responsibility'.<sup>60</sup>

We had expected, before undertaking our review of the firm websites, that the higher the ranking of the firm, the better its disclosures on CSR would be. This, however, was not necessarily the case. Simmons & Simmons (#15), for example, has a more voluminous and accessible CSR section to its website than Herbert Smith Freehills (#9).<sup>61</sup> Osborne Clark (#31) says fewer than 150 words about CSR;<sup>62</sup> whereas Burges Salmon (#46) has a series of relatively detailed pages on CSR.<sup>63</sup> As far as we could determine, all bar two of the top ten UK law firms produce annual CSR reports, a tradition that began in 2005/06 with Freshfields (#3).<sup>64</sup> Most of these reports are around 20 pages long. However, the latest Freshfields (#3) report comprises more than 50 pages and the latest Slaughter and May (#10) report is 40 pages long.<sup>65</sup> This trend, for the production of CSR reports, is not seen with the smaller firms in the top 100, as Table 2 shows.

In the sections that follow we look at specific aspects of CSR in law firms: pro bono and community giving; diversity; and the environment and sustainability.

## Pro bono publico and 'community giving'

By comparison with writing on law firms and CSR, there is a significant body of scholarship on lawyers, firms and pro bono, more so in relation to North America than the UK.<sup>66</sup> Since the mid-twentieth century, the phrase 'pro bono public' has signalled the giving of legal advice by lawyers without compensation.<sup>67</sup> For some, there is recognition that lawyers have a professional responsibility to provide legal representation for free although, as Granfield and Mather argue, 'that recognition has been far stronger in theory than in

<sup>58</sup> <<http://www.slaughterandmay.com/who-we-are/key-facts-and-figures.aspx>>

<sup>59</sup> <[http://www.freshfields.com/en/global/who\\_we\\_are/Reporting\\_and\\_policy\\_global/](http://www.freshfields.com/en/global/who_we_are/Reporting_and_policy_global/)>

<sup>60</sup> <<http://www.linklaters.com/Responsibility/Pages/Index.aspx>>

<sup>61</sup> <<http://www.simmons-simmons.com/en/About-Us/Corporate-Responsibility>>

<sup>62</sup> <<http://www.osborneclarke.com/about-us/>>

<sup>63</sup> <[http://www.burges-salmon.com/who\\_we\\_are/corporate\\_responsibility/default.aspx](http://www.burges-salmon.com/who_we_are/corporate_responsibility/default.aspx)>

<sup>64</sup> <[http://www.freshfields.com/uploadedFiles/Locations/Global/Who\\_we\\_are/Reporting/2005-6CSR.pdf](http://www.freshfields.com/uploadedFiles/Locations/Global/Who_we_are/Reporting/2005-6CSR.pdf)> – one of the authors (Vaughan) was a trainee who helped to work on this report, authored by his supervising partner Paul Watchman.

<sup>65</sup> <<https://www.slaughterandmay.com/media/1430833/corporate-responsibility-brochure.pdf>>

<sup>66</sup> Instructive starting points are to be found in the work of Deborah L Rhode and of Scott Cummings.

<sup>67</sup> Judith L Maute, 'Changing Conceptions of Lawyers' Pro Bono Responsibilities: From Chance Noblesse Oblige to Stated Expectations' (2002) 77 *Tulane Law Review Association* 91.

**Table 2.** Firms with a CSR report available on their website as at August 2014.

Law firm ranking	Percentage with a CSR report available on their website as at August 2014
1–10	80%
11–25	27%
26–50	24%
51–100	4%
Total	20%

practice.<sup>68</sup> Equally, Rhode argues that, ‘in practice, pro bono has never been only about what is good for the public. It has also been about what is good for lawyers: what will enhance their reputation, experience, contacts and relationships?’<sup>69</sup> As such, pro bono might be thought to be a part of the cultural capital of lawyers in large firms.<sup>70</sup> Cummings and Rhode show how, for some law firms, the selection of pro bono cases has more to do with the pedagogic value of enhancing certain associate skill sets than with any inherent worthiness of the pro bono matter.<sup>71</sup>

In the United States, the trade publication *American Lawyer* publishes, on an annual basis, the commitment to pro bono by the top 200 US law firms (hours worked, nature of work undertaken etc).<sup>72</sup> This is a useful and important dataset not found in England and Wales. Recent empirical work using this data has found that long term commitment by US law firms to pro bono is positively correlated with the financial performance of the firm.<sup>73</sup> Where the media has asked English firms for data on pro bono, the results have been disappointingly poor.<sup>74</sup> Below, we draw out the data we were able to glean from the top 100 law firm websites in the summer of 2014. We split our data between what we might think of as ‘pure’ pro bono (i.e. the giving of free legal advice) and other charitable acts that benefit the public good but which do not involve the giving of legal advice.

### Community giving

Law firms of all sizes engage in a diverse range of community giving activity, by which we mean donating money to charity and/or facilitating employee involvement in charitable activities, such as redecorating a charity’s premises, teaching school children to read, taking part in a sponsored event etc. This mirrors volunteering programs in the corporate sphere.<sup>75</sup> Boon and Whyte suggest that community based activities by law firms open up the possibility of ‘giving back’ to transactional lawyers and non-fee earning staff who

<sup>68</sup>Robert Granfield and Lynn Mather, ‘Pro Bono, The Public Good and the Legal Profession’ in Robert Granfield and Lynn Mather (eds), *Private Lawyers and the Public Interest* (OUP 2009) 2.

<sup>69</sup>Deborah L Rhode, ‘Rethinking the Public in Lawyers’ Public Service’ (2009) 77(3) *Fordham Law Review* 1435, 1435.

<sup>70</sup>Hilary Sommerlad, ‘Researching and Theorizing the Processes of Professional Identity Formation’ (2007) 34(2) *Journal of Law & Society* 190.

<sup>71</sup>Scott L Cummings and Deborah L Rhode, ‘Managing Pro Bono: Doing Well by Doing Better’ (2010) 78 *Fordham Law Review* 2359.

<sup>72</sup><<http://www.americanlawyer.com/id=1202730400870/Pro-Bono-Report-2015-Treading-Water>>

<sup>73</sup>Amit Jain Chauradia and Deepak Somaya, ‘Is Pro Bono Also Pro Lucrum? Doing Well by Letting Your Human Capital Do Good’ (2014) *Academy of Management Proceedings*. Copy on file with the authors. The suggestion in the paper is that law firms with longer histories of pro bono schemes have happier employees who in turn contribute more and better to the law firm’s financial performance.

<sup>74</sup><<http://l2b.thelawyer.com/solicitor/news/arnold-and-porter-tops-thomson-reuters-pro-bono-index-but-only-26-firms-in-england-provided-data/3035637.article>>

<sup>75</sup>Adam Grant, ‘Giving Time, Time after Time: Work Design and Sustained Employee Participation in Corporate Volunteering’ (2012) 37(4) *Academy of Management Review* 589.

might otherwise be unable to offer pro bono legal advice.<sup>76</sup> Due to the lack of consistency in the style and content of CSR reporting by the law firms we reviewed, it has not been possible for us to gain an accurate account of how many firms undertook particular types of each community giving activity. However, some patterns can be gleaned. Certain causes appear to attract charitable attention from large law firms across the top 100. For example, and as Table 3 below shows, a focus on young people is a common denominator throughout the top 100 firms, seen at either end of the spectrum. DLA Piper (#1) runs a scheme entitled 'Break into Law',<sup>77</sup> which provides mentoring, employability skills workshops and scholarships (amongst other things) for young people considering a career in the legal profession. At the other end, Boodle Hatfield (#99) operates a reading scheme with a local primary school.<sup>78</sup>

Within the scope of community giving, a number of law firms also make financial donations to charitable causes. The amount donated varies significantly and can range from relatively small sums raised by employees through sponsored activities and 'dress down days',<sup>79</sup> to significant pecuniary contributions made by the firm or its charitable trust to global NGOs or charities.<sup>80</sup> We found no consistency in terms of whether or how such donations are reported by firms. Some make reference to their charitable trusts on their websites and disclose the amount donated each year. For example, Clifford Chance (#2) states that the Clifford Chance Foundation has a budget of £1 million per year which is donated to support a host of local and global charities.<sup>81</sup> Others, such as Pinsent Masons (#14), provide approximate figures and refer to total donations made over a period of years.<sup>82</sup> A third group of firms, such as TLT (#54), are entirely silent on the subject of how much they donate to charity, simply mentioning that sponsored and fundraising activities are undertaken by employees.<sup>83</sup>

Our review of law firm websites also suggests that the larger the firm, the more likely it is to publicly disclose its collaboration with clients on community giving activities. Table 4 below shows the number of firms that referred to collaborations with clients on the CSR pages of their website. Evidently, larger firms place a greater public emphasis on the value of client collaboration and it would appear that some recognise the commercial benefits of such collaboration:

We look for ways to strengthen our relationships with clients by collaborating around CR. By combining our efforts [with clients] we are able to mobilise greater resource than we could individually, and our shared experiences deepen our relationship in a way that is personally and professionally rewarding.<sup>84</sup> (Clifford Chance, #2)

<sup>76</sup>Boon and Whyte (n 34) 190.

<sup>77</sup><<http://www.dlapiperbreakintolaw.com/>>

<sup>78</sup><<http://www.boodlehathfield.com/the-firm/corporate-social-responsibility.aspx>>

<sup>79</sup>For example, <<https://sites-blm.vuturvex.com/54/448/july-2014/final-version-16-july.asp>>

<sup>80</sup>DLA Piper has pledged \$6.5 million to UNICEF's global child justice programme (<[http://www.dlapiperprobono.com/what-we-do/signature/pro-bono/unicef\\_sig.html](http://www.dlapiperprobono.com/what-we-do/signature/pro-bono/unicef_sig.html)>)

<sup>81</sup><[http://www.cliffordchance.com/about\\_us/corporate\\_responsibility/community\\_pro\\_bono.html](http://www.cliffordchance.com/about_us/corporate_responsibility/community_pro_bono.html)>

<sup>82</sup>Pinsent Masons asserts that its foundation has made donations of over £260,000 to charities and projects that 'inspire young lives' since its formation in 2009. Link on website no longer live. Similarly, Mills & Reeve (#47) refers to over £80,000 being raised for a range of causes in recent years, then goes on to say that an annual donation of £5,000 is made to help young people from disadvantaged backgrounds gain access to higher education. It is not clear whether this is taken from the aforementioned £80,000 or is an additional sum.

<sup>83</sup><<http://www.tlsolicitors.com/about-us/corporate-social-responsibility/>>

<sup>84</sup><[http://www.cliffordchance.com/about\\_us/corporate\\_responsibility.html](http://www.cliffordchance.com/about_us/corporate_responsibility.html)>

**Table 3.** ‘Community giving’ projects involving young people.

Law firm ranking	Percentage mentioning projects involving young people on their website
1–10	80%
11–25	60%
26–50	36%
51–100	39%
Total	46%

**Table 4.** Firms that mention client collaboration in CSR activities on their website.

Law firm ranking	Percentage mentioning client collaboration in CSR activities on their website
1–10	70%
11–25	20%
26–50	12%
51–100	4%

The significantly greater degree of client engagement in CSR activities reported amongst the largest firms, coupled with the higher proportion of annual reporting, suggests a coordinated and strategic approach to CSR amongst the top 10 firms which is not present even amongst their closest competitors, as is evidenced by the sharp decline in both immediately outside of the top 10. Notwithstanding the above, many top 50 firms highlight their CSR achievements on their websites. Again, this is more prevalent in the largest firms, with 9 out of 10 of the top 10 mentioning awards received for community giving and/or pro bono initiatives.<sup>85</sup>

### **Pro bono**

Despite pro bono being a recognised and relatively well-established constituent part of the practices of large law firms, academic consideration of English law firms’ pro bono activity remains underdeveloped. A notable exception is found in the work of Andrew Boon. In 1997 Boon and Abbey published the results of a study that mapped the pro bono work undertaken at 61 large UK law firms.<sup>86</sup> This work was carried out at a time when ‘a new culture of pro bono publico [was] in the process of formation’,<sup>87</sup> with large law firms in particular beginning to adopt a coordinated approach to pro bono activity. Despite the authors citing this work as a ‘benchmark for future efforts’<sup>88</sup> to consider the pro bono practices in UK law firms, we are not aware of any comparable work having been conducted subsequently. In later work, Boon and Whyte explore the ‘aetiology of the emerging culture of pro bono public.’<sup>89</sup> Arguing for the importance of seeing law firm CSR in its social, political and organisational contexts, they demonstrate that client pressure and growing commitment by small groups of individuals inside large law firms had impacts on why and how large firms undertake pro bono. Their research shows that pro bono in the large firms, in the 1990s at least, was partly driven by

<sup>85</sup>For example, <<http://www.dlapiperprobono.com/news/awards/>>; <[http://www.freshfields.com/en/global/who\\_we\\_are/Community\\_investment\\_global/](http://www.freshfields.com/en/global/who_we_are/Community_investment_global/)>; <<https://www.slaughterandmay.com/what-we-do/community-and-environment/recent-news.aspx>>

<sup>86</sup>Boon and Abbey (n 16).

<sup>87</sup>Boon and Abbey (n 16) 649.

<sup>88</sup>Boon and Abbey (n 16) 654.

<sup>89</sup>Boon and Whyte (n 34).

**Table 5.** Firms that mention awards linked to community giving/pro bono activity on their website.

Law firm ranking	Percentage mentioning awards linked to community giving/pro bono activity
1–10	90%
11–25	67%
26–50	24%
51–100	2%

enthusiasm at the bottom end (trainees, junior associates),<sup>90</sup> and met by ‘clear leadership from the top.’<sup>91</sup> Whether this would remain the case today is unclear,<sup>92</sup> and is worthy of further qualitative exploration. Certainly, for many large US law firms the financial crisis has been shown to have had a significant impact on their pro bono contributions.<sup>93</sup>

The Law Society of England and Wales conducts an annual survey which asks a random sample of circa 1500 solicitors about pro bono work that they have undertaken.<sup>94</sup> This data has been collected in a consistent manner from 2010.<sup>95</sup> It charts, amongst other matters: the number of solicitors to have undertaken pro bono work during the preceding 12 months; the proportion of solicitors providing pro bono work by size of firm; the perceived adequacy of opportunity for private practice solicitors to get involved in pro bono work; and the annual financial value of private practice pro bono work. The survey does not identify any of the participants by firm, meaning that no conclusions can be drawn as to the institutional approach to pro bono activity.<sup>96</sup> However, a comparison between the 2010 and the 2014 surveys reveals that the percentage of solicitors to have undertaken some pro bono during the 12 months prior to each survey has remained constant at 42%.<sup>97</sup> It is worth noting that the definition of pro bono used by the surveyors in 2010 differs from that used in 2014. In 2010, pro bono was broadly defined as the ‘delivery of free legal services to individuals, organisations and communities in need’.<sup>98</sup> From 2012, the narrower definition, contained in The Pro Bono Protocol,<sup>99</sup> is instead used:

<sup>90</sup>Echoing findings by Webley. See Lisa Webley, ‘Pro Bono and Young Solicitors: Views from the Front Line’ (2001) 3(2) *Legal Ethics* 152.

<sup>91</sup>Boon and Whyte (n 34) 173.

<sup>92</sup>In a 2005 piece, Boon refers to an anecdote about lawyers from a magic circle firm being discouraged from doing pro bono work. See Andrew Boon, ‘From Public Service to Service Industry: the Impact of Socialisation and Work on the Motivation and Values of Lawyers’ (2005) 12(2) *International Journal of the Legal Profession* 229, 230.

<sup>93</sup>Scott L Cummings and Rebecca L Sandefur ‘Beyond the Numbers: What We Know – and Should Know – About American Pro Bono’ (2013) 7 *Harvard Law & Policy Review* 83, 84.

<sup>94</sup>For the 2014 survey see, <<http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/pro-bono-work-pc-holder-survey-2014/>>

<sup>95</sup>Surveys on pro bono activity were also conducted in 2002, 2007 and 2009 by The Law Society of England and Wales. In 2002 and 2009 data on pro bono was collected via surveys which included questions on a broader range of issues affecting legal practitioners. The 2007 report was commissioned to inform the publicity if National Pro Bono week and therefore focused solely on pro bono. Copies of the reports of these surveys are on file with the authors. For the results of the 2010 survey see <<http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/solicitors-pro-bono-work—omnibus-survey-2010/>>

<sup>96</sup>The 2007 survey did ask some questions at firm level, thereby offering a firm level perspective. This practice has not been continued, therefore it is impossible to chart any changes in attitudes or practices at that level.

<sup>97</sup>The 2010 report refers to 42% of practising certificate holders undertaking pro bono in the previous 12 months. The 2014 report simply refers to ‘solicitors’. It is not clear whether the constituents of these groups differ.

<sup>98</sup><<http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/solicitors-pro-bono-work—omnibus-survey-2010/>>. For a wider commentary on the challenges in defining pro bono, see Andrew Boon and Avis Whyte, ‘Pro Bono Publico’ (2000) 150 *New Law Journal* 1564.

<sup>99</sup>Best practice guidelines endorsed by the Law Society, Bar Council and CILEx: <<http://lawworks.org.uk/pro-bono-protocol>>



Legal advice or representation provided by lawyers in the public interest including to individuals, charities and community groups who cannot afford to pay for that advice or representation and where public funding is not available. Legal work is Pro Bono Legal Work only if it is free to the client, without payment to the lawyer or law firm (regardless of the outcome) and provided voluntarily either by the lawyer or his or her firm.<sup>100</sup>

We wonder whether this revised definition was put in place to avoid lawyers and firms claiming that work in which they were unable to recover fees was undertaken pro bono (as has happened in the US).<sup>101</sup> The average (self disclosed) number of pro bono hours worked by solicitors surveyed by the Law Society increased from 45 hours per annum in 2010 to 52 hours in 2014 and the (self-) estimated financial value of pro bono work by private practitioners increased from £476 million (2.3% of total gross fee income) in 2010 to £601 million (equivalent to approximately 2.8% of total turnover generated by solicitors' firms) in 2014.<sup>102</sup>

In 2012, LawWorks, an organisation based in London that acts as a facilitator between law firms and clients seeking pro bono legal advice,<sup>103</sup> conducted its first annual pro bono survey.<sup>104</sup> The 2013 survey details the responses from 119 law firms and outlines, amongst other things, which level of fee earners undertake pro bono; who is receiving pro bono assistance; and how law firms recognise time spent on pro bono matters. The report notes that its sample size is not large enough to be representative, but it does nonetheless give some insights. We learn, for example, that law firm pro bono work is predominantly carried out by solicitors and trainees (rather than partners or other employees); amongst larger firms 86% of respondents reported that their organisations actively encourage participation in pro bono work; and that two thirds of the largest organisations recognise pro bono in chargeable hours targets.<sup>105</sup> Unfortunately, the report does not define what is meant by 'the largest organisations' and so we cannot meaningfully compare these findings with our own data. From our summer 2014 review, Table 6 indicates how many of the top 100 include a distinct section on their website relating to their pro bono work. Once again, the difference between the top 10 and other large firms is striking.

In some cases, firms without a distinct section for pro bono do make some other mention of it on their website. Here, however, pro bono is often dealt with briefly and under a generic heading, such as 'community', and is detailed alongside other CSR initiatives such as volunteering.<sup>106</sup> In Table 7 we compare the number of firms that include a CSR section on their website with the number to include a distinct pro bono section. It is clear that whilst the majority of firms exhibit a commitment to CSR, notably fewer outside of the top 10 publicly categorised pro bono activity as a distinct area of their CSR activity.

<sup>100</sup><<http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/pro-bono-work-pc-holder-survey-2013/>>

<sup>101</sup>On which, see the various accounts in: Robert Granfield and Lynn Mather, *Private Lawyers and the Public Interest* (OUP 2009).

<sup>102</sup><<http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/pro-bono-work-pc-holder-survey-2014/>>

<sup>103</sup>LawWorks is the registered operating name of the Solicitors Pro Bono Group.

<sup>104</sup>This report also used the Pro Bono Protocol definition of Pro Bono: <[http://www.lawworks.org.uk/tmp\\_downloads/w87n101n14c35h108x83k18q138q119x71l98q96x125t91n79/lawworks-pro-bono-survey-report-2012-final.pdf](http://www.lawworks.org.uk/tmp_downloads/w87n101n14c35h108x83k18q138q119x71l98q96x125t91n79/lawworks-pro-bono-survey-report-2012-final.pdf)>

<sup>105</sup><[http://lawworks.org.uk/tmp\\_downloads/k78w57k26g23q65y112j98t105g59t60j49p78m38f32q106/lawworks-2013-pro-bono-report-final.pdf](http://lawworks.org.uk/tmp_downloads/k78w57k26g23q65y112j98t105g59t60j49p78m38f32q106/lawworks-2013-pro-bono-report-final.pdf)>

<sup>106</sup>For example, see <<http://www.dacbeachcroft.com/db812f0308d94210a2112bfc97c2f6b6/voluntary-work-charitable-giving>>

**Table 6.** Pro bono content on law firm websites.

Law firm ranking	Percentage with distinct pro bono section on website
1–10	100%
11–25	53%
26–50	56%
51–100	57%

**Table 7.** CSR and pro bono content on websites.

Law firm ranking	Percentage with distinct CSR section on website	Percentage with distinct pro bono section on website
1–10	100%	100%
11–25	93%	53%
26–50	84%	56%
51–100	82%	57%

### *Trends in pro bono activity*

We encountered a number of difficulties in seeking to analyse the data available on pro bono practices by large English law firms. An initial challenge was that not all firms differentiate between pro bono work and community giving more generally, or do not provide sufficient information on their websites to allow us to understand the nature or amount of pro bono work undertaken. Birketts LLP (#81) is a typical example:

We are members of the Suffolk, Norfolk and Cambridgeshire branches of the Pro-Help Group, one of many schemes created by the ‘Business in the Community’ organisation. The aim is to provide a broad range of professional services to locally based charities and the voluntary sector free of charge and the group’s members include local firms of solicitors, accountants, surveyors and a host of other professionals. We also participate in a local pro-bono initiative with the object of providing legal assistance and support to small local groups principally concerned with the interests of ethnic minorities and the disadvantaged.<sup>107</sup>

Clearly, the firm does undertake some pro bono activity, but it is not possible to ascertain how much or what type of work is carried out. Other firms provide even less detail, outlining a general commitment to CSR, community giving and/or pro bono, without giving any examples of projects or work undertaken.<sup>108</sup> International firms tend to tailor their pro bono offerings to the different countries in which they operate. For example, Clifford Chance (#2) offers advice sessions at a law centre in London, whilst in Hong Kong, Tokyo and Sydney it provides casework support for asylum seekers.<sup>109</sup> Despite running local projects, figures given by firms detailing the extent of pro bono participation are often global. For example, Freshfields (#3) reported in its 2012–2013 ‘Responsible Business Report’ that, across the firm, it worked on 431 matters for 253 clients, recording 43,212 pro bono hours.<sup>110</sup> However, we do not know how this breaks down between the firm’s many offices. Furthermore, the same report states that Freshfields employed 4,859 employees globally during the same year, over 2,500 of whom were lawyers. On a per capita basis, that breaks down as just 8.89 hours of time spent on pro bono per employee

<sup>107</sup> <<http://www.birketts.co.uk/about-us/csr.aspx>>

<sup>108</sup> For example, Anderson Strathern (#97) (<<http://www.andersonstrathern.co.uk/about/corporate-social-responsibility/>>).

<sup>109</sup> <[http://www.cliffordchance.com/about\\_us/corporate\\_responsibility/community\\_pro\\_bono/access-to-justice.html](http://www.cliffordchance.com/about_us/corporate_responsibility/community_pro_bono/access-to-justice.html)>

<sup>110</sup> <[http://www.freshfields.com/uploadedFiles/Locations/Global/Who\\_we\\_are\\_new/CR\\_Reporting/CR\\_Report\\_2013.pdf](http://www.freshfields.com/uploadedFiles/Locations/Global/Who_we_are_new/CR_Reporting/CR_Report_2013.pdf)>

or only 17.29 hours per lawyer per annum.<sup>111</sup> Similarly, in its ‘Corporate Responsibility Report 2013’, Clifford Chance (#2) disclosed that it had undertaken 55,348 pro bono hours globally in 2012–2013, or 18.3 hours per full time employee.<sup>112</sup>

These numbers, while now at least two years out of date, fall far below the aspirational targets to which that some firms now publicly ascribe. For example, at the time of writing, 27 firms (including Freshfields (#3) and Clifford Chance (#2)) have signed up to ‘The Collaborative Plan’, a group of law firms aimed at improving access to justice through pro bono in the UK, which requires firms to agree to an aspirational target of 25 hours of pro bono work, per fee earner per year.<sup>113</sup> In the United States, Rule 6.1 of the American Bar Association’s Module Rules of Professional Conduct sets out that, ‘Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.’<sup>114</sup> We have no comparable aspiration in the rules of professional conduct for solicitors in England and Wales, and would question whether this lack of aspiration (substantiated and promoted by a regulatory or representative body) remains appropriate.

The amount of time (when disclosed) that firms spent on pro bono/community giving by firms outside of the top 10 is significantly less than their top 10 counterparts. The lowest number of hours spent per annum on pro bono activities by a top 10 law firm in 2012–2013 was 10,099 (CMS Cameron McKenna #8), followed by 25,000 (Linklaters #4). Everheds (#11) disclosed just 3,092 pro bono hours in the year 2012–13, although they did report 10,540 of community giving activities.<sup>115</sup> Nine firms in the top 10 disclosed hours on pro bono and/or community. These 9 said that they gave, in total, 653,420 hours of their time.<sup>116</sup> Only a further 12 firms in the rankings 11–100 disclosed their pro bono and/or community hourages. These totalled 62,023.5 hours.<sup>117</sup> By comparison, in the US the top 200 law firms (self) reported performing a total of 4.75 million domestic pro bono hours in 2014, and 11 of those US firms reported an average of 100 or more domestic pro bono hours per lawyer.<sup>118</sup> This UK/US disparity has been present for some time.<sup>119</sup> However, and as set out in Table 8, the majority of English firms in the top 100 did not disclose *any* statistics at all regarding the extent of their pro bono work, making a true comparison between firms and/or between jurisdictions impossible.

Many firms grouped time employees spent on community giving and pro bono activities together when disclosing total hours: for example, DWF (#20) disclosed in its

<sup>111</sup>Using the figure of 2,500 lawyers in our calculation.

<sup>112</sup><<http://www.cliffordchance.com/content/dam/cliffordchance/CR2013/CRR2013.pdf>>

<sup>113</sup><<http://www.trust.org/spotlight/Collaborative-Plan-for-Pro-Bono-uk/?tab=methodology>>

<sup>114</sup>See <[http://www.americanbar.org/groups/probono\\_public\\_service/policy/aba\\_model\\_rule\\_6\\_1.html](http://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1.html)>

<sup>115</sup><<http://viewer.zmags.com/publication/4db70ae2#/4db70ae2/2>>

<sup>116</sup>Some of these were global figures, for example, DLA Piper quoted 207,000 of pro bono work globally (<<http://www.dlapiperwin.com/about/corporate-responsibility.html>>). Other firms quoted a minimum figure, for example, Herbert Smith Freehills state that they gave *more than* 52,000 hour of pro bono advice in 2013 (<<http://www.herbertsmithfreehills.com/about-us/pro-bono-and-citizenship>>) and in some cases was difficult to determine whether figures given for community giving were inclusive of pro bono hours, or were in addition to pro bono hours, see for example, p 27 of CMS Cameron McKenna’s Corporate Social Responsibility Report 2013: <<http://www.cms-cmck.com/Corporate-Social-Responsibility-Report-2013—Joining-the-Dots-07-11-2013>>

<sup>117</sup>Of these, some figures were again minimums, for example, the 2013 Gateleys CSR Report stated ‘During 2013 we donated over 150 hours of pro bono activities’. Others were admitted to be estimates. For example, Stewarts Law state on their website that ‘We estimate that we provide circa 10,000 hours of free legal advice and assistance on an annual basis’: <<http://www.stewartslaw.com/about-us/corporate-social-responsibility.aspx>>

<sup>118</sup>See <<http://www.americanlawyer.com/id=1202730400870/Pro-Bono-Report-2015-Treading-Water#ixzz3hBGdbAer>>

<sup>119</sup>Boon and Whyte (n 34) 189.

**Table 8.** Hard data on pro bono and community giving contributions.

Law firm ranking	Percentage of firms to disclose total hours spent on pro bono and/or community giving activities	Percentage of firms to disclose hours spent on community giving/pro bono activities by non-fee earners/support staff	Percentage of firms to disclose total financial value of pro bono and/or community giving activity
1–10	90%	20%	50%
11–25	20%	0%	13%
26–50	24%	0%	8%
51–100	6%	0%	0%

2012–2013 ‘Annual CR Review’ that 8,397 hours had been given to pro bono and community activities by fee earners.<sup>120</sup> Other firms failed to state whether the figures disclosed related to community giving, pro bono or both. As a result, we have grouped these disclosures together in Table 8. Only five firms out of the entire top 100 provided a distinct figure for number of hours spent on community giving activities, as a separate category from pro bono.<sup>121</sup> Relatedly, outside of the top 10 firms, very few disclosed the financial value of their pro bono or community giving activities.

Our review of law firm websites suggests a significant amount of philanthropic endeavor on the part of the legal profession in England and Wales based in the largest firms. However, a number of firms elide their pro bono and community giving efforts. We would suggest that this is a mistake. We were surprised by the lack of data across the top 100 on the specific pro bono efforts of law firms. This is because other work has suggested that pro bono has become ‘institutionalised’ in large law firms in the US.<sup>122</sup> Is the same not also true for English firms? We were also surprised by the lack of disclosure of hard data (i.e. number of hours committed) and by the lack of public commitment by firms to each of their lawyers or staff engaging in a minimum amount of pro bono work each year. Even where firms do disclose hard data, it might be important to question both the content and the impact of their pro bono efforts (including the quality and efficiency of what they are doing).<sup>123</sup>

## Equality, diversity and inclusion

For the last three decades, academics in the UK and elsewhere have engaged in work critiquing the lack of diversity in the legal profession.<sup>124</sup> This has largely focussed on issues of gender and ethnicity and, more recently, on social background. The picture painted is of a profession that has been labelled ‘male, pale [white] and stale [elderly]’.<sup>125</sup> Entry to the profession largely reflects the wider population: since 1989 female trainee solicitors

<sup>120</sup><<http://www.dwf.co.uk/media/582033/DWF-CR-Review-2012-13.pdf>>

<sup>121</sup>Linklaters (<[http://www.linklaters.com/pdfs/cr/CR\\_REPORT\\_2014.pdf](http://www.linklaters.com/pdfs/cr/CR_REPORT_2014.pdf)>); Eversheds (<<http://viewer.zmags.com/publication/4db70ae2#4db70ae2/1>>); Burges Salmon (<[http://www.burges-salmon.com/who\\_we\\_are/corporate\\_responsibility/volunteering\\_and\\_trusteeships/](http://www.burges-salmon.com/who_we_are/corporate_responsibility/volunteering_and_trusteeships/)>); Shoosmiths (<[http://www.shoosmiths.co.uk/files/Shoosmiths\\_CR\\_report\\_2012-13.pdf](http://www.shoosmiths.co.uk/files/Shoosmiths_CR_report_2012-13.pdf)>); and CMS Cameron McKenna (although it is not clear whether these are in fact two distinct figures) (<<http://www.cms-cmck.com/Corporate-Social-Responsibility-Report-2013-Joining-the-Dots-07-11-2013>>).

<sup>122</sup>Steven A Boutcher, ‘The Institutionalisation of Pro Bono in Large Law Firms’ in Robert Granfield and Lynn Mather (eds), *Private Lawyers and the Public Interest* (OUP 2009) 135–155; Scott L Cummings, ‘The Politics of Pro Bono’ (2004) 52 *UCLA Law Review* 1.

<sup>123</sup>Cummings and Sandefur (n 94) 85.

<sup>124</sup>For a recent review and commentary on these literatures, see Hilary Sommerlad and Louise Ashley, ‘Diversity and Inclusion’, in Laura Empson and others (eds), *Oxford Handbook of Professional Service Firms* (OUP 2015) Chapter 20.

<sup>125</sup>Julie Ashdown, ‘Shaping Diversity and Inclusion Policy with Research’ (2005) 83(5) *Fordham Law Review* 2249, 2249.

have outnumbered males,<sup>126</sup> and the proportion of black, Asian and minority ethnic (BAME) trainees has risen significantly in the last decade.<sup>127</sup> However, such diversity is not reflected at partner/senior level,<sup>128</sup> and women and minority lawyers are paid less and frequently work in smaller, less prestigious firms and areas of practice.<sup>129</sup> This lack of diversity is thought to be due to a series of formal and informal barriers over the lifetime of a lawyer, the operation of law firm culture, and the importance of personal relationships to career progression.<sup>130</sup>

### **The reporting of EDI**

Of all of the aspects of CSR covered in this paper, equality, diversity and inclusion (EDI) is the only area in which law firms in England and Wales have a legal obligation to collect and report data. In July 2011, the Legal Services Board (LSB) introduced a rule requiring the collection of data on workforce diversity, and the publication of that data, by the legal profession.<sup>131</sup> This was the first (and, indeed, is the only) direct regulatory intervention taken as regards diversity in the legal profession.<sup>132</sup> It was introduced in order to allow the LSB to better meet its own regulatory objective,<sup>133</sup> contained within the Legal Services Act 2007, to ‘encourage[e] an independent, strong, diverse and effective legal profession’.<sup>134</sup>

As a consequence of the LSB’s rule (contained within ‘statutory guidance’),<sup>135</sup> law firms regulated by the Solicitors Regulation Authority are now required to annually collect, report and publish data about the diversity make-up of their workforce.<sup>136</sup> The requirements apply to all firms regulated by the SRA, including sole practices and ‘alternative business structures’.<sup>137</sup> Everyone working at the firm should be covered by the workforce diversity data collection exercise, including owners of the firm and all other qualified and non-qualified staff. Firms are required to input their aggregated diversity data into the organisation’s diversity data section on the SRA’s website (known as ‘mySRA’).<sup>138</sup> Firms are also required to publish a summary of their workforce diversity data.<sup>139</sup> Importantly, for this paper, there is *no prescription* as to where or how the workforce data must be published by law firms. The regulator sets out that:

<sup>126</sup>Law Society, ‘Annual Statistical Report 2000’ (Law Society, 2000) para 9.7.

<sup>127</sup>Black Solicitors Network, ‘Diversity League Table 2013’ (BSN, Law Society and Bar Council 2013).

<sup>128</sup>Law Society, ‘Annual Statistical Report 2014’ (Law Society 2014).

<sup>129</sup>Law Society, ‘Private Practice Solicitors’ Salaries 2014’ (Law Society 2014).

<sup>130</sup>Hilary Sommerlad et al, *Diversity in the Legal Profession in England and Wales: a Qualitative Study of Barriers and Individual Choices* (London, Legal Services Board, 2010), see <[http://www.legalservicesboard.org.uk/what\\_we\\_do/Research/Publications/pdf/lwb\\_diversity\\_in\\_the\\_legal\\_profession\\_final\\_rev.pdf](http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/lwb_diversity_in_the_legal_profession_final_rev.pdf)>

<sup>131</sup>LSB, *Increasing Diversity and Social Mobility in the Legal Workforce: Transparency and Evidence – LSB Response Document* (Legal Services Board 2011) Annex B.

<sup>132</sup>‘Direct’ as opposed to the general equality and diversity obligations imposed via the various codes of conduct.

<sup>133</sup>LSB, *Increasing Diversity and Social Mobility in the Legal Workforce: Transparency and Evidence – Consultation Paper on Proposals* (Legal Services Board 2010).

<sup>134</sup>Legal Services Act 2007, s 1(f).

<sup>135</sup>Legal Services Board, *Increasing Diversity and Social Mobility in the Legal Workforce: Transparency and Evidence – LSB Response Document & Accompanying Statutory Guidance issued under Section 162 of the Legal Services Act 2007* (Legal Services Board 2011) Annex B.

<sup>136</sup>See <<http://www.sra.org.uk/diversitydata/>>

<sup>137</sup>ABSS are firms where either a non-lawyer is a manager of the firm, or has an ownership-type interest in the firm.

<sup>138</sup><<http://www.sra.org.uk/mysra/mysra.page>>

<sup>139</sup><[http://www.sra.org.uk/diversitydata/?301#Collection\\_5](http://www.sra.org.uk/diversitydata/?301#Collection_5)>

The SRA has not prescribed the manner or format in which a firm is required to publish a summary of their workforce data. It could be published on the firm's website, at the firm's offices or in one of the firm's publications. It is only a summary of the data that needs to be published and firms can present the data in a variety of ways.<sup>140</sup>

As we will come to see below, this lack of prescription is a stumbling block to allowing third parties to undertake meaningful comparisons of the diversity of different firms.

### ***Our data on diversity***

As Table 9 below shows, 78 of the top 100 law firms we reviewed in the summer of 2014 had a diversity section somewhere (no matter how small) on their websites. These web-pages disclose a raft of EDI initiatives undertaken by firms<sup>141</sup> but, as we will come to show, hard data on law firm workforce diversity was lacking for a number of firms despite the obligation imposed by the LSB and SRA to publish.

Previous work by one of the authors of this paper has shown how there has been an increase in the number of law firms disclosing data on workforce diversity between 2010 (i.e. before the reporting rule was introduced) and 2014.<sup>142</sup> Table 10 shows these differences. What is not clear is to what extent the increase in disclosures is linked to the LSB's reporting rule. Equally, what this table does not show, and what we come to discuss below, is the quality of those disclosures. In general, the report card for law firm diversity disclosures would read: 'can do better.' While 78 of the top 100 law firms talk about diversity on their websites, and 58 of the top 100 firms disclosed some diversity data in 2014, the content of the websites and the spread of data disclosed is, on the whole, rather poor.

As Table 10 highlights, we were unable to find workforce diversity data for a number of large UK law firms on their websites, despite the regulatory requirement to publish. In total, we were unable to find disclosed data for 42 firms out of the top 100.<sup>143</sup> Our research over the summer of 2014 was particularly laborious, challenging and frustrating when it came to EDI disclosures. Different firms report diversity data in different ways and on different parts of their websites. As noted earlier, this discretion is permitted by the regulators. We would suggest this is a mistake. When conducting our review, we found it interesting that some law firms appear to place public emphasis on certain diversity characteristics over others. For example, Clifford Chance (#2) has a page on 'Diversity' on its website which contains the following,

The firm has a global Diversity Committee, which considers policy, reporting and initiatives. There is also a thriving network of local and global groups that raise awareness and foster understanding around specific diversity issues. Arcus is our global network for lesbian, gay, bisexual and transgendered (LGBT) colleagues and their friends that aims to encourage an inclusive, integrated culture within the firm. The group organises regular events as well as an annual art exhibition in the London and New York offices. They also actively support

<sup>140</sup>*Ibid.*

<sup>141</sup>Including lawyer mentoring, affinity groups, membership of networking and representative groups for women and minority lawyers.

<sup>142</sup>Steven Vaughan, 'Going Public: Diversity Disclosures by Large UK Law Firms' (2015) 83(5) *Fordham Law Review* 101.

<sup>143</sup>Accepting that the inability to find disclosed workforce data might be due to researcher error (and not to non-compliance with the LSB's reporting rule), we contacted, via email, each of the firms for which we could not see the relevant statistics. From 42 emails sent to firms, 12 responses were received.



**Table 9.** Law firms with EDI webpages.

Law firm ranking	Percentage with EDI section on website
1–10	100%
11–25	93%
26–50	72%
51–100	72%

**Table 10.** Workforce EDI data disclosures (2014 and 2010 comparison).

Law firm ranking	Workforce EDI data disclosure (2014)	Workforce EDI data disclosure (2010)
1–10	90%	90%
11–25	87%	53%
26–50	52%	52%
51–100	46%	16%

LGBT charities – such as the Human Dignity Trust, Non-Gendered and the Albert Kennedy Trust – through fundraising and pro bono work.<sup>144</sup>

Why is there public disclosure of a global network for LGBT members of the firm, and not for any other group? Similarly Freshfields (#3), in its ‘Diversity and Inclusiveness’ pages, speaks of one specific initiative for female lawyers (the ‘strategic excellence program’) and another for LGBT lawyers (the ‘halo program’), but not for anyone else.<sup>145</sup> Do BAME lawyers at Freshfields (#3) not merit their own initiative?

Of the top 10 firms, Linklaters (#4) stands a clear head and shoulders above the other firms as regards disclosure on EDI: not only does the firm report publicly on the gender, ethnicity, sexual orientation, religious belief, social background and disability status of their employees, but they also provide this information in respect of applicants to their internship/vacation scheme and graduate training contract programmes.<sup>146</sup> This is commendable and, we would suggest, is a model of good practice which other firms should follow. So too, we think, is the colour coding approach (red, amber, green) taken by Simmons & Simmons (#15) to denote success with its diversity goals, and the willingness of the firm to ‘red light’ some of its less successful, or not yet achieved, policies and approaches.<sup>147</sup> We would suggest the LSB look to the approach taken by Linklaters (#4) should it decide to revise the parameters of its reporting rule. The firm’s webpages on Diversity are also notable for their ease of access and clarity.

We found that the size of firm is not necessarily an indication of a robust public approach to disclosure on EDI: for example, Hogan Lovells (#6) has only a tiny snapshot of diversity (one quarter of one page) in its 2013 CSR report,<sup>148</sup> and a 2011 report on diversity data (which we were only able to find via Google and the search term ‘Hogan Lovells diversity statistics’).<sup>149</sup> Allen & Overy (#5) only disclosed diversity data in respect of gender, ethnicity and part time working in 2014, but have now produced a

<sup>144</sup><[http://www.cliffordchance.com/about\\_us/corporate\\_responsibility/people.html](http://www.cliffordchance.com/about_us/corporate_responsibility/people.html)>

<sup>145</sup><[http://www.freshfields.com/en/united\\_states/who\\_we\\_are/Inclusivness\\_and\\_diversity/](http://www.freshfields.com/en/united_states/who_we_are/Inclusivness_and_diversity/)>

<sup>146</sup><[http://www.linklaters.com/pdfs/mkt/london/Linklaters\\_Diversity\\_Statistics%202014.pdf](http://www.linklaters.com/pdfs/mkt/london/Linklaters_Diversity_Statistics%202014.pdf)>

<sup>147</sup><<http://www.simmons-simmons.com/en/About-Us/Corporate-Responsibility/Inclusion-and-Diversity>>

<sup>148</sup>(p8) <[http://www.hoganlovells.com/files/Uploads/Documents/Citizenship%20Report%202013\\_E.pdf](http://www.hoganlovells.com/files/Uploads/Documents/Citizenship%20Report%202013_E.pdf)>

<sup>149</sup><<http://careers.hoganlovells.com/local/UK/aboutus/Documents/UK%20Diversity%20Profile%20-%20August%202011.pdf>>

more detailed report in 2015 across a large number of diversity characteristics.<sup>150</sup> For this paper, we had been hoped to break down diversity reporting by firm, and to offer up tables (comparable with those in the section above on pro bono) of comparisons. This has, however, proven impossible. The top 100 law firms we reviewed report on diversity in such a variety of ways that we been unable to draw together the data in any meaningful way. This has been enormously frustrating. To give just one example, Norton Rose Fulbright (#7) gives aggregate disability data for everyone in its London office in the year 2014 (i.e. for the entire office workforce, and not broken down into partners/associates/trainees/staff etc);<sup>151</sup> CMS Cameron McKenna gives disability data broken down into partners, associates, trainees, 'other legal', secretaries and business services but *only* for the year 2011;<sup>152</sup> and a whole raft of other firms provide no data whatsoever on disability. We are, as such, strongly in favour of the regulators amending the reporting rule to require some uniformity in how law firms disclose their diversity data so that meaningful comparisons and analysis can be undertaken. Despite the fact that the majority of firms are saying something public about diversity, and despite there being a regulatory requirement for disclosure, what is said is often very limited indeed. This is disappointing.

## The environment and sustainability

Large corporate actors in the West have reported on environmental matters since the 1970s,<sup>153</sup> although a sustained emphasis on environmental disclosures as part of CSR was not apparent until the 1990s.<sup>154</sup> In their work,<sup>155</sup> Tschopp and Nastanski argue that the push for environmental disclosures was driven partly because of public concerns about environmental problems in the late 1960s,<sup>156</sup> and partly because technological advances and the consequent rapid depletion of resources led to a demand for more accountability.<sup>157</sup> Despite early (and sustained) claims of 'greenwash' (where business is said to disclose certain environmental data for selfish or reputational reasons only),<sup>158</sup> environmental reporting has become a core aspect of CSR, and a number of international standards exist in this area.<sup>159</sup> Over time, there has been a shift in reporting from disclosures on 'environmental' matters to broader 'sustainability' disclosures, and a corresponding geographic broadening to include reporting by businesses based in emerging and

<sup>150</sup><<http://www.allenoverly.com/SiteCollectionDocuments/UK%20diversity%20metrics.pdf>>

<sup>151</sup><<http://www.nortonrosefulbright.com/uk/corporate-responsibility/diversity-and-inclusion/our-statistics/>>

<sup>152</sup><<http://www.cms-cmck.com/Hubbard.FileSystem/files/Publication/fa57a9a2-86ba-4395-bc35-9bc94b3ae57c/Presentation/PublicationAttachment/812b462f-ab3f-4c28-82c4-3dc1783e7894/Social%20Mobility%20and%20Diversity%20Statistics%202011.pdf>>

<sup>153</sup>Even Fallan, 'Explaining the Variation in Adoption Rates of the Information Content of Environmental Disclosure' (2015) 11(2) *Journal of Accounting & Organizational Change* 247.

<sup>154</sup>Matthias S Fifka, 'Corporate Responsibility Reporting and its Determinants in Comparative Perspective – a Review of the Empirical Literature and a Meta-analysis' (2013) 22 *Business Strategy and the Environment* 1.

<sup>155</sup>Daniel Tschopp and Michael Nastanski, 'The Harmonization and Convergence of Corporate Social Responsibility Reporting Standards' (2014) 125 *Journal of Business Ethics* 147.

<sup>156</sup>Marvin Mikesell, 'Geographical Perspectives in Anthropology' (1974) 57 *Annals of the Association of American Geographers* 617.

<sup>157</sup>Ron Johnston, *Geography & Geographers* (Oxford University Press 1979).

<sup>158</sup>Jill Solomon and others, 'Impression Management, Myth Creation and Fabrication in Private Social and Environmental Reporting: Insights from Erving Goffman' (2013) 38(3) *Accounting, Organizations and Society* 195; Thomas P Lyon and John Maxwell, 'Greenwash: Corporate Environmental Disclosure under Threat of Audit' (2011) 20 *Journal of Economics & Management Strategy* 3.

<sup>159</sup>For a review of these, see Tschopp and Nastanski (n 156).

developing nations.<sup>160</sup> Below, we present our data on environment and sustainability disclosures on the law firm websites we reviewed.

### **Environment and sustainability disclosures**

Disclosures by law firms on environmental and sustainability matters were the poorest of all of the elements of CSR reviewed, both in terms of numbers of firms reporting on these matters and on the quality of the disclosures made. Just over a third of the top 100 firms did not have separate environment/sustainability sections to their websites. Where these sections were present, they varied considerably (see Table 11).

Most firms split their environmental impacts into two main areas: carbon footprint and sustainable procurement. In this respect, these law firms are similar to corporates (and, as such, interested in energy usage, waste and recycling, responsible travel etc). A number of firms (for example, DLA Piper (#1) and Freshfields (#3)) also point to their work advising governments and clients on global environmental initiatives such as the Kyoto Protocol. In this way, law firms and their lawyers have the potential to act as ‘norm intermediaries’,<sup>161</sup> developing law that has the ability to improve the public good. What is striking, however, is the lack of comment by law firms on how matters on which they act (i.e. things done by their clients) impact, potentially negatively, on the environment – so, for example, Firm X advising Client Y on fracking, or enabling Client Z to buy a series of fossil fuel power stations in a developing nation.

Hard data on environmental matters (e.g. carbon footprint, waste reduction) is disclosed by firms on an ad hoc basis. In some firms, the public disclosures on environmental matters are more aspirational (vague) mission statements than anything else. For example, Harper McLeod (#98) states:

Our environmental policy recognises our clear commitment to improving our business practices to make a positive impact on the environment. Through an environmental scan and audit process, and working in partnership with our key stakeholder groups, we recognise, evaluate and adopt ‘best practice’ methods to minimise the impact of our business on the environment.<sup>162</sup>

However, the firm does not publish its environmental policy, nor is further data given on the ‘best practice methods’ that the firms uses to minimise its impacts. The lack of hard data on environmental matters is more commonly seen the further down the list of the top 100 law firms that one goes, although there are some notable exceptions: see, for example, the relatively expansive data given by Wedlake Bell (#85),<sup>163</sup> and the very limited data given by Ashurst (#13).<sup>164</sup> What seems to make (some) difference is whether or not a firm is a member of the Legal Sustainability Alliance (LSA, formerly known as the Legal Sector Alliance).<sup>165</sup> So, for example, while Michelmores (#95) says

<sup>160</sup>Fifka (n 155) 3.

<sup>161</sup>Susan Sturm, ‘Law’s Role in Addressing Complex Discrimination’ in Robert Nelson and Laura Beth Nielson (eds) *Handbook of Employment Research: Rights and Realities* (Springer 2005).

<sup>162</sup><<http://www.harpermaclLeod.co.uk/community/>>

<sup>163</sup><<http://wedlakebell.com/environment.html>>

<sup>164</sup><[https://www.ashurst.com/about-ashurst.aspx?id\\_Content=2642](https://www.ashurst.com/about-ashurst.aspx?id_Content=2642)>

<sup>165</sup><<http://www.legalsectoralliance.co.uk/>>

**Table 11.** Law firm environment/sustainability website sections.

Law firm ranking	Percentage with environment/sustainability sections on website
1–10	90%
11–25	87%
26–50	64%
51–100	50%

very little indeed about environmental issues, the firm does report that in the LSA survey 2012 it had emissions per employee of 2.31 tonnes CO<sub>2</sub>.<sup>166</sup>

The LSA was formed in 2007 originally with 18 law firm members that were each ‘committed to working collaboratively to take action on climate change by reducing their carbon footprint and adopting environmentally sustainable practices.’<sup>167</sup> There are now than 300 LSA law firm members,<sup>168</sup> and ‘Every year [the LSA] encourages members to report on their environmental performance during the previous 12 months using [its] bespoke online reporting platform.’<sup>169</sup> However, in 2014, only 66 out of the more than 300 LSA members reported data in this way.<sup>170</sup> This is despite the fact that one of the principles (P6) to which LSA member firms sign up states that they will ‘Report on [their] progress and be accountable’.<sup>171</sup> This disconnect is striking, and we wonder whether some firms sign up to the LSA for presentational or PR reasons, and not because of a firm commitment to reducing environmental impacts. With two outliers – DLA Piper (#1) and Eversheds (#11) – the 2014 LSA report clearly shows that the larger the law firm the higher the carbon footprint per employee, with Clifford Chance (#2) having the highest footprint of all of the 66 firms that reported data.<sup>172</sup> The power and potential of external audit in relation to environmental reporting has been seen with businesses more generally.<sup>173</sup>

A number of firms, across the rankings state that they are carbon neutral (e.g. Olswang (#33), Freshfields (#3), Mishcon de Reya (#39) and Forsters (#75)). This seems to have been achieved, in part at least, by the purchase of carbon offsets, which other law firms have instead directly rejected as a policy approach:

Our strategy is to reduce our consumption of resources and carbon emissions before considering carbon offset, which could in turn create a carbon neutral working environment. As there is some scepticism over the integrity of carbon offsetting, we are aiming to reduce the amount of pollution and waste that we generate, while continuing to monitor our CO<sub>2</sub> emissions.<sup>174</sup> (Weightmans, #44)

A number of firms reference environmental targets, but some do not say what these are and/or whether (or the extent to which) they have been achieved; and not one firm explains (as far as we can see) *why*, when the numerical targets are published, those

<sup>166</sup><<http://www.michelmores.com/about-us/corporate-social-responsibility>>

<sup>167</sup><<http://www.legalsectoralliance.co.uk/about>>

<sup>168</sup>LSA, *Annual Report 2014* (Legal Sector Alliance 2014) 5. See <<http://www.legalsectoralliance.com/files/lsa-annual-report-2014.pdf>>

<sup>169</sup>Ibid, 4.

<sup>170</sup>LSA (n 169) 6.

<sup>171</sup><<http://www.legalsectoralliance.co.uk/principles>>

<sup>172</sup>LSA (n 169) 33–35.

<sup>173</sup>Martin Jones and Jill Solomon, ‘Social and Environmental Report Assurance: Some Interview Evidence’ (2010) 34(1) *Accounting Forum* 20.

<sup>174</sup><<http://www.weightmans.com/about-us/environmental-action/>>

particular targets have been chosen. As such, it is difficult for a third party to say whether those targets are realistic and/or progress has been made. Similarly, even where data is made available by a firm, its coverage tends to be patchy. Of the largest firms, Herbert Smith Freehills (#9) stands out for its lack of data on environmental matters. The following is all that is said, under a website heading of ‘Pro Bono and Citizenship’:

We are committed to reducing our environmental impact. This includes targets for reducing energy and carbon, food waste and increasing recycling in our offices around the world as well as encouraging more environmentally friendly travel options.<sup>175</sup>

The Herbert Smith Freehills (#9) targets are not disclosed and, as noted earlier in this paper, the firm does not produce annual CSR reports. This is particularly striking given the firm lists an ‘Environment, Planning and Communities’ team as one of its practice areas,<sup>176</sup> and the firm (in February 2015) gave the following advice to its clients on CSR:

With CSR programs the new normal, consumers and investors increasingly factoring CSR performance into their decision-making, and companies eager to display ‘good corporate citizenship,’ strict CSR due diligence is required to manage legal risks. More than ever, words must match deeds.<sup>177</sup>

Interestingly, there does not appear to be any connection between the extent to which a law firm reports on environmental/sustainability issues and how highly that firm is ranked for its environmental law expertise.<sup>178</sup> So, for example, whereas Allen & Overy (#5) is ranked in the top band for environmental law in Chambers & Partners,<sup>179</sup> the firm says very little indeed about environmental matters in its CSR report,<sup>180</sup> and equally little in its CSR webpages.<sup>181</sup> The firm also does not disclose any hard data about impacts and/or emissions. By contrast, in its 2013 CSR report, Clifford Chance (#2) (ranked as Band 2 for environmental law) discloses an amount of hard data on its environmental performance;<sup>182</sup> and Pinsent Masons (#14) (ranked Band 4 for environmental law work) publishes its full environmental policy.<sup>183</sup>

## Conclusions

The public commitment of the top 100 law firms in England and Wales to CSR is widespread. The majority say something to the wider world about CSR. However, what is said varies significantly. This is, perhaps, unsurprising. What is more surprising is that so few firms explain *why* they are committed to CSR. As general trend, the lower the ranking of the law firm, the less they say about CSR and the less likely they are to explain their CSR motivations, although there are some notable exceptions to the rule at both ends of the rankings. Consistently, the top ten firms outperform lower ranked firms on all elements of CSR. We might speculate as to why this is so. Such might reflect greater resources

<sup>175</sup> <<http://www.herbertsmithfreehills.com/about-us/pro-bono-and-citizenship>>

<sup>176</sup> <<http://www.herbertsmithfreehills.com/practice-areas/environment-planning-and-communities>>

<sup>177</sup> <<http://www.herbertsmithfreehills.com/insights/legal-briefings/minding-the-specter-of-csr-reporting-liability>>

<sup>178</sup> For these rankings, see <<http://www.chambersandpartners.com/11814/25/editorial/1/1>>

<sup>179</sup> *Ibid.*

<sup>180</sup> <<http://www.allenoverly.com/corporate-responsibility/Documents/CS%20brochure.pdf>>

<sup>181</sup> <<http://www.allenoverly.com/corporate-responsibility/environment/Pages/default.aspx>>

<sup>182</sup> <<http://www.cliffordchance.com/content/dam/cliffordchance/CR2013/CRR2013.pdf>>

<sup>183</sup> <<http://www.pinsentmasons.com/en/about-us/starfish/our-communities-environment/>>

devoted to CSR by those firms (a corollary of their size, turnover and reach) and/or a greater desire to make additional work-related offerings to their employees in the form of CSR activities. It might reflect the client base of those firms (who may be more interested than other clients in CSR). These largest firms might also be more susceptible to approaches taken by, and the impacts of cultural differences from, US law firms. Finally, it may be that competition for work is fiercest between these top ten firms compared with other firms.<sup>184</sup>

We question whether current approaches by law firms to CSR really reflect the nuances (and specific impacts and responsibilities) of law firms as organisations. As providers of legal advice law firms are in a privileged position to incorporate their legal services into their CSR offerings. We would suggest that recent practice may have been (to varying degrees) symbolic; more about competition and about demand side pressures (i.e. appealing to clients), than a substantive, altruistic commitment to CSR. There may not have been any real attempt to, 'translate the ideals of professionalism into concrete institutional forms' of CSR.<sup>185</sup> We were struck, for example, by the widespread references to awards and external recognition for CSR on many law firm websites. This, we would suggest, is part of the 'media-isation' of legal practice, and one concrete aspect of the wider pan-promotionalism of contemporary culture. One might argue that this is linked to the use of CSR for commercial advantage. Such undermines altruism as an ethical ideal, and weakens the level of commitment to CSR,<sup>186</sup> part of an history of practice in large commercial firms which sees, 'industry, initiative, responsibility and success [put] over benevolence, altruism and, possibly, justice.'<sup>187</sup>

Where firms do make disclosures on CSR, these tend to group around the following three areas: (i) pro bono and community giving; (ii) diversity and inclusion; and (iii) environmental matters. For a number of firms, little or no distinction is made between pro bono (i.e. the giving of free legal advice) and wider 'community giving'. We suggest that this is a mistake, and potentially relegates the important role that lawyers in large corporate finance firms can play in alleviating unmet legal need.<sup>188</sup> We accept here that the extent of unmet legal need is vast, and that the contributions of large firms via pro bono initiatives can only ever hope to go a tiny part of the way towards meeting that need. We also accept the argument put forward by Cummings and Sandefur that, 'lawyers' pro bono service is importantly related to conditions in legal services markets and in the markets for lawyers',<sup>189</sup> and, as such, there will always be significant variation in where and how pro bono is enacted by lawyers. However, and like Luban, we see a correlation between the monopolistic privileges granted to lawyers and the corollary expectations that the state might have of those lawyers.<sup>190</sup> As Boon and

<sup>184</sup>Cummings and Sandefur (n 87) offer up market competition as one driver for pro bono.

<sup>185</sup>Cummings (n 123) 7.

<sup>186</sup>Boon and Whyte (n 34) 184.

<sup>187</sup>Boon and Abbey (n 16) 637.

<sup>188</sup>In this paper, we have not engaged in the debate over exactly how large firms should help to alleviate unmet legal need. See n 11. We do not suggest that in reconfiguring their CSR activities to increase pro bono efforts corporate law firms ever can, or should, seek fill the justice gap left by recent cuts to legal aid, as has recently been suggested by the Lord Chancellor – see <<http://www.telegraph.co.uk/news/uknews/law-and-order/11693145/Michael-Gove-Wealthy-lawyers-should-do-more-free-work-for-the-justice-system.html>>

<sup>189</sup>Cummings and Sandefur (n 94) 95.

<sup>190</sup>David Luban, *Lawyers and Justice: An Ethical Study* (Princeton, NJ: Princeton University Press 1988); David Luban, 'The Noblesse Oblige Tradition in the Practice of Law' (1988) 41 *Vanderbilt Law Review* 717.



Whyte have demonstrated, the traditions and ethics of lawyers are 'rich in the ideology of public service.'<sup>191</sup>

Despite there being regulatory intervention by the LSB as regards the collection and reporting of diversity data by law firms (and other lawyers), the quality of disclosures (in terms of the amount, nature and breadth of data reported on) varies to such an extent that we have been unable to draw any meaningful comparisons or conclusions. This is both disappointing and frustrating, and we have suggested that regulatory reform is necessary. Such reform would see some consistency to reporting introduced by the LSB and/or SRA, and the current discretion given to firms on disclosure reigned in significantly. Our expectation is that consistent reporting and the ability to compare performance between firms would go some way to improve diversity, especially if third parties (regulators, clients and others) undertook systematic comparisons of competitor firms. Environmental reporting by the top 100 firms was particularly poor, despite these firms having potentially significant environmental footprints, and despite advising their clients on potentially environmentally deleterious matters.

To borrow a phrase from Cummings, the story of law firms and CSR is still being written.<sup>192</sup> As part of that unfolding narrative there is a question as to the extent to which CSR should be a matter wholly for law firms to decide for themselves or the extent to which CSR requires some form of regulatory intervention.<sup>193</sup> Certainly, as discussed above, diversity as one aspect of CSR is an area in which the regulators of legal services in England and Wales have taken some initiative and introduced rules. In the same jurisdiction a number of bodies corporate have CSR reporting obligations under statute.<sup>194</sup> We leave this paper with the question, supported by the data we have offered up and which we plan to explore in further work, why law firms should not be treated the same, as regards CSR reporting, as the corporate clients they serve?

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<sup>191</sup>Boon and Whyte (n 34) 175. This might extend to the way in which the lawyer advises their clients. As Cummings points out, 'One version of this public service ideal places the lawyer in the role of mediating between client interests and public goals, advising clients to pursue the course of action that is not simply privately beneficial, but socially just' (n 123) 9.

<sup>192</sup>Cummings (n 123) 148.

<sup>193</sup>In an era of 'regulatory red tape' challenges, where legal services regulation thought to be superfluous or anti-competitive is done away with, we accept that the appetite for additional rules may be limited.

<sup>194</sup>Company Act 2006, s414A-D.