

## **Introduction to our Women In Law Roundtables - Toolkit**

Achieving gender equality in the legal profession should be a matter of fundamental importance for all working in the legal profession. Everyone working in the law will benefit from us being a more equitable profession.

What is needed is a shift in how we view gender equality. It can no longer be viewed as a women's issue. We would not argue that poverty was simply an issue for the poorest in society nor would we argue that the abrogation of civil liberties was an issue simply for those individuals involved. Rather we understand instinctively that we are all interconnected: we are all diminished if poverty exists in our society; we are all at risk if a fellow citizen's civil liberties are breached. Similarly we are all worse off whilst gender inequality exists in our profession.

Looking at the profession as a whole it is largely gender-balanced. There remain imbalances throughout: men are under-represented on the route to qualification and in the early stages of professional life whereas women still only comprise 30% of partners and a similar number of solicitor-advocates. We know women take longer to make partner. We know women are more likely to think about leaving the profession than our male colleagues – and well they might if they are paid less, are less likely to be given development opportunities or prime work, and if other sectors are more accommodating of their lifestyle.

Whilst noting that there is work still to be done we should note the progress the profession has made and note that this progress is quickening. In its first 60 years, the Society had one female president. There have been three female presidents in the last four years. Similarly, our research suggests the gender pay gap in the profession has lowered considerably in the last five year from 42% to 23%.

Gender equality includes multiple connected themes. It is about ensuring that men can spend more time with their children and making the idea of shared parental leave unremarkable. It is about eradicating the gender pay gap. It is about attracting men to the legal profession. It is about shattering the glass ceiling. It is about ending the idea that flexible working is a women's thing. It is about the simple idea that all in the legal profession – regardless of background, sex, ethnicity or sexual orientation – can thrive, have successful careers and live the life they want to live.

These are big topics but I have every faith the brilliant minds of this profession will accept the challenge.

This project builds on our research work and aims to involve women and men across the professions in deep discussions about how we get better. We want our profession to be one of true equality. To do so we need to understand the barriers in our way. And you, our members, can help us pull down those barriers by committing to action.

Alison Attack  
President of the Law Society of Scotland

## What is this Women in Law project about?

A huge body of evidence shows that equality, diversity and inclusion is good for business. We know that tackling the issues outlined in these documents will benefit everyone in the profession regardless of age, background, stage of career or gender. We also know that more dialogue, clear commitment, and tangible actions are needed to achieve full gender equality. We need a cultural shift and that will only come about through conscious action on behalf of many people.

We want organisations – firms, in-house legal teams, local faculties, or other groups of solicitors – to host roundtables, discuss these matters and make public commitments about what they will do to support our journey to full gender equality.

The information submitted by facilitators will be collated by the Society, fed into our research and published in due course. This toolkit offers some reference to the evidence we have collected so far, the main topics identified for the roundtable discussions and the activities for individuals and/or the group to take forward. There is a separate guide available for roundtable facilitators. The purpose of this toolkit is to provide all attendees with the background to the project to further its reach and our collective impact.

The research questions will identify the challenges faced in your organisations as well as the possible solutions to counteract them. Each tool will support members in identifying actions to tackle some of the main issues highlighted by our survey as being critical to improving diversity within the profession.

## What happens next?

The qualitative information submitted to the Society following your roundtable and the collective calls to action will feed into our larger research. Men's roundtables will also happen. If your male colleagues are interested please email [diversity@lawscot.org.uk](mailto:diversity@lawscot.org.uk).

This research will combine with our *Profile of the Profession* work. Ultimately the findings will be published in late 2019 in December to mark 100 years since the passing of the Sex Disqualification (Removal) Act 1919). For more information please contact: [diversity@lawscot.org.uk](mailto:diversity@lawscot.org.uk).

## Why roundtables? And why gender-focused roundtables?

We believe that gender equality will only be realised by ensuring that all voices are part of the debate and that people of all genders make commitment to change. It might seem odd then to hold men's roundtables and women's roundtables separately.

The topics that the roundtables will discuss will often focus on deeply personal experiences. This might include experiences of bullying, harassments and sexual harassment; experiences of returning to work post-maternity leave and the impact on career of this; experiences of flexible working; and times participants have suffered from unconscious bias in their career.

We think have a women-focused environment for these roundtables opens up a comfortable space to start intimate, deeply personal, and important conversations that might not otherwise happen. Similarly, we think that men-focused roundtables may open up freer thinking from male colleagues about gender equality: in a mixed room would men be more likely to hold back from saying what they really think? Possibly.

Our colleagues in England & Wales have already used this model to great effect. We have worked closely with them and learned from them. We need to learn though about the Scottish perspective.

### Where are we now?

- Our *Profile of the Profession* survey received nearly 3,000 responses from Scottish solicitors and Accredited Paralegals.
- According to *Profile of the Profession* the overwhelming majority of respondents (76%) thought that gender equality had improved in the profession over the last five years. However, men were far more likely to think it had improved to a great extent.
- When we asked why respondents thought comparatively few women reach senior positions the top three reasons selected were:
  - It is difficult to reach senior levels and have a family (75%)
  - Unconscious bias (53%)
  - Traditional networks and routes to promotion are male-orientated (50%)These were the same reasons selected in similar research in England and Wales. In that jurisdiction, the figures were Unconscious bias (53%), unacceptable work/life balance demanded to reach senior levels (49%) and networks and routes to promotion are male-orientated (46%).
- 90% of respondents felt that greater acceptance of flexible working would encourage more female solicitors to reach senior levels. But the numbers of people accessing flexible working had gone down.
- The median gender pay gap in the profession is 23% (down from 42% in 2013). Every legal employer in Scotland which reported its pay gap had a pay gap in favour of men whilst, in 2017, only one Scottish headquartered firm reported partner earnings.

### What works?

- Access to and mainstreaming of flexible working for all people at all levels.
- Broader networking opportunities.
- Mentoring and sponsorship including from senior staff, peers and reverse mentoring.
- Engaging men in the equality debate.
- Promotion and celebration of leading women.
- Role modelling family friendly policies.

None of these are particular radical and are happening in varied ways across the profession. There may well be value in more radical discussions – and those running roundtables should feel free to think big!

## Areas for discussion

We acknowledge the below are big topics and that in a 120 minute roundtable it is may be that roundtables cannot cover all five areas. We leave it to the discretion of those facilitating roundtables in discussion with those attending to focus on particular areas.

Have you faced challenges in any of the following areas, if so what solutions have you identified or used to address them?

### 1. Bias

- *Do you feel you have experienced bias in your career?*
- *Has your organisation implemented any specific action to tackle bias – unconscious, conscious or structural?*
- *Are you seeing any visible results?*
- *Is there anything the profession and Society should do?*

### 2. Gender Pay Gap

- *Did your organisation report its pay gap as part of the Gender Pay Gap Reporting Regulations?*
- *If so, has there been progress since the 2018 report?*
- *What do you think could be done to improve?*
- *Is there anything the profession and Society should do?*

### 3. Flexible working

- *Do you agree that flexible working is critical to improving diversity?*
- *Has your organisation implemented flexible working?*
- *If so, are you facing any challenges?*
- *If not, why not?*
- *How do we encourage more men to work flexibly?*

### 4. Bullying, harassment and sexual harassment

- *If you are willing to share, have you experienced or witnessed bullying, harassment or sexual harassment in your career?*
- *Was it dealt as you wanted it to be dealt with?*
- *If not, how was it dealt with? And how should it have been dealt with?*
- *Is there anything the profession and Society should do?*

### 5. Engaging men

- *How can we get men energised about gender equality?*

## **Toolkits**

Each tool focuses on a specific area where real change can be made, including the context and business case for doing so. Crucially, each tool also contains a list of activities and suggested calls to action which each roundtable group can use to effect change in their workplace or community.

All tools are broad enough for use by law firms, in-house communities, courts, chambers and legal businesses, and the terms used throughout reflect this inclusivity.

As a group, you may choose to focus on progressing one or multiple tools according to your interest and resources. If you would like to focus on an entirely different issue, please do still provide us with your insights to help us identify other key trends.

## Tool 1: Bias

The concept of unconscious bias has gained a lot of publicity in recent years. But what is it?

We'd like you to think of an orchestra. What do you imagine? A large group of highly-skilled men and women playing musical instruments. As late as 1970, the five top orchestras in the USA had fewer than 5% women. This seems unlikely: surely, musical talent would be pretty evenly distributed between the genders? Similarly, you'd assume the dedication to spend hours and hours of your formative years to master an instrument wasn't a particularly male trait. In the 70s and 80s orchestras started using blind auditions. Candidates for an orchestra now play behind a screen. Researchers have determined that this dramatically increases the number of women selected. Many orchestras are now at around 25%-30% female. It seems unlikely that women over the last few decades have just got better at music but, rather, perhaps beforehand women applying to become part of an orchestra were subject to bias: conscious or unconscious.

How often do you hear men described as "*shrill*", "*feisty*", "*emotional*", "*temperamental*" or "*hysterical*"? How often do you hear women described in the same terms? Are men "*bossy*" or "*assertive*"? Which would you prefer to be? How often are caring responsibilities assumed to be a women's role?

The first step is to recognise that we all have biases and these can have an impact. The next step is to begin to identify your own biases. One way to do this in advance of the roundtable is to undertake the Implicit Association Test<sup>1</sup> (<https://implicit.harvard.edu>). You may find the results uncomfortable!

### Where can bias occur?

We need to understand that bias can impact every stage of an employee's career: recruitment; work allocation; opportunities for professional development; business development and networking opportunities; performance reviews; promotion; and selection for partnership or equivalent.

Unconscious bias training only goes so far and, whilst extremely useful, needs to be taken in conjunction with other efforts. We need to change behaviour, as well as mindsets, unconscious or otherwise.

Changes to behaviour might include: advertising jobs more widely; using more carefully worded job adverts; monitoring the percentages of men and women who apply for a role, who are selected for interview, who are successful in getting roles; inclusive recruitment events and more controversially placing less weight on face-to-face interviews and presentations and testing what a candidate needs to know and be able to do.

A good starting point is to note that we are all biased and are hard-wired to make associations which in turns make us quickly characterise and make judgments based on those characterisations. Whilst this helps us make decisions quickly, it is also the foundation of stereotype, prejudice and discrimination.

A problem is that unconscious bias is not just individual but can work at an organisational level. This has a huge impact on how choices and decisions are made and what sort of behaviour is accepted. Ensuring that we all know – most importantly leaders and managers

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<sup>1</sup> <https://implicit.harvard.edu>

– our own biases and that of the organisation can help promote a more inclusive culture that sets a foundation for tangible change.

In the Scottish legal profession, unconscious bias was a running theme throughout *Profile of the Profession* survey<sup>2</sup> and also in our response<sup>3</sup> to it. When we asked respondents what changes organisations could make to working practice to encourage more female solicitors to reach senior levels nearly 50% noted unconscious bias training. Over 55% of respondents noted that such training was something the Society should implement.

Similarly, when we asked why comparatively few women reached senior positions in the profession 75% of respondents noted that it is difficult to reach senior levels and have a family. 52% (the second highest response) was unconscious bias.

As with so many things the important starting point is to admit there is a problem:

- We are all biased. We can't help it.
- This bias may not be conscious.
- Bias can impact decisions made throughout an organisation.
- Addressing bias will require cultural change.
- Active steps are needed in the future.

Spotting, confronting and addressing bias within an organisation can be extremely difficult. Just as individuals may need someone else to help them see when they are being unfair due to unconscious bias, an organisation needs to gain an objective view of persistent behaviours and ways of working that might indicate bias.

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<sup>2</sup> The Law Society of Scotland *Profile of the Profession* report: <https://www.lawscot.org.uk/media/361498/lss-pop-report-final-december-2018.pdf>

<sup>3</sup> The Law Society of Scotland *Profile of the profession* response: <https://www.lawscot.org.uk/media/361502/pop-response-final.pdf>



### Some suggested calls to action

1. **Commit to ask your leadership what steps can be taken to ensure that bias – conscious, unconscious and structural – is actively prevented.**
  - Implement unconscious bias training for everyone in the organisation.
  - Don't rely solely on training. Talk about bias at work, raise awareness and continue to discuss it after the training has taken place.
  - Appoint champions to proactively and consistently raise awareness.
  - Consider how you can move to blind/contextual recruitment<sup>4</sup>.
  - Introduce work allocation policies.
  - If your firm submits to directories ensure that submissions are diverse and inclusive to direct the diversity of your organisation.
  - If you instruct advocates: sign up to the Faculty of Advocates' *Fair Instruction Policy*<sup>5</sup>.
2. **Undertake the Harvard Implicit Bias Test:** <https://implicit.harvard.edu>
3. **Commit to a conversation with your leadership team on the impact that unconscious bias can have in an organisation on appraisals, opportunities or promotions.**
4. **Commit to equal numbers of male and female candidates are considered for every opportunity.**
5. **Commit to installing mixed boards and panels throughout your organisation when making decisions relating to recruitment, assessments, shortlists, and promotions to consider gender, race, age, background, ability and ethnicity.**

<sup>4</sup> The Law Society of Scotland's recruitment guidance provides pointers here: <https://www.lawscot.org.uk/members/business-support/recruitment-guidance/>

<sup>5</sup> Faculty of Advocates Fair Instruction Policy: <http://www.advocates.org.uk/instructing-advocates/fair-instruction-of-advocates>

## Tool 2: Gender Pay Gap

The Gender Pay Gap (GPG) is the difference in the average pay between all men and all women in a workforce. It is different to Equal Pay which deals with the pay differences between men and women who undertake the same jobs or work of equal value.

In 2018, the [Gender Pay Gap Regulations](#)<sup>6</sup> came into force. Organisations with over 250 employees had to report their gender pay gap via a government website. In some instances an individual company's pay gap became headline news.

Our *Profile of the Profession* report noted that progress has been made with regards to the Gender Pay Gap in the Scottish legal profession over the last five years. The median profession-wide pay gap dropped from 42% to 23% but we know that women still face difficulties regarding progression and pay: there is, despite the progress, still a significant gap; there is also a bonus gap of around 50%; and we know women tend to take longer to make partner. We suspect that women are more likely to be salary partners than equity partners although this is a suspicion based on consistent anecdote rather than data.

We published an Equal Pay Toolkit which will help organisations eliminate their Gender Pay Gap<sup>7</sup>. There is a statutory requirement for employers with over 250 employees to publish their calculations every year and, also, publish what action they are taking. Information is beginning to build a clear picture showing that the GPG for legal businesses is substantial<sup>8</sup>. Concerns have been raised that equity partners are not required to report remuneration via the regulations although some firms across the UK (although comparatively few in Scotland) have chosen to report their partner earnings.

### Why is this an important issue?

- Women now make up the majority of the solicitor profession (52%).
- Gender Pay Gap data for the largest law firms and in-house organisation in Scotland is now publicly available. This may affect career choices.
- There is a risk of staff leaving if they choose to leave because steps are not taken to reduce or eliminate the Gender Pay Gap.
- Organisations that reduce significantly or eliminate their gender pay gap will be able to use this in their marketing and when tendering for work.
- It is more cost effective to tackle the Gender Pay Gap than to recruit staff externally and replace experienced staff.
- There is a litigation risk arising from unfair or discriminatory pay practices. There is potential reputational damage for organisations that – over time – do not reduce significantly or eliminate their Gender Pay Gap. Large clients may well avoid organisations that do not take active steps.
- It is, quite simply, the right thing to do to reduce the Gender Pay Gap in your organisation.

<sup>6</sup> Gender Pay Gap Reporting Regulations: <https://www.gov.uk/guidance/gender-pay-gap-reporting-overview>

<sup>7</sup> The Law Society of Scotland Equal Pay Toolkit: <https://www.lawscot.org.uk/media/2004/ensuring-fairness-closing-the-pay-gap.pdf>

<sup>8</sup> Overview of news stories regarding Gender Pay Gap in legal profession: <https://www.thelawyer.com/tag/gender-pay-gap/>



## Suggested calls to action

### 1. Commit to support implementation of a specific GPG priority area in your organisation

If there isn't a GPG plan for your organisation (including because your organisation was too not obliged to report), offer to follow up with relevant areas of the business to ensure that tackling the GPG is a priority and to support implementation. This may include:

- Implementation of **flexible and agile working** and include staff input on what would work for them.
- Reviewing policies on **shared parental leave, maternity leave, paternity leave, adoption leave and supporting working carers.**
- Introduce initiatives focusing on **women returning to work.**
- Reviewing policies and procedures for **recruitment shortlists and interview panels.**
- Reviewing your **pay and reward structures**, with a particular focus on performance-related bonuses, to ensure transparency and compliance with equal pay legislation.

### 2. Commit to starting a conversation with your leadership team about sponsorship

To actively support more junior staff to progress in their career, for example, assess whether both male and female candidates are considered for every opportunity (this will include work allocation). If not, act!

### 3. Undertake an equal pay audit<sup>9</sup>

### 4. Commit to establishing a working group to ensure accountability

This group could report to the Board or Partnership on a regular basis. This is a very strong way of maintaining momentum and ensuring transparency and accountability.

### 5. Commit to identifying role models

These role models – female and male – can establish a formal role in progressing this work.

### 6. Report even if you don't have to do so.

Whilst the law only requires organisations of over 250 employees to report many organisations including the Law Society of Scotland voluntarily chose to report their pay gaps in 2018<sup>10</sup>. For organisations of over 100 staff in particular – reporting and committing to action plans can really assist.

Other organisations voluntarily chose to report partner earnings even though such the reporting of partner remuneration is not mandated as part of the regulations. Many law firms and accountancy firms across the UK chose to report partner earnings in April 2018 and more are predicted to do so in 2019.

<sup>9</sup> The Law Society of Scotland's Equal Pay Toolkit: <https://www.lawscot.org.uk/media/2004/ensuring-fairness-closing-the-pay-gap.pdf>

<sup>10</sup> The Law Society of Scotland's 2018 pay gap: <https://www.lawscot.org.uk/news-and-events/news/gender-pay-gap-2018/>

### **Took 3: Flexible working**

Most people agree that flexible working is critical to improving equality and diversity in the legal profession.

The percentage of respondents who have access to flexible working has reduced since 2013. Having access to flexi-time appears to have an impact on respondents feeling that they are achieving a reasonable work-life balance: 87% of those who have access to flexi-time and feel comfortable to use it feel that they are or mostly are achieving a reasonable work-life balance compared to 68% of those who do not have access to flexi-time.

Moreover, 83% of respondents felt that women leave the profession in their 30s and 40s for a better work-life balance elsewhere.

So how can the profession improve here? Why is flexible working becoming less?

Over 50% of those working flexibly noted felt doing so had a negative impact on their career. There were many reasons for this: some noted that there was a perception that those working amended hours were less dedicated; there is a lack of recognition around hours worked or expectation that full-time work should be completed in part-time hours; that flexible workers were unable to participate in out-of-hours networking or business development; and that flexible working had limited access to promotions.

#### **Suggested calls to action**

- 1. Consider how your flexible working policies are working. Are they being used? Are they disproportionately being used by women? Or people working at certain levels?**
- 2. Highlight senior figures who work flexibly. Show it is possible to work flexibly at senior levels.**
- 3. Consider networking and BD events that are during office hours, are over lunch or are breakfast events.**
- 4. If you are a client: ask your private practice law firms what their flexible working policies are, how many solicitors utilise it and how many partners utilise it.**



#### **Tool 4: Bullying and harassment**

Whilst bullying, harassment and sexual harassment are issues for everyone in the profession, a significantly higher proportion of women reported in *Profile of the Profession* that a third of female respondents stated they had personal experience of bullying, harassment or sexual harassment during their careers. 20% of female respondents noted they had suffered bullying over the last five years whilst 3% of female respondents noted they had suffered sexual harassment over the same time frame.

It is the Society's position that one incident of bullying, harassment or sexual harassment is one incident too many. It is a clear reason as to why so many in the profession are considering leaving the profession.

#### **Suggested calls to action**

- 1. Commit to challenging bullying, harassment and sexual harassment in the workplace when you see it.**
- 2. The above is particularly true of leaders and HR directors (in organisations which have them)**
- 3. Discuss with senior leadership in your organisation how they can publicly commit to eradicating bullying, harassment and sexual harassment in the profession.**
- 4. Be an ally for those colleagues who are suffering from bullying, harassment and sexual harassment. Highlight resources to help and remind them these matters can be considered professional misconduct.**

### Tool 5: Engaging men

Gender should not be a limiting factor for anyone. We want to empower everyone to become champions of change to advance equality and to level the playing field for women and men.

In the profession, women now make up more than half of the profession yet they are still not making it to partner status in equal numbers to men. Similarly women make up a little over a quarter of solicitor-advocates and, elsewhere in the Scottish legal world, make up around 30% of the advocate profession and the judiciary.

Proactive steps to address the gender balance in the workplace – at both ends of the profession - must be taken for businesses to fully benefit from all their people. For example, studies found that women without sponsorship are less likely to be appointed to top roles than men and more reluctant to try for them, and accessible influential mentorship is required to ensure that limited access to career relevant experience does not continue to limit women's access to resources throughout their career.

Benefits of diversity:

- Diverse thought and experience brings a wealth of resources, creativity and innovation, which in turn leads to better decision-making and avoids 'group think'.
- The ability to meet increasing client desire to work with diverse and inclusive teams.
- Representative workforces within the legal sector are considered important by public for achieving fair outcomes and improving diversity.
- Greater gender diversity on senior-executive teams corresponds to a higher performance<sup>11</sup>.
- There is a direct correlation between the profitability and diversity of the highest performing organisations.

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<sup>11</sup>[https://www.mckinsey.com/~media/mckinsey/business%20functions/organization/our%20insights/delivering%20through%20diversity/delivering-through-diversity\\_full-report.ashx](https://www.mckinsey.com/~media/mckinsey/business%20functions/organization/our%20insights/delivering%20through%20diversity/delivering-through-diversity_full-report.ashx)



### Suggested Calls to action

- 1. Commit to discuss gender equality with male colleagues, contacts and peers**  
*We will be hosting gender equality roundtables with men too. We are doing this in this way so that we can have a good insight into the experiences of women and, separately, the experiences of men.*
- 2. Commit to encourage participation in the Harvard University gender IQ test**  
*Ask colleagues, contacts, and peers to undertake the test to help better understand their own gender bias<sup>12</sup>.*
- 3. Commit to establish coaching and mentoring activities**  
*To empower women to achieve leadership roles.*
- 4. Commit to encourage your organisation to implement gender equality training**  
*For all staff. For smaller firms, consider whether or not you can work with the Society, local faculty or both to work with other organisations.*
- 5. Commit to encourage male champions for change to make their own measurable actions to address gender inequality**  
*Discussing a review of working practices with the leaders of your organisation to deter gender bias.*
  - *Refuse to take part in all-male panels, conferences and boards.*
  - *Ensure that equal numbers of male and female candidates are considered for all significant opportunities.*
  - *Source female colleagues/peers for participating in otherwise non-inclusive events.*
- 6. Commit to ask a male colleague at a senior level to participate in one of the Society's roundtables for men later in 2019.**

<sup>12</sup> Harvard gender IQ test: <https://implicit.harvard.edu/implicit/uk/selectatest.jsp>

### What happens next

After each roundtable, the following steps should be taken:

- The facilitator will circulate notes to all roundtable participants to agree amendments
- Within two weeks of the roundtable, the facilitator will share the notes and call to action commitments with the Society ([diversity@lawscot.org.uk](mailto:diversity@lawscot.org.uk))

Three months after the roundtable the facilitators will be contacted by the Law Society to find out about the initial progress made.

Around six months after the roundtable we will contact the facilitators again to collate all progress made by the groups and assess the level of impact made by each group and by individuals in their organisations and wider communities

We strongly encourage you to send us a group photo from your meeting and evidence of change in action can also be sent to the [diversity@lawscot.org.uk](mailto:diversity@lawscot.org.uk)

A final report will be published in late 2019.