



Law Society  
of Scotland

# Gender Equality Roundtables

Bias

May 2020



## Why did we ask roundtables to consider this area?

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When asked in *Profile of the Profession* why comparatively few women reach senior positions, the most common answer was *'it is difficult to reach senior levels and have a family'*. The second most common answer was *'unconscious bias'*. These were followed by *'lack of support in the industry'*, and *'traditional networks and routes to promotion are male oriented'*. It is likely though that each of these are to a lesser or greater extent imbued with bias.

We acknowledge that bias is not simply a gender issue. The profession reported that it felt that unconscious bias was, in their view, the main reason that comparatively few BAME solicitors reach senior positions. We undertook some research in this area last year and the findings continue to influence our work.

The Profile of the Profession also focused on solutions. We asked members what their organisations could do to make a difference. The most common answers: *'a greater acceptance of flexible working'*, *'unconscious bias training'*, *'more gender-neutral networking and client business development'* and *'broadening performance metrics to include less visible activities such as mentoring and recruitment'* are all predicated on the idea that there is a level of bias behind current decisions.

Similarly when we asked what the Society could do to make a difference the top answer was *'unconscious bias training'*. Since December 2018, we have introduced unconscious bias training to the mandatory Practice Management Course – a course that all new partners need to undertake.

The topics that the roundtables discussed were rooted in deeply personal experiences for all who attended, none more so than those focusing on bullying, harassment and sexual harassment. We wanted to add real-life discussion and experience to the quantitative analysis of the *Profile of the Profession*. We also hoped that the roundtables discussing these issues in a structured, guided way would provide potential ways forward to build a more inclusive profession.

We provided toolkits and guidance for the discussions as well as some suggested questions for those attending to answer.

For bias these were:

- 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 there any visible results?
- Is there anything you think the profession or Society should do in this area?

### How widespread are the issues of bias?

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The over-riding feeling was best encapsulated by one roundtable that noted that: *‘Every participant agreed that at some stage in their career they had all encountered unconscious bias. This was at junior and senior levels, in-house and in the private sector, before and after having children, whilst pregnant, and from colleagues and from clients’.*

Other respondents at other roundtables reported issues in different areas of work from private client, to commercial, to the courts.

As a counterpoint, another roundtable noted *‘that they had not (at a personal level) suffered a significant amount of bias. Each accepted that unconscious bias existed, but it would be difficult to be able to ascribe any obstacles in career progression to unconscious bias, which by its nature was hidden’.* That roundtable though did identify examples of bias later in their discussion.

### Examples of bias

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Numerous roundtables noted the same issue: people might not always be aware of when they are on the receiving end of bias (unconscious or otherwise). Two examples stood out: A roundtable noted *‘Issues around the hidden nature of unconscious bias and the fact that individuals are likely unaware if they experienced or perpetuated it’.* One roundtable noted that change would be *‘difficult to address as most people may be unaware that they were being biased or would deny it’.*

More than this, it isn’t always possible to know the effects of an individual incident. What may seem trivial to a neutral observer might be important to the individual. It is important to consider the wearing effects of many incidents of relatively minor issues totalling up over the course of a career (and compare to solicitors who do not suffer similarly).

## Historic examples

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Whilst some of the examples may be somewhat dated, it does not diminish their importance. One respondent – noting that the incident was fifteen years ago – was told when she asked for promotion to partnership that *‘women don’t want promotions’* and *‘we never thought you would be one (a partner) because you’re a girl’* even though a male colleague of the same age and stage had been promoted the year before. This is mirrored in discussions today when we hear relatively sweeping explanations of the relative lack of female partners, because women don’t want to be partners.

One participant noted that she had been promoted to associate *‘only to be told it was only because a less-experienced male solicitor was being promoted and it would look odd if she wasn’t an associate’*.

Another noted that *‘Being a female solicitor, there was a certain expectation for you to dress smartly and wear heels to “look the part”’*. Another still noted: *‘It may seem bewildering now, but many attendees could recount buying their first trouser suit and the reaction of others to it’*.

## The impact of wider societal issues

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Many of the roundtables reported bias – unconscious or conscious - relating to wider societal attitudes towards caring and parenting. This links to many of the themes in the flexible working report.

One roundtable noted that there is *‘still societal expectation that mothers will be the main carers and fathers will be the breadwinners’*. Another that *‘[the]expectation is that mum is the carer’*. Others noted that there were still perceptions around motherhood. One participant noted that *‘she felt that she had to raise to partners that she wanted to have children and then questioned herself’*. She went on to note that there was a perception that *‘career progression will halt if you have children’*. Another noted that she was made to feel that *‘making a choice to spend time with family is seen as a negative choice’*. Others considered how fathers may feel: *‘men may wish to be more included’*. Numerous roundtables thought that societal attitudes may make that difficult for men to achieve.

One respondent noted that an example of bias was women still *‘being asked about their marital intentions or plans in interviews’*. Another noted it is still common for *‘colleagues to check if another newly married colleague was drinking at an event to see if she was pregnant’*. Another participant noted that she was *‘afraid she might not get an NQ job, as she got married whilst a trainee’* whilst another noted that *‘young married female solicitors were asked if they were going to have a baby now they are married’*. One

participant noted that she was asked when she was getting married in an interview and was told that because *'being a partner isn't in your five-year plan you didn't get the job'*.

Others noted that single women are often asked to do more than other women in the workplace. One respondent asked: *'Is this discrimination? It is no less valuable a life than women who are married and/or have kids'*. Another participant noted that there was *'an expectancy that young female solicitors would work bank holidays/holidays or go to more evening networking events as they were single'*.

One telling comment was that society generally views sabbaticals differently to maternity/adoption/parental leave: *'An employee took a 13-month sabbatical. There was never an assumption that she would be deskilled when she returned to work, so why is this the case for maternity leave returners?'*

One respondent noted that becoming a partner whilst pregnant was hard: *'There are worries around when you should tell someone you are pregnant as you think this may affect partnership assessment. The partnership assessment process at the firm is gruelling enough and whilst pregnant is exhausting.'*

Numerous roundtables noted that women and men are often described in different ways when demonstrating similar attributes, summed up by one group as *'women are more likely to be labelled in certain ways: overly authoritative, bossy, particularly at performance review time'*.

One respondent noted that a female partner had given her advice as a trainee that due to issues in the profession she *'would have to work harder than men to progress'*. This is a theme that has been consistently raised at diversity events in recent years. The respondent noted she couldn't decide whether this was good advice or extremely depressing or both.

## **Bias in court**

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One roundtable noted that *'misogyny is still apparent in the court setting'*. Across the roundtables, a number of incidents of bias were given. One participant noted that it was common to *'be talked down to as a young female solicitor relatively new to practice (by the Sheriff)'*.

Others noted a disparity in treatment of female solicitors by the judiciary. One roundtable noted problems *'Where your opponent is male and perhaps of the same generation as the sheriff can leave you feeling dismissed and not being treated seriously'* whilst another noted that *'Regardless of how you are presenting your argument, the sheriff might try to draw in the male opponent to agreeing with his point'*.

It wasn't always gender-focused. One roundtable noticed that sheriffs can find themselves '*Favouring Counsel's perspective simply because it is Counsel who is presenting the argument. This might not be gender-related but there is a perception of superiority*'. Given fewer than 30% of advocates are female, there likely is a gender issue there, but this difference of treatment of pleaders likely flows through to other matters including self-esteem and potentially judicial appointments.

All of this should be viewed alongside allegations of shrieval bullying in the *Profile of the Profession* work and, also, the bullying elements of the roundtables.

### **Bias from clients**

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Similarly to the bullying section, many roundtables highlighted examples of clients showing bias – mostly negatively towards female solicitors or in ways that they would never behave towards male solicitors. Some feedback suggested latent sexism, such as '*old school clients still specifically request male solicitors over female solicitors*'; '*clients – and occasionally other lawyers – addressing male trainees rather than the female qualified solicitor (the assumption being the man was more qualified)*'; '*clients asking how long female lawyers had been qualified (usually when receiving advice they didn't want to hear)*'; and one roundtable noted examples '*where clients did not follow or questioned advice given by female lawyers (and on occasion requested a second opinion or approval from a male colleague)*'. Finally, one participant noted that '*in the private client sphere, older male clients can be dismissive of you as a solicitor particularly if they do not like the advice you are giving*'.

Echoing this were examples linked to outdated views of gender. For instance, one participant had '*suggestions from clients that as a female solicitor she wouldn't be aggressive enough in an action*' and that this was only commented upon because of her gender. Elsewhere, a roundtable noted that clients routinely would see female solicitors '*being called sweetheart, love and dear*'. Another participant noted '*being in court whilst pregnant and feeling unable to ask for a break when feeling weak due to client comments*'.

### **Bias in the office**

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The responses on unconscious bias interlinked with many other areas of research. Some matters that were raised as unconscious bias may well have been more overt.

One participant noted '*There is an older generation of male solicitor who talk down to female solicitors without appreciating how misogynistic they are being*'. Building on the previous comments about not realising bias, one roundtable noted that some '*male colleagues take the view "that I'm not sexist so there*

*can't be a problem"'. Others noted that bias flowed through organisations, noting that secretaries would 'accept behaviour and instructions from male solicitors that they didn't from female solicitors'.*

Bias – conscious or unconscious – seemed to seep into most areas of working life. Be it work allocation (*'male trainees being given different opportunities, which were better for career development'*) through to how firms market themselves (*'one large firm's brochure where the only image of a woman was a pregnant associate'*). Even when women did reach the senior ranks of the profession, they were *'asked to speak to female staff about matters that male partners feel uncomfortable asking about (i.e. how a female trainee was dressing in the workplace)'*. Another participant noted *'It can be intimidating clerking meetings where you are the only female, even for very experienced female solicitors'*. There were numerous comments across roundtables suggesting that senior women can on occasion hinder ongoing gender equality: *'Some female bosses... need to continually try to prove who they are and what they've done to achieve their position. It is perplexing to work for such an individual as they are critical and fault-finding rather than encouraging and supportive as a boss. It was thought that males do not feel threatened by other males in the same way'*.

One roundtable noted that *'there was unconscious bias towards young and newly qualified female solicitors, which was not aimed towards similarly qualified males'*. One participant at that roundtable noted that organisations mistake *'confidence with competence'* and noted that many junior male solicitors *'were extremely confident although not always competent, whereas female counterparts were often less confident but extremely competent'*.

Approaches to part-time working (see also section on flexible working) often suggested a level of bias. One respondent noted that *'at a performance review, I was put forward for a promotion but a final comment that she came in at 9 and left at 5.30 – which are secretarial hours'*. The participant felt that this wouldn't have been said to a man working similar hours; carried an underlying assumption that secretaries are women (and don't put in the hours); and felt that she was being judged on her commitment. Another roundtable noted that the *'culture rewards people delivering beyond their targets and encourages anti-social hours'*.

There were numerous comments about how part-time workers are discussed, which suggested a level of bias: one roundtable noted *'comments are made about part-time workers and not being in all day every day'*, whilst another noted *'situations where work was specifically not being given to the part-time solicitor but rather to her full-time colleagues, which could potentially result in financial targets being harder to achieve'*.

Mirroring feedback in other areas, one roundtable noted that none of the participants would be *'willing to approach leaders in their organisation (over bias) as this would put a black mark on their career'*.

### **Bias in the wider profession**

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One comment from one roundtable focused on the concept of post qualifying experience (PQE). It was thought *'that other industries do not have the same stigma because there is not as much of a focus as to how many years qualified you are'*.

Other examples were given where bias continued to exist. Numerous roundtables noted that they had been interviewed by *'all male panels'*, whilst others noted that similar panels remained common on the conference circuit. Others noted that there was bias throughout the recruitment procedure *'caused by potential factors such as school or university attended; and the interview questions themselves being geared towards those from a professional background'*.

It was accepted that bias was not solely about gender. Some roundtables noted that there were examples of bias against people from BAME backgrounds, *'people with regional accents'* etc.

One roundtable noted that the organisation's annual golf day – whilst inclusive of women – was *'male-oriented'* and noted that it shouldn't be discussed at board meetings as it was a social rather than professional matter. Another noted that a public sector organisation had held a Christmas event that was *'male only'*. On the other hand, one respondent noted that a female partner had noted to her she tended to avoid employing male trainees *'because boys are lazy'*.

**For further information, please contact:**

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