



Law Society
of Scotland

Gender Equality Roundtables

Gender Pay Gap

May 2020



Why did we ask roundtables to consider this area?

In the 2015 *Profile of the Profession*, the area that received the most attention was the sectoral gender pay gap. In that report, the average man in the profession earned 42% more than the average woman in the profession.

Our response to the 2015 report focused largely on the gender pay gap and saw us lead a large amount of work across the sector. This included: publishing *Parents in the Profession* guidance, hosting a year-long campaign called '*Conversation on progression*', choosing to publish our own gender pay gap annually, and hosting a debate on partnership quotas.

The 2018 report – likely combined with the wider gender pay reporting regulations – saw that sector-wide figure come down sharply to 23%. That progress is to be applauded, but the gap is still significant. We know too from the 2018 report that there are wider issues around progression: that women who make partner tend to take longer to get there.

We asked the roundtables to consider the following questions:

- 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?

What are the issues?

The gender pay gap in the profession is well-understood. A good number of law firms are required by law to report their gender pay gap annually. In 2019, all Scottish legal organisations that were required to report did so, inclusive of partner remuneration. We also know of other organisations that are not required to report, but have undertaken such analyses internally.

The gender pay gap in the profession has been a focus of the Society's last two *Profiles of the Profession* and has been the focus of policy and engagement work by the Society for a number of years. The roundtables that chose to discuss the gender pay gap focused on the underlying causes – taboos around talking about pay; differences of approach between men and women; and the short and long-term impacts of part-time working. Of course, it is difficult to consider the output of the roundtables on bias, flexible working in particular, without also considering how these impact the gender paygap.

The big taboo

Numerous roundtables noted that a significant problem was the lack of transparency around pay and the cultural behaviours of not talking openly about reward more generally (pay, pay rises, bonuses etc). One roundtable noted the depressing view that it was *'assumed across the board that male solicitors will be earning more than female solicitors, but unless you are working in a larger practice, then figures won't be produced'*.

This was consistently noted: *'[in] pay conversations – women are less comfortable/less inclined to speak about money'*. Another noted that a *'cultural shift was needed to stop the embarrassment of asking what others are paid'*. It was thought that changing the culture would be helpful: *'the more women talk about it, the more likely an employer will have to address it. The more women who get higher up the ladder, the more likely it is to be addressed'*.

When discussion turned to solutions, more radical ideas were generally eschewed. The only reference to quotas from a roundtable was in the form of a question (*'Is there a need for quotas?'*), to which there was no recorded discussion.

Across the sector, there was a lack of clarity around pay. One roundtable noted that *'clarity around internal progression and salary levels in the firm would encourage females to seek such roles'*. Another thought that *'transparency as to how pay, bonuses and advancement were achieved would be appreciated by all and would facilitate better, more meaningful, discussions and encourage firms to adopt a transparent approach'*.

One participant from a firm that did not require to release its gender pay gap thought *'that bonus figures should be released'*. Another noted that *'a person being promoted to associate has no idea what the salary should be... it would be good to know the benchmarks'*.

It was thought by another that encouragement should be given to firms *'to review how bonuses and financial packages are produced i.e. if they are based purely on chargeable hours, this would lead to more difficulty in closing the gap'*.

Another roundtable suggested that the lack of transparency made solicitors openly doubt the fairness of the reward system: *'There was an agreement that the lack of transparency as to how salaries at the firm are determined led to a perception that gender bias was present in the decision-making process'*.

One roundtable asked whether the issue was really about equal pay. They asked *'are women and men at the same PQE or in the same jobs getting paid the same?'*. The roundtable felt that *'what the average women gets paid against the average man over a career doesn't allow for a comparison across roles'*. Another group noted that PQE should not be an indefinite barrier to equal pay, as *'women catch-up in terms of ability to do the job (if they've had time out for maternity)'*.

It was also noted that some *'high-earning departments receive large bonuses, which was due to the type of work done commanding high fees, so perhaps there is a sectoral pay gap rather than a gender pay gap'*. It was not explained in the notes what these departments were, but it would be interesting to know if these departments were more likely to employ male solicitors and if male solicitors typically led those departments.

In that vein another group noted that there were many causes to the gender pay gap, including the difference in pay gradings in their firm, with *'more senior men [and] more women in business support'*.

One roundtable noted that there were some disparities in salaries of people at the same level. *'Some of this could be accounted for by solicitors who had been headhunted and accrued higher salaries as a result of this'*. It was not clear whether male solicitors were more likely to be headhunted, but given comments about men being more likely to move roles (noted below), perhaps that could be inferred.

Few reported having discussed salaries. One did note that she had *'raised salary during her appraisal, but this left me feeling uncomfortable. I was asked how much I thought I should earn and I had to say I had no idea as there was no transparency to the process'*. At another roundtable, a partner asked *'if anyone raised salaries during their appraisals? The roundtable noted that they thought performance reviews and reward were two separate things, and were not encouraged to talk about salary during their appraisal'*.

Linked to pay, of course, was progression and this raised the question: *'why are women not being promoted or taking longer to be promoted than men? It seems unlikely that competence is an issue across the profession'*. It was thought that pay differences at junior levels were minor and *'could be easily addressed'*.

Differences between women and men

A number of roundtables noted similar themes about the differences in approach that men and women have to salary negotiation and applying for jobs.

One roundtable reported that *'In their view, female lawyers may be more reluctant than their male colleagues to challenge their salaries or ask for pay rises'*. Another noted that *'men are allegedly better at negotiating pay rises and higher pay when taking on a new role. Men are also perceived to apply for roles that they match maybe 60% of the essential criteria. Women generally will only apply if they match 100%. Both factors mean that men, in general, may be in higher paid roles than equivalently qualified women, and/or start off with a higher salary'*. Another roundtable noted the same figures and there was a common refrain that men apply for higher paid and more senior roles earlier in their careers than women..

The nature of how part-time work impacted pay in numerous ways was also discussed and not solely in terms of making targets: *'Being female and part-time generally poses a barrier to promotion, as it can prevent meeting targets, especially in relation to attending business development and networking events after hours'*.

There was a feeling that women and men need to take different factors into account when considering career progression. As one roundtable reported: *'[There are] so many additional things a woman needs to build into her decision-making, such as whether she wants a child, when that might happen, what the maternity pay is like. Maternity policies can also affect when women choose to have a second baby etc. Men generally don't need to consider these things in the same way'*. Another roundtable noted similar issues: *'men don't usually make career decisions based on getting paternity benefits, whilst for many women, maternity leave and flexible working policies will be a factor in their decisions'*.

One roundtable noted that, as well as differences in approach to salary negotiation, there were other distinctions between the sexes: *'Female lawyers may be more willing than their male counterparts to get involved with non-chargeable work (such as diversity initiatives, mentoring, CSR activities), but that non-financial contribution to their firms would not be financially rewarded'*. Mirroring this was a comment that *'reward should not just be based on fees and targets'*.

The general view was summed up by one group: *'There is a fundamental acceptance that being female, having children and working part-time will have a significant impact on your career expectations. This is not tolerable. We should not just be grateful for having a job'*.

The impact of part-time working

One roundtable noted that *'it was harder to achieve financial targets if you were a part-time female solicitor and that could make you less likely to achieve a bonus as opposed to male colleagues'*. Another participant concurred, noting that in her view *'it was impossible to meet target to achieve bonus returning from maternity leave, due to accrued holidays, so the bonus system/targets were not fair'*.

The longer-term impact of flexible working was also noted: *'It was harder to move forward or ask for a pay rise, if you were returning to work after having had children and gone part-time'*.

Perhaps more significantly was the ongoing impact of part-time work on remuneration and progress. This was perhaps best elucidated by one roundtable that/by one participant who noted that people who work part-time will arrange their lives around those hours and therefore can *'feel restricted to staying in their current position, as it is too difficult to try and negotiate a move to another part-time position without going full time first'*. This was echoed by another comment from another participant, who stated *'that her husband (a lawyer) earned double what she did, because he had the security and flexibility to move from job to job. She doesn't, because she works part time and jobs aren't advertised as part-time'*.

This was echoed by another comment: *'Women can feel 'stuck' at the same level once part-time and give up any hope of promotion. Male counterparts generally don't experience this'*.

Some questioned the impact of part-time working. One roundtable noted that non-working days are not really non-working days *'it can be like a day on call'*. This led to queries around *'whether it is really the correct approach for 20% to be deducted from salary'*.

For further information, please contact:

Rob Marrs
Education, Training and Qualifications
Law Society of Scotland
DD: 0131 225 8882
robmarrs@lawscot.org.uk