Gender Pay Gap
The Law Society of Scotland

Introduction
The Law Society of Scotland (“the Society”) is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland’s solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society’s Equalities Sub-committee welcomes the opportunity to consider and respond to the Scottish Parliament Economy, Jobs and Fair Work Committee’s Call for Evidence on the Gender Pay Gap. The Sub-committee does not propose to respond to all of questions posed in the call for evidence but has the following comments to put forward for consideration.

Summary
There is an ongoing debate as to the reasons for the existence of the gender pay gap. Some research suggests that the gender pay gap cannot alone be attributed to wider social structures and that therefore it must, in part, be due to unconscious gender discrimination. Others disagree, and are of the view that the gender pay gap can be attributed solely to the differing roles assumed by men and women in society. This response begins by presenting some of the arguments on both sides for the reader to consider.

Regardless of the reason for the gender pay gap, to the extent that it persists, it appears that legislation has been ineffective in providing a resolution. It is suggested that a number of structural features of the equal pay model in the Equality Act 2010 are barriers to addressing the disparity. These structural features include a simplistic notion of formal equality and a rigidity of the equal pay regime.

With regard to gender pay in the Scottish public sector, the Sub-committee has limited its comments to the approach of local authorities to the equal pay regime and their experience in connection with the implementation of the Single Status Agreement (SSA). In particular, it is suggested that the introduction of the SSA opened up a Pandora’s Box of problems for local authorities which has led to a substantial amount of litigation. It would appear
that the influx of litigation is attributable to a number of factors which the Sub-committee has summarised at the end of the section.

The Sub-committee concludes the paper with a look at the gender pay gap in the legal profession and a discussion of the data we have collected through our "census" Profile of the Profession which we have been undertaking for over a decade. The census gives the Society a snapshot of the profession at a given time but also allows us to identify emerging trends. As a result of this data, we have undertaken a number of policy actions which we believe are "best practice" and which we note below.

What are the reasons for the existence of the gender pay gap?

The latest empirical research has revealed that the differentials in the median (and mean) gross hourly earnings between the genders cannot be attributed alone, or in aggregate, to market forces, differences in human capital, occupation/job characteristics, or workplace segregation. This has led some scholars to conclude that these variations in pay between men and women can be imputed to unconscious gender discrimination, which is known in economic terms as the 'discrimination coefficient'. Consider the following extracts:

While the pay gap can be partially explained by wider social structures, including occupational segregation, the undervaluation of women’s work and the unequal division of family responsibilities, it is generally accepted in policy circles that discriminatory practices by employers also contribute to the ongoing inequality in pay. The assumption is that while some pay discrimination may be deliberate, it is more likely in practice to be systemic, and as such only identifiable through systematic evaluation of payment systems by employers.

In the case of women doing the same jobs and/or working in the same workplaces as men, women’s wages are held down by their lower levels of seniority, their exclusion from bonus payment schemes and, in cases where such schemes do apply to their jobs, by discriminatory methods of appraisal. Women are less able to work overtime in respect of which, at least in the manual sector, significant premia apply. This

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1 The following text is reproduced from D. Cabrelli, Employment Law in Context, 2nd edition (Oxford, Oxford University Press, 2016) © Oxford University Press.

2 The expression ‘human capital’ is a shorthand reference to the prediction that earnings will rise commensurately with the accumulation of skills such as education and training. According to the human capital literature, a gender skills gap exists.


inability is not simply the result of child-care commitments—employers are also less likely to organise female jobs around the expectation of full-time work but are, instead, likely to introduce part-time shift work. And, whereas male shift working is generally paid a premium, female ‘twilight shifts’ are frequently not so rewarded because they are seen as convenient to working mothers. Finally, part-time workers are generally not entitled to overtime pay until they have exceeded normal full-time hours. To these factors may be added those of occupational and workplace segregation, women frequently working in smaller, less profitable organisations and in occupations in which the availability of cheap, (particularly part-time) female labour keeps wages down... these factors ought to be regarded as tainted by discrimination. In brief, traditional economists tend to take the view that discrimination does not persist within the market and that, therefore, women’s lower wages must be explicable by their lower levels of human capital and/or their preference for non-monetary compensation. These ‘human capital’ and ‘compensating differentials’ approaches do not withstand scrutiny. The factual assumptions upon which they rely (i.e., that women are less educated and less productive, that their jobs are less skilled, that the gender-pay gap can be attributed in large part to differential levels of experience by sex, that ‘female’ jobs have better terms and conditions than those generally done by men), are incorrect. Further, they are suffused with stereotypical assumptions about women and the nature and value of typically female jobs. . .

In stark contrast to the sentiments articulated in these passages, other commentators are less convinced that the stubbornness of the gender pay gap can be ascribed to managerial practices which are inherently discriminatory on the grounds of gender. Instead, it is contended that disparities in pay can be attributed to non-discriminatory factors such as the differing roles assumed by men and women in society, with the latter more likely to perform a dual role: i.e. as an economic actor labouring for wages in the workplace whilst also bearing a disproportionate share of family caring responsibilities in their social and private lives. The argument runs that the time spent on these caring duties which are non-remunerated depresses the female worker’s earning potential and productivity in the labour market and that this is one of the consequences of the transition from the traditional ‘male breadwinner’/‘female carer’ model to the ‘dual breadwinner’/‘dual carer’ model:

... it is inevitable that women will be paid, on the whole, less than men. This is because there are several reasons why men and women are paid differently that, although related to the sex differences between employees, cannot be attributed to sex discrimination. What are these non-sex reasons? First, it is still the case that women take career breaks far more frequently than men, and it is inevitable that employees who take career breaks are likely to be paid less than those who do not, for several reasons. They may not return to the same job, for example, and therefore start a new career. They may not think any longer in terms of a career but more in terms of financial provision for the family and family-friendly aspects of work available to them, such as more flexible hours. Or they look more for a job that allows shorter hours, of itself resulting in a lower income. And these types of jobs are more likely to be of a lower status than those which are more career-orientated and therefore are lower paid. The counter-argument to this, however, is that it is true that, at least to a degree, the reasons why women take more career breaks than men can be attributed to societal pressure on women to be the primary partner in a mixed-sex couple to look after children, at least in their early years. It may not be something that women desire more than men but they would feel more obligated than men to fulfil. In other words, this is a form of sex discrimination in that women take career breaks for child-rearing because of a stereotypical assumption that society makes about them that is not inevitable. Of course, in the early stages, when there may be breastfeeding, physical recovery and other issues to consider, certain sex-related factors have an inevitable role, but after that time, there is no reason why men should not play an equal part in the child-rearing responsibilities which could involve them in taking career breaks at least as much as their partners. They do not do so, the argument runs, because of societal assumptions and traditions which themselves display a form of sex discrimination in that the result is that women are adversely treated. The difficulty with this argument, for the purposes of legal protection of women against sex discrimination, is that it does not amount to discrimination by an employer but by society at large. It is hardly feasible to construct legislation that gives a claim to women which they can exercise against society at large. It also needs to be remembered that women who take career breaks for the purposes of child-rearing may not only lose the time that they have taken off work and the lack of progression in seniority that this entails compared with their previous male counterparts who have continued to climb the tree, but that frequently women will return to a different occupation, or if they remain in the same field of work possibly to a different employer. It is inevitable that such a move will entail lower pay on average. The second reason why women may be paid less on the whole than men that cannot be put down to discrimination, at least by their employer, is that the work that men and women do are quite different when considered generally. Twice as many men as women are self-employed. Of these, a greater proportion of men work full-time and women part-time... It does not necessarily follow that the self-employed are paid more than those who are employed, but it might
follow that there is a greater incentive to work longer hours more profitably if workers do so for themselves rather than for another. It is also true that women traditionally have worked in those sectors of the economy that are more fragmented, with a few employees scattered here and there. These types of workers are less likely to belong to a trade union than those who work in labour-intensive situations such as a factory or national firms. Hairdressing, hotels, catering and so on, with a dispersed workforce, have lower density union membership. Trade unions find these types of workers particularly difficult to recruit, if only for simple practical reasons. Such are the arguments in favour of the idea that, perhaps, the figures on the relative pay of men and women reflect a non-discriminatory profile of differences between male and female working. There are certainly differences between the sexes in pay, but these are to be expected given the differences in working patterns between them which are not caused by discrimination (at least by employers) but by individual and couple choices, and by societal attitudes towards the differing roles that men and women play in child-rearing. . .

Whatever one’s perspective on these competing positions, to the extent that the gender pay gap persists, this does appear to be symptomatic of the ineffectiveness of 40 years of equal pay legislation in the UK. A number of structural features inherent within the equal pay model in the Equality Act 2010 have been identified as barriers to the eradication of the existing pay disparity:

1. The simplistic notion of formal equality—that females doing the same, broadly similar, or equivalent jobs as males should be paid at the same rate as the latter—underpinning the current incarnation of the equal pay regime, is insufficiently radical to uproot ingrained gender pay inequalities. Commentators have advocated responses to the phenomenon of pay inequality which are much more innovative than the existing individual litigation-driven model based on symmetrical treatment.

This is compounded by the rigidity of the equal pay regime and its relative inability to (a) address occupational segregation\textsuperscript{11} where jobs are structured along gender lines, e.g. the ‘3Cs’ of catering, caring and cleaning and (b) confront the adverse effects on labour market participants of flexibilization in the relations of production in the productive economy, which have been charted by scholars such as Fredman and Collins.\textsuperscript{12}

a. With regard to the phenomenon of job segregation, this is an expression descriptive of the situation where certain occupations or jobs are performed exclusively by women. Where a woman is situated in such an environment and no man is to be found working for her employer in the same trade, job, or profession, the rules in Chapter 3 of Part 5 of the Equality Act 2010 are not sufficiently flexible to assist the female claimant in her quest for equal pay. In such circumstances, the rules are restrictive, since the female claimant is disentitled from invoking a hypothetical male comparator in her equal pay claim.\textsuperscript{13} Instead, she must identify an actual comparator working for the same employer (or an associated employer) in the same establishment or an alternative establishment operating on the basis of common terms and conditions.\textsuperscript{14} Given the absence of an actual male comparator in segregated workplaces, this will stop the female claimant’s equal pay claim in its tracks from the very beginning. This ‘common terms and conditions' defence is often cited in mass equal pay litigation. In Scotland, it served the purpose of prolonging first wave litigation against local authorities for several years whereby it was argued by the employer that predominantly female APT&C workers could not compare themselves with predominantly male manual

\textsuperscript{11} For a discussion of occupational segregation, see B. R. Bergmann, \textit{The Economic Emergence of Women} (New York, Basic Books, 1986), chapters 5 and 6; J. Browne, \textit{Sex Segregation and Inequality in the Modern Labour Market} (Bristol, Polity Press, 2006); and A. McColgan, \textit{Just Wages for Women} (Oxford, Clarendon Press, 1997) 22–7, 35–40, 45–52, and 57–60. This segregation may be the product of historical practices, e.g. where certain jobs, trades, or professions were treated as ‘out of bounds’ for female workers, with a clear demarcation between ‘men’s work’ and ‘women’s work’, on which, see S. Fredman, \textit{Women and the Law} (Oxford, Clarendon Press, 1997) 111.


\textsuperscript{13} However, this is subject to (a) section 71 of the Equality Act 2010 which would enable the female claimant to invoke a hypothetical comparator pursuant to any direct discrimination claim (rather than an equal pay claim under Chapter 3 of Part 5 of the Equality Act 2010) she might raise under section 13 of the Equality Act 2010 in relation to her payment terms, on which, see section 14.2.1.2 and (b) the female claimant’s entitlement to invoke a male worker as a hypothetical comparator where he was a predecessor in her role: see section 64(2) of the Equality Act 2010 and \textit{Macarhyths Ltd. v Smith} [1980] IRLR 210.

\textsuperscript{14} See section 79 of the Equality Act 2010.
workers on separate terms and conditions.\textsuperscript{15} It has been used again more recently by ASDA in the cases brought by predominantly female shop workers seeking to compare themselves with predominantly male warehouse workers on separate ts and cs.\textsuperscript{16}

b. The flexibilization of the relations of production associated with the modern service-based economy (e.g. franchising, outsourcing, joint venture networking, public/private partnering, etc.) have resulted in the fragmentation and rapid adaptation of working patterns away from the traditional bilateral relationship forged between an employer and an employee or worker. As such, there is greater scope for female workers to find that their employment relationship has been reconfigured entailing a change of employer and the emergence of a tripartite or multilateral relationship, e.g. owing to the employee’s former employer having engaged in a process of contracting-out, contracting-in, service provision change, or where an employment agency is inter-positioned between the employee and the former employer. In such circumstances, the potential for current equal pay legislation to apply is minimal to non-existent inasmuch as it insists that a female claimant must select a male comparator working for the same (or an associated) employer at the same establishment or an alternative establishment with common terms and conditions.\textsuperscript{17} In short, the claimant may well find that she is ‘unable to bring [an] equal pay claim... on the basis of a comparison with colleagues with whom [she] work[s] at the same establishment, because [her] employer has been changed [and differs from the employer of those colleagues].’\textsuperscript{18} Again this defence was used in Scotland by Glasgow City Council in the context of the local authority litigation to argue that their predominantly female care workers employed in an arms’ length company could not compare themselves with directly employed male workers. This defence was unsuccessful but was only dropped by the Council after several years of litigation and an unsuccessful appeal to the Court of Session.\textsuperscript{19} Of course, at a more technical level, other defects exist in the equal pay regime.\textsuperscript{20} For example, it is a real challenge for a potential female claimant to

\textsuperscript{15} (North & Ors v Dumfries & Galloway Council [2013] UKSC)
\textsuperscript{16} Brierley and ors v Asda Stores Ltd, ET 2016
\textsuperscript{17} See section 79 of the Equality Act 2010.
\textsuperscript{19} (Glasgow City Council v Unison and Fox Cross Claimants [2014] CSIH 27).
procure information about earnings levels in order to establish a pay disparity.\(^{21}\) As part of the solution to this problem, the UK Government introduced section 139A of the EA and the Equality Act (Equal Pay Audits) Regulations 2014\(^{22}\) in 2014, which empower a tribunal to order an employer who has been found to have breached equal pay law, to conduct an equal pay audit. In addition, the UK Government has recently activated the provisions of section 78 of the Equality Act 2010\(^{23}\) which impose mandatory gender pay gap reporting on private and voluntary sector employers. At the time of writing, the reporting obligation is restricted to employers with 250 employees or more, with a phased implementation dependent on the size of the employer and the number of employees it employs. As such, its effectiveness is likely to be limited in the short to medium term. More significantly, the UK Government also impeded a claimant’s access to information about earnings when it repealed the statutory ‘obtaining information’ process set out in section 138 of the Equality Act 2010 and regulation 3 of, and Schedule 2 to, the Equality Act 2010 (Obtaining Information) Order 2010\(^{24}\) in April 2014. Seen from the perspective of enabling claimants to gain access to the relevant information they need to evaluate the existence of firm-specific gender pay gaps, the UK Government’s approach has been somewhat disjointed.

There is an additional glaring deficiency in the legislation insofar as a female claimant’s successful equal pay claim may result in the ‘levelling down’ of the male comparator’s pay, rather than the ‘levelling up’ of the claimant’s pay to that of the male comparator:\(^{25}\)

The primary shortcoming of any legislation directed specifically at the gender-pay gap is that it fails to address substantive, as opposed to relative, justice. Even if legislation were to be drawn so as to require the adjustment of wages on a proportional basis... equal pay legislation will not, as a rule, prevent an employer from paying male and female employees equally badly.\(^{26}\)

The courts and tribunals have stated numerous times that it is not a function of the equal pay legislation to secure ‘fair’ pay. Furthermore, if the employer

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\(^{21}\) See South Lanarkshire Council v Scottish Information Commissioner [2013] 1 WLR 2421, where a local authority unsuccessfully attempted to block a freelance journalist’s access to information about the particular points on the pay scales assigned to posts.

\(^{22}\) SI 2014/2559.


\(^{26}\) A. McColgan, Just Wages for Women (Oxford, Clarendon Press, 1997) 394
does raise the pay of the successful female claimant to that of the comparator, this does no more than modify the claimant’s contract and there is nothing in the legislation compelling the employer to alter the overall pay structure for the benefit of the claimant’s female colleagues. This underscores the absence of a collective dimension to the equal pay regime and lays bare the shortcomings of the emphasis on the individual litigation-driven model in the legislation. Accordingly, for a more equitable distribution of pay, claimants are left to have recourse to collective bargaining, which in the past, has failed female employees to some extent.

An additional defect in the equal pay regime is that it is not designed to pay workers what they are actually worth. As such, the problem of ‘justified proportionate inequality’ is not addressed in the legislation. Consider Hypothetical A:

Charles Le Roux (‘CLR’) is employed by Danny’s Demolishers Ltd. (‘DD’) as a labourer at its Canterbury depot. He is paid £2,300 gross per month. Anita Falcon (‘AF’) is the deputy head of the Canterbury depot, which is two pay grades higher than CLR. AF is paid £2,500 gross per month. She complains to DD that she ought to be paid considerably more than her current salary on the basis that a pay differential of £200 gross per month between her pay and that of CLR is marginal taking into account the fact that CLR is two pay grades below her on the pay scale. AF presents a claim to an employment tribunal claiming that her pay would have been much higher than her current rate if she had been male and invokes CLR as a comparator. Unfortunately, the EA does not proscribe disproportionate pay differentials. Therefore, the employment tribunal has no option but to strike out AF’s claim.

Furthermore, an employer is not liable if it can convince a tribunal or court that the pay disparity is attributable to a material factor which is not tainted by direct sex discrimination or, if indirectly discriminatory, can be objectively justified as a proportionate means of achieving a legitimate aim. As such, there is an explicit defence at the heart of the equal pay model which enables an employer to be excused from equalizing the pay of its male and female employees.

28 See Evesham v North Hertfordshire Health Authority [2000] ICR 612, 628F per Roch LJ; Redcar & Cleveland Borough Council v Bainbridge [2008] ICR 238; and I. Steele, ‘Beyond Equal Pay’ (2008) 37 Industrial Law Journal 119. For mechanisms that could be deployed in order to tackle disproportionate pay, see S. Fredman, ‘Reforming Equal Pay Laws’ (2008) 37 Industrial Law Journal 193, 199–200. However, there is an argument that the decision of the European Court of Justice (‘ECJ’ or ‘CJEU’) in Murphy v An Bord Telecomm Eireann [1998] ECR 673 is authority for the proposition that EU law would allow a female claimant a ‘justified proportionate inequality’ claim in the circumstances adumbrated in hypothetical A.
staff. Moreover, other defences available involve the employer establishing that the claimant and her comparator are not doing equal work and/or that the comparator selected by the claimant is disallowed.\textsuperscript{29} Allied to the fact that the equal pay regime is notorious for being bedeviled by complexity and inordinate delays in its enforcement, there is something to be said for the contention that these factors combine to give rise to a ‘denial of justice.’\textsuperscript{30} It is worthwhile noting that, in Scotland, the majority of equal pay litigation in recent years has been brought against local authorities in relation to the implementation of Single Status and, as we refer to in our response below, has taken between 8-10 years to resolve and, in some cases, is still ongoing.

**Are there specific issues with gender pay within the Scottish public sector?**  
**What are local authorities doing to support gender pay equality and can more be done?**

Here, we only comment on the approach of local authorities to the equal pay regime in Chapter 3 of Part 5 of the Equality Act 2010 and the experience of local authorities in connection with the implementation of the Single Status Agreement (SSA). The SSA was a national collective agreement negotiated between local authorities and trade unions in Scotland in 1999. It was designed to harmonise the terms and conditions of council employees and remove historical pay differentials between men and women working in the same or similar jobs in local government. However, although the SSA aimed to reduce the gender pay gap and remove discriminatory pay structures, in reality, its introduction opened up a Pandora’s Box of problems for local authorities.

It had been anticipated that SSA would serve to eradicate the gender pay gap in the local authority sector. The thinking was that (1) the introduction of a transparent, single pay spine structure applicable to all staff working for a local authority would be more likely to remove ingrained discriminatory differentials in gender pay,\textsuperscript{31} and (2) the framework established by the SSA would be more effective at ensuring the progression of women up the pay hierarchy. Somewhat naively, it was believed that implementation of SSA would be cost neutral. However, the reality has been rather different. Many councils reacted poorly to the requirement to implement SSA, by delaying implementation, settling back pay claims at a fraction of the monetary value to

\textsuperscript{29} See the Statutory Code of Practice on Equal Pay at para 74 available at [http://www.equalityhumanrights.com/sites/default/files/documents/EqualityAct/equalpaycode. pdf](http://www.equalityhumanrights.com/sites/default/files/documents/EqualityAct/equalpaycode.pdf) (last visited 10 February 2016). The Code of Practice is admissible in evidence in criminal, or civil, proceedings and if an employer fails to adhere to this Code of Practice, this must be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant: section 15(4) of the Equality Act 2006.


which female employees were legally entitled, or by simply ignoring SSA and engaging in collective bargaining at a local level.\textsuperscript{32} These claims arose in the ‘first wave’ of litigation which was primarily related to historic bonuses, premiums, allowances and supplements paid to males in occupations rated as equivalent to the female claimants, whilst the ‘second wave’ litigation involved claims against councils who had allegedly implemented SSA improperly. The explanations for the failure of equal pay litigation against Scottish councils to dry up is rather complex. The litigation can be attributed to a combination of contributory factors, some of which are the following:

a. The longevity of the historic bonuses, allowances, supplements and other wage premiums negotiated and secured by trade unions for their male members in the 1960s, 1970s and 1980s;

b. The effect of trade union involvement in the local implementation of SSA, e.g. the unrealistic back pay settlements and the inclusion of pay protection and job enrichment schemes. The conflicting loyalties experienced by trade unions led them towards taking these measures;

c. The alleged perpetuation of pay discrimination through the denial of pay protection and job enrichment schemes to the predominantly female workers who suffered pay discrimination prior to the implementation of single status;

d. The failure of SSA to address head-on the dominant contributory factor for pay inequality, namely the endemic occupational segregation in staff/job types in local authority employment;

e. The alleged discriminatory approach to job evaluation under Single Status when evaluating traditionally female roles like home carers, classroom assistants, clerical workers and catering assistants;

f. The alleged perpetuation of pay discrimination through service redesign and outsourcing in order to preserve pay rates in predominantly male roles and to prevent cross-service comparisons;

g. The misguided (with the benefit of hindsight) reliance on decentralised and local implementation of the new pay structures and compilation of job evaluation studies pursuant to the roll-out of the SSA;

\textsuperscript{32} For example, South Lanarkshire Council, on which, see the decision of the Employment Appeal Tribunal in \textit{Russell and others v South Lanarkshire Council} (Appeal No. UKEATS/0067/09/BI).
h. The delays in implementing the SSA by local authorities: evidence suggests that the local authorities in England who implemented SSA early avoided backdated pay claims and equal pay litigation generally;\(^{33}\)

i. The impact of legal decisions on the calculation of compensation pay-outs and the procedural rights of claimants;\(^{34}\)

j. The decisions of certain local authorities to opt out of the nationally prescribed job evaluation scheme developed by the Scottish Joint Council for Local Government Employees pursuant to the roll-out of the SSA;

k. The failure of local authorities to outsource to genuine third parties pursuant to standard procurement processes, rather than to external arm’s length organisations (“ALEOs”) where the council retained an ownership or controlling stake or share.

l. The failure to treat equal pay settlements as pensionable and thereby perpetuate the effects of pay discrimination into retirement.

**The gender pay gap in the legal profession**

For over a decade the Society has undertaken a “census” of the profession (’Profile of the Profession’) which gives us both a robust basis of what the profession looks like at a given time but also allows us to see emerging trends. This is invaluable for informing our policy work. It allows us to see where the profession is making progress, where more work may be needed, and how we should target support and encouragement.

The last survey (2013) saw 3,449 members respond. This was circa 25% of the practising profession at the time.

Amongst many other things, respondents were asked to indicate their salary or earnings p/a against a range of options. The distinction between salary and earnings is important as equity partners are not employees and will not receive a salary.

When the earnings figures were analysed it became clear that male solicitors on average earned more than female solicitors. Women featured more prevalently in the £15k to £45k brackets whilst men were more prevalent in


the £65k to £150k brackets. There are numerous reasons for this. The most obvious being the demographic change in the profession over time. The Society focuses on post-qualification experience (PQE) rather than age as we think this gives us the best evidence (i.e. it is perfectly possible for a 55 year old to be a newly qualified solicitor whilst a 37 year old could have fifteen years’ PQE).

Until the early 1990s the majority of those admitted to the solicitor profession were male. Since that point, more women have been admitted each year (and in recent years that trend has intensified). Whilst the profession as a whole is narrowly majority female (51% female to 49% male) the distribution is not equal. Solicitors over the age of 45 are disproportionately likely to be male. Solicitors under the age of 45 are disproportionately likely to be female (circa 60% of solicitors under 40 are female). The increased feminisation of the profession shows no signs of abating. Intake into the LLB each year is roughly 2/3rds female to 1/3rd male. Traineeship numbers are similar.

As solicitors with more post-qualification experience PQE are more likely to earn more and the average male solicitor is disproportionately likely to have more PQE and – conversely – as solicitors with less PQE are likely to earn less and the average female solicitor is disproportionately likely to have less PQE it is understandable why there is a pay gap between the average male and the average female solicitor.

In the 2013 report, women were more likely to be trainees, assistants and associates compared to their male counterparts while men were more likely to be equity partners or consultants.

Whilst the changing gender dynamic may explain some level of pay gap it clearly does not explain the current pay gap.

When gender is taken into account there is no real difference in salary between men and women who are trainees or those who have up to five years’ PQE. However, for those with over five years’ PQE, a disparity started to show:

- For those with 6 to 10 years’ PQE, although they were in a minority, a greater proportion of men (16% of men) than women (6%) had moved out of the lower salary bands to be earning over £80k p/a.
- For those with 11-20 years PQE, women (70%) were more prevalent in the salary brackets from £15k to £65k than men (46%).
- For those with 11-20 years PQE, men (39%) were more prevalent in the salary brackets to earn more than £80k women (15%).
- For those with 21-30 years’ experience, women (64%) were more prevalent in the salary brackets between £25k to £65k than men (37%).
- For those with 21-30 years’ experience, men (58%) were more prevalent in the salary brackets over £65k than women (31%)
The report collected information on full-time equivalent basis recorded in 18 bands which we recoded into 18 corresponding mid-band values which are used to calculate average salaries. For instance, respondents indicating they earned £25,001 to £30,000 were coded as £27.5k.

The figure below shows the gap between male and female salaries is all but non-existent at the outset of their careers but steadily widens as careers progress. For females, salaries remain relatively flat from 6-10 years onwards whereas for males it continues to grow to 16-20 years and then drops back down close to the 6-10 years level.

![Average annual salary](image)

The table below provides full details of average (FTE) salaries by gender and number of years since completing their traineeship. This shows that, across all categories, females receive on average, lower salaries than males with the same number of years of experience, with the gap widening significantly upon reaching 6-10 years’ experience.

<table>
<thead>
<tr>
<th>Duration since completing training</th>
<th>Male</th>
<th>Female</th>
<th>Male-Female Difference £</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trainee</td>
<td>18,228</td>
<td>17,896</td>
<td>-332</td>
<td>-2%</td>
</tr>
<tr>
<td>&lt;1</td>
<td>30,099</td>
<td>28,353</td>
<td>-1,745</td>
<td>-6%</td>
</tr>
<tr>
<td>1-5</td>
<td>37,919</td>
<td>34,599</td>
<td>-3,320</td>
<td>-9%</td>
</tr>
<tr>
<td>6-10</td>
<td>54,982</td>
<td>45,631</td>
<td>-9,351</td>
<td>-17%</td>
</tr>
<tr>
<td>11-15</td>
<td>70,448</td>
<td>51,960</td>
<td>-18,488</td>
<td>-26%</td>
</tr>
<tr>
<td>16-20</td>
<td>83,075</td>
<td>51,251</td>
<td>-31,825</td>
<td>-38%</td>
</tr>
<tr>
<td>21-30</td>
<td>76,769</td>
<td>52,042</td>
<td>-24,727</td>
<td>-32%</td>
</tr>
</tbody>
</table>
Overall, the female full-time equivalent average salaries of £44,500 is 42% less than the average salary for males £77,095.

This is complex. When considering inequality of those who are 16-20 years qualified of 21-30 years qualified we are to a large extent analysing inequality that occurred some time ago.

We have placed considerable emphasis on the gender pay gap in the profession. We chose to publish the gender pay gap very visibly in July 2015 to promote debate and discussion on this topic. We have subsequently undertaken a number of policy actions which we believe are “best practice”:

- The publication of the *Parents in the Profession* guides. These were written for solicitors, by solicitors and were supplemented by an event for returning parents.

- In late 2015, we published a series of recommendations for the Scottish Government, Scottish Courts & Tribunals Service and Judicial Appointments Board for Scotland.

- In the summer of 2016, we ran a campaign titled “#letstalkprogression”. A two-sided leaflet (one side covered facts and figures and the other a series of questions to prompt discussions) was disseminated with our members’ Journal. This was accompanied by a major digital campaign. We also undertook a number of round-table discussions on how the profession can ensure fair progression.

- We have consistently published articles on this area: *Bridging the gender pay gap; what about the men, why gender equality is not just an issue for women, equality means business, and why do young women leave their jobs?* We have also had articles published on Engender’s website, in *The Scotsman* and *The Herald*. Our members’ *Journal* has published responses and some of these articles gained considerable social media attention.

- We have published a series of interviews with senior women in the profession as role models and this will continue.

- We continue to promote our equality & diversity standards to the profession. We have held numerous one to one discussions with medium to large size law firms regarding their own pay gaps and progression rates.

**The Law Society of Scotland**