

Review of published evidence on the equality of pay in legal services

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Executive Summary

1. Information on the equality of pay in legal services suggests that as with the wider labour market, equal pay gaps do exist and that they are potentially more substantial in the legal services sector. The Office for National Statistics (ONS) reported that the gender pay gap was 9.6% for all jobs and 21.7% for legal professionals in 2012¹ and The Law Society (TLS) found in their 2009 report on gender and earnings in private practice² that the gender pay gap for solicitors was 28.9% in 2008. A similar pay gap has been suggested in relation to race by TLS's research in this area but less is known on this than on gender.
2. While this research does suggest that pay gaps do exist, there is a shortage of credible sources of information on the equality of pay in legal services in England and Wales. The evidence from TLS concerns data which is now over four years old and the substantive research needed on pay across all branches of the profession, how it is changing and the reasons behind that, is missing.

Introduction

3. The purpose of this paper is to identify from the published evidence, what can be understood about the equality of pay in the legal services sector in England and Wales and highlight what action is needed. We have looked at this issue in relation to the protected characteristics of gender and race.
4. Information on pay levels in legal services can be found in the ONS's Annual Survey of Hours and Earnings (ASHE) but there are a number of limitations with this information. The Law Society has produced a detailed analysis of the situation in relation to pay gaps for women and made steps to begin considering the issues in relation to Black and Minority Ethnic (BME) solicitors. This work has produced a number of interesting findings as well as identifying a range of challenges in this area that need to be addressed.
5. Overall, there is real shortage of information on the relationship between protected characteristics and earnings in the legal services sector in England and Wales. We have therefore looked to other qualitative studies to help us to understand these issues in more depth. For example, whether there are links between pay and the issues that exist in relation to retention and progression across the legal profession.
6. There are also specific technical challenges with the measurement and monitoring of pay gaps which are discussed in the Appendix.

¹ ONS 2012 Annual Survey of Hours and Earnings <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2012-provisional-results/stb-ashe-statistical-bulletin-2012.html>

² TLS - Gender and earnings in private practice: findings from TLS 2008 salary survey June 2009

Key empirical findings

Annual Survey of Hours and Earnings (ASHE)

7. The ONS produce the ASHE³ as their principle source for structural earnings statistics. This gathers information on earnings and paid hours worked from employers for a 1% sample of HM Revenue & Customs PAYE records, producing a sample size of approximately 280,000. This is used to calculate the gender pay gap based on median hourly earnings. In April 2012 the gender pay gap was 19.7% for all jobs. The survey also confirmed that the median salary in the legal profession for men is £53,651 and £42,019 for women, the gender pay gap in legal services therefore being 21.7%.
8. There are a number of limitations with the ASHE which impact on its usefulness in the legal sector. For example, the employee data on legal professionals in the survey is not split into the separate branches of the profession but grouped together into the following three categories: barristers and judges, solicitors, and legal professionals not elsewhere classified. It is therefore not possible to identify problems in the specific branches of the profession. Also, the ASHE does not include the self-employed or any employees not paid during the reference period. This means that a number of legal service professionals will not be included in the survey as a significant proportion of individuals (e.g. partners and the majority of barristers) would be classified as self-employed. In the 2012 ASHE, the number of jobs to the nearest thousand were reported as 11,000 barristers and judges, 83,000 solicitors and 34,000 legal professionals not elsewhere classified⁴. This contrasts with the number of legal professionals with practising certificates⁵, indicating that there are a significant number of individuals in the legal profession not included in the ASHE.
9. The ASHE therefore provides a picture of earnings across the UK but in order for it to prove useful in the legal services sector substantial adjustments would need to be made to the data collection and analysis.

The Law Society research

10. Research undertaken on the solicitor profession by TLS provides the most comprehensive analysis of salaries in legal services and is a useful benchmark for the rest of the legal services professions on the range of data that is needed. Analysis has

³ Office for National Statistics - 2012 Annual Survey of Hours and Earnings (SOC 2000) <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2012-provisional-results/stb-ashe-statistical-bulletin-2012.html>

⁴ Office for National Statistics - Annual Survey of Hours and Earnings, 2011 Provisional Results (SOC 2010) <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcM%3A77-256648>

⁵ LSB – Legal professionals with practising certificates in 2012: 120,202 solicitors, 15,204 barristers, 7,907 members of the Chartered Institute of Legal Executives, 1,071 licensed conveyancers, 639 trade mark attorneys, 1,687 patent attorneys and 858 notaries http://www.legalservicesboard.org.uk/can_we_help/faqs/index.htm

been undertaken on data from the 2008 salary survey, which was sent to 1,200 individuals and collected in October 2008 (covering the financial year, 6 April 2007 to 5 April 2008). One of the key differences with the ASHE being that self-employed solicitors are included in this research, this means for example that the earnings of individuals at the top of the profession such as partners, will be included in the findings.

Gender and earnings in private practice - findings from the 2008 salary survey: June 2009 report

11. In June 2009, TLS published a comprehensive report⁶ on gender and earnings in private practice. The report considered the effect of grade, firm size, Post Qualification Experience (PQE) and region on the gender pay gap between average earnings.
12. An over estimation of hours worked and billed was suggested by discrepancies between hours worked and/or billed. It was therefore suggested that using annual earnings provided the most reliable basis for estimating the salaries of solicitors in private practice. A combination of exact values and estimates based on the midpoints of salary ranges provided was used to counter a low response rate and the subsequent instability in the findings this produced.
13. The report found that on average women private practitioners earned 28.9% less than men in 2008. However, when TLS used a statistical model which controlled a range of factors including PQE, grade and location, they suggested that when considering gender alone the pay gap narrowed to 6%. Consideration should also be given however to the influence of gender on the factors controlled.
14. Average earnings⁷ for all solicitors in private practice and the gender pay gap were estimated as follows for the financial year 2007/2008:

	Median earnings	Mean earnings
Annual earnings	£55,000	£74,033
Gender pay gap	28.94%	37.17%
Hourly earnings	£23.08	£30.06
Gender pay gap	23.08%	29.41%

⁶ The Law Society - Gender and earnings in private practice: findings from the 2008 salary survey June 2009

⁷The median is the most commonly used indicator of pay gaps in the UK, providing a stable measure of the amount earned by the typical individual. The possibility of the measure being affected by extreme highs and lows is reduced which is seen to be an advantage when considering annual changes, trends over time and in particular when dealing with smaller domains, such as pay gaps in particular regions or within certain industries or sectors. The mean is generally used in international comparisons, it identifies the average amount earned in a sector and is a more manageable mathematical tool which can be more easily used in further sophisticated analysis involving advanced statistical techniques.

15. Evidence was established of multiple gender pay gaps throughout a range of different solicitor groups which are of varying size. An overall analysis of the data indicated that “the gender pay gap is wider, at present, for more experienced and more senior solicitors than it is for less experienced solicitors and associates”. It should be noted that the report pointed out that without specifically tracking the same or similar individuals over a period of time, it is not possible to say whether pay inequalities increase with age or over time.
16. The report also highlighted that although the largest firms did not appear to have the widest median gender pay gaps, their mean gender pay gap indicated a much wider variation. This indicated a wider distribution of extremes of earnings (in other words a larger gap between the highest and lowest incomes around the average) indicating that while the difference between the average employee’s earnings is not that great, at the top of the earnings scale there are more men earning the very highest salaries than women.
17. The following are some of the more statistically significant distinctions between female and male solicitors that the report highlighted.

Hours

18. The report found that there was little difference in the average number of hours billed by men and women but on average, women worked fewer hours than men, however men received a better rate of return for hours billed, all other things being equal⁸.

Grade

19. Female solicitors were shown to be much more likely to be assistants/associates than men, only 41% of male solicitors compared to 74% of female solicitors being associates (in 2011, 37% of male solicitors and 68% of female solicitors were associates⁹).
20. When considering partners or sole traders the proportions are reversed and 50% of male solicitors compared to 22% of female solicitors were equity partners or sole traders (in 2011, 52.9% of male solicitors and 23.8% of female solicitors are equity partners or sole traders¹⁰).
21. In 2008, the median gender pay gap was smallest at 10% for associates but highest for salaried partners where it was 24%. The mean pay gap was 34% indicating some wide differences in earnings in this group.

Area of work

22. The report indicated that men and women were fairly evenly distributed among firms, although male solicitors were over-represented in business and commercial areas

⁸ As has been explained above, there are some doubts about the validity of estimations of hours worked and billed.

⁹ TLS – Trends in the solicitors’ profession: annual statistical report 2011

¹⁰ TLS – Trends in the solicitors’ profession: annual statistical report 2011

(where female solicitors are seriously underrepresented), consumer problems, crime, landlord and tenancy, personal injury and residential conveyancing. Female solicitors were over-represented in employment, family and welfare benefits. The only area where representation was similar to proportions in the population as a whole was probate, wills and trusts. Overall, this indicated an overrepresentation of men in the best paid areas of law and an overrepresentation of women in the worst paying areas.

Age and PQE

23. The average age of female solicitors was 36 which was seven years younger than male solicitors. This mirrors the difference in average PQE which was nine years for women and sixteen for men indicating that as a whole, women in the workforce are less experienced (as measured by PQE) than men. Analysis of PQE also indicated that women and men received different rates of return for each year of PQE, with men earning 5.7% more for each year of PQE compared with 5.1% for women. The average seven years more PQE men had than women therefore having a substantial impact on a pay gap.

Ethnicity and earnings in private practice – findings from the 2008 salary survey: June 2009 report

24. In June 2009, TLS published a report¹¹ on ethnicity and earnings in private practice. The report provides evidence of a persistent differential in the average earnings of White and Black and Minority Ethnic (BME) private practitioners. It suggested that a pay gap of around 18% exists but also stated that on the basis of the 2008 salary data, it has no evidence that ethnicity on its own accounts for any variation in earning. The report found that the overall pay differential can be accounted for by differences between white and BME solicitors work situations and type of work undertaken which results in BME solicitors being paid less on average.
25. As with the report on gender, it was suggested that using annual earnings provided the most reliable basis for estimating the salaries of solicitors in private practice and the low response rate (particularly in providing exact salary values) meant a combination of exact values and estimates based on the midpoints of salary ranges provided was used to counter any instability in the findings. The BME sample size was also too small to support any reliable analysis of pay gaps between White and BME groups by firm size, PQE or Region.
26. Median annual earnings of private practitioners for BME solicitors were found to be £45,000 compared to £55,000 for White solicitors. The report found that based on annual earnings, at associate/assistant grade there was no evidence of a BME pay gap but for equity partners and sole practitioners the median BME pay gap was 39%; among women there was no evidence of a BME pay gap but among men the median BME pay gap was 33%.

¹¹ The Law Society - Ethnicity and earnings in private practice – findings from the 2008 salary survey: June 2009

27. Average earnings for all solicitors in private practice and the BME pay gap were estimated as follows for the financial year 2007/2008:

	Median earnings	Mean earnings
Annual earnings	£55,000	£74,033
BME pay gap	18.18%	23.78%
Hourly earnings	£23.08	£30.06
BME pay gap	20.83%	22.58%

28. The report suggests that while evidence of direct discrimination in pay has not been found, it supports findings from other sources that inequality for BME solicitors in employment may in fact be the bigger problem and lead to the resulting pay differences. The findings from some relevant studies on labour market discrimination are discussed in a section of the report dealing with insights from other sources. It is suggested that this wider evidence¹² points to problems for BME solicitors in labour market access and that inequality for BME private practitioners in obtaining employment, either at all or in different types or firm, or areas of law, being likely to be the root problem that has to be tackled first.
29. Some of the more statistically significant distinctions between White and BME solicitors in private practice identified were:

Area of work

30. BME solicitors were less likely to undertake work in business and commercial affairs cases and more likely to work in the areas of crime, family and personal and financial management. Over one quarter of BME solicitors worked with legally aided clients compared to 16% of White solicitors. BME solicitors were also more likely than White solicitors to work in smaller firms with 2 to 5 solicitors and less likely than White solicitors to work in larger firms with 41 to 170 solicitors. This is borne out in TLS annual statistical report for 2011; 50.5% of BME solicitors work in sole practices or firms with 2 to 4 partners compared to 28.7% of White European solicitors and 30% of BME solicitors work in firms with 26 or more partners compared with 42.6% of White European solicitors.

Age and PQE

31. The average age of BME solicitors was 37 which was 4 years younger than White solicitors. The mean PQE for White solicitors was 13.26 compared to 7.88 for BME solicitors and tenure in current job by years was equally lower for BME solicitors than

¹² Pudney, S and Theodoropoulos, N Firm Specific Gender and Ethnicity Pay Differentials in Britain Department of Economics University of Cyprus, Discussion Paper 2006-09
 Blackaby, D, Leslie, D, Murphy, P, O'Leary, N, White/Ethnic Minority Earnings and Employment Differentials in Britain: Evidence from the LFS 2000
 Shiner, M, Entry into the Legal Professions: The Law Student Cohort Study Year 5, The Law Society Research Study No.33 1999

White solicitors, at 4.51 and 7.28 respectively. The report stated that this corresponds with lower levels of BME employment in the legal sector historically.

Grade

32. No significant difference within grades was evident in the distribution of White and BME solicitors from the sample the report looked at but TLS 2011 annual statistical report indicates BME solicitors are more likely to be sole practitioners than White solicitors (8.7% compared to 4.6%) and less likely to be partners (23.7% compared to 35.6%).

Explanation of pay gaps

Gender

33. The Home Office has conducted a range of research into the causes of the gender pay gaps¹³. They have used the findings from this research to suggest the following key reasons for the gender pay gap across the economy:
 - 22% of the gap due to the different industries and occupations in which women work
 - 21% of the gap due to differences in years of full-time work
 - 16% of the gap due to the negative effect on wages of having worked part-time or of taking time out of the labour market to look after family
 - 5% of the gap due to formal education levels
34. It is suggested that a significant proportion (36%) of the pay gap could not be explained by any of the factors above and that this implied that discrimination could still be an important factor.
35. These findings are echoed in TLS's 2009 report on gender and earnings which found that the vast majority of the gender pay gap (92%) in private practice was attributable to the differences in the attributes of men and women (in experience, grade, the types of firms worked in and practice areas), leaving 8% of the pay gap or 2% of pay potentially attributable to discrimination. Suggesting that this could take the form of either male advantage or female disadvantage. In particular, differences in PQE and the proportions of women and men at equity level appearing to account for 82% of the earnings gap - the ASHE therefore missing a large part of the earnings gap by not including self-employed individuals.
36. Direct discrimination as well as different preferences or different motivations and attitudes to the labour market of female and male solicitors were suggested in TLS's 2009 report as having had an impact on pay differentials. However it was also

¹³ <http://www.homeoffice.gov.uk/equalities/women/women-work/>

suggested that consideration is needed of the possibility that indirect discrimination itself may have an impact on any of these other potential factors.

Race

37. The limitations of the BME sample in TLS's 2009 report on ethnicity and earnings meant that although appropriate analysis could be done to identify what the key determinants in variations of solicitors earnings were, the necessary further analysis of how much the pay gap could be attributed to possession of those determinants and how much to direct discrimination (an unexplained part) could not be and was therefore not reported. The report concluded that BME solicitors are more likely to work in smaller, lower-paying firms and to cluster in BME-owned firms (which also pay comparatively less), are more likely to undertake and spend more time on legal aid, and are less likely to practise in business and commercial affairs, but "there is no evidence that simply being a BME solicitor in private practice results in pay disadvantage". The report proposed that the question that needs answering is whether or not, and to what extent, direct and/or indirect discrimination plays a role in the patterns of work identified. This being a key question when considering all pay gaps, not just those concerning race.

Qualitative studies

38. Information available on the diversity of the legal profession has consistently shown that in recent years it has generally become increasingly diverse. In 2010-11, women accounted for 46.5% of solicitors with practising certificates, increasing by 79.7% since 2001¹⁴. It has been presumed that as diversification of the legal profession gains momentum, with representation from previously underrepresented groups reaching the levels that they now have, there would be a corresponding levelling out of inequalities. However, the data suggests that there at the more senior levels of the profession, diversity has not improved at the same rate. For example, , 20.2% of women with practising certificates working in private practice are partners in firms compared with 46.3% of men¹⁵; and of practising barristers 3.3% of women are QCs compared with 13.1% of men¹⁶. Using 1999 and 2001 data from TLS, McNabb and Wass (2005) found that a significant part of the pay gap was a result of women's limited access to partnership and lower earnings growth when promoted.
39. Research funded by the LSB¹⁷ has underlined that there is an extensive body of academic and policy based literature which indicates that while steps have been taken

¹⁴ Trends in the solicitors' profession: Annual Statistical Report 2011
Nina Fletcher, TLS

¹⁵ Trends in the solicitors' profession: Annual Statistical Report 2011
Nina Fletcher, TLS

¹⁶ Bar Barometer: Trends in the profile of the Bar
The Bar Council, November 2012

¹⁷ Diversity in the legal profession in England and Wales: A qualitative study of barriers and individual choices

to dismantle overtly discriminatory practices, a statistical picture of persistent structural inequalities within the profession across a range of indicators, including pay, career progression, status and retention remain¹⁸.

40. Further qualitative research¹⁹ has considered the impact that both direct and indirect discrimination is having on, and provides an explanation for, the employment choices lawyers are making. These factors often result in the issues that impact on the equality of pay which have been highlighted in the quantitative research (experience, grade, area of practice and type of firms worked in).
41. The view that gender inequality is reduced once the pay gap is adjusted for differences in individual characteristics (such as experience, education, career choices, etc., as reported in TLS research) is generally supported in the wider literature. It is suggested that in theory, the inclusion of measures of these factors could improve the pay gap model and potentially remove gender from the equation entirely. This view is criticised in an article by Rubery et al.²⁰, who propose that sustained progress in reducing the gender pay gap is unlikely to be achieved without a demand-side approach and without 'gender mainstreaming'²¹ of general pay policy. Addressing the indirect

H Sommerlad, L Webley, L Duff, D Muzio, J Tomlinson, LSB, 13 October 2010

¹⁸ 'Can't Live with 'Em; Can't Live Without 'Em: Gendered Segmentation in the Legal Profession' *Sociology* 41(1): 47-61.

S Bolton, and D Muzio, 2007

Male female earnings differentials among lawyers in Britain: a legacy of the law or a current practice? *Labour Economics*, 13(2): 219–235.

R McNabb and V Wass, 2006

'Hierarchical Rank and Women's Organizational Mobility: Glass Ceilings in Corporate Law Firms' *American Journal of Sociology*, 114(5): 1428–74.

E Gorman, and J Kmec, 2008

Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status. London: Ashgate

H Sommerlad and P Sanderson, 1998

'Work Identity' *Cornell Law Review*, 85: 1259-1308.

D Carbado and M Gulati, 2000

Experiencing discrimination: race and retention in America's largest law firms' *Law and Society Review*, 44(3): 553-583.

M Payne-Pikus, J Hagan and R Nelson, 2010

'Why are there so few black lawyers in Corporate Law Firms? An institutional Analysis. *California Law Review*, 84(3): 496-625.

D Wilkins and G Gulati, 1996

¹⁹ 'Men and Women of Elite Law Firms: Reevaluating Kanter's Legacy.' *Law and Social Inquiry* 25: 41-68.

E Chambliss and C Uggen, 2000

Experiencing discrimination: race and retention in America's largest law firms' *Law and Society Review*, 44(3): 553-583.

M Payne-Pikus, J Hagan and R Nelson, 2010

The Profile of Pupil Barristers at the Bar of England and Wales – 2004-2008. *International Journal of the Legal Profession*. 17 (2): 117-134.

A Zimdars, 2010

²⁰ How to close the gender pay gap in Europe: towards the gender mainstreaming of pay policy *Industrial Relations Journal* 36:3, 184-213

J Rubery D Grimshaw and H Figueiredo, May 2005

²¹ TLS - Gender and earnings in private practice: findings from TLS 2008 salary survey June 2009 - Gender mainstreaming shifts policy focus from deficits or deficiencies in female characteristics, behaviour and preferences to the investigation and elimination of gender pay discrimination rooted in institutional arrangements, market systems and pay policies. The objective of gender mainstreaming

discrimination highlighted in TLS research would therefore be essential when tackling gender inequality.

42. Although TLS research does not find that evidence of direct discrimination can be definitively stated. Elvira and Graham²² state that in pay systems which have a greater dependency on judgement and are less formal, the characteristics and composition of the workforce will have an increased impact on levels of compensation.
43. It is also suggested in the equal pay literature that the levers available to regulators to tackle gender pay gaps are limited when compared to those available to governments. Examples of the levers which are available and could possibly be adapted being: mandatory or voluntary pay audits; procurement policies; or gender quotas. Shackleton²³ describes some drawbacks with these options. Legislation requiring pay audits was introduced in Ontario and evidence suggests that such efforts did not succeed in reducing the gender pay gap. Complex procurement policies are seen to add considerably to the burdens on smaller start-up firms who have less experience of policies relating to the full range of social issues. Experience from Norway, where gender quotas for senior posts in the private sector were imposed, highlights a disproportionate recruitment of women from politics and the civil service into largely non-executive roles, with the best qualified women often holding multiple directorships.
44. There is clearly a need for both quantitative and qualitative research in this area. In order to not just identify the factors influencing inequality of pay but also the reasons behind it, the actions needed to address any problems found and the likely outcomes of those actions.

Conclusions

45. This report is focused on available quantitative evidence and analysis and highlights the importance of considering equality of pay alongside equality of representation at the different levels within the profession. The available evidence suggests that equal pay gaps exist in the legal services sector in relation to both gender and race. The pay gaps found are significant even when allowing for factors which themselves e.g. choice of type of work, may be an indirect result of discrimination and therefore suggest a topic worthy of further analysis by the regulators.
46. However the picture is far from complete. The majority of the evidence on discrimination in relation to earnings in the legal services market in England and Wales is largely qualitative, quite dated and largely restricted to the solicitors profession. This

is to examine apparently gender-neutral policies and practices with the aim of uncovering and, if possible, removing hidden gender discrimination effects. In the case of private practice this would require, for example, limits placed on the maximum number of hours worked by solicitors and review of the fees-to-salary target ratios placed on aspiring associates and other salaried staff.

²² Not Just a Formality: Pay System Formalization and Sex-Related Earnings Effects
M M Elvira and M E Graham, 2002

²³ Should we mind the gap? Gender pay differentials and public policy - Institute of Economic Affairs
J R Shackleton, 2008

means that a number of assumptions which are not supported by appropriate evidence are often made when explaining gender pay gaps, such as different attitudes to careers, motivation and preferences. These assumptions may therefore hide some of the underlying issues which are also connected to the pervasive problems with retention and progression of female and BME lawyers.

47. While not directly associated with pay, there have been attempts to uncover the reasons for the choices and attitudes that lie behind some of the issues concerning equality in legal services, for example the work undertaken in TLS Cohort studies, the LSB's research on diversity in the legal profession in England and Wales and the paper by Muzio et al. on women and BME individuals career strategies in the legal sector²⁴. It is the case however, that the existing evidence base makes it difficult to identify and understand precisely the impact of any potential unfairness and inequality that exists, let alone take action to address it. More evidence and information on earnings in areas where there is the potential for individuals to be discriminated against in relation to their gender, ethnicity or any protected characteristic, is clearly needed, as is more information on the underlying factors determining levels of pay.
48. It is therefore important that the challenges and issues raised in the research undertaken in the solicitors profession, as well as in the economy as a whole, are followed up. The 177 firms that are signatories to TLS's Diversity Charter²⁵ are leading the way in tackling diversity in the solicitors profession. However, only a sixth of the large firms that are signatories have undertaken an equal pay review and are now taking appropriate action following its completion. Delivering on equal pay has been identified as a priority area for the Charter firms and all legal service providers need to be challenged to undertake and publish equal pay audits. Voluntary action is preferred on this but only if it results in the changes needed.
49. We hope that the work undertaken by TLS in 2008 is repeated and expanded to ensure that where possible the impact of discrimination on earnings in relation to all protected characteristics can be properly considered and that this becomes part of a regular programme of research used to monitor developments and identify areas of concern. The annual practising certificate fee process for example, provides an ideal data collection opportunity, minimising the cost of additional research and also providing the potential to map variation of earnings by region, type of entity or practice area.
50. Other parts of the legal profession, such as the Bar, are encouraged to undertake similar work to that completed in the solicitors profession and we would also

²⁴ Entry into the Legal Professions: The Law Student Cohort Study Year 5, Research Study No.33
TLS, 1999

Diversity in the legal profession in England and Wales: A qualitative study of barriers and individual choices

H Sommerlad, L Webley, L Duff, D Muzio, J Tomlinson, LSB, 13 October 2010

Structure, agency and career strategies of white women and Black and Minority Ethnic individuals in the legal profession

J Tomlinson, D Muzio, H Sommerlad, L Webley, L Duff, 8 November 2012

²⁵ TLS Diversity and Inclusion Charter: Annual Review 2012, December 2012

<http://www.lawsociety.org.uk/advice/diversity-inclusion-charter/diversity-charter-annual-report/>

emphasise the importance of considering the underlying findings of any quantitative analysis.

51. A much better picture of the makeup of the legal services sector is expected following the completion of the regulators' work on diversity data collection and transparency. This will help regulators to identify trends and issues so that action can be targeted appropriately. Completion of the proposed work on the equality of pay will also help regulators to consider what steps it would be appropriate for them to take to ensure delivery of the regulatory objectives.

Appendix

Statistical comparisons

1. The literature on equal pay identifies a number of issues with equal pay gaps. A key concern expressed in an ONS position paper²⁶, is that the measures themselves provide an estimation at a whole population level and do not necessarily reveal the extent of the difference in pay for individuals undertaking comparable jobs or relating to identical employment. As TLS state in their 2009 report²⁷, pay gaps should not in isolation be relied upon to prove that discrimination exists nor the extent of any discrimination that there may be²⁸. However, they provide a valuable insight into areas of potential concern as well as highlighting where there are issues that may need to be tackled and should be seen as part of a pool of evidence to consider within a wider labour market, societal and policy context.
2. Several of the most common concerns with the reporting of gender pay gaps that are raised in the literature are set out in a discussion paper published by the Office of the First Minister and Deputy First Minister in Northern Ireland in 2009²⁹. The issues that are raised generally include the concerns expressed above along with the following:
 - the mean and the median are different measures and will produce different results
 - comparing female pay with male pay rather than all employees pay explicitly identifies male pay as the benchmark for female pay
 - using specific full-time or part-time measures inevitably reflects the employment characteristics associated with each
 - excluding elements of pay does not provide the full picture of earnings (overtime for instance, will potentially be at a higher rate than basic pay and applies to a higher proportion of men than women)

Mean or Median

3. Earnings data typically presents a wide distribution with the measurement of pay gaps involving the comparison of two skewed earnings distributions. The mean is a more manageable mathematical tool to measure average earnings with, however there is the potential for it to be skewed by extreme values at the higher or lower ends of a distribution. The median avoids this possibility by providing a measure of the amount earned by the typical individual. This can be seen to be an advantage when

²⁶ Presentation of the Gender Pay Gap: ONS Position Paper
4 November 2009

²⁷ Gender and earnings in private practice: findings from TLS 2008 salary survey
June 2009

²⁸ Trends in the solicitors' profession: Annual Statistical Report 2011
Nina Fletcher, TLS

²⁹ Gender Pay Gap Measurement in Northern Ireland: A Discussion Paper
Alan McClelland, Office of the First Minister and Deputy First Minister in Northern Ireland April 2009

considering annual changes, trends over time and in particular when dealing with smaller domains, such as pay gaps in particular regions or within certain industries or sectors.

Pay comparator

4. Hourly earnings are most commonly used when calculating pay gaps as this takes account of differences in working time and provides a better comparison of like for like than other measures. As women are likely to work fewer hours in a week or a year than men, estimates based on hourly earnings can produce the narrowest gaps, not necessarily presenting the full picture. It is also widely suggested that the differences in the hours that women and men work is one of the main reasons for the gender pay gap and it is argued that this is ignored by using hourly rates³⁰.
5. Earnings data can also be split between full and part time figures, as well as featuring overtime and bonuses. Again the decision as to the data that is compared will have an impact on the pay gap that is presented. For example, an all employee measure which includes full and part time earnings will be affected by part time employees on average earning less and there being an overrepresentation of women working part time.
6. The ONS have undertaken a review of the different measures used in their position paper on gender pay gaps³¹, describing the advantages and disadvantages of each.

³⁰ Cabinet Office - The Gender Pay Gap: Final Report to the Women and Equality Unit 2001-Anderson, Forth, Metcalf, and Kirby

³¹ Office for National Statistics - Presentation of the Gender Pay Gap - ONS Position Paper <http://www.ons.gov.uk/ons/guide-method/method-quality/specific/labour-market/annual-survey-of-hours-and-earnings/annual-survey-of-hours-and-earnings/presentation-of-the-gender-pay-gap---ons-position-paper.pdf>

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