



THE BAR
OF IRELAND

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Gender Pay Gap Consultation 2017
Gender Equality Division
Department of Justice and Equality
Bishops Square,
Redmond's Hill,
Dublin 2
D02TD99

26th October 2017

Re: Gender Pay Gap Consultation 2017

To whom it may concern,

Please find enclosed a submission by the Council of The Bar of Ireland in response to the public consultation on measures to tackle the gender pay gap.

Thank you for accepting our submission at this late stage.

Please contact me should you require any clarification or additional information in relation to the submission.

With best regards,

Yours sincerely,

Ciara Murphy
Ciara Murphy
DIRECTOR

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Submission by Council of The Bar of
Ireland to the Gender Equality
Division, Department of Justice and
Equality on measures to tackle the
gender pay gap

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INTRODUCTION

The Employment Equality Act 1998, as amended, extends to a person engaged under a contract whereby he or she agrees with another person personally to execute any work or service for that person: Employment Equality Act 1998, section 2, as amended by the Equality Act 2004, section 3.

This means that such persons are entitled to equal pay and equal treatment with regard to access to employment and conditions of employment. As such, the proposals outlined in this consultation document such as periodic wage surveys and gender pay gap reporting ought to be co-extensive with the legislation and extend beyond “employees” to any persons contracted personally to execute any work or service for the business or its clients. An interpretation of such persons would in The Bar of Ireland’s view extend to self-employed professionals, including barristers, medical general practitioners, dentists, accountants and others engaged personally to execute any work or service.

GENDER INEQUALITY AND THE BARRISTER PROFESSION

The Bar of Ireland is the representative body of approximately 2,200 barristers who are members of the Law Library and practicing as independent sole practitioners at the independent referral bar. The Bar of Ireland welcomes the opportunity to share and represent its members’ views on gender inequality and pay equity within the barrister profession.

Pay disparities at the Bar

There is no statistical basis for the measurement of barristers’ fees in the private sector. As independent sole practitioners, a barrister’s fee is negotiated and agreed between the barrister and the solicitor, on behalf of the client. In the interests of competition, there is no set scale of fees and The Bar of Ireland does not hold or have access to any information in relation to fees charged. Without such information, it is difficult to assess the difference in pay among male and female barristers in Ireland. However, reference to studies carried out in other jurisdictions can offer some insight into gender pay disparities. A survey carried out by the New South Wales Bar Association in 2014, for example, revealed a 38% pay disparity between male and female barristers. The average gross annual fees for men were \$437,450 while the average gross annual fees for women were \$269,958. On average, gross annual fees for men were \$226,213 higher than that of women across the whole of the New South Wales Bar. The data also revealed that 41% of women earned gross fees under \$200,000 compared to 24% of men. The National Attrition and Re-engagement Study (NARS) published by the Law Council of Australia in 2013 gives some insight into the reasons behind differences in pay. For example, it was reported that female counsel experience bias in briefing practices, based on both client and colleague perceptions, which in turn impacts on their income. Maternity leave, childcare responsibilities and part-time work arrangements are also major contributing factors to progression prospects for female practitioners. The pay gap is furthermore explained by the fact that there are fewer women represented at the most senior levels of the New South Wales Bar compared to men (10% of Senior Counsel are women).¹

¹ Equitable Briefing Working Group. (2015). *Review of the Application in New South Wales of The Equitable Briefing Policy of The Law Council of Australia - Report to the President of the New South Wales Bar Association*. Available at https://www.nswbar.asn.au/docs/webdocs/eb_report_01092015.pdf

Gender inequality at the Irish Bar

Despite the absence of statistical data in relation to barristers' fees in Ireland, a survey carried out by The Bar of Ireland in February 2016 pointed towards similar issues such as gender bias and a preference for male counsel which would infer that women are not receiving access to either the number or the kind of briefs that their male counterparts are receiving.

There has been a remarkable upsurge in the number of women pursuing a career at the Bar. Female counsel currently represent 38% of the total Law Library membership. While these figures are encouraging and ought to be celebrated, the rate of attrition for women remains slightly higher than that of their male counterparts, and the proportion of women being called to the Inner Bar remains significantly lower at 16%.

The Bar of Ireland survey results indicated that many female members have encountered obstacles in their efforts to access particular areas of work. Some respondents to the survey expressed a feeling of being pigeon-holed into particular areas of practice such as family law, and feel that some of the more lucrative areas of practice, such as commercial law, are less available to female practitioners.

The precarious nature of the barrister profession also makes it very difficult to sustain a consistent level of work and income; and balancing childcare and family responsibilities with the demands and unpredictability of practice is cited as one of the biggest challenges facing female barristers. The level of risk, uncertainty and inconsistency associated with self-employment pose challenges for male and female practitioners alike, however it appears to be the dominant cause for female attrition rates at the Bar.

In order to preserve and accentuate the positive aspects of being in practice in the independent referral Bar, The Bar of Ireland set upon addressing, insofar as is possible, the issues raised in the survey. A series of actions have been considered since the survey results were published in April 2016 and a variety of initiatives have been implemented to promote professional development and to provide greater supports for parents to facilitate career progression. Some of these initiatives are set out below and may be of interest to the Department in the context of its consultation on pay equity and the National Strategy for Women and Girls 2017-2020 as a whole.

OBSERVATIONS ON SOME OF THE MEASURES OUTLINED IN THE CONSULTATION DOCUMENT

The Bar of Ireland acknowledges the work that is already being undertaken to address pay inequity in Ireland and commends the measures and proposals outlined in each of the sections: (a) awareness and information; (b) human capital; (c) job-level and firm-level initiatives; and, (d) societal factors.

The Bar of Ireland will focus its submission on the following:

Gender stereotypes

Council of The Bar of Ireland are encouraged to see the Department's consultation document emphasise the importance of tackling gender stereotypes which can limit occupational opportunities for women. In tackling gender bias at the Bar, Council of The Bar of Ireland is currently looking

towards other jurisdictions such as Australia and New Zealand, both of which have introduced an equitable briefing policy in recent years. An equitable briefing policy seeks to encourage those who brief the Bar to make a conscious effort to look beyond their usual pool of barristers and to assist in the equitable distribution of briefing to both male and female counsel in all areas of practice. Briefing entities are therefore encouraged to give genuine consideration to the skills and competency of counsel, regardless of gender, and should avoid inappropriate assumptions about the capacities and aptitude of female and male counsel. Where there is equally capable male and female counsel available, arbitrary and prejudicial factors should not operate to exclude the engagement of female counsel.

In order to measure and evaluate the impact of the policy, briefing entities who have adopted the policy are required to submit to the relevant bar association, each year, a confidential report with an outline of their briefing practices and the measures they have taken to implement the policy. Briefing firms are therefore required to develop the capacity to collect data and to report upon that data so as to identify the nature of engagement with counsel. The confidential report is expected to address separately the figures for male and female barristers in respect of, *inter alia*, the monetary value of briefs and the pay rates. The obligation to submit an annual report will assist the briefing entity in assessing its success or otherwise in the implementation of the policy and to initiate steps, where necessary, to widen the pool of barristers it briefs to include barristers of all genders in line with the recommended targets of the policy. It will also work to expose any discrepancies in pay rates according to gender and enforce the principle of equal pay for like work.

The introduction of a similar equitable briefing policy in Ireland presents an opportunity for collaboration with the Department on the implementation of gender equality initiatives and to achieving pay equity within the legal profession, particularly where the engagement of barristers' services by the State is concerned. The adoption of equitable briefing practices can play a particularly important role in the progression of women in the law, and society too benefits from having both genders participating equally in the provision of legal services as it leads to a much more diverse pool of suitably qualified barristers on which to call, facilitating greater client choice and a profession which is much more representative of the composition of the community it serves.

Supports for working parents

The Council of The Bar of Ireland commends actions to improve supports for working parents through government investment in quality, affordable childcare and financial support towards the cost of childcare. Efforts to maximise the use of schools and community facilities and to formulate guidelines for schools to facilitate the use of school buildings for out-of-school-hours care is also commended and could be a huge boon for barristers and other self-employed professionals. The vagaries of self-employment can make it very difficult to plan childcare needs and there is an increasing demand among barristers for more flexible childcare solutions. Council of The Bar of Ireland would also urge the government to provide a more supportive tax regime to self-employed parents such as an entitlement to claim tax relief on the cost of childcare. Such measures would be of great assistance to self-employed individuals in terms of alleviating the problems associated with poor cash-flow.

Mentoring

The Council of The Bar of Ireland welcomes proposals to promote and increase the representation of women in senior positions through mentoring. The recently established Law and Women Mentoring Programme is a hugely successful and highly subscribed initiative at the Bar. A panel of trained mentors comprising judges, senior women in State departments and solicitors' firms, in-house lawyers and senior and junior counsel are assigned a mentee for one year, and undertake to support the mentee in developing her strengths and her potential; in finding solutions to professional problems and challenges; and in promoting professional development and career progression. Men too are invited to act as mentors in recognition of the importance of the role of men in acting as champions of gender equality. The support which mentees have garnered through the programme to date cannot be overstated.

CONTRIBUTION TO IMPLEMENTING ACTIONS

Legal Expertise

In terms of the contribution The Bar of Ireland can make to the implementation of the actions proposed in this consultation document, there is a wealth of legal expertise available at the Bar in areas such as equality and human rights, employment law, and constitutional law. The Women's Working Group, established by Council of The Bar of Ireland in December 2015 to support women at the Bar, and a number of Specialist Bar Associations who practise and advise on specialist areas of law, such as the Employment Bar Association, are available to consult with the Department and to advise on an in-depth and specialist basis on any legal aspects arising from the pursuit of gender equality in line with the National Strategy for Women and Girls 2017-2020



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