

Gender Pay Gap Reporting: setting the standard for the profession

6 November 2018

Since the introduction of new government reporting requirements on gender pay gap in 2017, members of the legal profession (and other professional services sectors) have been the subject of adverse comment for inconsistencies in reporting and a perceived lack of full transparency, especially in relation to the publication of partners' pay.

The regulations require all businesses with at least 250 employees in England, Wales and Scotland to publish yearly data comparing the basic pay and bonus payments for male and female employees.¹ Whilst there is no regulatory requirement for smaller firms to publish data the Law Society seeks to promote gender pay equality and in doing so encourages all firms to publish data on this issue.

The Business, Energy and Industrial Strategy (BEIS) Commons Select Committee has published a report titled "Closing the gender pay gap – businesses must drive change", in which a number of key recommendations to the government were made including:

- recommending that organisations should be required to provide some **narrative reporting** alongside their gender pay statistics and an **action plan** setting out how pay gaps are being and will be addressed;
- recommending the **inclusion of all partners' pay** in the reporting requirements and calling on the government to provide guidance to clarify how data on partner pay should be calculated;
- **reducing the threshold for reporting** to all those employers with 50 employees or more (from 2020);
- recommending a consultation on introducing requirements to collect and report pay gap data in respect of **disability and ethnicity** (from 2020).²

The Government has since responded to the Committee's report, indicating that it will not make any changes to the regulations until the regular review period which follows 5 years of the regulations being in force.

This is why, as your professional body, we have sought to capture in this document the best practice that we believe will help the profession to set the right standards for the legal sector, and to build a clearer picture and way forward.

This note is designed to provide recommendations to law firms on how to fulfil their gender pay gap reporting requirements; however it will be for individual firms to determine how to

¹ The full regulations can be found online here:

<https://www.legislation.gov.uk/ukxi/2017/172/contents/made>.

² <https://www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/>

implement these recommendations. Certain firms may decide that aspects of this guidance are not suitable to their own businesses; that will be a judgement they will have to make independently.

The Law Society supports the inclusion of partner pay alongside employee pay data in gender pay gap reporting to give our members and the wider public a useful benchmark and increased confidence in pay reporting and to enable an evidence-based action plan to tackle inequalities.

Based on consultations with many of our members that reported their gender pay gap (GPG) data this year, we have identified the following key principles to which, we hope, all our members will decide to adhere in publishing data:

1. When calculating “basic pay” as required by the legislation, **adopt for partners the same weekly working hours used for employees** (e.g. 35, 37.5, 40) based on your contractual terms. We recommend that in your report you include at least three separate figures: one for all the workforce (employees and partners together); one for employees only; and one for partners only.³ It is best practice to further break down each of these figures by job type (e.g. legal and non-legal/business support roles) and then by level to make them more transparent (e.g. for legal roles: trainee, associate, senior associate, junior partner, partner, senior partner, etc.)
2. When calculating “basic pay” be clear on whether you are **including elective benefits** (e.g. childcare vouchers) before or after calculation to ensure consistency.⁴ Bear in mind that current government guidelines require salary sacrifice benefits to be excluded prior to calculation.
3. When calculating “bonuses” consider whether your organisation has an equivalent **partner bonus scheme** that could be compared with the employee bonus. If not, include explanatory narrative on how the partner bonus has been calculated. Of course, if your firm operates a 'points' model and does not pay bonuses to partners, the only figure needed is the total compensation paid to partners in the financial year.
4. The regulations require firms to publish basic pay and bonus gaps; however, a **full time equivalent (FTE) total compensation gap** based on a full financial year (rather than a snapshot date) may provide a fuller picture and a better metric for comparison. You might want to calculate FTE total compensation for inclusion in your data as an additional metric, or alternatively you might choose FTE total compensation as the basis from which to

³ To these three figures organisations should consider adding ones relating to the ethnic gap and the disability gap and the sexuality gaps, as recommended at the end of this guidance.

⁴ During our consultation with member we learnt that this difference alone could account for around 5% of the gap for some organisations.

calculate basic hourly pay (this would be achieved by first calculating FTE total compensation for all employees and partners, based on their total compensation over a full financial year, and then dividing this figure by yearly working hours).

5. Any firm which is required to report should provide data on **all staff based in England, Scotland or Wales**.⁵ This should include staff working for subsidiary entities which, in and of themselves, fall below the threshold for reporting.
6. When reporting on partner data, you should consider making the distinction between **equity and non-equity partners**, where this is applicable, as this will increase transparency and provide a much more meaningful picture to help you identify specific actions to take to reduce your gender pay gap.⁶
7. It is best practice to include a **robust narrative report** to explain the data. This will give you a chance to provide a better picture of what is actually happening in your organisation. This report should not simply state, if applicable, the lack of women in senior positions, and should take a holistic view of your organisation's policies and practices including (but not limited to) recruitment, retention, staff development and progression, flexible working, working culture, leadership, workplace wellbeing etc. The narrative report will also give you an opportunity to clarify the rationale of your calculations and ensure transparency on how you have chosen to include elements like employee benefits (e.g. childcare vouchers and pension contributions).
8. It is best practice to include a **detailed action plan** explaining how you will address the pay gaps identified. The action plan should contain SMART objectives that clearly relate back to the improvement areas identified in the narrative report.⁷ Given the complexity of some of the challenges that will need to be tackled (e.g. flexible working, shared parental leave, recruitment and progression practices, unconscious bias, etc.) we recommend you develop a multi-year action plan with a combination of short, medium and long term actions, which you can monitor and review at each reporting deadline to highlight progress.

Building on recommendations from the BEIS report mentioned above, we would also encourage members to consider collecting additional information about their **disability**,

⁵ In Northern Ireland this matter is covered by Section 19 of the Employment Act 2016 (NI) but no reporting requirements have been introduced at the time of writing this guidance (October 2018).

⁶ Our consultation highlighted the issue of most female partners being actually "non-equity" partners rather than "equity" partners, which is in itself an issue.

⁷ Specific (what exactly will you achieve?); Measurable (how much/ how many? Clear targets); Achievable; Resourced (how will you achieve it? What resources are required?); and Time-bound (by when?).

ethnicity and sexuality pay gaps as this will offer you a more comprehensive picture of the overall state of equality and inclusion in the organisation and facilitate the consideration of inequalities that might be compounded by the intersection of diverse characteristics.⁸ This additional information may be useful in tackling gender pay gaps and other inequalities in the workplace, and could help to inform firms' equality action plans.

There may however be difficulties associated with low sample sizes and inconsistent data sets, and so it will be up to each firm to assess the feasibility of compiling this information. If this data is not currently collected by your firm, we recommend the introduction of such data collection and monitoring is included in your action plan as a priority action to help you gain a better understanding of your workforce.

Finally, we would recommend that **all members**, wherever it is practical for them to do so, undertake the gender pay gap reporting exercise (even those with fewer than 250 employees) and to publish their data on their website alongside a narrative report and an action plan.

⁸ Ethnicity pay gap reporting is now the subject of a Government consultation with a view to introducing mandatory reporting requirements similar to those in place for gender pay. As such, it is particularly important that law firms are ahead of the curve in assessing and tackling the other pay gaps that may exist in their organisations.