



Law Society  
of Scotland

# Gender Equality Roundtables

## Flexible Working

May 2020



## Why did we ask this question?

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In the 2013 *Profile of the Profession*, one of the main themes was investigating flexible working in the profession and the conclusions were clear that the sector needed to improve in this area. In our latest *Profile*, the number of respondents who noted they had access to flexible working had dropped slightly. Moreover, when we asked why women (in particular) left the profession in their 30s and 40s, 83% of respondents thought it was for a better work-life balance.

A general theme across all the roundtables that considered flexible working was a view that '*law is not a nine-to-five profession*'. Yet, there was a strong desire from the roundtables to better accommodate flexible working (in its numerous forms) across the profession. Recently, when we asked the largest firms about their equality and diversity policies, the overwhelming majority noted that they had a flexible working policy, but how it is enacted may differ significantly within firms.

A common refrain from part-time workers was that they were expected to do hours '*over and above those agreed to in their contract*'. However, at least one roundtable noted that the business models of most law firms – regardless of size - rely to a very large extent upon discretionary effort of their staff, whether part-time or full-time. Of course, the roundtables present a pre-Covid view of life. Even with the outbreak of Covid-19 and its impact, it is unlikely that the requirement for discretionary effort will diminish significantly in the coming years.

It seems, therefore, that short of a sea-change in client demand and a new found willingness for clients to pay a greater sum for legal services, we are attempting to build the most flexible, agile system possible in a culture with a built-in default against those concepts. It may be that the profession's enforced move to remote and more flexible working as a result of Covid-19 may improve matters in this regard. Yet, the 'new normal' may simply change the definition of presenteeism – that no one is ever really off work and increasingly has to juggle other elements of their life alongside work. These discussions link to much bigger issues within the profession: how matters are managed; the size and number of teams working on those matters; the cost of legal services and the business models of law firms; and how they adapt to the challenges of Covid-19.

Whilst these are immediate concerns, there are longer-term ones too. One roundtable noted that '*if we don't manage to make partnership or senior leadership more attractive, the profession will go over a cliff, as there will be insufficient numbers wanting to take on partnership*'. As demographics continue to change and as corporate clients increasingly focus on matters outside cost and quality from those providing legal services, perhaps the levee will begin to spring leaks.

## What are the issues?

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We asked the roundtables to consider the following questions:

- Do you agree that flexible working is critical to improving diversity?
- Has your organisation implemented flexible working?
- If so, are you facing any challenges?
- If it hasn't implemented flexible working, why not?
- How do we encourage more men to work flexibly?

It is noted that the Scottish Government has set a challenge in this area – that all law firms should have family-friendly flexible working policies in place. It is hoped that this document helps firms identify ways forward to meaningfully embrace flexible working, with fully embedded policies that are widely utilised by those who wish to across the profession.

Recurring themes from the roundtables were:

1. Flexible working has arrived, it just isn't evenly distributed yet.
2. What do clients and others in the sector say they want and what do they actually want?
3. What are the attitudes towards flexible working?
4. How do flexible workers manage?
5. Does working from home... work?
6. Technology: curse or cure?
7. Profession does not live in a bubble.

## Flexible working has arrived, it just isn't evenly distributed yet

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Most agreed that flexible working equalled a '*more productive, more loyal employee*'. Despite this, pre-Covid-19, flexible working had not become the norm across the profession.

Numerous roundtables noted that there was inconsistency around flexible working: '*the firm were encouraging of it, but some individual partners were not*' and noted '*there were inconsistencies across departments*'. Whether or not flexible working is embraced is '*dependent upon the attitudes of the firm*'. Another firm noted that attitudes towards parenting responsibility<sup>1</sup> differed between departments and this

<sup>1</sup> Most roundtables noted that flexible working for those who weren't parents or didn't have caring responsibility was key, although many of the roundtables did focus on the impact on those groups primarily.

impacted how flexible working was viewed. Another still noted that flexible working was *'not applied consistently across the firm, [it was] very much at the discretion of partners'*.

One roundtable – that brought together practitioners from various firms – noted that flexible working was *'positively encouraged'* at some of the firms represented, whilst at others it happened on *'a more informal basis and that led to a feeling that it was not really acceptable'*. In contrast, another roundtable noted that *'smaller firms didn't have formal flexible working policies, but rather just do it'*. It was noted that *'flexible working is an area that is ripe for tackling gender imbalance'*.

Whilst most thought some level of consistent application was necessary, one roundtable noted that it might not be possible: *'some departments where there are documents/deeds needed can't work flexibly as other departments'*. Others noted that flexible working and homeworking did change the working dynamic and required managers to spend more time managing. One example was *'when people are not in the office, questions are stored up, taking more time to go through at a meeting than just "on the go"'*.

One roundtable noted that, whilst client need was often spoken of when discussing flexible working requests, *'in all likelihood clients have never been asked if it (flexible working) is a problem'*. Others noted that many clients – particularly corporate clients – operate far more flexibly than the law firms they instruct. Examples of SSE, Diageo and Baillie Gifford were given for their parental leave policies.

The same roundtable suspected that *'clients were not bothered in general who they talked to'* as long as the work was being done to the appropriate standards and timescales. It was thought that, in areas of a business where flexible working was not encouraged, this was done because it suited partners. However, working patterns ought to be *'client and employee-focused, rather than partner-focused'*. Another roundtable disagreed, noting *'we are servicing clients and their needs rule, and we do need to react to client needs'*.

One roundtable thought that the sector needs to think more *'creatively around flexible working e.g. term-time working'*. In contrast, one noted that *'job-sharing doesn't work in legal'*, although there are examples of this occurring, including at partner level.

### **What do clients say they want vs what clients actually want.**

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Other than the comments above, comparatively little was said about how clients view flexible working. Instead, the focus was on the perception of what clients *might* think about flexible working, rather than what they actually *did* think about flexible working. For instance: *'clients might see part-time lawyers as less committed'*. One roundtable queried this, asking *'do clients really think their solicitor is less invested, just*

*because they work part-time?*'. One respondent noted that, whilst a senior associate at a previous firm, *'she was not allowed to tell clients that she worked part-time'*.

There were numerous comments that noted clients demands and expectations may be, at points, antithetical to embedding a flexible culture.

One large firm noted that clients did set *'false deadlines'*, which impacted those who work flexibly. Another noted that technology didn't help as *'out-of-office responses can act as an artificial trigger for clients – causing panic and clients chasing to see if someone is dealing with the matter in the lawyer's absence'*. This could presumably be minimised by proactively telling clients who would be dealing with matters whilst someone was away.

One criminal defence lawyer at a roundtable noted that, on occasion, *'clients do specify that they do want a female solicitor or they don't want a female solicitor'* depending on the nature of the case. Another noted that criminal defence solicitors are essentially 24/7, with the requirement for police station visits and that practices had to manage this.

Ultimately, the perceptions outlined above are grounded in lived experience and there must be some resistance from some clients to flexible working. We know – from anecdotal evidence, from *Profile of the Profession* etc – that clients do often set tight deadlines, do increasingly ask for more work at lower prices and do chase for answers if they get an out-of-office reply. Indeed, the very fact that some private practice firms and some large instructors thought it necessary to establish the laudable Mindful Business Charter shows some discomfort with how the current client-service provider model works.

Clients are important, although they are not the only people whose views matter to the working practices of lawyers. One court solicitor noted that a female sheriff had told her in open court *'she should not be doing the job she was doing as a part-time role. She was chastised for being unable to agree to a suggested court date because of family commitments'*. Another noted that, whilst working in-house in a previous role, her team had a number of female solicitors working flexible hours. Many did not go to court, because of attitudes that they couldn't be available for court dates: *'This limited prospects'*.

Most roundtables identified clients as the agents of change and some noted that larger clients were increasingly looking for that change. One firm noted that a client had said in a pitch that they were looking for *'good quality advice, rather than lawyers who are stretched'*.

## **What are the attitudes to flexible working?**

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One firm noted that there is *'still an attitude that female solicitors were expected to be more flexible regarding parenting'*. Another noted that *'working from home is frowned upon'* and *'job sharing and compressed hours do not fit with a legal career'*. Another firm noted *'there is still a stigma around part-time workers'*. Again, this predated the Covid-19 pandemic. It is entirely possible that the move to home-working and home-schooling will have exacerbated this in many households, where disproportionately women are asked to work and educate their children.

Most agreed that, if firms approved to someone working part-time, it was for the firm to make it work, rather than the individual. This included putting teams together on matters to ensure that the proper service is provided. Numerous roundtables noted that those working full-time can have some level of resentment if they do require to stay late on a matter, when those working part-time leave at a set time. However, this is an issue of project management and staff and resource management, rather than one of flexible working.

Some HR representatives noted issues with the partnership model: *'HR are not always aware of part-time requests, as sometimes the discussions only involve the line-manager and the employee'*. If the partner gives a negative response, the employee may just abandon the idea.

Those who work in a *'part-time role are almost certainly doing over their set part-time hours'*. The business model for many law firms relies upon discretionary effort of employees. It was noted by some roundtables that all employees – regardless of their contract type – do more than their contracted hours.

One attendee noted that she her employer had agreed her request to work from home but felt she could not do so due to *'comments by partners about not being available'* and *'about her not working whilst at home'*.

One roundtable noted that *'in teams where all the partners are male, there has been difficulty getting approval to work part-time. [It is] seen as a "no go"'*. Others noted that *'some female partners are less tolerant of part-time working, as they perhaps had to struggle to get to their position and thought that everyone else should do the same'*.

At one roundtable, a number of respondents spoke about previous roles. While it is not clear how long ago these roles were held, the experiences of those individuals have obviously shaped their own choices about their careers. For instance, on returning to work after maternity leave, one partner was told *'we don't have part-time partners'*. Her hours were subsequently cut, but this was not accompanied by a concomitant reduction in workload or fee targets. Numerous roundtables noted that it was recognised that it *'was difficult to retain women returners in areas where the partners did not encourage flexible working'*.

There were also questions about how men were treated with regards to flexible working. One roundtable noted that *'there was a bias against men working flexibly or taking shared leave. Men feel they cannot ask for this'*. Others noted that *'shared parental leave only works if parents earn similar amounts or if the woman earns more'*.

Numerous roundtables noted that *'paternity leave is not generous and this doesn't send the right message to men'*. There were some comments about the attitudes of part-time workers themselves: *'The expectation is that, if you are working part-time hours, you still do full-time hours. This is partly colleague pressure, but also partly pressure you choose to put on yourself'*. Most roundtables complained about presenteeism – noting that it was *'engrained'*, that it should be *'eradicated'* and that it was *'rewarded but it shouldn't be'*.

### **How do flexible workers manage?**

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One participant said she *'made a conscious effort not to pick up work on her non-working day, but found two of her colleagues did pick up work and that, by doing so, they blurred the lines'*. It was unspoken, but perhaps could be reasonably assumed that this blurring of lines impacted all part-time workers at the firm.

Another noted *'there was an underlying worry that it could be taken away at any time'*. Another described working part-time in law means *'doing everything under exam conditions'*. Another noted *'working part-time is getting paid less for the same job'*.

Numerous roundtables noted that they knew of people who had left their organisation or – less frequently – the profession, because of an inability of employers to adjust to part-time working or flexible working.

Numerous roundtables noted that presenteeism is still engrained and that there was a culture of longhours. Others noted that part-timers *'felt guilty'* for leaving at their contracted hours. Others said that flexibility should work both ways – firms should be flexible, but employees should be flexible when the firm is busy.

One roundtable highlighted that evening networking events can cause a problem for those who work flexibly or even for those who simply need to leave earlier. (NB: anecdotally, the Society has heard similar comments about breakfast events and lunchtime events. Perhaps, the best way forward is a planned mix of business development and networking events).

### **Does working from home... work?**

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One firm noted that *'for some partners, working from home is perceived differently from working in the office (perhaps seen as not as productive or they don't trust people are actually working)'*. This view may

have been put under some pressure, as everyone has had to move to working from home for an extended period as part of the response to Covid-19.

Working from home may require managers to manage differently and may bring trust issues to the fore (although it is unlikely to be the cause). Law firms and their partners routinely rely upon employees to represent clients in court or police stations on their behalf or run matters. It seems odd, from the outside, that trust is assumed in such situations, but not for more desk work.

Another firm noted that *'you cannot supervise employees remotely. You have to rearrange times for updates instead of just asking a quick question. This can add to the workloads of those supervising'*. The same firm noted that *'training, supervision, and learning and development all became more difficult'*. This seems at odds with wider moves in the sector to agile, but is perhaps symptomatic of the mindset. Again, it is likely that the view of remote supervision may well have changed or at least been challenged.

There were some concerns that home working might hinder how lawyers learn things: *'traditionally, lawyers learn from hearing other things on the phone, interactions with colleagues and clients – it's more difficult if teams are home-working to have on-the-job learning'*. Another comment was that having senior people out of the office affects less-experienced staff. Interestingly though, *'trainees at large firms work across three or four seats and see different practices in different teams'*. It was noted that trainees often see their futures in more enlightened teams.

A wider point made by one respondent was that *'those working at home are essentially paying for an office at home: electricity, broadband heating etc'*. A follow-up point might be made: if we know that women are on the wrong side of the pay gap and we also know that women are currently more likely to work flexibly/from home, this financial element is worth noting. Another roundtable noted that *'home working is not the solution – as you are bringing your work home, which isn't good for wellbeing and it can be impractical'*.

### **Technology: cure or curse?**

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There was disagreement as to whether technology was a force for ill or good. On the one hand, a roundtable suggested a solution of *'use of technology [to] support flexible working, although proper toolkits are required i.e. bigger screens, two screens etc'*. Others noted that modern technology means *'you can't turn off'*, another noting *'part-time workers reply to emails when not working, because they know it is there lurking in their inbox'*. One comment that summed up many voices in this area simply said *'you can work flexibly, but there is the expectation to be online all the time'*.



This was expanded considerably by another roundtable, which noted that wider societal expectations are that everything is accessible 24 hours a day (e.g. people can shop online 24 hours). For the larger global firms, *'there is an expectation that someone will always be available'*.

### **The profession does not exist in a bubble**

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One roundtable stated that the profession *'does not exist in a bubble'*. It is *'impossible to look at flexible working through the eyes of the profession alone'*. The roundtable noted that wider societal attitudes played a part here: both in shaping how members of the profession view things, but also how those outwith the profession may impact upon it. For instance, if a solicitor is a parent (and assuming a two-parent family), then whether or not the other parent works will have an impact, as will the nature of that employer's policies.

Another roundtable noted that there was a *'bias against men working flexibly or taking shared leave. Men feel they cannot ask for this'*. There was a feeling that shared leave *'only works if parents earn similar amounts or the woman earns more'*.

One firm noted that they needed to look at *'paternity leave policy, which is not generous and doesn't give the right message about men taking leave'*. This was alluded to at numerous roundtables. The attraction of other roles for highly-qualified, bright women was also noted: *'it is difficult to retain women returners where partners did not encourage flexible working and other sectors do'*.

**For further information, please contact:**

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