Gender Inequality in Corporate Law Firms in Ireland: Recommendations for Reform

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ABSTRACT

This thesis examines gender inequality in corporate law firms in Ireland, focusing specifically on proposals to reform the profession with the aim of securing greater participation by female solicitors within senior management positions. Although women currently make up more than half of all practising solicitors, they have consistently remained significantly underrepresented in corporate law firm partnerships.

This thesis begins with an analysis of the structural and non-structural barriers that exist for women solicitors seeking to advance within the profession. These structures are both upheld and fuelled by practices that are deeply engrained in the profession, including the culture of long working hours and inaccessibility of alternative working arrangements. Consequently, subsequent chapters of this thesis examine proposals intended to address the barriers identified. The examination of these reform proposals is informed both by studies in other jurisdictions, alongside an empirical study conducted by the author with female solicitors who have experience working in corporate law firms in Dublin, Ireland. Through this study, the viability of the proposals is assessed by practitioners with relevant knowledge and expertise.

The conclusion to this thesis recommends several reforms to address barriers identified. Recommendations include an abandonment of the billable hours model in favour of models of value billing, and increasing transparency and oversight in the operation of alternative working arrangements. Equally, emphasis is placed on measures designed to increase female representation within law firm partnerships, including gender quotas and core competency models of assessment. Finally, and as a means of addressing the masculine culture of the profession, recommendations consider the practicality of unconscious bias training and internal networking events.

Alongside the central argument demonstrating the need for reform, this thesis demonstrates the consistency of the recommendations with the preferred formulation of equality: Sandra Fredman's model of substantive equality. The broad and comprehensive nature of this model is significant in demonstrating the potential that these recommendations have in securing gender equality within the profession.

The arguments made by this thesis demonstrate the pressing need for reform in corporate law firms in Ireland. In doing so, this research intends to contribute to and extend the

existing literature in this area by proposing reforms designed to reduce instances of gender inequality within the profession.

TABLE OF CONTENTS

LIST OF FIGURES

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I would like to express my sincere thanks to Dr Catriona Cannon for her advice and guidance throughout this project. I would also like to thank those who participated in this study for their time and insight.

AUTHOR'S DECLARATION

I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

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CHAPTER 1: INTRODUCTION

1. Background to Women's Employment in Ireland

Women in Ireland have historically suffered a disadvantage in their participation in the paid labour market. Indeed, Article 41.2 of the 1937 Irish Constitution expressly dissuades a woman from entering the paid labour market to the neglect of her duties within the home:

> *1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.*
>
> *2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in the labour market to the neglect of their duties in the home.*

This assurance was subsequently embodied in legislation that prevented women from participating in civil service jobs once they were married, a restriction that was not lifted until 1973 on foot of a recommendation by the Commission on the Status of Women.[1] Despite the legislative marriage ban applying only to those working in civil service jobs, it was a measure that was adopted by a majority of private employers in practice.[2] As a result, a woman's ability to engage in the paid labour market following marriage was significantly diminished. This facilitated the growth of a social structure that viewed women as the 'homemakers', responsible for unpaid domestic labour, while their partners were given the opportunity to engage freely in the paid labour market as the 'breadwinners'.[3]

Following the repeal of the marriage ban in 1973, married women no longer experienced legislative exclusion from the employment sphere. However, barriers continued to exist preventing women from engaging with the labour market on equal terms. It was not until Ireland became a member of the European Economic Community (EEC) in 1973 that the area of gender equality began to develop. The original 1957 Treaty of Rome included a

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1 Section 16(2) (c) of the Civil Service Commission Act 1976 and section 10 of the Civil Service Regulation Act 1956. Both sections were repealed by the Civil Service (Employment of Married Women) Act 1973. The recommendation to remove the ban was first made by the Commission on the Status of Women in their Interim Report on Equal Pay, presented to the Minister for Finance (Dublin Stationary Office, 1971), and subsequently in their Report to the Minister for Finance (Dublin Stationary Office, 1972).

2 For discussion see Eileen Connolly 'Durability and change in state gender systems: Ireland in the 1950s' (2003) 10(1) *The European Journal of Women's Studies* 65; and Irene Mosca and Robert Wright 'The long-term consequences of the Irish marriage bar' (2020) 51(1) *Economic and Social Review* 1.

3 For discussion see: Carole Pateman, *The Sexual Contract* (Cambridge, Policy Press, 1988); Zillah Eisenstein, *The Radical Future of Liberal Feminism* (London, Longman, 1981).

guarantee that men and women would receive equal pay for equal work.[4] Although the intentions in including this provision were purely economic in nature, with the French Government concerned that its domestic equal pay legislation would create a competitive disadvantage, it acted as a precursor for Irish equality legislation. Subsequently, the Irish Government passed the Anti-Discrimination (Pay) Act 1974 and the Employment Equality Act 1977, both of which prohibited discrimination on gender grounds in employment.[5]

More recently, Sandra Fredman has noted that the male breadwinner model upon which society was traditionally based is no longer an accurate portrayal.[6] Working women now often assume the roles of both breadwinner and homemaker, and are 'constantly traversing the boundary between paid and unpaid work'.[7] However, this change to women's engagement in the paid labour market has not been matched by a change to assumptions in employment law that 'work' encompasses paid work only. This is evidenced by recent figures published in a study by the Central Statistics Office ("CSO") demonstrating that 63.7% of women of working age in Ireland are in employment, compared to 74.6% of men in the same age category.[8] Further categorisation demonstrates that of those men and women, 52.8% of men work for 40 hours or more in comparison with 24.7% of women. Finally, and as demonstrated in Figure 1, the study demonstrates that the employment rates for women with children are notably lower than the same rates for women without children, with a minimal impact on the same statistics for men.

Table 5.10 Ireland: Employment rates of couples (with/without children) and lone parents aged 20-44 by age of youngest child, 2018

employment rate

Family status	Men	Women
No children	91.5	88.1
Youngest child aged 0-3	90.1	66.9
Youngest child aged 4-5	92.7	66.8
Youngest child aged 6 or over	88.4	69.5
Total	90.4	72.0

Source: CSO LFS

Figure 1. Employment rates of couples in Ireland (with/without children), 2018.

[4] Article 119 of the Treaty of Rome 1957.
[5] This has since been replaced by the Employment Equality Act 1998, as amended.
[6] Sandra Fredman 'Women at Work: The Broken Promise of Flexicurity' (2004) 33(4) ILJ 299.
[7] *Ibid* at 300.
[8] Central Statistics Office, *Women and Men in Ireland* (Dublin, 2019) available at <https://www.cso.ie/en/statistics/womenandmeninireland/> (accessed on 16 January 2021).

It is apparent that women still fulfil the homemaker role and are more likely to exit the employment sphere upon having children, while a man's employment will remain relatively stable. Equally, it is clear from the CSO study that women continue to make up a larger percentage of part-time workers, while men are more likely to be in full-time employment. These statistics ought to be considered alongside another study recently conducted on behalf of the Economic & Social Research Institute which concluded that there is a significant and persistent imbalance in Ireland between men and women when it comes to unpaid work and caring.[9] Notably, the report finds that on average women spend double the amount of time men spend on caring and more than twice as much time on housework.[10] It is against this background that women's participation in the paid labour market in Ireland is interpreted throughout this thesis.

2. Research Aims

This thesis will focus on women's employment as solicitors in corporate law firms in Ireland and will recommend reforms for the profession that seek to secure greater participation by women at senior levels of the profession. Having regard to the general labour market analysis outlined above, it is pertinent to briefly consider women's entry into the legal profession in Ireland.[11] Although women were not formally excluded by legislation from participating in the legal professions, pursuing a career in law was 'seen as less fit for the sensibilities of women than the traditional roles of mother and wife'.[12] Benchers refused to allow women enter the profession for 'formalistic reasons', by reference to tradition and precedent, as well as a deference to the legislature. [13] It was not until the Sex Disqualification (Removal) Act 1919 was adopted in England and Ireland in 1920 that this refusal was itself prohibited.[14] Subsequently, the first women were admitted

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[9] Economic & Social Research Institute, *Caring and Unpaid Work in Ireland* (Dublin, 2019) available at <https://www.esri.ie/publications/caring-and-unpaid-work-in-ireland> (accessed on 16 January 2021).

[10] The report finds that the average time spent on care across the whole population is 16 hours per week; 10.6 hours for men and 21.3 hours for women. The report further concludes that although time on housework is related to hours of employment for both women and men, at each level of paid work women do significantly more housework than men.

[11] For a detailed discussion see: Mary Redmond 'The Emergence of Women in the Solicitors' Profession in Ireland' in Hall and Hogan (eds), *The Law Society of Ireland 1852-2002 – Portrait of a Profession* (Dublin, Four Courts Press, 2002); and, Ivana Bacik, Cathryn Costello and Eileen Drew, *Gender InJustice: Feminising the Legal Professions?* (Dublin, Trinity College Dublin Law School, 2003).

[12] Bacik et al, *ibid* at 1.2.1.

[13] *Ibid*.

[14] *Ibid*. See also Sandra Fredman, *Women and the Law* (Oxford, Clarendon Press, 1997).

as solicitors in Ireland in 1923 - Mary Dorothea Heron and Helena Mary Early.[15] More women began to enter practice after these two pioneers, but the numbers of women entering the profession in Ireland during the 1920s and 1930s was minimal. A requirement remained for an articled clerk to pay a training premium, which proved to be a difficulty for women seeking to qualify as solicitors.[16] Nevertheless, since 1990 women have been admitted to the profession in equal numbers to their male colleagues and in 2021 comprise over half of solicitors practising in Ireland.[17] Despite this increased presence, women make up just over 1 in 3 solicitors at partner level.[18]

The scope of this research has been narrowed to focus on corporate law firms in Ireland for several reasons: firstly, and as outlined above, women remain significantly underrepresented within law firm partnerships despite their equal admittance to the profession since 1990. Secondly, given the peculiarities of women's participation in the paid labour market in Ireland and a continued responsibility for unpaid domestic labour, there is a need for reform proposals to consider this background and to be tailored to the Irish legal market. Finally, and as noted by Ivana Bacik, et al, in a study on the legal profession:

> '*Lawyers wield a power in society in that '[t]here is necessarily a close relationship between any system of law and the experts who operate it'. Securing gender equality in the practising legal profession is a prerequisite for ensuring gender equality in the third arm of government – the judiciary. It has implications for the development of law through litigation and legislative reform'*.[19]

Although several of the issues identified throughout this thesis pertain to issues that exist in society more generally, consideration must be given to the ability of the legal profession to influence societal change. Securing greater participation by women solicitors within senior roles in the profession has the potential to create that change.

In discussing corporate law firms throughout this thesis, the intention is to refer to those firms who serve the needs of large corporations in areas such as banking, tax and company

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15 *Ibid* at table 1.3.

16 Redmond, note 11 at 110.

17 See Bacik et al, note 11 at table 1.11. See also Law Society of Ireland Press Release 'Law Society calls for renewed collective efforts to increase access to legal leadership roles for women on International Women's Day' (8 March 2021) available at <https://www.lawsociety.ie/News/Media/Press-Releases/law-society-calls-for-renewed-collective-efforts-to-increase-access-to-legal-leadership-roles-for-women-on-international-womens-day> (accessed on 29 September 2021).

18 *Ibid*.

19 Bacik et al note 11 at 32, citing John Baker, *An Introduction to English Legal History* (London, Butterworths, 4th ed, 2002).

law. These firms typically have more than 100 employees and would tend to have more standardised recruitment and career progression structures than smaller legal partnerships. It is the structures and cultures within these types of firms which engender the inequalities that reform proposals outlined in this thesis seek to target.

2.1. Methodology

This thesis is a multi-method study drawing upon multiple sources. Data sources will include data from the Law Society of Ireland drawn from similar studies examining the solicitors' profession in Ireland, as well as findings made in qualitative interviews. Additionally, data that has been made publicly available in studies conducted by research bodies, both independent and governmental, will be drawn upon and considered throughout.

As part of the research for this thesis, the author conducted qualitative interviews with solicitors who either currently work, or have previously worked, in corporate law firms in Ireland. The intention in conducting these interviews was to receive feedback on the various proposals put forward as recommendations for reform. The data collected in these interviews will form, alongside the data sources identified above, the basis for the recommendations made in the conclusion to this thesis.

Finally, a doctrinal analysis will be adopted at various points throughout this thesis. Consideration will be given to the current state of employment equality law in Ireland, set out in further detail below, and whether the recommendations made in this thesis fit within the current legal framework.

2.2. Argument and Structure

Throughout this thesis, it will be argued that the profession ought to detach itself from its masculine roots in order to provide women solicitors with the opportunity to engage with the profession on equal terms with their male colleagues. To achieve this, there is a need to reform various aspects of current working practices and culture. Equally, and for any such reform to be successful, there is a need for senior members of the profession to assume responsibility and engage with reform proposals to promote a more inclusive culture. Until this change has been achieved, women solicitors will remain at a disadvantage in corporate law firms.

It is intended that the following sections will highlight the various aspects of the profession that are in need of reform and, subsequently, recommend the means of reform. The remainder of this thesis is therefore structured as follows: the subsequent sections of this chapter set out the theoretical background and legal framework grounding this thesis. This involves a consideration of both Fredman's four-dimensional theory of substantive equality, the framework against which reform proposals are assessed, and the current protections that exist for employees within international, constitutional and legislative measures. Subsequently, chapter 2 sets out both the structural and non-structural barriers that exist for women solicitors working in corporate law. This includes the culture of long working hours, the 'billable hours' model, the difficulties associated with alternative working arrangements, and the cultural norms and prevailing attitudes within the profession. The analysis in this chapter demonstrates how current working practices operate to exclude women solicitors from advancing within corporate law at the same pace as male colleagues. Subsequently, chapter 3 introduces the empirical study conducted as part of the research for this thesis, whose aim it was to gather the views of women with experience working within the profession. This chapter continues the foregoing analysis by presenting a series of proposals for reform to be discussed with interview participants. The findings of the qualitative interviews are subsequently set out in detail in chapter 4. This chapter considers the conclusions and recommendations of interview participants for each of the reform proposals, and further contemplates how proposals might be amended to reflect these findings. Finally, chapter 5 sets out the final recommendations for reform and considers the implementation of recommendations through both legislative and non-legislative intervention. Subsequently, this chapter demonstrates how the suite of proposed reforms fulfil the criteria of Fredman's model of substantive equality, set out in further detail below.

3. Theoretical Background and Legal Framework

Before continuing to a substantive analysis of working practices within corporate law firms in Ireland, it is useful to consider the context within which this analysis is conducted. The following sections will therefore set forth the preferred theoretical framework for equality, and the current legislative structure of employment equality laws in Ireland. In doing so, it is intended that context will be given for the regulatory environment within which reform is sought.

3.1. Substantive Equality

It is worth noting at the outset that the concept of equality is not something amenable to a comprehensive definition. In the context of Irish employment equality law, for example, employees may not be discriminated against based on a list of protected characteristics.[20] However, this does not encapsulate the concept of 'equality' but rather seeks to prohibit instances of discrimination. Attempts have been made to capture the core tenets of equality in a single, broad statement, but the definitions have not been without fault. Perhaps the most well-known formulation of equality is coined by Aristotle: that likes are to be treated alike, and that fairness is to be found within the equality of treatment.[21] Indeed, this principle of equality is demonstrated by the declaration of equality contained in Article 40.1 of the Constitution of Ireland 1937.[22] However, it is thought to create further difficulties and is criticised for its failure to give guidance on the circumstances within which two individuals can be deemed substantially alike.[23] Noting these difficulties, the focus of equality law has shifted over time to newer interpretations of equality that are more substantive in nature. These formulations considered actions based on their equality of results, equality of opportunity and, finally, individual dignity.[24] Putting forward a model of substantive equality, Fredman identified the shortcomings of each of these formulations of equality.[25] In doing so, however, note is also taken of their relative strengths. These strengths are ultimately utilised and adapted within the four-dimensional framework of substantive equality put forward.

Firstly, Fredman's model of equality aims to redress disadvantage. The focus of this first dimension is on the disadvantaged group, and the need to bring the treatment of that group in line with those who are better off. A key benefit of framing equality in this way is that it removes the possibility of 'levelling down', one of the main criticisms of the Aristotelian formulation of equality. This criticism would arise in situations where a successful claim would be made that likes were not being treated alike, and as a result the benefit would be removed from the advantaged group. In this way, both groups would be treated poorly but for the purposes of equality law, alike. Under Fredman's model of substantive equality there is no possibility of levelling down.

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[20] Section 6 of the Employment Equality Act 1998, as amended.

[21] For a discussion of the Aristotelian theory of equality, see Sandra Fredman, *Discrimination Law* (2nd ed, Oxford University Press, 2011), chapter 1.

[22] See paragraph 3.2.

[23] *Ibid.*

[24] For a further discussion of these formulations of equality see Fredman, note 21, chapter 1.

[25] Sandra Fredman 'Substantive Equality Revisited' (2017) 14(3) IJCL 712.

The first dimension of substantive equality is bolstered by the second dimension: that of redressing stigma, stereotyping and humiliation. The intention of this dimension is to appeal to an individual's basic humanity, similar to the concept of 'dignity' identified in earlier formulations of equality. However, Fredman seeks to remove some of the pitfalls that attached to that doctrine by focusing instead on the idea of recognition. This involves a consideration of the ways in which our identity is shaped, and addressing the social constructs and implications of the ground of equality at issue. The intention of this dimension, ultimately, is to ensure that equality attaches to an individual not because of their merit but because of their humanity.

Thirdly, Fredman sets out what is labelled the 'participative dimension'. This dimension considers that the right to equality is concerned with two aspects of participation, the first of which is political. Equality laws are needed to compensate for the absence of a political voice, and to encourage greater political participation in the future. Secondly, the participative dimension acknowledges the importance of community in the life of individuals. Substantive equality recognises that humans are essentially social, and to be fully human includes the ability to participate on equal terms in the community and within society more generally.

Fourthly, and finally, Fredman's model of substantive equality seeks to accommodate difference and structural change. Substantive equality recognises characteristics that are valued aspects of an individual's identity. This fourth dimension seeks to reverse the model of conformity that is present in Aristotle's model. Rather than opening up equality only to those who are suitably alike, this model acknowledges essential differences between individuals, and calls for structural change so that differences can be accommodated.

Fredman's model of substantive equality is deliberately framed in 'dimensions' to focus on their interaction and synergies. This model provides an evaluative framework and permits laws, policies, and practices to be analysed against these four criteria to determine whether equality is being fulfilled. It is worth noting, however, that some criticism of the model has been voiced by Catharine MacKinnon, who argues that social hierarchy should be the main consideration of substantive equality, as opposed to disadvantage.[26] Fredman subsequently notes that to characterise equality solely in terms of hierarchy would be to obscure the multi-faceted ways in which equality manifests.[27] Power relationships do not always arise

[26] Catharine MacKinnon 'Substantive Equality Revisited: A Reply to Sandra Fredman' (2016) 14(3) IJCL 739.

[27] Sandra Fredman 'Substantive Equality Revisited: A Rejoinder to Catharine MacKinnon' (2016) 14(3) IJCL 747.

vertically, as this concept of hierarchy would suggest. Fredman gives the following example: 'White women may be subordinate relative to men, but dominant relative to black women. They may be privileged in relation to black men where race matters, but subordinate to black men in patriarchal contexts'.[28] MacKinnon, writing a rejoinder to this response, disagrees and considers that an inequality of power is the fundamental dynamic of inequality.[29]

For the purposes of this thesis, recommendations for reform will be analysed as against Fredman's four-dimensional model of substantive equality. The concept of hierarchy proposed by MacKinnon does not adequately capture the distinct ways in which equality manifests. In particular, in the context of women solicitors in corporate law firms, 'women' cannot be looked upon as a single group. Disadvantage can manifest in a number of ways within that group including, perhaps, women who are pregnant, women who fulfil both homemaker and breadwinner roles, and women who possess one or more additional characteristics typically associated with disadvantage, including race, gender identity, or religion.

3.2 Employment Equality Law in Ireland

Having outlined the theoretical framework for equality, brief consideration ought to be given to the regulatory environment. Employment equality law in Ireland is derived from three main sources: European law, the Constitution of Ireland 1937 and the Employment Equality Acts 1998-2015. Initially, employment equality law developed only to comply with Ireland's obligations under European law, but over time this area has grown beyond what is strictly required at EU level.[30]

Article 40.1 of the Constitution of Ireland, which pre-exists Ireland's entry to the European Economic Community in 1973, contains a guarantee of equality as follows:

> *All citizens shall, as human persons, be held equal before the law.*
> *This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.*

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[28] *Ibid* at 747.

[29] Catharine MacKinnon 'Substantive Equality Revisited: A Rejoinder to Sandra Fredman' (2017) 15(4) IJCL 1174.

[30] For discussion see Ailbhe Murphy and Maeve Regan, *Employment Law* (Dublin, Bloomsbury Profession, 2nd ed, 2017) at 17.01.

However, this constitutional provision permits the State to have 'due regard' to certain differences which is of no assistance to women whose social function is defined in Article 41.2, detailed above.[31] Nevertheless, following entry to the EEC, Ireland implemented the Equal Pay Directive and the Equal Treatment Directive, whose legislative basis was in Article 119 of the Treaty of Rome, recognising equal pay for equal work, as well as equal treatment in employment as between men and women.[32] Following ratification of the Treaty of Amsterdam, equality between men and women became one of the tasks of the European Union under Article 2.

The subsequent enactment of the Employment Equality Act 1998 in Ireland went beyond what was required by European equality measures. This legislation has since been amended and supplemented, and the law is now contained in the Employment Equality Acts 1998-2021 (the "Acts"). The Acts provide a strong level of protection for employees, who are defined as those who work, or have worked, under a contract of employment.[33] The Acts in section 8(1) prohibit discrimination in relation to: (i) access to employment, (ii) conditions of employment, (iii) training or experience for or in relation to employment, (iv) promotion or re-grading, or (v) classification of posts on any of the nine discriminatory grounds set out in section 6(2). These discriminatory grounds include gender, and marital and family status, among other things.

The Acts are broad in scope, and consider discrimination to have occurred where:

'(a) A person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified [above] which-

(i) exists;

(ii) existed but no longer exists;

(iii) may exist in the future, or

(iv) is imputed to the person concerned,

(b) a person who is associated with another person –

[31] For discussion see Marguerite Bolger, Claire Bruton and Cliona Kimber, *Employment Equality Law* (Round Hall, 2012) at 2-147.

[32] Council Directive 75/117/EEC implemented by the Anti-Discrimination (Pay) Act 1974 and Council Directive 76/207/EEC implemented by the Employment Equality Act 1977, respectively.

[33] Section 2 of the Employment Equality Act 1998, as amended.

(i) is treated, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated in a comparable situation, and

(ii) similar treatment of that other person on any of the discriminatory grounds would, by virtue of paragraph (a), constitute discrimination.'[34]

The less favourable treatment identified in this section is more commonly known as 'direct discrimination'. Notably, this legislative definition of direct discrimination embodies the Aristotelian model of equality criticised above, by requiring the use of a comparator to demonstrate the occurrence of unequal treatment. The Acts equally prohibit indirect discrimination, although this differs from direct discrimination under the Acts insofar as it is permissible by objective justification.[35] Direct discrimination is not capable of justification, except where it relates to retirement age.[36] Discrimination under the Acts further includes the concepts of 'harassment' and 'victimisation'.[37] Harassment includes any form of unwanted conduct relating to any of the discriminatory grounds, including sexual harassment. Separately, victimisation relates to conduct that punishes a person for complaining about or opposing unlawful discrimination, bringing proceedings or assisting another in bringing proceedings under the Acts.

Thus, the protection afforded to employees against discrimination under the Acts is broad. Where an individual seeks to make a complaint in relation to any discrimination that has occurred under the Acts, the complaint is heard by the Workplace Relations Commission ("WRC").[38] The WRC is the forum for initiating claims under employment legislation in Ireland, and was established in 2015.[39] The WRC has several functions which include hearing disputes, inspections and enforcement, and the preparation of draft Codes of Practice providing guidance to employers and employees.[40] The Acts also contain a slight

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[34] Section 6(1) of the Employment Equality Act 1998, as amended.

[35] This is included in several sections throughout the Acts. For example, section 19(4) prohibits indirect discrimination on grounds of gender in relation to pay and provides: 'Indirect discrimination occurs where an apparently neutral provision puts a person of a particular gender … at a particular disadvantage in respect of remuneration compared with other employees of their employer'.

[36] For further discussion see Murphy and Regan, note 30, at 17.15.

[37] Harassment is defined in Section 14A(7) and victimisation is defined in section 74(2) of the Employment Equality Act 1998, as amended.

[38] For discussion on redress under the Employment Equality Acts 1998-2015, see Murphy and Regan note 30 at 17.307.

[39] Established pursuant to the Workplace Relations Act 2015.

[40] It is worth noting that the functions of the WRC have recently been limited by the Irish Supreme Court in *Zalewski v Adjudication Officer and WRC, Ireland and the Attorney General* [2021] IESC 24. This judgment found that certain aspects of the legislation and procedures of the WRC amounted to an administration of justice, a function that is reserved for the Courts under Article 34 of the Constitution of

anomaly where gender disputes arise. In this respect, an employee initiating a claim for direct or indirect gender discrimination can choose to commence that claim either in the WRC or the Circuit Court, due to certain requirements under EU law.[41] This option is not available for any other ground of discrimination under the Acts.

Finally, it is worth setting out in brief some of the other protections that are afforded to employees under Irish legislation. The Organisation of Working Time Act 1997 implements The Working Time Directives, the purpose of which is to enhance the safety and welfare of workers and to provide for greater compatibility between work and family life.[42] The 1997 Act regulates extensively the ways in which employees spend their working day, including the maximum number of hours that are permitted to be worked per day, or per week.[43] Equally, the 1997 Act requires daily rest periods of at least 11 hours every 24 hours, and regulates interval breaks while at work.[44] However, the Directives also permit several exclusions and exemptions for those professions where the ordinary considerations of working time are such that the legislative entitlements are unsuitable.[45] This includes, for example, doctors in training.[46] The Organisation of Working Time (General Exemptions) Regulations 1998 set out further exemptions to the legislative requirements. Notably, the Regulations exclude activities falling within a sector of the economy 'in which it is foreseeable that the rate at which production or the provision of services, as the case may be, takes place will vary significantly from time to time'.[47] Although the parameters of this exemption have not been litigated, it is possible that the provision of legal services in corporate law firms could fall within this category.

Employees in Ireland also receive certain protections under the Protection of Employees (Part-Time Work) Act 2001.[48] This legislation, in brief, provides those employees who work part-time with certain safeguards and ensures that they are entitled to the same protections as comparable full-time employees, unless there are objective grounds for the less favourable treatment. It is worth noting, however, that there is no provision in the 2001 Act, nor elsewhere within Irish employment legislation, providing employees with a

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Ireland, 1937. This judgment has led to some procedural changes for the WRC, however a full consideration of this judgment and its implications is beyond the scope of this thesis.

41 For discussion, see Murphy and Regan, note 30, at 17.86.

42 Directive 93/104/EC and Directive 2003/88/EC. For a detailed consideration of the legislation, see Murphy and Regan, note 30, chapter 4.

43 See Part II of the Organisation of Working Time Act 1997, as amended.

44 Sections 11 and 12 of the Organisation of Working Time Act 1997.

45 Article 17 of Directive 2003/88/EC.

46 Section 3(2)(a) of the Organisation of Working Time Act 1997.

47 Regulation 3(a) of Statutory Instrument 21/1998.

48 For a detailed consideration of the legislative protections afforded to part-time employees, see Murphy and Regan, note 30, chapter 12.

statutory entitlement to part-time work. Instead, the legislation is concerned with preventing discrimination against those who do avail of part-time working arrangements. Once more, however, this legislation concerns itself with the Aristotelian model of equality by requiring unequal treatment to be demonstrated as against a comparative full-time employee.

Although this section does not provide an exhaustive list of the statutory protections afforded to employees under Irish employment law, it does identify those which are of significance for solicitors working in corporate law firms. More particularly, the legislation outlined in this section is of significance to women solicitors insofar as it provides a level of protection against discrimination in the workplace, and a measure of support for those who wish to combine work and family life. In setting out the final recommendations for reform, consideration will be given to how reform recommendations fit within this legislative framework and any consequent legislative amendments that may be required.

5. Concluding Remarks

This chapter has provided an insight into the barriers that women continue to face in their participation in the Irish labour market and the solicitors' profession more specifically. In doing so, the intention was to provide the reader with the social and legislative context within which the subsequent analysis of corporate law firms is conducted. It is intended that the context provided by this chapter will remain at the forefront of the reader's mind throughout the analysis of working practices within corporate law firms, and the subsequent recommendations for reform.

CHAPTER 2: STRUCTURAL AND CULTURAL CONTRAINTS IN CORPORATE LAW FIRMS

1. Introduction

Recent statistics in Ireland demonstrate that women comprise just over half of all solicitors, and 34% of partners in the largest firms.[49] Despite this representing an improvement on statistics presented in earlier studies it remains apparent that women face significant barriers beyond entry to the profession.[50] Numerous studies have noted that women enter the profession on equal footing with their male colleagues or, often, ahead in terms of the academic capital they possess, but as solicitors move through the ranks of the profession towards partnership the variety of advantages afforded to men allows them to overtake their female colleagues.[51]

This is, in part, unsurprising due to the historical exclusion of women from the profession.[52] The assumption had been that, upon entry, women's struggles had been corrected; there was no longer a formal exclusion in place and it became a matter of women moulding themselves to the profession and to its working practices.[53] This assumption is flawed, however, as Hilary Sommerlad and Peter Sanderson note due to the 'organic connection between the nature of partnership, legal practice and the fraternal contract'.[54] The "fraternal contract" in this sense is taken to meant the advantages that are afforded to male solicitors, by male solicitors, both in terms of the organisational structure and the culture of the profession. Inherent in this is the attainment of cultural capital, something which cannot be acquired through formal study but requires participation in 'complex forms of socialisation', many of which revolve around masculine culture.[55] Examples of this might include practices such as networking, mentoring and socialising in male-exclusive areas. Sommerlad and Sanderson thus concede that '[t]his complex of masculine relationships, of which the legal partnership is the most concrete expression,

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[49] Suzanne Carthy 'A mixed methods study of gender equality and inclusion in the Irish solicitors' profession' (Dublin, University College Dublin, 2018) at 24.

[50] Bacik et al, note 11, finding that women made up just 24% of partners in the 13 largest firms.

[51] See Bacik et al, note 11; Carthy, note 49; Ivana Bacik & Eileen Drew 'Struggling with juggling: Gender and work/life balance in the legal professions' (2006) 29(2) *Women's Studies International Forum* 136; Hilary Sommerlad and Peter Sanderson *Gender Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (Routledge, 1998).

[52] See chapter 1, paragraph 1.1.

[53] For discussion see Sommerlad and Sanderson, note 51 chapter 6.

[54] Sommerlad and Sanderson, note 51, discussing the concept of the "fraternal contract" first identified by Margaret Thornton in *Dissonance and Distrust, Women in the Legal Profession* (Oxford University Press, 1996).

[55] Sommerlad and Sanderson, note 51 at 182.

then does not only impede women's inclusion and/or progression, but actively reproduces the sexual contract on which they are based'.[56]

It follows from this that the profession, both in terms of its hierarchal structure and masculine environment, creates a breeding ground whereby men can easily outpace their female colleagues in the race to partnership. This chapter will argue that the current working practices within corporate law afford structural and cultural advantages to male solicitors, with a corresponding negative impact on the career progression and earnings of female solicitors.

2. Corporate Law: Organisational Structures and the Working Day

'*For centuries, women were excluded from the profession on the assumption that they were different; once admitted, the assumption was typically that they were the same. By and large, women have been expected to practise within established structures; those structures have not sufficiently changed to accommodate women*'.[57]

The prevailing attitude within corporate law firms is that unless a solicitor adopts a 'work-work balance', their commitment to the firm is lacking.[58] This attitude acts as the primary promoter for the long hours' culture and is reflected in the means by which work is carried out, and the structures that exist for recognition and promotion. Key amongst this is a structure that has often been cited by practitioners as a facilitator for the long hours culture: the billable hours model.[59] Billable hours can mean different things but, in general, tends to refer to that part of a solicitor's work that is recorded and 'on file' and is therefore charged to a client.[60] This system of billing is widespread in Irish firms, and is most often used in countries with common law traditions.[61] The billable hours model was originally introduced as a means of calculating the costs of a service to a client, but has since been

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[56] *Ibid* at 183.

[57] Deborah Rhode 'Gender and the Profession: An American Perspective' in Shaw & Schultz (eds) *Women in the World's Legal Professions* (Oxford, Hart Publishing, 2003) At 4.

[58] For discussion see: Sommerlad and Sanderson, note 51 chapter 6; Hilary Sommerlad '"A pit to put women in": professionalism, work intensification, sexualization and work-life balance in the legal profession in England and Wales' (2016) 23(1) *International Journal of the Legal Profession* 61; Mary Noonan and Mary Corcoran 'The Mommy Track and Partnership: Temporary Delay or Dead End?' (2004) 596(1) *ANNALS AAPSS* 130.

[59] See Carthy, note 49 chapter 6.

[60] Iain Campbell and Sara Charlesworth 'Salaried lawyers and billable hours: a new perspective from the sociology of work' (2012) 19(1) *IJLP* 89.

[61] A. Woolley 'Evaluating value: a historical case study of the capacity of alternative billing methods to reform unethical hourly billing' (2005) 12(3) IJLP 399.

adopted as a managerial tool; now being used in assessments for bonuses, promotions, and as a means of judging how 'committed' an individual is to the firm.[62]

On the basis that this long hours model is incapable of facilitating responsibilities that solicitors might have outside of working hours, firms often permit employees to avail of alternative working arrangements. However, interviewees to a number of studies have indicated that seeking access to these arrangements can carry a significant penalty, both in terms of the quality of work delegated and the practitioner's career progression.[63] Given that flexible working arrangements are primarily accessed by women, it follows that this has the potential to result in fewer promotions for women, and limited representation on more lucrative transactions.[64]

Both the billable hours model and the accessibility of alternative working arrangements are structural arrangements over which law firms have control and the power to change. These practices are not simply inherent in the day-to-day working lives of solicitors, but shape working practices and ultimately determine the levels of success that individual solicitors achieve. The impact which each of these has on female solicitors will therefore be further considered.

2.1. Billable Hours

'*The way you get to the top is not by being legally good, but by doing lots of hours*'.[65]

Billable hours are inextricably linked with heavy workloads and long hours in law firms.[66] The difficulty with this model is that it has developed within a profession that is designed by men, for men, in a man's world.[67] As such, current working practices with regards the numbers of hours billed are predicated on the expectation that solicitors will make themselves constantly available, and the assumption that there is an 'economically inactive' spouse or partner to assist the solicitor in working these long hours.[68] This

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62 For discussion see Deborah Epstein Henry *Law & Reorder: legal industry solutions for restructure, retention, promotion & work/life balance* (American Bar Association, 2010).

63 See Carthy, note 49, chapter 6; and Bacik et al, note 11, chapter 7.

64 See Bacik et al note 11 at 7.4.1.

65 Margaret Thornton 'Work/life or work/work? Corporate legal practice in the twenty-first century' (2016) 23(1) IJLP 13.

66 See Epstein Henry, note 62 chapter 1 for a discussion of the evolution of the billable hours model. See also: Deborah Rhode *The Trouble with Lawyers* (Oxford University Press, 2015) chapter 4.

67 For discussion see Sommerlad, note 58 at 63; and, Thornton note 65.

68 See Thornton, note 65; Guy Weir 'The economically inactive who look after the family or home' (2002) 110(11) *Labour Market Trends* 577.

longstanding model of working practices has been disturbed by the entry of women into the profession, but has not yet been adapted in any material respect.

Long hours remain an expected and integral part of the structure of corporate law firms, and the practice of recording hours worked equips those in managerial positions to monitor and control the input of their staff. This system provides a single, clear measure that permits employers to evaluate the performance of staff with minimal effort, bypassing the need to rely on the subjective assessment of a supervisor.[69] The difficulty with this is that the billable hours model fails to speak to the legal complexity of a matter, or to an individual's innovation or leadership skills. Instead, billable hours provide a simple overview of the monetary value that an individual has to a firm, and in some instances, performance reviews focus principally on this contribution alone.[70]

Difficulties with the use of the billable hours model as a managerial tool are numerous and are exacerbated by the setting of 'goals' or 'targets'. This refers to circumstances in which the model is utilised to set what are essentially quotas on the number of billable hours that need to be achieved by solicitors over a specific period of time. Whether a solicitor has met, or even exceeded, their target will determine whether they will be put forward for a bonus or a promotion.[71] Similarly, the number of hours billed over a period of years will be a key consideration for an individual seeking to join the partnership.[72] However, targets are often difficult to meet without volunteering almost all free time, including days off and weekends.[73]

Another difficulty with the use of targets is that billable hours only account for the time where a solicitor is at their desk, working on a matter free from distraction. It does not take into consideration the need to eat or to take other necessary breaks, nor does it consider the social aspects of working within an office environment. Equally, daily administrative tasks such as filing or attending internal meetings are often not included as billable and result in almost doubling the number of hours worked by a solicitor. Indeed, it has been estimated that a target of six billable hours would usually entail nine or ten actual hours.[74]

Despite the apparent difficulties with this model of work, it is difficult to foresee change in the near future. The widespread use of this model is understandable from a business

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69 See Campbell and Charlesworth, note 60.
70 *Ibid* at 104.
71 *Ibid.*
72 *Ibid.*
73 *Ibid*.
74 *Ibid* at 105.

perspective, particularly in circumstances where it allows partners to exert indirect pressures on salaried solicitors and to reap the benefit of that pressure through profit to the firm. Suzanne Carthy, detailing an interview with a partner in a top tier law firm, quotes:

> 'The way a law firm works, [the assistant solicitors] are the drones, the worker bees and [the partners] need them. The law firm know that they will charge these people at €300 an hour, do the maths, per solicitor [the partners] earn €450k. That's Capitalism at its finest, in its purest form'.[75]

The pay-off for volunteering the additional hours is thought to exist for salaried solicitors also: the more hours they put in, the more likely their eventual promotion to partner is, and with it a premium for all of the hours volunteered. As one commentator abruptly summarised the structure: 'Corporate firms are, essentially, giant pyramid schemes'.[76]

Despite this, with the growing numbers of solicitors qualifying each year the promise of partnership is no longer as definite as it once might have been, and the benefits for surrendering a life outside of the firm are not as apparent.[77] Given the alternative job options available for trained solicitors it is likely that dissatisfaction with working arrangements will not be voiced but rather will be expressed by an exit from the profession.[78] For corporate law firms this high attrition rate can beneficial given that the business model is based on a high leverage and constant pressure to sustain, or even increase, the productivity of salaried solicitors. [79] A regular turnover of employees could alleviate the pressure to change rigid working-time patterns. Equally, however, high attrition rates can reduce productivity where new solicitors will have to be briefed on client dealings within the firm.[80] Indeed, one commentator has noted that even where clients are assured that they will not be billed for this additional catching-up time, some scepticism does remain.[81] As such, a failure to retain employees may cause clients to lose confidence in the firm.[82]

It is clear that billable hours are deeply engrained in the functioning of corporate law firms. Equally, however, their continued use actively discourages female involvement at the

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75 Carthy, note 49 at 172.
76 Cameron Stracher 'For better law careers: cut my salary please!' (2006) *Wall Street Journal* available at <https://www.wsj.com/articles/SB114384471634713946> (accessed on 28 March 2020).
77 See Campbell and Charlesworth, note 60, at 112.
78 Albert Hirschman, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States* (Cambridge MA, Harvard University Press, 1970).
79 Campbell and Charlesworth, note 60 at 111.
80 Epstein Henry, note 62 chapter 6.
81 *Ibid*.
82 *Ibid.*

higher levels of the profession.[83] In a recent study on the solicitors' profession in Ireland, Carthy identified that the 'accepted or perceived objectivity of the billable hours [model] has a sanitising and legitimising effect on the reproduction of gender inequality.[84] Participants to Carthy's study identified that complying with and achieving billable hours targets is a 'a non-negotiable and elementary hurdle on the bath to promotion'.[85] This leads another participant, Jane, to conclude that the prospects for increasing women's retention and promotion rates are 'very bleak'.[86] She continued by noting that 'the billable hours metric was not going to change', and that productivity, commitment and output will continue to be gauged according to hours billed.[87] Any change to this model would require equity partners in corporate law firms to accept a decrease in their profit shares, something which Jane considered was 'never going to happen'.[88]

2.1.1. *Allocation and Intensification of Work*

It is worth considering the recent expansion by corporate law firms into the business sphere, insofar as clients increasingly expect 'a full service treatment'.[89] Solicitors are now expected to handle all aspects of transactions, resulting in what has been dubbed a 'boundary-spanning' role, requiring the fulfilment of tasks that go beyond the strict legal sphere.[90] In conceding to this, however, solicitors are now experiencing an intensification of work, necessitating long working hours for high-volume, low-value work.[91]

Commenting on this expansion, one practitioner noted that a difficulty with the boundary-spanning role is that pressure from clients results in more work; and the more work that is done the more the client ultimately comes to expect.[92] These tasks extending the boundaries of legal work are often considered to be 'trivial, no-value tasks', with the result that they often do not count towards a solicitor's billable hours. Respondents to a study conducted by Sommerlad discuss this kind of work and note that it was frequently allocated to female solicitors, especially those returning from maternity leave.[93]

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83 For discussion see Carthy, note 49, chapter 6.
84 Carthy, note 49, at 252.
85 *Ibid* at 174.
86 *Ibid* at 178.
87 *Ibid*.
88 *Ibid*.
89 For discussion see Sommerlad, note 58 at 69. See also Lisa Webley and Liz Duff 'Women Solicitors as a Barometer for Problems within the Profession – Time to Put Value Before Profits?' (2007) 34(3) *Journal of Law and Society* 374.
90 *Ibid*.
91 *Ibid* at 70.
92 *Ibid* at 70.
93 *Ibid*.

Considering this, Sommerlad noted that due to the low status of women in the profession, especially those who have broken the full-time career-track, clients and male colleagues felt able to ask them to do things which they would not usually ask of men.[94]

The allocation of this work to women operates to hinder professional development. The nature of the work allocated is such that it excludes women from the more complex aspects of a transaction, and work that is more likely to create an advantage when it comes to promotional decisions. Equally, expressing a lack of interest in menial work may result in the allocation of a lesser amount of work thereby labelling practitioners as 'uncommitted'. Sommerlad, discussing this, notes the account of a practitioner who met with her boss and argued that she 'hadn't signed up for dead end work' and 'wanted [her] career back', only to be told 'you've had a baby and you're about to have another so your career is over'.[95] This led Sommerlad to conclude that women are left in a fragile position, needing to demonstrate that they are indeed true professionals, accentuating their vulnerability to extreme exploitation.[96]

2.2. Flexible Working Arrangements

In Ireland, there is not yet a legislative right to avail of flexible working arrangements. However, in light of changes to working practices caused by the COVID-19 pandemic, consideration has been given to the rights of employees in respect of alternative working arrangements. In this regard, the Government are currently considering plans to provide employees with a legislative right to request remote working arrangements.[97] This will come as part of a broader National Remote Working Strategy announced by the Government which aims to build upon the increase in remote working over the course of the COVID-19 pandemic and to ensure that it remains a permanent feature in the Irish workplace.

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94 *Ibid.*

95 *Ibid* at 77.

96 *Ibid.*

97 For example, in December 2020 the Government launched a consultation on Flexible Working under the Future Jobs Ireland action plan. Press release available at <http://www.justice.ie/en/JELR/Pages/PR19000315> (accessed on 16 January 2021). In January 2021, the Government announced its intention to legislate for a legal right to request to work from home. Available at <https://www.gov.ie/en/publication/51f84-making-remote-work-national-remote-work-strategy/> (accessed on 16 January 2021).

Nevertheless, it remains open to employees to negotiate flexible working arrangements with their employers on an individual basis.[98] Where a solicitor does seek to avail of flexible working arrangements, it is often dependent on the relationship which that individual has with the partner for whom they work.[99] This often requires that a solicitor has established themselves and earned the trust of the firm before they can be considered for flexible work.[100] Other factors might also be taken into consideration including the practice area within which the individual works, or the need for physical presence in the office to, for example, attend meetings or sign documents. Given advances in technology, however, and the increasing pressure to move to paperless work, physical presence may no longer be justifiable as the sole reason for declining a request for alternative working arrangements.

Those who successfully negotiate alternative working arrangements ultimately face further difficulties. Commentary in this area notes that negative connotations attach to those who avail of alternative arrangements, resulting in an unspoken 'black mark' against the person.[101] In discussing the so-called 'flexibility stigma', one commentator notes that availing of these arrangements attached a stereotype to women that they are 'uncommitted and incompetent'.[102] The implication that life outside of work might be of equal or greater importance to a solicitor does not sit comfortably within the working practices that prevail in corporate firms. Notably, however, this flexibility stigma attaches differently to men than it does to women. Women, as noted, are presumed to no longer have an interest in their own professional development resulting in the assignment of work that is routine or lacks complexity, often referred to as the 'mummy track'.[103] Women who work flexibly may also be side lined in the allocation of work, particularly if they are not present when work is being distributed.[104] Men, on the other hand, may not seek flexible arrangements or, where they are sought, may not be granted flexible arrangements as it is seen as a mark

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98 It is worth noting that where reduced hours are negotiated with employers, employees may not be treated in a less favourable manner than a comparable full-time employee pursuant to the Protection of Employees (Part-Time) Work Act 2001. For discussion see Chapter 1 at 3.2.

99 See Carthy note 49 chapter 6; Bacik et al note 11 Chapter 7.

100 See Carthy, note 49, chapter 6. In particular, at 190 participants note the importance of relationships of trust with senior partners, and describe reduced hours as a reward for good behaviour.

101 For discussion, see: Stephanie Bornstein 'The Legal and Policy Implications of the 'Flexibility Stigma'' (2013) 69(2) *Journal of Social Issues* 389; Scott Coltrane, Elizabeth Miller, Tracy DeHann & Lauren Stewart 'Fathers and the Flexibility Stigma' (2013) 69(2) *Journal of Social Issues* 279; Joanne Bagust 'Keeping Gender on the Agenda: Theorising the Systemic Barriers to Women Lawyers in the Corporate Legal Practice' (2012) *Griffith Law Review* 137; Carthy note 49 chapter 6.

102 Bornstein, *ibid* at 392.

103 For discussion see Noonan and Corcoran, note 58.

104 *Ibid*.

of femininity.[105] As a result, men seeking flexible working arrangements often do so for masculinist or gender-neutral activities, such as part-time lecturing or sports training.[106] This has resulted in a situation wherein '[f]lexible work is ostensibly gender-neutral, but because it is coloured by the long association with caring work, it has become feminised'.[107]

Indeed, financially this pattern of behaviour is incentivised where a contrast to the 'motherhood penalty' exists in the form of a 'fatherhood premium'. [108][109] Research has demonstrated that men who are parents have higher earnings than those who are not.[110] In one study of Toronto lawyers, it was found that the more children a male lawyer had the more secure his position within a firm was.[111] This contrasts sharply with female lawyers, whose probability of leaving the profession increased with every child.[112]

This is not to suggest, however, that the experience of those availing of flexible working arrangements is entirely negative. Despite inconsistencies in approach and varying levels of support, women solicitors have in some instances successfully designed working arrangements that accommodate their own needs. For example, Carthy notes the experience of one interview candidate whose positive relationship with a client provided her with a strengthened position from which she could negotiate a reduced working week.[113] In this instance, the solicitor's work came primarily from that client and she was able to secure an arrangement that suited herself, the client and her firm.

Negotiating a positive, workable solution may not always be possible. A number of solicitors availing of reduced working days have noted difficulties where their workload is not alleviated to reflect fewer working hours.[114] This results in solicitors making themselves available on their days off or after hours to make up for lost time and to keep on top of their workload. As one solicitor has noted: 'Everyone with flexible working practices ends up working (unpaid) on their day off and the firm refuses to pay any money

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105 See Thornton, note 65, for discussion.
106 *Ibid*. See also Bacik et al note 11 at 7.4.
107 Thornton, note 66 at 25.
108 The 'motherhood penalty' refers to the financial penalty experienced by women who avail of flexible working arrangements. See Bornstein, note 101 for discussion.
109 See Coltrane et al note 101 for discussion of the fatherhood premium.
110 Rebecca Glauber 'Race and gender in families at work: The fatherhood wage premium' (2008) 22 *Gender and Society* 8.
111 Fiona Kay, Stacey Alarie & Jones Adjei 'Leaving private practice: how organizational context, time pressures and structural inequalities shape departures from private law practice' (2013) 20(2) *Indiana Journal of Global Legal Studies* 1223.
112 *Ibid* at 1251.
113 Carthy, note 49 at 194.
114 Carthy note 49 chapter 6.

for it even though it is a windfall to the firm because the time is billed'.[115] Often, as a result, practitioners see no choice but to return to full-time work or to leave the profession altogether.[116]

What becomes apparent is that although flexible working arrangements are available in corporate law firms they rarely, if ever, provide suitable outcomes for those who seek to avail of them. Equally, the absence of a firm-wide policy on alternative working arrangements means that those solicitors who seek to avail of them do not receive adequate support, often resulting in an unworkable outcome. The gendered take up of alternative arrangements by women for care reasons is actively facilitated by corporate firms in circumstances where there is an unwillingness to recognise the parenting role of men. Until there is an express recognition that alternative working arrangements ought to be made as available to male solicitors, these arrangements will continue in an ad hoc and stigmatised manner.

3. Cultural Capital and Non-Structural Barriers in the Workplace

'*Some of the most important processes that contribute to greater career success among men than women are invisible, not just unmeasured but unmeasurable*'.[117]

In discussing the non-structural impediments to success within the profession, what is intended by this section is to capture the cultural norms and attitudes that prevail in the corporate legal world. These barriers take a number of forms, including the need to be 'visible', either by remaining in the office until the late evening or by attending networking events outside of office hours.[118]

Issues surrounding visibility and presenteeism are intertwined with the structural issues identified above and it is often difficult to disconnect one from the other. The stigma surrounding agile working arrangements is one example, in circumstances where the implication is that those who are working from home are not engaging in real work.[119] This is in contrast to the accounts of practitioners, however, who consider themselves to work

[115] Thornton, note 65 at 25.
[116] *Ibid*.
[117] Catharine Hakim, *Key Issues in Women's Work: Female Diversity and the Polarisation of Women's Employment* (London, Routledge, 1993) at 183.
[118] For discussion see Sommerlad and Sanderson note 51 chapter 5; Bacik et al, note 11, chapter 9; Carthy, note 49, chapter 6.
[119] See Thornton, note 65, at 25.

harder at home than they would in the office in order to prove their value.[120] Having discussed this with interview participants, Carthy notes that the prevailing attitude towards those availing of agile working arrangements is condescension: 'Barry also reached for a gendered stereotype in describing what a woman might be doing at home, assuming as he does, that she isn't working on legal matters. She is instead unloading the dishwasher'.[121] This comment was made by "Barry", an equity partner in a top tier firm, who suggested that women working from home would not answer the phone on the first ring as they would if they were in the office, to which Carthy questions: 'Should a lawyer working at home curtail toilet breaks to demonstrate constant availability?'.[122] The prevalence of this attitude within law firms suggests that it is only when you are physically present and visible to all others in the office that you are doing valuable work. Any deviation from this suggests a lack of commitment to the firm, and demerits the individual when it comes to decisions on career progression.[123]

Sommerlad and Sanderson have commented on this idea of 'commitment', noting that it is of itself inherently gendered.[124] They argue that it is predicated on a naturalised view of the independence of the public and private spheres, and the role of men and women in each.[125] They further note that studies of commitment looking at the respective hours worked by men and women, and the hours that they are willing to work, rarely, if ever, question a man's commitment to home life and the distinct work which they undertake in the private sphere.[126] Thus, it is argued, without succumbing entirely to the male model of work it is difficult to see how women might ever be seen as committed to their careers in the same way as men are. Even this may not be sufficient, however, since employers cannot distinguish in advance the women who will reduce their time commitment in work in response to childcare. 'Female' is therefore used as a proxy for future disruption and as such is a signal of poor commitment.[127] The only way out of this cycle is for women to work even longer hours than male colleagues in order to distinguish themselves from heavily gendered stereotypes.[128]

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120 *Ibid*.
121 Carthy, note 49, at 188.
122 *Ibid*.
123 For discussion on commitment to the firm, see note 62.
124 Sommerlad and Sanderson, note 51 at 19.
125 *Ibid*.
126 *Ibid*.
127 Victoria Wass and Robert McNabb 'Pay, promotion and parenthood amongst women solicitors' (2006) 10(2) *Work, employment and society* 289 at 293.
128 *Ibid* at 294.

3.1. Cultural Capital

Despite how committed an individual appears within the four walls of the office, it is clear from literature in this area that a further commitment is required from individuals through socialisation outside of office hours.[129] In doing so, practitioners attain what is referred to as 'cultural capital'. Individuals who possess cultural capital will be considered to have the social knowledge and ability that is a sign of eligibility for partnership.

The attainment of cultural capital requires that practitioners to prolong the number of hours which they will ultimately spend away from their personal lives. One practitioner in a large commercial firm described a typical work week as follows:

> 'I'd say that I would work two kinds of days; one 8am till 6pm, and another 8 till 2am, but the billable work is mainly done 8 till 6, and then you're often marketing in the evenings … three or four nights a week and then two or three times you have to go out for long lunches … building relationships with clients … there's huge pressure to get on with clients'.[130]

There is significant difficulty in seeking to define what it means to possess cultural capital, however. Sommerlad and Sanderson consider that the core cultural capital of the profession is masculinity.[131] Practices such as networking, mentoring and 'cloning' characterise relationships which are essentially male, both within private practice and the wider legal world.[132] The partnership itself is, therefore, the most concrete expression of masculine relationships.[133] Another aspect of cultural capital is the ability to attract and retain clients. For example, in one study an academic and former solicitor advised his students that 'it doesn't matter if you're the worst lawyer in the world, you'll be made partner if you bring in work through the door'.[134]

Networking with clients as a form of cultural capital has traditionally taken place in male-dominated environments: whether that be spaces that are only open to men, or

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[129] See Sommerlad and Sanderson note 51 chapters 5 and 7.
[130] Sommerlad and Sanderson, note 51, at 213.
[131] *Ibid* at 182.
[132] Cloning in this context refers to the process of "male sponsors appointing people in their own image" or seeking to reproduce the image which the firm already has resulting in the appointment of more men. One partner, for example, commented "when we choose someone, either as a trainee or a solicitor, or promote someone, we have to get on with them, so I suppose we choose people like us, who have the same interests'. Sommerlad and Sanderson, note 51 at 211.
[133] *Ibid* at 218.
[134] *Ibid* at 219.

environments that are akin to a men's locker room.[135] One participant in a study noted that the solicitor's room at the Magistrate's Court was 'still a virtually all male preserve' and 'if women do come in they have to adopt to the laddishness of it all'.[136] This articulation paints a clear picture of an environment within which women cannot comfortably fit in. As such, women are often excluded or made to feel unwelcome in a number of spaces where business deals are made, where networking occurs, and where opportunities to meet and obtain new clients arise. It becomes apparent that women are at a clear disadvantage in the attainment of cultural capital.

Another aspect of cultural capital in which masculinity affords an advantage is within mentoring structures. In some instances, firms may have adopted formal mentoring programmes in which trainee solicitors are assigned to individual mentors or mentor groups to assist with professional development. This might include mentors exposing mentees to complex transactions, or influential clients.[137] Often, however, these formal mentoring programmes operate alongside informal mentoring relationships that have been built out of mutual affinity and investment, and diversity operates as a disadvantage in this system.[138] Where partnerships are made up predominantly of white men it is likely that white men will reap the benefits when it comes to informal mentoring. Notably, commentators consider that diversity initiatives might raise difficulties where they create mentoring opportunities to assist those who do not meet the criterion of being white and/or male.[139] These programmes implicitly affirm the status and identity of white male lawyers as the dominant and ideal class of lawyer and, despite often being authorised by partners, these programmes typically mandate limited, if any, actual involvement by the partnership.[140] As a result, the mentoring programmes set up to facilitate diversity provide limited assistance to those seeking to advance within the profession.

What becomes clear is that barriers for women solicitors do not lie solely within the volume of work delegated, nor the organisational structures that prevail within corporate law firms. The culture of the profession, deriving directly from its male foundations, is deeply engrained and continues to pose difficulties for women. Until there is an

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135 For example, Round Table or Freemason events are mentioned as spaces in which networking has often occurred. Sommerlad and Sanderson, note 51 at 216.

136 *Ibid* at 223.

137 Sommerlad and Sanderson, note 51, chapter 5.

138 Russell Pearce, Eli Wald and Swethaa Ballakrishnen 'Difference Bias v Bias Awareness: Why Law Firms with the Best Intentions have Failed to Create Diverse Partnerships' (2015) 83(5) *Fordham Law Review* 2407.

139 *Ibid* at 2419.

140 *Ibid*.

acknowledgement of this fact, it will continue to be difficult for women to participate and progress on equal footing within the profession.

3.2. Cultural Constraints and COVID-19

It is beneficial, at this point, to consider the impact which the COVID-19 pandemic and the almost overnight move to agile working has had upon women. Although the full impact of the crisis has yet to be revealed, there have been some preliminary accounts suggesting that women have suffered to a greater degree.

For example, in a survey of nearly 1,500 women conducted by the National Women's Council of Ireland (NWCI) in May 2020, 85% of women responded that their caring responsibilities had increased since the onset of the pandemic, suggesting they were further shouldering the burden of unpaid work.[141] Similarly, research conducted by the Central Statistics Office demonstrated that women's well-being in Ireland has been more adversely affected by the crisis than men's, including a higher percentage of women reporting difficulties working from home than men.[142] This may be caused by a variety of factors, but it is interesting to note that one newspaper article remarks that American women are twice as likely as men to have been working at the kitchen table during the pandemic, while men tend to have a home office.[143]

Equally, cultural issues appear to persist in the face of the pandemic. One account provided of a working mother, now working from home, notes that '[h]er husband has some of the same pressures, but when he brings their children on to a video call, it is deemed adorable. There is no chance she would do the same. "Career suicide"'.[144] The same individual notes feeling unsupported by senior colleagues who have a stay-at-home partner.[145]

Conversely, it is probable that the stigma surrounding agile working arrangements has been confronted by the COVID-19 pandemic. Employers have been given the opportunity

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141 NWCI *Women's Experiences of Caring During COVID-19* (Dublin, November 2020) available at <https://www.nwci.ie/images/uploads/FINAL_Womens_Experience_of_Caring_During_COVID19_Survey_Report.pdf> (accessed on 17 January 2020).

142 Central Statistics Office (CSO) *Social Impact of COVID-19* (Dublin, April 2020) available at <https://www.cso.ie/en/releasesandpublications/ep/p-covid19/covid-19informationhub/socialandwellbeing/socialimpactofcovid-19survey/> (accessed on 17 January 2020).

143 Pilita Clark 'Women are bearing the brunt of the COVID-19 recession' (31 August 2020) available at <https://www.irishtimes.com/business/work/women-are-bearing-the-brunt-of-the-covid-19-recession-1.4342204> (accessed on 17 January 2020).

144 Emma Jacobs and Laura Noonan 'Is the COVID-19 crisis taking women back to the 1950s' (17 June 2020) available at <https://www.irishtimes.com/business/work/is-the-covid-19-crisis-taking-women-back-to-the-1950s-1.4281579> (accessed on 17 January 2020).

145 *Ibid*.

to assess whether business can continue as normal away from the office environment. Indeed, many expect that flexible working arrangements will now continue beyond the COVID-19 pandemic.[146] It will be interesting to monitor these developments, and to see whether remote working is embraced within corporate law once traditional working arrangements can resume.

4. Conclusion: The Impact of Organisational and Cultural Constraints on Women Solicitors

It follows from the foregoing discussion that corporate law firms create an environment which is conducive to greater career success by men when compared with their female colleagues. This fact is confirmed by Carthy, who undertakes a statistical analysis and confirms the existence of vertical segregation in the solicitor's profession in Ireland.[147] More specifically, she finds that being a female is the most significant factor in predicting who makes partner, and halves a lawyers' chances of progressing to partnership.[148] She further finds that motherhood significantly and negatively affects the likelihood of being a partner.[149]

Requiring women solicitors conform to the masculine model of work identified in this chapter is to echo once more the Aristotelian concept of equality. Women entering the profession are being treated 'alike', but are equally expected to adhere to working practices that actively foster their disadvantage. The prevalence of this same Aristotelian model within Irish legislation results in a structure whereby no recourse is available under employment equality laws. This is demonstrative of the failure of the Aristotelian model to recognise fundamental differences in working practices that have developed over time and, consequently, its failure to achieve substantive equality.

It is clear that in order to facilitate a greater representation of women at senior levels of the profession, and to eliminate any disparities in relation to pay, it will be necessary to bring about reform within the profession and to remove the organisational and cultural barriers which have been found to exist. Proposals for reform are initially set out in the next chapter, alongside the methodology of an empirical study conducted by the author of this thesis to inform the development of these proposals.

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146 *Ibid*.
147 Carthy, note 49.
148 *Ibid* at 252.
149 *Ibid*.

CHAPTER 3: STUDY METHODOLOGY AND REFORM PROPOSALS

1. Study Introduction and Aims

Having identified the structural and cultural advantages afforded to male solicitors, and the impact which this has on women solicitors, the focus of this chapter will be to introduce the empirical study conducted as part of the research for this thesis. The intention in conducting this study was to complement and extend the existing body of research on the solicitors' profession in Ireland, and to develop proposals for potential solutions to those barriers that have been shown to exist for women.

In defining the scope of the empirical study, the key aim was to gather the views of women who had experience working within corporate law on potential proposals for reform. Participants were encouraged to draw upon their own experience practising as a solicitor to assess whether certain proposed solutions were viable, whether they would be readily adopted by the profession and whether they successfully tackled the structures and behaviours intended to be addressed. The results of the study and the contributions of participants will, therefore, form the basis for the recommendations made in the final chapter.

2. Methodology

The research question to be addressed by the study was as follows: '*How can the barriers that exist for women working in corporate law firms in Ireland be eliminated?*'. Qualitative interviews were conducted with a view to answering this question, and interview participants were all female solicitors who, at the time of the interviews, were either working or had previously worked in corporate law firms in Dublin, Ireland.

2.1. Reform Proposals discussed with Interview Participants

Before considering the recruitment and interview processes, it is worthwhile detailing the reform proposals that were selected for discussion with interview participants as a means of addressing the difficulties outlined in chapter 2. In setting out these proposals, detail will be given on the reasons for the recommendation, and consideration will be given to the key pieces of literature and discussion in the area. As such, the following sections will consider proposals to (i) eliminate the billable hours model and move towards a model of value

billing, (ii) provide employees with a written policy on alternative and flexible working arrangements, and centralise the oversight of these arrangements, (iii) implement a gender quota on the partnership and to revise the current structures surrounding career progression, (iv) amend the Gender Pay Gap Information Bill 2019, and (v) address the masculine culture of the profession through bias awareness seminars and formal mentoring programmes.

2.1.1. Value Billing

As noted previously, the culture of long working hours and, in particular, the billable hours model presents a number of difficulties for women working within the profession.[150] Commentators have long called upon firms to abandon this method in favour of the less paternalistic model of value billing.[151] Value-based assessments are thought to be beneficial in shifting the focus from the number of hours inputted by solicitors to the actual benefits that a client has received from the legal work. In doing so, a variety of factors are taken into consideration including the complexity of the matter being billed, the number of solicitors working on the matter (including their qualifications, experience and reputation), and the outcome that has ultimately been achieved for the client.[152]

Writing in 2010, Deborah Epstein Henry noted the greater need on the part of the profession to adopt alternative billing methods due to a growing pressure from clients to move away from the uncertainty of billing by the hour.[153] However, with the commencement in Ireland of section 150 of the Legal Services Regulation Act 2015 in 2019, arguments against the unpredictable nature of legal costs have been addressed to some degree.[154] Section 150 requires solicitors receiving instructions from a client to detail the legal costs expected to be incurred or, where this is not reasonably practicable, to set out the basis upon which the costs will be calculated. What was intended by the enactment of this legislation was for there to be greater transparency on the part of solicitors when it comes to the costs of legal services. This intention can be further seen by the new duty

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150 For discussion, see chapter 2 at 2.1.

151 For discussion see: Epstein Henry, note 62, chapter 3; Unsigned Student Note 'Why Law Firms Cannot Afford to Maintain the Mommy Track' (1996) 109(6) *Harvard Law Review* 1375; and Campbell and Charlesworth, note 60.

152 *Ibid*.

153 See Epstein Henry, note 62, chapter 3.

154 Section 150 of the Legal Services Regulation Act 2015 replaces a previous provision that was contained in section 68 of the Solicitors Amendment Act 1994. For further detail on section 150, see John Elliot 'New legal costs regime under the LSRA' (2019) available at <https://www.lawsociety.ie/gazette/in-depth/costs/> (accessed on 26 April 2021).

placed upon solicitors by section 150 to issue a fresh notice in relation to costs where it becomes apparent that significant additional costs will be incurred by the client.

Despite this increased transparency in favour of clients, the internal difficulties created for women solicitors by the billable hours model have not been addressed by the Legal Services Regulation Act 2015. The continued use of the billable hours model facilitates the existence of a culture of oversight within the profession, particularly where time continues to be recorded by solicitors even where fixed costs agreements have been entered into.[155] As outlined in the previous chapter, this is detrimental to the career progression and retention of female solicitors.[156]

In seeking to effect reform it is therefore recommended that consideration be given to a model of value billing that would not require a recital of time from practitioners. Firms adopting this model could be afforded a degree of latitude in assessing the factors relevant to their calculations of legal costs, but one factor that would need to be rigidly applied for this proposal to be successful would be that firms no longer require a meticulous account of time from practitioners. Perhaps high-level assessments may be necessary in some limited circumstances, for example where a team of practitioners devote all resources to one particular client matter, but this proposal would otherwise see the elimination of the current practices surrounding time recording.

2.1.2. *Alternative Working Arrangements: increasing transparency and oversight*

Proposals addressing the difficulties experienced by those seeking alternative working arrangements ought to focus on two key areas: firstly, the inaccessibility of alternative working arrangements due to the absence of available information; and, secondly, the sustainability of those arrangements in circumstances where practitioners are not provided with an adequate level of support.[157]

Looking firstly to the issue of accessibility, it is apparent from research in this area that the current practice is for alternative working arrangements to be negotiated on an individual basis.[158] This has resulted in a series of *ad hoc* arrangements whereby the suitability of the working arrangements is often dependent on a variety of factors external to its operation.[159]

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155 For discussion see Carthy, note 49 chapter 6.
156 For discussion see chapter 2 at 2.1.
157 For discussion see chapter 2 at 2.2.
158 *Ibid*.
159 *Ibid*.

Addressing this practice, Epstein Henry suggested that it would be beneficial for firms to reduce policies on alternative working arrangements to writing.[160] Often, this approach is resisted by employers who fear that increasing transparency on alternative working arrangements would create a situation whereby all employees would seek to avail of the flexibility offered to some extent, but this is not necessarily the case.[161] Indeed, it is evident from the COVID-19 pandemic that the profession is resilient even where a majority of solicitors avail of alternative working arrangements.[162] These fears, therefore, would not appear to be well-substantiated.

Conversely, the arguments in favour of written policies on alternative working arrangements are extensive. Increasing transparency and setting out the criteria necessary to avail of alternative working arrangements has the potential to reduce the biases that currently exist where the arrangements are negotiated on an individual basis. Similarly, by providing practitioners with all of the relevant information, there is a potential for those who would not otherwise have considered themselves to be eligible for alternative arrangements to avail of them. This is particularly welcome in circumstances where the take up of alternative working arrangements remains heavily influenced by gender.[163] Increasing transparency and providing practitioners with clear, digestible information on the processes and factors influencing who can avail of alternative working arrangements therefore has significant potential in destigmatising alternative working.

It is equally important in considering policies on alternative working arrangements to address the latter issue of support for practitioners. It is only one step to make alternative working arrangements broadly available, practitioners then need to be given the resources to ensure that the new working arrangements are sustainable. Central in addressing this issue, it is proposed, is to ensure that there is an element of accountability and oversight built into policies.

In this respect, it would be beneficial for firms to designate an individual or a body whose function it is to oversee alternative working arrangements and to ensure their continued success. Centrally focusing this responsibility ensures uniformity in the operation of alternative arrangements, and equally provides practitioners with a forum for raising any issues that might arise. Equally, having this structure in place encourages a consideration

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160 See Epstein Henry, note 62, chapter 3.

161 *Ibid*.

162 For example, see: 'Annual report highlights COVID-19 'resilience'' (Law Society Gazette, 2020) available at <https://www.lawsociety.ie/gazette/top-stories/annual-report-highlights-covid-19-resilience/> (accessed on 26 April 2021).

163 For discussion, see: chapter 1 at 1.1; Bornstein, note 101; Coltrane et al, note 101; and, Bagust, note 101.

of operation of alternative working arrangements. This might be achieved by having the designated individual or body act as a facilitator, prompting communication between the practitioner and the partner with whom they work on how the arrangements will work in practice. Importantly, a review process should be built into any such programme, to ensure that arrangements are regularly assessed, and that the practitioner is being supported beyond the initial take up of the arrangements.

The above measures are of particular importance for women in the profession for two key reasons. Firstly, noting the current gendered take up of alternative working arrangements, this measure will provide those solicitors who do take up alternative working arrangements with the necessary information and assistance to ensure that they can access viable working arrangements. Secondly, by making this information centrally available and demonstrating that alternative working arrangements can be successfully availed of, these proposals have the potential to encourage a wider group of practitioners to consider alternative working.

2.1.3. *Career Progression: gender quotas and core competencies*

In order to address the differing rates of career progression and gender representation at the senior levels of the profession, a combination of proposals ought to be considered.[164] Firstly, strict measures should be considered to increase diversity within the partnership through the use of quotas. Secondly, a more flexible approach ought to be considered in relation to the career progression of practitioners. This could be achieved by adopting a model that focuses on the competencies of the practitioner in performance reviews, as opposed to the current emphasis that is being placed on the billable hours of the practitioner.[165]

Gender quotas are often heavily contested, and opponents favour an approach in which assessments for promotions are based on the concept of 'merit'.[166] This idea of merit poses its own issues, however, with one commentator noting that within the legal profession ''merit' goes hand in hand with the notion of the 'ideal lawyer' who is traditionally male

[164] For discussion, see chapter 1 and chapter 2.

[165] See chapter 2 at 2.1.

[166] For discussion, see: Peta Spender 'Gender Quotas on Boards – Is it Time for Australia to Lean In?' (2015) 20(1) *Deakin Law Review* 95; Timothy Besley 'Gender Quotas and the Crisis of the Mediocre Man: Theory and Evidence from Sweden' (2017) 107(8) *The American Economic Review* 2204; and, Louise Grey 'Reflections from a Young Woman Entering the Profession – would a female partner quota address gender inequality within the New Zealand legal profession?' (2017) 11(1) *New Zealand Women's Law Journal* 51.

and not the primary caregiver'.[167] Equally, individuals fear tokenism and the potential for there to be an assumption by other practitioners that they were only promoted to achieve a particular gender quota.[168] This assumption is inaccurate, however, with one study examining the use of gender quotas in politics finding that the overall competency of the political class increased once quotas had been adopted.[169] On the whole, gender quotas are an important mechanism for equality and could be beneficially adopted by law firms to establish a greater female representation within the partnership. Indeed, as one commentator noted, where quotas are adopted they can increase women's representation in three key ways: descriptively, substantively and symbolically.[170] By increasing the number of women at the senior level of the profession (*descriptive*), women are given a greater role in policy decisions (*substantive*), and can act as role models for younger women in the profession thereby reducing the high levels of attrition (*symbolic*).[171] Coupled with the other proposals in this section, it is possible that gender quotas could be utilised as a valuable tool for female solicitors in corporate law firms.

The second aspect of a solicitor's career progression that ought to be considered concerns the current method of assessment in performance reviews and promotion decisions.[172] As noted earlier, billable targets and quotas often bear a significant weight in assessing a practitioner's eligibility for partnership.[173] Proposing to remove this strict practice of recording time, and with it any reference to quotas and targets, would consequently require a new method for assessing a practitioner's professional growth. It is therefore proposed that consideration is given to the 'core competency' model of promotion.[174] This model envisages a move away from the lockstep evaluation model currently prevalent within law firms, towards a merit-based system which examines and facilitates the development of the competencies of a practitioner. Firms adopting this approach ought to set out a list of the required competencies that apply broadly across all relevant areas of practice, providing definitions and expectations for those competencies.[175] Examples might include a focus on managerial skills, communication skills and research skills. Practitioners might then be given the opportunity to develop those skills through arranged presentations, research

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167 See Grey, note 166.
168 *Ibid*.
169 See Besley, note 166.
170 See Spender, note 166.
171 *Ibid*.
172 For discussion, see chapter 2 at 2.1.
173 *Ibid*.
174 For discussion, see: Epstein Henry, note 62, chapter 4; Peter Sloan, *From Classes to Competencies, Lockstep to Levels: how one law firm discarded lockstep associate advancement and replaced it with an associate level system* (Blackwell Sanders LLP, 2007)
175 *Ibid*.

publications or project management opportunities. Firms would be encouraged to provide training for each of the competencies and would have a role in ensuring the development of skills by practitioners. This professional growth would then become the focus of performance reviews, as opposed to billable targets. Once effectively implemented, firms could adopt what would essentially become a system of levels for each of the competencies with corresponding compensation bands that are commensurate with the competencies of the practitioner.

Significantly, and in order to ensure the uniform implementation of any such system, it would be necessary to have oversight of the system by an individual or body who could safeguard it from the gender biases that are currently inherent in the lockstep process.[176] Epstein Henry notes that in order to ensure a competency system is free from biases, competencies would have to be clearly and specifically defined and the performance evaluations of practitioners standardised.[177] If this is successfully achieved, the system would operate to reduce instances of subjectivity and individual bias.[178]

It is worth noting that the core competency model does not disadvantage those who avail of alternative working arrangements in the same way that the current model does. So long as practitioners who avail of reduced hour or agile arrangements are given the same opportunities to develop competencies, this assessment model has the potential to effectively eliminate the negative consequences that are associated with non-standard working arrangements. This is a significant benefit for women solicitors, whose career progression has been shown be negatively affected both by reliance on billable hours in performance assessments, and the take up of alternative arrangements.[179] Equally, consideration should be given to how firms stand to benefit from adopting this proposal. By increasing the firm's output in terms of presentations and publications, this model has the potential to create a valuable presence for the firm within the legal sphere. This can create significant networking advantages, both for the firm and for individual practitioners, and demonstrates the expertise that are held by a firm within specified practice areas. Additionally, focusing on the competencies of practitioners increases the client experience and this can result in further engagement on subsequent transactions. Finally, and significantly, creating an environment wherein the professional growth and development of a solicitor is encouraged has the potential to reduce attrition rates.

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[176] See Epstein Henry, note 62 at 81.
[177] *Ibid*.
[178] *Ibid* at 82.
[179] For discussion see chapter 2 at 2.1 and 2.2.

2.1.4. Gender Pay Gap Information Bill 2019

In considering gender pay reporting, interview participants will be asked to consider the remit of the Gender Pay Gap Information Bill 2019 (the "Bill").[180] This Bill will allow the Minister to make regulations requiring employers to publish information relating to the pay of their employees, to demonstrate differences in pay between male and female employees. Pay reporting will initially apply to companies with over 250 employees, with the threshold reducing to 50 or more over time.[181]

A majority of the detail for gender pay reporting will be included in subsequent regulations prepared by the Minister for Justice and Equality. As a result, it is difficult to assess how gender pay reporting measures will operate in practice. However, the Bill does provide some guidance on the detail that can be considered by the Minister in preparing any such regulations. This includes the classes of employers and employees to which the regulations apply, and how the remuneration or classes of remuneration of employees is to be calculated.[182] Equally, the Bill sets out certain information that must be included in the Regulations of the Minister, including the requirement for employers to publish, concurrently with the publication of gender pay data, a statement setting out why any gender pay gap exists in the employer's opinion and the measures being taken or proposed to be taken by the employer to eliminate or reduce those differences.[183]

Notably, this statement to be published by an employer is not enforceable and if an employer makes no attempt to reduce the gender pay gap that cannot be sanctioned. Consequently, consideration ought to be given to the benefit of an amendment to the Bill implementing an enforcement mechanism for employer statements. Any such amendment need not be penal in nature, but might take the form of an incentive for those employers who actively attempt to eliminate their gender pay gap.

2.1.5. Corporate Culture: bias awareness training and formal mentoring programmes

The final area in which proposals will be made for reform is in relation to the culture of the profession.[184] This is an area which is perhaps the most difficult to reform and will require

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[180] Note that since conducting interviews, this Bill has been enacted and is now the Gender Pay Gap Information Act 2021.
[181] Section 2 of the Gender Pay Gap Information Bill 2019.
[182] *Ibid.*
[183] *Ibid.*
[184] For discussion, see chapter 2 at 3.1.

intervention at a number of levels. As a result, the proposals outlined below ought to be considered in conjunction with the proposals previously discussed with the intention of addressing the cultural constraints identified.[185]

Firstly, and as a means of drawing out the difficulties that are experienced by women within the profession, one option for firms is to conduct educational seminars on bias awareness. Bias awareness training would encourage practitioners to identify their own biases and harmful behaviours, with the aim of reducing their occurrence in future interactions. At present, however, the effectiveness of unconscious bias training is largely unknown.[186] Commentators examining the area have suggested several useful improvements that can be made to bias awareness training as it currently operates.[187] Firstly, unconscious bias training needs to be complemented by affirmative action measures including targets to increase the numbers of women in leadership or male dominated areas; secondly, practices beyond training are necessary through broader, ongoing workplace interventions, and; thirdly, the implementation and effectiveness of unconscious bias training needs to be regularly evaluated.[188] Combined with the other reform proposals outlined in this section, it is possible that a properly considered and well-conducted unconscious bias programme could make a significant impact in corporate law firms.

However, firms adopting this proposal will need to make several decisions to ensure that training is thoroughly considered and seen as more than a 'tick box' exercise by attendees. Importantly, firms should consider whether standardised training is appropriate for all employees, particularly given that the level of detail required by those in positions of authority may not be appropriate for other employee groups. Equally, thought should be given to whether training ought to be revisited on a continuous basis and maintained as part of a broader training programme. Finally, and importantly, firms adopting this proposal would be encouraged to ensure that there is some measure in place to receive feedback on training and to allow programmes to grow and develop.

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185 *Ibid*.

186 Tinna Nielson and Lisa Kepinski 'Unconscious Bias Awareness Training is Hot, but the Outcome is Not: so what to do about it?' available at <https://medium.com/@tinnaCnielsen/unconscious-bias-awareness-training-is-hot-but-the-outcome-is-not-c00ca0b7e037> (accessed on 3 March 2021).

187 Sue Williamson and Meraiah Foley 'Unconscious Bias Training: The 'Silver Bullet' for Gender Equity?' (2018) 77(3) *Australian Journal of Public Administration* 355.

188 *Ibid*.

A second proposal designed to assist with reforming the culture of the profession concerns informal mentoring relationships.[189] Although it is practically impossible to prevent instances of informal mentoring from occurring, one potential method to reduce the impact which they have on women would be to create formal mentoring programmes to assist those who might not otherwise have the benefit of a mentor. Formal programmes are often dismissed on the basis that the process of matching a mentor with a mentee is imperfect, and formal structures do not adequately mirror the relationships that arise informally.[190] However, this is not an impossible hurdle to overcome and there are ways in which programmes can be adjusted. One possibility might be to create less formal mentoring circles, as opposed to the standard one-to-one mentoring.[191] This might involve five to ten solicitors, all at different stages in their careers, who would meet informally as a group. The ultimate intention in creating this mentoring circle would be to facilitate internal networking within the firm, and to expose solicitors to potential transactions or networking events that they might not otherwise have been exposed to. An additional benefit is that this has the potential to create a space where the informal relationships mentioned above can arise. However, care would need to be taken to ensure that any subsequent informal relationships do not further the gender biases that the formal programme is designed to eliminate. An assessment of the success of the programme at regular intervals would likely be sufficient. Similarly, firms could seek to host larger internal networking events, and create an informal environment where practitioners are encouraged to meet others and develop new relationships. By instigating these events, women solicitors are given more of an opportunity to develop the same relationships that exist for men under the current informal structure.

2.2. Recruiting Participants

Having outlined the analysis of proposals to be discussed with the study participants, the focus will now shift to a consideration of the recruitment phase of the study. Participants for the study were recruited on the basis that they either held at the time of the interview, or had held at some time beforehand, a practising certificate issued by the Law Society of Ireland and had experience working in corporate law in Dublin, Ireland. The geographical scope of the study was limited to Dublin on the basis that, had social distancing guidelines

[189] For discussion, see chapter 2 at 3.1.
[190] See Epstein Henry, note 62 at 111.
[191] *Ibid*.

been lifted and the interviews were conducted in person, it was the most accessible area in which to conduct the interviews.

In approaching potential candidates for participation in the study, efforts were made to recruit participants at different levels of the profession. Potential participants were identified and contacted using information that was made publicly available on law firm websites or through LinkedIn. As the scope of the study was restricted to corporate law firms, the practice areas of firms were assessed to ensure that they met the relevant criteria. Searches on the names of corporate law firms were also performed on LinkedIn to identify practitioners whose listed employment was, or had previously been, a corporate law firm. These searches were filtered by employment category.

Initially, 19 female solicitors were contacted in late December 2020 by email requesting their participation in the research study. The response rate to this recruitment effort was low, but this was improved with a subsequent follow-up email. Noting the increase in responses, this method of sending follow-up emails was engaged to increase response rates during later recruitment efforts. Following the initial batch of recruitment emails, a second recruitment effort was engaged, and 11 practitioners were contacted by email in early February 2021. Follow up emails were sent approximately one week after the first email. A third and final recruitment effort was made in late February 2021, with follow up emails being sent mid-March 2021. 20 participants were contacted by email in the final recruitment effort. Throughout the recruitment process, automatic replies were received on several occasions noting that the practitioner was ‘out of office’, either on secondment or maternity leave. Of the responses that were received, several expressed a reluctance to engage with the study. This was often due to a practitioner’s heavy workload, or other commitments that meant they would not have the time to participate in the study. Some practitioners also expressed a reluctance to engage as they were of the view that, due to certain identifying characteristics, there was the potential for them to be identified even after interview transcripts had been anonymised and pseudonymised. In one instance a practitioner noted that she did not feel as though she had experienced any inequality working as a female in the profession.

Overall, 50 female solicitors were contacted requesting their participation in the study, and this resulted in the recruitment of 4 participants. One further participant was recruited through a snowballing process. Snowballing, in this context, refers to the process whereby

existing interview candidates recruit future subjects from among their acquaintances.[192] This technique was considered to be appropriate given that the study was to provide an initial evidential basis, rather than a representative view from members of the profession. The participants had all, at differing points in their career, worked in corporate law firms in Dublin, Ireland. Not all participants were holding practising certificates at the time of the interviews. Of those who were practising, two participants were at the associate level and one participant was at partner level. Participants were made aware that the researcher conducting the study was also practising as a trainee solicitor at the time of the interviews.

In advance of interviews, participants were provided with a Participant Information Sheet, a Consent Form and a Privacy Notice, each of which is appended to this study.[193] Participants were also provided with a list of interview themes, and this was circulated at least 48 hours in advance of the scheduled interview time to encourage prior consideration of the topics to be discussed.[194]

2.3. Interview Process

Each participant was engaged in one interview, lasting between 1 and 1½ hours. Interviews were conducted between February and April 2021. Due to the ongoing COVID-19 pandemic and social distancing guidelines that had been issued both by the University of Glasgow and the Irish Government, interviews were conducted remotely. In all instances participants were given the option for the interview to be conducted either over the phone or through the video conferencing platform, Zoom. All candidates elected for the interviews to occur over Zoom. Given that each of the participants had gathered experience working remotely over several months, conducting the interviews remotely provided no difficulties for data collection.

A list of questions based on the interview themes were prepared in advance of the interviews and each interview was structured around those questions. In some instances, the questions and themes were modified to take into account the answers given by participants. During the interviews, the participants were provided with a high-level summary of the research in the area, and the key issues that had been identified for women practising as solicitors. The issues outlined to the participants were those which are set out

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[192] For a discussion of recruitment techniques, see Nigel King and Christine Horrocks, *Interviews in Qualitative Research* (2nd ed, 2018) chapter 4.

[193] See Appendix 1, Appendix 2 and Appendix 3, respectively.

[194] See Appendix 4.

in greater detail in chapter 2. Proposals addressing those issues, based on the analysis provided in the preceding sections, were then put forward for consideration and discussion by the participants. Participants were encouraged to consider whether they would modify or amend the proposals put forward or, if the proposals were considered altogether unsuitable, to propose an alternative method of reform. Given the number of participants to the study, the views expressed by the participants are not representative of the profession as a whole. Rather, given the experience of the participants working within corporate law firms in Ireland, the considerations which they have given to the proposals provided a valuable insight into the viability of reforming the profession to increase female participation.

All interviews were audio-recorded with the consent of the participants. Recordings were subsequently transcribed in full, and copies of the transcripts were sent to the participants for their approval and to ensure that participants were satisfied that they accurately reflected the discussions that had occurred. All of the participants subsequently approved the transcripts, with only one participant suggesting minor modifications. A separate participant also followed up by email to clarify a point she had made during her interview and that clarification has been taken into consideration in the analysis that occurs in the following chapter.

3. Concluding Remarks

Interviews conducted with participants resulted in an in-depth analysis of the proposals for reform that have been outlined in this chapter. Participants engaged with the content discussed in the interviews and provided a valuable insight into how these proposals might operate in practice. Equally, participants proposed alternative solutions and remarked on how they believed the profession might be reformed to reduce instances of gender inequality. The following chapter will set out the data collected from the research study, and will analyse the findings.

CHAPTER 4: STUDY FINDINGS AND ANALYSIS

1. Introduction

Following on from the discussion in the preceding chapter, this chapter will present the key findings of qualitative interviews. Participants to this study gave a valuable insight into the potential operation of proposals and noted the additional ways in which greater participation by women solicitors could be secured. Equally, participants expressed both a need and a demand for reform, and considered that any failure to do so would result in a continued loss of female talent.

This study evidences the interventions that are necessary to achieve greater gender equality within the profession. Indeed, the accounts of participants detailed in this chapter will demonstrate the significance of change occurring from within the partnership in order to achieve equality within the profession as a whole. Equally, this study will demonstrate some of the central concerns arising for women solicitors as a result of the COVID-19 pandemic, and how these concerns might be managed by firms going forward.

The key findings made by this study are taken into consideration in the recommendations put forward in the concluding chapter to this thesis.

2. Culture of Long Working Hours and Value Billing

Discussions with participants on the culture of long working hours concentrated on several themes. Significantly, a majority of the participants reiterated the findings set out in previous research that the culture of long working hours does compound the inequality experienced by women working within the profession. Indeed, Participant A noted that 'if I were to decide to have a family at some point it just, to me, is completely incompatible with the way that we work. And that's because of the hours and not because of anything else'.

In discussing the role of the billable hours model in contributing to this culture of long working hours, some participants expressed the view that this was not among one of the central concerns for them at this time.[195] Indeed for Participant A, due to the busy nature of the practice area in which she worked, quotas and targets were not much of a concern. For the participant, these were often met with ease, and months in advance of the year end.

[195] For further discussion see chapter 2, at 2.1.

However, there was an acknowledgement that for others the pressures created by targets and quotas was felt more significantly. Conversely, for Participant B, it was considered that in some practice areas it might be 'easier to throw time on to a matter without anyone looking behind it', and as a result the existing bonus structures operate to their benefit.

This inflation of hours was also cited by Participant C as one of the difficulties that is exacerbated by the billable hours model. Speaking to this, the participant noted that she had no major issue with the model but continued: 'I have an issue if people are rewarded or get a bonus purely based on billable hours'. In considering the practice of recording excessive hours, the participant opined that this meant people are 'either working those hours or just bill excessive hours'. In the participant's view, what ought to be considered by firms using billable hours to assess a practitioner's eligibility for a bonus or promotion is the time that ultimately gets billed to the client, as opposed to the time that has been recorded. She considered 'if I record 2000 hours in a year, I'll get a really big bonus. But in reality, the firm may only be able to bill 1400 hours that I have billed because I have amplified my time so much'. She continued 'I don't think that behaviour should be rewarded', but that the concept of billable hours is 'quite fair' insofar as people are 'getting the same opportunity to bill the hours, the same opportunity to work on good clients and they are accurately recording their time'. Participant C did note the difference between amplifying hours, and a situation where a piece of work might take longer than anticipated. She considered:

> 'I would always encourage everyone on my team to record as much time as possible. So even if they're doing something and they think "that contract review only should have taken me two hours, so I'm only going to record two hours" – but if it took them four, they record the four hours because that's what it took them. What I don't want is somebody recording six hours because they think "Oh well I need to look like I have been here all night"'.

Although the example given relates to the role which the billable hours model plays in facilitating the culture of visibility and presenteeism in the profession, this is inextricably linked with the current culture of long working hours.[196] Equally, the participant considered 'I don't think people should be getting bonuses for time recorded, if that time recorded isn't genuine'.

[196] For a discussion of the role that the billable hours model plays in the culture of visibility and presenteeism, see chapter 2 at 3.1.

In querying this practice of inflating hours, several additional considerations were made by Participant C. In particular, the behaviours of men and women were considered in relation to the practice of recording time. The participant noted 'I think there's just some behaviours that come more naturally to a lot of men and don't come naturally to a lot of women', but the participant did think that there are men and women who can fall into either category. She continued that some of the more 'dominant men' who end up in law might 'have no issue with putting 20 hours on the clock because their work deserves that', but other less confident people might consider 'I should only really be putting 6 hours on the clock'. She therefore considered that what is important is 'encouraging everyone regardless of their work to actually record their time', with the hope that those who under-record their time start to record more, and those who over-record, record less. The participant continued 'instead of this big gap, you're bringing both sort of towards the middle'. Intervention of this nature would need to occur by training, and Participant C noted that this might uncover some of the biases in the partnership: 'Some partners would have behaved like that when they were younger and therefore they would struggle to call it out, or they would see themselves in younger versions … and don't really see any harm in it'. However, and to address this unconscious bias, Participant C considered that it would be necessary to show partners the discrepancies in the numbers of hours being recorded and the hours actually billed. By demonstrating the difficulties that this creates from a financial perspective, it could result in greater intervention by those partners.

Noting the comments made by Participant A on the busy nature of her practice area, and the limited impact of the billable hours model, the participant continued with a reflection on the key driver of the long working hours in her own experience. The central focus for Participant A was on the unrealistic demands that can often be made by clients and the accession to those demands by the partners. Speaking to this issue, she noted: 'We don't say no to clients, we don't push back on clients, we just do the work, and we get it done even if they're being totally unreasonable'. When queried on how client expectations might be managed to alleviate the difficulties that this creates, the participant conceded that this would be difficult to address. Due to the competitive nature of the legal market in Ireland, the participant felt that there is a fear that if the firm were to push back on client expectations, the client would go elsewhere. With that in mind, however, the participant did consider that pushing back on client expectations would likely achieve success at least thirty to forty per cent of the time. She considered it to be a 'frustration' that 'every junior person in a firm will have' when a partner agrees to an unreasonable deadline with a client,

but it was clear from the tone of the client that if they'd asked to extend the deadline by a day or two that would have been fine.

It is clear that more consideration needs to be given by the partners to the resources available within their teams. Participant A considered that it needs to be an 'exceptional thing' to ask a practitioner to give up time outside of work to help on a matter, rather than the norm. she felt that the expectation is that it is 'very acceptable, and not an inconvenience' to ask that of a practitioner, and that the attitude is that it's 'not something anyone should have an issue with'. For Participant A, fostering this approach means that the partners aren't doing what they should in terms of managing client expectations, and to avoid instances of working beyond agreed hours.

Throughout the interview process, it was noted by several participants that it is no longer the norm for clients to engage a firm without negotiating a fee quote at the outset. Participant B, speaking to this point, noted that 'projects with unlimited billable hours that are going to be paid by clients is actually a thing of the past, or very unusual at this stage'.

Discussing how the billing process operated within her own practice area, Participant E noted that clients have come to expect a very detailed fee estimate at the outset of the project. This was achieved through a collaborative process with the client, wherein the steps of the proposed project were discussed, as well as any contingencies that might arise. Participant E continued that the 'number of hours worked does come into that when calculating it, but things like complexity and staggering work among appropriate team members at proper levels also did'. Participant E considered that this increased emphasis on the result sought by the client rather than the hours worked by the solicitors created a benefit for women in terms of the working culture. Continuing, she considered 'if it's less about how many hours were spent and more about what the end product is and the result the client wanted, it gives a little more flexibility on how to work around it'.

2.4 Key Findings

It was clear from discussions with participants that reforming the means by which a firm bills its clients would not be sufficient of itself to address the culture of long working hours. Intervention is instead required at a variety of different levels in order to create a workplace culture that permits solicitors to have a work-life balance. This is particularly apparent in the account given by Participant A of the client expectations. Equally,

Participant C gave valuable insight into the impact of unconscious bias in time recording practices and how this might be resolved.

Nevertheless, the reported rise in the use of fee quotes is to be welcomed. This collaborative approach between firms and their clients on fee expectations lays a significant amount of the groundwork for models of value billing. Concentrating the focus on the result sought by the client and assessing the value that the legal work brings to the client, as opposed to a strict recital of time, facilitates flexibility and collaboration for solicitors. However, the continued requirement to record hours despite the use of fee quotes does means that some of the difficulties inherent in the billable hours model will persist.[197]

3. Alternative Working Arrangements

In discussing the topic of alternative working arrangements with participants, the focus was on two areas of concern: the use of written policies to set out non-standard working arrangements and the need for oversight and accountability where alternative working arrangements are taken up by practitioners.[198]

3.1. Written Policies on Alternative Working Arrangements

All interview participants considered that there was merit in reducing policies on alternative working arrangements to writing. Noting the benefit, however, participants also considered the reluctance that is likely to exist on behalf of employers. Participant C, in particular, noted:

> 'it's the idea that if you carefully write something down that people will take advantage of the flexibility that you're giving them. And that's a bit of nonsense because I would see one hundred times over that if a business allows someone to work flexibly, or to work per the needs of their family, male or female, that the employer will get it back in spades'.

Similarly, Participant E opined 'I think if there are actual straightforward policies in place that are effectively communicated to people in the firm and people have an equal opportunity to take them, then I think that's really positive'. In this respect, one participant

[197] For discussion see chapter 2 at 2.1.
[198] For a discussion, see chapter 3 at 2.1.2.

gave an example of a written policy that had been introduced in her firm which gave practitioners the opportunity to work from home for one day every two weeks. The participant noted that she had an initial reluctance to take up this arrangement, particularly given that she felt she had no pressing need to work from home. She also expressed the concern that it might not 'look good' to work from home where there was no immediate need. However, following encouragement by her partner to take up the opportunity, the participant commented that it had a positive impact on her working arrangements. Consequently, the participant felt that it is essential that where written policies are put in place that they are regularly reviewed and evaluated. Drawing upon her own experience, she considered 'maybe [the firm] need to communicate a bit better with the partners and ask them to communicate with their team, because it means a lot more when your direct partner says "consider doing this", as opposed to a general email going around the whole firm'.

Similarly, another participant discussed a pilot programme that had been introduced in her firm, allowing employees to work remotely for one day per week. The participant noted that she had engaged in the programme, and considered it to be 'just transformative, in terms of my quality of life', and 'hugely impactful on reducing my general level of stress'. The participant spoke to the success of the programme, noting that it had been rolled out in a very clear and transparent way. She further noted that the programme operated so that when a practitioner requested a remote working day, there was no need to justify the request to the partner. Rather partners would have to justify any refusals. Equally, when the programme was launched it was 'launched publicly' and there was 'huge backing' by well-respected individuals within the firm. She considered that these factors were significant in the overall success of the programme.

3.2. Successful Working Arrangements: Oversight and Accountability

Participants were further asked to consider the role of an independent third party, perhaps HR, in overseeing and managing alternative working arrangements. In general, participants felt that oversight and accountability were important principles that would ensure the effectiveness of alternative working arrangements. In this regard, Participant A noted that

> 'it's almost frustrating when you see one person having an arrangement that works really well, and they work on a different team in the same department – and their

> work isn't any different – but your partner's view is that you couldn't possibly do this job if someone is missing a day a week'.

Accordingly, oversight and accountability were considered by the participant to be 'really important'.

However, the responses of participants varied on who might oversee these arrangements. Indeed, Participant B noted that not all corporate law firms have a HR role. This function is often taken up by the partners which means that the 'independent person' is missing. Noting the difficulty this creates, Participant B continued 'you train as a lawyer, and you work as a lawyer, and you are promoted to partner and all of a sudden you're a manager'. The participant considered that the intervention of an intermediary equipped to manage alternative working arrangements would be a valuable benefit.

Conversely, Participant E felt that although an intermediary would be beneficial, it is not the entire solution. She noted that 'with the best will in the world HR doesn't really get what it is that we're doing'. She continued that it isn't possible for the work that solicitors are doing to be 'cut into neat commodities' that can be divided up and easily managed in their absence. What Participant E considered most important was 'front-loading' the process and ensuring that thought be put into how the arrangement will work in practice. Consideration will need to be given to what it is that a practitioner does on a day-to-day basis and how their time is spent 'most fruitfully'. Once that has been determined, thought will need to be given to how the workload can be condensed into a three-day week, for example, and which of the tasks can be reallocated. When queried on how front-loading the process might be encouraged, Participant E felt that work would need to be done on both sides. There is a need on the part of the partner to understand the demands of the practitioner, but equally the practitioner will need to communicate any difficulties they might be having. The participant considered that training would be beneficial to understand the 'front-loading' process, but she noted that 'it's not at all legal people that you want doing that training'. Instead, she felt, professionals such as project management consultants could provide a valuable insight by providing high level training, and in doing so the operation of alternative working arrangements is likely to become more successful.

3.3. COVID-19 and Remote Working

Finally, participants were asked to consider the COVID-19 pandemic and the move by a majority of the profession to remote working arrangements. Participants were encouraged

to reflect on lessons that have been learned by the profession within this time, and how those lessons might be implemented in future working arrangements.

For Participant D, the move to remote working by the profession has shown that 'it can be done' and that a physical presence in the office is not a necessary requirement for work to be done. However, the participant did note the stigma that has often accompanied those who take up alternative working arrangements. She noted that it is important to have a policy in place for this reason, to ensure that those who do take up these arrangements are still progressing up the ladder.

For Participant C, the central concern going forward related to the idea of trust. The participant noted that 'in particular over the last few months that trust has been lost by employees more than employers' and considered the value of face-to-face interactions and communications in building that trust. Expanding on this, the participant considered that 'employees are kind of saying "we don't trust anything anymore. If I can't see a colleague doing work I presume that they're not doing anything. I presume they're watching Netflix all day. If I can't see my boss enough I presume he doesn't care, or she's not involved"'. The participant noted that, in particular, a lot of trust had been lost by those who were put on pay-cuts for a continued period of time. Separately, discussing the plans that were being discussed by the Irish Government to provide employees with a legislative right to request remote working arrangements, the participant noted that significant efforts will have to be made by employers to ensure that this is not heavily influenced by gender. She noted 'if 70% of our applications for remote working are women, that has to be an issue … instead of breaking the women down we need to bring the men up'. The participant considered that it might be necessary to mandate that certain employees work from home to ensure that remote working is a balanced solution.

3.4. Key Findings

It was apparent from discussions with participants that implementing a policy on alternative working arrangements was a viable and valuable solution. However, drawing upon their respective experiences, participants made it clear that in order for any such policy to be successful it would be necessary to ensure that it was clear, transparent and accessible. Important also is ensuring that any such policy introduced by a firm is actively backed and supported by the firm, and that practitioners are encouraged to engage in the opportunities that are made available to them. However, as noted by Participant C in her

discussion of remote working arrangements post-COVID, firms will need to ensure that the take-up of these arrangements is not heavily influenced by gender, ultimately creating a further gender divide between men and women in the profession.

On the take-up and oversight of arrangements, it is apparent that considerable thought ought to be given to how these might operate in practice. In this respect, the reasonings of Participant E on front-loading the process would assist in creating viable working arrangements for practitioners. Equally, permitting oversight by an intermediary not involved in the partnership would allow practitioners to approach someone who is properly trained to manage their concerns, creating more effective results.

4. Career Progression

Discussions with participants on the career progression of female solicitors centred primarily on placing a gender quota on the partnership of the firm to increase female representation. Participants were also asked to consider the current assessments that exist for bonuses and promotions, and the merit or otherwise of introducing a core competencies model.

4.1. Gender Quotas

In general participants were in favour of the proposal to place a gender quota on law firm partnerships, albeit with some reluctance. However, not all participants were in favour, with Participant A considering that quotas would 'sow a huge amount of discord in a firm'. Participant A further noted that quotas may be difficult to implement, particularly where the role of partner is a particularly difficult role to achieve. She considered it might be unfair to dictate, for example, that where a firm intends to promote six employees to partner within one year this must include a specified number of women.

Other participants expressed a similar hesitancy, but noted the positive change that quotas might bring about. Participant D, for example, expressed 'I am not particularly enamoured with them', but continued 'there is a merit in having gender quotas, and policies and principles in place to ensure that more and more females are getting promoted'. Similarly, Participant B expressed:

> 'generally I don't agree with them, it should be based on merit. But I think for the right note to be hit, the pendulum probably has to swing. It does strike me that the pendulum does need to be forced before it will drop at the right spot'.

Some participants were keen to see gender quotas introduced, with Participant E noting '[g]ender quotas are absolutely necessary'. She continued:

> 'the arguments against gender quotas tend to be "people need to be promoted on merit". And I don't know why people are still making this argument because how many times do you need to debunk it? We're at a point where I think female trainees outnumber male trainees, and female law undergrads are outnumbering male … It's not that the women are not capable or are not able to do this work, or not good enough or not competent enough. So what's the problem? There is a problem there and it's not to do with merit, and it has to be fixed'.

Participant C expressed similar remarks in favour of gender quotas, but considered that any quotas adopted by firms would need to be clearly defined to be effective, giving the example of a firm expressing that they would commit to '40% female partners by 2024'. The participant felt that this would create a target for firms, and provided a means by which the success of the firm could be measured. However, the participant did note that quotas are often accompanied by stigma and the potential to reduce a practitioner's achievements by suggesting 'she only got [promoted] because she was a woman'. Participant B expressed a concern that this might affect the credibility of the practitioner, noting that 'if you're appointed to something based on your gender, but somebody else deserves a position, I'd imagine you don't really have a whole pile of respect at the table'.

4.2 Core Competencies: A new model of assessment?

The second proposal that participants were asked to consider related to the model of core competencies, and the use of this model in assessing a practitioner's eligibility for a bonus or promotion.[199] Due to time constraints in the interviews, not all participants were given the opportunity to consider this proposal. However, those who did consider this proposal were in favour of placing an increased emphasis on the competencies of the practitioner.

For Participant D, there was an acknowledgement that core competencies were already being assessed by her firm within performance reviews. However, noting the difficulties that the focus on competencies has while the billable hours model remains the norm, the participant remarked 'it's at a cost to you because it's a case of having to put all of those hours in on top of your billable hours'. Participant D therefore felt that it would be beneficial to replace the current system of assessment which uses billable hours as a key

[199] For discussion, see chapter 3 at 2.1.3.

determination in bonus allocation and promotion decisions with the core competency model. Participant D felt that in doing so, developing competencies would no longer be seen as a sacrifice 'to the cost of your billables, which are they key things coming back to your bonus'. She further noted that it is valuable for firms to encourage practitioners to develop their competencies, because 'those are the things that the firm does benefit from in the long term'. Speaking to models of alternative billing, Participant D made some further remarks that are of interest in considering new forms of assessment. In this regard, the participant considered that firms should adopt models of billing that credit those who spend additional hours training and managing other team members, or who otherwise engage in business development activities. In Participant D's view, 'there are some people who are exceptionally good at it and they may not get the same credit for that that others would get for the billable hours'.

Similarly, Participant B expressed the view that the current assessment focusing on billable hours is 'completely overplayed' and considered it would be a benefit to move towards the model of assessing a practitioner's core competencies.

4.3 Key Findings

Overall, it was apparent from discussions with participants that although there was some reluctance towards gender quotas, they were likely to have a positive impact. However, it was noted by some participants that for quotas to be effective, a realistic and clear target would need to be set by firms. Having a target in place against which performance could be measured creates accountability. Nevertheless, the associated stigma with gender quotas does remain and is likely to arise if partnership quotas were introduced.

Equally, it was clear from discussions with participants that there is merit to firms adopting a model of core competencies. In order to ensure the success of the model there is a need to reduce or eliminate the current focus that is placed on billable hours. As such, performance reviews would only focus on the competencies and skills of a practitioner, and no reference would be made to hours recorded. In doing so, practitioners would be given space and encouragement by the firm to develop their competencies without the concern that it might be to the detriment of their overall career progression.

5. Gender Pay Gap Information Bill 2019[200]

Participants were asked to consider the Gender Pay Gap Information Bill 2019 that was before the Oireachtas (Irish Parliament) at the time of the interviews. Participants were generally in favour of gender pay reporting, with Participant A noting that 'transparency is the friend of everyone who is not in charge'. Participants all generally felt that this information would be beneficial, particularly for those who think they might be paid less than others at an equivalent level. Participant A, for example, noted that it is 'very easy to see if the partnership has gone this way or that way', but:

> 'it's a lot harder to see if there's ten associates on a team – five men and five women – but the women get all of the rubbish work and aren't getting as well paid, and the guys are getting all of the great cases. That's very hard to identify and pay is why we're all here at the end of the day'.

However, Participant C did consider that the equivalent legislation in the UK doesn't appear to have made much of an impact: 'I don't really think any females have said that they got a pay increase because of the gender pay gap'. Interestingly, Participant C also noted the limited impact that gender pay legislation might have within corporate law firms, particularly where equity partners are not considered to be 'employees' for the purposes of the legislation. The participant considered that this is where the biggest difference is likely to arise in gender pay gap reports, but because of the partnership structure that data would be left out. Participant A did consider this also, but noted that there are 'ten years of your career in the middle' where it's not clear whether you are being paid at the same level as others who have the same post-qualification experience. She continued that there is often the 'superstar', and the general expectation is that 'they're probably being paid more' but it's not actually something that is known.

Participants were also asked to consider whether any amendments to the legislation might be beneficial, and in particular whether it should include an enforcement or compliance structure to ensure that organisations comply with their plans to reduce the gender pay gap. Participants were generally reluctant to accept the imposition of penalties on employers, and Participant B considered that this might only be suitable in a 'worst-case scenario', where the reports of organisations are found not to be a true and accurate representation of their data. Participant D did note that she would not be in favour of imposing penalties, particularly where 'there is a big societal influence to the gender pay gap and the

[200] Note that following interviews this Bill was subsequently enacted and is now the Gender Pay Gap Information Act 2021.

inequalities that have existed'. She continued that for as long as 'females are seen as the primary caregivers and the primary persons staying at home with the children' the gender pay gap will continue to exist. For Participant D, she felt 'I wouldn't like to see employers punished for that'.

Participants were asked to consider whether, alternatively, incentives could be put in place to encourage employers to reduce gender pay gaps. Participant E noted 'I have an instinctual better feeling about incentives'. She continued 'I think incentives are a good measure and … if you can get firms to compete with each other to see the best environments for women to work in then all the better'. The participant felt that incentivising change rather than imposing penalties from the outset would address the unconscious biases contributing to the pay gap that are more difficult to identify within firms.

5.1. Key Findings

It was clear from discussions with participants that although the legislation would not give an accurate depiction of the pay gap at all levels of the profession, increased transparency would still stand to benefit a significant number of practitioners. Participant A spoke to this topic in particular and noted that lawyers are in high demand in the market, and so have a lot of 'buy-in power' in terms of going to other jobs. Providing solicitors with this information would enhance their negotiating position within the legal market. In terms of amending the legislation, however, it was clear that practitioners did not consider that penalties would be beneficial except in exceptional circumstances. Rather, incentivising compliance was met with a better response from participants, particularly where it can be utilised to create competition between firms.

6. Workplace Culture

The final topic discussed related to the culture of the workplace. Participants were asked to reflect on two main areas: the culture of visibility and presenteeism, and the existence of informal mentoring relationships, both of which operate to the detriment of female practitioners.[201] Participants were asked, in particular, to consider the usefulness of

[201] For discussion, see chapter 2 at 3.

educational seminars and the development of formal mentoring programmes within corporate law firms.

6.1. Visibility and Presenteeism: unconscious bias seminars

In discussing the use of educational seminars to reduce instances of unconscious bias and to tackle the culture of presenteeism within corporate law, a majority of participants considered this to be beneficial. Participants further provided insights, based on their own experience of gender and diversity training, on the merits of the different approaches and how educational seminars might be conducted.

Participant A noted that diversity training that had occurred in the past had not been 'delivered in a way that resonates with the people who need to hear it'. When queried on how these initiatives might operate better to achieve that aim, Participant A noted that 'people listen to people who they empathise with a bit'. She considered that it was important to have someone who worked and had been successful within the profession, and who was willing to show the firm how they might work 'smarter and not harder'. Doing so would be more beneficial than having someone who did not understand the demands of the job and simply saying it's 'outrageous' to expect employees to take a call after midnight. For Participant A, the feeling was 'that's always going to be the job, it's just how you manage it'. Similarly, Participant B felt that 'there's no harm in trying to educate', but there's a concern that practitioners will sit through these seminars and see them as no more than a tick box exercise.

One participant, speaking to a gender equality initiative that had been implemented in her firm noted that 'it's extremely important that you have the training from the top down'. Within her own firm, the participant noted, training had been given to certain 'champions', which she estimated to be about 100 people at various levels of the profession and within a variety of different roles. This was rolled out alongside training for the partnership and educational seminars for all employees. She noted that the firm had taken on the initiative initially because it was seen as an 'expectation' to go down that route, but since becoming involved she considered the firm was embracing the training and 'trying to implement it across the firm and across all roles on an ongoing basis'.

Participant E also expressed the view that 'creating that more inclusive culture' needs to begin within the partnership. She felt that there is a demand from the solicitors coming from the 'ground up' to have a better work-life balance, and this pressure needs to be met

with a response from the 'top down'. Participant E felt that due to the competitive nature of the legal market, firms will need to make themselves attractive places to work to ensure they are employing talented solicitors. The participant noted 'there's a new generation of lawyers now who aren't prepared to settle for "this has to be your life, this has to be your grind in order to make it for the next ten or fifteen years"'. To retain talent, the partnership will have to adapt to facilitate the demands of this new generation of lawyers.

Similarly, Participant C expressed the view that there is an onus on the partnership to dismantle this culture. She felt that there is a need for partners to 'show that they have a life outside of the firm'. Participant C considered that lectures and seminars weren't going to be the driver in creating this change in culture, but instead it is important to receive a clear message from the managing partner of a firm saying, for example: 'I don't want to see partners here after 8 o'clock unless it's the two nights a week that you work late, or unless it's a corporate transaction closing … but I don't want our fee earners to think they have to be here until that time'. In doing so the firm would send a clear message and the partners would be encouraged to lead by example in dismantling the culture of visibility and presenteeism.

6.2. Formal Mentoring Programmes

In discussing proposals to create formal mentoring programmes, participants were encouraged to consider structures that encourage both one-to-one mentoring relationships, and wider mentoring groups. Participants were generally in favour of formal mentoring, with Participant B considering that mentoring relationships can be 'invaluable' for solicitors. She further noted the significance that a formal mentoring programme might have for someone who was a lateral hire, having trained as a solicitor in another firm, and who therefore did not have the opportunity to network internally throughout the training programme. Similarly Participant D considered that individuals tend to gravitate towards people who they are similar to and having a formal programme can challenge solicitors by creating relationships with 'someone who thinks slightly differently or takes a slightly different approach in terms of their career progression'. Equally, Participant D noted that in having a formal programme, 'you're giving everyone the same opportunity'.

Participant C spoke of the importance of not just mentors, but 'backers' and 'supporters'. The participant considered that 'you need to be backed by your own partner and your own specific team', but equally you need backers and supporters outside of your own practice

area. For Participant C, she felt that in her experience members of her team would have these supports from other practice areas, and those supporters would push an individual in a way that the participant did not feel ready for 'but it's right for that person's career path'. Expanding on this, Participant C considered that a supporter might push someone to put themselves forward for a promotion or a pay increase 'because for that other partner it doesn't directly impact on their team structure'. However, for the participant she is now having to consider how to make it work and meet these demands. Discussing this relationship of 'supporter' or 'backer', Participant C considered:

> 'People are happy to do it, they're happy to go for a coffee and they're happy to go for a conversation, but it can be nerve wracking asking for that. So that's where formal programmes are good because they more naturally build up that relationship for people'.

Another participant noted that her firm had introduced a mentoring programme whereby the firm matched you with someone outside of your practice area with the intention of meeting for coffee every couple of weeks. The intention in doing so was to provide practitioners with the opportunity to receive an outside perspective. For this participant, it was felt that this 'sounds great in theory, but it's not so great in practice'. She felt that having a mentor is a very personal relationship, and that this is difficult for firms to manufacture. Continuing, she noted 'formal mentoring sometimes can work great if you end up meeting someone and you have good chemistry, and other times it can just be a bit awkward and not work very well', noting that in her firm it had 'sort of fizzled out'. Instead, however, the participant discussed the success of another programme that had been run in her firm – a woman's leadership group. The initiative consisted of events that were held informally and outside of working hours, and the events were open to women at all levels of the profession. The participant noted that these were particularly successful in allowing women to network internally and outside of working hours, and the events were open to women at all levels of the profession. The participant noted that these were particularly successful in allowing women to network internally within the firm, but also in boosting morale among women solicitors. In terms of the events themselves, the participant elaborated that 'we would have had outside career consultants … [f]or example one might have been dedicated to public speaking'. Noting that it may be a generalisation, the participant felt that this gave an opportunity for women who might otherwise be nervous about putting themselves forward for speaking at conferences and other events to practice their public speaking skills within a safe environment. Overall, the initiative was

considered by the participant to be very successful. She did note, however, that at times the group was met with resentment from the rest of the firm, but she considered that to be 'a really immature attitude to have' and that 'men should be equally invested in moving female fee earners up because it actually benefits the firm'. For the participant it was felt that this group did create mentoring opportunities, and although it was 'still a bit orchestrated', it occurred in a much more natural way than mentoring programmes because it was being done under the umbrella of a women's leadership group.

6.3. Key Findings

It is clear from the considerations of the participants that educational seminars can create some benefit in eliminating the culture of visibility and presenteeism in the firm. By hosting unconscious bias seminars and demonstrating the impact that this culture has on the career progression of women solicitors, there is the potential for reducing that inequality.[202] However, it is also important to ensure that in conducting any such training it is done in a considered way so that it is seen by the profession as more than a 'tick box' exercise.

Interestingly, several participants gave consideration to the role which the partnership can play in reducing instances of visibility and presenteeism. Participants tended towards the view that there was a need for change to happen from the 'top down', and that a failure to create this inclusive environment would result in the loss of talented solicitors to the firm. In order to achieve this change, Participant C in particular felt that there was a need to positively acknowledge this culture and to require that partners lead by example by no longer engaging with it.

Separately, mentoring programmes were considered by participants to have a number of benefits. The key benefit that was identified was the use of these programmes for internal networking within firms. Indeed, as Participant C noted, giving practitioners the opportunity to meet others outside of their own practice area allows them to receive an outside perspective on their career development. Notably, the benefits of internal networking were significantly drawn out in the account given by one participant of the women's leadership initiative that had been implemented in her firm. Allowing for networking to occur in this way created an opportunity for women to meet others, but did so in a way that was not quite as 'stilted' as a formal mentoring programme.

[202] For discussion see chapter 2 at 3.

7. Concluding Remarks

Overall, discussions with participants gave considerable insight into the viability of reforming the profession with a view to increasing gender equality. It was clear from discussions with participants that there was both a need and a demand for change, and that it would be necessary for firms to adapt to retain female talent.

Notably, all participants remarked throughout the interview process that there is a need for change to occur within each partnership in order to successfully achieve that change within the profession as a whole. This is particularly significant in circumstances where partnerships are predominantly male, and likely to resist change. Speaking anecdotally on this issue, Participant A felt that it was more common for male partners to have a stay-at-home spouse, and this allowed them to 'have huge support in their personal lives to enable them to work very long hours in a way that other professionals don't'. She felt that this meant that partners often had a lack of understanding when it came to how much 'life admin' had to be done outside of working hours, and how difficult that was for practitioners. Equally, Participant E acknowledged the same issue, noting that if you want to change a system 'it's the people that are empowering the system that need to effect change'. However, she continued:

> '[I]f the system as it exists serves them, they're going to be very unwilling to do that. If it's a case that the majority of the senior partners in the firms are male, and they have partners that stay at home or they have nannies … and they like to have their team around them, then you would imagine that is hard to budge'.

All participants reflected on the important changes that have been made to the profession to adapt to the COVID-19 pandemic. Noting it has eliminated some of the difficulties created by the culture of visibility and presenteeism, participants also often expressed the concern that women might be disproportionately impacted when the profession returns to the office. This concern is the result of the typically gendered take up of alternative working arrangements, coupled with the potential for the culture of visibility and presenteeism to be resurrected once traditional working arrangements resume.[203] If it is the case that women make up a disproportionate number of those availing of remote working arrangements, they are likely to be negatively impacted by the stigma associated with

[203] For discussion, see chapter 2 at 3.2.

alternative arrangements.[204] Therefore, it was expressed that there is a need to continue to monitor the situation, and to ensure that new policies on working arrangements do not create any further gender inequality within the profession.

Finally, it is pertinent to acknowledge the concluding remarks of Participant D before setting out the final recommendations. Participant D felt that it was important to consider that there is an 'underlying societal issue', and that this will continue to progress over the coming years. It is important to appreciate that although corporate law firms have a role in alleviating the difficulties that are experienced by women solicitors, they cannot resolve gender inequality within the labour market as a whole.

[204] *Ibid*.

CHAPTER 5: RECOMMENDATIONS FOR REFORM

1. Introduction

It is clear that achieving reform in corporate law firms will be a considerable task. Intervention is required throughout the profession and at a variety of levels. However, a failure to reform the profession will result in loss of female talent and a continuing lack of diversity within partnerships.

As a result, this thesis makes the following recommendations:

(i) The billable hours model ought to be abandoned in favour of a model of value billing that no longer requires an account of time by solicitors. Instead, focus should be placed on the value of the legal work.

(ii) Firms should reduce policies on alternative working arrangements to writing, communicate these new policies to all employees, and regularly review and evaluate their success. Firms should also 'front-load' considerations on working arrangements and ensure that these arrangements are independently overseen and assessed.

(iii) Gender quotas ought to be utilised to increase female representation within the partnership. This should take the form of, for example, a quota that requires 40% female representation by 2025. Furthermore, performance assessments should focus on a specified set of core competencies, and no account should be taken of the billable hours of a solicitor.

(iv) The Gender Pay Gap Information Act 2021, and the corresponding gender pay gap within the profession, should be kept under regular review. Any shortcomings in the success of the legislation should be addressed first by implementing incentives, and subsequently through the use of financial penalties.

(v) Finally, unconscious bias training should be conducted across the profession. Any such measure should be carefully structured to ensure that it does not enhance the inequalities it is intended to address. Similarly, firms should implement cultural measures to increase instances of internal networking, both through formal mentoring programmes and women's leadership initiatives.

The following sections in this chapter will consider the implementation of these recommendations by the profession. Subsequently, it will be shown that the suite of

proposed reforms fulfils the criteria specified in Fredman's model of substantive equality.[205]

2. Implementing Reform: the role of the legislature

The solicitors' profession in Ireland was, until recently, a self-regulating profession overseen by the Law Society of Ireland. The establishment in 2019 of the Legal Services Regulatory Authority ("LSRA"), an independent regulator with statutory authority to regulate both branches of the legal profession, demonstrates the increased legislative focus being placed upon the profession. [206]

However, regulatory reform is not always appropriate. This can be seen, for example, with the recommendation to abandon the billable hours model in favour of models of value billing. Although legislative intervention would be most effective in achieving reform, it would be highly draconian and likely to be strongly contested by the profession. This is particularly the case where the billable hours model is not only utilised by corporate law firms, but a large majority of the legal profession including barristers and firms specialising in other practice areas. Notably, no further legislative intervention is necessary for firms to adopt models of value billing. Section 151 of the Legal Services Regulation Act 2015 expressly allows solicitors to enter into agreements relating to legal costs with clients.

Legislative intervention would, however, be necessary to implement gender quotas. In this respect, both European and domestic law allow employers to engage 'positive action' measures.[207] Article 157 of the Treaty on the Functioning of the European Union provides:

> 'With a view to ensuring full equality and practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers'.

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[205] See chapter 1, at 3.1.

[206] The Legal Services Regulation Act 2015. This legislation was introduced to meet the Irish Government's commitment to independent regulation of the profession and intervening EU-IMF-ECB undertakings. For discussion, see the speech given by then Minister for Justice and Equality during the second stage debate of the Legal Services Regulation Bill 2011 (16 December 2011) available at <https://www.oireachtas.ie/en/debates/debate/dail/2011-12-16/14/> (accessed on 30 September 2021).

[207] For discussion of positive action see Frances Meenan, *Employment Law* (Round Hall, 2014) at 12.20.

Similar provision is made in domestic legislation, with section 24 of the Employment Equality Act 1998 specifying that the Act is without prejudice to any measures 'maintained or adopted with a view to ensuring full equality in practice between men and women in their employments'.[208] What is intended by positive action is to authorise a measure that would otherwise have been prohibited by equality laws, whose purpose it is to reduce the effect of 'existing attitudes, behaviour and structures' on women within the employment sphere.[209] One such example is the use of targets. These differ from quotas insofar as they are not mandatory in nature, and the failure to achieve a target is not sanctioned.[210] Indeed, targets currently exist for professional service firms in Ireland, including corporate law firms.[211] Although targets have achieved some success, the absence of independent oversight and enforcement limits the results that can be achieved.

In order for quotas to be utilised in Ireland the current legislative framework would have to be amended.[212] However, the European Courts have tended to reject measures that allow automatic and unconditional preferential treatment and that do not include an objective assessment of all personal circumstances.[213] Nevertheless, Marc De Vos notes that 'the Court's case law on positive discrimination has been frozen in time for well over a decade', and concurrent with this has been the 'movement towards explicit gender quotas on company boards' in several European countries.[214] Indeed, the European Commission has proposed an EU Directive in favour of compulsory board gender balance.[215] It is therefore unclear whether Ireland could freely legislate for gender quotas within the current

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208 Section 24(1)(a) of the Employment Equality Act 1998, as amended.

209 Meenan, note 207, at 12-207.

210 For discussion see: Alice Klettner, Thomas Clarke and Martijn Boersma 'Strategic and regulatory approaches to increasing women in leadership: Multilevel targets and mandatory quotas as levers for cultural change' (2016) 133 *Journal of Business Ethics* 395; Rachel Hussey 'Is there merit to gender quotas?' (2020) available at <https://www.charteredaccountants.ie/Accountancy-Ireland/Articles2/Comment/Latest-News/is-there-merit-to-gender-quotas> (accessed on 6 September 2021).

211 The 30% Club aim to 'support the achievement of a minimum 30% Gender Balance at all senior decision-making tables across Ireland'. This was extended to include Professional Service Firms in 2015. For discussion see <https://30percentclub.org/about/chapters/ireland> (accessed on 9 September 2021).

212 See Meenan, note 207, at 12-217. It is worth noting that legislative gender quotas have been introduced in Ireland for parliamentary elections by the Electoral (Amendment) (Political Funding) Act 2012.

213 See Marc De Vos 'The European Court of Justice and the march towards substantive equality in European Union anti-discrimination law' (2020) 20(1) *International Journal of Discrimination and the Law* 62.

214 *Ibid* at 75.

215 European Commission, Proposal for a Directive on improving the gender balance among nonexecutive directors of companies listed on stock exchanges and related measures, COM/2012/0614 final – 2012/0299(COD).

EU framework. Notably, however, gender quotas have been successfully introduced in other EU countries.[216]

In Ireland, a recommendation was recently made by the Citizen's Assembly on Gender Equality for the Government to enact legislation requiring private companies to have at least a 40% gender balance on their boards, taking into consideration certain criteria such as turnover and number of employees.[217] However, if the Government does implement this recommendation, it would need to go further than legislating for private companies and include partnerships also. Any failure to enact broadly drafted legislation could mean that women would continue to be excluded from senior decision-making roles within a particularly influential profession.

Separately, consideration must also be given to the legislation on gender pay reporting. In the time that has elapsed since interviews were conducted, the Gender Pay Gap Information Act 2021 (the "Act") has been enacted. Consequently, proposals discussed with participants to amend the Bill prior to its enactment would now have to occur by statutory amendment. At the time of writing the Act has not been commenced, and the regulations prescribed by the Act have not yet been published. As a result, little information is available on the operation of gender pay reporting. It is therefore essential that the Act be commenced, and regulations published by the Minister without further delay. Equally, noting the emphasis that was placed by interview participants on increasing transparency, it is recommended that the regulations drafted by the Minister for Children, Equality, Disability, Integration and Youth (the "Minister") mandate that employers provide a breakdown of the gender pay gap at each level of employment within the firm, alongside the overall pay gap.[218] Finally, and having regard to discussions with interview participants on the enforcement mechanisms, it is not recommended at this juncture that sanctioning provisions be enacted.[219] However, if gender pay reporting does not prove to

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[216] See Marc De Vos and Philippe Culliford, *Gender Quotas for Company Boards* (Antwerp: Intersentia, 2014).

[217] Report of the Citizen's Assembly on Gender Equality (June 2021) available at <http://citizensassembly.ie/en/about-the-citizens-assembly/report-of-the-citizens-assembly-on-gender-equality.pdf> (accessed on 6 September 2021).

[218] Section 20A(9)(b) of the Employment Equality Act (inserted by section 2 of the Gender Pay Gap Information Bill 2021) provides that Regulations made by the Minister may require the employer to publish information by reference to job classifications.

[219] Section 20A(1)(c)(ii) of the Employment Equality Act 1998 (as amended by the Gender Pay Gap Information Bill 2021) will require that employers publish these measures concurrently with the publication of information on the gender pay gap within the organisation.

be successful following statutory review after 4 years, consideration ought to be given to the enactment of further legislation incorporating incentive and compliance mechanisms.[220]

Finally, brief consideration ought to be given to the ability of the legislature to amend current practices for alternative working arrangements. It was apparent from discussions with interview participants that there is a need for policies on alternative working arrangements to be made clear, accessible and transparent for all employees. Equally, centralising the oversight of arrangements will ensure that all practitioners are given an equal opportunity to access successful working arrangements. Noting that the legislature is currently considering a National Remote Working Strategy, it is recommended that these measures be included as part of this reform.[221] The legislature ought to require that policies on alternative working arrangements are reduced to writing and made available to employees, and that employers nominate an individual or body to oversee the functioning of these arrangements. It is argued that given the unequal impact that the COVID-19 crisis has had on working arrangements for women in particular, the Government have a duty to ensure that women are not further excluded from the labour market in Ireland.[222] Enacting these measures will assist in eliminating the stigma associated with alternative working, a measure which will be of benefit to all female employees, including those working in corporate law.

In sum, legislation can be incredibly effective in achieving reform. However, legislative reform may not always appropriate. This is particularly apparent in reforms seeking to address cultural issues, and prevailing attitudes in firms. Consequently, the role of soft law and guidance in achieving reform is considered in further detail below.

3. Soft Law Guidance and Reform: the role of the LSRA and the Law Society of Ireland

Both the Law Society of Ireland and the LSRA have a significant influence over the conduct of the profession. The Law Society regularly issues guidance for solicitors through the publication of Practice Notes, made available on their website and in the Law Society Gazette issued monthly to all practising solicitors in Ireland.[223] The LSRA equally have the authority to issue professional codes of practice to set and improve standards in the legal

[220] As required by section 6 of the Gender Pay Gap Information Act 2021.
[221] For discussion, see chapter 2 at 2.2.
[222] For discussion see chapter 2 at 3.2.
[223] For further information see <https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/> and <https://www.lawsociety.ie/gazette/> (accessed on 20 June 2021).

profession, although this power has not yet been utilised in respect of the solicitors' profession.[224] One example of guidance that has been issued by the Law Society is the Guide to Good Professional Conduct for Solicitors (the "Guide").[225] The Guide provides a statement of the accepted principles of good practice and conduct for solicitors. Although it represents the Law Society's policies and recommendations, it does not have the force of law.[226] It does, however, complement the rules of professional conduct that derive both from statutory and non-statutory sources.[227] Despite its soft-law approach, the Guide has a significant influence on the culture and values of the profession.[228]

It is recommended here that the Law Society, in conjunction with the LSRA, publish a suite of reforms with the intention of furthering women's advancement within the solicitors' profession, and corporate law firms in particular. Central among these reforms, it is recommended that both bodies declare that the billable hour is no longer a suitable method of assessing legal costs in corporate law firms and encourage firms to move towards models of value billing. To effectively achieve this change, it will be necessary to provide firms with a significant amount of detail, including the business implications caused by the change, proposed models of alternative billing and timelines for phasing out the billable hours model.

Equally, to demonstrate the need for reform, it would be useful to provide firms with detail on the implications of the billable hours model on the careers of women solicitors. Key in reducing the inequality identified is the need to eliminate the current culture of oversight inherent in the billable hours model, and as a result firms ought to be cautioned that new models of billing should no longer require an account of time from practitioners. Equally, noting the significance that the billable hour plays in bonus assessments and promotions, guidance issued by these bodies should set out a new model of assessment based on a practitioner's core competencies. This guidance should be prescriptive in nature, showing

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[224] Section 13(2)(iv) of the Legal Services Regulation Act 2015. See also <https://www.lsra.ie/for-law-professionals/professional-codes/> (accessed on 30 September 2021)

[225] Law Society of Ireland, 3rd Edition (2013) available at <https://www.lawsociety.ie/globalassets/documents/committees/conduct-guide.pdf> (accessed on 20 June 2021).

[226] *Ibid* at ii.

[227] *Ibid*.

[228] As noted, the Guide does not have the force of law, and decisions on whether the conduct of a solicitor amounts to misconduct can only be made by the Solicitors Disciplinary Tribunal (the "Tribunal"). The Tribunal assesses "misconduct" in accordance with the definitions broadly contained in the Solicitors Acts 1954-2015, but it is worth noting that the Annual Reports of the Chairperson have made reference to the Guide in discussing the duties of solicitors. See, for example, Chairperson's Report 2019 (Solicitor's Disciplinary Tribunal) at page 9 available at <http://www.distrib.ie/wp-content/uploads/SDT-Annual-Report-2019.pdf> (accessed on 20 June 2021).

how this model could be utilised by firms and how it would operate in practice. This might include detailed information on the competencies that a firm could assess in their reviews, and how solicitors might be expected to develop those competencies. The Law Society ought to consider the role that it would play in assisting solicitors to develop those competencies due to the significant role that it plays in the educational development of solicitors in Ireland.

Separately, reforms ought to consider the current practices and structures that are in place for alternative working arrangements. Although legislative reform has been recommended above, it would be equally worthwhile for the LSRA and the Law Society to reiterate these new requirements. In particular, it would be beneficial to provide specific guidance for the profession on how these arrangements might operate in practice.[229]

In relation to the culture of the profession, both the Law Society and the LSRA have a significant role to play in creating change. Developing bias awareness initiatives will be central in reforming this culture but must be carefully considered to ensure that the training is both effective and does not create any further cultural constraints for women working in the profession. In conducting this training, it would perhaps be beneficial for professional bodies to provide training for all members of the profession, alongside specialised training for partners in corporate law firms. In doing so, the need for change to occur from the top down can be instilled. Encouraging partners to address their own biases has the potential to significantly change cultures of visibility and presenteeism.

Finally, guidance issued ought to recommend that firms create more opportunities for internal networking. Consideration should be given to traditional formal mentoring programmes, including one-to-one mentors and mentoring groups. Equally, consideration ought to be given to alternative networking events that might be beneficially held internally. The example provided by an interview participant on women's leadership groups is significant in this respect. Creating an environment where women can be encouraged not only to network, but to develop lawyering skills, can have significant benefits for professional development. Indeed, the Law Society could play a role in developing its own women's leadership initiative to act as a central point for groups within individual law firms. Creating these opportunities for women facilitates the development of

[229] In this regard, it is worthwhile to consider the Code of Practice on Access to Part-Time Work published by the Workplace Relations Commission pursuant to its statutory obligations under section 20(2) of the Workplace Relations Act 2015, available at <https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/cop7/> (accessed on 25 June 2021).

mentoring relationships in less formal environments. However, this ought not to be the sole measure adopted to advance mentoring relationships. A failure to conduct additional programmes alongside women's leadership initiatives could potentially 'other' women solicitors, and the gender divide inherent in the informal mentoring would continue.[230] As such, the emphasis ought to be on increasing the number of situations wherein mentoring relationships occur, rather than a single solution.

In sum, the professional bodies overseeing the regulation and operation of the solicitors' profession in Ireland can play a significant role in bringing about reform. Should these bodies engage with gender inequality as a key concern in need of reform, these recommendations have the potential to create a valuable change for women solicitors working in corporate law firms. However, it is equally worth noting the limitations of these recommendations. Given that women's unequal participation in the labour market is an issue that exists outside of the legal profession and pertains to society more generally, it cannot be expected that the professional bodies can eliminate this inequality in its entirety. Rather, these recommendations ought to be considered as part of a wider reform, and should be regularly reviewed to assess women's progression within the profession.

4. Achieving Substantive Equality in Corporate Law Firms

Having set out the theoretical framework for this thesis in the introductory chapter, this final section will demonstrate how the recommendations made in this chapter fit within the preferred model of substantive equality. The profession has typically followed the Aristotelian model of equality and expected women to conform to an unsuitable working environment.[231] However, by looking at equality substantively, it is apparent that there is a need for the profession to adapt to accommodate the working practices of women solicitors.

As such, the first dimension of Fredman's model aims to redress disadvantage. Noting the disadvantages inherent in the organisational structures and working practices of the profession, the intention in devising recommendations for reform was to provide women solicitors with the opportunity to engage with the profession in the same way as male colleagues. This can be seen, for example, within the recommendation to increase female representation at senior levels by placing a gender quota on the partnership. Equally, the

[230] For discussion, see chapter 2 at 3.1.
[231] For discussion see Rhode, note 57.

current structures for assessing eligibility for a bonus or a promotion present a significant disadvantage for women. Moving towards a model of core competency provides an unbiased assessment for practitioners and, significantly, does not penalise those who avail of reduced hour working arrangements.

Looking to the second dimension of Fredman's model, the focus is on redressing stigma, stereotyping and humiliation for women solicitors. As noted in earlier discussions, reforming the culture of the profession is a particularly onerous task.[232] Nevertheless, the intention in making these recommendations was to educate the profession on the biases inherent in the current masculine culture. If bias awareness training is conducted carefully and correctly, it has the potential to reduce instances of stigma, stereotyping and humiliation for women solicitors. Equally, in devising recommendations, the increased emphasis placed by interview participants on transparency was a central concern. This can be seen, for example, in the recommendation to reduce policies on alternative working arrangements to writing. By increasing transparency and accessibility it is possible that the stigma that currently attaches to such arrangements can be eliminated.

Thirdly, Fredman notes the importance of participation, both politically and socially. Once more, measures intended to increase women's presence within the partnership provide a political voice that has been missing in corporate law firms. Equally, by increasing internal networking events and devising women's leadership initiatives, the recommendations increase the instances in which women can participate on equal terms within the legal community. However, this third dimension is more difficult to address insofar as it highlights the limitations of the recommendations. There is no guarantee that women will be given the opportunity to participate within the wider community, and society more generally, on equal terms with men given the broader issues that exist within the labour market. Combined with other reforms, however, the recommendations attempt to pave the way for equal participation going forward.

Fourthly, and finally, Fredman's model demonstrates the need to accommodate difference and to create structural change. Recommendations call upon the professional bodies overseeing the profession to create that structural change. This can be seen in the recommendation to cease the reliance currently placed on the billable hours model, replacing it instead with a model of value billing. Equally, by reforming evaluations for solicitors, reliance will no longer be placed on a single form of assessment. Rather, the

[232] See chapter 3 at 2.1.5.

relative strengths and differences of individual solicitors will be taken into consideration. This will positively achieve substantive equality for women solicitors who have been negatively impacted by structures prevalent within corporate firms.

5. Conclusion

In conclusion, this thesis has demonstrated the pressing need for corporate law firms to reform in order to secure greater participation by women solicitors within partnerships. The context provided within the introductory chapter illustrates the continued responsibility placed upon women for unpaid care work, despite an increased presence in the labour market. This has created a relationship with the labour market that significantly differs from male colleagues. The failure of corporate law firms to acknowledge this relationship, or to take steps to reduce it, perpetuates the existence of the unequal labour market. Given the influential role of solicitors in both societal and legal developments, the profession ought to take an active interest in reducing instances of gender inequality within the employment sphere.

Subsequent chapters have demonstrated the structures and practices within law firms that operate to exclude a majority of female solicitors from senior management positions. Specifically, the culture of long working hours, perpetuated both by the billable hours model and the emphasis placed on presenteeism, excludes those women with a responsibility for unpaid care work from engaging fully with the profession. Alternative working arrangements designed to alleviate the burdens of the profession result in a presumed lack of dedication by those who seek to avail of them. Furthermore, and significantly, the masculine nature of the profession continues to dictate both the development of interpersonal relationships and the spaces within which it occurs.

It is within this context that the consequent proposals for reform arose. The proposals seek to place an increased emphasis on effective communication, oversight and transparency. As a result, the proposals do not remain stagnant but rather encourage regular engagement and review to ensure that they properly target the inequalities at issue. Subsequent amendments to the proposals following the informed considerations of interview participants ensure that the recommendations ultimately made are both effective and viable.

This thesis consequently makes several recommendations intended to increase female participation in the profession. This includes the abandonment of the billable hours model,

an increased oversight of alternative working arrangements, the utilisation of gender quotas and the implementation of measures to address the unconscious biases of the profession. Further consideration is also given to the implementation of these measures, and how they fit within the current legislative framework in Ireland.

Finally, and having regard to the theoretical framework underpinning this thesis, the conformity of the proposals with Fredman's model of substantive equality ensures that the recommendations made fulfil a broad and comprehensive formulation of equality. The evaluative framework provided by this model has encouraged a thorough consideration of the inequalities intended to be addressed by reform recommendations.

Consequently, this thesis has argued that there is a significant onus on corporate law firms to evaluate and reform current working practices in order to reduce instances of gender inequality. In doing so, it is anticipated that greater female representation within these partnerships can be achieved.

APPENDIX 1

Participant Information Sheet

University of Glasgow

College of Social Sciences

University of Glasgow

School of Law

Participant Information Sheet

Title of Project: Women in Corporate Law

Name of Researcher: Beth Devlin

Name of Supervisor: Dr Catriona Cannon

Programme: LLM by Research, School of Law

You are being invited to take part in a research study. Before you decide to take part, it is important for you to understand why the research is being done and what it will involve. Please read the following information carefully and discuss it with others if you wish. Ask the researcher if there is anything that is not clear or if you would like more information. Take some time to decide whether or not you wish to take part.

Thank you for reading this.

This study forms part of my research for the degree of LLM by Research in the School of Law at the University of Glasgow. The subject of my research is to discuss proposed solutions to the current inequalities experienced by female solicitors working in corporate law firms in Ireland. The aim of the study that you are being invited to participate in is to gather participant views on the proposals and to receive your suggestions for modifications or alternatives. This study will contribute to the larger research project by ensuring that the recommendations for reform are thoroughly considered, constructive and relevant to the issues being addressed.

Participants have been chosen on the basis that they currently hold, or have previously held, practicing certificates issued by the Law Society of Ireland and have experience working within a corporate law firm in Dublin, Ireland. Approximately ten participants will take part in the study. Interviews with participants will occur over the next four months.

Participation is entirely voluntary and will consist of an interview with me which will last approximately 1 hour and which will take place over the phone or through Zoom. I would like to audio record the interview (with your consent) to ensure accurate recording of your

views. If the interview is audio recorded, I will ask you to review the transcript of the recorded interview. If you decide to take part you are still free to withdraw at any time, without providing a reason for doing so.

The data collected for the purposes of this research will be presented in a thesis submitted for assessment as required by the LLM by Research programme. It is anticipated that the degree will be awarded at the end of 2021 and, where requested, I will email participants with a copy of the thesis thereafter. The data may also be used in conference papers or in journal articles published from this thesis. Participants will be referred to by pseudonyms in the thesis, and any information on the participant's practice area or details about the firm will be used sparingly and only where necessary to give sufficient context to data. Due to the small nature of the sample size and the geographical scope of the study there is a risk that participants may be identified and as a result anonymity cannot be guaranteed.

Assurances on confidentiality will be strictly adhered to unless evidence of wrongdoing or potential harm is uncovered. In such cases, the University may be obliged to contact relevant statutory bodies/agencies or the authorities, including An Garda Síochána.

Data will be stored securely under lock and key where is it held in hardcopy or encrypted or stored on secure servers where it is held electronically. Research data may be provided to other researchers, but only on request and subject to an agreement of confidentiality. Participant's names and firm names will be removed from transcripts and replaced with a pseudonym. However, this will be reversible, and a key of pseudonyms will be stored securely, separately from the other data, and this will be destroyed 6 months following the end of the research project, in addition to any audio recordings of interviews. Research data will be held securely for a period of 10 years following the completion of the research project, after which time it will be destroyed. Research data will be stored in a secure repository for these 10 years where it will be available to other organisations and individuals with restricted access. Where data is destroyed, physical copies will be shredded, and electronic files will be removed using secure removal software.

Should a participant experience distress during or as a result of this research, they are encouraged to contact LawCare who offer support to members of the legal community experiencing difficulties with mental health and wellbeing.

This project has been considered and approved by the College Research Ethics Committee

If you would like further information about this research, please do not hesitate to contact me at e.devlin.1@research.gla.ac.uk or my supervisor at Catriona.Cannon@glasgow.ac.uk.

To pursue any complaint about the conduct of the research: contact the College of Social Sciences Ethics Officer, Dr Muir Houston, email: Muir.Houston@glasgow.ac.uk

_____End of Participant Information Sheet_____

APPENDIX 2

Consent Form

University of Glasgow

College of Social Sciences

Consent Form

Title of Project: Women in Corporate Law

Name of Researcher: Beth Devlin

Name of Supervisor: Dr Catriona Cannon

Please tick as appropriate

Yes ☐ No ☐	I confirm that I have read and understood the Participant Information Sheet for the above study and have had the opportunity to ask questions.
Yes ☐ No ☐	I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.
Yes ☐ No ☐	I consent to interviews being audio-recorded
Yes ☐ No ☐	I acknowledge that copies of transcripts will be returned to participants for verification.
Yes ☐ No ☐	I acknowledge that participants will be referred to by pseudonym.
Yes ☐ No ☐	I acknowledge that there is a risk to anonymity due to the size and geographical scope of the study

I agree that:

Yes ☐ No ☐	All names and other material likely to identify individuals will be anonymised.
Yes ☐ No ☐	The material will be treated as confidential and kept in secure storage at all times.
Yes ☐ No ☐	The material will be retained in secure storage for use in future academic research

Yes ☐ No ☐ The material may be used in future publications, both print and online.

Yes ☐ No ☐ I waive my copyright to any data collected as part of this project.

Yes ☐ No ☐ Other authenticated researchers will have access to this data only if they agree to preserve the confidentiality of the information as requested in this form.

Yes ☐ No ☐ Other authenticated researchers may use my words in publications, reports, web pages, and other research outputs, only if they agree to preserve the confidentiality of the information as requested in this form

Yes ☐ No ☐ I acknowledge the provision of a Privacy Notice in relation to this research project.

I agree to take part in this research study ☐

I do not agree to take part in this research study ☐

Name of Participant …… Signature ……

Date ……

Name of Researcher ……Signature ……

Date ……

APPENDIX 3

Privacy Notice

Your Personal Data

The University of Glasgow *will be what's known as the 'Data Controller' of your personal data processed in relation to qualitative interviews conducted for the above-named project. This privacy notice will explain how The University of Glasgow will process your personal data.*

Why we need it

We are collecting your basic personal data such as name, email address/contact details, employment status and place of work in order to conduct research. We will use the personal data to arrange interviews with you to examine proposed solutions to inequalities experienced by female solicitors working within corporate law firms in Ireland, and to potentially follow up with you on any data you provide. We will only collect data for the research project and will de-identify personal data from research data (e.g. participant's answers in interviews) through pseudonymisation. Due to the small nature of the sample size and geographical scope of the study, there is a risk that participants may be identified and as a result anonymity cannot be guaranteed.

Legal basis for processing your data

We must have a legal basis for processing all personal data. In this instance, the legal basis is Task in the Public Interest.

What we do with it and who we share it with

- *All the personal data you submit is processed by Elizabeth Devlin, student at the University of Glasgow, and by staff at the University of Glasgow in the United Kingdom.*

In addition,

- *Personal data will be separated from research data using pseudonyms, and both forms of data will be held on secure software, or on encrypted drives. Data in hardcopy will be stored in a locked facility. Transcripts of audio recordings will be pseudonymised, and a key of pseudonyms will be held and stored securely and separate from other data. Further details of how your data will be held safely can be found on the Participant Information Sheet or on the Consent form.*

How long do we keep it for

Your personal data will be retained by the University until 30 March 2022, being 6 months following submission of the final thesis. After this time, data will be securely deleted. Data will not be kept for longer than it necessary for the purposes for which it is being processed.

Research data will be held securely for a period of 10 years following submission of the final thesis, after which time it will be securely deleted.

What are your rights?*

Individuals have certain rights in relation to their personal data, including to request access to, copies of and rectification or erasure of personal data, and to object to its processing. In addition, individuals can restrict the processing of personal data and to data portability.

You can request access to the information we process about you at any time. If at any point you believe that the information we process relating to you is incorrect, you can request to see this information and may in some instances request to have it restricted,

corrected or, erased. You may also have the right to object to the processing of data and the right to data portability.

If you wish to exercise any of these rights, please submit your request via the webform or contact dp@gla.ac.uk.

*Please note that the ability to exercise these rights will vary and depend on the legal basis on which the processing is being carried out.

Complaints

If you wish to raise a complaint on how we have handled your personal data, you can contact the University Data Protection Officer who will investigate the matter.

Our Data Protection Officer can be contacted at dataprotectionofficer@glasgow.ac.uk

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner's Office (ICO) https://ico.org.uk/

Who has ethically approved this project?

This project has been considered and approved by the College of Social Sciences Research Ethics Committee.

APPENDIX 4

Interview Themes

Interview Themes

Title of Project: Women in Corporate Law

Name of Researcher: Beth Devlin

Name of Supervisor: Dr Catriona Cannon

Programme: LLM by Research, School of Law

1. **The culture of long working hours**: interviews will consider alternative methods of billing to the billable hours model including, for example, value billing.

2. **Flexible and remote working**: interviews will consider proposals to improve the availability of remote and flexible working arrangements, particularly in light of the current COVID-19 crisis.

3. **Career progression**: interviews with participants will consider the use of gender quotas and positive action measures, and whether this is a workable solution to facilitate female representation at partnership level. Participants will also be encouraged to consider the viability of alternative systems of appraisal during employee reviews, including an increased focus on the competencies of the practitioner.

4. **The gender pay gap**: the current legislation being passed by the Houses of the Oireachtas to facilitate gender pay gap reporting will be considered, including whether it might usefully show disparities in earnings between male and female solicitors at the various levels of the profession (junior associate, senior associate, partner, equity partner etc.) but also within the entire organisation.

5. **Workplace cultures**: interviews will consider the use of educational seminars to address the culture of the workplace and incidents of indirect discrimination, as well as mentoring programmes to facilitate exposure to transactions and networking events.

6. **Redress systems**: interviews will consider alternatives to the redress systems currently available for employees who experience discrimination, whether direct or indirect.

TABLE OF CASES

Ireland

Zalewski v Adjudication Officer and WRC, Ireland and the Attorney General [2021] IESC 24.

TABLE OF LEGISLATION

Ireland

Anti-Discrimination (Pay) Act 1974

Civil Service Commission Act 1976

Civil Service (Employment of Married Women) Act 1973

Civil Service Regulation Act 1956

Employment Equality Act 1977

Employment Equality Act 1998

Gender Pay Gap Information Act 2021

Legal Services Regulation Act 2015

Organisation of Working Time Act 1997

Organisation of Working Time (General Exemptions) Regulations 1998 (S.I. 21/1998)

Solicitors Amendment Act 1994

Workplace Relations Act 2015

European Union

Treaty establishing the European Economic Community 1957

Council Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women

Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

Directive 93/104/EC concerning certain aspects of the organisation of working time

Directive 2003/88/EC concerning certain aspects of the organisation of working time

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