



Talking women in leadership and gender pay gaps with Dame Janet Gaymer

Function after form – when will Law Firms get out in front on gender issues?

Dame Janet Gaymer recently chaired the discussion panel at the launch of Lewis Silkin's research *The Future of Employment Legal Services*. Their research uncovered a trend in gender issues which was discussed in more detail during a post-launch conversation with Dame Janet. What transpired was an achingly human story to contrast the gender issues faced in 2016.

In 2016 with increasingly high profile reports of women in leadership positions, the spectre of gender pay gap reporting (without penalty) looms large on the landscape of 2018, and flexible working teases a potentially enormous shift in the world of work. And yet gender pay gaps in the legal sector are increasing.

It's the early 1970s and Janet Gaymer (later honoured as Dame for her services to Employment Law) enters her first salary negotiation as a Solicitor at London Law Firm Simmons & Simmons. She was 'pugnacious' about being paid only 92% of the market rate. Across the industry, by 2015 the gender pay gap had grown. The US-based National Association of Women Lawyers 2014 survey reports that female equity partners earn 84% of what male equity partners earn. In 2015 the difference is 80%, mirroring the c20% pay gap from private practice surveys.

Unsurprisingly, there is little data from the larger law firms in the UK.

Dame Janet's salary negotiation was made more piquant as she was also responsible for writing the Firm's policy on Maternity Rights. The Industrial Relations Act had come in to force, and Dame Janet's entrepreneurialism in setting up an Employment Law Practice was 'thoroughly supported' by the Firm. These first forays into Employment Law later became a significant contributor to the Firm's overall success.

Yet the Maternity policy assignment wasn't gifted to Dame Janet by chance. 29 days after becoming partner (and one of only two female lawyers at the Firm) Dame Janet and her husband, whom she met reading Law at Oxford, were expecting their first child.

Continuing with her rising status as a Lawyer of note and as a mother - tragedy struck the Gaymers with the loss of their third child in utero the day after a particularly difficult conversation at work about the impending third maternity leave. Did the Gaymers' situation enable a better future for women at Simmons & Simmons, an improvement to the manner in which the company behaved? Dame Janet is emphatic: "Yes! I think they felt responsible (even though they were clearly not)." It was a case of function following form: fixing the problem after it has occurred.

From first employing Dame Janet, Simmons & Simmons were being progressive, even though Dame Janet was only initially 'allowed' to practise Corporate and Commercial Law 'under sufferance'. Dame Janet says "I don't recall any pushback at all from the clients [not even in retrospect]. If there was I wasn't aware of it, but I was a young thing and naïve."

If pay gaps still span the generations, so too does the tendency for Law Firms to be overly cautious, even if the clients don't need it. Over time, this materialises as Law Firms inability to innovate.

Inability to innovate, especially in terms of employment practices, is apparent in the loss of women at higher levels in Law Firms even though 2016 sees even more instances of women joining as Newly Qualified Lawyers. For women returning after maternity absence to Law Firms "there is no real appetite for developing talent," says Dame Janet "in order to be a better lawyer you need to have access to the most testing work, and when the Partner hands the work out, the natural inclination is to hand it to the guy who has not been away from the workplace. Regardless of the quality of their work, [continual years of experience allows for] the assumption of skills. This snowballs and continues as the Partner is only concerned with delivering a high quality job for the client. The notion of equality in terms of work allocation doesn't come in to it."

The 2016 Lewis Silkin report 'The Future of Employment Legal Services' cites three issues in the top six ELS issues in the next five years as: Gender Pay Reporting, Flexible Working, and Equal Pay. All of these, ironically are issues faced internally by Law Firms and not just in relation to the legal advice that they need to give their clients.

In terms of Gender Pay Gap Reporting and the related issue of Equal Pay, Dame Janet muses the "Interesting question of whether firms will do it." She is circumspect "Some people will just ignore it. If one leading firm starts to do it then it's highly likely the others will do and we

will get momentum. The market needs to right it - Corporate Buyers of services in the supply chain. When clients are asking to tender for work they ask the question on Diversity. [Buyers] are more interested in getting a good price for a quality job – are any clients going to be brave enough to ask for it [Gender Pay Gap Reporting]?"

So there remains a thorny question: if law firms don't implement Gender Pay Gap reporting, what advice will they be giving clients? With no impending change to the legislation to make it enforceable by civil procedures, Dame Janet says "draw your own conclusions, note no effective enforcement".

Furthermore, what will right the ship in terms of equality of pay? Dame Janet suspects the same 'function following form' approach in Law Firms "we shouldn't kid ourselves that seeing the arrival of women in leadership positions means that the problems have been solved because I don't think they have, there's a lot of work to do. Law firms follow the corporate masses that they serve – they are nervous of being ahead of them." This may be the key to balance, for equality to be feasible.

"Everyone will be waiting for the first case" predicts Dame Janet, speaking of a future perfect storm scenario of both lack of compliance with Gender Pay Gap Reporting and a successful case of discrimination brought against an organisation. It will be this type of circumstance which will force the hand of both Corporates and Law Firms to deal with the inequalities of pay across genders.

Would Theresa May take the job of Prime Minister if she wasn't paid the same as David Cameron? Dame Janet refuses to be drawn as pay for this role is set, but she concedes to wonder if Emma Warmsley is being paid the same as the outgoing CEO at GlaxoSmithKline.

Interview between Emma Rose, Winmark Global and Dame Janet Gaymer