**“Using Care Ethics to fill the void between Formal Equality and**

**Substantive Equality for Women Solicitors in the UK.”**

**Abstract**

1. **Purpose:** For over 20 years now, there have been more women entering the legal profession in the UK than men, but at partnership level in private practice women still represent less than 30% on average. There appears to be a “leaky pipeline” whereby women solicitors reach around 3 to 5 years post-qualification and often choose to leave private practice for alternative legal careers such as working in-house, or leave the profession completely. Women following the traditional route to qualification of an undergraduate degree, followed by the obligatory post-graduate qualification, then 2 year training contract would typically be aged in their late twenties or early thirties at this point in their careers and therefore might be considering starting a family soon. Losing this much talent from the profession is a problem, not only for the women who have spent many years of their lives studying and training, but also for the law firms who have invested in them at the start of their careers. This paper discusses the result of a content analysis of the policies of the Law Societies of (1) England and Wales; and (2) Scotland; in relation to the issues of the retention and progression of women solicitors in private practice.
2. **Design/Methodology/Approach:** A framework derived from the theory of Care Ethics was developed for the purpose of this analysis. The analysis was conducted by reading the policy documents repeatedly i.e. without the use of NVivo or similar software.
3. **Findings:** The findings of the analysis were that although some elements of the framework were included in the policies, the essence of Care Ethics was lacking, and some areas were not touched upon at all. The policies are numerous and complicated and do not seek an outcomes based approach to the issue of the retention and progression of women solicitors.
4. **Research Implications:** The implications of these findings are that the policies of the Law Societies pay lip service to solving the problems of the retention and progression of women solicitors, but they are not bold enough to bring about real change. These policies appease law firms who say that they would like to achieve substantive equality for women solicitors but who are not willing to make significant changes to achieve this goal.
5. **Originality/Value of the Paper:** This paper suggests that these policies should include the core values of Care Ethics and should also require targets to be used in law firms at partnership level in order to ensure substantive equality for women solicitors. Care Ethics have not previously been used as a framework to assess workplace policies for law firms, and this theory does not appear to have been linked to law firms at all.

**Keywords: women solicitors; law firms; Care Ethics; workplace policy; content analysis**

1. **Introduction**

This paper encompasses the theme of the conference, as it relates to the “border” around partnership in private practice law firms, and the problems that women face in their careers making it more difficult for them to break through the border into partnership. The paper begins by setting out the issues facing women solicitors in private practice in the UK, and it is acknowledged that these issues are not unique to solicitors, or to the UK, but this will be the focus of this paper. It is also acknowledged that there are other significant equality issues in addition to gender within the legal profession relating to inter alia race, class, disability, and sexuality but the scope of this paper is limited to gender issues. The paper will then present the results of a content analysis of the policies of (a) Law Society of England and Wales; and (b) the Law Society of Scotland, (the “Regulators”) in relation to the retention and progression of women solicitors in private practice. The analysis was conducted using a framework inspired by the theory of Care Ethics. The paper will conclude by making recommendations which it is hoped the Law Societies will consider and implement in due course.

1. **Problems**

For over 20 years, there have been more women entering the legal profession in the UK than men, but at partnership level in private practice women still represent less than 30% on average (Law Society of England and Wales 2017). Literature in this area has identified that some issues contributing to this problem are : the macho culture of law firms (Law Society of England and Wales 2010; and Macmillan et al 2005); direct discrimination in the form of unequal pay (Law Society of England and Wales 2016; and Law Society of Scotland 2014); indirect discrimination in the form of systemic disadvantage such as promotion practices (Kumra and Vinnicombe 2008); stereotyping; unconscious bias (Law Society of England and Wales (2013); and an unequal domestic burden (Bacik and Drew 2006).

UK legislation has existed for decades to protect people from some of the problems identified here, but there remains a lacuna between the formal equality set out in statute, and the substantive equality that still appears to elude women solicitors in private practice. This paper considers whether the non-binding workplace policies of the Regulators of the legal profession in the UK, could go some way to filling the void and shifting from formal equality to substantive equality. The Law Societies of (a) England and Wales; and (b) Scotland; have both conducted research into this area and have a range of policies which they say assist law firms in dealing with these problems. This paper will now present the results of an analysis of these policies.

1. **Analysis**

The framework used in this manual content analysis consists of themes inspired by the theory of Care Ethics. The main theorists that have inspired this framework are Carol Gillian, Nel Noddings, Sara Ruddick, Eva Feder Kittay, Virginia Held, and Joan Tronto. There are three main themes which are further subdivided creating a framework as follows: (1) Moral and Political Theory: (i) Legal Procurement; (ii) Equal Pay; and (iii) Ethical Case or Moral Reasoning; (2) Relationships and Interdependency: (i) Maternity/Paternity/Parental Leave; and (iii) Flexible Working; and (3) the Honest Voice: (i) Women’s Networks/Mentoring; and (ii) Cultural Shift. This paper will now look at each theme and its subdivisions, and set out the results of the analysis of the policies of each of the Regulators in turn, starting each time with (a) the Law Society of England and Wales, and then (b) the Law Society of Scotland.

**3.1 Moral and Political Theory**

Care Ethics theory is used in multiple fields and for multiple purposes, but this theme relates to the use of Care Ethics in decision making in moral and political situations (Ruddick 1989; Held 2006; Tronto 1993). This paper suggests that if Care Ethics becomes more widely accepted as a moral and political theory on a national and international scale, it is more likely to be adopted by mainstream social and political movements, and in turn, more likely to be integrated into the promotion crtieria and working culture of law firms. If law firms could be convinced to take on elements of Care Ethics as their own internal moral and political theory this could help with the retention and progression of all solicitors, not only women. This paper will now set out the results of the analysis highlighting these where the policies of (a) the Law Society of England and Wales; and (b) the Law Society of Scotland; include elements which have been catergorised within this theme under the three subdivisions of (i) Legal Procurement; (ii) Equal Pay; and (iii) Ethical Case or Moral Reasoning.

* 1. **(i) Legal Procurement**

Procurement policies are relevant under this heading because they can be used to assess which law firms will be selected to conduct the legal work of a client through the tendering process for example for the legal department of a company, bank, or public body. These policies often include diversity and inclusion requirements that are considered when scoring how suitable a law firm would be and therefore how likely they are to be awarded the contract.

* 1. **(i) (a) Legal Procurement policies by the Law Society of England and Wales**

The Law Society of England and Wales’ Charter Standards require as a minimum that each signatory “demonstrates its commitment to equality and diversity to prospective clients” (Law Society of England and Wales 2012a); “is able to complete in full the model questionnaire under the Law Society’s procurement protocol” (Law Society of England and Wales 2012a); and “is successful in winning contracts from purchasers of legal services who consider equality and diversity performance as part of their procurement process.” (Law Society of England and Wales 2012a).

Since in-house legal departments who are purchasers of legal services from law firms are also encouraged to sign up to the Charter, it includes the following minimum requirements which are of relevance to them: the signatory “has reviewed its procurement policy and has a documented procurement process” (Law Society of England and Wales 2012a); and “has reviewed its procurement policies and processes to ensure inclusion of equality and diversity considerations” (Law Society of England and Wales 2012a). There is a further recommendation in addition to the minimum requirement which is that each signatory “uses information about equality and diversity policies and practices when evaluating competitive tenders.” (Law Society of England and Wales 2012a).

In addition to these requirements and recommendations in the Charter, signatories are also expected to comply with the Procurement Protocol which “has been designed to give organisations who purchase legal services the peace of mind that they are using law firms who share their commitment to diversity and inclusion.” (Law Society of England and Wales 2016b). Signatories are also provided with a model diversity questionnaire, supplier scorecard, best practice guidance and checklists to help partners implement the protocol (Law Society of England and Wales 2016b).

These points are positive in that they ensure that law firms are considering equality and diversity every time they are involved in the tendering process, and they are likely to attempt to appear in the best light to their clients in order to obtain the contract.

**3.1 (i) (b) Legal Procurement policies by the Law Society of Scotland**

The Law Society of Scotland uses equality as a criterion within its own procurement process when looking for services (Law Society of Scotland 2014), and this is important as this regulator is showing that it leads by example by doing this and by “mainstreaming” equality and diversity in all that it does (Law Society of Scotland 2014).

It does not however publish a separate policy encouraging law firms to do the same which is an opportunity missed and one which perhaps will be dealt with in the future.

**3.1 (ii) Equal Pay**

Relevant to this theme, is another problem mentioned above which is the issue of inequality of pay between men and women solicitors. In the legal profession, the latest available figures show that this stands at 19.2% in England and Wales (Law Society of England and Wales 2015b and 2016c) and 42% in Scotland (Law Society of Scotland 2014). As well as being unlawful (Equal Pay Act 1970, and Equality Act 2010), clearly it is not fair and not moral to pay people different salaries for doing the same job where the only difference between them is their sex, and therefore the question of equal pay is both a moral and a political issue which is the theme being discussed under this heading.

**3.1 (ii) (a) Equal Pay policies by the Law Society of England and Wales**

The Law Society of England and Wales addresses the issue of equal pay within its diversity and inclusion policies, in various ways including non-binding Practice Notes (Law Society of England and Wales 2012c and 2015b) advising law firms on best practice. However, the latest and most detailed policy from the Law Society of England and Wales on this point is entitled “Equal Pay: Guidance, Toolkit and Templates” (Law Society of England and Wales 2015a) which will now be analysed.

It begins by stating that “There should never be a difference in the pay of a man and woman doing work of equal value that can only be explained in terms of difference in their sex” (Law Society of England and Wales 2015a) and goes on to point out that “Law firms should address equal pay, not only because it is a legal duty, but also to reduce the risk of an expensive and embarrassing pay claim being made against you, and to show staff, clients, and potential staff and clients, you are committed to equality.” (Law Society of England and Wales 2015a).

The second quote sets out the legal and financial importance of equal pay, which may attract the attention of managing partners of law firms the most, but unfortunately does not address the moral and political reasons for ensuring equal pay between its employees. The last phrase about showing commitment to the equality, is the most relevant to this theme of moral theory under Care Ethics, but gives the impression that it has been added on to ensure that mention has been made, but it does not appear to be the central message. This paper takes the view that this element is important and should be the focus of the policy, rather than an additional bonus feature gained by law firms who manage to avoid equal pay claims.

The document goes on to give practical suggestions as to how law firms can ensure that they are not breaching the Equality Act 2010 in relation to equal pay, and sets out in detail how to use low risk pay systems; equality impact assessments; and equal pay audits. Of particular interest in this document is the section entitled “Look at your culture and informal practices too” (Law Society of England and Wales 2015a) which may make uncomfortable reading for HR professionals and managing partners in law firms with deep rooted historical issues of unequal pay between solicitors. The advice from the Law Society of England and Wales here is to look at whether the law firms’ written policy on equal pay reflects what actually happens in practice. It says “The idea that due to the impact of their family responsibilities women earn less than men doing equal work is too often used as an excuse for gender inequity. In fact, women often earn less due to the complex relationship between pay system factors, effects of unconscious bias and gender inequity in the workplace and broader society. Getting to grips with how these types of factors operate in your workplace can be challenging. It may involve looking at aspects of organisational culture and practice that are not regularly discussed openly…” (Law Society of England and Wales 2015a) and goes on to give examples.

Examples are given of the evidence that would need to be collected to objectively justify a pay differential, and a reminder that if there is no such evidence then action will need to be taken to equalise the pay between the people involved. Case studies are used to show how particular firms have implemented the steps set out to ensure compliance with the equal pay laws. Since the Equality Act 2010 has come into effect, law firms, like all employers have had to address in detail the question of equal pay between their employees. It is expected that over time this should reduce, and eventually eliminate this problem, provided that law firms take onboard the Law Society of England and Wale’s advice of ensuring that actual practice reflects the substance of the policy in implementing black letter law. This is an important point and if addressed by law firms could go some way to redressing the issue of unequal pay and also part of the macho culture identified in law firms.

**3.1 (ii) (b) Equal Pay policies by the Law Society of Scotland**

The Law Society of Scotland’s Equality and Diversity Strategy 2014-2017, commits to “Lead the debate on pay and remuneration within the profession, whilst recognising we do not have authority or powers to directly act in this area.” (Law Society of Scotland 2014). In its Framework for Equality and Diversity Standards, the Law Society of Scotland suggests that law firms should have “a statement on equal pay which is available to staff, clients, prospective clients and the Society” and that “organisations with more than 150 employees publish their gender pay gap figures for full time and part time solicitors at each level of seniority” (Law Society of Scotland 2015a).

The Law Society of Scotland has issued formal and specific guidance for law firms, and intends to continue to monitor the impact of this approach before it considers introducing firm regulatory requirements in relation to equal pay (Law Society of Scotland 2014). The guidance is entitled “Ensuring Fairness, Closing the Pay Gap” (Law Society of Scotland 2015b) and takes the form of an Equal Pay Audit Toolkit. It has been adapted for law firms from the Equality and Human Rights Commission’s (“EHRC”) broader version for use by all employers (Law Society of Scotland 2015b) and it is suggested that law firms read it alongside the EHRC’s Code of Conduct (Law Society of Scotland 2015b). In a similar fashion to the Law Society of England and Wales’ “Equal Pay: Guidance, Toolkit and Templates” (The Law Society of England and Wales 2015a) this document sets out the reasons why equal pay is important and why firms need to conduct an equal pay audit. It concludes that “Above all, it allows you to show to your clients and staff that you are committed to equality of opportunity. Undertaking an equal pay audit is one essential part of that commitment.” (The Law Society of Scotland 2015a).

The document reminds law firms that “under the Professional Rules for solicitors (Rule B1.15) there is a requirement to ensure there is no discrimination in employment terms, meaning that an equal pay complaint is also possible to the Scottish Legal Complaints Commission.” (Law Society of Scotland 2015b). It then sets out a simple 5 step process for conducting an equal pay audit, (The Law Society of Scotland 2015a) and data checklists are provided to assist law firms in conducting an audit.

The Law Society of Scotland does not emphasise that following this policy will “reduce the risk of an expensive and embarrassing pay claim” in the same way that the Law Society of England and Wales does (Law Society of England and Wales 2015a), which allows the true importance of equal pay for moral and political reasons to stand alone as the justification for conducting an equal pay audit. The Law Society of Scotland makes reference to the EHRC Code of Conduct which the Law Society of England and Wales does not do, and by doing so, the Law Society of Scotland avoids having to go into further detail itself, and also sends the message that the issue of equal pay is an international human rights issue which is far broader than avoiding embarrassing and expensive claims.

**3.1 (iii) Ethical Case and/or Moral Reasoning**

Under this sub-heading, references to the ethical case or the moral reasoning for making certain decisions are relevant within the policies of the Regulators.

**3.1 (iii) (a) Ethical Case and/or Moral Reasoning by the Law Society of England and Wales**

The Law Society of England and Wales’ Framework for Equality, Diversity and Inclusion 2016-2019 flags up early on that there is a “powerful business case for equality in the legal profession” (Law Society of England and Wales 2015d) but it lacks any reference to an ethical case for equality at all. There are also supporting documents relating to the Charter which focus on the business case rather than the ethical or moral reasons for equality (Law Society of England and Wales 2014a and 2014b).

However, on the Law Society of England and Wales webpages concerning the Diversity and Inclusion Charter, they include a quote from the Diversity Partner of a signatory firm which states: “Working towards improving performance on diversity is not just the right thing to do but is also critical to a firm's business and its ability to continue providing a high quality service to clients. Clients are clearly aware of this and are increasingly asking questions of the firms they use.” (Law Society of England and Wales 2016).

The ethical considerations surrounding the decision to aim for equality in a law firm are an element of Care Ethics which this paper has categorised as the third sub-heading under this theme of moral and political theory. Perhaps since it has become apparent that clients are aware of this, the ethical and moral case could be made more central to the drafting of the next version of Law Society of England and Wales’ policies.

**3.1 (iii) (b) Ethical Case and/or Moral Reasoning by the Law Society of Scotland**

There is no particular reference in the Law Society of Scotland’s policies to the ethical case or moral reasoning behind its policies which is an opportunity missed.

**3.2 Relationships and Interdependency**

This section sets out the areas of the policy and strategy which relate to the second theme of this framework which is relationships and interdependency. These relationships primarily take place in the private sphere but inevitably affect a person’s working life. According to this paper, this theme within Care Ethics theory highlights the fact that nobody is entirely self-sufficient, and all people rely on others to a greater or lesser degree in their lifetimes. The extent to which this affects people working lives differ between people, and those with caring responsibilities for children, elderly or disabled relatives or others will have their working lives affected more at certain times during their working lives. The policies of the Regulators reflect this in certain areas mainly be divided into (i) maternity/paternity/parental leave; and (ii) flexible working. This section will now set out the results of the analysis highlighting these areas within the policies of (a) the Law Society of England and Wales; and (b) the Law Society of Scotland.

**3.2 (i) (a) Maternity/Paternity/Parental Leave policies by the Law Society of England and Wales**

The Law Society of England and Wales’ policy does not include any significant areas focusing on maternity, paternity or parental leave.

**3.2 (i) (b) Maternity/Paternity/Parental Leave policies by the Law Society of Scotland**

The Law Society of Scotland however, commissioned a series of 12 guides in a series entitled “Parents in the Profession” which are aimed at people about to embark on or return from a period on maternity, paternity or parental leave, and their managers (Law Society of Scotland 2017a). The guides give very practical advice and include case studies of people from a variety of law firms and in-house legal positions in Scotland. They cover topics such as: “How to ensure a smooth handover to and from your cover” (Law Society of Scotland 2017e); “How to ask for, and make the most of, KIT days” (Law Society of Scotland 2017f); “How to set yourself up for a great return” (Law Society of Scotland 2017i); “How to reignite your confidence” (Law Society of Scotland 2017j); “How to ensure a strong first 90 days back in the saddle” (Law Society of Scotland 2017k); and “How to draw boundaries between work and home” (Law Society of Scotland 2017l). Additionally, “How to make a positive start to combining fatherhood and career” (Law Society of Scotland 2017c) is aimed at solicitors who are new fathers planning to take paternity leave and “Best practice for managing maternity leave for line managers” (Law Society of Scotland 2017d) is written for those managing all solicitors in these circumstances.

These guides consider the practicalities surrounding taking leave, returning to work and successfully continuing one’s career progression taking into the importance of the interdependency and relationships that become central to one’s life as a parent or carer.

In other guidance, the Law Society of Scotland makes a very valuable point to law firms when suggesting that they consider “the potential benefits in terms of loyalty and reputation of offering a maternity/paternity package that goes beyond the minimum required by law.” (Law Society of Scotland 2013).

**3.2 (ii) Flexible Working**

This sub-heading considers the issue of flexible working which can often be required by solicitors once they become parents. This is an example of where statutory rights exist to protect employees, but where the culture of law firms may result in requests to work flexibly being refused, or a solicitor’s career not progressing at the speed or to the extent that it would have if the solicitor had not needed to work flexibly for a portion of their career.

**3.2 (ii) (a) Flexible Working policies by the Law Society of England and Wales**

The Law Society of England and Wale’s Framework for Equality, Diversity and Inclusion 2016-2019 highlights the issue of flexible working and states “The importance of flexible working has emerged as a priority area for solicitors. Flexible working enables members to support their own work/life balance without penalties to career progression. It also enables employers to deliver equality of opportunity, attract and retain diverse talent and enhance business performance.” (Law Society of England and Wales 2015d).

The importance of flexible working to members of the profession was also highlighted by the Career Satisfaction Report 2015, which in states:

“Millennials are demanding greater flexibility and it is evident that employers are already accommodating this to some extent: 68% of under-35s are striking the right work/life balance and 79% are getting time off when they need it. This compares to 50% and 64% respectively of over-55s. Employers must be aware that younger generations will expect this flexibility to remain throughout their careers.” (Law Society of England and Wales 2015c).

This is an indication that newer solicitors entering the profession have the expectation of flexible working which is helpful as it may be able to assist in a cultural shift (discussed further in section 3.3 below) making flexible working more acceptable. If it becomes the norm in law firms, this will in turn contribute to the improvement in equality at partnership level over time.

The training needs of all staff including partners who are responsible for managing staff in law firms, is dealt with by the Law Society of England and Wale’s Diversity Standards which form part of the Charter. Included as minimum requirements for all signatories to the Charter are that the firms have “assessed equality and diversity training needs for all staff including partners” (Law Society of England and Wales 2012a); “delivers equality and diversity training to all staff” (Law Society of England and Wales 2012a) and “delivers a range of equality and diversity training and information which is adapted to roles and levels within the practice.” (Law Society of England and Wales 2012a). It is clearly of vital importance that managing partners are aware of the issues they need to consider when members of their staff have changes taking place in their lives such as having babies, taking maternity/paternity leave, and/or requesting flexible working patterns, since the relationships and interdependency that take place in the private sphere directly impact the working lives of the people involved on a daily basis.

Once managers of law firms are aware of their duties and the issues facing these members of staff at this time in their lives, they will know of their duty to consider requests for flexible working in a reasonable manner (Employment Rights Act 1996). The Charter Standards include as a minimum requirement that for each signatory :“The standards that every signatory “has a mechanism for reviewing the effectiveness of the process” (Law Society of England and Wales 2012a); and “can demonstrate the usage of flexible working practices at various levels within its workforce” (Law Society of England and Wales 2012a).

Signatories to the Law Society of England and Wales’ Charter are also expected to commit to the Flexible Working Protocol which states “To ensure the long term retention of both male and female lawyers, legal practices need to understand and incorporate flexible working into the fabric and culture of the business.” (Law Society of England and Wales 2011). This protocol attempts to tackle some of the problems faced by solicitors such as solicitors being considered less committed than full time colleagues if they request flexible working. The protocol includes the following statements: “Flexible working does not mean lower performance or productivity, rather efficient lawyers who maximise their working hours to benefit both employer and client” (Law Society of England and Wales 2011); “We want flexible working to become a genuinely acceptable option for top lawyers that does not diminish their career development progress in the medium and long term” (Law Society of England and Wales 2011) and “We want lawyers to maximise their professional potential regardless of personal constraints, including caring responsibilities or disabilities” (Law Society of England and Wales 2011).

The protocol then sets out some practical advice for law firms who sign up with a section headed “Equipping partners to manage flexible working” (Law Society of England and Wales 2011) in which useful proposals are made such as “Encouraging reflection and greater awareness of those managing flexible working of their own views and perceptions, particularly past experience and own domestic arrangements” (Law Society of England and Wales 2011) and “Ensure that a positive culture is fostered with give and take on both sides.” (Law Society of England and Wales 2011).

Law firms that have not signed up to the Charter and the Protocol, are still advised to put into place the best practice guidance set out in the Law Society of England and Wales’ Practice Note on Flexible Working (Law Society of England and Wales 2015b). Clearly law firms are obliged to comply with the provisions of legislation in this area, but there is no obligation for them to implement the best practice suggested. This Practice Note points out that all statutory requests to work flexibly must be considered carefully and that “As more women enter the profession and the proportion of older people increases, it is likely that more employees will assume caring responsibilities on top of their paid employment. This is likely to lead to an increased demand for flexible working. As carers will often be women with caring responsibilities, any practice restricting opportunities for part-time or flexible working may be indirectly discriminatory on grounds of gender.” (Law Society of England and Wales 2015b). It goes on to set out examples of requests for flexible working and the grounds on which refusal is likely to lead to claims against the law firm. It also points out that “flexible working requests are often made by: women, who still traditionally assume most responsibility for child caring; women returning from maternity leave, and those caring for elderly and/or disabled adults.” (Law Society of England and Wales 2015b). These are examples of the relationships in the private sphere to which this theme refers and the fact that they are dealt with in detail here is a positive step towards improving the equality position of women solicitors.

It was suggested in International Women in Law Summit Legacy Report, that the uptake of flexible working in law firms should be included in the diversity data that is collected by the Solicitors Regulation Authority and the Law Society of England and Wales(Law Society of England and Wales 2012b) in order to identify which practice areas and firms require further assistance in achieving flexible working for solicitors. However, the latest questionnaires for this data collection do not yet include questions on flexible working uptake.

The legacy report refers specifically to the effect of flexible working on career progression when it recommends that law firms should “Achieve lasting change and close the gap between policy and culture: make flexible working a choice that does not impede long term career progression.” (Law Society of England and Wales 2012b). This is an important point which is supported by the following three suggestions:

1. “Ensure men and women can harness flexible working throughout their career, can clearly signal differing career development speeds at different points in their professional and personal lives to engage and ensure long term career paths”;
2. “Review and improve the measurement of performance and career development criteria, including flexible working contributions: to develop a fairer appraisal of performance, to include measurement of broader contributions to profitability, including recruitment, retention and business development”; and
3. “Commit to provide alternate roles and later entry points to partnership, track and communicate viable alternate careers.” (Law Society of England and Wales 2012b).

These are important points and it is hoped that the mention of them in this 2012 report will result in them being included in future guidance encouraging law firms to put these points into practice for the purpose of achieving substantive equality for all solicitors.

**3.2 (ii) (b) Flexible Working policies by the Law Society of Scotland**

This paper now considers the Law Society of Scotland’s policy in relation to flexible working. It states that due to the fact that some women on maternity leave may not want to return, may return then leave the firm, or prefer to return on a part-time basis (Law Society of Scotland 2013), law firms should “Publish criteria, and agree requests for part-time or flexible working at all levels wherever possible. Consider job share, part-time working, annualised hours, compressed hours, etc.” (Law Society of Scotland 2013).

The Law Society of Scotland does not yet have detailed guidance for Scottish law firms, in the same way that the Law Society of England and Wales has already. However, following the publication of research including working patterns (Law Society of Scotland 2015b) there is an indication in their Strategy that this may be issued in the near future (Law Society of Scotland 2014). The Strategy also includes the following objective: “To positively promote the business and staff productivity/ retention benefits of new thinking on patterns of work and address issues concerning career progression” (Law Society of Scotland 2014) and sets itself the specific objective to “Issue Guidance on working patterns, technology and careers progression: ‘Ensuring fairness, supporting diverse patterns of work’ including guidance on best practice to be adopted in promotion exercises and highlighting the potential for discrimination” (Law Society of Scotland 2014) which is likely to deal with similar issues to the equivalent guidance from the Law Society of England and Wales.

Practical advice for women solicitors in relation to flexible working also exists within the Parents in the Profession series from the Law Society of Scotland in the form of two guides entitled “How to pitch for flexible working (and make it work for you and your team)” (Law Society of Scotland 2017g) and “How to renegotiate your role” (Law Society of Scotland 2017h). These guides are helpful, but it remains to be seen how the Law Society of Scotland deals with guidance to law firms in more detail on the issue of flexible working.

**3.3 The Honest Voice**

The last theme within this analysis has been entitled the “honest voice”. This was derived from Care Ethics theory by Gilligan, and is inspired by the title *A Different Voice* but this framework separates itself from the content of A*Different Voice* (Gilligan 1982). This paper disagrees with a number of elements of Gilligan’s early theory which found differences in the ways girls and boys make moral decisions and instead this part of the framework has been adapted from Gilligan’s later work in *Joining the Resistance* (Gilligan 2011), which found that adolescent girls entering secondary education and becoming women, were encouraged to “separate their minds from their bodies, their thoughts from their emotions, their voices from their relationships.” (Gilligan 2011). According to Gilligan, girls bury their honest voice and prefer to mute it in order to “align themselves with the more highly valued masculine traits”(Gilligan 2011) and they do this “paradoxically for the sake of having relationships.”(Gilligan 2011).

Earlier in this paper, the issues facing women solicitors in law firms were set out and included the macho culture of the workplace, and under this theme the findings of the analysis are those where the Regulators refer to ways to alter this culture. This paper has developed the idea of the “honest voice” which represents what women would like to say frankly, if they worked in a culture that was more open to listening to it, and which openly welcomed their forthright contributions. This theme is about creating relationships of trust in the workplace; rejecting the old values of the macho culture of law firms and importing a new value system by way of a cultural shift towards openness, generating confidence and allowing space for people to speak with their honest voice. The areas referring to this in the Regulator’s policies can be divided into (i) women’s networks/mentoring; and (ii) cultural shift. The results of the analysis of the relevant parts of the policies of (a) the Law Society of England and Wales; and (b) the Law Society of Scotland; will now be discussed.

**3.3 (i) (a) Womens’ Networks/Mentoring policies by the Law Society of England and Wales**

The Law Society of England and Wales points out that women, ethnic minority members, LGBT, and disabled solicitors are “under represented at the top of the legal profession” and state that they “want to help their career progression”. The Law Society of England and Wales has conducted research within its membership which shows that “many of these solicitors would value working with a mentor.” and a new mentoring programme was launched in 2016. This is done with the intention of assisting members within these groups to aspire to further career progression, have confidence in themselves to achieve it, and to assist them in doing so.

Although this programme will be of benefit to a variety of solicitors, the focus of this paper is on women solicitors, so the benefit to them in particular will now be considered. Women who have a relationship with a mentor may be more likely to use their honest voice, and less likely to bury it. Having a one-to-one conversation with a mentor, and building a close relationship, particularly with a woman in a senior position within the legal profession is intended to build confidence and rapport, and show more junior women examples of women who have maintained and progressed their careers in law through the child-bearing years (Kay and Wallace 2009; and Anderson et al. 2010). It will also give women the contacts they may need to progress their careers after returning from leave, or perhaps after returning to full time work after a period of working part time.

The Law Society of England and Wales’ Career Barriers Action Plan 2013 suggests the promotion of networking as a means to assist career progression (Law Society of England and Wales 2013), improving mentoring programmes for large and small firms for under-represented members of the profession, and talks about training for mentors and mentees of the programme (Law Society of England and Wales 2013). It also suggests a Practice Note should be prepared on the topic of effective mentoring (Law Society of England and Wales 2013), however this does not appear on the Law Society of England and Wales website at present.

This element seems to be dealt with fairly adequately by the Law Society of England and Wales in the opinion of this paper.

**3.3 (i) (b) Womens’ Networks/Mentoring policies by the Law Society of Scotland**

Turning to the Law Society of Scotland on this point, it refers to “affinity networks” in its Equality and Diversity Strategy 2014-2017 and commits “to remain open to member led proposals for affinity networks based on the protected characteristics” (Law Society of Scotland 2014) which would include women’s networks. Networking is discussed in 4 of the 12 guides in the Law Society of Scotland’s series Parents in the Profession(Law Society of Scotland 2017h), and the practical guides suggest that women returning after maternity leave should not pressurise themselves to keep up with networking events immediately (Law Society of Scotland 2017i), but once they are settled back into their jobs, a goal of attending quarterly networking events is suggested (Law Society of Scotland 2017m).

In the Law Society of Scotland’s policy document entitled “Ensuring fairness, creating opportunity: A practical guide to equality and diversity for Scottish solicitors” (Law Society of Scotland 2013) there is a case study set out of a law firm using mentoring under a section headed “Good practice: the role of mentoring in promoting equality” (Law Society of Scotland 2013). Later the same guide suggests that law firms “Create personal development opportunities such as mentoring…[which]… can be linked to promotion and progression goals” (Law Society of Scotland 2013). Mentoring is also referred to in 4 of the 12 guides in the Law Society of Scotland’ series Parents in the Profession (Law Society of Scotland 2017k) signalling its importance to solicitors around the time in their careers that they are taking or returning from maternity, paternity or parental leave.

As with the Law Society of England and Wales, this element seems to be dealt with fairly adequately by the Law Society of Scotland too, in the opinion of this paper.

**3.3 (ii) Cultural Shift**

This paper has already identified the macho culture of law firms as one of the issues that contributes to the problem of the retention and progression of women solicitors within the legal profession. Altering law firm culture is a slow but vital process, in order for substantive equality for women solicitors to be achieved.

**3.3 (ii) (a) Cultural Shift policy by the Law Society of England and Wales**

The International Women in Law Summit Legacy Report (Law Society of England and Wales 2012b) forms part of the Law Society of England and Wales’ policy in this area and includes a section on cultural change in law firms. The report states that there is “significant gap between policies and culture and that frequent ‘lip service’ is paid to ‘doing the right thing’ ”(Law Society of England and Wales 2012b). It goes on to point out that there is an embedded culture which is perceived as biased, (Law Society of England and Wales 2012b) and there was a need to overcome the fear of having uncomfortable conversations about bias and individual perceptions for a cultural shift to take place (Law Society of England and Wales 2012b). The practical suggestions made by the delegates at the summit on this point were: (1) to provide mandatory unconscious bias training for partners and senior partners; (2) to providing tool kits; and (3) the importance of good role models (Law Society of England and Wales 2012b). However, it is not yet a requirement or a recommendation of the Law Society of England and Wales for partners in law firms to undergo unconscious bias training which would be a helpful step in contributing towards the cultural shift according to this report.

There is also reference in this report to the need for a cultural change in relation to flexible working. It makes a recommendation to “Improve and drive flexible working practices in the legal profession, narrowing the gap between culture and policy to ensure that flexible working is more accessible and acceptable and does not arrest career development” (Law Society of England and Wales 2012b) and also to “Achieve lasting change and close the gap between policy and culture: make flexible working a choice that does not impede long term career progression.” (Law Society of England and Wales 2012b). One step towards achieving this would be to incorporate the uptake of flexible working and the seniority of the position in which is it taken, into the D&I monitoring which all law firms are required to undertake for Principle 9, and as signatories to the Charter.

The Law Society of England and Wales does acknowledge in its policies that a cultural change is required but this paper takes the view that it does not tackle it sufficiently to make a difference.

**3.3 (ii) (b) Cultural Shift policy by the Law Society of Scotland**

Turning to the Law Society of Scotland,its Equality and Diversity Strategy 2014-2017 does talk about “creating a culture and practices that recognise, respect and value difference” (Law Society of Scotland 2014) and “creating a workforce who feel valued/respected and have their potential fully utilised in order to meet organisational goals” (Law Society of Scotland 2014). It also makes specific reference to tackling the long-hours culture (Law Society of Scotland 2014), which has been identified as one of the problems facing all lawyers with caring responsibilities.

Altering the long-hours culture is also an aim set out in the Law Society of Scotland guidance entitled “Ensuring fairness, creating opportunity: A practical guide to equality and diversity for Scottish solicitors” (Law Society of Scotland 2013) which states that “Workplaces with a culture of long hours put pressure on everyone, but especially people with caring responsibilities” (Law Society of Scotland 2013) so law firms should “Encourage partners and managers to lead by example and promote a healthy work/life balance” (Law Society of Scotland 2013) because “Stress can cause a range of problems to firms. Good work/life balance can mean that time spent in the office is more productive.” (Law Society of Scotland 2013).

The Law Society of Scotland’s guide “How to Pitch for Flexible Working (and Make It Work for You and Your Team)” (Law Society of Scotland 2017g) suggests that people wishing to convincce their employer that flexible working would be a good idea, could give examples of client companies who have a culture of flexible working and output oriented culture (Law Society of Scotland 2017g), rather than long hours which may actually be less productive on average.

As with the Law Society of England and Wales, the Law Society of Scotland does acknowledge that a cultural change is required but again this paper takes the view that it does not tackle it sufficiently to make a difference either.

**4. Conclusions**

In conclusion, this paper takes the view that Regulators of the legal profession in the UK appear to attempt to deal most of these issues in some way. However, the policies are more complicated than necessary and should be far simpler and send out strong messages about the importance of achieving substantive equality for women solicitors.

This paper suggests that this should be done by embedding the elements of Care Ethics theory in the policies and guidance issued to law firms ensuring that they form central themes of the Regulator’s policies in this area, rather than “add on” benefits that law firms can obtain whilst avoiding “embarrassing and expensive claims”.

This paper also suggests that in addition to adopting Care Ethics as the culture of law firms, certain criteria should be incorporated into the criteria used for promotion from assistant/associate solicitor to partner level. For example, alongside the criterion of bringing in new clients, there should also be a criterion valuing the maintenance and continuation of existing client relationships. Additionally, the internal relationships that solicitors have in the workplace such as with their support staff, other colleagues, clients and other external parties with whom they have frequent contact, for example court staff, or estate agents should be taken into consideration as criteria for promotion. This can be ascertained by collecting 360 feedback from internal and external contacts, and would give value to importance of interdependency and relationships ensuring that those promoted to partnership level had displayed this element of Care Ethics. Time and effort spent training trainees and giving training seminars to other staff members should also be rewarded by way of promotion criteria too.

This paper’s final point is that in order to fill the lacuna between the formal equality that statute sets out and the substantive equality that women solicitors in private practice have been seeking to achieve for decades, it is likely that gender targets will need to be used in partnership decisions for a period of time. Although targets are unpopular since women want to be able to rely solely on their own merit to achieve promotion to partner, it is the view of this paper that statutes providing formal equality have now been in place for so many decades that in order for them to overcome the barriers facing women, the use of Care Ethics in Regulators’ workplace policy will not achieve this quickly enough, and targets are also required.

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