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Our ref. 0001.0004

Dear Ms Boydens

RE: GENDER PAY GAP REVIEW (the “Review”) PANEL

I am writing to the Scrutiny Office further to Wednesday evening’s Gender Pay Gap debate at St Paul’s Gate.

Background

I have attached hereto a copy of my CV by way of background information. I grew up in Jersey, qualified at the English Bar in 1996, have been specialising in employment law since 2001, returned to Jersey in 2004 and founded Callington Chambers in 2013.

At Appendix 1 hereto I have set out in summary form my responses to the questions which are the subject of the Review. Below I provide my thoughts on this area more generally, in relation to Jersey.

I would be happy to meet with Scrutiny to discuss this further.

Commercial benefits of women at senior levels in the workplace

Research continues to confirm the commercial benefits of male/female diversity in the management of businesses:

“...there is a positive correlation between the proportion of women in the top management and the organizational and financial performance of the companies. A study conducted by McKinsey shows that companies having women among top managers demonstrate higher operating margin and market capitalization in the industry than companies managed by men only.”

April 2012 McKinsey & Company

“Banks with higher shares of women leaders had higher capital buffers, lower nonperforming loans, and higher distance to distress (“zscores”). These results hold even after controlling for factors such as bank size, GDP per capita, experience of board members, and other board and country characteristics.”

September 2018 IMF “Women in Finance: A case for closing gaps”

Gender pay gap in Jersey

From my experience, the gender pay gap in Jersey is evident in areas including the following:

- Jersey's civil service
- The judiciary of the Royal Court*
- The financial services sector
- The legal sector

*The legally-qualified judges of the Royal Court are the Bailiff, the Deputy Bailiff and the Commissioners. No local women are legally-qualified judges of the Royal Court, save for the Registrar of the Family Division of the Royal Court. There are other local senior women within our judicial system including the Jurats (we now have equal representation of men and women among the Jurats of the Royal Court), the Viscount and the Magistrate. (In addition, the Attorney General and Solicitor General are both male. As far as I am aware, there has only been one female Solicitor General in the history of the role and there has never been a female Attorney General. Appointments to these roles to date may reflect the proportions of suitably qualified men and women.)

There are many reasons why the gender pay gap exists in areas such as those above, including the cultural norm which still prevails in Jersey of women being the primary childcare providers. I.e. Mothers staying at home to look after children. (Not all sectors will necessarily see a gender pay gap; comments in this letter are focused on those areas with which I have worked directly.)

(Discussions, at the debate last week and online, have flagged the position in other countries such as Sweden. It must be acknowledged that (a) tax in Sweden is 61.85%, which allows for a very high level of state benefits, and (b) the Swedish have a history of encouraging parental leave dating back to 1975. The Swedish context is different; radical cultural changes do not tend to happen overnight.)

If we wish to address Jersey's gender pay gap, before we take any steps to try to do so we need to be very clear on:

- the problem statement (what we define as the issue to be addressed or condition to be improved upon);
- what we are trying to achieve (the outcome sought);
- why we believe this to be in the general, long term interests of the Jersey population;
- how this might be done; and
- what the unintended consequences of any measure might be.

In relation to the final point above, it is noted that an unintended consequence of the implementation of the Employment (Jersey) Law 2003 (the "Employment Law") was an increase in the number of people employed on zero hours contracts. Given that a worker on a zero hours contract may historically have had no right to be given notice of termination of employment, this meant that some people may have lost statutory employment protection as a consequence of the implementation of the Employment Law.

Legal sector

In the UK there are now more women law graduates than men. (As at 2016-2017, 12,060 (67.5 per cent) were female and 5,795 (32.5 per cent) were male). However law firms are consistently under-represented when it comes to female partners. Women make up nearly half (48%) of all lawyers in law firms but in large UK law firms only 1/3 of the partners are female.

In Jersey the position is twice as bad. On the basis of information published on line by 6 of our largest law firms, their Jersey offices have an average of 1 female partner to every 7.5 male partners. One of the largest law firms has only 1 female partner out of a total of 18 partners within the Jersey partnership, although globally (looking across all of their offices) the balance is more equal.

Why might this be?

- Jersey's dominant industry is financial services. This is a highly competitive industry. Locally it is under pressure from regulators and threatened by global competition. By its very nature, it is about making money. It might be said that this industry promotes a macho culture, with factors such as:
 - o Long hours
 - o Rewards systems based on who brings in the most money
 - o Competition, with individuals and/or teams pitted against each other
 - o Presenteeism (not taking sick leave or paternity leave; being constantly available via mobile devices)
 - o Promoting a view of a stereotypical male worker (heterosexual, dominant male, "work hard/play hard", alcohol or sports based social/client events or a combination of the two, little recognition of mental health issues)
- Jersey's major law firms primarily service the financial services industry and look to replicate what they perceive to be the successes of London's "city" law firms, which may include working unsafe hours and (certainly historically) practices such as taking male clients to male-orientated entertainment venues or events.
- An arguably trivial example of what may be considered acceptable within the financial services sector is a decision by a financial services training provider in Jersey to base a public seminar on a showing of the film "The Wolf of Wall Street". This is a good film and I enjoyed it, watching it from the comfort of my own home. However, as a woman, I would have been mortified if I had been required by an employer to watch this film with male colleagues, using it as a "what not to do" training tool, given the explicit women-as-sex-objects content of the film, which is based on the life of Jordan Belfort.

Generally the sexism which underpins the gender pay gap in Jersey law firms is unconscious. Many law firm partners are kind, generous and paternalistic. This can make challenging unconscious biases nigh on impossible, particularly in the context of difficult discussions around matters such as promotion, when one is trying to demonstrate how well one fits into and contributes to an organization.

Partners at leading law firms will often emphatically proclaim that they promote only "on merit", and they will feel insulted if allegations of bias or sexism are raised. What promotion "on merit" usually means is that they promote to partnership on the basis of fee income. However women often choose to work in or are encouraged to work in teams which undertake less remunerative but emotionally rewarding work, such as family, legal aid or employment ("FLAE") law. These legal sectors cannot compete in financial terms with the banking, commercial litigation and trusts ("BCT") teams. That means that if it is a choice whether to promote to the partnership either a member of a BCT team or a member of an FLAE team, the BCT team member is likely to succeed and the FLAE individual to fail. In addition, women will often be expected to undertake less remunerative and/or supporting work; perhaps they may be more compliant in terms of agreeing to undertake non-chargeable work than male peers. Firms will often say that they recognize all of the contribution that each person makes when that is unlikely to be the case: work which does not generate income is not valued in the same way as fee-earning work. The fact that lawyers doing lower income work (including legal aid work, management and business development) may contribute to staff and client retention, support morale and help to manage risk, may count for little.

Arguably there is an element of personal choice in all of this – although that may be a consequence of cultural norms and social pressures. Being prepared to push yourself forward in a highly competitive arena may require levels of confidence and forcefulness which in our society are more rewarded in men, men being congratulated from birth on being big, strong, brave, vocal and confident – like a lion or a chest-beating "alpha male". By contrast, women are expected to be kind, sympathetic, gentle, petite and have a "softer touch". This could mean that women expect to fail if they speak up for themselves and/or that they will be perceived as "difficult" or "pushy".

In many Jersey law firms the gender hierarchy is clearly visible: women are plentiful in support roles and at junior levels, frequently outnumbering men in lower salaried positions. They then filter out so that there are very few at the top.

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Many women will take time out to have children and to look after children when they are small. This might be covered by maternity leave, a career break/unpaid leave and then a return to work on part-time hours. During the time that they are out of the office others (men and women) will be working very long hours, often in stressful and highly competitive roles. When a woman returns to a law firm she may find that working in a potentially lucrative full-time role – say senior associate in a commercial, banking or litigation team – isn't compatible with her family's requirements, with children now a critical priority.

This may be made worse by the fact that there will be few very senior women within a law firm. As a consequence there may be few people with whom a mother can discuss the complexities of being a working mother or who will recognize her need to drop matters to pick up a sick child from school. Those women who do succeed may be able to afford to pay for high levels of childcare. Some may have family members who can help with childcare, although this is far more rare than it was a generation ago. A few will have husbands who are the primary childcare providers in the family.

Because being a law firm partner and being the primary childcare provider is often incompatible, women tend to drop out of private law firms, moving to in-house roles or other types of work such as the civil service, where there may be more flexibility or more ability to work part-time.

The loss of women for family reasons has knock on implications for those women who do not have children. For them too there are few female peers and mentors at the top.

In the past decade numerous small and boutique law firms have sprung up in Jersey. Many of these have been founded or co-founded by women including:

- Lacey Advocates
- HJH Law
- Callington Chambers
- Binet Law
- Corbett Le Quesne
- Myersons
- Castle Chambers
- Ardent Chambers
- Ward Yates

It is not accepted that women are necessarily less entrepreneurial than men. It is accepted that their approach to risk and their areas of interest may sometimes be different.

Technology

The lack of women in the technology sector should be a huge concern to everyone in Jersey. Action on this should be made an immediate priority.

We are seeing girls dropping out of STEM (science, technology, engineering and maths) subjects and failing to engage in hackathons and coding clubs in the same way as boys. This is not a new thing. However it is vital that it is addressed, given that going forward power will be in the hands of those who control technology, potentially creating a very unequal society. This is particularly important when one considers the implications of artificial intelligence ("AI") and the impact of unconscious bias when it comes to programming AI.

My experience is that women in Jersey have a tendency to self-select out of technology related projects and activities, saying that they are "not good at it" or "it's not my thing". This leads to girls having no middle aged and older female mentors in technology, influencing the younger generation to conclude that tech is "not for girls". (Also, arguably there is a lack of public recognition of the interplay between STEM subjects and what are traditionally regarded as arts or creative subjects. It could be said that in the modern world these are fundamentally inter-related and opportunities arise when skill-sets are mixed rather than siloed.)

This self-selection away from technology increases the risk of being selected for redundancy when businesses change and restructure.

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Jersey's state pension age is increasing and we are all getting older, but there appears to be limited meaningful investment in reskilling the workforce. Unemployment is the elephant in the room when it comes to AI. The pitch for AI is that it "allows people to do much more". The truth though is that when simple jobs are automated the people that lose those jobs are not being enabled "to do much more" – they simply become unemployed and a drain on the island's resources. In Jersey we have a shortage of people with the right tech skills and an excess of people who don't have the right skills.

According to our unemployment statistics, unemployment shoots up at the age of 50. Of those in Jersey who are registered as actively seeking work generally, women are more likely than men to be actively seeking work and are far more likely to be underemployed. (See www.gov.je "Registered unemployment for the third quarter of 2018".)

This is a waste of the workforce resources available.

During Jersey TechWeek 2018 a whole morning was spent on cryptocurrencies and the blockchain. One of the major issues around any disruptive technology is risk and that is particularly the case with cryptocurrencies. Research confirms that companies with women directors deal more effectively with risk than those without. Not only do more diverse businesses better address the concerns of customers, employees, shareholders, and the local community but also they tend to focus on long-term priorities. Given this, it was disappointing that a question about gender diversity was not addressed, presumably because it was not seen as a core issue within the fintech debate – yet employing more women in emerging fintech businesses could give Jersey a tangible advantage.

How one might address the gender pay gap

Legislation generally provides a stick with which to beat the non-compliant. Sometimes it is necessary to legislate to create change, but it always carries a cost (both predictable costs and hidden and unanticipated costs) which must not be minimised.

There are other ways of changing attitudes.

The 2012 London Paralympics were a huge success in transforming the way that disabled athletes are viewed. The extensive, upbeat and passionate television coverage meant that for the first time the Paralympics were viewed by very large numbers of people. That's not to say that disabled athletes don't continue to face enormous challenges but the London Paralympics changed perceptions of what athletes look like.

Here in Jersey, the Beresford Street Kitchen is helping to change perceptions.

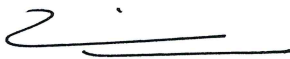
There is no one-size fits all solution. Jersey shouldn't rush to introduce measures on the basis of what other jurisdictions do: we could and should do something different and better.

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A different option from legislation would be to engage with regulators, authorities and commercial bodies (the JFSC, JFL, The Law Society of Jersey, Digital Jersey, Jersey Business, the Chamber of Commerce and the IoD for example) and ask them to set diversity standards which they expect their sector/their members to meet. Particularly when it comes to regulated industries, the support or expectations of a regulator bear significant weight.

In addition, there should be a review of how cultural norms are permeated through our education systems and what needs to change, including in terms of immediately acknowledging the technology education deficit for older workers.

Yours sincerely



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Appendix 1

1. Do you think there is a gender pay gap in Jersey?

Yes.

2. Is there any evidence to suggest that women returning to work after having children are less likely to be successful applicants?

I do not know the extent to which there is evidence confirming this in Jersey.

3. From your experience, are women more likely to apply for part time jobs or jobs where there is flexibility in working hours?

Yes.

I believe that the weighting of women in part-time roles is also reflected by the States of Jersey's Actively Seeking Work figures, Q3 2018:

"Figure 9 shows the age and gender distribution of people registered as ASW underemployed; in September 2018 59% were aged 40 years or over and over two-thirds (71%) were female."

4. Do you think a culture change is required to encourage more men to take career breaks to look after children?

Yes – but that is subject to the question of whether it is considered that, objectively, it would be a positive benefit to the island if more men took career breaks to look after children?

5. How long do you think women can take out of the work place before it starts to hit their future progression?

It is very difficult to quantify this - perhaps 6 months?

6. What barriers do you think women face in relation to promotion and progression in the workplace?

Please see my more detailed response in the body of the letter above.