Transgender Research in the Legal Profession in Scotland

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Introduction

Previous surveys of the legal profession in Scotland (in 2013, 2009 and 2006) showed that transgender people are prevalent in very small but fairly consistent numbers (less than 1% of the total legal profession) over the past 8 years.

Other than these large scale quantitative surveys, which did attempt to capture the issues faced by transgender people within the profession, albeit as part of the wider research applicable to the entire profession, the Law Society of Scotland had not, until now, conducted any research to consider the experiences and views of transgender legal professionals.

Methodology

Due to the very small numbers of transgender individuals prevalent within the legal profession as suggested by the pervious surveys it was considered appropriate to target transgender professionals using qualitative methods. It was also considered that this would provide a more sensitive approach and allow us to consider individuals’ experiences in greater detail and context. As such, it was agreed that a series of depth interviews would be the most appropriate methodology to employ. The topic guide used within the research is included at Appendix A.

To recruit respondents we consulted the list respondents to the latest Law Society Profile of the Profession Survey to identify any transgender respondents who had also provided contact details for further research. Notices and adverts were also placed on various Society forums, including twitter feeds, the Society’s website, and the e-bulletin.

Two transgender respondents to the 2013 survey had provided contact details; however, when contacted to be invited to participate in this research, they indicated that they were not suitable. Only one respondent come forward to participate in the research as a result of advertising from within the Society. The Equality Network also advertised the research on our behalf, and requests were also made to Stonewall Scotland for assistance in advertising and recruiting suitable respondents, however, no further responses were received. As such, this report provides a summary of the results from only one interview.

Due to the poor response rate, and the limited number of respondents included in the research, this summary cannot be treated in any way as representative of transgender legal professionals more widely. Rather, it represents one individuals views and experiences, which may or may not be typical of others experiences.

Personal Background

The respondent indicated that they had transitioned many years prior to starting their legal career, including officially changing their name prior to any legal training, and obtaining legal gender recognition during university. As such, they could not comment on the nature and/or effectiveness
of any support or policies in place within the profession or the Society itself to assist transgender solicitors during this period.

The respondent was assigned female at birth and underwent gender reassignment to live as male. They now consider themselves to have a fairly androgynous gender identity. Their current employer is aware of their trans status and is very supportive of this so they feel able to express their fluid gender identity, sometimes presenting as more masculine and others more feminine. However, they also contribute to other external work environments, committees, etc, and in those environments they have always presented in their acquired gender. They feel they have to dress in a certain, very traditionally male way in order to be considered and treated as professional:

“As soon as you present in a way that slightly confuses people, and they’re not sure if you’re male or female, it’s really complicated and it makes things awkward. So for me, I find it best to just present in the way that people expect me to in each situation, it’s easier.”

Having to present in a way that they don’t really feel comfortable is difficult and frustrating, however they see no other alternative. However, they do acknowledge that this is a society imposed issue rather than something that would only be experienced within the legal profession, albeit that the problem may be more acute within the legal profession due to the historic ‘old boys network’ and masculine tradition of the profession.

“It’s frustrating, but I don’t feel that there’s much of an option. Society at the moment doesn’t really recognise there being anything other than male or female, generally.”

**Early Expectations**

Like any young person thinking about going to University, the respondent had been anxious about embarking on a legal career. They had been nervous about meeting new people during the law degree, and specifically about the types of people that would be likely to be on a law course. They were also worried about the prospects of getting a job once the degree was completed, would an employer hire me. These may seem similar to the types of concerns that most new students would experience, but their trepidation was heightened by the worried that they would experience homophobia because of their gender identity. They indicated that, as they had not been on hormone treatment for very long by the start of their degree, they felt that they were often perceived by others as very effeminate and read as gay, so they worried about homophobia, both in terms of going to University, whilst they were there, and when thinking ahead to what they would face within the workplace.

Whilst still at the stage of considering whether to embark upon a legal career and projecting forward in time to when they entered the workplace, they indicated that their main concern/worry had centred around meeting partners of law firms and experiencing discrimination at this point in terms of recruitment. Would they make it past the recruitment and interview stages or would employers meet them and form stereotypical and/or discriminatory views about them? However, they had also experienced anxiety regarding workplace bullying and/or more subtle exclusion from the social side of the workplace. For these reasons, they had expected that they would not feel able to be open about being trans.

“people just not really treating you like one of the group, would always be treated as different and that I wouldn’t be able to make friends with colleagues, etc”.

“I certainly never envisaged myself being able to be open about being trans. It was always something that I thought I would keep to myself.”
The respondent had been less worried about clients, even from the early stages of considering a legal career, but this was because they had always wanted to work in equalities where they thought that their transgender status would be less of an issue. They did wonder, however, if this had perhaps been their way of setting limits and thinking, even subconsciously, that they wouldn’t be accepted into a traditional private practice law firm.

**Actual Experiences within the Profession**

The 2013 Profile of the Profession Survey asked a series of questions to identify any type of discrimination experienced at any stage of a legal career, including various elements within University courses, traineeship, first jobs, and during more established career/positions. Although response options were included for discrimination related to being transgender, no respondents indicated that they had been subject to discrimination on these grounds. Despite this lack of quantitative evidence, the interview was designed to consider trans respondents experiences during these various stages to identify the extent, nature and severity of any discrimination that they may have experienced.

**Recruitment into the Legal Profession**

The respondent felt that their trans status had had no impact whilst at University and noted that the lecturers had been very discrete. They had been anxious about having to show old exam certificates in old name and gender identity, and a bit anxious about completing the gender section of the application form as they had not received their gender recognition certificate at that point, but had not been anxious about the University application process overall. They reported that this had all gone smoothly and that they did not actually experience any difficulties during this stage. They did, however, overhear transphobic comments and/or jokes at times whilst at University, and whilst these had not been directed at them or any other specific individual, they acknowledged that it still made them uncomfortable and nervous about people finding out that they were trans. This resulted in the not wanting the fact that they were trans to be widely known, as felt that some people would have been prejudiced against them if they knew.

Beyond University they felt that they were/are not really perceived as trans by majority of people, rather they feel that they are perhaps seen as effeminate or a bit different. However, they do think that this has impacted upon their ability to obtain a traineeship. They note that it took a considerably long time to secure a traineeship; despite having been top of their University class, achieving a 1st in the Degree, and having excellent University references, they indicated that they could not get past the interview stage. The respondent also belongs to other minority groups that often face discrimination as well, so they note that it is hard to know which element was the cause of this impact, or if it was the combination of these factors, but are certain that its definitely had an impact on their recruitment into the workplace. They stressed that no one had been overtly offensive, but does felt that there’s something more to the difficulties they have faced in obtaining a traineeship than simply the economic downturn or other legitimate reasons faced by all University graduates.

**Experiences within the Workplace**

The respondent was confident that they had not been subjected to any transphobic or homophobic discrimination (or indeed any form of discrimination), or had any negative experiences within their current workplace. However, they did indicate that they had experienced some inappropriate and perhaps discriminatory behaviour whilst undertaking an internship within the profession.
They had completed a short internship at a traditional private practice firm where inappropriate statements were made. These statements were not particularly discriminatory in nature, but rather very gendered and elitist comments which were likely to have made the female interns as uncomfortable as any LGBT interns. They felt that there was a very macho, misogynistic culture prevalent within this firm which made them feel uncomfortable. They also noted that women didn’t appear to be valued as much as male counterparts in this firm either.

“"It's not about overt transphobia, it's just about people having no idea about the way their behaviour impacts on others.""

In addition, whilst completing this internship they felt that they were treated differently from the other interns, and recalled an example of being given gendered souvenirs and when they asked if they could swap theirs for the alternative version they were made to feel that they were creating a fuss and being inconvenient. Further, they felt that some staff had talked to them a bit differently than the other interns; they acknowledged that some people had been lovely but that others had been “a bit off with me”, being both dismissive and patronising. In terms of dealing with this, they generally ignored it, “kept my head down and got on with it”. Overall they felt it was only a short term placement and there was no overt discrimination so they felt they could get through it and it was not worth making waves/enemies.

They were certain, however, that would not have outed themselves as trans within the internship company, or many other workplace environments within the profession. As mentioned above, they have disclosed their trans status in their current employment, and the organisation providing the traineeship were aware as they had worked with them in various capacities previously and specifically around equality issues. This meant they were much more relaxed about entering into the traineeship, although they admitted they had still been anxious about other trainees and/or professionals that they would meet whilst in the role and how they would be treated. However, they noted that the organisation had good equality and diversity policies in place and were very active in ensuring that these policies are implemented and adhered to, and that HR aware of their situation and had been understanding and respectful. They felt that they would have felt far more comfortable in this organisation than in other, more traditional private sector firms.

“"Deciding whether to say that you are trans or not, it has so much weight and its not a decision that you can take lightly, because once you’ve said it people will always look at you in a different way. There’s no avoiding that. It’s not something that you can unsay. And if someone’s funny about it or got a problem then that’s it, you’re kind of stuck.”"

As outlined above, the respondent has regularly felt that they have had to change and/or adapt their gender expression in order to fit in within the workplace. They dress in a very traditional formal manner in certain situations where they feel this is what would be expected despite not feeling entirely comfortable presenting in such a way.

“"if a [more senior colleague] asks me to do something and I’m presenting in way to them that they think is not professional because I’ve not got a suit on or whatever, then they may judge me without me having the opportunity to explain. So I think I probably will just continue to present [in my acquired gender] as they expect me to.”"
Although they feel that presenting in such a way will make them uncomfortable and be difficult for them, they feel that there is no acceptable alternative currently. Again, this is a society wide issue however and not just something specific to the legal profession:

“Until there’s a shift in society to where it’s acceptable to be different then I don’t think I’m going to have much choice.”

Another issue they have faced is around language used. They note that, although some people know their trans status many people don’t understand or know to use gender neutral pronouns, etc.

In terms of complaining in the even of experiencing discrimination, they feel that they would be very unlikely to do this because they would not feel confident enough to make a complaint. Whilst they noted that it would largely depend upon the situation, they felt that they are not that confident in complaining generally and would have very serious concerns that it would affect their own future career prospects, whether this was not being kept on in team/organisation, or in terms of not being able to gain promotion, but also included worries about how their ongoing day-to-day working life would be affected. Therefore, they feel it would be highly unlikely that they would complain, no matter what the organisation was that they worked for. The discrimination would have to be extremely serious and obvious for them to risk making a complaint – only in the situation where it was so bad that they either complained or left the organisation would they risk making a complaint.

In relation to the existence of equality and diversity policies or practices, they acknowledged that they thought the firm where they had completed the internship did have an equality and diversity statement which covered all elements of protected characteristics, however they stated “there’s such a gulf between a firm having a policy and actually doing anything with it.” They felt that their traineeship organisation were much better in terms of providing suitable equality and diversity policies and that the practices were implemented and adhered to, and that they were still trying to improve their position further. They felt this was positive, even if it was just to show that they “were aware that trans people existed - whereas I wouldn’t think that a lot of other places actually do.”

**How the Society can further promote equality, diversity and acceptance within the workplace**

The respondent felt it would be beneficial if the Society was in charge of equality and diversity training for all affiliated and registered bodies/firms/etc. They felt that firms should have to be accredited by the Law Society of Scotland to show that you have completed equality and diversity training, that there is a certain standard maintained across the profession and that policies are both suitable and implemented, etc. There is a feeling that there are probably many firms and organisations within the profession where staff will not have received any equality and diversity training, and also, where training has been provided it will often not adequately cover trans issues.

“So often general equalities training does not include trans stuff, unless someone has made a real effort to include this. I think the Law Society would be capable of doing this but individual firms aren’t going to.”

The respondent stressed the issue and difficulties faced with having little visibility of trans people within the profession:

“It’s difficult to never see yourself reflected anywhere, I never felt like there was any acknowledgement that there might be trans people in the profession. It makes you feel really isolated.”
“It would be really useful if reference to gender identity/expression could be made, just to acknowledge that trans people do exist.”

To tackle this, they indicated that it would be beneficial if the Society could run articles within the journal, etc. covering the experiences of trans solicitors and raising awareness and the trans profile within the profession.

They did indicate however, that literature needs to be written and/or amended to be more sensitive to trans people. Ensuring that, when discussing trans peoples cases in the literature that the correct gender terms are used, or indeed using gender neutral references. For example, they noted that even at University where they studied trans cases mistakes were often made by the lecturing staff over the correct gender reference, and they mentioned elsewhere that people can often offend unintentionally by not using the correct gender term or not using gender neutral language, etc. Therefore they advocated the need for additional education, training, and awareness raising which would be required across the board so that people are aware of the appropriate language to use. They felt that the Society could, therefore, perhaps provide some best practice guidelines around language and requirements to assist in this education/awareness raising within the profession.

They also suggested that an LGBT network should be established within the Law Society, and that this should be available and advertised to students on the law degree as well as those working within the profession. They acknowledged that such a network may well already exist, but stressed that if people are not aware of it then they could not tap into it: “so if it does exist then there needs to be greater awareness/advertising of this to the students and the qualified professionals so more people are aware of it”.

In addition, they thought it would be hugely beneficial if the Society were to engage more with LGBT Youth and similar groups to provide talks and encourage them to consider a legal career. This would let young LGBT know that this is not a career that is blocked off to them, that it is an option for everyone.

Finally, they felt that more effort needed to be made with the commercial private practice firms to “move them on” in terms of gender biases.

**Best Practice in Relation to Trans Policies/Practice**

The respondent was not aware of any specific good practice from within the legal profession currently, other than perhaps that the organisation that had provided their traineeship had developed good equality and diversity policies and were actively promoting suitable practices around this. There were, however, aware of good working practices going on in other places in relation to trans policies. For example, the police have a National Trans Police Peoples Association, so they have a visible trans presence and they have a really good trans policy about how people should be treated, how they can be supported to transition at work, etc, etc. Traditionally, the police is an historically macho profession so it is encouraging that they have taken these steps and are working hard to ensure that trans people are not discouraged from entering this profession – there are, therefore, potential learning that can be taken from this example and implemented within/across the legal profession.

“So it’s really obvious if you are a trans person that you know that you’re employer has thought about you. Just that visibility can make such a huge difference. Any organisation that’s done anything to highlight that the know that trans people exist then that’s a positive and really good first step.”
Experiences and Expectations of the Society

Has not had much contact with the Society in relation to regulatory matters or member services so could not comment on these. However, they did note that they have had very positive interactions with the Society in their current role, and that the Society has been very supportive and helpful when approached for assistance. The Society has proven that they are keen to be involved in trans issues, willing to engage, and contribute to joint working where ever possible.

The respondent can’t remember seeing literature or other materials from the Society that is particularly trans inclusive. This could perhaps represent an area where the Society could improve, for example more use of gender neutral language in its own literature, use of trans people in examples of cases, etc, or more specifically including articles in the journal and e-bulleting tackling the subject of trans people within the profession, and the development of suitable template/standardised equality and diversity policies which adequately and appropriately take account of trans people in the workplace, etc.

Things in relation to law reform issues and related matters from the Society have been “pretty good”. For example, they felt that the Equal Marriage Consultation was good in relation to trans issues, and that this could perhaps be considered as best practice.

In terms of awareness of equality and diversity work carried out by the Society, they were aware of some joint work between the Society and the Equalities Network. Also, that the Society had hosted the SWAN LGBT Networking event, which they considered was very good and had impressed them. Finally, they were aware of the Equality and Diversity Committee in that they knew that it existed, but they were not aware of any of the specific work carried out by this Committee.

In relation what they felt the Society’s remit and responsibility should be for equality and diversity within the profession, they felt that the Society should take much more responsibility for ensuring that the legal profession in Scotland is reflective of the people of Scotland. They felt that the Society should perhaps be suggesting to some firms that there is some element of positive discrimination used on occasions, however, this a large number of respondents is pervious surveys have indicated strong objections to the use of positive discrimination so the introduction of this or suggestion that the Society was trying to encourage firms down this route would be highly controversial. The respondent also felt that the Society should be encouraging the big organisations to host LGBT networks, or that the Society itself could provide and/or coordinate a Scottish wide LGBT Network (although this could perhaps consist of a series of more local branches as well). Ultimately, they felt that the Society should take much more responsibility for coordinating the whole thing.

They also noted that “anything that helps with visibility is really valuable, and the Law Society [of Scotland] has a responsibility to make sure that the diversity of the profession is visible and promoted.” As such, they wanted to see more articles from the Society to promote good news stories or employers with positive diversity policies and flourishing careers for any minority group.

In terms of improving the Society’s own services, the respondent felt that they had not had enough contact with these to comment on specific potential improvements.

In terms of how the Society can promote better practice within the profession – this is covered above.

In terms of how the Society can improve its public position on equality issues, they felt that promoting trans visibility is vital (ideas for doing this are detailed above). They also felt that the
Society could do more to target specific groups and organisations for minority young people (eg LGBT Youth) to encourage them to consider a legal career.

**Other comments/issues:**

They felt that application forms across the board are always inappropriate in terms of the gender question; these always only present a binary option of male or female, so if you’re anything other than this there are not options to select. Also, they have found that most equality monitoring forms do not ask if you’re trans, however, they have seen a few which have asked about sexuality and then included transgender in the list of options. This is not appropriate as being transgender is not a sexuality issue; therefore this is (at least) annoying for trans people if not also degrading. They felt that if the Society could provide advice to firms of how to construct appropriate application forms and equality monitoring forms this would be helpful; although they considered that it would be even better if the Society could provide a standard template for equality monitoring to be adopted across the profession.

They also outlined a disappointment that there were no role models for young trans people either already in the profession or for those thinking about a legal career.

“How many solicitors are there in Scotland? Why aren’t there any role models, where are young trans people supposed to look? ... There may well only be a few trans solicitors out there but they aren’t writing any articles, or talking about what its like to be a trans person working in law, there’s just nothing.”

They were understanding that for many people they do not claim trans as an identity, and that it is not part of their everyday lives as such, rather they want to just be themselves and for people not to know, "but I think its often a sign of general fear of what will happen if people know." They also understood and accepted that until that this fear is removed, both within the profession and in society more generally, then little progress can be made on this.

The respondent did acknowledge, however, how difficult it will be for the Society to try to improve things, or for the profession to make improvements without improvements also being made across society more generally:

“Until things improve more generally people aren’t going to want to be out at work, in any workplace, so there needs to be much more out of the box thinking about what is needed to improve equality and diversity. There needs to be much more partnership working between the Society and the EHRC and bodies like that to try and improve things. If the Society had a campaign of “I’m your lawyer and I’m gay”, or “I’m your lawyer and I’m trans”, these kinds of things just to raise awareness, it would make a huge difference.”
1. INTRODUCTION

1.1.1 Good morning/afternoon/evening. My name is [NAME] and I work for an independent research company called SYSTRA. Last year we completed the Law Society’s profession wide research, the Profile of the Profession Survey, which aimed to provide an updated picture regarding the demographic make-up of the profession, as well as considering the extent and patterns of flexible working within the profession, and various equality issues, including experiences of discrimination.

1.1.2 The Society want to build upon that survey with qualitative depth research to provide greater understanding of the experiences of people with various equality characteristics, to identify any specific needs, and ensure that they meet these needs and do all they can to encourage those from minority groups to consider a career within the legal profession. The experiences of transgender solicitors have received very little research attention, which is therefore the rationale for this research.

1.1.3 I will be recording the interview if that is OK with you? The recording will be used solely for me to write up the group later, rather than trying to write down everything you say now. I assure you that I will be the only one to listen back to the recording. Your participation will remain anonymous. We adhere to the Market Research Society’s Code of Conduct and the Data Protection Act, so nothing will be attributed to you personally, your name will not be used in the reporting and we will endeavour to remove/anonymise all details that may identify you. Your personal details will never be passed to any other party, including the Society.

1.1.4 I should stress that there are no right or wrong answers; I simply want to know your opinions and hear about your experiences. Also, all questions are voluntary, if you do not wish to answer any of them, just say and we will move on.

1.1.5 Finally, throughout we are interested in hearing about both negative, and positive experiences, and identifying any elements of good practice, either from within the legal profession, or from elsewhere which you think could inform improvements.

2. PERSONAL BACKGROUND

2.1.1 So that we can understand a bit more about your experiences within the workplace, can I ask a few rather personal questions regarding when you transitioned?

1. Have you transitioned on a permanent basis? At what point did you transition? If this was during your legal career, at what point was this?

2. Do you present your acquired gender, or biological gender at work, or is this more fluid? Is there anything about your workplace that prevents you from presenting your acquired gender at work?

3. Have you changed your name officially, eg driving license, passport, Law Society of Scotland registration, etc? If this was during your legal career, at what point was this?

4. Have you obtained a gender recognition certificate?
3. **EARLY EXPECTATIONS ABOUT THE LEGAL PROFESSION AS A CAREER**

3.1.1 Please consider your time when considering the legal profession as a career, ie before going to University and/or early stages of your degree. We are looking to understand your expectations here rather than any actual experiences that transpired.

5. What initially interested you about a career in the legal profession?

6. Were you concerned about any **potential/perceived** prejudices or discrimination within the legal profession when you were considering your career choice or were at University?

- Where did you expect to experience them (eg during the University Degree, during training/placements, first job, etc)?
- Who did you think was likely to be the source of this (eg lecturers/tutors, partner/line manager, other students/work colleagues, clients, etc)?
- What were these potential/expected prejudices (eg bullying/harassment, promotion/salary issues, in relation to social activities/networking, etc)?
- How did you reconcile these expectations with continuing with your career choice?

4. **RECRUITMENT INTO THE LEGAL PROFESSION**

4.1.1 Now please consider your time at University and/or early stages of your degree and/or your traineeship. We are looking to understand your experiences during these early stages in your career.

7. Do you think the fact that you are trans or have a transgender history has impacted, either positively or negatively, on your recruitment into the legal profession (eg during your degree/diploma/traineeship)? If yes, at what stage and in what way?

8. Did you have any concerns about, or face any barriers during the application process, (eg having educational certificates bearing a previous name, if you have a non-binary gender identity only being able to choose male or female on application forms, etc)?

9. Did you experience any of the expected prejudices mentioned earlier during this early stage of your career? If yes, please explain.

10. Did you experience/note any issues during degree/diploma/traineeship where you thought the Society could do more?

11. Do you think there were any elements that could be considered as best practice during degree/diploma/traineeship that could be implemented either by the Society or more widely throughout the profession? [Probe if yes: what was this, why would you consider it best practice, where else could it be implemented].

5. EXPERIENCES WITHIN THE WORKPLACE

12. Do you feel you have ever been treated differently within the workplace because of being trans or having a transgender history? Please fully describe this/these instances.

13. If you have wanted to, have you felt able to disclose the fact that you are trans or have a transgender history with your employer and/or with colleagues within the workplace? If not why not? If so, what has the reaction of colleagues been?

14. Have you felt any pressure to change your gender expression or behaviour in any way to ‘fit-in’ in the workplace? If yes, in what way, please explain?

15. [If appropriate] How did you deal with this discrimination?

16. If you felt it was necessary, would you feel comfortable in discussing the issue informally with your employer, line manager or team?

17. Would you feel comfortable/confident in making a formal complaint, if you felt it was necessary?

18. Do you know if your employer has any Equality and/or Diversity policies or practices in place? Do you feel that your employer is supportive, and places a high priority on equality and diversity issues?

19. Do you know if your employer has a policy specifically relating to supporting trans people in the workplace? Do they implement this effectively and happily to support people in their gender transition?

20. Do you think there is anything that the Society could do more to promote equality, diversity, and acceptance within the workplace?

21. Do you think there were any elements from within your workplace (either current or previous) that could be considered as best practice? [Probe if yes: what was this, why would you consider it best practice, where else could it be implemented, what could the Society do to help promote this more widely?]

6. EXPERIENCES AND EXPECTATIONS OF THE SOCIETY

22. Have you experienced/noted any issues/best practice in terms of interaction with the Society around regulatory matters (eg renewing your practising certificate each year, inspections, complaints, CPD requirements). If yes, please explain these, and when was this?

23. Have you experienced/noted any issues/best practice around the membership services of the Society – like provision of CPD course, Journal content, e-bulletin content, etc. If yes, please explain these, and when was this?

24. Have you experienced/noted any issues/best practice around the public statements of the Society on law reform issues and related matters?
25. What work by the society around equality are you aware of? Are you aware of the Society’s Equality and Diversity Committee and any of the work that they have done?

26. What do you think the Society’s remit and responsibility should be for equality and diversity within the profession?

27. What more do you think the society could do to:
   - improve its own services,
   - promote better practice in the profession,
   - improve its public position on equality issues.

28. Finally, is there anything more that the Society could do to promote the legal profession as an attractive career for transgender people specifically, or that they could do to ensure that transgender issues are treated more appropriately within the workplace (eg language used on forms, application processes, etc or guidance for employers, provision of example policies and best practice, etc).