



Law Society
of Scotland

Profile of the Profession Response

A blueprint for a more inclusive profession

December 2018



Introduction

The publication of the *Profile of the Profession* is a landmark event for the Law Society of Scotland. It allows us to evaluate where collectively we have made progress and also helps us to identify areas which need further attention.

The report gives us a rare opportunity to hear what members think about important issues such as equality, progression, the nature of the profession and their experiences within it. Nearly 3,000 people responded to the report: that gives us a huge, robust evidence base. It is also a significantly higher response rate than most of our surveys suggesting that the profession realises the critical importance of equality and diversity.

This important work is a matter of choice. We chose to undertake this work – and to instruct independent research – because we believe it is the right thing for a world-class professional body to do. The research helps inform our equality and diversity work, of course, but also informs other diverse workstreams including: our response to government consultations and policy and how these affect our members, our work on social mobility and our innovative programme Lawscot wellbeing

This is our fourth *Profile of the Profession* report. Each of the previous reports has provided the basis for our policy direction over the next few years. This report is no different. Having considered the report in-depth we know what we would like to see change and our goal is one that we believe all members will support: that everyone who enters the profession should be treated equitably and fairly throughout their career regardless of their characteristics, background or circumstance.

Since our first report, the legal services market in Scotland has changed immeasurably. We have seen global law firms merge with established Scottish practices. There has been significant consolidation within the Scottish market. The number of solicitors working in-house has increased significantly. We have seen continued financial pressures on all sectors of the profession although perhaps most starkly for those working in criminal legal aid and on the high street.

The profession itself is different. For the first time, there are over 12,000 solicitors and the majority of those are female. Looking at the demographics of those studying to become solicitors this trend will only continue. Twelve years ago we did not have a membership status for paralegals: now we are the professional body of choice for over 500 Accredited Paralegals. The overwhelming majority of those are female too. There has also been progress in the percentage of partners who are female. This has risen 5% over the last 12 months to 30%. We expect that this trend will continue.

Looking through the *Profile of the Profession* report we have identified a number of themes that we believe require our continued attention over the next few years. We are fully aware that the themes link with each other and shouldn't be viewed in isolation. However, we believe focusing on these five themes will help achieve our stated goal:

- Retaining talented people.
- Ensuring fairness around pay and progression.
- Ending bullying and harassment in the profession.
- Members being able to be their whole selves at work.
- Reflecting Scotland's population now and in the future.

We explore each of these in-depth in this response. In doing so, we look at some of the headline statistics from the report; we look at the state of play in other industries (and are fully aware that just because there are issues in other industries that cannot allow us to be complacent nor stop us from acting); we look at what we have done in the past to make progress; and we outline our initial plans for future action. We also consider what success would look like in five years' time.

As well as the recommendations outlined in this report, we will bring forward further recommendations about how best to move the Society's equality and diversity standards from their current voluntary status to being part of our formal regulatory processes. This will involve consultation with our members and consideration of the principles of best regulatory practice. Options for consideration include requiring an equality and diversity lead at all practice units, annual equality returns, and mandatory equality training.

The research and our response should be of interest to all who care about the future of the profession. We suggest that all in the profession take the time to consider both documents carefully. We encourage them to think about the issues raised and consider how they can help us enact positive change. We urge them to join with us in ensuring that the profession is a place where people from all of the communities of Scotland can thrive and can, in turn, serve the people of Scotland.

Alison Atack
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The Law Society of Scotland

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Equality & Diversity Committee

Chapter 1: Retaining talented people

Overview

Our research found that 54% of respondents have considered leaving the profession within the last five years. The figure was highest for those who were between 6-10 years PQE (69%) but even a significant number of those in traineeships had considered leaving the profession (30%). That such percentages of relatively new entrants to the profession are considering leaving is concerning.

The most common reasons given for why respondents were considering leaving the profession were '*achieving a better work-life balance*' (70%), *better pay elsewhere* (49%), and *lack of opportunities in the profession* (32%). Perhaps linked to this the number of respondents who had access to flexible working had fallen since 2013. We have identified that the comparative lack of flexible working – particularly at senior levels – is a key issue.

We have undertaken other related research. In a recent survey, a third of respondents noted that they had suffered threatening conduct at work⁽¹⁾ Our partners, LawCare, have told us that around a quarter of their calls cite stress whilst a further 7% cite anxiety.

Considering the findings of the *Profile of the Profession* alongside our other research it seems clear that we need to redouble our work on promoting the benefits of flexible working and pay and progression.

The state of play in other professions

- 80% of teachers in England have considered leaving their profession⁽²⁾.
- 69% of principal dentists and 57% of associate dentists have considered leaving their profession⁽³⁾.
- 68% of teachers in Scotland have considered leaving their profession ⁽⁴⁾.

What have we done in the past?

- For many years we have supported and funded [LawCare](#): an independent charity which promotes and supports good mental health and well-being to all in the legal community across the British Isles.
- Introduced voluntary [equality & diversity standards](#) in 2014 but the take up to these has been limited.
- Published [Parents in the Profession](#) guidance in 2015. These guides featured real-life case studies from men and women from across the profession aimed at helping those about to embark on or return from a period of maternity, shared parental or adoption leave.
- Offered a trainee helpline where trainees and trainers can discuss matters which might impact on the training contract such as performance, personal issues, and health.
- In 2018, we launched [Lawscot Wellbeing](#) which is a dedicated online resource that provides help and guidance for members and their employers.

What we plan to do in the future

- As our *Parents in the Profession* guidance was well-received and has been well utilised, we will produce similar guidance on mainstreaming flexible working for men and women at all stages of their career. This will include showcasing examples of flexible working within the profession with a particular emphasis on those working at senior levels.
- Work with general counsels to promote cultural change in the profession in terms of using their tender processes to promote good practice.
- We have offered a [career mentoring scheme](#) since 2013. This is open to all members. We will, however, target our mentoring activities to groups which are under-represented at senior levels within the profession.
- As well as bringing forward recommendations on moving the Equality Standards from their current voluntary status to being part of the Society's regulatory processes, we will also introduce an Equality Excellence kitemark to celebrate those employers who go significantly beyond the Society's standards.
- In response to the Journal Employment Survey, we will embed the recommendations outlined in the response to help build a "no tolerance" culture of violent and threatening conduct across the legal profession and wider justice sector.

What will success look like?

We understand that some people will always consider leaving the profession – sometimes via retirement; because they have found a new passion; or because they wish to pursue a related career in law where they no longer need to hold the title of solicitor. There will likely always be a small number of those who embark on a traineeship and decide that legal practice is not for them.

We are concerned though that there are some in the profession who dearly want to be solicitors, who want to serve their clients and, who for a variety of reasons, are still considering not only changing jobs but, rather, changing their profession.

We think that our proposed actions will make a tangible difference to the working lives of solicitors and Accredited Paralegals in Scotland. When we ask the question in five years' time, we hope that the number of respondents who are considering leaving the profession drops significantly as a result of our activities.

It is our intention that through engagement with the profession more organisations will implement flexible working policies and that more women and men will be able to combine working flexibly with achieving their career goals. We would like to see a majority of respondents at our next survey indicating that they have access to flexible working.

Finally, the response to *Profile of the Profession 2018* was strong with a significant percentage of the profession responding. At our next survey, we aim for over 4,000 responses to the *Profile of the Profession* survey.

Chapter 2: Ensuring fairness and pay around progression

Overview

We asked respondents whether or not they thought gender equality in the profession had improved over the past five years. Over 75% thought that it had improved either “to some extent” or “to a great extent”.

This seems to be backed up by the fall in the gender pay gap in the profession. In 2013, the gap in the profession stood at 42% (i.e. the average female solicitor earned 42% less than the average man in the profession). In the 2018 report, the median gender pay gap was 23%. Separately, we also looked at the bonus gap: the average female solicitor who expected a bonus thought she would receive £2k. The average male solicitor who expected a bonus thought he would receive £4k.

Whilst progress has been made we are aware there is still work to do. Consideration needs to be given to why young men are not entering the profession. There is a difference between access to a profession and progression within it and it is not beyond the capabilities of the legal community to give focus to both.

With that in mind, we are aware that whilst women are now the majority of the profession; they still only hold 30% of partnership positions. This though has increased by 5% over the last year.

We note that a higher proportion of those identifying as White – Scottish or White British were earning over £60k per annum than those from all other ethnic groups. There will also be intersectional issues: if women take longer to achieve partnership status and solicitors from a BAME background are likely to earn less than their white counterparts then it is likely that female solicitors from a BAME background face particular challenges.

The state of play in other professions

- Office for National Statistics (“ONS”)¹ estimate for Scotland: professional occupations: pay-gap of 9.9% ⁽⁵⁾.
- Doctors (NHS) England: pay-gap of 15% ⁽⁶⁾.
- ONS estimate for Scotland: associate professional and technical occupations: pay-gap of 15.5% ⁽⁶⁾.
- Accountancy: the “Big Four” accountancy firms have reported their figures (including partner earnings) ranging from 15.2% to 27% ⁽⁷⁾.
- The CA Magazine reported a median gender pay-gap for all employees of 31.7% ⁽⁸⁾.
- A number of law firms operating in Scotland reported under the Gender Pay Gap Reporting Regulations. Few reported partner earnings – though at least one did – and their pay gaps ranged from 12.2% to 37.4% ⁽⁷⁾.

What have we done to improve?

A major focus of our equality activity since 2013 has been regarding equality of pay and progression particularly in relation to gender.

- In 2013, we commissioned further research into the [perceptions of working patterns](#).
- We published an [equal pay toolkit](#) to help legal employers calculate their pay-gaps.
- In 2015, we ran a year-long programme called *Conversation on Progression* which included social media campaigns, roundtable events and interviews with leading female solicitors.
- We chose to publish our [own gender pay gap](#) in 2018 and will do so in the future.
- In 2015, we published recommendations about [making the judiciary](#) a more diverse place.
- Supported Women In Law Scotland since its inception.

¹ From ONS Annual Survey of Hours and Earnings which is based on an analysis of 1% of the HM Revenue and Customs PAYE reports.

What we plan to do in the future

- 90% of respondents thought that greater acceptance of flexible working would aid more women reach senior levels. We will begin an engagement programme with legal employers to promote the benefits of flexible working including discussing issues of gender bias and work allocation.
- Host a number of roundtables around the country to bring together members of the profession to discuss critical issues such as why diversity matters, how to embed flexible working, and what policies and processes will help organisations retain their female staff.
- Encourage Scottish legal employers to report partner earnings even if the UK government does not change the law to require this. We will encourage and assist Scottish employers who are not required to report under the Gender Pay Gap Reporting Regulations to report their figures.
- Promote and celebrate leading women in the law. In 2019, we plan to host a lecture in honour of Madge Easton Anderson, the UK's first female solicitor.
- 53% of respondents thought unconscious bias training would help female progression and 69% thought it would help BAME progression. We will offer unconscious bias training to the profession.
- Embed equality and diversity across a range of the Society's CPD & Training activity to ensure that even those solicitors who might not attend specialist equality and diversity CPD gain some exposure to this area.

What will success look like?

We are already a majority female profession. We expect that trend to deepen in the coming years given the current demographics of those on the route to qualification. We will continue to work with universities and schools to promote legal careers to all pupils and collaborate with them to see how we can increase the number of men considering legal study.

We acknowledge that many of Scotland's largest legal employers will report year on year as part of the Gender Pay Gap Regulations and this will drive progress across the sector. Moreover, many in-house teams will be affected by their own organisations reporting. We think the combined efforts of the sector will see the profession-wide gender pay gap continue to reduce.

We will ask the same question regarding perception of improvement with regard to gender equality and we would like to see a majority of respondents – both male and female – perceiving that gender equality in the profession has improved when we ask again in 2023.

We do not control how private businesses decide who becomes a partner nor do we control whether or not individuals choose to become a partner. We do, however, hope to see continuing progress in the gender balance of partnership and would be concerned if by 2023 significant further progress had not been made.

Chapter 3: Ending bullying and harassment in the profession

Overview

The #metoo movement has focused minds globally on bullying, harassment and sexual harassment. A large focus of the *Profile of the Profession* report was investigating the experiences of our members in the workplace both now and in the past. We understand that such experiences necessarily link to feelings of people who wish to leave the profession.

16% of all respondents (and 19% of female respondents) had experienced bullying over the past five years. 3% noted they had experienced sexual harassment. 22% of respondents had witnessed bullying over the last five years whereas 5% reported they had witnessed sexual harassment. In a separate survey, our *Journal* in late 2017 noted that around a quarter of respondents know of one or more others who claim to have suffered sexual harassment⁽⁹⁾. All of these are extremely concerning statistics.

The state of play in other professions

- The BBC estimates that 50% of women and 20% of men have been sexually harassed in the workplace or whilst studying⁽¹⁰⁾.
- The TUC estimates around a third of workers have been bullied at some point during their career⁽¹¹⁾.
- Around 20% of doctors have suffered workplace bullying or harassment⁽¹²⁾.
- Around 20% of all lawyers, and 33% of female lawyers, in New Zealand have suffered sexual harassment⁽¹³⁾.
- The International Bar Association's recent global survey suggested 43% of lawyers had been bullied and 25% of lawyers had been sexually harassed.

Whilst understanding the extent of bullying and harassment in other industries and professions is instructive, our focus is ensuring that the Scottish legal profession is one that does not tolerate such behaviours. It is our view that one incident of bullying, harassment or sexual harassment is one too many.

What have we done to improve?

- In 2011, we published guidance on [Preventing Bullying and Harassment](#). This was updated in 2017 (and has been consistently promoted since).
- For many years we have operated a confidential trainee helpline which may be utilised for many matters but is accessed by trainees who perceive they are being bullied.
- Supported and funded LawCare.
- Written articles on how to [tackle bullying and harassment](#).
- In 2018, we launched [Lawscot Wellbeing](#) which is a dedicated online resource that provides help and guidance for members and their employers.

What we plan to do in the future

- Host a summit of leaders from across the legal professions to discuss the extent of bullying, harassment and sexual harassment and consider how together we can affect cultural change across the sector. We will ask those leaders to commit to a zero tolerance approach. We will work with other bodies in the Scottish justice sector to eliminate bullying, harassment and sexual harassment.
- Host a series of Chatham House focus groups with members of the profession who have been affected by bullying, harassment and sexual harassment.
- Remind the profession that behaviour such as bullying, harassment and sexual harassment can be viewed as professional misconduct and that such matters can be reported to the Scottish Legal Complaints Commission. The Commission – as the gateway to the complaints system – will refer complaints of professional misconduct to the Society to investigate and act upon if appropriate to do so.

What will success look like?

We will monitor the number of complaints received each year which relate to bullying, harassment and sexual harassment and will also ensure that we collate statistics about the nature and extent of such issues via our trainee helpline.

The Law Society of Scotland's position is one of zero tolerance: that bullying, harassment and sexual harassment have no place whatsoever in the Scottish legal profession. It is our aim, therefore, that when we next survey the profession none of our members respond noting they have experienced bullying, harassment and sexual harassment in the time between our surveys.

Chapter 4: Members being their whole selves at work

Overview

It is important to the legal profession and the public which it serves that people from all backgrounds can succeed in the legal industry. We understand that if any member cannot be their whole self at work this may affect their morale, performance and, potentially, their mental health.

People from different backgrounds and with different characteristics may feel the need to hide part of themselves at work. It may be a solicitor from a religious community who hides their faith at work. It may be a solicitor who has mental health issues who does not feel able to discuss this with their colleagues. It may be that solicitors with caring responsibilities do not express the full extent of those responsibilities. In not feeling able to be their whole self at work each of these may feel less at home in the profession, be more likely to consider leaving the profession, and not be able to reach their full potential.

Whilst we acknowledge that there may be many reasons that people cannot be their whole selves at work, findings from the research highlighted this in particular in two groups within our membership: LGBT+ members and members with disabilities. We understand that the historic prejudices to both groups are different and the issues they face in the workplace are different. In this chapter we look at each group in turn.

LGBT+ members

Our profession is a richer place because of our LGBT+ members. It was concerning to learn, therefore, that 11% of LGBT+ respondents noted they would not be comfortable being out at work at all. A further 22% of LGBT+ respondents noted they would not be comfortable being out to all people at their workplace.

The state of play in other professions

- 35% of LGBT+ people have hidden or disguised their sexual orientation at work in the last year ⁽¹⁵⁾.

What have we done to improve?

- Supported the [Glass Network](#) (the awareness-raising and networking group for LGBT+ and allied members in the Scottish legal profession) since its inception.
- In 2017, in collaboration with the Glass Network, we organised a social media campaign called #theseareourprinciples. This involved leaders in the profession publicly supporting LGBT+ equality. Amongst others, the Right Honourable Nicola Sturgeon, the First Minister, took part in the campaign.

What do we plan to do in the future

- Recognising the importance of senior leaders in the profession publicly supporting LGBT+ equality, we will ask leaders of the profession to take part in an awareness-raising campaign.
- Take part in Pride 2019 and in subsequent years.
- Building on #theseareourprinciples campaign we will organise a digital campaign highlighting LGBT+ role models in the profession.
- Support the Pride in Justice Initiative co-ordinated by the Crown Office and Procurator Fiscal Service.
- Working with legal employers to support their LGBT+ staff by developing clear policies, training their staff, and ensuring inclusive recruitment practices.

What will success look like?

Not all of our LGBT+ members will want to be out at work and they should not feel forced to do so. We want the profession to be a place where all LGBT+ members feel comfortable to come out at work if they want to do so. We would like, therefore, to see more LGBT+ members responding that they are comfortable being out at work when we next survey the profession.

Members with disabilities

Our profession is a richer place because of our members with disabilities. It was concerning that 23% of respondents with disabilities had not requested a reasonable adjustment because they were apprehensive of the response. A further 14% of respondents with disabilities had seen a request for an adjustment refused.

The state of play in other professions

- It is our understanding that we are pioneering in our disability research. The Equalities and Human Rights Commission notes that there is comparatively little research about reasonable adjustments.
- 3% of lawyers in England and Wales have disabilities⁽¹⁴⁾. 5% of our respondents had a disability. Around 10% of the working population have disabilities⁽¹⁴⁾.

What have we done to improve?

- We took part in the [Criminal Justice Disability Project](#) with other justice sector bodies and welcomed its 2018 report.
- In collaboration with Capability Scotland, we published our guidance for solicitors: '[Ensuring fairness, creating more accessible services](#)'.
- We write letters to support applications for employment made by disabled law students outlining reasonable adjustment and sources of additional support for employers.
- Written articles on [reasonable adjustments](#).

What we plan to do in the future

- Introduce a service for solicitors with disabilities to support applications for reasonable adjustments.
- Learning from the success of our #theseareourprinciples campaign, organise a digital campaign showcasing solicitors with disabilities.
- Produce guidance for solicitors on the legal requirements around making reasonable adjustments including examples of the sorts of adjustments that can be made (including promoting the Access to Work scheme).
- Work with employers to offer work experience opportunities to students and graduates with disabilities.

What will success look like?

We will monitor the number of requests we have each year for our new service for solicitors with disabilities to support applications for reasonable adjustments. We will report on trends and total numbers annually.

We will ask, in our next survey, the same questions about reasonable adjustments. It is our aim that when we next ask that no solicitor with a disability feels that they are too apprehensive to ask for an adjustment even if in some circumstances it may be lawful to turn down a request for an adjustment.

Chapter 5: Reflecting Scotland's population – now and in the future

Overview

The 2011 Scottish census showed that BAME groups make up 4% of the total Scottish population. This is in line with the respondents to the *Profile of the Profession* report. Whilst this is good news we are aware that the BAME population has grown since 2011 and is likely to continue to grow over the next decade (some estimates suggest that the BAME population of Scotland will be 7% by 2031)⁽¹⁶⁾. Moreover, we know that the percentage of the BAME population which is working age is higher than that of the white population. We are therefore aware that we need to ensure that we continue to attract people from all of Scotland's communities to become part of the legal profession in the coming years.

It is our aim that the profession reflects Scotland's population in the truest sense. We won't be successful if we attract more solicitors from an Asian background but do not attract solicitors from a Black background or a Chinese background. Nor will we be successful if a more diverse membership is – for instance – disproportionately privately educated.

This goal links to the Society's work on social mobility. It is of the utmost importance that we continue our work to ensure fair access to the profession: so that pupils from all schools and all communities in Scotland who have the desire, ability and discipline to qualify as a solicitor can do so and can thrive once they do qualify.

The state of play in other professions

- 56% of junior doctors and 58% of senior doctors are white⁽¹⁷⁾.
- 11% of the UK workforce were BAME in 2015⁽¹⁸⁾.
- In 2017, 21% of lawyers in England and Wales were BAME (up from 14% in 2014)⁽¹⁹⁾.

We note though that the demographics of the wider UK are different to those in Scotland but there are relatively few Scottish comparators.

What have we done to improve?

- Published research on the experiences of [ethnic minority background solicitors in Scotland](#).
- Our careers & outreach work – including Street Law – has focused on city schools across Scotland. The schools have higher than average BAME populations (and will continue to do so).
- Launched the Lawscot Foundation. Around a quarter of those who have received financial support from the foundation are from a BAME background.
- Held a summer school in 2017. This was focused on pupils at low-progression schools. Over a quarter of the pupils involved were from a BAME background.
- Supported the [Scottish Ethnic Minorities Lawyers' Association](#) (SEMLA) from its very inception.

What we plan to do in the future

- Expand our Street Law programme from schools to community groups including faith groups.
- Hold focus groups with law students, trainees and newly qualified solicitors from a BAME background to learn about their experiences of the route to qualification. This will help us better ensure that BAME representation on the route to qualification translates into similar levels of representation in traineeships and NQ positions. Our collaboration with SEMLA notes that this is their most frequently cited issue.
- Learning from the success of our #theseareourprinciples, we will organise a digital campaign highlighting BAME role models in the legal profession.
- Respond positively to the UK Government's consultation on ethnicity pay reporting and work with our members to comply.
- Provide unconscious bias training to the profession.

What will success look like?

Noting the demographic changes in Scotland since the 2011 census and the projected future demographic changes, we hope that at our next *Profile of the Profession* survey we will see an increase in the percentage of respondents from BAME backgrounds.



We will continue to monitor the backgrounds of those who are funded by the Lawscot Foundation, who attend summer school and look at other areas where we could monitor such information to track progression.

Conclusion

The contents of the *Profile of the Profession* report and the actions we have outlined in this response are fundamental to the future health and success of the solicitor profession.

The five themes identified in this report interlink and interrelate. We will only retain talented people if we can ensure fairness around pay and progression. We will only reflect Scotland's population now and in the future if we are a welcoming profession which allows members to be their whole selves at work. It is likely that bullying and harassment will lead to talented people leaving and undermine equitable progression. It is time to stamp out such behaviours and say in no uncertain terms that such behaviour is unwelcome.

In this response we have set out an ambitious programme of work that we will take forward. We expect members at all ages and stages of their career to consider the recommendations carefully. We welcome all to engage with us positively to ensure that everyone who enters the profession is treated equitably and fairly throughout their career regardless of their characteristics, background or circumstance.

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