



Law Society  
of Scotland

# Gender Equality Roundtables

## Bullying & Harassment

May 2020



## Why did we ask roundtables to consider this area?

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One of the most commented upon parts of the *Profile of the Profession* report was the section on bullying, harassment and sexual harassment. The headline statistics from the report in this area were:

- 16% of respondents had at some stage personally experienced discrimination in the profession, although that was 20% for women.
- A higher proportion of women had personal experience of bullying, harassment and sexual harassment over the past five years (2013-2018) compared with male respondents.
- 44% of respondents felt that bullying was either systemic or frequently occurred in the legal profession.

Since the publication of that report, we have presented the findings to organisations all over the country and we estimate that we have spoken directly to around 1,000 solicitors and accredited paralegals. This has included a focus on bullying and harassment. We have gained a real desire from the profession to stamp these issues out once and for all. We welcomed the Scottish Government's challenge to the profession to eradicate bullying and harassment in the profession.

We have also hosted a well-attended event with the International Bar Association in Edinburgh that focused on its own report into bullying and harassment in the profession, which we have shared widely with the profession.

The topics the roundtables discussed were rooted in deeply personal experiences for all who attended none more so than those focusing on bullying, harassment and sexual harassment. We wanted to add real-life discussion and experience to the quantitative analysis that *Profile of the Profession*. We also hoped that the roundtables discussing these issues in a structured, guided way would provide potential ways forward to build a more inclusive profession.

We provided toolkits and guidance for the discussions, as well as some suggested questions for those attending to answer.

For bullying and harassment, these were:

- If you are willing to share: have you experienced or witnessed bullying, harassment or sexual harassment in your career?
- Was it dealt with as you wanted it to be dealt with?
- If not, how was it dealt with? And how should it have been dealt with?
- Is there anything you think the profession and Society should do?

## How widespread are the issues?

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Most roundtables acknowledged that there were significant issues in the legal profession. One noted that *'no one was surprised by the findings of Profile of the Profession. It is surprising that people were surprised'*.

A facilitator at one roundtable asked if anyone *'has seen bullying in the workplace? Every single attendee had raised their hand'*. Another roundtable noted that issues in courts were widespread and it was an *'uncomfortable truth that... almost everyone can recall a humiliating experience in court'*.

Only one roundtable noted that no attendee had experienced bullying. However, all had *'experienced some form of inappropriate behaviour such as commenting on appearance or behaviour which to a degree and in a fashion that was wholly inappropriate in a business context'*.

Most roundtables noted that the workplace they were currently in was better than even the relatively recent past. Many though did identify there were still issues. The general theme was that things have improved, but that isn't necessarily a cause for celebration as issues persisted. *'Casual sexual harassment has decreased over the past 20 years'*. Others noted that improvements had only been partial: *'thanks to #metoo there is a feeling now that you can stand up to a man making comments but when it is a woman it isn't so easy'*. Another thought the *'#metoo movement has already helped'*.

None of the roundtables reported discussing definitions i.e. what bullying and harassment were defined as, although a number thought that some in the profession *'did not know what constitutes unacceptable behaviour. There is a lack of awareness'*. Another reported *'people make comments which they consider to be a joke, but it is actually offensive to the receiver'*.

## Does the structure of the legal sector exacerbate the problem?

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A large number of the roundtables noted that the structure of the profession made dealing with bullying and harassment difficult to deal with. These were largely broken down into four areas:

1. The structure of the profession
2. The partnership model
3. Clients
4. Courts

### The structure of the profession

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One roundtable noted that the *'legal profession in Scotland is small and people are possibly unwilling to act fearing it will jeopardise their careers'*. Another noted *'a fear of colleagues and friends being affected by raising issues or claims against employers'*. There was a fear that those who wished to report bullying and harassment would be *'seen as a trouble maker or overly sensitive'*. The same roundtable reported *'concerns about ramifications of reporting behaviours'*.

### The partnership model

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The partnership model was discussed by many roundtables. One comment sums up those discussions: *'[the]partnership structure was problematic. In other companies, everyone is considered an employee. There was a perception that there is no system of checks and balances and that, if a partner is making a profit, then that would be more important than dealing with behaviours'*.

Numerous roundtables cited the partnership business model as a blocker to reporting and dealing with bullying and harassment. One noted *'the unique position of firms is that they are owned by partners and there is no one to complain to above the partners'*. Another roundtable said *'no one would be likely to want to raise issues about senior individuals within the business for fear of creating detriment to their own progression'*. There was a view, which was expressed across many roundtables, that *'partners would get away with bullying as nothing would be done as they owned the business'*.

This led to a *'clear preference of dealing with issues individually rather than having to go down a formal route'*. One roundtable, though, noted that *'when participants had stood up against harassment, they had either been called names or frozen out'*.

Some larger firms had put in place anonymous reporting channels, but *'there were concerns about anonymity'*. In firms with HR teams, there were concerns about the ability of those functions *'complaining to HR about a partner will only result in the individual raising the issue being frozen out'*. That said, another noted that *'HR is seen as the only route to take things to'*.

All of this made it difficult for organisations that did want to address bullying and harassment: *'It is difficult for partners and senior people to address bullying and harassment complaints where people are not forthcoming with information'*.

One roundtable commented: *'Everyone has seen colleagues being bullied and no one has done anything about it because of fear of repercussions'*. It was noted elsewhere that *'(some) other people laugh along as they felt it easier rather than speaking out'*. Some noted the power imbalance of a system that saw predominantly men at the top of firms and lots of female trainees/NQs. It was also noted that this power imbalance existed between senior male clients and relatively junior female lawyers. One roundtable noted that *'sexually inappropriate behaviour is about control and dominance. Examples are clients targeting training and young female NQs and male partners targeting younger women and secretaries'*.

Numerous roundtables noted that speaking out was hard in any environment, but particularly hard in a partnership model. One thought it was more complex again: *'people worried about getting involved as the person being bullied may feel even worse – or bullying may become worse – if a colleague has to intervene'*.

## Clients

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A consistent theme was that some clients can use bullying and sexually harassing behaviours. Most roundtables noted that this was difficult for solicitors – partly due to the importance of the client-solicitor relationship and client care; partly due to the financial importance of clients to law firms.

Someone at most roundtables noted issues here. One said: *'Some older male clients can be difficult and in their attitudes to you, make it difficult to manage that relationship. The response is generally to have the client seen by a male solicitor and take the file from you, rather than tackling the client's attitude'*. Another noted that *'Due to this, a female solicitor may be doing the bulk of the work, but the male solicitor fronts it'*.

Another noted that *'clients themselves often bullied and harassed. One participant noted that her whole team had experienced this. It was thought nothing could be done as they are clients'*.

This was encapsulated by a comment that there are *'tensions between providing good service to demanding clients and ensuring that individuals are supported i.e. when a client's behaviour is unacceptable. However, their work provides a large source of income'*.

One attendee noted that she worked in an area where most clients are male and noted that *'networking/client socials can become sexualised'*. Her experience of harassment and other inappropriate behaviour had *'come exclusively from clients'*.

Others noted that female solicitors often 'joke' about clients, saying things like *'make sure you aren't left alone with them'* and *'watch out for wandering hands'*. The roundtable noted – quite rightly – that *'female solicitors should not be expected to put up with this'*.

One attendee with criminal defence experience noted that *'young female solicitors would tend to be sent to do prison visits (pleasing to the eye of the client) while the male solicitor would deal with the court appearance. This will change, as no one young or female is choosing to do criminal law'*. It was noted that ultimately firms have a duty of care to their staff and that they need to *'tackle unwelcome behaviour and harassment by clients. We shouldn't expect employees to put up with it for the good of the business'*.

## Courts

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Many respondents noted that they had experienced bullying behaviours in courts. Roundtables consistently focused on this theme: *'Sheriffs routinely comment on the clothing of solicitors (particularly female solicitors)'*. There is a *'perception at court of a macho culture: other lawyers make inappropriate comments, try to intimidate etc'*. Another noted that *'some sheriffs can exhibit bullying behaviour towards agents. There is a feeling that this can be because the sheriff doesn't know what they are doing'*.

It was pointed out that in Diploma classes appropriate court dress is discussed in a way that there are overt comments based on sex. The example cited was: *'Don't wear a skirt to court'*.

## How does bullying occur and how does it impact the profession?

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A number of respondents were extremely open about personal experiences. One female partner noted that *'she had been asked to investigate an allegation of sexual harassment from a junior female solicitor against a male partner. She felt very isolated by the other male partners. The accused partner's response was that the junior colleague "could just leave". Eventually, the rest of the partnership took it seriously when the potential cost of an employment tribunal and potential reputational damage were explained'*.

Another noted that there were sexist assumptions. A female employee *'was told "you won't be able to take this so go away and have a cup of tea" ' when dealing with a post-mortem. The view was that 'there was no way this would be said to a male.'*

One attendee noted that she knew of an associate at another firm who was *'being quite blatantly sexually harassed. When she reported it she was sent to the (female) accountant as the firm had no HR team. The accountant had no idea what to do and didn't deal with it'.*

Bullying and harassment manifested in numerous ways. One attendee noted that when she started at the firm someone she didn't work for picked on everything she did and *'made her feel inadequate'*. She said this *'nit-picking was extremely anxiety inducing'*. One attendee was told *'put your hair in a bun, you look older and are taken more seriously'*.

Another noted that *'she had been bullied and sexually harassed in every job she had until this one. As a trainee she had lodged a complaint but nothing had happened as she was leaving'*.

One attendee had left a firm as there was a *'a partner that kicked things and threw things around, referred to trainees in derogatory terms and regularly humiliated staff'*. She later heard that the partners admitted this was going on, but only after the individual had moved on. Another noted that a partner had emailed her referencing *'sex in the header but not in the body of the email'*. She thought that this was a way of the partner demonstrating his power over her. She noted *'HR didn't deal with it'*.

As well as these specific incidents, some roundtables gave general examples: *'People higher up particularly male employers make comments about younger women's looks', 'Inappropriate behaviours – partners clicking their fingers at junior female lawyers instead of using their names'*. Another noted *'bullying can take place outside of the workplace via social media'*. Another noted *'there are firms with bad reputations about bullying which would make prospective employees steer clear'*.

It was thought that *'General rudeness is rampant. Even people coming in and not saying hello to their team'*. One noted that corporate language is inherently sexual *'i.e. getting into bed'*.

It was thought that *'Alcohol at events is a big factor in poor behaviour. This is not an excuse'*.

## Making sure policies work and other thoughts

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Some noted that they were *'unaware of what is in the firm's (bullying and harassment) policy'*. Others acknowledged that some firms *'wouldn't have a (bullying and harassment) policy'*. There were general comments that there was a *'lack of knowledge about what policies/support there is'*. People felt it was unclear *'who to speak to if feeling bullied/harassed'*. One commenter did note though that *'no one reads policies'*.

It was thought that to make the policies effective *'examples of what inappropriate behaviour is should be clear in the policy and that the processes and procedures in relation to this should be promoted regularly and reviewed regularly'*. The IBA report into bullying and harassment in the global legal profession does go into granular detail of the sorts of behaviours that may be considered bullying and sexual harassment.

Many roundtables noted that, whilst the issue is widespread, it was not solely men bullying or sexually harassing women. *'There is bullying from both men and women – either way, no one steps up to say they think it is inappropriate'*. Another noted *'It isn't just men'*. Another still *'the alpha female is a worrying phenomenon. When they have made it to the top they remain defensive, critical and liable to bully others'*. In contrast though *'women may be reported as exhibiting bullying behaviour towards others, which would not be considered bullying if it came from a man'*.

Some felt that *'what can be interpreted as bullying is part of the necessary training and that solicitors need to have certain levels of resilience to succeed (especially in court). The question is over what is reasonable and what is unreasonable'*. Another noted that *'people deal with stress differently'*, although it was unclear if this was a justification of some behaviours or an explanation of response to those behaviours.

Finally, one roundtable focused on the Society's regulatory approach. It noted that other regulators focused on the fitness to practise of registered members when there has been a disciplinary action. The feeling of that roundtable was that the Society appeared focused on *'AML and client account concerns'*.

### For further information, please contact:

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