



Law Society
of Scotland

Law Society of Scotland

Report on the COP26 & Climate Change Working Group Survey of the Profession

December 2020



Background to the Report

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

Inspired by the 26th UN Climate Change Conference COP26 (Conference of the Parties) which is to be hosted by the United Kingdom in Glasgow on 1 - 12 November 2021¹ in partnership with Italy², we have set up a Working Group with its focus on COP26 & Climate Change. The Working Group has been established under our Public Policy Committee. Members of the profession are represented on the Working Group with varied policy interests including environment, energy, finance, planning, employment, technology and criminal law³. The Working Group's remit includes:

- providing policy direction for the Society on climate change,
- continuing to raise the profile of climate change within the profession,
- helping to identify opportunities for the Society to engage with COP26 and climate change more generally, and
- considering the practical impacts of COP26 and the related legal issues.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Working Group considered that it would be appropriate to undertake a brief survey of the profession at this time in order to:

- establish and to increase the level of awareness of the COP26 conference as the countdown of one year to COP26 starts and
- help inform the Working Group's plans, including as to how best to support the profession in relation to the COP26 and to explore and build on opportunities for engagement.

The holding of COP26 in Scotland provides us with an opportunity to be part of international efforts to focus the world's agenda on climate change. The COP26 summit enables states to come together "to accelerate

¹ Delayed by a year due to the COVID-19 pandemic <https://www.ukcop26.org/cop26-postponement/>

² <https://ukcop26.org/pre-cop/>

³ <https://www.lawscot.org.uk/members/journal/issues/vol-65-issue-09/cop26-working-in-support/>

action towards the goals of the Paris Agreement and the UN Framework Convention on Climate Change [agreed in 1994].”⁴

The timing of the survey has allowed us to publish this Report in conjunction with the fifth anniversary of the adoption of the landmark Paris Agreement. The Paris Agreement was adopted on 12 December 2015 and is an agreement within the UN Framework Convention on Climate Change. It committed:

- to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels, and
- to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius⁵.

The UK and Scottish Governments have committed to working with all countries and joining forces with civic societies, companies and interested parties at the forefront of climate change to inspire climate action ahead of COP26⁶.

We recognise that the issue of climate change affects us all but in different ways. Solicitors may be directly engaged in advising clients on climate change law and their responsibilities, or on the development of sustainable business practices and green investment and countries who wish to avoid their responsibilities. Others may have a personal commitment to reacting to environmental concerns and/or be introducing sustainable practices for their own business.

The planning for COP26 comes while we are dealing with the immediate challenges that are presented by the COVID-19 crisis with considerable fears of a long-term economic recession. The effects of COVID-19 continue to inevitably impact on each and every aspect of our daily lives and on our personal and professional perspectives. Planning how to deal with the climate change challenges may not be uppermost in all our or in businesses’ minds. With challenges, however, come opportunities too which include changes in the way that we work with the increased use of remote working and the holding of virtual meetings that may be factored into long term planning to reduce carbon footprints. The COVID-19 crisis may help us all to focus on preparedness and investment for adaptation and resilience.

We are grateful to all members of the profession who have taken the time to complete this short survey. The results will help us to reflect on the current level of knowledge, understanding, and interest in COP26 and climate change within the profession.

⁴ <https://www.ukcop26.org/>

⁵ <https://unfccc.int/process-and-meetings/the-paris-agreement/what-is-the-paris-agreement>

⁶ <https://www.gov.uk/government/topical-events/cop26>

Executive summary

With one year to go to the COP26 event, undertaking this survey offered us an opportunity to engage with our members to explore and understand, at this point in time, what they think about issues related to COP26 and climate change. We have gained valuable information from the survey which will help us to map out the levels of knowledge and understanding of the profession in relation to COP26 and climate change. This information is a basis for our Working Group to plan future work, including developing the expertise of our Working Group members, hosting events, collaborating with members and stakeholders, and identifying opportunities to engage with COP26 and climate change more generally, including in relation to legislative measures concerning climate change. Without this level of engagement from the profession in responding to the survey, the picture that we now have of our members' views in this area would not have been possible.

We have prepared Appendix 1 which should be read in conjunction with this Report as it outlines legal policy areas where consideration has been given to the interaction with climate change matters. This is a brief outline for information purposes to assist those reading the Report to gain an understanding of how the content of the survey is of cross-cutting policy significance.

The response in relation to our members' awareness of COP26 and climate change is encouraging, where the survey results demonstrate a trend of increasing awareness over the past year. This heightened visibility is expected to increase as the organisation and profile of COP26 heightens in the run up to the event in November 2021.

We recognise that responses to the survey have shown that there are a range of views on COP26, climate change and our role in these matters. There are those who consider the holding of COP26 and the commitment within it to provide a chance to have "global visibility by taking a strong and vocal stand in favour of strong action against climate change."⁷ There are others who consider that this is not an issue for them professionally or for the Society to be involved in.

The survey offers a chance for us to better support and influence our members including through:

- Promoting greater awareness of COP26 and climate change, and the associated legal regimes. Inevitably, knowledge and understanding are more developed for those who already work in climate change and related policy areas. Law is never static; it changes to meet developing societal issues and climate change is one of the areas where there has been accelerated legal development in recent years. We consider that our work in this area will ensure our members can directly or indirectly be involved in and consider climate change issues. Where solicitors have the ability and/or opportunity to influence law, by promoting greater knowledge and understanding of the

⁷ Response to the survey

relevant issues, for example relating to emissions, energy, renewables or otherwise, climate change is a consideration. This also includes climate justice;

- Supporting greater professional awareness of climate change and the associated legal issues as the survey highlights that members place a greater importance on climate change personally than they do professionally. This indicates consideration being given to the role of solicitors in relation to clients and in the framework and legal issues arising in relation to climate change, but also in their wider professional roles;
- Considering opportunities to influence and develop relevant education and training for members.

It is important to acknowledge the role that COVID-19 plays in the backdrop to the survey. The survey specifically considered the pandemic as we were interested in how the impacts of COVID-19 may have impacted on attitudes in relation to climate change. When viewed in perspective, a number of respondents highlighted that the pandemic is an issue for now, but that climate change will have significant long-term impacts. The focus of the pandemic requires much needed attention and resources and we recognise that this has had a significant impact on our members. The survey highlighted concerns from some that there “will always be something “more important” that needs immediate attention that will always come before climate change until one day...[there are] no more days left to deal with it.”⁸

One respondent to the survey stated: “Scotland is host to COP26. Scots law the jurisdiction. Scots lawyers the local voice. If Scots lawyers care, they must be active and shout their support...”. The holding of COP26 in Glasgow provides us with an opportunity to reach out to our members and stakeholders, develop networks, draw on many years of professional experience, support and develop strategy⁹, and use this opportunity to engender respect and earn trust.

The survey results provide a springboard to build on our members’ existing interest and awareness of climate change and associated issues, in order to support and develop understanding of the legal issues relating to climate change and professional perspective.

Introduction to the report

As a start, it may be helpful to put the issue of climate change into perspective. Why should the Society be interested in climate change?

In its fifth report in 2013, the Intergovernmental Panel on Climate Change (IPCC) stated:

⁸ Response to the Survey

⁹ <https://www.lawsco.org.uk/about-us/strategy-reports-plans/strategy-2020-2022/>

“It is extremely likely that more than half of the observed increase in global average surface temperature from 1951 to 2010 was caused by the anthropogenic increase in greenhouse gas concentrations and other anthropogenic forcings together.”¹⁰

Anthropogenic refers to having origins in human activity. The IPCC concludes that it is 95 per cent confident about its findings.

In 2018, the IPCC issued a special report on the impacts of global warming of 1.5°C¹¹. This report concluded that limiting global warming to 1.5°C would require rapid, far-reaching and unprecedented changes in society. The report found that limiting global warming to 1.5°C, rather than to 2°C, could help to ensure a more sustainable and equitable society.

Solicitors are involved in advising clients on a wide range of matters which may include legal obligations associated with climate change and in relation to potential impacts of climate change including associated liability claims or other actions. There is a growing demand for sustainability and ‘green’ operations. There is an opportunity to consider the role of our members regarding climate change and to identify the cross-cutting policy and legal interests.

This survey can inevitably only provide us with a snapshot of the profession’s response to the questions which we asked in October and November 2020. However, we stress that its importance lies in providing information and a basis from which to start.

Overall Response to the Survey

We received 145 responses to the survey which was conducted from 22 October to 15 November 2020. This reflects a response-rate of just over 1% of our solicitor membership. While the survey was conducted over a short period of time, the results are a useful indicator for our working group as to our members’ views on COP26 and climate change.

These results provide an opportunity for our Working Group to plan for engagement in a range of ways throughout 2021. This can help us to identify where there may be opportunities to increase interest, awareness and involvement in and for the Scottish solicitor profession. There may also be questions regarding the responsibilities of the Scottish legal community to some of the issues resulting from climate change and from the inequalities that arise. According to UNESCO, there is an impact on social justice as those within poverty brackets and communities are facing the brunt of the crisis not just from global warming but in an unequal and unjust world.¹²

¹⁰ *Climate Change 2013: The Physical Science Basis* IPCC Working Group, at section D.3, accessed here: <http://www.climatechange2013.org/>

¹¹ *Special Report: Global Warming of 1.5°C*, IPCC, 2018, accessed at <https://www.ipcc.ch/sr15/>

¹² <https://en.unesco.org/courier/2019-3/climate-and-social-justice>

Responses to the questions posed in the survey

Question 1: When did you become aware of COP26 being held in Glasgow?

143 responses were received.

- 78% (112) selected that they became aware of COP26 within the last 12 months or more
- 8% (12) selected that they became aware of COP26 in the last 6 months (from May 2020)
- 10% (15) selected that the survey was the first time that they were aware of COP26.
- 2.8% (4) selected other, and two of these noted that they had become aware of COP26 when it was announced by UK Government/United Nations.

This question was deliberately focused at awareness of COP26 and not climate change. It is interesting that most of the profession who responded stated that they became aware of the COP26 in the last 12 months or more. The announcement regarding COP26 being hosted in Glasgow was made in September 2019 and publicity for the original event (to take place in November 2020) was increasing over this period, before its necessary postponement, so this explains the context¹³.

Question 2: Are you aware of the aims and objectives of COP26¹⁴?

145 responses were received.

- 62% (90) selected that they were aware
- 32% (47) selected that they were not aware
- 6% (8) replied 'don't know'

This is a positive result with the majority of the profession who responded confirming their awareness of the aims or objectives of COP26.

The COP26 events will bring together heads of state, climate experts and campaigners to agree action to tackle climate change. COP26 is of significance as it will provide a platform for countries to set out more ambitious goals to tackle climate change under the three pillars of the Paris Agreement: mitigation, adaptation and support. The Paris Agreement's aim is "to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius."¹⁵

¹³ <https://unfccc.int/cop25>

¹⁴ <https://www.gov.uk/government/topical-events/cop26>

¹⁵ <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement/nationally-determined-contributions-ndcs>

The COP26 President Alok Sharma¹⁶ recently set out the UK Government's aims and objectives for the Climate Ambition Summit 2020 which is to be co-hosted by the UK COP26 Presidency, the UN and France, in partnership with Chile and Italy in December 2020. The Summit has been described as an "important milestone on the road to COP26." It is to address the three pillars of the Paris Agreement. They include seeking:

- New, more ambitious Nationally Determined Contributions
- Long-Term Strategies setting out a pathway to net zero emissions
- Climate finance commitments to support the most vulnerable
- Ambitious adaptation plans and underlying policies

Question 3: What is your key driver for your engagement in COP26 as a solicitor?

145 responses were received.

We provided a range of possible answers and asked respondents to select all that applied.

- 22% (32) selected professional interest in climate change through advising clients
- 59% (86) selected personal interest and concerns over climate change and the environment
- 26% (38) selected General interest and I live/work in Glasgow.
- 25% (36) selected General interest and I have read articles on the topic.
- 10% (15) selected none

A significant proportion reflected that they had a personal interest and concerns over climate change and the environment with a smaller number indicating that they had a professional interest. The Scottish Government previously declared a climate emergency. The publication of the Scottish Government's Programme for Government 2019-2020¹⁷ committed to tackling climate change. The results suggest that the legal community has a personal awareness and interest in this issue of climate change.

As well as offering an option to suggest another driver for their engagement on COP26 where 10 other responses were received, 38 responded that they have a general interest and live/work in Glasgow. This recognises that a number of the profession have direct involvement as part of their day-to-day work in COP26. This was confirmed by some responses indicating that individuals were contributing to the "organisation of the event."

It is interesting to note that the comments received demonstrate awareness of the issues for the criminal justice sector as there will be an impact on the availability of police witnesses as witnesses in summary criminal trials due to high level of policing of the conference for the duration of COP26. There will also be

¹⁶ <https://www.gov.uk/government/speeches/looking-ahead-to-the-climate-ambition-summit-2020>

¹⁷ Protecting Scotland's Future <https://www.gov.scot/publications/protecting-scotlands-future-governments-programme-scotland-2019-20/pages/5/>

implications arising from the possible disruption to business while the event is ongoing given that COP26 is bringing together heads of state, climate experts and campaigners. That will present considerable logistical implications for policing and security. Up to 30,000 delegates were expected to attend.

One response stated that “professional interest in people understanding the issues, and questioning the extent to which computer models are "science", and debating the cost/benefits of decarbonisation. For a profession so supposedly interested in "evidence", there is little hard evidence to be found in any debate on climate change. Just because...declares there to be a climate crisis does not mean one exists.”

Question 4: Please use this space to add any further comments you have on your key driver for your engagement in COP26 as a solicitor?

55 responses were received. The responses were able to be grouped into some common themes. These themes included:

Policy awareness and motivations: The responses ranged from the personal to professional influence reflecting shorter and longer terms perspectives and the need to support change and influence the law:

- “have a strong personal interest in the topic, but was quite unaware of my ability to effect much change in my professional role - hadn't considered it much beyond reducing travel, etc.”
- “...keen to engage to find out more and see what I can do.”
- “This may generate regulatory changes going forward that [I] require to keep abreast of”
- “interested in changes and development of the law”
- “a public sector lawyer, CC duties should be given more prominence in all decision making but regrettably, they are not.”
- “As...the Scottish Courts and Tribunals service, it is imperative that we plan for likely increases in criminal activity around the event”
- “Climate change being key issue for all clients and for everyone in the world”
- “Personal interest in the environment”
- “As solicitors, I believe we have a duty to change our working practices and be leaders in driving change to combat climate change.”

Direct work /professional involvement: These reflected a range of professional roles including working inhouse and include:

- “working for environmental regulator”
- “Involved in renewable energy financings”
- “It's important to stay up to date with what is going on in the world & particularly in my home city!”
- “Some key clients are involved in COP26 making it particularly relevant.”

Opportunity/responsibility: These also featured with respondent noting:

- “I have an interest in the tourism sector so hoping the conference will be a boost for clients”
- “Climate change should embrace new technology which should make life easier, more jobs, better economy for everyone concerned, while implementing change needed for sustainable future.”
- “I work in consumer protection enforcement and I am currently working on issues relating to misleading green claims. More generally, I think there is a great deal that can be done with existing and reimagined consumer protection frameworks to ensure that consumption is sustainable.”

Need for changes: There were concerns that there needs to be change:

- “I have very real concerns about the environment and genuinely believe if we all don't make changes to the way we operate and exist both as people and business we will impact the environment beyond repair.”
- “I hope we see some drastic measures taken out of COP26. Unfortunately the last COP did not go far enough in terms of environmental action. This is a chance to be able to get more people in Glasgow and Scotland to become more actively engaged in the climate crisis. This crisis is very sadly being seen as secondary to the current pandemic. However we have seen this year how quickly people and businesses can adapt to change, it now just needs to be for the environment.”

We recognise that a very small number of respondents highlighted that they do not consider the COP process to be successful, with one respondent stating that “this is a huge waste of resources and should not be taking place.”

Question 5: What opportunities do you think may arise for the legal profession in Scotland as a result of COP26?

142 responses were received. There was more than one option provided for an answer.

Suggestions were provided which included:

- 49% (70) selected to influence policy on climate change
- 68% (97) selected to gain further knowledge and understanding of global climate change issues
- 43% (61) selected to promote the role of the legal profession in Scotland
- 14% (20) selected none

The majority of those responding were positive that there were opportunities to be seized from COP26. As well as those options provided in the questions, other suggestions were made by respondents, including influencing behaviour in climate change and opportunities to achieve global visibility to take a strong and vocal stand in favour of strong action promoting Scotland as a place for green investment. Though some respondents may have particular interests, there was a general recognition that there was the chance to promote and gain further knowledge of the issues which affect us from climate change.

Other responses included and recognised the opportunity in conformity with our objectives the role that the profession has in seeking to influence behaviour in tackling climate change. There was also a view that “Those who believe there is money to be made from the decarbonisation industry will be all for it, as will environmentalists. The remaining vast majority will likely remain entirely unengaged.”

With an echo to the opportunities queried in Question 4, some respondents identified opportunities for the legal profession, for example, suggesting that these included to “promote Scotland and Scottish clients as providers of climate change solutions or otherwise mitigation (e.g. renewable / low carbon technology)” and “to promote Scotland as a great place for green investment which would lead to new instructions.”

Question 6: Please use this space to add any further comments you have on opportunities you think may arise for the legal profession in Scotland as a result of COP26?

31 responses were received.

These continued many of the themes identified earlier such as:

Leadership and opportunity

- “the profession need to be aware of this and be able to advise”
- “We should lead by example and do all we can to make our voices heard as well as those of our clients.”
- “An opportunity to demonstrate that Scots Law and Scottish lawyers behave in a Green and responsible manner.”
- “Scots lawyers can seize the initiative and become the thought leaders and influencers on climate change law and voluntary standards.”
- “The outcomes of COP26 will impact every part of the Scottish economy because climate change and decarbonisation affects everyone. Lawyers have an opportunity to engage with policy to ensure fairness, transparency and good governance.”
- “Stand out as policy thinkers and leaders in law and sustainability including competition law and regulatory.”

With clients

- “We need to show as a profession how we can support clients with environmental practices and ensuring they will help to achieve any target that will come out of COP26.”
- “It is also about keeping the conversation going and ensure solicitors are engaging with clients about how they are adapting their practices.”
- “Equally law firms also need to make more environmental changes and hopefully this will raise it to the forefront of people's minds.”

To work with other Law Societies to represent the legal profession internationally

- “These opportunities [lie] not only with clients and the public but with our fellow UK and international profession colleagues.”

Other areas of law not necessarily identified earlier

- These included property licensing and road traffic.
- There is also recognition of the impact on criminal law with one response identifying “policing issues will possibly generate custody cases and the court programme is likely to be altered to cater for this event.”

Question 7: How important is climate change to you in your professional capacity?

124 responses were received.

- 24% (30) selected that it was very important
- 33% (41) selected that it was somewhat important
- 20% (25) selected that it was neither important nor unimportant
- 6% (7) selected that it was somewhat unimportant
- 17% (21) selected that it was not important

The majority of those responding were positive reflecting a message that climate change had some relevance to them either in their professional practice or professional role as a solicitor.

Question 8: When considering climate change professionally, what answer best represents the reason that you responded as you did to question 5?

123 responses were received.

Question 5 asked about opportunities for the legal profession in Scotland. We were interested in motivation in this question.

- 26% (32) selected consideration of your professional role in advising clients on matters relating to climate change
- 26% (32) selected an in-house role
- 38% (47) selected general professional responsibility to clients

We had anticipated that those responding positively would be coming from a specific policy interest in climate change from a professional perspective. This was confirmed with the majority indicating as above.

What was of relevance when considering the bigger policy agenda is the question of general professional responsibilities. This is an aspect which may be explored in more depth as we consider our interests in planning for and being aware of changes to come. This could involve consideration of professional and personal responsibilities, including the impact of technology.

Others responded some interesting perspectives for us to build on going forward:

- “It is probably irrelevant practically to the client unless they are engaged in environmental business”
- “It simply doesn't cross my desk”
- “small mainly legal aid practice so professional involvement limited”
- “I can't see anything I can do in my current role.”
- “we must cut [down] number of face to face meetings for e.g. licensing boards and encourage local authority, courts and other entities to realise this is beneficial for the future of the world.”

Question 9: How important is climate change to you in your personal capacity?

124 responses were received.

- 60% (74) selected that it was very important
- 27% (33) selected that it was somewhat important
- 5% (6) selected that it was neither important nor unimportant
- 0% selected that it was somewhat unimportant
- 9% (11) selected that it was not important

Overall, respondents attributed greater importance to climate change in their personal capacity than professional capacity. This highlights that there is an opportunity to explore the differences between personal and professional attitudes to climate change.

Question 10: How has the COVID-19 pandemic affected your professional opinion of the importance of climate change?

124 responses were received.

- 31% (38) selected that climate change is much more important than the pandemic.
- 18% (22) selected that climate change is somewhat more important than the pandemic.
- 29% (36) selected that climate change is of equal importance to the pandemic.
- 10% (12) selected that climate change is somewhat less important than the pandemic.
- 13% (16) selected that climate change is much less important than the pandemic.

The majority indicated that climate change was as important or more important than the pandemic.

Question 11: Please use the space below to explain the reason for your response to the previous question.

81 responses were received.

The reasons indicated were predictable in that “The pandemic is here now and personal attention is needed. There is little I can go out and do about climate change.”

- “the pandemic will pass but climate change will destroy the planet”
- “Covid has turned my working life upside down. Climate change hasn't affected it.”
- “longer term impact. I have a child and have concerns for his future.”
- “The pandemic is appalling in the short term affecting a large percentage of the world's population. Climate change affects smaller numbers of people in the short term but is a threat to all of us in the longer term.”
- “The pandemic is temporary but the changes in our lifestyles with less commuting and travelling has hopefully impacted positively on climate change”
- “We need to get on top of the pandemic first”
- “Climate change and the pandemic both affect and impact society and, by extension, the profession. One is not more important than the other - it is merely the timeline that applies to COVID is causing actual deaths, whereas the threat from climate change is remote, doubt ridden, and manageable. That said, there are interesting parallels in the injunction to “follow the science” when a review of “the science” merely highlights the array of complexities which interested parties prefer to over-simplify.”

Question 12: How has the COVID-19 pandemic affected your personal opinion of the importance of climate change?

121 responses were received.

- 30% (36) selected that climate change is much more important than the pandemic.
- 22% (27) selected that climate change is somewhat more important than the pandemic.
- 27% (33) selected that climate change is of equal importance to the pandemic.
- 12% (14) selected that climate change is somewhat less important than the pandemic.
- 9% (11) selected that climate change is much less important than the pandemic.

The responses to this question were broadly similar to the question asking about respondents' professional opinion of the importance of climate change.

Question 13: Please use the space below to explain the reason for your response to

the previous question.

72 responses were received.

Comments received included:

- “we can’t lose sight of the fact that our behaviour is destroying the earth”
- “Climate change if not slowed down will affect the lives health and economic well being of far more people of all ages than Covid-19.”
- “Climate change is the most pressing issue of our time”
- “I would say my professional and personal opinions are fairly aligned. Personally, I want to see more people be accountable for their choices and consider their impact. I want the world to be less disposable and live more within our means. everyone has a responsibility to have less impact on this world, however they see that to be. There are quite clear ways to stem the virus so there are strict rules on how to help manage the pandemic, however there are so many different ways to help save the environment, people I think feel lost on what to choose. There is not enough active management of people being accountable for environmental action and that needs to change.”

As referred to above, a number of the comments made in response to this question acknowledged that the COVID-19 pandemic is a shorter-term issue while climate change will have longer term impacts.

Question 14: Do you consider that climate change should be regulated by its own, discrete area of law, or all (or some) areas of law should take climate change considerations into account for reform?

117 responses were received.

- 23% (27) selected that climate change should be regulated by its own discrete area of law
- 77% (90) selected that all (or some) areas of law should take climate change considerations into account for reform

The majority of respondents considered that all or some areas of law should take climate change considerations into account for reform. This supports climate change being considered across a range of legal and policy interests rather than as a stand-alone issue. This is interesting to note given the range of areas of law and policy which might interact with climate change.

Question 15: What do you consider is the responsibility of the profession in relation to climate change? (Please select all that apply.)

124 responses were received.

- 48% (60) selected providing advice to clients on climate change specifically
- 59% (73) selected including advice on climate change issues and risks within legal advice generally
- 40% (49) selected engaging in climate dispute resolution, for example through mediation, negotiation or litigation
- 74% (92) selected supporting legislative and policy making efforts to address climate change
- 77% (96) selected operating in a way which reduces the environmental footprint of legal businesses
- 66% (82) selected living in a way which reduces environmental footprint
- 6% (7) None

Others reflected that there were limits to the role of the profession, for example suggesting that the profession should not have a position on the matter. It was suggested that in their personal lives, solicitors could adopt the approach that they wanted as far as “their own politics, interests, ethics, and philosophy” were concerned.

Question 16: Please use this space to add any further comments you have on the responsibility you consider the profession has in relation to climate change?

35 responses were received.

Comments included:

- “law can change behaviour when guidance doesn't so we need to implement laws to make people change their ways”
- “Our profession has a long and proud history of helping people to see where issues exist that might otherwise have gone unnoticed. We shine a light, we raise awareness, and I think that is a key role for us here. Too many people still remain unaware and if we add our professional voices on the matter then people will listen.”
- “if we are to continue to be seen as a profession with legal knowledge and an understanding of business we must be in a position to advise or direct clients to where to find appropriate advice”
- “My firm has set up an Environment & Sustainability Working Group in order to ensure that the working of our business are as eco-friendly as possible as a consequence of climate change.”
- “All firms have a responsibility to their staff and to wider society to work in an environmentally sustainable way. We can all make a difference - whether it be through the advice we give or the way in which we operate our working environments. I have seen first-hand the widespread enthusiasm for the work of our firm's Environmental Committee from people in all areas of the business, and it has had a positive impact on the firm at both a policy and operational level. This is a responsibility that all firms should be considering.”

Question 17: How might the Law Society help to address the responsibilities of the profession on climate change?

59 responses were received.

Suggestions included:

- “By education and as a pressure group.”
- “Raising awareness within the profession of the role we can play, and supporting us in that role (by providing advice, information, etc.)”
- “Be a leader on sustainability and [reduce] its carbon footprint. Engage with policy makers to ensure that the profession is heard and listened too. Create and host events/ talks on climate change and what impact the legal profession can have.”
- “Having forums and raising awareness. Lobbying for the courts to continue to be paperfree/paperlight could be an immediate change”
- “They should have a law society department, perhaps a committee, but they need to keep us informed of policy and developments.”
- “Drive the thinking that the responsibilities are at client level and as national and international influencers. So expect more and drive standard of expectations up - we cannot as a society be bystanders and our profession could be brave and seek to lead the way.”
- “Education on how [climate change] already forms part of the legal landscape”
- “Promoting the issue amongst the membership as being of importance to the profession and to population”
- “Perhaps by sourcing advice/ comment on the way legal practices are conducted in order to assist us plan how best to run our businesses”
- “CPD and legal education”
- “Create a professional structure that law firms have to adhere to. Reduce their carbon footprints, reduce their overall impact on climate change, whether they have any social responsibility towards effecting change within this area.”
- “Hold a forum with all viewpoints on this”
- “Help with development of legislation, recommend best practice to legal practitioners on climate matters.”

A wide range of suggestions were received. These demonstrate a desire for education and training for the profession around climate change, including supporting the membership to adapt their businesses to respond to climate change and to become more sustainable. Our role in supporting the development of legislation was noted, including in relation to supporting clarity in the law “and...cautioning against the excessive use of unnecessary legislation...”. Opportunities to address climate change via our regulatory role were also discussed, for example “encourage reporting and compliance with regulatory obligations in a green, electronic manner.”

Some respondents noted that they did not consider we had a role to play, for example, noting that those solicitors involved in giving relevant advice are well placed to advise clients and to adapt to legislative changes in this area, and that climate change is an issue for individuals.

Question 18: What aspects of law and policy in so far as they relate to climate change are of particular interest to you and your practice? (Please select all which apply.)

117 responses were received.

- Agriculture 19% (22)
- Circular economy 18% (21)
- Construction and development 28% (33)
- Company law 14% (33)
- Energy and energy transition 14% (16)
- Environment 36% (42)
- Employment and work practices 30% (35)
- Finance and investments 19% (22)
- Forestry and woodland 19% (22)
- Governance 25% (29)
- Human Rights 29% (34)
- Land use 32% (38)
- Legislative/Policy making 38% (45)
- Marine 15% (18)
- Planning 26% (30)
- Technology 14% (16)
- Other (please specify) 15% (17)

For other, the responses included criminal, family, licensing, property, health and safety, competition, and consumer protection.

We are encouraged to note that responses covered a very wide range of areas of interest in law and policy.

Question 19: Please outline the professional area of legal work in which you are involved.

104 responses were received. A wide range of legal practice areas were identified by respondents, the most frequent being criminal law and human rights, property, real estate and planning; in-house; and environment and energy.

Question 20: If you would like to receive details of any open events organised by the Society, please note your membership ID or email address

40 responses were received.

We are grateful to all those who responded to the survey. We will publish details of the work carried out by the Working Group as well as other events, seminars and opportunities as we approach COP26.

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standards and delivery of buildings including energy efficient and affordable homes; the protection of greenbelt and conservation areas, and the planning and consenting of renewable energy developments, both on land and at sea. Climate change has been a central theme arising from the recent call for views on National Planning Framework 4.²¹ It will be interesting to note the role it plays as the Framework develops.

Finance

There has been much discussion about the role of finance in tackling climate change, highlighted in recent months by the focus on a 'green recovery' from the COVID-19 pandemic²². Not least of all, financial investment is needed to progress renewables programmes, build energy efficient homes and develop new technologies. Those contributing to pension funds and other investment schemes may be driving demand for 'green' investments.

Marine

The marine environment plays a significant role in relation to climate change. There are a number of aspects which are of interest, such as the role of marine law in relation to 'green' shipping and transport, marine planning and licensing for offshore renewables, marine protected areas and fishing matters. Climate change itself may impact upon marine ecosystems and threatens the security of coastal communities and island states.

Technology

There are a range of technological interests in relation to climate change. Technological innovations itself may assist in reducing the impacts of climate change, for example, generating renewable energy, carbon capture and storage, remote working, and developing alternative fuels such as electric batteries and hydrogen²³.

Intellectual property rights are also relevant, for example, how might these be used to assist in the development of technology, and should patents be used to prevent widespread development and use of technology? The development and use of technology gives rise to privacy and data concerns, for example, in relation to smart meters.

Energy

Energy law and climate change are inter-related in seeking to address with the current challenges. It aims to balance climate change mitigation with a reliable and needs-oriented system of reliable and affordable energy supply. It extends its focus to the global transition towards more sustainable forms of efficient energy production and consumption, for example through partnering between oil and gas, renewables,

²¹ <http://www.gov.scot/publications/npf4-analysis-reponses-call-ideas/pages/2/> and <https://www.gov.scot/publications/scotlands-fourth-national-planning-framework-position-statement/>

²² Economic Recovery Implementation Plan: Scottish Government response to the Advisory Group on Economic Recovery

²³ For a summary and links to relevant papers, see <https://commonslibrary.parliament.uk/climate-change-solutions-the-role-of-technology/>

hydrogen and carbon capture to meet net zero targets. These concerns are increasingly reflected in international, EU, and UK law.

Criminal

Regarding COP26, administration and policing will be required in relation to the SEC venue itself and the security for of all those who will be attending including heads of state and in relation to a number of other venues being used for conference related meetings and events. The SEC is being handed over to the UN for the duration of the COP26 conference. Any alleged crimes which arise in the 'blue zone' are to be investigated by Police Scotland but will be prosecuted under international law. Just how that will involve the profession and indeed other criminal justice partners is not yet ascertained.²⁴

Regarding climate change more generally and criminal law, there is environmental and other legislation which may include criminal sanctions to ensure compliance with certain statutory standards. There are those who consider that climate change may increase opportunities for crime, and create social conflict perhaps in debate over the existence of climate change. The role of criminal offences may increase to deal if and where criminal conduct violates basic rights and destroys human security.

Land and land use

There are a number of areas of interest concerning the interaction between land and its use, and climate change, including in urban and rural areas.

In January 2020, the Committee on Climate Change published a report concerning land use²⁵. The report highlights that in order to achieve net zero targets, changes are required in land use across the UK, including:

- Increasing tree planting
- Encouraging low-carbon farming practices
- Restoring peatlands
- Encouraging bioenergy crops
- Reducing food waste and consumption of the most carbon-intensive foods

In its 2019 Report, the Committee on Climate Change noted that "Scotland...has different capabilities, notably its larger land area per person and its significant CO2 storage potential, meaning it can credibly reach net-zero GHGs earlier."²⁶

²⁴ <https://www.getreadyglasgow.com/event/climate-change-conference-cop26/>

²⁵ *Land Use: Policies for a Net Zero UK*, accessed at <https://www.theccc.org.uk/publication/land-use-policies-for-a-net-zero-uk/>

²⁶ *Net Zero – The UK's contribution to stopping global warming*, accessed at <https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/>

The Scottish Government is currently consulting on Scotland's Third Land Use Strategy²⁷, which recognises the significance of the land use to achieving net zero targets. The Scottish Land Commission's work on vacant and derelict land²⁸ is also of interest.

Human rights and access to justice

There is a growing body of commentary around the interaction between climate change and human rights.

The Preamble of the Paris Agreement to the United Nations Framework Convention on Climate Change states that all States "should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights". The Human Rights Council resolution 41/21²⁹ acknowledges that the impacts of climate change have implications for the full and effective enjoyment of a range of human rights by people throughout the world, including the rights to life, food, physical and mental health, housing, self-determination, safe drinking water and sanitation, work and development.

In addition to the obligations on states under international law, the UN Guiding Principles on Business and Human Rights provides a voluntary framework for regulation. It includes three central pillars: the state duty to protect, corporate responsibility to respect, and access to remedy.

There has been a growing body of case law in relation to climate change and its impacts. Some cases have focussed on human rights obligations, *Urgenda v Netherlands*³⁰ which concerned obligations under articles 2 and 8 of the ECHR, *Plan B Earth v Secretary of State for Transport*³¹ (appeal to Supreme Court pending) in which it was argued that there had been a violation of the Human Rights Act 1998, *Juliana v United States* in which an appeal is pending from a group of young people, and *Gbemre v Shell Petroleum Development Company of Nigeria Ltd et al.*³² in which the court held that gas flaring violated the fundamental rights of life and dignity provided in the Constitution of Federal Republic of Nigeria and the African Charter on Human and Peoples Rights.

Litigation has also been pursued on other legal bases, for example, challenges under state legislation or tort/delict, and has demonstrated some of challenges in pursuing climate litigation including proving causation, the lack of binding obligations, location of the litigation, costs, legal standing, and expert evidence and recovery of documents. Cases include: *Notre Affaire a Tous et Others v Total* (pending, France) concerning duties under France's Duty of Vigilance Law, *Smith v Fonterra Co-Operative Group Limited*³³ concerning public nuisance and negligence and a common law claim against an alleged greenhouse gas emitter, *Milieudefensie et al. (Friends of the Earth) v Royal Dutch Shell Plc* (pending, Netherlands) which concerns a challenge in relation to a duty of care under Dutch law as well as human rights obligations, *Lliuya v RWE* (appeal pending, Germany) concerning an alleged greenhouse gas

²⁷ <https://consult.gov.scot/agriculture-and-rural-economy/consultation-scotlands-third-land-use-strategy/>

²⁸ <https://www.landcommission.gov.scot/our-work/housing-development/vacant-and-derelict-land>

²⁹ Accessed at <https://undocs.org/A/HRC/RES/41/21>

³⁰ ECLI NI HR 2019

³¹ [2020] EWCA Civ 214, appeal to Supreme Court pending.

³² FHC/B/CS/53/05

³³ [2020] NZHC 419

emitter's impacts on flooding and an associated claim for damages, and *Bushfire Survivors for Climate Action Inc v Environment Protection Authority*³⁴ which concerns civil enforcement proceedings to compel the EPA to regulate greenhouse gas emissions.

Equalities

It is recognised that climate change may have a disproportionate impact on certain groups in society and may have exacerbated global social and economic inequality as a result, for example, by exacerbating existing vulnerabilities, health implications, impacts on access to food and water, increased conflict and migration³⁵.

The Just Transition Commission³⁶ was formed in Scotland in 2019. The purpose of the Commission is to advise Scottish Ministers on how to apply Just Transition principles to Scotland. The just transition principles were incorporated into the Climate Change (Scotland) Act 2009 by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019. The principles are “the importance of taking action to reduce net Scottish emissions of greenhouse gases in a way which—

- a) supports environmentally and socially sustainable jobs,
- b) supports low-carbon investment and infrastructure,
- c) develops and maintains social consensus through engagement with workers, trade unions, communities, non-governmental organisations, representatives of the interests of business and industry and such other persons as the Scottish Ministers consider appropriate,
- d) creates decent, fair and high-value work in a way which does not negatively affect the current workforce and overall economy,
- e) contributes to resource efficient and sustainable economic approaches which help to address inequality and poverty.”

The Commission published their Interim Report in February 2020³⁷ and expected to publish their final report in Spring 2021.

³⁴ [2020] NSWLEC 152

³⁵ Quaker Council for European Affairs *Poverty, Inequality and Climate Change: Challenges on the road to sustainable energy security in Europe and beyond* Briefing Paper, October 2011, accessed at <http://www.qcea.org/wp-content/uploads/2011/11/bp-susensec3-en-oct-2011.pdf> and *Global warming has increased global economic inequality*, Noah S. Diffenbaugh, Marshall Burke, Proceedings of the National Academy of Sciences May 2019, 116 (20) 9808-9813, accessed at <https://www.pnas.org/content/116/20/9808>

³⁶ <https://www.gov.scot/groups/just-transition-commission/>

³⁷ Accessed at <https://www.gov.scot/publications/transition-commission-interim-report/>