



Law Society
of Scotland

The report of the Racial Inclusion Group

January 2022



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Convener's introduction

One might ask why a profession that is symbolised by blindness and balance, factors that should disqualify prejudice, finds it necessary to discuss the topic of inclusion. The answer is that it arises out of our tribe being integral to a society that was never designed to be inclusive in the first place.

As Leslie Thomas QC notes: '[Racism and discriminatory behaviours pervade all levels of society and our legal system is not immune.](#)' Insisting that we become inclusive is a necessary revolutionary act in the same way that sex, gender, ethnicity, sexuality, and perceived capability became protected characteristics in our laws. Unless we proactively pursue change then the goal of being able to see ourselves and each other, our work, and our issues for what they truly are remains elusive. Continuing to do things as they have always been done guarantees that things will remain as they are.

Our group accepted its remit, acknowledging that the stated aim of an inclusive profession had not been achieved despite previous efforts. We knew that we would encounter explanations for what had been implemented in the past and the limited success preceding us. Our own personal and professional experiences left us under no illusion that there were problems that were not recorded on the face of the data that had been collected and analysed. On this basis, we engaged with the data, the research and the personal accounts of many.

Our report therefore presents our discovery of a progressive legal sector exemplified, in terms of our remit, by the following values:

1. Innovation: a willingness to adapt current processes and practices in new ways.
2. Diversity: an appreciation of more and different voices in conversations contributing to the richness of ideas.
3. Stewardship: A desire to continuously improve the profession in order to create a progressive legacy for the benefit of future lawyers.
4. Accountability: Taking responsibility for making the necessary changes to meet our desired outcome of a genuinely inclusive profession and contributing to this by recording and providing information in furtherance of this.

These values are the themes that you will notice in the report and its recommendations. They are offered to the profession as a mindful anchor in the sea of uncomfortable facts that we explore here.

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My gratitude goes to the Law Society of Scotland staff who put their data and formidable analytical and presentational skills at our disposal. A particular thank you to a final year LLB student, Sonia Siddique, a work experience student, whose research efforts were invaluable. Members of this group who took time out of their professional and personal lives to exhaustively analyse and discuss this project, offering and exposing their own experience and insight, are to be commended. Those who spoke to us, in whatever way, are appreciated for their participation, which gives this report fundamental authenticity and authority.

We have found a profession that is enthusiastic about innovation on this issue. Progressive voices at every level recognise the value of diversity. The opportunity to openly discuss the situation of ethnic minorities in Scotland, particularly over the last year, was warmly welcomed and reciprocally engaged with. While it would be dishonest to say that every conversation was inspirational and uplifting, the recognition of the difficulty and desire to continue regardless were reassuring. Doubtless these constructive conversations will continue; indeed, they should.

This report takes as an established truth that ethnic minorities face structural disadvantage throughout society as no credible source denies this. That this disadvantage often intersects with others, such as those based on class, sex and gender, reinforces our proposition that inclusion is to be championed. The foundational work that the profession has carried out to enhance the inclusion of women has delivered a stronger sector and exhibits the truth that we were all disadvantaged by past failures. We make no bolder claim than that a decisive and determined profession can open their narrative to achieve greater inclusion and better outcomes. We are fortunate that we flow in the same direction as the Scottish Parliament, which is set to incorporate the United Nations Convention on the Elimination of All Forms of Racial Discrimination in this term.

We need not justify diversity in terms of convergent interest. There is ample evidence to show that diversity impacts the bottom line by introducing more robust decision-making and challenging structural biases that inhibit innovation and growth. The very experience of working with peers from other walks of life correlates to better outcomes for all involved. Our hope is that this report makes it clear to the profession that our business thrives on meaningful inclusion, and to all else, that we intend to achieve it.

Tatora Mukushi, January 2022

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The remit of the group and the approach of the group in achieving that remit

Remit

The Racial Inclusion Group's remit:

- Revisit the *Profile of the Profession* report and undertake a literature review of any other data sources that may give us insight on how to improve racial inclusion in the profession.
- Invite black, Asian and minority ethnic law students, trainees, and solicitors to come forward to speak openly (anonymously if preferred) about their experiences. This may be done, for example, in one-to-one calls or by subject-focused roundtables.
- Speak to stakeholders in the profession such as universities, law firms, in-house counsel and bodies such as Scottish Courts and Tribunal Service (SCTS) to discuss best practice, challenges, and how we can seek to overcome these challenges.

Approach

The Racial Inclusion Group's work included the following activities:

- (a) Considered the main Scottish data sources on inclusion in the profession. These included the various *Profiles of the Profession*, the data collected by the Society at practising certificate renewal, data the Society ingathers as part of its accreditation of the LLB and Diploma in Professional Legal Practice and useful comparators (eg the Scottish census, diversity data from the Solicitors Regulation Authority and Institute of Chartered Accountants of Scotland (ICAS)). The group also undertook a comprehensive literature review. The group was subdivided into pairs and trios. Each smaller group considered a particular area of literature and reported back their observations and findings to the group before a wider group consideration took place.
- (b) Invited black, Asian and minority ethnic law students, trainees, and solicitors to speak to the Society about their experiences. These experiences were ingathered in two main ways: a survey of members; and a series of one-to-one interviews with members and future members.
- (c) Spoke to in-house employers, representatives of law firms and justice sector stakeholders about best practice, challenges and views towards improvement in the future.

Members of the group also took part in, or attended, a number of events focusing on racial inclusion over the course of the lifetime of the group. All of these were analysed, discussed and synthesised by the group. The findings of the group are the following report.

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Executive summary

Chapter 1: What does the Scottish legal profession look like and how can we make it better reflect the Scotland it serves?

- The Law Society of Scotland has gathered specific profiling data since 2005 which, when combined with practising certificate renewal data, shows a trend towards further diversification of the profession.
- High return rates make the data reliable. The overall trend of diversification is not present across every minority ethnic group.
- Note is taken of the intersection between race and disadvantage disproportionately affecting ethnic minorities.
- Data from the Scottish Government's Commissioner for Fair Access suggests the route to qualification is becoming more representative of Scotland as a whole when it comes to Scottish Index of Multiple Deprivation (SIMD) data. Ultimately, the analysis of the data revealed complex reasons behind events and an imperative not to take the data at face value.
- While the trend of increased diversity entering the profession is positive, an increased pace is required. Access to minority role models, mentoring networks and funding opportunities feature prominently as issues that ought to be addressed in order to achieve more diversity throughout the profession.

Chapter 2: We know role models are important but where are our BAME role models?

- We continue the theme of the visibility of ethnic minorities and the disappointing picture in the top end of the economy. This is universal across the public and private sector and has been remarked upon by senior government figures.
- In education, fewer than 1% of UK university professors are black.
- This lack of visible role models allows the audience to assume at a glance that firms have failed to recruit or retain ethnic minority staff, deterring ethnic minority students from firms and the profession as a whole.
- This is compounded in subject areas such as corporate, banking and finance, competition, technology, media ('white collar law') where black, Asian and minority ethnic (BAME) lawyers are most rare.

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- The links between the visibility of role models and social mobility are evidenced, as is the burden that this creates for entrants into the profession.
- The burden persists while isolated BAME solicitors are forced to carry out the role of mentor, ideal and representative in addition to their careers, due to professional and social pressure.
- The section considers solutions such as reverse mentoring to reduce these burdens, and highlights important initiatives in the profession to promote supportive networks such as Fair Justice System for Scotland Group (FJSS), Scottish Ethnic Minorities Lawyers Association (SEMLA), and the Law Society's career mentoring programme.

Chapter 3: Employers want diverse talent but struggle to attract it. How can they improve?

- The gap between the appreciable numbers of BAME law students and those applying successfully to the largest law firms in Scotland is explored via practising certificate renewal data and data from universities.
- The largest 30 firms by partner number train 39% of trainee solicitors, rising to 46% when including Crown Office and Procurator Fiscal Service and the Scottish Government. This represents a substantial pool of potential for generating diverse talent.
- It is estimated that between 20%-30% of traineeships use contextualised recruitment, which the Society is able to facilitate via its commercial agreement with the providers of software for this. Blind recruitment is also gaining in popularity amongst firms and may be an alternative for organisations that cannot justify the expense of contextualised recruitment.
- Context is crucial as it informs employers about what obstacles applicants have had to overcome to achieve the results that they have, bringing equity into the recruitment process.
- Taking this approach puts to bed the falsehood that lawyers and potential lawyers can be judged by the results that they achieve, which is the common approach. Understanding context helps employers to evaluate their candidates' strength more robustly.
- This is reinforced by the environments in and around legal employers, which can fail to be inclusive through a lack of understanding and focus on equality. Organisations as disparate as SEMLA, Black Professionals Scotland and the UK Supreme Court have rolled out initiatives specifically targeted at disadvantaged groups.
- Anyone expanding this should ensure that schemes are tailored and targeted to overcome the specific hurdles posed by structural disadvantage. Ethnic minorities, for example, are less likely to

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be able to afford unpaid internships and the associated costs that accompany them.

Chapter 4: What is the experience of our ethnic minority members?

- Knowing that a lack of inclusion is harmful is not the same as understanding it. This chapter relates the personal journeys and experiences of black and minority ethnic members of the profession based on recent extensive qualitative and quantitative research. This data is carefully controlled to account for population sizes, repetition and such.
- 215 people completed the survey, 157 of which identified as BAME. This includes 20-25% of the practising BAME population.
- 60.44% of all respondents noted experiencing bias, racism or discrimination on their route to qualification. 21.43% said that they did not. These figures were similar to those reported in a recent members survey by ICAS.
- This is further categorised in terms of where these negative experiences occurred for BAME respondents in Table D. Places include universities, courts and accessing a traineeship. No category was empty.
- Over 75% of respondents noted they had experienced bias in the last two years. A variety of examples of types of bias occurring within survey data are listed.
- As the BAME population in the profession is so small, the level of detail given in some accounts has been limited to reduce the chance of individuals being identified. Examples include overt acts (things someone did or said to or about someone) to omissions (lack of inclusion, lack of parity, inconsiderate practices).
- Attention must be given to the cumulative effect of minor events creating a relentless flow of negative experiences and outcomes with little or no relief available. Responses candidly include accounts of bias from clients and from other BAME practitioners.
- Systemic factors such as pay opacity and no obligation to provide feedback to interviewees impact ethnic minority staff in particular as there is a legacy of exploitation and underpaying as well as a historical and contemporary correlation between ethnicity and wealth.
- Denial or downplaying of the need to increase diversity or inclusion disempowers BAME practitioners. It makes it more difficult for them to report issues or to seek support if their seniors or contemporaries do not accept that there might be bias at play and that this is injurious.
- None in the justice sector are immune to the perception of bias, including the Law Society of Scotland.

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Chapter 5: How do we build a culture where everyone can thrive?

- Inclusiveness, rather than demanding or expecting assimilation of BAME practitioners, critiques the barriers and standards within the profession that dictate norms and instead accepts standards that are not based on preconceived biased notions. In this context, the bias is inevitably in favour of white Scottish culture.
- The cost of failing at inclusion is that BAME lawyers are subjected to an environment that subjects them to a pressure that their white counterparts simply do not face. Research from England and Wales shows that 'average BAME lawyer's tenure at a law firm is around 18 months shorter than that of the average white lawyer'.
- The intersection between ethnicity bias and sex and gender bias cannot be ignored, nor can the similarities with class discrimination. The group identities are not prescribed as specific people but the favoured status tends to identify as white and male, with seniority weighing in to amplify the disparity.
- The persistent absence of senior BAME staff is problematic, not only in its own right but because it belies other problems, such as those of culture and equity. In their absence, there is no one to nurture new talent with the reinforcing comfort of identity and belonging that white staff can take for granted. Similar conclusions can be drawn with regard to class bias.
- England and Wales appear to have achieved a sort of critical mass of BAME practitioners whereby the lack of senior BAME staff could be remedied within the talent pool already present.
- While Scotland appears to lack the numbers, this is not coincidence. Evidence of the tapering of BAME numbers through the ascending profession and analysis here shows that the attrition, if not deliberate, shows a lack of impetus on the part of the established profession. If continued, the situation will perpetuate indefinitely.
- The lack of the many weighs down the few in the industry, with perceptions of tokenism, the 'vanguard burden', and isolation making professional life more difficult. It is difficult, if not impossible, to assert and sustain one's personal culture at work when one is submerged in another, particularly when there are other significant power dynamics involved, such as age and wealth. BAME employees may fear their own visibility.
- Where firms take steps towards inclusion in how they treat their staff (for example, celebrating a wide range of cultural events, prayer rooms and openly acknowledging contemporary racism), the outcomes are clearly beneficial. Seeking to remedy the problems of ethnicity bias is appreciated across the spectrum.

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Chapter 6: What can we learn from the experience of our counterparts in England and Wales?

- Leslie Thomas QC strongly advocates speaking about race (as a pioneer in the industry with lived experience of racial bias, he has offered his experience and wisdom in various forums, including in Scotland). Like many, he laments the lack of progress in England and Wales. Things are not changing quickly enough.
- The [Race for inclusion](#) report in England is a stark prophecy of what happens if we do not implement change urgently. The report highlighted that the ethnicity pay gap in law is shocking, with white solicitors earning a third more than their black colleagues.
- Several large firms in England and Wales chose to report ethnicity pay gap figures in 2021. These range from 9.5% to 47.5%.
- A similar picture emerges from research by the [Bar Standards Board](#), with a clear amplifying effect where barristers were black and female.
- 40% of BAME barristers had an income of £60k or less compared to 24% of white barristers. [White barristers were twice as likely to earn over £240k per annum as BAME counterparts](#). *'Female BAME barristers were the lowest-earning group and white men the highest.'*
- The Society's *Profile of the Profession* report noted status and pay disparities which systematically favoured white Scottish partners.
- In England, as Bentley notes: ['The majority \(of BAME solicitors\) work in small practices, often in areas like family law and immigration, which are not so highly remunerated.'](#) This applies at the English Bar as well and is also likely replicated across Scotland.
- Scotland replicates England in terms of specific barriers to entry, eg a lack of role models, a lack of connections, and an intersection for some BAME groups of coming from a disadvantaged background.
- A non-inclusive culture has been noted as a negatively impacting feature of English legal practice as in Scotland. Non-progressive work environments drain the energy and enthusiasm of BAME practitioners. This affects workplace wellbeing where BAME workers suffer disproportionately. BAME retention in England is lower along the lines of the ['ethnicity stay gap'](#).
- Disappointingly, BAME participation at partnership level has not improved across the board. Analysis of apparently favourable data from England and Wales shows that only 8% of partners at large firms (those with 50 or more partners) were BAME.
- 36% of partners in solo practice are from a BAME background – and the growth in population of BAME partners in solo practice is twice as fast as partnership in the firms of 50 partners or more.

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(NB: [This should be considered against the wider trend of a decrease of 47% of sole practitioners over the last decade.](#)) This indicates that a) BAME partners are increasing as a result of a lack of opportunities at larger firms, and b) BAME partners continue to dominate the ‘blue collar law’ fields, such as immigration and criminal defence, where remuneration is many times lower than in the larger more corporate firms. This seems to unfortunately be replicating in Scotland.

- The differences between Scotland and England do not mitigate the similar outcomes with regard to progress on inclusion. Rather, they are a clarion call to act now in order to avoid finding ourselves in the same situation in the future.
- These results in England seem to have promoted action by way of firms taking note of the Black Solicitors Network invitation to consider (a) metrics, targets, and accountability (b) retention (c) promotion (d) organisational culture – inclusive leadership (e) external diversity engagement/social impact to improve their cultures and outcomes. [We would recommend considering the Black Solicitors Network open letter in full.](#) In addition, there are an increasing number of firms signing up to the Race Fairness Commitment designed by Rare Recruitment (Appendix C), including a number of firms with Scottish presences.
- The lamentable lack of diversity in the judiciary straddles the border, with urgent action being called for.
- Professional bodies have a crucial role to play in gathering high-quality data to help to design policies that will remedy these problems. They would also assist the bodies themselves in ensuring that bias does not pervade their functions and they can be proactive in addressing imbalances in the profession.

Chapter 7: Increasingly, large businesses are setting targets for providers of legal services. Is this the best way to shift the dial?

- Mandatory ethnicity pay gap reporting has been called for by a number of bodies, including the Equality and Human Rights Commission (EHRC), the Confederation of British Industry (CBI) and the Trades Union Congress (TUC).
- Consideration of achievement targets by large firms is also taking place. There is disparity in how these firms set their voluntary targets but what is most important is the strategic plans that will be put into effect to reach these targets and the accountability where targets are missed.
- Business in the Community sets out a good approach to approach this issue: [Executive Sponsor for Race Toolkit: How to set ethnicity targets.](#)

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- Clients can be influential in both demanding targets in this area and holding firms accountable. A prominent example has been the '[Intel Rule](#)', which mandates diversity criteria for firms wishing to bid for service contracts with the company. Initial analysis of this approach at Novartis [suggests that it is effective](#).
- Discussions around this have a historical legacy, including the policy of affirmative action.
- Discussion should be encouraged to ensure that proportionate action is being taken to meet a legitimate aim and that it does not lead to personal or professional victimisation.

Chapter 8: What do our members want?

- A significant percentage of our BAME members responded to the Racial Inclusion Group survey.
- The favoured future policy actions by those who completed the survey included making equality and diversity training mandatory, creating a specialist mentoring network focused on law students and trainees from ethnic minority backgrounds, and offering leadership skills training programmes for solicitors from ethnic minority backgrounds.

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Biographies

- Amina Amin:** I am an Associate at Global Law Firm Kennedys. I'm also a Non-executive Committee Member of the Scottish Young Lawyers' Association (SYLA). I hope to use this platform to work towards making our legal profession reflective of the society in which we live. I believe that when firms embrace a diverse and inclusive culture, everyone from solicitors, to clients, to our industry wins.
- Amina Mahmood:** I am a mid-level associate in the CMS Pensions team in the Edinburgh office. I act for a broad range of trustee, corporate and local government clients on all aspects of pensions law and regulation. I am passionate about creating a more diverse and balanced legal profession, particularly so in the corporate area of law. I understand that in order to get there the taboo that is race requires to be broken and action plans put in place in order to increase ethnic minority representation. I believe that the Racial Inclusion Group can lay down the blueprint to help the legal profession get there
- Brianella Scott:** I am a trainee solicitor with Harper Macleod LLP and am based in the firm's Glasgow office within the Energy & Natural Resources team. I am due to qualify in October 2021. I completed my undergraduate degree at the University of Stirling where I graduated with a First Class LLB (Hons) before going on to the University of Strathclyde to complete my Diploma in Professional Legal Practice. I am an appointed member of the Scottish Young Lawyers' Association, which represents young lawyers across Scotland. I am passionate about addressing the social dilemma of diversity and racial inclusion within the profession. I hope to use this platform to drive diversity and inclusion within the legal profession and to educate others on these matters, as well as having uncomfortable conversations around BAME under-representation, racial inclusion, and gender equality in the legal profession.
- Dr Eddy Wifa:** I am an Energy Law lecturer at the University of Aberdeen School of Law. I have a Master's in Oil and Gas Law with Distinction and a PhD in Marine Renewable Energy Risk Governance, both from the University of Aberdeen. My research expertise includes offshore energy health, safety and environmental regulation across several jurisdictions; decommissioning; regulatory theories; energy and natural resource governance; energy transition; and energy justice. I have advised governments and have been part of several research projects. I regularly speak at conferences and events and have produced numerous publications on my research interests. I am a member of the Aberdeen University Centre for Energy Law, the Centre for Energy Transition, and

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am the Director of the African Natural Resource and Energy Law Network (ANREL).

- **Eniola Oshodi:** I am currently a solicitor at the Office of the Advocate General within the HMRC Division. I obtained my Diploma in Professional Legal Practice at the University of Edinburgh and Law degree at University of Dundee. Prior to this, I obtained a BA (Honours) degree in Criminological Studies. I qualified as a solicitor and notary public in 2020 after completing my traineeship in a small firm, practising in many areas of law such as civil litigation, private client, dispute resolution, conveyancing and personal injury. I now work for the Office of the Advocate General. Having a keen interest in civil litigation, I have experience in First-tier Tribunals, sheriff courts, High Courts and the Supreme Court.
- **Karolina Bodzak:** I am from Lublin, Poland, and attended Jagiellonian University, obtaining a Master's degree in law in 2009. My research and interests lie in the nexus of European Union law, public law, human rights and civil litigation. I have been fortunate to pursue relevant opportunities in Poland, Finland and finally in the UK. I embarked on my UK legal journey in 2014 as a mature, part-time student. I attended the University of Strathclyde, obtaining a Bachelor of Laws in 2018 and in 2020 I completed the Diploma in Professional Legal Practice. I received the Law Society of Scotland award first place for overall achievement during the Diploma. I am currently working in the charity sector: advocating and providing a voice for those who do not have one. I took part in the Integration Network project providing advice for migrants in the UK. Although my career goals are not quite set, I am interested in public law and I am looking forward to the next two years of my traineeship.
- **Musab Hems:** I am a Director at Anderson Strathern LLP, accredited by the Law Society of Scotland and Signet Accredited as a specialist in employment law, I have high-profile experience of representing clients on a wide range of difficult and challenging industrial relations disputes, employment litigation and senior/board level exits. My track record includes advising on strategic projects, wholesale changes to terms and conditions, discrimination/harassment complaints, whistleblowing, industrial action, trade union recognition, and domestic/international transactional employment issues.

I am one of Scotland's representatives to the European Employment Lawyers Association and Chair of the Scottish Discrimination Law Association.

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- **Olivia Yeneka:** I am Olivia Yeneka, one of the members of the Racial Inclusion Group. I am a recent university graduate with a First Class Honours degree in Law. I am now a junior associate at Weber Shandwick. In addition, I am a part of the BlackEd Movement: a voluntary anti-racist organisation. BlackEd was founded to support BAME people in Edinburgh, particularly students. The organisation works with local stakeholders and the student body to improve support, opportunities, and the community for BAME individuals.
- **Savita Sharma:** I am a dual-qualified (Scotland and England & Wales) solicitor and a consultant in the Family Law team at Morton Fraser LLP.
- **Sheekha Saha:** I am a Scottish Solicitor, 20 years' qualified. I work in-house with Comhairle nan Eilean Siar, based in the Stornoway office. In my time working for the Comhairle, I have covered many areas of local authority practice, but I have specialised for a number of years in social work law, both Child & Family protection and Adult (Community Care, Incapacity and Mental Health) Services.

Outside of my 'day job', I am one of the elected members of the Law Society of Scotland's governing Council. I sit on a number of the Society's Committees, including Child & Family Law, Access to Justice, Public Policy and I co-convene the In-House Lawyers' Committee.

I am one of the five founding members of SEMLA (the Scottish Ethnic Minorities Lawyers Association). SEMLA is an organisation established to promote and support the legal professions in achieving equality, diversity and inclusion within those professions for those from minority ethnic backgrounds.

- **Usman Tariq:** I am an Advocate at the Scottish Bar. I called to the Bar in 2011 having studied at the Universities of Glasgow and Cambridge and then trained as a solicitor at Pinsent Masons LLP. I specialise in commercial dispute resolution and public law. I have appeared in cases at all levels of the Scottish court system, including the UK Supreme Court. I have held a number of professional appointments, including as a Standing Junior Counsel to the UK Government in Scotland, Contributing Editor of the Banking Law title of *The Laws of Scotland: Stair Memorial Encyclopaedia*, and am currently commissioned as Crown Counsel by the Lord Advocate prosecuting serious crime.

I am passionate about increasing diversity and inclusion in the Scottish legal profession. I co-founded the Scottish Ethnic Minorities Lawyers Association (SEMLA) and over the years, the five co-founders have worked on a voluntary basis with a number of law firms and organisations to host events and create opportunities for law students and lawyers from ethnic minority backgrounds. I

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am also a member of the Faculty of Advocates' Equality & Diversity committee. Outside of work, I am the father of two young children who keep my wife and I very busy on our supposed 'days off'.

- **Ussamah Nassar:** I am a trainee solicitor who joined the Law Society of Scotland's Racial Inclusion Group as a Diploma student because I knew how hard the Society worked towards keeping the legal field progressive and up to date. Having read the Society's previous publications on equality & diversity in the workplace and the challenges surrounding it, I wanted to contribute my part and my help: which is what brought me to the group.
- **Won Lim:** I am a solicitor in the corporate finance team at Burness Paull LLP, having completed my studies at the University of Edinburgh and qualifying as a solicitor in 2020.
- **Tatora Mukushi (Convener):** I am a lawyer working in the Scottish Government Legal Services. I am on the solicitors' roll in Scotland and in England, with litigation and advocacy experience in criminal defence, asylum, immigration, mental health and incapacity, including pioneering cases in each of these areas. I have worked as a Legal Officer for the Scottish Human Rights Commission and led Shelter Scotland's Migrant Destitution Project. I am registered as a curator ad litem to the Mental Health Tribunal for Scotland and I sit on the Scotland Committee of the Equality and Human Rights Commission. I am honoured to have convened this group of talented volunteers.

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Chapter 1: What does the Scottish legal profession look like and how can we make it better reflect the Scotland it serves?

Since 2005, the Society has organised a 'census' of the profession (*Profile of the Profession*). These surveys have not used the same methodology for recording the ethnicity of solicitors, therefore Table A does not necessarily compare like with like. It is indicative and brings together data from all four *Profiles* and the data gathered at 2020/21 practising certificate renewal.

The four *Profiles* and PC renewal information are the best data available and show a trend that the profession is diversifying. It is likely given the data that we have for solicitors who are under 30 and information we gather from university accreditation that this trend will continue.

Table A: BAME representation in the profession since 2006

	2006	2009/10	2013	2018	2020	2020 (< 30)
White combined	97.3%	97%	97%	96%	88.01%	91.38%
BAME combined	0.9%	2%	2%	4%	3.38%	6.9%
Other	0.29%	<1%	<1%	N/A	1.48%	1.57%
Did not specify	1.4%	1%	1%	N/A	7.13%	2.01%
Estimated number of BAME professionals	80-90	210-230	210-230	480	420-480	115-125
Percentage of members who completed the survey/PC renewal	31.3%	19.5%	29%	19.6%	79.16%	84.06%

Notes on Table A

1. The presentation of the 2009/10 *Profile of the Profession* does not include the data set itself. The figures are presented as rounded in the report. The same is true of the 2013 figures.

2. The 2018 *Profile of the Profession* did not allow for a 'Prefer not to say' option. Moreover, the category of 'Other ethnic group' was included in analysis as part of the BAME analysis. The estimated number of BAME professionals for 2018 is likely high.

3. The figures for 2020 are based around data received at PC renewal. The percentage of members responding was therefore much higher and these figures are – as well as being more recent – much more statistically valuable. The proportions correspond to earlier data sets with lower return rates, showing that overall the methodology has been robust.

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4. It has been suggested that BAME legal professionals are more likely to complete an optional diversity survey. If that is true, the 'Estimated number of BAME professionals' is likely high in 2006, 2009/10, 2014, and 2018.

Has the profession changed since the first *Profile of the Profession* and, if so, how?

Looking at the first *Profile of the Profession*, the numbers of BAME respondents are remarkably low. In 2006, 27 members indicated they were from an Asian background (Indian, Pakistani, Bangladeshi, Chinese or other). Combining all people from a BAME background in 2006 and applying the percentage recorded at *Profile of the Profession* against the 2006 solicitor population as a whole suggests that there were between 80-90 BAME legal professionals at the time.

Applying the same arithmetic to the data ingathered at PC renewal 2020/21 suggests we have between 420-480 BAME members across the profession. The *Profiles of the Profession* show a steady growth in number and percentage of those from a BAME background, although we know progress across ethnic groups has not been uniform.

This improvement was noted by members. One BAME solicitor with between 15 and 20 years Post-Qualified Experience (PQE) noted *'there's definitely more diversity in the court than when I started. It wasn't very often you'd see another person of colour but things have improved. At the criminal bar we are still under-represented though'*. A further breakdown can be found overpage in Table B.

(NB: The Society's 2020 PC renewal data suggests that 3.38% of members were from a BAME background. 3.38% of 12,500 PC holders is 422. Over 7% (890) answered 'Prefer not to say' and another 1.48% (185) answered 'Other'. We know from free text responses that some who selected 'Other' are from a minority ethnic background, eg free text responses included Turkish, Persian, Kosovan, Kurdish, Filipino etc. Assuming that some of those who indicated 'Prefer not to say' and chose 'Other' are from a BAME background would suggest a population size between 420 and 480.)

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Table B: Breakdown of membership by ethnic background at practising certificate renewal 2020 – total solicitor population and solicitor population under age of 30

Ethnic group	% (Total solicitor population)	% (Aged 30 and under)
White Scottish or white British	86.47%	89%
Prefer not to say	7.13%	2.91%
Other	1.48%	1.57%
White Irish	1.24%	0.99%
Pakistani British, Pakistani Scottish or Pakistani	0.95%	1.40%
Mixed or multiple ethnic groups	0.74%	1.05%
Asian British, Asian Scottish or Asian	0.43%	0.70%
Polish	0.30%	0.81%
Jewish	0.29%	0.23%
Indian British, Indian Scottish or Indian	0.29%	0.35%
Chinese	0.26%	0.47%
Sikh	0.16%	0.17%
African British, African Scottish or African	0.13%	-
Bangladeshi British, Bangladeshi Scottish or Bangladeshi	0.06%	0.17%
Arab British, Arab Scottish, or Arab	0.05%	0.12%
African – not specified	0.01%	-
Black British, black Scottish or black	0.01%	0.06%

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How does the profession compare with the population as a whole?

It is difficult to compare as the census is now 10 years old and ethnicity demographics (particularly for the working age population) will have changed potentially significantly. The most up-to-date information can be found here: [Scotland's census: ethnicity](#).

Table C: BAME representation in the profession since 2006

Ethnicity	Scottish census 2011	Solicitor population: 2021 (difference with census)	Solicitor population under age of 30: 2021 (difference with census)
White Scottish/British	91.83%	86.47% (-5.36%)	89% (-2.83%)
Prefer not to say	N/A	7.13%	2.91%
Other	0.37%	1.48%	1.57%
White Irish	0.40%	1.24% (+0.22%)	0.99% (+0.59%)
Pakistani British, Pakistani Scottish or Pakistani	1.16%	0.95% (+0.02%)	1.40% (+0.24%)
Mixed or multiple ethnic groups	N/A	0.74% (+0.37%)	1.05%
Asian British, Asian Scottish or Asian	0.62%	0.43% (+0.03%)	0.70% (0.08%)
Polish	0.64%	0.30% (-0.86%)	0.81% (+0.17%)
Jewish	N/A	0.29%	0.23%
Indian British, Indian Scottish or Indian	0.55%	0.29% (-0.36%)	0.35% (-0.20%)

Continued overpage

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Ethnicity	Scottish census 2011	Solicitor population: 2021 (difference with census)	Solicitor population under age of 30: 2021 (difference with census)
Chinese British, Chinese Scottish or Chinese	0.64%	0.26% (-0.38%)	0.47% (-0.17%)
Sikh	N/A	0.16%	0.17%
African British, African Scottish or African	0.55%	0.13% (-0.42%)	-
Arab British, Arab Scottish, or Arab	0.18%	0.05% (0.13%)	0.12% (0.0%)
Gypsy/Traveller	0.08%	0% (-0.08%)	0% (-0.08%)
Bangladeshi British, Bangladeshi Scottish or Bangladeshi	0.07%	0.06% (0.01%)	0.17% (+0.13%)
Black British, black Scottish or black	0.04%	0.01% (-0.03%)	0.06% (+0.02%)
African – not specified	0.01%	0.01%	0% (-0.01%)
Caribbean, Caribbean Scottish or Caribbean British	0.01%	0% (-0.01%)	0% (-0.01%)
Roma	N/A	0%	0%

By way of comparison, the Society's figure of at least 3.38% from an ethnic minority background is close to the [Institute of Chartered Accountants of Scotland's figure of 4% of people from an ethnically diverse background](#).

(NB: The option of selecting the 'Jewish' was not included in 2011 as part of the ethnicity report. However, 0.1% of people selected 'Jewish' in the religious faith question. Similarly, the option of selecting 'Sikh' was not included as part of the ethnicity report. However, 0.2% of people selected 'Sikh' in the religious faith question.)

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What does the near future look like?

The Society accredits the Foundation Programme (LLB) and the Professional Education and Training 1 Programme (PEAT 1) Programme (referred to as both PEAT 1 and the DPLP). Each year, accredited providers are required to submit an annual report to the Society for the most recently completed academic year. The Racial Inclusion Group interrogated the 2018/19 collected data as at the time these were the most up-to-date figures.

The LLB

For the 2018/19 academic year, the overall BAME population of the LLB was 13.80%. This encompasses everyone studying on the LLB (eg everyone from first year to fourth year, four-year LLB or accelerated two-year degree etc). The lowest BAME percentage was 7.66% of the LLB population through to the highest of 22.6%.

As a comparator (and noting that the reporting year is different), the Scottish Funding Council notes that 'in 2019/20 9.8% of Scottish-domiciled entrants to full-time first degree courses at university were from a non-white ethnicity'.

Even though the LLB cohort across Scotland compares well with the Scottish Funding Council data, there may well be matters of concern. The intersection of race and disadvantage may make access to the LLB more difficult for those from BAME backgrounds. We know from the [Scottish Government's research](#) that people from non-white backgrounds are more likely to live in relative poverty (39% of those from Asian, Asian Scottish or Asian British and 38% of mixed, black or black British and other live in poverty compared to 25% of white – other and 18% of white – British). In our discussions with universities, we heard consistent examples of focus on widening access to disadvantaged communities and under-represented groups in their pre-university efforts.

The Scottish Government's Commissioner for Fair Access [notes that the proportion of entrants to qualifying law degrees from SIMD20 areas increased from 11% in 2015/16 to 13% in 2018/19](#). SIMD20 being the 20% most deprived data zones in Scotland. The report also noted that '*the proportion of entrants from the least deprived SIMD quintile has fallen from a peak of 39% in 2016/17 to 33% in 2018/19*'.

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Professional Education and Training 1 (PEAT 1)

The percentage of students from a BAME background on the 2018/19 PEAT 1 programme was lower at 7.40%. The drop between LLB and PEAT 1 is at face value concerning, although there are number of explanations for this:

- The LLB is a more global programme than PEAT 1/DPLP. The total non-Scottish-domiciled population of the LLB in 2018/19 was 24.7% (6.8% from the rest of the UK (ruK), 7.8% from the European Union, and 10.1% from the rest of the world). There is a 20% drop in global representation between the two programmes in that reporting period. In 2018/19, PEAT 1 had a total non-Scottish-domiciled population of 4.5% (1.7% from rUK, 2.1% from the European Union, and 0.7% from the rest of the world).

Those from outwith Scotland choosing not to undertake the DPLP is relatively common, either through design (eg it was always their intention to return to their home jurisdiction having studied an LLB; they had studied for one of the dual-qualifying degrees or the English LLB at a Scottish institution) or due to factors outwith their and the Society's control (eg the impact of Brexit; the nature of the UK's visa and immigration scheme means it can be extremely difficult for non-UK, non-EU graduates to commence traineeships given the level of remuneration required to work in the UK and the limited number of traineeships that pay significantly in advance of the Society's recommended rate etc). (NB: The universities that offer dual-qualifying degrees are Dundee, Aberdeen, and Strathclyde. Dundee also offers a degree that is entirely focused on English law.)

Of those from outwith Scotland who chose not to undertake the DPLP, we do not know what percentage are white and what percentage are from a BAME background. It is reasonable to assume that all three groups (eg rUK students, EU students, and students from the rest of the world) were more diverse than the Scottish population.

- This was reinforced in our meetings with universities. Each university we spoke to cited the above as the primary factor in the drop between LLB and DPLP. It was noted to us that dual-qualifying degree students (and English LLB students at one institution) will be included in total LLB figures. We did not meet every provider but we did speak with the following: Glasgow Caledonian University, Dundee University, Edinburgh University, Edinburgh Napier University and Strathclyde

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University.

- In all discussions with universities (and in many with those on the route to qualification and qualified solicitors), the lack of visible role models has been cited as a factor which might inhibit those from BAME backgrounds progressing to the DPLP. This is explored in Chapter 2.
- The lack of connections or links in the profession has also been cited as an issue by the Racial Inclusion Group itself in group meetings; in the survey on racial inclusion; and in our discussions with stakeholders. This issue was more fully explored in Glasgow Caledonian University's [Equality in Law Podcast](#) hosted by Seonaid Stevenson-McCabe and Eisa Mahmood. A number of organisations are working in this area to improve connectedness between BAME students and the profession. These include:
 - [The LawScot Foundation arranges mentoring for all law students it funds.](#)
 - The Law Society of Scotland's [career mentoring scheme](#).
 - [Scottish Ethnic Minorities Lawyers Association](#).
 - [Fair Justice System For Scotland Group](#) .
 - [Black Professionals Scotland](#).
 - Other organisations which may focus on other areas of under-representation usually also support BAME inclusion ([Next Generation Lawyers](#), [The Glass Network](#), [Legable](#)).
 - [Scholarships exist to financially support people across the profession](#), eg the [Faculty of Advocates scholarship schemes](#) and CMS Cameron McKenna Nabarro Olswang have for a number of years [funded scholarships in Scotland via an essay competition](#). The aforementioned LawScot Foundation funds a number of students annually.
- Through our discussion with universities and law students, it became clear that (a) some university law societies have diversity officers as a standing role on their committee (and with diversity and inclusion activity as part of the calendar of events) (b) there are new student law societies either specifically focusing on BAME inclusion (eg University of Edinburgh BAME Law Society) or with a focus on diversity (eg Aberdeen University Diversity in Law Society). Glasgow Caledonian University runs the Equality in Law project.

The intersection of race and disadvantage continues beyond point of access to the LLB. It is possible that

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the cost of the DPLP allied with the speculative nature of the course may combine to be prohibitive to some people. This was cited in meetings with members and students. That said, there has been no shortage of DPLP students in recent years. The academic year 2020/21 saw 769 people commence the DPLP, which was the largest cohort since 2008/9 and considerably above the 10-year average.

Considering the DPLP, the [Scottish Government's Commissioner for Fair Access noted that](#) *'whilst the possibility exists that potential students from more socially deprived backgrounds may be discouraged from proceeding to this second stage in fact there is limited evidence that this is happening'*. The Commissioner went on to note that *'there is no evidence that at the professional Diploma stage there is any greater disparity between entrants from SIMD20 and SIMD80 areas'*. The Commissioner's work primarily focused on social disadvantage rather than race and social disadvantage.

The intersection of race and disadvantage may intersect to make access to the DPLP harder. If we know that pupils from the most deprived backgrounds in general terms adapt to university life more slowly than more advantaged peers then the current system of DPLP access, which is based to a very large extent on performance in the Foundation Outcomes (outcomes which are taught and assessed in the first two years of the LLB), may inadvertently disadvantage those from the poorest backgrounds. If people from a BAME background are more likely to live in relative poverty then this will impact those from a BAME background. The Racial Inclusion Group is aware that the Society did suggest reform of access to the DPLP to the providers of the DPLP in the autumn of 2020 and still has a policy intent of reform in this area.

How else might the profession diversify?

In late 2019, the Society changed its [admission regulations](#). This made the requalification procedure much easier for those from outwith the EU. Since November 2019, the Society has seen 26 applications from lawyers from outwith the UK/EU. In the preceding decade, fewer than 10 such lawyers applied to become Scottish solicitors. This may intensify via the Professional Qualifications Bill currently going through the UK Parliament and developments regarding the Hong Kong British Nationals (Overseas) (BN(O)) visa scheme and integration programme. The UK Government predicts an increase in applications for requalification or recognition from Hong Kong professionals.

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Chapter 1: Recommendations

1. Our data suggests, and discussions with early career professionals suggest, that the legal profession is not attracting people from all of Scotland's communities proportionately.

Organisations that work in schools to promote careers in the legal profession, including the Law Society of Scotland, should consider this under-representation and target efforts on ensuring under-represented groups get the information they need. This may include offering bespoke events and education programmes.

2. The Law Society of Scotland should publish diversity statistics for the LLB and Diploma in Professional Legal Practice (DPLP) to aid understanding in the sector. The Society should work with providers to ensure a standardised data set.

This will help organisations recruiting interns and trainees to know if they are attracting a cohort similar to the law student population and, if not, amend their policies accordingly.

3. The Law Society of Scotland and the Diploma Co-Ordinating Group should create a new process for accessing the DPLP which takes into account a wider range of factors than placing such weight on the performance of students in the Foundation Programme Outcomes in the first two years of legal study.
4. Nearly half of the respondents to our survey noted that they had experienced some form of bias in relation to their race at university. University law schools should look to eliminate all forms of bias at their own institutions.

As well as this, universities should prepare all students for joining a diverse workplace in the future.

5. Building on the recommendation for schools (recommendation 1): our data and discussions with early career professionals suggest that students from ethnic minority backgrounds may need targeted and tailored careers advice and events whilst studying law.

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6. Each year, a percentage of students graduate from the DPLP and do not commence a traineeship. The Society should collect data on this group to see if there are any trends relating to any of the protected characteristics.
7. We heard consistent commentary from law students and recent graduates that they were rarely lectured, tutored or taught by people from ethnic minority backgrounds.

Universities should offer insight into careers in legal academia to all students, including focused events for those from ethnic minority backgrounds.

DPLP providers should ensure that those tutoring on their courses are from a diverse range of backgrounds.

8. Universities should support any BAME law societies and/or other law societies that promote diversity and inclusion which are established by their students. The Law Society of Scotland and other organisations that work with universities should look to assist such societies by providing speakers and supporting events.

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Chapter 2: We know role models are important but where are our BAME role models?

'You can't be what you can't see'

Marian Wright Edelman. Founder and President of the Children's Defense Fund and the first African-American woman to be admitted to the Mississippi Bar

The profession does not appear to be out of kilter with Scottish public life

In the previous chapter, we considered what the Scottish legal profession looks like now. In this chapter, we consider the potential impacts of the current demographics on the career choices by young lawyers. The data is clear that the profession is similar to other prestigious spheres of public life and the economy. When you look at senior positions in Scotland, you are less likely to see BAME people holding them.

[Margaret Taylor noted that:](#) *'Not one of Scotland's 48 listed companies features a Black executive on its senior management team while just six employ executives from an Asian background.'*

This was followed in October 2020 when the [David Hume Institute identified 708 top positions across Scottish life](#). Of those, only 1% are people of colour. Only 0.3% are women of colour. *'The largest BAME minority group in Scotland is the British Asian population who make up 2.7% of the population but account for just 0.9% of Scotland's top leaders.'*

Looking to the wider justice sector, the lack of racial diversity and visible role models was highlighted by then Cabinet Secretary for Justice, [Humza Yousaf MSP](#): *'To my colleagues in the Government, I say that we know that we are not immune, either. Some people have been surprised or taken aback by my mention on my social media that at 99% of the meetings I go to, I am the only non-white person in the room. Why are we so surprised when the most senior positions in Scotland are filled almost exclusively by people who are white? Take my portfolio, for example. The Lord President is white, the Lord Justice Clerk is white, every High Court judge is white, the Lord Advocate is white, the Solicitor General is white, the chief constable is white, every deputy chief constable is white, every assistant chief constable is white, the head of the Law Society is white, the head of the Faculty of Advocates is white, and every prison governor is white.'*

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The Fair Justice System For Scotland Group (FJSS) report, [Framework for Justice Sector Reforms in Scotland](#) noted that as of January 2020 barely any of the Scottish Government agencies had a single BAME board member.

The Scottish Children's Reporter Administration was the only one of the public bodies which might reasonably be considered part of the justice sector which had a BAME board member. At the time of the FJSS publication, those that did not included: Scottish Legal Complaints Commission, Scottish Human Rights Commission, Her Majesty's Inspectorate of Prisons for Scotland, Scottish Parole Board, Scottish Legal Aid Board, Scottish Police Authority, Community Justice Scotland, Children's Hearings Scotland, Scottish Courts and Tribunals Service, Risk Management Authority, and the Scottish Criminal Cases Review Commission.

A [freedom of information request to the Scottish Government](#) in August 2020 elicited the answer that there were fewer than four director-level staff from a BAME background.

The Law Society of Scotland is undertaking a review of its committee architecture and will publish in due course. However, at time of writing, 10% of the solicitor members of the Society's Council are from a BAME background (and 8% of the total membership of the Council). The Law Society of England and Wales has a [seat on their Council to represent ethnic minorities](#).

It seems that the top-end of the Scottish economy is disproportionately white, as are the senior ranks of the public sector. [Taylor noted](#) this is similarly true of the professional services companies who advise these bodies and businesses, saying '*there is just one partner who is not white working in a Big Four accountancy practice in Scotland*' and at '*the country's five largest law firms there are only five non-white partners, three of whom are at Harper Macleod*'.

It is not clear how Taylor collated this information and we are aware from discussions with some of the firms that they have raised concerns about these figures. With caution in mind, even if the figures are only close to being correct as of July 2021, the five firms focused on by Taylor had a total of 396 partners (which accounts for just over 12% of all partners in Scotland).

BAME law students looking at the senior echelons of the profession and the clients they serve will rarely see people like them in positions of power.

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This is just as true in law schools. Consistently, our discussions with universities and students noted there are few legal academics, including master's degree students, from a BAME background across Scottish universities.

Throughout the summer of 2021, [Professor Mindy Chen-Wishart](#), the Dean of the Faculty of Law at the University of Oxford, has led an online discussion called #racemetoo to highlight racial inequality in higher education and academia. Whilst this has primarily focused on the English legal profession, it is illuminating for Scottish readers. This means students are unlikely to be taught or tutored by other people from BAME backgrounds. It is important to understand the effect of this on BAME law students. There is little official data on the number of BAME legal academics in Scotland or the wider UK but anecdotally numbers are low and it has been noted in England and Wales by [Philippe Sands QC](#) as 'a major problem'. Whilst we do not know the statistics in relation to legal academia, we do know that fewer than 1% of university professors in the UK are black.

The importance of visible role models

We arrive at problem. Across the senior echelons of public life, and of legal life, there are few visible BAME role models. Yet every representative from a university and from the profession indicated how important role models are, as did numerous sources from the literature review.

One BAME graduate seeking a traineeship noted: 'I speak to friends from ethnic minority backgrounds. We do search through company websites to see who are the partners, who are the leaders, who are the senior associates. It can put us off as we question if we'll even get through the process. This was echoed by a senior BAME solicitor, who noted: 'To see and identify people who are similar to you is empowering. Not seeing people like you can inhibit some people of confidence and assurance.'

One university stressed to us that when they had asked their BAME students what would help make a tangible difference to racial inclusion, seeing wide-ranging visible role models was consistently reported as the most important action an organisation could take to promote inclusion. At university, this could be manifest in various ways: having visible mentor/peer-learning support from BAME backgrounds; BAME people lecturing or tutoring on the courses; and, in events with the legal profession where solicitors/advocates attend to offer insight into practice.

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This is echoed in the podcast from Glasgow Caledonian University (GCU) between [Seonaid Stevenson-McCabe and Eisa Mahmood](#) where Mr Mahmood notes when asked about role models: *'I looked at him (Aamer Anwar) and I was like... you've come from a similar background to me and you've made it. People underestimate how hard it is when you don't have those links. It is quite easy to say "I don't have a role model" but it is more to do with links... how am I meant to get into it when friends have parents in the field?'*

Another university noted they had worked hard to ensure visible role models but often found themselves inviting English barristers/QCs, particularly when looking for black role models in the profession.

[Archibald writing in the Society's Journal](#) noted: *'It is important in a workplace to see people in senior roles with whom you identify. Their success encourages you to believe in your own potential. As a woman, I am inspired every day to see many strong, female leaders in my firm. As a black woman, I feel lonely when I fail to see my race reflected in senior positions.'*

Under-representation has numerous harms. If Haldane is right in his speech '[The Sneetches](#)' that *'diversity is a public good because it corrects our biased minds in ways which benefit society – from greater creativity and innovation to more robust and resilient decision-making, in every social setting from schoolrooms to sports fields, from companies to communities, from eco-systems to economies* then the first harm is that we have less diverse businesses with the lower levels of creativity and innovation and less robust decision-making.

A secondary harm is that without visible diversity at the top end of a profession, there are fewer role models from under-represented groups. A vicious cycle develops: younger people from those groups may opt out of a career in law; may find it harder to make it within the law; or may choose an area of law where BAME people are more prominent even though they would prefer to work elsewhere.

One early career BAME solicitor we spoke to mentioned the importance of positive stories, role models and the news that things are getting better: *'A negative focus may put people off! Things are getting better and the key is to break the perception that young people have that the profession is all male, all white.'* Another member noted: *'The profession was always viewed as stuffy, elitist and a bit of an old boys' network. There was an element of that in the past and it has really broken down significantly but that perception of the profession remains among many people.'*

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The supporting evidence here is in the negative. The statistics of partners at larger firms [highlighted by Taylor](#); almost every large law firm we spoke to noted that they do not see proportionate numbers of applications from students/graduates from BAME backgrounds for traineeships. Almost every large firm noted that they felt there was under-representation at all levels of their business.

Our survey data was inconclusive as to whether BAME solicitors are more likely to work in certain areas than their white peers. However, almost every BAME solicitor we spoke to cited that BAME solicitors were more likely to work in sectors such as criminal defence, housing, and immigration and asylum. This was supported by other anecdotal evidence: larger law firms themselves noted they were not seeing a proportionate number of BAME applications for traineeships and found lateral hires of BAME solicitors at a more senior level difficult etc.

A newly qualified solicitor from a Pakistani-Scottish background noted that *'I was the only person from my background on the LLB who went on to get a traineeship at a big firm'* and noted that others from a similar background who studied the DPLP with them had been successful in entering the profession but not to the larger firms to which they had applied. (NB: This was the solicitor's own wording. There is no standard or agreed definition as to what a 'big firm' or 'large firm' is, although it is generally assumed to be a firm of 10+ partners.)

If there are few BAME role models in corporate, banking and finance, competition, and technology, media, telecoms (TMT) etc then it may mean that BAME law students feel excluded and choose other routes or areas of law where they believe their face may fit.

If we strongly suspect there are practice areas within the profession where BAME solicitors are under-represented, organisations with seat-based traineeships might wish to consider ensuring BAME trainees get experience in those areas to try and diversify the profession longer-term.

Writing in the *Law Gazette*, Mohamed notes that the importance of role models ['*cannot be overstated when it comes to improving social mobility in the legal profession*](#)'. He notes, citing the Social Mobility & Child Poverty Commission, that *'a lack of visible role models and low social capital can have a detrimental effect on young people's perceptions of their ability and access to the legal profession. This is especially true of Black, Asian and Minority Ethnic students from a disadvantaged background'*.

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The [Social Mobility & Child Poverty Commission report](#) recommends offering ‘*formal and informal mentoring to students from non-traditional backgrounds*’ and ‘*where possible provide them with more visible role models amongst current professionals*’. Whilst the focus of the Commission’s research was social mobility, there is a considerable overlap between social deprivation and ethnicity.

In our discussions with firms, they noted that role modelling comes in many forms – and perhaps links to a wider concept of ‘presence’: are BAME people present throughout an organisation from reception desk to partnership and every stage in between?

A number of junior lawyers and law students noted that relatable role models were important. As one newly qualified solicitor noted to us: ‘*In many ways the role model a few years older than you is more important than the Asian Sheriff or the Asian managing partner as they are relatable.*’

This was brought home by a criminal defence solicitor we spoke to who noted their first experience of a common room: ‘*I didn’t feel excluded as such but I did feel out of touch in that environment. I felt completely disassociated.*’ But the solicitor contrasted this experience in another common room soon after: ‘*I met a solicitor from the same background as me in the library at court. It was lovely. Someone a little older than me. Just having a conversation made me feel part of this legal world.*’ They went on to say that student work experience with ‘*a fellow BAME lawyer gave me a sense of belonging. It gave me someone to look up to, to aspire to, and to make me think I can do this.*’

Another criminal defence solicitor we spoke to noted: ‘*I was never accepted. I was an outsider and still feel like an outsider. It didn’t give me a chip on my shoulder but more a sense of paranoia.*’

One black member noted that ‘*presence and recognition are key. It should feel perfectly acceptable to be where you are. It is difficult though to articulate the experience of having no network of black lawyers with you. It is such a strange way to go through a career.*’

Numerous firms noted that, given relatively low levels of BAME staff and partners, it was difficult to ensure that there was a diverse presence at law fairs or in interview panels, as to ensure such they would have to disproportionately ask their BAME colleagues to assist.

[Dame Linda Dobbs, citing the importance of diverse selection committees](#), noted ‘*then again, if there are not enough role models and there are not enough people to be put on the panel you are not going to have*

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a diverse committee and noted the importance of 'coaxing out reluctant role models'.

A [roundtable the Society held in 2019 with BAME law students and trainees](#) noted related matters as outputs: 'If your organisation attends recruitment fairs at universities think about the diversity of staff attending. If you welcome diversity then consider how you can show it rather than how you say it.' And: 'Make it clear on your website and promotional materials that people from a BAME background have successful careers throughout your organisation.'

[McKeith makes the case](#) that there is strong evidence to show that introducing role models and mentors early in the careers of women has had a great impact on the progress of women throughout their careers in the legal profession. The same should be applied to ethnic diversity, whereby role models and mentors help bring talented professionals who are culturally and ethnically diverse into organisational structures.

Tariq, in an interview with [Scottish Legal News](#), outlines the lack of diversity at senior levels: 'It is clear from these pictures that people from BAME backgrounds are under-represented in senior roles. That can be self-perpetuating with the concerns being that there are too few visible role models in place to prevent BAME graduates giving up on the profession because they feel it isn't for them. Bamgbose agrees in his piece titled [Future lawyers need role models to show them it's possible](#) and notes that, in relation to small population sizes, that black law graduates 'look at the small percentage of black lawyers in the profession and get discouraged: we have a responsibility of changing the narrative'.

One senior BAME solicitor highlighted a number of examples: 'Seeing people like Sheekha Saha, Naeema Sajid, Aamer Anwar, Amel Elfallah, Omar Ali... when you see those role models at the top it helps.'

The double-edged sword of being a mentor or role model

In discussion with some senior members of the profession from a BAME background, it was noted that not everyone wishes to be a role model and, for those that do so, it is often not appreciated how much work it takes.

One senior BAME figure in the profession noted that if BAME solicitors are expected (or, at least, feel a sense of duty) to mentor young BAME professionals, sit on diversity groups, and attend role model events, that is work that their white counterparts are not doing.

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They, and others, noted the onus consistently being put on a relatively small but growing group can be tiring. Another senior BAME figure noted that multiple mentors may be useful to help develop young people and noted that many BAME lawyers will cite fantastic white role models in their own development. Senior white figures mentoring younger members of the profession should be encouraged.

A BAME criminal defence solicitor we spoke to specifically highlighted that work-shadowing with a white criminal defence solicitor had been instrumental in their career choice.

Two large firms noted that their time-recording system allows for mentoring, colleague networking groups, pro bono, diversity and inclusion, Corporate Social Responsibility (CSR) etc to be included and count towards performance reviews. Building such activities into time recording shows the organisation literally values this work and encourages a wider range of people to take part.

When we analysed our survey, the idea of creating a specialist mentoring network focused on law students/trainees from an ethnic minority background was a popular policy (11.11% of respondents noted it was the most significant policy the Society could introduce, whilst 53.29% of respondents ranked it as one of the top three most significant policies).

The role of reverse mentoring

A number of organisations globally, and in Scotland, have begun reverse mentoring. The Bar Standards Board (BSB) has introduced a reverse mentoring programme stating [*'the onus of change needs to be on the white majority and senior ranks in the profession'*](#). The BSB notes that *'when compared to traditional mentoring schemes, reverse mentoring is more likely to ensure mutual benefit to both the mentor and mentee, and to pair people who might not otherwise come together'*. The global law firm, Linklaters, [*launched a similar scheme a number of years ago*](#). The [Race Fairness Commitment](#) also notes that all firms which sign up commit to championing junior ethnic minority talent: [*'ensuring every junior ethnic minority member of staff has access to a senior manager, with a view where possible to create sponsorship, mentoring, and reverse mentoring programme'*](#).

It cannot be up to BAME members alone to fix things. White colleagues should educate themselves on anti-racism and their own biases, should take part in reverse mentoring, and the Society – and others – should consider how it can promote a multi-pronged approach to improve racial inclusion.

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Role models, connections and links into law

A number of initiatives across the profession, and also within organisations, have tried to promote BAME role models in Scotland:

- The establishment of the Scottish Ethnic Minorities Lawyers Association (SEMLA). Over a number of years, SEMLA has organised events with legal employers (both private practice and in-house) for students and trainee solicitors to learn from BAME qualified lawyers. SEMLA has been consistently praised by law students for the work it does (an example can be found in the Equality in Law podcast highlighted above).
- The establishment of the Fair Justice System for Scotland Group, which over a number of years has organised events to promote diversity and inclusion across the justice sector, including the legal profession.
- The Law Society of Scotland's career mentoring programme. This is not primarily or exclusively reserved for people from BAME backgrounds but obviously can be accessed by those people.
- The Law Society of Scotland's Inclusion Law Fair in 2020 and 2021 (and due to be hosted again in 2021), which had a focus on inclusion throughout the day, including presentations from SEMLA.
- The Law Society of Scotland's [One Profession, Many Journeys](#) programme. This is not focused on solicitors from an ethnic minority background but rather focuses on solicitors from all backgrounds to inspire school pupils. Whenever a new role model is added, these are re-sent to all secondary schools and Developing the Young Workforce.

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Chapter 2: Recommendations

9. Employers should work with universities and target marketing, outreach activities and specific events at BAME students.
10. Employers should aim for a presence of BAME people throughout their organisation at all levels and in all roles and to look to make this presence more visible.

We heard routinely from BAME students and recent graduates that the lack of such presence does put some people off applying to organisations. This presence could be shown by: hosting blogs and video content from diverse individuals on websites and social media channels, including people from diverse backgrounds on marketing materials; by publicly taking part in a diverse range of celebrations, festivities, and observances (eg Bandi Chhor Divas, Black History Month, Chinese New Year, Diwali, Eid al-Fitr, Passover).

11. Without overburdening a potentially small number of employees, employers should ensure diverse groups of staff attend external events – such as school careers events, university law fairs – and are involved in recruitment processes. Feedback from early career professionals suggested that seeing diverse people involved in the recruitment process helped their confidence enormously.
12. Providers of CPD should ensure they have diverse speaker lists and panels.
13. There are a number of formal mentoring schemes in the profession. These can make a tangible difference to the careers, and career choices, of new solicitors. Senior figures should engage in mentoring and reverse mentoring arrangements with newer professionals, particularly those from under-represented groups.

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Chapter 3: Employers want diverse talent but struggle to attract it. How can they improve?

The last chapter focused on the importance of role models to the next generation of BAME lawyers and on how we can make role models more visible. Role models though are only one method available to employers to encourage and welcome the next generation of BAME solicitors.

If university LLB and Diploma in Professional Legal Practice programmes continue to be diverse courses, all other things being equal, it should follow that the traineeship and newly qualified roles will also diversify. Practising certificate renewal data for solicitors under the age of 30 suggests this is occurring, although our discussions with firms suggests that there is still a disconnect between the number of BAME people on the LLB and DPLP and the number of people from a BAME background applying, and applying successfully, to the largest firms in the country.

The larger firms (and the sort of work they undertake) are not for everyone. They do though play an outsize role in training the next generation of solicitors. The largest 30 firms by partner number (ranging from 12 partners to 109 partners) train 39% of trainee solicitors. Adding the two largest in-house training organisations (Crown Office and Procurator Fiscal Service) and the Scottish Government) and the percentage of traineeships trained rises to 46%. To a very large extent, if those organisations can attract, employ and retain diverse talent, we will see considerable change across the sector.

How are employers trying to ensure fairness at application stage?

More large legal employers are moving to a model of contextualised recruitment for traineeships as Mattu notes in the [Financial Times](#). The [Law Society of Scotland has a commercial relationship](#) with one provider of such recruitment software and a number of firms have signed up to use the software via that relationship (others are too large to use the product via that relationship but have chosen to buy the system). It is estimated between 20% and 30% of traineeships in Scotland now use contextualised recruitment. Such software can be a game-changer. However, if people from BAME backgrounds or other traditionally under-represented sectors of society choose not to apply to firms then we return to square one.

Our discussions with employers and recent graduates/trainees suggested that name-blind recruitment may help and this may be more accessible for smaller employers or organisations that hire trainees

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infrequently. 'Name blind' is a process where an individual's name – and sometimes other potentially identifying information – is removed from an application process. This could be combined with removing schools-based information, including school grades. It is likely that removing names may remove the risk of stereotyping. However, this assumes that the rest of the hiring process is free of bias. It is likely name-blind recruitment is a necessary step but not a sufficient one as the Society's guidance notes '[blind recruitment is only a positive step up to a point](#)' without some level of contextualisation. (NB: [The Law Society of Scotland](#), the [Law Society of England and Wales](#) and the [Solicitors Regulation Authority](#) have all recommended this in the recent past.)

Many we spoke to highlighted the importance of internships and that for some BAME students there may be cultural, familial or financial reasons why an internship could not take place. The Society has [had advice and information on the payment of interns since 2012](#), which has ensured the payment of many internships, but financial issues may still play a part.

One newly qualified solicitor we spoke to noted that '*my summer work experience was working in my family's shop where I was needed*'. They felt that, in some interviews, those on the other side of the table did not view this as equivalent to legal work experience and were dismissive of it. This links to wider issues with internships: if people of any background for financial reasons need to work throughout the summer, it may be difficult to take a break from that work even for a paid internship.

One BAME senior solicitor we spoke to noted they thought: '*Firms need to look at people differently on work experience. We need to look at those people who work in family businesses; who have experience with people. The person who has worked at Tesco or in a bar. They've done that to pay the bills, have held down a job, getting lived experience. Not the captain of a sports team who has been paid through University by mum and dad.*' They noted that many young BAME lawyers '*volunteer at the local Mosque or Gurdwara and gain valuable skills... but might not include that in their applications because they fear that might go against them*'.

Another noted that they were first in their extended family to go to university. The advice from their family was essentially to '*get in, work hard, get the degree, get a job*' but noted that meant they didn't get involved with university societies, law reviews, law clinics etc, which may well have made their job search easier.

This clash was reflected upon by successful BAME solicitors. One noted that when they gave advice to school children from their community considering law that work experience and getting involved in the

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wider university experience were just as important as good grades, this often clashed with parental advice to simply *'get your head down and work hard'*. Another senior BAME solicitor echoed this, noting they advised students to get involved with other aspects of university life but that this may *'clash with the cultural and religious aspects of some of their lives'*. It was consistently noted that careers advice at university and elsewhere needed to take into account these wider contexts and backgrounds and to understand one size does not fit all.

Another senior BAME member of the legal profession noted that *'social skills, networking are so important for law students'* but this may be difficult if networking events are not welcoming, are predominantly white, or are not inclusive to those from diverse backgrounds. By way of example, at a roundtable held on BAME recruitment held in 2019 by the Law Society of Scotland, one then law student from a Muslim background noted she had attended a recruitment drinks event hosted by a law firm. [People consistently asked her if she had a problem with them drinking, whether she drank etc rather than why she wanted to work at that firm](#). At the same roundtable, a number of attendees noted the critical importance of feedback to interview candidates but particularly BAME candidates.

The Scottish Ethnic Minorities Lawyers Association (SEMLA) has organised a series of events with law firms and in-house organisations. These events have had different themes (eg one focused on 'Exploding myths: opportunities in the legal sector for BAME candidates', another focused on an insight into practice etc). Others, including the Government Legal Service for Scotland, have held recruitment events targeted at under-represented groups. As well as these awareness-raising and confidence-building events, SEMLA has also worked with employers to offer targeted work experience to student members (examples include [Burness Paull](#), [Shell](#), [Natwest Group](#), [Brodies](#)). Black Professionals Scotland has undertaken similar work in the finance sector and recently held an event to promote such internships within the legal sector, hosted by the Law Society of Scotland.

Others are adopting this approach. In May 2021, the [UK Supreme Court announced plans to take on paid interns from under-represented groups](#). This programme offers a five-day placement to eight candidates who have either completed or accepted an offer to take the Bar Professional Training Course. Prior to the placement, training will be offered to the successful candidates. The reason for doing so was elucidated by the Chief Executive of the Supreme Court (see previous link): *'The Court recognises that it has a leadership role to play to support increasing diversity of the judiciary and it is our intention that this programme will support under-represented groups into the legal profession and ultimately into judicial roles.'*

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Similar moves could be considered in Scotland: either following the Supreme Court model directly of training followed by work experience. Or, more imaginatively, is there any reason a trainee couldn't be seconded to a clerk for a senator or a sheriff for six months along the lines of the Law Society of Scotland's Brussels Office secondment scheme? Could priority be given to those from backgrounds from under-represented groups? This would build a legacy of those interested in judicial appointment from under-represented groups, would likely be appreciated by employers, and would perform a reverse mentoring role for the judiciary.

Tailored and targeted support can be done in a number of ways. Events and internships are one way. In England and Wales, a number of firms have begun specifically offering support to law graduates from a black background, either by way of application support (such as interview training or guidance on how to fill in applications, eg [Linklaters offering training contract support to disadvantaged black students](#), or funding, eg [Gowling helping to fund black students through Birmingham Law School](#) and Freshfields Bruckhaus Deringer's [Stephen Lawrence Scholarship Scheme](#)).

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Chapter 3: Recommendations

The Racial Inclusion Group notes that the recommendations from Chapter 3 and Chapter 5 could be combined to create a racial inclusion charter for employers, which organisations could sign up to. If such a charter is created, those who sign it should be required to share their anonymised, aggregated data (referenced in recommendation 19) with the Society and other signatories to aid understanding.

14. Employers should critically evaluate their recruitment processes to better understand if there are elements of the process that are disproportionately putting BAME people off from applying or disadvantaging them in the process compared to their white counterparts, eg if summer placements are more likely to be accessed by white candidates: why is that? Is the organisation ensuring it takes equal account alternative work experience?
15. The recommendations in this chapter should only occur in organisations after critical evaluation of their current situation: all organisations will start from a different place.

Data and insights should be gathered to understand how recruitment processes are working and if they are not working as well as they might for some communities. Data should be broken down by ethnic group so employers can see where to target future action.

16. Employers should not make judgements about the decisions candidates made earlier in their lives in systems that may have been unfair. It has been pleasing to see so many large legal employers use contextualised recruitment software to ensure a more diverse range of people being interviewed and hired. Such software should be seriously considered by all organisations who routinely hire summer interns and trainee solicitors.

If the cost of such software is prohibitive, as it may be for some, employers should look to other systems, such as blind recruitment, removing school grades (and where someone went to school etc) as well as following the Society's recruitment guidance.

17. Employers should track progress of alumni of schools, university and internship programmes they have engaged with, as well as progress of early career professionals, to see if these programmes are working.

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18. Employers should be aware that certain communities – including some BAME students but also those from lower socio-economic groups and older law students – may not be able to take part in even paid summer internships/placements. Employers should ensure that this is acknowledged in recruitment processes.
19. Legal employers should gather diversity data of those applying for summer placements and for traineeships and see who is successful/unsuccessful at each stage. Employers should interrogate this data in line with that data published by the Law Society of Scotland. It is only by gathering and analysing this data organisations will know if they are doing well/poorly.
20. Employers that use campus representatives, or participate in campus recruitment events, should ensure a diverse range of campus ambassadors and organisational representatives.
21. The Racial Inclusion Group heard from early career professionals and recruiters that task-based exercises are more objective than solely traditional interviews and that they can lead to a more diverse talent pool. Employers should consider task-based exercises in their recruitment processes, such as essay competitions, in-tray exercises, presentations, assessments etc.
22. Our survey makes clear that many early career BAME professionals feel that they have experienced bias when accessing traineeships. This links to feedback from our discussions that when feedback is not given to BAME candidates there can be a nagging doubt in their mind that race played a factor. Giving good quality feedback to those interviewed is time-consuming but best practice and particularly beneficial to those from under-represented groups.
23. Legal employers should pay interns and summer placements and refer to the Society's guidance for further information.
24. Numerous employers told us they do not get proportionate applications from people from ethnic minority backgrounds. Targeted recruitment events and campaigns to improve the number of BAME applications to internships and traineeships will likely help. Employers should consider working with organisations like SEMLA, Fair Justice System for Scotland Group, Black Professionals Scotland, and BAME university law societies.
25. Employers should make it clear that they specifically welcome applications from students/graduates from minority ethnic backgrounds.
26. Even in instances where employers do get greater numbers of BAME applications, they noted to us that they often saw a drop in percentages between applications and interviews. Employers should

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consider structural unfairness within their processes and look to eliminate this. Providing dedicated support (alongside targeted events and campaigns, a diverse panel involved in the recruitment process, and improved data) should help. We heard examples of the following:

- Direct financial support
- Mentoring
- Reverse mentoring
- Bespoke/targeted internships
- Application support (eg additional guidance on how to apply, interview etc)

27. Employers noted to us that they found it hard to hire BAME staff at senior levels via lateral hires, often noting that there was not a large pool of BAME lawyers in particular practice areas.

Organisations which offer seat-based traineeships should make themselves aware of practice areas where there is BAME representation. In the event that one of their BAME trainees requests to work in such a practice area, the organisation should do their best to prioritise this, as long-term this will help to diversify practice areas.

28. Employers should think creatively about qualified solicitors changing practice area once qualified and should facilitate this where possible. We heard numerous successful examples of established professionals changing practice area.

29. Whilst the majority of those studying on the DPLP are Scottish or British-domiciled, there are some students from outwith the UK. We heard from one firm which had on occasion paid a higher rate of remuneration for trainee solicitors from overseas to comply with visa requirements. Employers should consider following this approach.

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Chapter 4: What is the experience of our ethnic minority members?

‘The reaction of some White people whenever race is mentioned is to become guarded and defensive but we need white people to support us and understand there is a problem. BAME people cannot solve the issues of discrimination and racism on our own’

A senior BAME practitioner in Scotland

The preceding three chapters have largely focused on how we can ensure diversity on the pathway to practice. In this chapter, we consider the experience of our members from ethnic minority backgrounds. This is largely informed by a survey we have undertaken but also ingathered from our discussions with BAME members of the profession. We undertook a survey in spring of 2021 asking members (amongst other things) whether or not they had experienced bias based on their race on the route to qualification as a solicitor or as a member of the legal profession. The survey questions included examples of bias that may have been encountered (ie unconscious bias, another form of conscious bias, racism, and dual discrimination).

To aid readers, here are some headlines from the survey. These are presented to help better understand the demographics of those who completed the survey.

- 215 people responded to the survey. 157 respondents identified as BAME (just under 75% of respondents).
- Of those 157 BAME respondents, nearly 25% were from a Pakistani, Pakistani Scottish or Pakistani British background.
- 105 solicitors and solicitor advocates responded. 81% of those identified as BAME. This is around 20-25% of the BAME population of the profession.
- 39 of the law students who completed the survey identified as BAME (72%).
- The remaining respondents mostly consisted of either trainee solicitors or those who had graduated from the DPLP but not yet found a traineeship. These were significantly smaller cohorts.
- When interpreting the results for BAME respondents as a sub-set of all of the respondents, it is important to note that where the results appear to be similar, this does not necessarily mean that the overall population of respondents has had similar experiences to BAME respondents. This is as

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a result of BAME respondents being a significant percentage of the overall respondent population as well.

Encountering bias, racism and discrimination in the profession

60.44% of all respondents noted they had experienced bias on their route to qualification or as a member of the profession. 16.48% noted they were unsure or did not know and 1.65% preferred not to say. The remaining 21.43% noted they had not experienced bias. Focusing solely on BAME respondents, 66% noted they had experienced some form of bias on either the route to qualification or as a member of the legal profession. We also asked: *'Where did you experience bias on account of your race?'*

Table D: Where was bias encountered?

Where bias was encountered?	Percentage (BAME respondents only)
Accessing university	14.14%
Whilst at university	49.49%
Accessing a traineeship	59.60%
During a traineeship	27.27%
In the workplace as a qualified solicitor	41.41%
Finding roles as a qualified solicitor	21.21%
Work allocation	24.24%
Promotion and progression	38.38%
In courts	23.23%
From clients	27.27%
On social media	21.21%
Other	9.09%

NB: In the above table, we have focused on the experience of BAME respondents to the survey.

By way of comparison, [ICAS's most recent survey](#) noted that 68% of ethnically diverse people have witnessed discrimination and 56% of ethnically diverse people have experienced discrimination (it is not clear from the documentation over what period).

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At every stage of the route to qualification and during their professional career, our black, Asian and minority ethnic members perceive they have encountered some form of bias. This was true of each category of respondent, although it should be noted that two groups were comparatively small (graduates seeking a traineeship and trainee solicitors) in response numbers. Solicitors and solicitor advocates noted they have experienced some form of bias in multiple ways.

The survey does not tell us when these incidents took place or the precise nature of each incident. The important point though is that many of our members, and future members, perceive that they have faced bias at many stages of their career. In our discussions with members from an ethnic minority background, this was routinely described as ‘exhausting’. Depressingly, a number of members we spoke to noted that they were surprised that the percentages were not higher.

We went on to ask when was the most recent incident where an individual had experienced bias.

Table E: When was the most recent incident of bias encountered?

Within the last year	45.28%
Between one and two years ago	30.19%
Between two and five years ago	19.81%
Longer than five years ago	4.72%

Over 75% of respondents noted they had experienced bias in the last two years.

What are our BAME members encountering?

We have taken the decision not to publish individual responses from the survey. This is because some of the free text responses would very likely identify an individual or individuals. The responses though can be sorted into broad headings. We have aimed to be as open as possible without inadvertently identifying individuals. Where appropriate, we have supplemented these headings with comments received in our one-to-one catch-ups and/or matters highlighted to us by organisations such as SEMLA.

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It should be noted a number of members specifically emphasised matters were getting better. A smaller number identified to us in discussion that they had not knowingly been impacted by bias or racism but those solicitors were conscious that this was not a universal experience.

Inappropriate use of language or physical contact

- Assumptions made about an individual because of their ethnic background (eg asking a Muslim member about Bandi Chhor Divas or Diwali) or questions asked about their background (eg asking someone where they are from with the clear inference in the question that the answer is not Scotland/UK).
- Stereotypes about background and assumption that all people of colour have the same experience (eg assuming a black person has a Caribbean heritage when they may have – for instance – a Nigerian heritage or Zimbabwean heritage etc).
- Mixing different colleagues from ethnic minority backgrounds up (eg calling person A by person B's name etc). One senior BAME member noted: *'Misidentification happens. You call someone Jim when their name is John but for people from ethnic minority backgrounds it just happens a bit too often. When I was trainee a Sheriff kept referring to me by the name of a famous Pakistani cricketer. Would he have called a white solicitor Mr Botham or Mr Flintoff?'*
- Inappropriate focus on personal appearance (eg comments about skin colour; comments about hair; touching people's hair etc).
- Name bias (eg someone with a surname that is not viewed as traditionally Scottish noting that they thought this held them back in terms of job prospects).
- Comments that roles have been awarded (or not been awarded) because of someone's ethnic background.
- Consistently spelling the names of people from ethnic minority backgrounds incorrectly or mispronouncing the name of an ethnic minority solicitor (including continuing to do so once corrected).
- Racist comments. Responses in the survey noted these ranged from occurring at university through to working in practice. The individual who made the comment was not always identified but ranged from fellow students to colleagues, managers, clients or on social media. The most extreme example cited was one that gained significant media attention: the abhorrent racist abuse of one of the Society's members, Aamer Anwar, [on social media earlier this year](#).

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- A number of respondents noted the term microaggressions or subtle and less obvious comments adding up over the course of a career. One noted: *'I've had a good experience in the profession. I love what I do. I enjoy where I work. When I have these bad moments I laugh them off. It is only when you cumulatively look back and think "that's quite a lot" but then you hear about others and you realise maybe they deal with it differently.'* This feeling was encapsulated in [in a tweet](#) by the Dean of the Faculty of Law at the University of Oxford, Mindy Chen-Wishart: *'Each instance looks "small" but they ADD UP, alienating and exhausting. Death by 1,000 cuts.'*
- One person we spoke to directly noted: *'Tolerance levels for behaviours is high because you don't want to cause trouble. No one complains as the community is too small.'*

A lack of support or inclusion

- Not being supported by an employing organisation when challenging a staff member who had made a racist comment.
- Inappropriate questions at interviews.
- No accommodation made for those from certain backgrounds (eg an example being consistent drink-based events with little consideration of those who don't drink alcohol).
- An example at university: essay deadlines etc would not be set for Christmas Day or Boxing Day but little thought appears to be given to them clashing with major celebrations in other religions or traditions.
- A lack of feedback from unsuccessful job applications/interviews was mentioned as particularly harmful to BAME applicants because some BAME people will – without feedback – begin to think that a reason for a lack of success and feedback was related to their race.

Equal opportunities

- Recruiters pigeon-holing people from ethnic minority backgrounds into particular practice areas.
- Perceived unfairness in work allocation and management.
- Perceived unfairness in offering positions and promotion.
- Perceived unfairness in seat allocation during traineeships.
- Perceived unfairness in redundancy selection.
- Consistent commentary that those from ethnic minority backgrounds feel they have to work twice as hard to succeed. [Kankiya, an English lawyer, noted that he was told this by a black](#)

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[partner of his](#): *'Umar, you need to work ten times harder than everyone else'*. One of our senior BAME members noted: *'You would have to work 10 to 20 times harder. You will be zoomed in on if you make a mistake. You don't get the same benefit of the doubt.'* This was echoed by another member who noted: *'There is a subconscious benefit of the doubt: who gets it? Who doesn't?'*

- Assumptions made about seniority (eg that a more junior white solicitor is the manager/partner).
- A feeling/knowledge that white colleagues (particularly white male colleagues) are paid more or are advanced more quickly.
- Numerous responses noted pay disparity with white counterparts, although some noted it was difficult to know due to opacity around pay. Lady Dorrian noted [in the Society Journal](#) on the then impending gender equality pay gap reporting how difficult this might prove: *'Pre-empting the legislative change from April this year, the Society's Head of Education, Rob Marrs, suggested firms might conduct an equal pay audit, asking the telling question: if you were accidentally to email the whole office a spreadsheet of everyone's earnings, could you look them in the face? One can only imagine the uproar!'*

Treatment by others

- Numerous respondents noted it wasn't always easy to explain inequality of treatment but that it was clear in their mind that white colleagues would be treated differently for similar requests.
- Ethnic minority members being assumed to be a defendant in criminal courts.
- Numerous members noted that they thought they had faced conscious and/or unconscious bias from judges.
- Information shared from SEMLA that some members of SEMLA (in particular female members of SEMLA) have been assumed to be interpreters in court by court staff. This was also raised in some survey responses. There were also references to behaviour by members of the judiciary.
- Members of the profession noting to BAME colleagues that there is no need for a greater understanding of BAME issues in the profession. An example was given by a senior BAME member who had mentioned institutional racism in the justice sector at an event. They noted that a senior white figure at another organisation had taken them to one side to *'rant at me there was no racism, no institutional racism in the profession. We rightly wouldn't dismiss the views of a woman who was speaking about sexist behaviour or misogyny but this white man knew more than me about racism in the profession'*.

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- Racist comments and behaviour from clients (eg preferring to speak to more junior white colleagues; junior BAME solicitors having their abilities questioned by white clients). One criminal defence practitioner noted that racist behaviour and language from clients was something they dealt with frequently and noted that funding was so poor, and everyone was so stretched, that firms might not address such behaviour for fear of losing work: *'It all links back to not being funded properly.'*
- In the survey, one individual highlighted two distinct processes at the Law Society of Scotland where they perceived they had experienced bias on account of their race.

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Chapter 4: Recommendations

Two comments in a survey response highlighted that members thought they had experienced bias on account of their race via the Law Society of Scotland's processes. As the survey was anonymous, we do not know when these incidents are alleged to have occurred, nor can we the identity those who raised these concerns. We have chosen not to identify the processes publicly in case this inadvertently identifies the individuals publicly. The processes, however, have been highlighted to the Senior Leadership Team.

30. The Law Society of Scotland should critically assess its processes to ensure that potential bias is eliminated.
31. The Law Society of Scotland should require all staff and relevant committee members to undertake training (eg anti-racism training, unconscious bias training) on a recurring basis. This should be combined with a critical assessment of the Society's processes and procedures on an ongoing basis.
32. Organisations across the justice sector should critically assess their own processes to ensure that potential bias is eliminated and should consider similar training for staff.
33. We found that the Law Society of Scotland has strong relationships with many organisations which promote equality generally and in the legal profession specifically. The Society should continue and broaden its work with various organisations, such as the Scottish Ethnic Minorities Lawyers Association, Fair Justice System for Scotland, the Council of Ethnic Minority Sector Organisations Scotland, Show Racism the Red Card, Black Professionals Scotland, and the Coalition for Racial Equality and Rights.

Racism and bias in the profession cannot be overcome by BAME members alone. Individuals, and organisations, though do have the power and ability to influence those around you. Make it clear that you have a commitment to racial justice, talk with your clients and suppliers about it, support other organisations promoting racial equality. You can show this commitment by embracing the recommendations of this report.

34. All members can play a part by:
 - a. Acknowledging racism, bias, and discrimination exist within the profession. Acknowledging this, and helping implement the recommendations of this report, should not be viewed as a personal criticism but rather an attempt to understand structural unfairness within the

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profession and wider society. White allies should understand they have a critical role to play in promoting positive change.

- b. Educating themselves on the racism, bias and discrimination within the profession and within the justice system. It is not enough to be not racist; members should become anti-racist.
- c. Being prepared to talk about race and racism within the profession. These discussions may be unsettling or uncomfortable for some. If the discussions are handled sensitively, and supported by education and training, then progress will be made.
- d. Calling out racism, bias, microaggressions, or incivilities and/or reporting it accordingly. It has to be the responsibility of all members to challenge problems when they are seen and leaders should create an environment where incidents can be called out and reported.
- e. As well as calling out issues, supporting those who are on the receiving end of such behaviour is critical in showing solidarity and likely has a beneficial effect on wellbeing.
- f. Senior leaders should understand the special role they play and visibly lead the above.

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Chapter 5: How do we build a culture where everyone can thrive?

‘So does it matter that I’m Black? Yes. It matters because despite the challenges, I am here. I am in that collective of lawyers; no longer is it an exclusive club’

Thembe McInnes, *Journal of the Law Society of Scotland*

In the previous chapter, we considered the experience of our members via our survey and one-to-one discussions. This chapter looks at the literature that exists in Scotland to provide wider context.

Arriving within the profession and thriving in that profession, whilst related, are different. As Cooposamy notes: [‘The difficulty is that we can achieve greater diversity recruiting Black lawyers but the more complex challenge is to tackle inclusiveness and to ensure that everyone can progress to senior leadership.’](#)

Some of the ideas considered in earlier chapters about making the route to qualification more inclusive will be of limited value if there is not a concomitant examination of the culture of, and the experience of our BAME members within, the profession. The previous Chapter 4 outlines some of the issues our members have faced. This chapter looks at how those issues manifest themselves across the profession.

Talking about the English profession, Field [notes that](#): *‘The centuries-old dominance of white (mostly privileged) men in our profession has often brought with it a prevailing workplace culture that requires those wanting to progress to assimilate. For minority groups, this means working harder just to fit in. It is tiring and unfair – and little surprise that many give up and leave.’* Field was discussing his own firm’s ‘ethnicity stay gap’ that revealed that BAME lawyers leave seven months earlier than their white colleagues and black lawyers leave two years and five months earlier than their white counterparts. This analysis is backed by Rare Recruitment, which notes that the [‘average BAME lawyer s tenure at a law firm is around 18 months shorter than that of the average white lawyer.’](#)

Our own data does not at this stage allow us to test Field’s hypothesis. We know from our data that BAME members are [as likely to work in-house as their white peers](#) but we do not know how they become in-house lawyers or what level they are within the organisation.

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Table F: Ethnicity of in-house solicitors in Scotland (November 2020)

	In-house
White	2063
BAME	81
Other	44
Prefer not to say	132
BAME% of in-house (comparison with BAME total)	3.49% (+0.11%)

Ultimately, it seems counter-productive to spend considerable amounts of time, money and thought to attract diverse talent to businesses if the culture of those businesses does not accommodate people from diverse backgrounds.

As discussed in the previous chapter, many of our BAME members and future members have experienced some form – often multiple forms – of bias during their careers.

Mooker addresses this in her piece, [Why is there so little BAME representation in the Scottish legal profession](#). She says that whilst most organisations have a genuine commitment to diversity, ‘the reality is that it is going to take more than just words to actually be diverse. The Scottish legal profession must keep asking itself why so few women or those from a BAME background or working-class background are partners or in leadership positions across the profession.’

She goes on to note a central issue in promoting diversity in the profession by [quoting a tweet](#) from Brandi Riley: ‘Thank you for your Black Lives Matter graphic. May I please see a picture of your executive leadership team and company board?’ A test was proposed by the Racial Inclusion Group along similar lines: ‘When did you last speak to a black, Asian or ethnic minority person who was at the same level or more senior to you in your organisation? Or outside of your organisation?’

This lack of senior BAME presence was consistently raised in our discussions. Organisations noted that they had few BAME solicitors at senior associate, director or partner level and similarly found it hard to hire

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BAME solicitors laterally as there was a lack of BAME talent in similar organisations. One senior human rights solicitor from a BAME background noted that *'they did not see the next generation of BAME human rights lawyers coming behind them'*.

Our analysis of this conundrum is that at some of the largest entities there is likely no quick fix to a lack of BAME senior leaders as there simply isn't the presence of BAME talent at associate and senior associate level, although this may change in the coming years.

Many BAME solicitors are under the age of 30. The main issue in Scotland is different to that in England and Wales. South of the border, it appears that there is a sizeable eligible pool of BAME lawyers who may form the next generation of partners.

North of the border, there is a lack of a sizeable eligible pool. The lack of an eligible pool of next generation leaders is not a coincidence or historical quirk. As [Mooker notes](#): *'It (the Scottish legal profession) has to start by acknowledging all that is wrong and all that has been wrong. Accept the need for change. Accept that you will feel uncomfortable when discussing these issues – and then be prepared to learn, educate, and work hard at championing and being the change.'* Fixes may not be quick now but they do need to happen. They are needed now because they have not occurred in the past.

BAME talent does exist within the profession, though it is not evenly distributed. BAME members are disproportionately younger and – anecdotally – more likely to work in certain fields. Perhaps one way larger firms could diversify would be to think creatively about lateral hires.

Whilst the number of members from a BAME background is growing and will likely continue to do so, it is not rare that a solicitor from a minority ethnic background will be the only person from a BAME background in their office. Kanter's work suggests that the lack of presence affects everyone negatively in such a situation: [*'Being the only one of your kind, being a token, creates a special set of problems for both sides, for the majority and for the token.'*](#) Trevor Sterling, the first black senior partner of a top 100 firm in the UK, notes: [*'I've been involved in a run of firsts. What I want to see now is more 2nds, 3rds, 4ths, and 5ths.'*](#)

[Mooker explains](#) that those *'from a BAME background don't want to be the "token" BAME person in an organisation'*. This was mirrored in discussions with ethnic minority law students who noted they wanted to see a greater degree of 'presence' across the industry and at all levels but also noted *'that they didn't want*

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to always be talking about their background'. A greater level of presence across organisations would surely mean that the focus on people's backgrounds would dissipate.

McInnes [asks probing questions](#) on what we mean about culture: *'Because what do we mean by culture and cultural fit? Do we mean a culture where race doesn't matter, where we do not see colour? If so, does it follow that we also don't see the challenges and limitations faced by people of colour?'*

[Archibald discusses similar](#): *'On my first day of traineeship, I agonised over whether to wear my Afro hair out or secure it back. This was not a question of vanity but rooted in deeper nervousness as to whether I would "fit in".'*

These fears are sadly not unique as Archibald goes on to explain: *'The Law Society of Scotland's 2018 Profile of the Profession states: Students from Black, Asian and Minority Ethnic communities are disproportionately over-represented on the LLB per head of population. However, comparatively few BAME solicitors attain senior roles. The majority of respondents blamed unconscious bias.'*

McInnes [explains that](#) *'we need to see that race does matter and we all need to get comfortable talking about it'*.

Newlands interviewed [Enoch Adeyemi, the founder of Black Professionals Scotland \(BPS\), who explained that](#): *'The general belief is that there's no racism in Scotland and that it is an American or London issue. But there is subtle racism in Scotland in terms of opportunities not being given to people because of the colour of their skin... in speaking to BPS members the experience of subtle racism in Scottish finance is very common.'*

Adeyemi was focusing on financial services but parallels with Scots law are clear. The interview goes on to note that *'it is a struggle to get past the CV stage with an African name. Opportunities for progression are very slim and it's worse in Scotland than in the rest of the UK'*.

A number of graduates we spoke to noted that they had perceived similar name-bias and praised firms that operated 'name-blind' applications. One graduate noted they tended to use their middle name to avoid applying with a name they thought people might assume was African.

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[McCusker argued](#): *‘There is no shock that racial prejudice remains in the Scottish legal profession. Many BAME lawyers have spoken eloquently about the overt and covert racist language and attitudes they still experience.’* He also used the demographics of the profession to outline the issues faced: *‘The lack of non-white members of the judiciary, the limited number of advocates of colour, and the distinction between the numbers of BAME law students and those who enter the profession, demonstrate a truth that is uncomfortable to those who believe racism is history.’*

Criminal defence solicitors we spoke to highlighted the relative lack of BAME members of the judiciary. One noted that in his entire career there had only been one occasion where the defence solicitor, the procurator fiscal and the sheriff had been from a minority ethnic background. Another noted: *‘There has been a slight improvement in representation but there is still a lack of diversity to one side which I don’t think it is good for society. It is important that people making these decisions have an understanding of different cultures and backgrounds. I was pleased to see improvement in the recent round of appointments but there’s still a lack of male BAME lawyers on the bench’.*

We heard of many good examples of inclusion in the profession: staff praising employers for ensuring prayer rooms are available for staff and clients; the increasing celebration of a wider range of cultural events; organisations openly discussing race, anti-racism and how they can improve their processes and culture; more firms taking part offering internships via SEMLA etc. The Law Society of Scotland’s [gathering of data at practising certificate renewal](#) was consistently praised in our discussions with members and stakeholders.

There is, to quote the former President of the Law Society of Scotland, Amanda Millar, *‘much still to do’*. The final word in this chapter though [should go to Thembe McInnes](#): *‘I need it to be OK for prospective law students to go to a school where family heritage and private benefactors are not a thing. I need it to be OK for invitations to networking events to be sent regardless of faith. Presence is surely more important than the contents of the glass in hand. I need everyone to get comfortable being uncomfortable.’*

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Chapter 5: Recommendations

The Racial Inclusion Group notes that the recommendations from Chapter 3 and Chapter 5 could be combined to create a racial inclusion charter for employers, which organisations could sign up to. If such a charter is created, those who sign it should be required to share their anonymised, aggregated data (referenced in recommendation 19) with the Society and other signatories to aid understanding.

35. Organisations should develop key performance indicators around racial inclusion, have aspirations for the organisation regarding racial inclusion and hold themselves to account critically.
36. Organisations should expect diversity from their own suppliers. It may be appropriate to write this expectation into procurement processes to ensure organisations are working with others that share a commitment to racial inclusion.
37. Ensuring that BAME employees thrive in an organisation goes beyond hiring and must include a focus on organisational culture and environment. A starting point is ensuring that there are appropriate policies in place, diversity training for staff, and encouraging sensitive discussion about issues of race. In the event that problems emerge and racism, bias, or any other issues are identified, organisations should ensure that these are dealt with fairly, quickly, and robustly.
38. Two firms highlighted to us that they allowed their solicitors to record time spent on diversity and inclusion projects, mentoring etc. Such an approach gives significant emphasis to these activities and assigns value to them. Other employers should consider this approach.
39. Employers should request diverse lists from recruitment agencies to help ensure that the diversification of the business occurs not only at traineeship or at Newly Qualified level but as an ongoing process throughout the business.
40. It is critical that employers ensure a level playing field – not just around those joining the business, but ensuring that pay, bonuses, appraisals, progression, work allocation, development opportunities etc are fair and free from bias.
41. Organisations should think carefully about the events they host as well as the content of those events. Are events at certain times of the day/year accidentally excluding people? For instance, a 5.30pm/6pm event during Ramadan may inadvertently put some Muslim staff members off from attending. Are networking events and business developments focused on certain groups?

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42. It is essential that when looking to promote racial inclusion in the workplace, employers listen to the voices, and experiences, of their BAME colleagues.
43. When considering corporate responsibility activities, organisations should give serious consideration to addressing issues of racial injustice in wider society. Organisations should also support wider campaigns to promote racial inclusion in the profession.
44. In-house lawyers should routinely discuss equality and diversity, including racial inclusion, with their external law firms, including their plans to diversify their business.
45. In-house lawyers should consider using their buying power to ensure positive change in the profession.

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Chapter 6: What can we learn from the experience of our counterparts in England and Wales?

‘Let’s talk about race. Forget the guilt and take action. Bias is implicit and often unconscious. It takes great courage to change the system. It benefits us’

Professor Leslie Thomas QC

There is significant literature from England and Wales focusing on racial inclusion in the English legal professions which was helpful for our purposes. The Law Society of England and Wales (LSEW) published its [Race for inclusion](#) report in 2020 and found significant issues in both the representation and experiences of BAME solicitors and found that actions to improve inclusion are not delivering change quickly enough. The issues identified in the LSEW report are found in Scotland to a greater or lesser degree.

As the English professions – largely due to the different population dynamics – are more diverse than the Scottish professions and have diversified considerably over the last two decades, their experience may prove useful in policy decisions going forward. The [Race for inclusion](#) report highlighted a number of issues. These are presented as headings and the narrative underneath is from elsewhere in the literature review.

A significant ethnicity pay gap

[Race for inclusion](#) found that white solicitors are earning a third more than their BAME colleagues. It noted a pay gap of more than £20,000 a year when comparing the average salary for full-time solicitors and confirmed *‘the ethnicity pay gap is clearly an issue’*.

A number of large firms in England and Wales chose to report ethnicity pay gap figures in 2021. [Clifford Chance’s ethnicity pay gap stood at 47.5%, Hogan Lovells at 9.5%, Clyde & Co was around 30%, Irwin Mitchell was 5.9%](#), whilst DWF’s stood at [23%](#).

Other research from the English profession suggests similar issues. [Research in 2018 from the Bar Standards Board](#) confirmed that female barristers and those from BAME backgrounds were more likely to earn less than their male and white counterparts.

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This [research](#) found that female barristers tended to specialise in lower earning areas of law than male barristers and this was more pronounced for those who were BAME and female. 40% of BAME barristers had an income of £60k or less compared to 24% of white barristers. White barristers were twice as likely to earn over £240k a year as BAME counterparts. *[‘Female barristers BAME were the lowest-earning group and White men the highest.’](#)*

Our own [Profile of the Profession](#) found that a higher proportion of ‘white – Scottish/British’ respondents were equity partners than those from ‘white – other backgrounds’ and ‘all other ethnic groups’. The same report found that a higher proportion of ‘white – Scottish/British’ respondents were earning over £60k a year when compared with the other two groups. This was also true when considering those earning over £80k, £100k and £150k a year. As we saw in Chapter 4, there were numerous comments in response to the survey on where bias was encountered focusing on the differentials in pay and progression.

Statistics about representation in the profession have improved but this hides differences between groups

[Kankiya explains that statistics do not tell the whole story](#): ‘Many reading this will think “the legal profession – our profession – is not racist. After all, 21% of our members are from the BAME community – higher than the national average of 13%”.’ He notes that whilst this is true ‘these figures do not mean racism isn’t prevalent’. This is true in Scotland too.

As outlined above, we have seen that whilst there is progress in terms of BAME representation in the Scottish legal profession, this progress is not even across different ethnic minority groups.

BAME solicitors are more likely to be in smaller, and certain, generally low-paying sectors, and practice areas

Bentley’s [article notes that](#) ‘the majority (of BAME solicitors) work in small practices, often in areas like family law and immigration, which are not so highly remunerated. We’re keen to understand why this is’.

This was also highlighted by [Leslie Thomas QC](#): ‘The Diversity at the Bar 2019 statistics... make uncomfortable reading. It has long been well known there is an under-representation of people of colour in the Chancery and commercial bar and in other specialist sectors. Why are there more people of colour in less lucrative and/or publicly funded areas such as crime?’

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Similarly, Forde noted on the [One Crown Office Row podcast](#), and focusing on the Bar: *'In terms of the overall percentage mirroring the population as a whole, I think the Bar can congratulate itself. This is a difficult profession to get into and it is an achievement to be celebrated. However, these statistics disguise the fact that a significant proportion of that figure is concentrated in two areas: family and crime.'*

Our research was inconclusive as to whether BAME solicitors were more likely to work in certain practice areas. However, our discussions with members – and the existence of an ethnicity pay gap outlined in [Profile of the Profession](#) – suggests this is a feature of legal life in Scotland too.

Specific barrier to entry, eg a lack of role models, a lack of connections, an intersection for some BAME groups of coming from a disadvantaged background and not having the opportunity to attend an independent school

This was explored in Chapter 2, with a particular focus on the Scottish experience and role models here.

Non-inclusive culture within firms/organisations

'[I didn't necessarily have a very warm welcome](#). You kind of got the impression that people were looking at you, what are you doing here? I didn't feel very welcomed at all and unlike my initial thoughts as to how the landscape would be, it wasn't very diverse at all.'

The culture within the Scottish profession was explored in Chapters 4 and 5 and this quotation from England and Wales mirrored some of our own discussions.

Experiences of microaggressions

'[Additionally, when BAME solicitors do try and speak up on these issues, they feel disheartened that the only "safe" environments in which they can do so, such as diversity and inclusion forums, often just become talking shops.](#)' Hussain [notes that these include](#) 'othering' – pointing out, scrutinising, or mocking cultural differences in the form of "banter" or "jibes" and when somebody says, "you speak English so well", and you want to explain to them why that is racist, they are more upset about being called racist than they are about the actual racism itself. So, you just think, "what's the point? I just don't have the energy for this, I have still got eight hours of work to do".'

The existence of microaggressions in the Scottish legal profession was explored in Chapter 4.

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Lower levels of work-based wellbeing compared to white solicitors

A respondent to [Race for inclusion](#) noted: *'I burnt out. Now that I'm on a break, I haven't been afraid to say controversial things. If I don't the cycle won't change. People need to feel uncomfortable because what I've experienced is the reality, and a lot of people who look and sound like me have experienced the same.'*

This was not a matter that was raised consistently in the survey, although a number of BAME members did cite that dealing with microaggressions was exhausting. This may be an area for future research.

Retention rates were lower than for white colleagues in larger City firms

The large firm, [Allen & Overy, has publicly discussed its 'ethnicity stay gap'](#), revealing that BAME lawyers leave seven months earlier than their white colleagues and black lawyers leave two years and five months earlier than their white counterparts. This has been backed by [analysis from Rare Recruitment that 'the average BAME lawyer's tenure at a law firm is around 18 months shorter than that of the average white lawyer'](#). The managing director of Rare Recruitment, [Mokades, has highlighted that many 'black lawyers go in-house very, very early on'](#). Long-term this may drive change in private practice: if BAME lawyers remain in-house and rise to positions of seniority, they may choose to use their purchasing power to drive change.

As [Cooposamy notes](#): *'The difficulty is that we can achieve greater diversity recruiting Black lawyers but the more complex challenge is to tackle inclusiveness and to ensure that everyone can progress to senior leadership.'*

Retention links to so many other matters: culture, work allocation, pay, progression etc. [As Mattu argues in the Financial Times](#): *'Some firms are also rethinking how work is allocated. Traditionally, partners have tended to choose the associates who work on their projects – but senior lawyers have typically favoured those of a similar background. Mr Osuntokun says Bryan Cave Leighton Paisner (BCLP) is experimenting with employing a third party to operate as an adjudicator that will determine how work is allocated, rather than relying on partners to make such decisions.'*

Representation at partner level was poor and has not improved significantly over the years, despite more BAME solicitors at junior levels

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[The Solicitors Regulation Authority's diversity figures](#) show that the profession as a whole is 21% BAME (15% Asian, 3% black, 2% multiple/mixed, 1% other). 22% of English and Welsh partners are from a BAME background, which is roughly in line with the percentage of the solicitor population. However, only 8% of partners at large firms (those with 50 or more partners) were BAME. 36% of partners in solo practice are from a BAME background – and the growth in population of BAME partners in solo practice is twice as fast as partnership in the firms of 50 partners or more (NB: This should be considered against the [wider trend of a decrease of 47% of sole practitioners over the last decade.](#))

At face value, the BAME partnership data from England and Wales is encouraging. On a deeper analysis, it shows a more nuanced picture: BAME partnership is relatively static at the largest entities but flourishing in the smallest. BAME people do make partner but disproportionately by setting up on their own (perhaps because partnership was not available elsewhere) or by banding together with other people from BAME backgrounds to start a firm. The areas of work that sole practitioners work in, such as immigration and asylum, criminal defence etc, generally have lower levels of remuneration contributing to a profession-wide ethnicity pay gap. Our discussions with members suggest to us that these factors are at play in the Scottish profession. One ethnic minority partner noted to us: *'I set up on my own because I felt I had to.'*

The English and Welsh legal profession is separate and distinct to the Scottish solicitor profession. The population of lawyers in that jurisdiction, and the population it serves, is more diverse than the Scottish equivalents. However, the issues identified in the Law Society of England and Wales (LSEW) *Race for inclusion* report also exist in Scotland as evidenced in our survey, our discussions with stakeholders, and in our literature review.

Evaluating the report, [Rose noted](#) that *'many law firms are doing a lot of work in the field of diversity but change is coming too slowly or not at all in many areas and more needs to be done ; and that 'representation across the profession is not consistently good.'*

Partly due to the difference in population dynamics, England and Wales is further along its journey towards racial inclusion than Scotland. Yet it provides a cautionary tale: as outlined above, the problem in England and Wales is that there is an eligible pool of senior associate-age solicitors who aren't progressing as they should. Scotland is not at that stage but we cannot focus on growing the eligible pool without any thought to ensuring fairness of progression for those people.

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Pre-empting the publication of the LSEW's report, the Black Solicitors Network (BSN) published a call to action for racial diversity, challenging firms and organisations to “[walk the talk , to turn positive intentions into positive action and create a level playing field for all](#)”. Their letter argues that: *‘Recruitment, retention, and promotion must be the core strategies of these diversity initiatives. Such positive actions require a change in organisational culture and that change can only occur if senior management is willing to take the tangible steps needed to create a truly inclusive and diverse legal profession* The BSN thought firms should consider: (a) metrics, targets, and accountability (b) retention (c) promotion (d) organisational culture – inclusive leadership (e) external diversity engagement/social impact.

In response to the BSN letter, [17 large law firms announced](#) they will *‘use data analysis to improve the recruitment and retention of Black Asian and minority ethnic lawyers* .

Ngozie Azu, of Slaughter and May, [noted that the commitment will encourage firms to take a more personal approach to diversity and to understand](#): *‘How does it actually feel to be Black in a firm like this? There will always be areas of differences – for example my unusual name, my hair and how I spend my leisure time. The challenge for firms is to ensure that they are creating an environment in which everyone can bring their most authentic selves to work without fear that our differences will mark us out or impact our ability to succeed’*. A number of Magic Circle and Silver Circle firms have signed the initiative, as did a number of large legal recruitment agencies.

The suggestions in the [Race Fairness Commitment](#) are sensible and should be considered by organisations, particularly large employers in Scotland. These can be found in the appendices. An increasing number of firms with a Scottish presence have signed this.

The steps taken by those who have signed up to the Race Fairness Commitment are laudable and may lead to positive change by focusing on key data points to understand the lived experience of BAME solicitors.

Elsewhere in the English profession, problems persist. [Slingo noted that](#): *‘In a survey of 100 self-employed black barristers, 24% of respondents said their relationships with solicitors had been negatively affected by their race, while a quarter said they might have been negatively impacted’*.

Hillborne [focused on the Bar](#): *‘More Black barristers have reported experiencing racism from judges, magistrates and panel members than from other lawyers*.

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Natasha Shotunde, [Chair of the Black Barristers' Network](#), gave more detail: *'This survey shows that many Black barristers feel their experiences at the Bar may be negatively affected by racism. What is particularly striking is the differences in experiences by Black male and Black female barristers, with many more Black female barristers reporting negative treatment which may be due to their race. This negative treatment gained national attention when a black female barrister, [Alexandra Wilson, was mistaken for a defendant three times in a day](#).*

Jo Sidhu QC (the Chair of the Criminal Bar Association) noted in a debate around the same time that ['inequalities in the profession were rooted in institutional racism'](#).

A recent report (covering the US and UK) considered by [Hillborne showed that](#): *'Black lawyers are much more likely than Asian colleagues to say that racial injustice has held them back in their careers.*

Professor Leslie Thomas [QC argues](#) *'racism and discriminatory behaviours pervade all levels of society and our legal system is not immune'. He gives the example of a judge saying to him: "Mr Thomas, in this country we do things in this way. Anyone who knows me, knows that I speak with a South London accent, of which I'm proud. Which country did he think I came from? I know the judge would not say that to one of my colleagues. I was deliberately "othered"; made to feel different.'*

Issues raised in Scotland regarding a lack of a diverse judiciary are prominent in England too. [Thomas asks](#): *'Why is there still a gross under-representation of Black judges? In 2020, there are still no Black male High Court judges. We had one full-time High Court judge in recent times who has since retired (Dame Linda Dobbs QC DBE). There are no Black Court of Appeal or Supreme Court judges.'*

[Lord Reed, the President of the Supreme Court, has lamented](#) that the lack of diversity among justices was a situation that *'cannot be allowed to become shameful'*. When asked when a black, Asian or minority ethnic background justice would be appointed, Lord Reed noted: *'I hope that will be before I retire which is in six years' time.'*

[Thomas notes](#) that *'harsh realities need to be confronted. Firstly, to discuss diversity and improving diversity particularly as it concerns race, there needs to be a proper and honest discussion about racism'*.

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In [a follow-up article, Thomas sets out a 14-step](#) plan to increase the presence of black people in senior positions in the legal profession, focusing on both theory and practice. We would recommend reading those recommendations in full.

What is the English regulator doing?

Collection of diversity data

The major difference between diversity data collection in England and Wales and in Scotland is that in the former it is mandatory. In England and Wales, all regulated firms – regardless of size – have to collect, report and publish the diversity make-up of their workforce every two years.

There are two important distinctions between the data collection procedures: (a) the Solicitors Regulation Authority (SRA) has the power to regulate entities. The Law Society of Scotland does not. Therefore, data collection for the Society needs to be done at the individual level (either voluntarily or mandatorily) (b) it is likely that the Society would wish to understand the diversity data of its in-house members which do not appear to be captured in the SRA data.

In the most recent data collection effort (2019), 96% of regulated firms [reported their data to the SRA](#) (compared to 80% of all members reporting at 2020/21 practising certificate renewal in Scotland). (NB: Although it is understood compliance in 2021 in England and Wales dipped to circa 90%.)

Monitoring of enforcement action

The Solicitors Regulation Authority (SRA) has [undertaken some work on the over-representation of BAME solicitors in some of their disciplinary outcomes](#) following on from the Independent Comparative Case Review ([the John Review](#)) a number of years earlier. Whilst the regulatory system is different in England and Wales (with different powers available to the regulators in each jurisdiction), the findings of the John Review continue to influence Scottish thought. These were: (a) understanding the demographics of the profession (b) collaborating with law firms and others to promote diversity in the profession promoting high ethical standards (c) embedding equality, diversity and inclusion in the SRA's regulatory reforms (d) raising awareness of key diversity issues and providing guidance and resources to support law firms.

The issue of enforcement action may be nuanced. Kyle Blackburn, the chair of Black Solicitors Network North, at the SRA's 2021 Regulatory Futures [event noted](#): 'There is an almost institutionalised position

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whereby you have had certain sections of the legal profession essentially through want or otherwise having to practise on the high street. High streets are made up of sole practitioners or less than 20 staff. Other groups, other demographics tend to work in larger firms that do have proper infrastructure that helps them deal with issues. Again this is possibly something that we are seeing as a result of that lack of opportunity.'

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Chapter 6: Recommendations

46. The Racial Inclusion Group found the diversity data from the Society's practising certificate extremely useful and understands that the Society intends to ingather this information every second year. The Law Society of Scotland should make reporting of diversity data mandatory to improve the data sets.
47. Where possible, the Society should collate diversity information on those appearing before regulatory committees and compare this data with the diversity data it already holds.
48. Professor Leslie Thomas QC's article to [Increase the presence of Black people in senior positions within the legal industry: what we must do](#) influenced the group's thinking significantly. All should consider the article carefully.

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Chapter 7: Increasingly, large businesses are setting targets for providers of legal services. Is this the best way to shift the dial?

In June 2021, [the Confederation of British Industry, the Trades Union Congress, and the Equality and Human Rights Commission](#) called for the UK Government to introduce mandatory ethnicity pay gap reporting, noting: *'Introducing mandatory pay reporting on ethnicity would transform our understanding of race inequality at work and most importantly, drive action to tackle it where we find it. This has been a long-standing goal for all of us. It will enable employers to identify, consider and address particular barriers facing ethnic minorities in their workplace, and will complement and enhance the work many already do to address gender pay gaps under existing regulations.'*

For a variety of reasons (planning for likely action by the [government](#), client pressure, a response to Black Lives Matter, keeping up with the Joneses), businesses are beginning to consider carefully how they can attract, retain, and promote talented people from BAME backgrounds better.

Many organisations set targets annually to measure performance in certain ways and to measure improvement. Increasingly (in the UK legal sector and wider business community), organisations are beginning to apply that approach to ethnic minority representation within their business. The usual reasoning behind setting targets applies: setting a target over a particular timeline forces the organisation and its employees to focus their efforts to bring about the desired outcome. If an organisation notes publicly, 'we want 10% BAME partners by 2025', it is clear to all what needs to be achieved by when. It is clear what both success and failure look like and progress can be tracked over the duration (allowing for remedial action if the organisation is behind the curve).

Who is currently setting targets?

The English Magic Circle law firms have announced diversity targets which include published ethnicity targets ([Clifford Chance](#), [Allen & Overy](#), [Linklaters](#), [Slaughter & May](#), [Freshfields Bruckhaus Deringer](#)).

These extremely large firms have all chosen to set targets and methods of achieving those targets:

- Clifford Chance: having 15% of its UK and US partner promotions and lateral hires from minority backgrounds by 2025, averaged over the previous five-year period. There is a target of 30%

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representation for senior associates and senior business professionals in the same region as a whole (ie not simply promotions and hires).

- Freshfields: doubling the number of black associates at the firm by 2026.
- Linklaters: starting from the 2020/21 recruitment cycle, the firm aims to have 35% ethnic minority trainees in the UK, including 10% black trainees.
- Allen & Overy: having 15% of partners and 25% of lawyers and support staff from ethnic minority backgrounds. The firm has set a target of 35% ethnic minority trainees.
- Slaughter & May: a minimum of 15% of equity partner promotions in London and Brussels will be from ethnic minority backgrounds.

Other firms such as [Eversheds Sutherland](#), [Simmons and Simmons](#), [Norton Rose Fulbright](#), [Herbert Smith Freehills](#), [Hogan Lovells](#), [DLA](#) and [Pinsent Masons](#) have made similar commitments.

This trend is mirrored by other large professional services companies. [EY](#) has a target of 20% BAME partners by 2025 and, of those partners, 15% will be black (3% of the total). Another of the big four, [PWC](#), is aiming for 15% of partners from an ethnic minority background. [McKinsey has](#) – amongst its 10 actions towards racial equity – committed to doubling its black leadership and hiring of black colleagues.

All of these targets are underpinned by plans, strategies and policies (eg [Linklaters has recently](#) announced offering application support to disadvantaged black students; [Gowling WLF](#) announced its partners are to help fund black students through law school through a collaboration with the University of Birmingham etc).

[Natwest](#) – which has a large presence in the Scottish legal sector as both an employer and an instructor of legal firms – has introduced targets to improve representation of BAME employees in its top four leadership levels to at least 14% by 2025. The bank has introduced a new goal to have 3% black employees. Early indications suggest it is working as at 31 December 2020, Natwest had 10% BAME employees in its top four levels (+2% since targets were introduced).

Tidman [predicted that with](#) ‘*Clifford Chance and Allen & Overy nailing their colours to the mast... it seems inevitable that peers must follow suit with similar ambitions or face awkward scrutiny for not doing so*’.

The sheer number of larger firms moving in this direction suggests Tidman is right and the scrutiny will be

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brought to bear on the Scottish legal profession and the biggest organisations within it. Our discussions with firms have not identified targets for people from ethnic minority backgrounds so far.

The presence of targets should not be assumed to equal success. As [Novarese notes](#): *Even when law firms have come up with hard targets they have frequently been missed. Despite being widely viewed as one of the most progressive law firms, Clifford Chance is still a huge distance off the 30% target it set back in 2009 for female partner representation. Its global tally currently stands at 19.8%.*

Some might argue that targets are useful in garnering positive headlines at a time of unwelcome focus (eg in the immediate aftermath of Black Lives Matter), which can be gently forgotten about over time. [Novarese notes, citing the PRIME commitment, that](#) *'while such steps are laudable, cynics will question whether the legal industry is turning again to initiatives that attract headlines rather than drive action and 'eventually the profession must address why so many comparable initiatives fail to reach the communities they are supposed to help* .

As we have seen, the nature of targets differs from firm to firm. Some may be 'stretch targets' and may not be quite achieved in the time frame. Others may be easier to meet. Tidman [noted Allen & Overy's](#) targets are not a 'far cry' from the current make-up of the firm. Ultimately, the actions that underpin any given target will likely be more important than the target itself.

It is likely that there are relatively few legal employers in Scotland that could consider setting ethnicity targets: larger law firms and a handful of larger in-house employers. These organisations collectively employ a significant number of solicitors in Scotland. Moreover, a number of cross-border firms have published ethnicity targets for the UK as a whole and they may turn their attention to Scottish-specific figures in due course.

Setting targets

Business in the Community sets out a good approach to this issue: [Executive Sponsor for Race Toolkit: How to set ethnicity targets](#). We would recommend interested organisations consider that document carefully in line with the data about ethnicity on the route to qualification and wider profession presented in Chapter 1. For instance, using UK-wide figures in Scotland may not be helpful.

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Clients demanding change

One major change in recent years has been the interest taken in improving diversity by in-house counsel. A prominent example has been the [‘Intel Rule’](#): *Beginning January 1st 2021, Intel will not retain or use outside law firms in the US that are average or below average on diversity. Firms are eligible to do legal work for Intel only if, as of that date and thereafter, they met two diversity criteria: at least 21% of the firm s US equity partners are women and at least 10% of the firm s US equity partners are under-represented minorities (which, for this purpose, we define as equity partners whose race is other than full white/Caucasian, and partners who have self-identified as LGBTQ+, disabled or veterans).*

This new rule adds above average diversity to other mandatory items required from panel firms: results, value, professionalism, and diversity.

This followed work by the US tech giant in 2017, which noted it [would withhold up to 10% of costs](#) invoiced if firms do not meet minimum diversity requirements. [Coca Cola has begun to set targets](#). This move from large corporates has begun to be copied in the UK.

In February 2020, [Novartis, the pharmaceutical giant, pledged](#) to withhold 15% of fees if diversity and inclusion targets are not met by its panel firms. Novartis noted that no less than 30% of associate time and 20% of partner time on a legal provider will be provided by *‘females, racially/ethnically diverse professionals, or members of the LGBTQ+ community, with an expectation that such commitments will move to parity over the next several years* . [An initial analysis suggests that this is working](#): the diversity of teams working on Novartis matters has gone up and no fees have been withheld.

In 2020, [BT announced](#) that there would be a guaranteed renewal to its panel for the firm with the best diversity and inclusion record. In 2021, [Nokia followed suit](#) by developing a scorecard which made panel firms accountable for their progress. The trend is intensifying with more FTSE 100 legal panels under pressure on diversity. It seems from the [Law Gazette’s analysis](#) that *‘fee cuts and deductions are off the table at UK plc, for now at least. But whatever approach companies adopt, in-house teams know their buying power, and when it comes to diversity are not afraid to leverage it* .

Whilst some firms have used sticks (or at least the threat of them), [Microsoft has used incentives](#) to external law firms with a bonus if they increase the diversity of their partners.

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There have been major moves on both sides of the Atlantic, with groups of general counsel urging firms to improve. In the UK, the group General Counsel for Diversity and Inclusion launched in 2019 with [over 60 large organisations signing up](#), following the lead of 170 organisations doing similarly in the USA.

We can find little literature on the ethics of using such targets. Whilst many might agree with the idea of the private sector using targets to promote racial inclusion, there may be some worries about the precedent being set or such incentives being used in ways that many would baulk at.

Any discussion of targets – or references to positive discrimination or affirmative action – will often be challenged. Some may worry that the use of such targets may undermine achievement that ‘an individual has only succeeded because a target has been set’. Others may worry that other people may be unfairly excluded. These are sensitive discussions and should be welcomed. Discussions of the perceived unfairness of targets, however, should be set in the wider context of structural unfairness that people from a BAME background are confronted with throughout the route to qualification and throughout their legal careers and personal lives. Another way of looking at that, of course, is to note that white people generally are not confronted with such unfairness.

If a target is set by an organisation, it should be set within the context of the route to qualification and the wider solicitor profession (eg if an organisation was looking at diversification via the traineeship, any target should be primarily set around the Scottish and UK-domiciled populations on the LLB).

Any organisation considering using targets should do so judiciously. The headline figure will likely focus the mind for a short while but what is necessary to meet any such target is how will an organisation get to (say) 10% of its solicitors from a BAME background by 2030? How will they engage with schools and universities? How will they rework their traineeship application processes? How will they ensure the culture of the organisation is welcoming and allows people from all backgrounds to flourish? How will they collaborate with others in the sector to improve inclusion? In many ways, the context around the target, and how firms plan to meet a public target they have set, are far more important than the target itself.

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Chapter 7: Recommendations

49. Business in the Community has created a useful resource called [How to set ethnicity targets](#).
Businesses considering setting targets should consider this resource.

50. Our literature suggests that large clients globally are increasingly speaking to their legal service providers about diversity and in some instances setting diversity targets.

Law firms and large institutional clients should discuss the setting of targets and be mindful of the Scottish context when doing so.

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Chapter 8: What do our members want?

Our survey asked members and future members about what actions the Society should take in order to improve racial inclusion within the profession. Nine potential policy actions were suggested. The majority of respondents to the survey were from a BAME background.

Table G: Favoured policy responses by respondents to the survey

	% of respondents who ranked the policy as the most important policy response	% of respondents who selected the policy in the top three most important policy responses
Making equality & diversity training a mandatory part of CPD	34.56% (1 st)	58.09% (1 st)
Require a minimum percentage of ethnic minority solicitors at partner/board level of every firm with more than 25 employees	18.52% (2 nd)	30.37% (5 th)
Offering leadership skills training programmes for solicitors from ethnic minority backgrounds	15.33% (3 rd)	43.07% (3 rd)
Create a specialist mentoring network focused on law students/trainees from ethnic minority backgrounds	11.11% (4 th)	53.29% (2 nd)
Change how the Society regulates around equality & diversity	8.51% (5 th)	21.98% (6 th)

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	% of respondents who ranked the policy as the most important policy response	% of respondents who selected the policy in the top three most important policy responses
Create a group for solicitors from ethnic minority backgrounds within the Law Society of Scotland	5.19% (6 th)	37.04% (4 th)
Recording, and publishing where possible, data at certain key points	5.04% (7 th)	18.7% (8 th)
Work with in-house solicitors to promote racial inclusion within the firms they instruct	2.19% (8 th)	13.14% (9 th)
Set targets for the numbers of solicitors and lay people from ethnic minority backgrounds on the Society's committees	1.47% (9 th)	19.78% (7 th)

This chimes with feedback about what the Law Society of Scotland could change to encourage more BAME solicitors to reach senior levels in the profession. In response to that question – and noting that *Profile of the Profession* attracted a far greater response from across the profession – the top three answers were as follows:

- 66% of respondents noted unconscious bias training (n = 1,400)
- 52.6% of respondents chose making equality and diversity training a mandatory part of the CPD requirement
- 38.1% of respondents chose leadership skills training programmes specifically for BAME solicitors (n = 804)

We are aware that the unconscious bias training is mandated on the practice management course (the mandatory course for all new partners) and has been since 2019. The mandatory CPD risk management requirement includes reference to '*organisational culture including the prevention of bullying and harassment*' and '*equality and diversity*' as part of a wider list. Whilst these are positive steps, the survey

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suggests that further steps need to be taken. As well as these steps, there is an appetite for mentoring as outlined in Chapter 2 and also for leadership development courses targeted at BAME individuals in the early stages of their career.

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Chapter 8: Recommendations

51. The inclusion of unconscious bias training at the practice management course is a good development and should continue. Consideration should be given to adding to the relatively short content.
52. The Regulatory Committee of the Society should consider the position of mandatory equality and diversity training, ensuring that any such training is meaningful and does affect positive change. This could be aided by offering high-quality training at particular groups within the profession (eg managing partners, training managers, client relations managers).
53. The improvement in ethnic minority representation on the Society's Council is pleasing to see. The Society should consider how to ensure visibility of ethnic minority members of Council and committees to show how diverse the organisation is and to encourage other people from diverse backgrounds to apply. This could be done via the Society's publications, events, adverts, outreach activities, and also via content in the *Society's Journal*.
54. The Regulatory Committee of the Society should consider how equality and diversity can be better embedded. Ideas considered by the group include: audits of firms focusing on recruitment, retention, promotion; equality training as outlined in the recommendation above; guidance to support the diversity practice rule etc.
55. The Institute of Chartered Accountants of Scotland has extended its Protect helpline to include matters of equality, diversity and inclusion. The Law Society of Scotland should consider expanding the range of activities that can be reported to it via its reporting concerns hotline and should consider whether matters related to equality, diversity and inclusion should be included.
56. The UK Supreme Court recently announced paid internships to promote diversity. Consideration should be given by the appropriate authorities to see if this could be replicated in the senior Scottish courts.
57. A number of years ago, the [Law Society of Scotland produced recommendations to improve the diversity of the judiciary](#). The recommendations of that paper should be revisited and considered in line with the Society's diversity data. The group recommends a wider discussion on what we mean by merit in modern Scotland.
58. Organisations across the justice sector should consider their own processes and procedures in light of the Society's diversity data.
59. The Law Society and the wider profession should continue to press for the introduction of ethnicity pay gap reporting to be introduced by the UK Government. The next two points are contingent upon this being introduced.

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- a. Pan-UK organisations should consider in any reports separating out their Scottish based-staff and partners.
 - b. If ethnicity pay gap reporting is introduced by the UK Government and is introduced for organisations over a certain size (eg 250 staff and partners), large organisations not at the required number of staff should give serious consideration to voluntary reporting.
60. That the Racial Inclusion Group is reconvened after a suitable time to review progress.

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Appendix A: Glossary

- **BAME:** The Racial Inclusion Group was aware of criticism of the term. The [Sewell Report](#) notes it *'feels like a group that it is held together by no more than what it is not'*. The group did consider if there were better alternatives and agreed that BAME – flawed as it is – was preferable to such as people of colour, BME etc. When discussing people from a BAME background, we have generally meant the following groups: (a) Arab British, Arab Scottish or Arab (b) African, African Scottish or African British (c) Asian British, Asian Scottish or Asian (d) Caribbean British, Caribbean Scottish or Caribbean (e) Chinese British, Chinese Scottish or Chinese (f) Gypsy/Traveller (g) Indian British, Indian Scottish or Indian (h) Mixed or multiple ethnic groups (i) Pakistani British, Pakistani Scottish or Pakistani (j) Jewish (k) Polish (l) Roma (m) Sikh. These are the categories the Law Society of Scotland used at practising certificate renewal in 2021. These broadly mirror the Scottish census. Necessarily, individuals who do not identify as any of the above may also be part of the BAME community, eg Brazilian people, Turkish people, Iranian people. The acronym is used for the sake of its familiarity and the group would advocate for its reduction and eventual removal from discourse.
- **Blue collar law:** Areas of the profession such as criminal defence, immigration, mental health and incapacity. Its use, whilst somewhat facetious, is fully intended to invoke the elements of class disadvantage inherent in Scottish society.
- **CBI:** The Confederation of British Industry (CBI) is a UK-wide business organisation.
- **COPFS:** The Crown Office and Procurator Fiscal Service is the independent public prosecution service for Scotland.
- **Dual discrimination:** Where a person is discriminated against because of a combination of two or more protected characteristics. For instance, a policy which prevented employees from wearing headscarves would discriminate against some Muslim women.
- **Developing the Young Workforce/DYW:** The Scottish Government's youth employment strategy to better prepare young people for the world of work.
- **Ethnicity:** Race and ethnicity are often used interchangeably in public discourse. It is useful though to be clear about what the group means by the difference. An ethnic group generally has the following features: (a) a long-shared history of which the group is conscious as distinguishing it from other groups and the memory of which it keeps alive (b) a cultural tradition of its own, including family and social manners, often but not always associated with religious observance (c) a common, however, distant, geographical origin (d) a common language and/or

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literature. Ethnicity should not be seen as something that belongs only to certain, minority groups. We all have an ethnicity.

- **Equality and Human Rights Commission:** A non-departmental public body with responsibility for the promotion and enforcement of equality and non-discrimination laws in England, Scotland and Wales.
- **FJSS:** The Fair Justice System for Scotland Group is a grassroots-led legal charity founded by Silence Chihuri with the patronage of Sir Geoff Palmer OBE.
- **ICAS:** The Institute of Chartered Accountants of Scotland.
- **LSEW:** The Law Society of England and Wales.
- **Microaggressions:** Brief and commonplace, verbal, behavioural or environmental indignities. These may be intentional or unintentional and can communicate hostile, derogatory or negative attitudes towards members of certain groups, particularly those from stigmatised or marginalised groups. Microaggressions are sometimes referred to as micro incivilities.
- **Race:** Race is one of the [nine protected characteristics](#). It refers to a group of people defined by their race, colour, and nationality (including citizenship), ethnic or national groups.
- **Racism:** When a person is treated worse, excluded, disadvantaged, harassed, bullied, humiliated or degraded because of their race or ethnicity.
- **Scottish Ethnic Minorities Lawyers Association (SEMLA):** A voluntary, independent organisation for lawyers and law students with the aim to facilitate a diverse and inclusive legal profession in Scotland. The group was founded in 2017 by Usman Tariq, Sheekha Saha, Omar Ali, Imran Bashir and Naeema Sajid.
- **Scottish Funding Council:** The Scottish Funding Council is the non-departmental public body charged with funding Scotland's further and higher education institutions, including its 26 colleges and 19 universities.
- **Scottish Index of Multiple Deprivation (SIMD):** SIMD is a statistical tool used by the Scottish Government, local authorities, the National Health Service, and educational providers to measure deprivation. SIMD measures across seven domains: current income, employment, health, education, health, access to services, crime and housing. These seven domains are calculated and weighted for 6,976 small areas called data zones with roughly equal population sizes. SIMD20 are the 20% most disadvantaged data zones in Scotland.
- **Structural racism:** To describe a legacy of historic racist or discriminatory processes, policies, attitudes or behaviours that continue to shape organisations and societies today.

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- **Systemic racism (or institutional racism):** Applying to organisations, or wider societies, which exhibit racist or discriminatory processes, policies, attitudes or behaviours. (There are numerous definitions of institutional racism although [the Macpherson definition is widely understood.](#))
- **Trades Union Congress:** The TUC is a national trade union centre, a federation of trade unions in England and Wales, representing the majority of trade unions.
- **Unconscious bias:** Social stereotypes about certain groups of people that individuals form outside their own conscious awareness.
- **Vanguard burden:** The outcome of being the first or only member of an ethnic minority group is a high degree of expectation, pressure in the absence of support or guidance around the identity that white colleagues do not suffer.
- **White collar law:** Areas of the profession such as corporate, banking and finance, competition, technology, media. Its use, whilst somewhat facetious, is fully intended to invoke the elements of class disadvantage inherent in Scottish society.

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Events attended by group members and the secretariat during the lifetime of the group

- Throughout the lifetime of the group: the Cross-Justice Working Group on Race and the Workforce (Jan to Oct 2021. Host: Scottish Government)
- Fair Justice System for Scotland Group Equalities Workshop 2021 (June. Host: FJSS)
- Presentation at the Diversity Steering Group hosted by the Judicial Appointments Board (July)
- Less talk, more action: what are we doing to improve ethnic diversity in the profession? (August. Host: SEMLA and Natwest)
- Introductory meeting with Black Professionals Scotland and the legal profession (September. Host: The Law Society of Scotland)
- Two Overcoming Barriers events (September/October. Hosts: The Law Society of Scotland/Pinsent Masons)

Discussions with members and organisations

We are grateful to the many members who spoke to the group, and Society staff, during this process about their experiences in the profession. We spoke to them on the condition of anonymity as we wished to create a safe, open space for them to discuss matters candidly.

This was advertised openly on the Society's website, social media platforms and via our fortnightly e-bulletin to all members and our *Student Associate* newsletter. Members and future members volunteered their experience to us and we are grateful for their insight and expertise.

We are also grateful to the many organisations who spoke to us about their experiences: justice sector bodies, universities, law firms, in-house organisations etc.

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Appendix C: Rare Recruitment's Race Fairness Commitment

1. Monitor internally with a view to publishing externally on annual and aggregated basis the following data:
 - a. Application to interview rates for Black, all ethnic minority, and White groups – for graduate programmes, these should be grade-adjusted calculations so that what is being compared is the success rates of candidates from different ethnicities with the same A Level or equivalent grades.
 - b. Interview to offer rates for Black, all ethnic minority, and White groups.
 - c. Promotion rates for Black, all ethnic minority, and White groups.
 - d. Ethnicity stay gap rates looking specifically at Black, all ethnic minority, and White groups.
2. Complete at least once per year the following analyses:
 - a. Ethnicity equal pay analysis by level, function, location and performance banding where present, looking specifically at Black, all ethnic minority, and White groups.
 - b. Employee sentiment on the question 'I can be myself at work', for Black, all ethnic minority and White groups.
3. Champion junior ethnic minority talent by:
 - a. Monitoring any outreach programmes run by the firm for students aged 16 or over to ensure that they include a proportion of Black, and all ethnic minority, students at least in line with the local school and university age population.
 - b. Ensuring that every junior ethnic minority member of staff has access to a senior manager, with a view where possible to creating sponsorship, mentoring and reverse mentoring programmes.
4. Ensure everyone joining us gets a clear message in their induction that the organisation has zero tolerance of racism.
5. Ask in every exit interview whether the person leaving has experienced or seen racism in the firm.
6. Ensure that at least once a year, the firm tells all its staff that it has a zero tolerance of racism and, if appropriate, share examples of how the firm has dealt with any incidents of racism.

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Appendix D: Actions the Society has already taken to improve racial inclusion

Recent work undertaken to promote racial inclusion

The Racial Inclusion Group is aware that the Society has undertaken significant work in recent years to improve and promote racial inclusion in the profession.

- **2014 onwards:** Established a [Street Law programme](#) to promote public legal education and inspire pupils to consider a career in law. This work is concentrated in Scotland's four largest cities and in schools with higher than average BAME populations.
- **2017 onwards:** Established the [Lawscot Foundation](#). This is a charity which gives grants, and provides mentors, for students from disadvantaged backgrounds. Over 20% of those who have received funding are from a BAME background.
- **2017 onwards:** Supported the Scottish Ethnic Minorities Lawyers Association since before it formally came into being (Society officers met with the then clerk of the Faculty of Advocates and worked with SEMLA's founder, Usman Tariq). The Society has hosted SEMLA events, promoted and suggested speakers for their events, and our staff team and office-bearers routinely attend and/or speak at events. The Society enjoy a productive, collaborative relationship and intends to continue to do so.
- **2017 onwards:** Hosted Summer Schools to promote legal careers. In 2020 and 2021 these were virtual events. The first summer school in 2020 had 30% of attendees from a BAME background.
- **2018:** All staff undertook mandatory unconscious bias training. Many also undertook a separate session about the nature of biases.
- **2018/19:** Undertook representative work on behalf of members. An example from 2018/19 was working with some baptised Sikh members of the profession who could not access certain buildings in the justice sector due to one of their articles of faith (the Kirpan). This was successfully resolved in a way that allowed members to continue to undertake their work whilst also taking on board the concerns of justice sector colleagues.
- **2018:** The most recent [Profile of the Profession](#) was published, as was the Society's response, [A blueprint for a more inclusive profession](#).
- **2019:** Promoted understanding of *Profile of the Profession* and *A blueprint for a more inclusive profession*, nearly 800 solicitors attended CPD sessions on these matters throughout Scotland.

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- **2019:** Operated a commercial relationship with Rare Recruitment. This is a software system that contextualises recruitment processes for internships and traineeships, leading to more diverse cohorts.
- **2019:** Hosted a focus group (and also ingathered some evidence from people who could not attend) with law students, trainees, and newly qualified solicitors from a BAME background to learn about their experience. This led to a number of articles that formed part of the Racial Inclusion Group's literature review, informed our CPD sessions with solicitors outlined above and our discussions with recruiters about their processes.
- **2019:** New admission regulations were introduced to streamline the process for qualified lawyers from outwith the European Union to requalify into Scotland (and as outlined in the report this has led to a significant increase in requalifiers from outwith the EU).
- **2019 onwards:** Worked collaboratively with Fair Justice System for Scotland Group including speaking at a number of their conferences and promoting their events and work to members of the profession.
- **2019 onwards:** Introduced mandatory unconscious bias training to the practice management course. This has been a feature of every course since that point.
- **2019 onwards:** Established an Inclusion Calendar, which marks important celebrations, festivities, and observances. This has included blogs, viral video campaigns, and virtual events. Other events which have been celebrated include Eid al-Fitr, Vaisakhi, Bandi Chhor Divas, Diwali, Chinese New Year, and Rosh Hashanah. Black History Month and Yom Kippur have been marked whilst International Holocaust Memorial Day has been commemorated.
- **2019/20:** Worked closely with the Scottish Government as they hosted three roundtables of members of the profession on diversity. One of these roundtables focused on race, ethnicity, and religion.
- **2020:** Launched a campaign called 'One profession, many journeys' to highlight role models. This is added to periodically and showcases the diversity within the profession.
- **2020:** Introduced diversity data collection to our annual PC renewal process and will do so on an ongoing basis.
- **2021:** Established the Racial Inclusion Group.
- **2020/21:** Were active participants in the [Cross-Justice Working Group on Race and Workforce](#).

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- **2021:** Have recently hosted an event for human resources professionals and firm leaders alongside Black Professionals Scotland. We know that a number of organisations in the sector have followed up with Black Professionals Scotland regarding potential internships and collaboration.
- **2021:** Hosted the first of a series of online events aimed at supporting ethnic minority members of the legal profession who are starting out in their careers. The first was called Overcoming Barriers, Building Confidence.

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Appendix E: Schedule of recommendations

Chapter 1 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
<p>1. Our data suggests, and discussions with early career professionals suggest, that the legal profession is not attracting people from all of Scotland's communities proportionately.</p> <p>Organisations that work in schools to promote careers in the legal profession, including the Law Society of Scotland, should consider this under-representation and target efforts on ensuring under-represented groups get the information they need. This may include offering bespoke events and education programmes.</p>	<p>The Law Society of Scotland</p> <p>Universities</p> <p>Any other organisation giving careers advice in schools</p>	<p>School pupils, leavers and college students from a BAME background will be able to attend targeted events with information presented in a targeted way.</p> <p>This should increase their confidence to apply to study law.</p>
<p>2. The Law Society of Scotland should publish diversity statistics for the LLB and Diploma in Professional Legal Practice (DPLP) to aid understanding in the sector. The Society should work with providers to ensure a standardised data set.</p> <p>This will help organisations recruiting interns and trainees to know if they are attracting a cohort similar to the law student population and, if not, amend their policies accordingly.</p>	<p>The Law Society of Scotland</p>	<p>Employers will better understand whether or not their recruitment activities are working by having a standardised, nationwide data set to compare against.</p>
<p>3. The Law Society of Scotland and the Diploma Co-Ordinating Group should create a new process for accessing the DPLP which takes into account a wider range of factors than placing such weight on the performance of students in the Foundation Programme Outcomes in the first two years of legal study.</p>	<p>The Law Society of Scotland</p> <p>The Diploma Co-Ordinating Group</p>	<p>This will lead to an improved system of DPLP access for all.</p>
<p>4. Nearly half of the respondents to our survey noted that they had experienced some form of bias in relation to their race at university. University law schools should look to eliminate all forms of bias at their own institutions.</p> <p>As well as this, universities should prepare all students for joining a diverse workplace in the future.</p>	<p>University law schools</p> <p>DPLP providers</p>	<p>This will lead to a better experience for all students.</p> <p>This could be measured in future surveys/accreditation reports.</p>

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Chapter 1 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
5. Building on the recommendation for schools (recommendation 1): Our data and discussions with early career professionals suggest that students from ethnic minority backgrounds may need targeted and tailored careers advice and events whilst studying law.	Universities The Law Society of Scotland	Building on recommendation 1, students from a BAME background will be able to get the tailored advice they need about the next stage. This has been flagged to the group as important.
6. Each year, a percentage of students graduate from law school and do not commence a traineeship. The Society should collect data on this group to see if there are any trends relating to any of the protected characteristics.	The Law Society of Scotland	This will allow the Society to know more about the group that does not have a traineeship and serve them effectively. The data itself will be measurement.
7. We heard consistent commentary from law students and recent graduates that they were rarely lectured, tutored or taught by people from ethnic minority backgrounds. Universities should offer insights into careers in legal academia to all students, including focused events for those from ethnic minority backgrounds. DPLP providers should ensure that those tutoring on their courses are from a diverse range of backgrounds.	Universities DPLP providers	We heard this will have all the benefits of all role-modelling and acceptance. It may also help people consider alternative legal careers. The Society could support this activity.
8. Universities should support any BAME law societies and/or other law societies that promote diversity and inclusion which are established by their students. The Law Society of Scotland and other organisations that work with universities should look to assist such societies by providing speakers and supporting events.	The Law Society of Scotland Universities Other organisations such as employers, the Faculty of Advocates etc	Students from a BAME background will be able to get tailored advice they need about the next stage – something we know is lacking now. Measurement: the Society can monitor engagement with these societies and promote them to firms. The measure would be the level of take up.

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Chapter 2 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
9. Employers should work with universities and consider targeting marketing, outreach, and specific events aimed at BAME students.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider.
10. Employers should aim for a presence of BAME people throughout their organisation at all levels and in all roles and to look to make this presence more visible. We heard routinely from BAME students and recent graduates that the lack of such presence does put some people off applying to organisations. This presence could be shown by: hosting blogs and video content from diverse individuals on websites and social media channels, including people from diverse backgrounds on marketing materials; by publicly taking part in a diverse range of celebrations, festivities, and observances (eg Bandi Chhor Divas, Black History Month, Chinese New Year, Diwali, Eid al-Fitr, Passover).	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider.
11. Without overburdening a potentially small number of employees, employers should ensure diverse groups of staff attend external events such as school careers events, university law fairs, and are involved in recruitment processes. Feedback from early career professionals suggested that seeing diverse people involved in the recruitment process helped their confidence enormously.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider.
12. Providers of CPD should ensure they have diverse speaker lists and panels.	The Law Society of Scotland All other providers of CPD	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider.
13. There are a number of formal mentoring schemes in the profession. These can and do make a tangible difference to the careers, and career choices, of new solicitors. Senior figures should engage in mentoring and reverse mentoring arrangements with new professionals, particularly those from under-represented groups.	The Law Society of Scotland Legal employers Individual members	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider.

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Chapter 3 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
The Racial Inclusion Group notes that the recommendations from Chapter 3 and Chapter 5 could be combined to create a racial inclusion charter for employers, which organisations could sign up to. If such a charter is created, those who sign it should be required to share their anonymised, aggregated data (referenced in recommendation 19) with the Society and other signatories to aid understanding.		
14. Employers should critically evaluate their recruitment processes to better understand if there are elements of the process that are disproportionately putting BAME people off from applying or disadvantaging them in the process compared to their white counterparts, eg if summer placements are more likely to be accessed by white candidates: why is that? Is the organisation ensuring it takes equal account of alternative work experience?	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
15. The recommendations in this chapter should only occur in organisations after critical evaluation of their current situation: all organisations will start from a different place. Data and insights should be gathered to understand how recruitment processes are working and if they are not working as well as they might for some communities. Data should be broken down by ethnic group so employers can see where to target future action.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
16. Employers should not make judgements about the decisions candidates made earlier in their lives in systems that may have been unfair. It has been pleasing to see so many large legal employers use contextualised recruitment software to ensure a more diverse range of people being interviewed and hired. Such software should be seriously considered by all organisations who routinely hire summer interns and trainee solicitors. If the cost of such software is prohibitive, as it may be for some, employers should look to other systems, such as blind recruitment, removing school grades (and where someone went to school etc) as well as following the Society's recruitment guidance.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.

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Chapter 3 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
17. Employers should track progress of alumni of schools, university and internship programmes they have engaged with, as well as progress of early career professionals to see if these programmes are working.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
18. Employers should be aware that certain communities – including some BAME students but also those from lower socio-economic groups and older law students – may not be able to take part in even paid summer internships/placements. Employers should ensure that this is acknowledged in recruitment processes.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
19. Legal employers should gather diversity data of those applying for summer placements and for traineeships and see who is successful/unsuccessful at each stage. Employers should interrogate this data in line with that data published by the Law Society of Scotland. It is only by gathering and analysing this data organisations will know if they are doing well/poorly.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
20. Employers that use campus representatives, or participate in campus recruitment events, should ensure a diverse range of campus ambassadors and organisational representatives.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.

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Chapter 3 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
21. The Racial Inclusion Group heard from early career professionals and recruiters that task-based exercises are more objective than solely traditional interviews and that they can lead to a more diverse talent pool. Employers should consider task-based exercises in their recruitment processes, such as essay competitions, in-tray exercises, presentations, assessments etc.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
22. Our survey makes clear that many early career BAME professionals feel that they have experienced bias when accessing traineeships. This links to feedback from our discussions that when feedback is not given to BAME candidates, there can be a nagging doubt in their mind that race played a factor. Giving good quality feedback to those interviewed is time-consuming but best practice and particularly beneficial to those from under-represented groups.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
23. Legal employers should pay interns and summer placements and refer to the Society's guidance for further information.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
24. Numerous employers told us they do not get proportionate applications from people from ethnic minority backgrounds. Targeted recruitment events and campaigns to improve the number of BAME applications to internships and traineeships will likely help. Employers should consider working with organisations like SEMLA, Fair Justice System for Scotland Group, Black Professionals Scotland, and BAME university law societies.	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.

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Chapter 3 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
25. Employers should make it clear that they specifically welcome applications from students/graduates from minority ethnic backgrounds.	The Law Society of Scotland Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
26. Even in instances where employers do get greater numbers of BAME applications, they noted to us that they often saw a drop in percentages between applications and interviews. Employers should consider structural unfairness within their processes and look to eliminate this. Providing dedicated support (alongside targeted events and campaigns, a diverse panel involved in the recruitment process, and improved data) should help. We heard examples of the following: <ul style="list-style-type: none"> - Direct financial support - Mentoring - Reverse mentoring - Bespoke/targeted internships - Application support (eg additional guidance on how to apply, interview etc) 	Legal employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
27. Employers noted to us that they found it hard to hire BAME staff at senior levels via lateral hires, often noting that there was not a large pool of BAME lawyers in particular practice areas. Organisations which offer seat-based traineeships should make themselves aware of practice areas where there is BAME representation. In the event that one of their BAME trainees requests to work in such a practice area, the organisation should do their best to prioritise this, as long-term this will help to diversify practice areas.	Legal employers	This will lead to more diverse senior figures in due course. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.

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Chapter 3 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
28. Employers should think creatively about qualified solicitors changing practice area once qualified and should facilitate this where possible. We heard numerous successful examples of established professionals changing practice area.	Legal Employers	This will lead to more diverse senior figures in due course. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
29. Whilst the majority of those studying on the DPLP are Scottish or British-domiciled, there are some students from outwith the UK. We heard from one firm which had on occasion paid a higher rate of remuneration for trainee solicitors from overseas to comply with visa requirements. Employers should consider following this approach.	Legal Employers	This, combined with other efforts, will lead to more diverse trainee applications for organisations to consider. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.

Chapter 4 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
<p>Two comments in survey responses highlighted that members thought they had experienced bias on account of their race via the Law Society of Scotland's processes.</p> <p>As the survey was anonymous, we do not know when these incidents are alleged to have occurred nor do we know the identity of those who raised these concerns. We have chosen not to identify the processes publicly in case this inadvertently identifies the individuals publicly. The processes, however, have been highlighted to the Senior Leadership Team.</p>		
30. The Law Society of Scotland should critically assess its processes to ensure that potential bias is eliminated.	The Law Society of Scotland	Improved processes at the Law Society of Scotland. This could be monitored by a future survey of members.
31. The Law Society of Scotland should require all staff and relevant committee members to undertake training (eg anti-racism training, unconscious bias training) on a recurring basis. This should be combined with a critical assessment of the Society's processes and procedures on an ongoing basis.	The Law Society of Scotland	Improved processes at the Law Society of Scotland. Measurement could involve % of staff and committee members taking part.

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Chapter 4 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
32. Organisations across the justice sector should critically assess their own processes to ensure that potential bias is eliminated and should consider similar training for staff.	Justice sector organisations	Improved processes across the justice sector.
33. We found that the Law Society of Scotland has strong relationships with many organisations which promote equality generally and in the legal profession specifically. The Society should continue and broaden its work with various organisations, such as the Scottish Ethnic Minorities Lawyers Association, Fair Justice System for Scotland Group, the Council of Ethnic Minority Voluntary Sector Organisations Scotland, Show Racism the Red Card, Black Professionals Scotland, and the Coalition for Racial Equality and Rights.	The Law Society of Scotland	This will help ensure the Law Society of Scotland remains up to date on matters of racial inclusion.

Chapter 4 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
Racism and bias in the profession cannot be overcome by BAME members alone. Individuals, and organisations, though do have the power and ability to influence those around you. Make it clear that you have a commitment to racial justice, talk with your clients and suppliers about it, support other organisations promoting racial equality. You can show this commitment by embracing the recommendations of this report.		
<p>34. All members have to play a part by:</p> <ul style="list-style-type: none"> - Acknowledging racism, bias, and discrimination exist within the profession. Acknowledging this and helping implement the recommendations of this report should not be viewed as a personal criticism but rather an attempt to understand structural unfairness within the profession and wider society. White allies should understand they have a critical role to play in promoting positive change. - Educating themselves on racism, bias and discrimination within the 	Members of the legal profession	The impact will be improved lived experience for our BAME members and a more inclusive profession. It is, though, harder to measure other than by way of future <i>Profiles of the Profession</i> .

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<p>profession and justice system. It is not enough to be not racist; members should become anti-racist.</p> <ul style="list-style-type: none"> - Being prepared to talk about race and racism within the profession. These discussions may be unsettling or uncomfortable for some. If the discussions are handled sensitively, and supported by education and training, then progress will be made. - Calling out racism, bias, microaggressions or incivilities and/or reporting it accordingly. It has to be the responsibility of all members to challenge problems when they are seen and leaders should create an environment where incidents are called out and reported. - As well as calling out issues, supporting those who are on the receiving end of such behaviour is critical in showing solidarity and likely has a beneficial effect on wellbeing. - Senior leaders should understand the special role they play and visibly lead the above. 		
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Chapter 5 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
<p>The Racial Inclusion Group notes that the recommendations from Chapter 3 and Chapter 5 could be combined to create a racial inclusion charter for employers, which organisations could sign up to. If such a charter is created, those who sign it should be required to share their anonymised, aggregated data (referenced in recommendation 19) with the Society and other signatories to aid understanding.</p>		
<p>35. Organisations should develop key performance indicators around racial inclusion, have aspirations for the organisation regarding racial inclusion and hold themselves to account critically.</p>	<p>Legal employers</p>	<p>This, combined with other efforts, will lead to a better lived experience for our BAME members.</p> <p>If the idea to turn these recommendations into a charter is adopted, the</p>

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		measurement would be uptake and compliance.
36. Organisations should expect diversity from their own suppliers. It may be appropriate to write this expectation into procurement processes to ensure organisations are working with others that share a commitment to racial inclusion.	Legal employers Suppliers to the legal sector	This will not change the sector directly but helps promote the importance of diversity and inclusion across all that we do. A measurement may be to speak to leaders about whether this has occurred.
37. Ensuring that BAME employees thrive in an organisation goes beyond hiring and must include a focus on organisational culture and environment. A starting point is ensuring that there are appropriate policies in place, diversity training for staff, and encouraging sensitive discussion about issues of race. In the event that problems emerge and racism, bias, or any other issues are identified, organisations should ensure that these are dealt with fairly, quickly, and robustly.	Legal Employers	This, combined with other efforts, will lead to a better lived experience for our BAME members. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
38. Two firms highlighted to us that they allowed their solicitors to record time spent on diversity and inclusion projects, mentoring etc. Such an approach gives significant emphasis to these activities and assigns value to them. Other employers should consider this approach.	Private practice	This may not be possible/feasible for all legal firms. It may be something we could test in <i>Profile of the Profession</i> .
39. Employers should request diverse lists from recruitment agencies to help ensure that the diversification of the business occurs not only at traineeship or at Newly Qualified level but as an ongoing process throughout the business.	Legal Employers Legal recruitment agencies	This will not change the sector directly but helps promote the importance of diversity and inclusion across all that we do. A measurement may be to speak to leaders about whether this has occurred.
40. It is critical that employers ensure a level playing field – not just around those joining the business but ensuring that pay, bonuses, appraisals, progression, work allocation, development opportunities etc are fair and free from bias.	Employers	This, combined with other efforts, will lead to a better lived experience for our BAME members. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.

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Chapter 5 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
41. Organisations should think carefully about the events they host as well as the content of those events. Are events at certain times of the day/year accidentally excluding people? For instance, a 5.30pm/6pm event during Ramadan may inadvertently put some Muslim staff members off from attending. Are networking events and business developments focused on certain groups?	Employers	This, combined with other efforts, will lead to a better lived experience for our BAME members. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
42. It is essential that when looking to promote racial inclusion in the workplace, employers listen to the voices, and experiences, of their BAME colleagues.	Employers	This, combined with other efforts, will lead to a better lived experience for our BAME members. If the idea to turn these recommendations into a charter is adopted, the measurement would be uptake and compliance.
43. When considering corporate responsibility activities, organisations should give serious consideration to addressing issues of racial injustice in wider society. Organisations should also support wider campaigns to promote racial inclusion in the profession.	Employers	This, combined with other efforts, will lead to a better lived experience for our BAME members. It may also help better understanding of the lived experience of BAME people in Scotland.
44. In-house lawyers should routinely discuss equality and diversity, including racial inclusion, with their external law firms, including their plans to diversify their business.	In-house lawyers	In-house lawyers have a role for change and this recommendation is for them to take that opportunity. The primary measurement would be via engagement with the in-house community via the In-house Lawyers' Group.

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Chapter 5 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
45. In-house lawyers should consider using their buying power to ensure positive change in the profession.	In-house lawyers	<p>In-house lawyers have a role for change and this recommendation is for them to take that opportunity.</p> <p>The primary measurement would be via engagement with the in-house community via the In-house Lawyers' Group.</p>

Chapter 6 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
46. The Racial Inclusion Group found the diversity data from the Society's practising certificate extremely useful and understands that the Society intends to ingather this information every second year. The Law Society of Scotland should make reporting of diversity data mandatory to improve the data sets.	The Law Society of Scotland	<p>Better data for the Society (and wider sector).</p> <p>Measurement will be the data ingathered.</p>
47. Where possible, the Society should collate diversity information on those appearing before regulatory committees and compare this data with the diversity data it already holds.	The Law Society of Scotland	This could help identify any existing bias within the Society's systems and processes. The numbers involved might be relatively low, but this could be monitored by the Regulatory Committee.
48. Professor Leslie Thomas QC's article to <u>Increase the presence of Black people in senior positions within the legal industry: what we must do</u> influenced the group's thinking significantly. All should consider the article carefully.	<p>The Law Society of Scotland</p> <p>Individual members</p>	Better understanding of what is necessary to increase the presence of black people in senior positions.

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Chapter 7 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
49. Business in the Community has created a useful resource called How to set ethnicity targets . Businesses considering setting targets should consider this resource.	Legal employers	Targets may well improve matters in some instances. Those that wish to do so should consider using this guide.
50. Our literature suggests that large clients globally are increasingly speaking to their legal service providers about diversity and in some instance setting diversity targets. Law firms and large institutional clients should discuss the setting of targets and be mindful of the Scottish context when doing so.	In-house lawyers Larger law firms	In-house lawyers have a role for change and this recommendation is for them to take that opportunity. The primary measurement would be via engagement with the in-house community via the In-house Lawyers' Group.

Chapter 8 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
51. The inclusion of unconscious bias training at the practice management course is a good development and should continue. Consideration should be given to adding to the relatively short content.	The Law Society of Scotland	This was introduced to ensure new partners had a better understanding of unconscious bias. Feedback is generally good and this should be built on.
52. The Regulatory Committee of the Society should consider the position of mandatory racial inclusion training, ensuring that any such training is meaningful and does affect positive change. This could be aided by offering high-quality training at particular groups within the profession (eg managing partners, training managers, client relations managers).	The Law Society of Scotland	We are aware that many areas of practice and client service request that CPD is mandated in their area. We believe that the case for mandatory CPD focusing on racial inclusion is a strong one, would benefit all within profession and be a strong public statement.

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Chapter 8 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
53. The improvement in ethnic minority representation on the Society's Council is pleasing to see. The Society should consider how to ensure visibility of ethnic minority members of Council and committees to show how diverse the organisation is and to encourage other people from diverse backgrounds to apply. This could be done via the Society's publications, events, adverts, outreach activities, and also via content in the Society's <i>Journal</i> .	The Law Society of Scotland	All of the benefits listed above about role modelling and the importance of visibility and presence are as true of the Society's work.
54. The Regulatory Committee of the Society should consider how equality and diversity can be better embedded. Ideas considered by the group include: audits of firms focusing on recruitment, retention, promotion; equality training as outlined in the recommendation above; guidance to support the diversity practice rule etc.	The Law Society of Scotland	Depending on the course of action taken, this may increase compliance with the diversity rule and in turn lead to better outcomes for our members.
55. The Institute of Chartered Accountants of Scotland has extended its Protect helpline to include matters of equality, diversity and inclusion. The Law Society of Scotland should consider expanding the range of activities that can be reported to it via its reporting concerns hotline and should consider whether matters related to equality, diversity and inclusion should be included.	The Law Society of Scotland	At present, it may be difficult to report concerns related to equality and diversity other than via anonymous survey. Such a move would allow the Society to act quickly, either by policy response or action taken to support members.
56. The UK Supreme Court recently announced paid internships to promote diversity. Consideration should be given by the appropriate authorities to see if this could be replicated in the senior Scottish courts.	The Scottish Courts and Tribunals Service	The group was impressed with the UK Supreme Court's approach and think it would be beneficial to mirror such in Scotland.
57. A number of years ago, the Law Society of Scotland produced recommendations to improve the diversity of the judiciary . The recommendations of that paper should be revisited and considered in line with the Society's diversity data. The group recommends a wider discussion on what we mean by merit in modern Scotland.	Judicial Appointments Board for Scotland	A number of members noted that there were still low numbers of ethnic minority sheriffs and senators. It is hoped that this issue is addressed in the coming years.

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Chapter 8 recommendations	Who is the recommendation primarily aimed at?	What will the impact be? Can this be measured? If so, how?
58. Organisations across the justice sector should consider their own processes and procedures in light of the Society's diversity data.	Other justice sector agencies	The Society's data may well benefit other agencies and bodies. The group thinks that all bodies examining their processes and procedures would lead to better outcomes for BAME members.
59. The Law Society and the wider profession should continue to press for the introduction of ethnicity pay gap reporting to be introduced by the UK Government. The next two points are contingent upon this being introduced. - Pan-UK organisations should consider in any reports separating out their Scottish based-staff and partners. - If ethnicity pay gap reporting is introduced by the UK Government and is introduced for organisations over a certain size (eg 250 staff and partners), large organisations not at the required number of staff should give serious consideration to voluntary reporting.	The Law Society of Scotland	Ethnicity pay gap reporting – whilst it would only impact a relatively small number of Scottish legal employers – would be a positive step forward. The reports themselves would be the measurement.
60. That the Racial Inclusion Group is reconvened after a suitable time to review progress.	The Law Society of Scotland.	The reconvening would be the measurement.

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