



Report following survey of members entitled:

YOUNG LAWYERS' VIEWS ON COURT DRESS REQUIREMENTS IN SCOTLAND

Conducted between 05 -08 November 2019

INTRODUCTION

On 21 October 2019 the Lord President signed a practice note for the Court of Session. It stated:

"Judges sitting in the Outer House will, ordinarily, no longer wear wigs and judicial robes, except when presiding over a hearing which involves the testimony of witnesses. It is not expected that counsel or solicitors with rights of audience appearing in the Outer House will wear wigs or gowns.

If a judge determines that special circumstances exist which make it appropriate to wear a wig and judicial robe, that will be intimated to practitioners in advance of the hearing."

The Scottish Young Lawyers' Association conducted a survey of their membership of their views on this topic and received 372 responses.

The vast majority were qualified solicitors (56.06%). This was followed by trainee solicitors at almost 24% and students at just over 10%. Responses were also received from some advocates, devils, solicitor advocates and those looking for traineeships.

Of those in practice 47% worked in civil litigation and 14% in criminal law. 11% classed their area of law as being corporate or commercial work and almost 10% were in-house lawyers.

PRACTICE NOTE

Question 1. Do you agree with Practice Note No.1 of 2019 issued by the Court of Session that advocates/ solicitors with rights of audience are not expected to wear wigs and gowns in the Outer House?

68.28% of respondents disagreed with the practice note.

This is broken down to 52.63% of students, 75.28% of trainees, 68.27% of solicitors and 83.33% of advocates who were opposed to the removal of the dress code requirement as per the practice note.

In terms of practice areas 84.62% of criminal lawyers, 68.97% of civil litigation lawyers, 65.85% of commercial and corporate lawyers, 60% of employment lawyers, 57.14% of in house lawyers and 62.50% of private client and property lawyers were opposed.

ADVOCATES

Question 2. Do you think that the current court dress requirements (i.e. wig and gown) should be removed for Advocates in all courts?

22.7% of respondents thought current court dress requirements should be removed for advocates in all courts. At the highest end of the scale were in house lawyers with 38.24% and at the lowest end of the scale were criminal lawyers with only 11.54%.

In terms of job roles students were most likely to support the removal at 34.21% and (perhaps unsurprisingly) advocates least likely at 5.56%.

SHERIFFS

Question 4. Do you think that the current court dress requirements should be removed for sheriffs in all courts?

Interestingly this proposition had the lowest overall support with only 18.87% of respondents agreeing that court dress requirement should be removed for sheriffs. Advocates were least likely to support with only 11.11% and students were most likely with 31.58%.

30% of employment lawyers and 31.43% of in-house lawyers thought the requirements should be removed for sheriffs compared to a low of 7.69% for criminal lawyers.

SOLICITORS

Question 3. Do you think that the current court dress requirements (i.e. gown) should be removed for solicitors in all courts?

The responses to this question were generally similar to question 2 with only 22.97% of people in favour of abolishing court dress for solicitors.

The number of advocates in favour doubled, however, to 11.11% although solicitors had exactly the same response as previously with 23.79%.

When it comes to practice area criminal lawyers give an identical response to the above question and in-house lawyers increased their support for removal of court dress to 40%.

OPINIONS

Most people in favour of retaining current dress code requirements viewed the formality of the gowns (and wigs) as a good thing.

In particular many lawyers saw this as their uniform, their armor or their identifying feature. Others felt it created a more equal appearance for solicitors, regardless of the outfit they wore underneath or their age, gender or ethnic background. From a court user perspective many thought it was a helpful distinction for those looking for assistance from lawyers and for solicitors looking to find their counsel.

The next greatest reason was tradition with many simply seeing no need to remove this important and long-lasting tradition. Many felt that the tradition was of comfort to their client and it made their clients feel reassured. Of those who took the time to explain their view several felt that the court dress brought a sense of gravitas and importance to the occasion of court business.

Some respondents also felt it was a sign of achievement to those who had worked hard to obtain rights of audience.

Most of those in favour of abolishing court dress cited the fact that it was outdated. Many also felt that court dress is unnecessary. Some expressed the view that the way an individual dresses will not impact their advocacy skills or the outcome of a case.

Others who approved with the direction of the practice note felt the formality of court dress was a negative thing – either alienating the profession from the rest of society or creating an intimidating barrier to access to justice.

CONCLUSIONS

It doesn't look like the profession is ready to be de-robed just yet and this has created significant debate with strong views held on both sides. It is perhaps telling that students consistently voted in a higher percentage than any other groups in favour of removing court dress across the profession. As the future of our profession it is they who will have to face the challenges of being a modern lawyer and such challenges may well touch on the concerns expressed in the responses to our survey – access to justice, loss of traditions and the role of the court in dispute resolution. However, this survey has shown that the majority of junior lawyers do not think this is progress in the right direction.

SYLA Committee, 2019-20