

Pro Bono Practices and Opportunities in Scotland

INTRODUCTION1

In recent years, pro bono legal services have become an increasingly important focus for law firms within Scotland. The push towards the development of pro bono services in Scotland is the result of various factors, including an awareness that the Legal Aid system does not cater to charitable organizations and the increasing visibility of corporate social responsibility of both law firms and their corporate clients.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

Scotland operates under the constitution of the United Kingdom. However, devolution in the United Kingdom means that the Scottish government has the power to take decisions in respect of certain domestic policy areas. Equally, on issues impacting citizens of the United Kingdom (the "**UK**"), decisions are taken at the UK level. Scots Law shares many statutory provisions with the law of England and Wales, but Scots civil law remains substantially based on Scots common law rather than statute. European Union (the "**EU**") law and decisions of the European Court apply in the same way to Scotland as it does to England, Wales and Northern Ireland by virtue of Scotland's position as a constituent of the UK.

The Courts

Scotland's Supreme Courts consist of the High Court of Justiciary and the Court of Session. The High Court of Justiciary deals with criminal appeals and serious criminal cases. Although the Court is based in Edinburgh, trials are held throughout Scotland. At first instance, the High Court of Justiciary sits in cities and larger towns around Scotland and has a permanent base in each of Edinburgh, Glasgow and Aberdeen. There are periodic sittings in eight circuit courts and regular sittings at Edinburgh Sheriff Court. As an appeal court, it sits only in Edinburgh. The Court of Session is the supreme civil court that sits in Edinburgh. It sits in an appeal capacity and also as a civil court dealing with disputes between people or organizations. It is divided in two: the Outer House is the first instance court and the Inner House is the appellate court.

The lower courts consist of the Sheriff Courts, which operate in three capacities: (i) civil, (ii) commissary and (iii) criminal. Civil business involves disputes between persons or organizations. Commissary work deals mainly with the disposal of an estate. Criminal cases are brought under either "solemn procedure," where trials are held before a sheriff sitting before a jury, or, for less serious offences, under "summary

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See <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79417/Scotland_analysis_Devolution and the implications of Scottish Independan... 1 .pdf (last visited on September 4, 2015).

See http://www.gov.scot/resource/doc/925/0000078.pdf (last visited on September 4, 2015).

See http://thestudentlawyer.com/2013/06/17/the-scottish-legal-system-in-a-nutshell/ (last visited on September 4, 2015).

See https://www.scotcourts.gov.uk/the-courts/supreme-courts/about-the-supreme-courts (last visited on September 4, 2015).

See https://www.scotcourts.gov.uk/the-courts/gazetteer/high-court/about-the-high-court (last visited on September 4, 2015).

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procedure," where a sheriff sits without a jury. There are 49 Sheriff courts across six sheriffdoms in Scotland.

The Court of Session, the High Court of Justiciary and the Sheriff Courts are administered by the Scottish Courts and Tribunal Service. The Scottish Courts and Tribunals Service supports nine tribunals which exist to safeguard peoples' rights. Tribunals hear cases on a range of issues including compulsory care and treatment of people with mental health disorders, land and property disputes and disputes between tenants and landlords. Each tribunal is presided over by a judicial head known as the "president," an expert and a member from the pool of panel members. Those invited to a hearing may have legal representation and decisions of the tribunal can be appealed.⁷

Appointed vs. Elected Judges

There are no elected judges in Scotland; all individuals are appointed to judicial office. The Judicial Appointments Board for Scotland has been in existence since 2002 and is responsible for recommending to the Scotlish Ministers individuals for appointment to judicial offices. The Queen makes all permanent judicial appointments based on recommendations from the First Minister of the Scotlish Government who consults with the Lord President.

The Practice of Law

The legal profession in Scotland is divided into two branches: solicitors and advocates.

Education

The vast majority of people that qualify as a Scottish solicitor or advocate will have completed three distinct stages of education: (i) a four-year LLB (Legum Baccalaureus – Bachelor of Laws) degree in Scots law; (ii) a one-year Diploma in Professional Legal Practice; and (iii) a traineeship, which is a two-year period of paid, in-office training in a firm of solicitors. To become an advocate, the Faculty of Advocates (the "Faculty") requires additional exams and a period of pupillage known as "devilling", which is similar to an apprenticeship.⁹

Licensure

The Role of Solicitors

Solicitors are regulated and represented by the Law Society of Scotland (the "**Society**") and provide advice on all legal matters. Solicitors are instructed by members of the public and have rights of audience in the lower courts and tribunals. Solicitors carry out more general legal practice. Additionally, there are solicitor advocates who have extended rights of audience and can appear before the Court of Session and the High Court of Justiciary.¹⁰

The Role of Advocates

Advocates are equivalent to barristers in England & Wales. They are primarily instructed directly by solicitors, rather than by members of the public, although they may be instructed directly by members of the public in limited circumstances. Advocates, who are regulated by the Faculty, are able to provide advice on all legal matters and have rights of audience in the Court of Session and the High Court of Justiciary.¹¹

The Role of Foreign Lawyers

There is no bar to lawyers qualified in another jurisdiction working in Scotland provided they do not describe themselves as "solicitors" and do not undertake certain kinds of work reserved by statute for

See https://www.scotcourts.gov.uk/the-courts/the-tribunals/about-scottish-tribunals (last visited on September 4, 2015).

⁸ See http://www.judicialappointmentsscotland.org.uk/Home (last visited on September 4, 2015).

See http://thestudentlawyer.com/2013/06/17/the-scottish-legal-system-in-a-nutshell/ (last visited on September 4, 2015).

See http://thestudentlawyer.com/2013/06/17/the-scottish-legal-system-in-a-nutshell/ (last visited on September 4, 2015).

See http://www.advocates.org.uk/index.html (last visited on September 4, 2015).



Scottish-qualified solicitors (Section 32 of the Solicitors (Scotland) Act 1980). These reserved areas are broadly conveyancing of land and/or buildings, litigation (civil or criminal) and obtaining confirmation in favor of executors (the Scottish equivalent of probate).

It is a requirement of the Solicitors (Scotland) Act 1980 that foreign lawyers must be registered with the Society before they can enter into multi-national practices with Scottish solicitors or incorporated practices.¹² A person who wishes to become a registered foreign lawyer must apply in writing to the Society for registration, submit an application and pay any application fee(s).¹³

The Role of In-House Counsel

In-house lawyers are a large and growing part of the Scottish legal profession, with over a quarter of practicing solicitors working in-house.¹⁴

Demographics

In November 2014, there were more than 11,000 solicitors practicing in Scotland, an all-time high. Membership statistics released by the Society showed there was one solicitor for every 500 people in Scotland. Over 460 advocates are currently practicing in Scotland, approximately one-fifth of whom are Queen's Counsel. To

Legal Regulation of Lawyers

The Faculty regulates advocates. The Faculty has published the "Guide to the Professional Conduct of Advocates," which outlines professional conduct for advocates, particularly young advocates. The Society regulates solicitors. In recent years it has attempted to clarify the standards expected of Scottish solicitors. Part of that process has been to introduce practice rules. Standards of conduct can be found under Rule B1 of the 2011 Rules.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

State-Subsidized Legal Aid

The Legal Aid and Solicitors (Scotland) Act 1949, which came into force in 1950 for civil matters and in 1964 for criminal matters, was the original legislative foundation to Scottish Legal Aid and is the forerunner to the current act, the Legal Aid (Scotland) Act 1986. The Scottish government determines Legal Aid policy and the Scottish Parliament is responsible for drafting any legislation required to implement such policy. The Legal Aid system is managed by the Scottish Legal Aid Board (the "SLAB"), who is also responsible for administering the Scottish Legal Aid Fund.

Within the umbrella of free legal assistance, there are two kinds of services available. The first is "Advice and Assistance," which helps pay for advice from a solicitor on any matter of Scots law. Advice and

See https://www.lawscot.org.uk/rules-and-guidance/section-d-requirements-of-and-restrictions-on-practice/rule-d7-registration-of-foreign-lawyers/guidance/d7-d8-registration-of-foreign-lawyers-and-multi-national-practices/ (last visited on September 4, 2015).

See <a href="https://www.lawscot.org.uk/rules-and-guidance/section-d-requirements-of-and-restrictions-on-practice/rule-d7-registration-of-foreign-lawyers/guidance/d7-d8-registration-of-foreign-lawyers-and-multi-national-practices/(last visited on September 4, 2015).</p>

See http://www.thesundaytimes.co.uk/sto/news/uk news/article1534447.ece?CMP=OTH-gnws-standard-2015 03 21 (last visited on September 4, 2015).

See http://www.scotsman.com/news/scotland/top-stories/scotland-has-more-solicitors-than-ever-1-3604154 (last visited on September 4, 2015).

See http://www.scotsman.com/news/scotland/top-stories/scotland-has-more-solicitors-than-ever-1-3604154 (last visited on September 4, 2015).

See http://www.advocates.org.uk/profession/index.html (last visited on September 4, 2015).

See http://www.advocates.org.uk/downloads/guidetoconduct 5thedition.pdf (last visited on September 4, 2015).

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Assistance may cover some, or all, of the costs of procuring legal advice. The second is "Legal Aid," which helps pay for a solicitor to act in court and is divided into Civil Legal Aid and Criminal Legal Aid. It covers preparatory work, as well as the hearing itself, and can also provide funding for advocates and experts if needed.¹⁹

Eligibility Criteria

Advice and Assistance, Civil Legal Aid and Criminal Legal Aid are subject to several eligibility criteria. Those who qualify for Criminal Legal Aid will receive aid for free, although they may be required to pay for any Advice and Assistance received before Criminal Legal Aid is granted. For "solemn cases", including murder, rape, robbery, serious drugs cases, large thefts and serious assault, an applicant is automatically entitled to Criminal Legal Aid while in custody, until (i) a decision is made about whether to grant Criminal Legal Aid, or (ii) he or she is given bail. An applicant can choose to engage the duty solicitor or his or her own solicitor during this period when he or she is automatically entitled to Criminal Legal Aid. Once released, the applicant must apply for Criminal Legal Aid and the SLAB must consider whether the applicant paying such legal costs would cause too much hardship.²¹

Financial Means

In order to qualify for Advice and Assistance, the applicant must meet the financial means tests set out in the most recent Advice and Assistance Keycard, published by the SLAB.²² For Civil Legal Aid, the applicant is also subject to a financial means test based on the applicant's income and assets. Depending on an applicant's income, different arrangements are available, ranging from complete ineligibility for assistance to receiving assistance without having to make any contribution to legal fees.²³ Financial determination for Criminal Legal Aid is based on the financial means test applied in connection with determining eligibility for Civil Legal Aid. Criminal Legal Aid also uses an "undue hardship" test, which considers whether an applicant paying legal costs would cause "undue hardship" to his or her dependents.²⁴ The financial aid criteria for Criminal Legal Aid differ for summary and solemn cases.²⁵

Merits

To qualify for Civil Legal Aid, an applicant must have a legal basis for his or her case. For Criminal Legal Aid, the extent of the aid an applicant receives will depend on (i) the seriousness of the charges, (ii) whether the applicant is in custody and (iii) whether the applicant plans to plead guilty or not guilty. Criminal Legal Aid is only available after an applicant has pled not guilty, or in more serious cases, when he or she first appears in court.

See http://www.slab.org.uk/export/sites/default/common/documents/publications/Civil_legal_aid_information_for_applicants_July_2011_FINAL.pdf (last visited on September 4, 2015).

See http://www.slab.org.uk/public/criminal/info/ (last visited on September 4, 2015).

See http://www.slab.org.uk/public/criminal/info/ (last visited on September 4, 2015).

See http://www.slab.org.uk/export/sites/default/common/documents/profession/documents/AxA and Civil Keycard 2">http://www.slab.org.uk/export/sites/default/common/documents/AxA and Civil Keycard 2">http://www.slab.org.uk/export/sites/default/common/documents/profession/documents/AxA and Civil Keycard 2">http://www.slab.org.uk/export/sites/default/common/documents/AxA and Civil Keycard 2">http://www.slab.org.uk/export/sites/default/common/documents/AxA and Civil Keycard 2">http://www.slab.org.uk/export/sites/default/common/documents/AxA and Civil Keycard 2">http://www.slab.org.uk/export/sites/default/common/documents/AxA and Civil Keycard 2

See http://www.slab.org.uk/export/sites/default/common/documents/profession/documents/AxA and Civil Keycard 2 015.pdf (last visited on September 4, 2015).

See http://www.slab.org.uk/export/sites/default/common/documents/documents/Criminal Financial Tests 2015.pdf (last visited on September 4, 2015).

See http://www.slab.org.uk/export/sites/default/common/documents/documents/Criminal_Financial_Tests_2015.pdf (last visited on September 4, 2015).



An applicant must also show that it is "in the interests of justice" to grant Legal Aid; in short, that it would be unfair to the applicant, the court, or a third party if the applicant does not have a solicitor. ²⁶

Legal Issues/Case Type

In order to qualify for Advice and Assistance, the matter must concern Scots law. To qualify for Civil Legal Aid it must be considered reasonable to use public funds to support the applicant's case.

Applicant Type

Civil and Criminal Legal Aid are only extended to individuals.²⁷ To qualify for Civil Legal Aid, help must not be available to the applicant from any other source, such as a trade union, insurance company or professional body.

Mandatory assignments to Legal Aid Matters

Legal assistance (i.e. Advice and Assistance, Civil Legal Aid and Criminal Legal Aid) is available from private practice solicitors, law centers and solicitors employed by the Public Defence Solicitors' Office (the "PDSO") (for criminal cases) and the Civil Legal Assistance Office (for civil cases). The PDSO is a national team of publicly funded, specialist criminal defense lawyers who provide advice and representation in criminal cases. Anyone eligible for Criminal Legal Aid is entitled to use the PDSO's services. The Civil Legal Assistance Office employs solicitors to assist clients with civil legal problems where the client has had difficulty obtaining advice under Civil Legal Aid.

Assignments for private practice lawyers are undertaken on a voluntary basis. Private practice solicitors are paid on a case-by-case basis from public money, whereas employed solicitors are paid a salary as employees of the SLAB. The Legal Aid Fund meets the cost of cases and is uncapped, but funded cases must relate to matters of Scots Law.

Unmet Needs and Access Analysis

Because Legal Aid is not available to charities and certain other organizations, pro bono legal advice continues to be a significant resource to those institutions as well as those individuals who do not meet Legal Aid eliqibility requirements.

Since 2008 there have been cutbacks to the budget for Legal Aid. In 2013-2014, the total expenditure on Legal Aid (criminal and civil) was £150.5 million, exceeding the budgetary allocation of £138.1 million. For civil Advice and Assistance, a slight downward trend in demand has continued from previous years, with grants of Advice and Assistance falling 9% to 77,444 in 2013-2014. Demand for Civil Legal Aid decreased with the total number of applications for Civil Legal Aid falling by 2.7% from 2012-2013 to 20,170 in 2013-2014. Grants of Civil Legal Aid were broadly static at 13,409 in 2013-2014. While demand for Civil Legal Aid decreased slightly compared to 2012-2013, application numbers continue to remain high (only 2,000 below the peak of 2009-10). As the Scottish and UK economies improve there is an expectation that application numbers will decrease to the level experienced before the 2008 economic crash.

In 2013-14, applications for Criminal Legal Aid increased by 11% in respect of summary cases and by 8% in respect of solemn cases compared to the previous year. These increases arguably reflect proactive policing by police in Scotland together with a shift in prosecution policy. Total grants of Criminal Legal Aid relating to summary cases increased by 8% from 2012-13 to 86,191 while grants of Criminal Legal Aid relating to solemn cases increased by 7% to 12,013. 28

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See http://www.slab.org.uk/public/criminal/info/ (last visited on September 4, 2015).

See Phone conversation with SLAB on June 19, 2015 – phone number: 0131 226 7061.

See http://www.slab.org.uk/common/documents/Annual_Report_2013_2014/A_-_Annual_Report_2013-14.pdf (last visited on September 4, 2015).

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Alternative Dispute Resolution

Mediation and Arbitration

Mediation can be used in all types of cases. The SLAB will consider requests to cover the costs of mediation in civil cases; however, only the applicant's share of the mediation costs will be covered (half). Funding can only be made available for mediation through a solicitor. The costs of mediation will be treated as an outlay in the applicant's account with his or her solicitor.

PRO BONO ASSISTANCE

Pro Bono Opportunities

Private Attorneys

There is no administrative body that mandates pro bono work for private practice lawyers in Scotland. A proposal in the formative stages of the Legal Services (Scotland) Bill in 2010 to require solicitors to complete a minimum of 12 hours of pro bono work per year was not included in the final bill.²⁹

Law Firm Pro Bono Programs

As the profile of pro bono in Scotland has risen, there has been an increase in awareness of corporate social responsibility. As a result, many law firms in Scotland seek to fulfil their pro bono initiative through collaboration with law centers and interaction with the local community. Many large law firms also provide exclusive pro bono legal advice to one or more high profile charities, as charities are unable to access funds through Legal Aid and in many instances require assistance with matters that are in-line with the firms' general practices, such as tax advice.

Non-Governmental Organizations (NGOs)

In Scotland, as in England and Wales, there is a national network of advice agencies staffed primarily by volunteers who fulfill many different types of advisory roles, including the provision of legal advice. The most prominent network is the Citizens Advice Bureau ("CAB"). The CAB is a charity that provides free advice to the public, including on legal matters. It is made up of Citizens Advice Scotland ("CAS"), which is a national umbrella body that provides essential services to Scottish citizens advice bureaus.

The CAS offers representation in the courts and tribunals and assists clients with drafting letters, bringing small claims and negotiating with creditors. Services are located throughout Scotland and the CAS provides both referral services as well as legal advice themselves. The CAB is funded and supported mainly by government grants (through SLAB), local authority grants and also by private companies, charitable trusts and the legal professional bodies.

LawWorks Scotland is a charity that aims to coordinate, develop and encourage the provision of free legal assistance to individuals and community groups who cannot afford legal assistance and who are ineligible for Legal Aid. Although the Scottish charity is independent, it acts with the support of LawWorks England and Wales. ³¹ Law firms register as members of LawWorks with LawWorks matching the firm with legal advice agencies or University law clinics. ³² Once a match is achieved, the member firm agrees with the advice agency to provide, on a rotating basis, volunteer solicitors to enable the agency to operate a regular advice clinic. In this way, volunteers are matched with the advice agencies that would otherwise be unable to provide relevant advice for their clients.

See http://www.scotsman.com/news/gillian-carty-this-week-is-dedicated-to-pro-bono-services-1-2614076 (last visited on September 4, 2015).

³⁰ See http://www.cas.org.uk/ (last visited on September 4, 2015).

³¹ See http://lawworks.org.uk/clinics (last visited on September 4, 2015).

³² See http://lawworksscotland.org.uk/legal-clinics-project/ (last visited on September 4, 2015).



Shelter Scotland is a charity that works to alleviate the distress caused by homelessness and bad housing by giving advice, information and advocacy to people in need of housing. Shelter Scotland also provides advice regarding Legal Aid and applying for Legal Aid.³³

The Ethnic Minorities Law Centre is a charity that since 1991 has provided ethnic minorities with access to professional services to address their legal needs. The center provides legal advice on matters of asylum, human rights, immigration, discrimination, employment law and criminal injuries and compensation.³⁴

The Scottish Child Law Centre is the only law center in Scotland that works exclusively for children and young people. Through its advice line, website and email communications, the Scottish Child Law Centre provides free legal advice and information to children and young people, their families and caregivers and professionals working for and with children.³⁵

Bar Association Pro Bono Programs

Pro bono initiatives have historically been driven by the Faculty and the Society. The Faculty established the Free Legal Services Unit ("**FLSU**") to provide free legal advice and representation to those who cannot afford legal help and who cannot obtain assistance from any other source. Advice is provided by advocates who have volunteered to join the Free Legal Services Panel.³⁶ In 2012, the Free Representation Unit, which provided free legal advice by devils (trainee advocates), was merged into the FLSU.³⁷ Cases are referred to the FLSU through a number of agencies, including the CAB and the CAS, Shelter Scotland,³⁸ the Ethnic Minorities Law Centre,³⁹ the Scottish Child Law Centre⁴⁰ and several university law clinics.

The Scottish Legal Services Trust (the "**SLST**") was established by the Society to provide financial assistance to Society members to meet any costs and expenses incurred for the provision of pro bono legal services. Assistance from the SLST is restricted to Society members providing legal services to individuals who are in need or who are suffering financial hardship, or to charitable institutions of limited means which support community organizations or activities.

University Legal Clinics and Law Students

Several law schools and universities have established pro bono centers and clinics where students have the opportunity to participate directly in pro bono work. The Aberdeen Law Project is a law clinic and community outreach initiative that operates in partnership with the School of Law at the University of Aberdeen. Established in 2009, The Aberdeen Law Project (the "ALP") was the first law clinic in Scotland to be founded, operated and led by students. In addition to clinical work, the ALP provides an extensive range of outreach programs in Scotland, including employability workshops, legal training and support, designed to empower members of the community by providing them with the skills and knowledge necessary to identify, avoid and/or address legal issues before a dispute occurs.

Two other notable student organisations are the Strathclyde University Law Clinic⁴¹ and the University of Edinburgh Free Legal Advice Centre (the "**FLAC**").⁴² Both of these bodies are staffed by students and

³³ See http://scotland.shelter.org.uk/about us/who we are (last visited on September 4, 2015).

³⁴ See http://emlce.org.uk/?page_id=15 (last visited on September 4, 2015).

³⁵ See http://www.sclc.org.uk/ (last visited on September 4, 2015).

See http://www.advocates.org.uk/FLSUwebsite/index flsu.html (last visited on September 4, 2015).

³⁷ See http://www.journalonline.co.uk/News/1011197.aspx#.VaZqmE10w5g (last visited on September 4, 2015).

³⁸ See http://scotland.shelter.org.uk/ (last visited on September 4, 2015).

³⁹ See http://www.emlce.org.uk/ (last visited on September 4, 2015).

See http://www.sclc.org.uk/ (last visited on September 4, 2015).

See http://www.lawclinic.org.uk/ (last visited on September 4, 2015).

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faculty and supported by law firms. The Strathclyde Law Clinic is one of the largest in Scotland with 195 student advisers, and has completed over 1,200 cases since its inception in 2003.⁴³ The clinic is intended to complement existing legal services such as the CAB and does not provide services to anyone who can afford professional legal services or who qualifies for Legal Aid, or in areas such as immigration and debt, where there are already adequate services in existence.

The FLAC was established in 2007 and delivers pro bono legal services to members of the public living in and around Edinburgh. The FLAC is run by University of Edinburgh law students, all of whom are either graduate lawyers completing their Diploma in Professional Legal Practice or Postgraduate Masters. While the students are supervised by qualified solicitors, it is the students that are responsible for dealing with clients and their cases.

Others

The Government Legal Service for Scotland (the "GLSS") is a professional community of government lawyers in Scotland. The GLSS Pro Bono Network is designed to encourage government lawyers, including those in the Scottish Government Legal Directorate, the Office of the Solicitor to the Advocate General and the Scottish Parliament to volunteer their legal services for the benefit of the wider community. Through the GLSS Pro Bono Network, government lawyers can become involved in a number of pro bono activities, including providing advice at their local citizens advice bureau, raising funds, lobbying at local and national levels, negotiating agreements and even establishing citizens advice bureaus.

Historic Development and Current State of Pro Bono

Historic Development of Pro Bono

Scotland has had a tradition of civil pro bono since the establishment of the Poor's Roll in 1424 and of criminal pro bono since an Act of the Scots Parliament of 1587. Prior to 1950, these matters were entirely staffed by solicitors and advocates on a voluntary basis.⁴⁷

Current State of Pro Bono including Barriers and Other Considerations

Laws and Regulations Impacting Pro Bono

"Loser Pays" Statute

The usual position in Scots law is that the loser pays the winner's legal fees as assessed by an expert and approved by a judge. However, litigants may seek to restrict their potential exposure by applying to the court for a protective expenses order (a "**PEO**"), which is a recent development in Scottish courts. The effect of a PEO is to limit a litigant's liability for expenses to a particular sum. This ensures that the litigant's liability to pay the expenses of an opponent or any third party will be capped, whatever the outcome of the case.

See http://www.law.ed.ac.uk/probono/ (last visited on September 4, 2015).

See http://www.lawclinic.org.uk/ (last visited on September 4, 2015).

⁴⁴ See http://www.gov.scot/About/People/Directorates/LPS/glss/GLSSpb (last visited on September 4, 2015).

See http://www.gov.scot/About/Directorates/LPS/glss/ACprobono (last visited on September 4, 2015).

⁴⁶ See http://www.gov.scot/About/People/Directorates/LPS/glss/CAB (last visited on September 4, 2015).

See http://www.slab.org.uk/about-us/who-we-are/history/ (last visited on September 4, 2015).

⁴⁸ See http://www.terrafirmachambers.com/articles/DevelopmentinScotlandofProtectiveExpensesOrders.pdf (last visited on September 4, 2015).

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Practice Restrictions on Foreign-Qualified Lawyers

There is no bar to lawyers qualified in another jurisdiction working in Scotland provided they do not describe themselves as "solicitors" and do not undertake certain types of work reserved by statute for Scottish-qualified solicitors. 49

Regulations Imposing Practice Limitations on In-House Counsel

Lawyers working in-house may provide pro bono advice to clients, however, there are some barriers to the provision of this advice. Some types of work, such as conveyancing, court work (except tribunals) and probate work, are reserved so that in-house lawyers can only act for their employers on such matters. If an in-house lawyer wishes to perform these services on a pro bono basis, he or she is required to establish his or her own part-time private practice, which would require them to obtain compulsory insurance coverage under the Society's Master Policy. In-house lawyers not covered under the Master Policy are able to provide other services outside of their in-house work provided that they do not do so as "solicitors."

Availability of Professional Indemnity Legal Insurance Covering Pro Bono Activities by Attorneys

Since 1978, all lawyers in Scotland have been required to have professional indemnity insurance as a condition of practice. Pursuant to Section 44(1) of the Solicitors (Scotland) Act 1980 and to the Solicitors (Scotland) Professional Indemnity Insurance Rules 1995, the Society is required to maintain professional indemnity insurance arrangements.⁵⁰ The Master Policy is the compulsory professional indemnity insurance arrangement which covers all Scottish solicitors working in private practice. This insurance means that where a valid claim for negligence against a practice is established, that claim will be paid even if the solicitor is no longer in practice, no longer solvent or cannot be traced.⁵¹ The Society arranges the Master Policy and claims are handled by the Master Policy insurers. The insurance provides coverage of up to £2 million for any one claim.⁵²

As well as holding professional indemnity insurance coverage in its work for his or her direct employer, a lawyer must have coverage if he or she acts for a client other than his or her employer, including a pro bono client. For further information refer to the Society's website. 53

Availability of Legal Insurance for Clients

The legal expenses insurance market, including Before the Event ("BTE") insurance and After the Event insurance, has grown substantially in the UK in recent years. On average, the legal expenses insurance sector has grown faster than the insurance market as a whole. While BTE insurance is relatively inexpensive, typically costing consumers around £20-30 per year, coverage is often limited to £50,000 (and sometimes less).

The SLAB recently reviewed legal expenses insurance products within the UK. It found that BTE insurance was offered as an optional extra in all of the home insurance products that it examined. Typically, coverage was provided for the pursuit of personal injury claims, breach of employment contracts, non-commercial disputes about faulty goods and services and actions arising from interference with the right to use, or damage to, the home. None covered family actions or judicial review. The Scottish Civil Courts Review considered that BTE insurance could contribute to improving

See http://www.lawscot.org.uk/rules-and-guidance/section-d-requirements-of-and-restrictions-on-practice/rule-d8-multi-national-practices/guidance/d7-d8-registration-of-foreign-lawyers-and-multi-national-practices/ (last visited on September 4, 2015).

⁵⁰ See http://www.scottishlegalcomplaints.org.uk/media/7495/final%20report%20to%20slcc.pdf (last visited on September 4, 2015).

⁵¹ See https://www.lawscot.org.uk/media/364020/Master-Policy-rule-change-background-paper-.pdf (last visited on September 4, 2015).

See http://www.lawscot.org.uk/for-the-public/what-the-society-can-do-for-you/consumer-and-professional-protections/professional-indemnity/ (last visited on September 4, 2015).

See http://www.lawscot.org.uk/for-the-public/what-the-society-can-do-for-you/consumer-and-professional-protections/professional-indemnity/ (last visited on September 4, 2015).



access to justice, particularly for those not eligible for Legal Aid, and recommended that the Scottish Government explore with insurance providers the scope for improving public awareness and increasing voluntary uptake. It did not advocate that BTE insurance should be made compulsory.⁵⁴

Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

Judicial inefficiency is considered a significant problem by some in Scotland. In 2012, a Scottish Government Social Research Group evaluated the impact of criminal summary justice reform. It found that "Among information, support and advice professionals, there was consensus that victims, and particularly witnesses, are still subject to inconvenience during their case due, primarily, to waiting times for trial to come to court, adjournments (colloquially known as 'churn') and waiting times in court. There was also consensus that the system was neither quick nor simple for victims or witnesses." Some argue that the same can be said of the civil justice system. Lord Gill stated in his Scottish Civil Courts Review that "Inefficiency in procedure comes at three main costs: the public cost in unnecessary and avoidable judicial and administrative procedures; the cost to the client or to the SLAB in payment for avoidable court appearances and for unnecessarily complex procedural steps; and the unquantifiable costs in stress and frustration to the litigant. All of these diminish public respect for the law and cause a loss of confidence in society's ability to resolve disputes justly." These perceived inefficiencies could be argued to be a barrier to people participating in the judicial system or seeking pro bono legal assistance.

Pro Bono Resources

The following is a list of agencies that provide pro bono resources and their websites:

- Citizens Advice Scotland http://www.cas.org.uk/ (last visited on September 4, 2015)
- LawWorks Scotland http://lawworks.org.uk/clinics (last visited on September 4, 2015)
- Shelter Scotland http://scotland.shelter.org.uk/ (last visited on September 4, 2015)
- Scottish Child Law Centre www.sclc.org.uk/ (last visited on September 4, 2015)
- Free Legal Services Unit http://www.advocates.org.uk/FLSUwebsite/index_flsu.html (last visited on September 4, 2015)
- Ethnic Minorities Law Centre http://emlce.org.uk/ (last visited on September 4, 2015)
- Scottish Legal Services Trust http://www.lawscot.org.uk/for-the-public/what-the-society-can-dofor-you/legal-fees/scottish-legal-services-trust/ (last visited on September 4, 2015)
- Aberdeen Law Project http://abdnlawproject.com/ (last visited on September 4, 2015)
- University of Edinburgh Free Legal Advice Centre http://www.freelegaladvice.ed.ac.uk/ (last visited on September 4, 2015)
- Strathclyde Law Clinic https://www.lawclinic.org.uk/ (last visited on September 4, 2015)
- Government Legal Service for Scotland Pro Bono Network -<u>http://www.gov.scot/About/People/Directorates/LPS/glss/GLSSpb</u> (last visited on September 4, 2015)

CONCLUSION

The demand for pro bono legal advice in Scotland appears to have increased in recent years. This is in part due to the economic recovery following the financial crisis, which has led to an increase in the number individuals who do not meet the eligibility criteria for Legal Aid but are still unable to afford legal services. Fortunately, the growth of CSR and the increasing importance placed on pro bono services by corporate clients seems to be increasing the interest of law firms in the area, with some firms including pro bono hours as part of billable targets.

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See http://www.gov.scot/Publications/2013/10/8023/17 (last visited on September 4, 2015).

See http://www.lawscot.org.uk/media/409526/legal-assistance-in-scotland-discussion-paper.pdf (last visited on September 4, 2015).

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