

SCOTTISH UNIVERSITIES LAND UNIT (SULU)

Introduction

The Scottish University Land Unit (SULU) has been set up to encourage law students across Scotland to take an active interest in land reform, community empowerment, and community rights in respect of land; and, working in partnership with the Development Trusts Association Scotland (DTAS) and the Community Ownership Support Service (COSS), to provide practical support to community bodies looking to exercise these rights.

Fundamentally, this is intended to be a two-way relationship which, on the one hand, gives DTAS/COSS access to the unparalleled wealth of legal knowledge and research skills that law students have while, on the other hand, giving students an opportunity to learn from DTAS/COSS experience in this area, and gain an invaluable insight into how the land reform/community empowerment agenda works in practice.

Ultimately, it is in everyone's interest for tomorrow's lawyers to take on board the principles of land reform/community empowerment, and to be well versed in both the letter and spirit of the legislation. It is hoped that partnership working between DTAS/COSS and SULU will positively contribute to this.

What is expected from a DTAS/COSS perspective:

- Law students wouldn't have any contact with DTAS members/COSS clients directly, but would provide support to DTAS/COSS advisors, which DTAS/COSS advisors in turn can use to inform the advice they give out (see lines of communication below).
- The scope of work to be carried out by SULU students is only to cover matters where DTAS/COSS advisers are looking for an explanation of what the law says, and not advice on a particular course of action to take (so, for example, SULU students could be asked to set out the law on the enforceability or otherwise of title conditions, but not to provide advice on whether any particular title condition might still be enforceable and/or should be ignored or challenged);
- It will be for DTAS/COSS advisors to decide if/when to ask SULU for input on any given matter but, where possible, would be expected to discuss this with the COSS legal advisor first, and for them to decide together who would be best placed to speak to SULU and take things forward from there.
- In the same vein, the partnership with SULU will be advertised to DTAS members/COSS clients, and they would be invited to get in touch with us via our legal advisor if they have any particular questions that they think SULU might be able to help with. We would then make a call as to whether to refer any such questions on to SULU or not.
- In terms of the work being done by students, this is expected to be supported by an appropriate member of staff or legal professional through the University, who would be able to provide the students with feedback on their work to ensure that this is a valuable learning experience for them, but also to ensure that DTAS/COSS advisors can confidently rely on the work that is passed to them.

What is expected of students

- SULU students will be acting pro bono – for the public good – on a voluntary basis. Students will not directly represent clients and, like the student law clinic model that exists across the UK, suitable disclaimers explaining that SULU students are not qualified lawyers and limitations/exclusions of liability will be provided to anyone liaising with SULU students. Such documentation should not be taken as an invitation for students not to strive to provide a useful service to communities in partnership with DTAS and professional solicitors working with DTAS as appropriate, but they will clearly demarcate the role of students and make clear that students will not be held liable for any advice given, because SULU students will never give advice as to what course of action a community should take. There is no stipulated minimum or maximum hourly commitment to SULU, but it is not expected that this will average at more than 4 hours a month.
- Student membership of SULU is open to anyone enrolled at a Scottish University in a suitable degree or diploma programme and at a suitable stage of study. The three qualifying categories are: undergraduate LLB students in second year or above; accelerated LLB students (in either year); and DPLP students.
- In all cases, students are expected to exercise their judgement as to whether they have a suitable level of study behind them and capacity to take on any particular piece of work through SULU, and to treat any case related information that is shared with them through SULU as confidential unless told otherwise.

Other partners

- From the outset, it is envisaged that SULU will be open to queries from both DTAS/COSS and FCFCG's Community Land Advice Service but, to keep lines of communication clear, everything is to be rooted through COSS/the COSS legal advisor (at least initially).
- Looking further ahead, and subject to a successful pilot, it's also envisaged that SULU's role could be opened up further to also provide support to other relevant organisations, for example HIE, Community Land Scotland, etc.
- In addition, if looking at Community Right to Buy, there may be potential for the Scottish Government's CRTB team (Dave Thompson and others) to get involved, and to support the project by providing some early capacity building training to students, or something along those lines. This is of course subject to the team's caseload/availability etc.

Support from legal professionals:

- SULU students should be supported by staff/practicing solicitors where this is possible. Where it has not been possible student peer review will take place and all information presented will be framed with an additional disclaimer to explain the lack of supervision and highlight areas where the students would have asked for support if it had been available.

Lines of Communication

It is envisaged that the partnership between DTAS/COSS and SULU would work as follows:

Query from DTAS members/COSS clients

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DTAS/COSS area advisors COSS legal advisor

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Details of case to SULU email list (or potentially area list)
Together with spreadsheet of cases/SULU members

This to include - Background to case
- What the specific query is
- What form of answer sought
- When need to know who doing work by
- When need answer to query by

↓
Cab rank system

First student to respond gets the work

Students expected to respond if they are able, (subject to past workload on this and other pro bono projects).

2 or more students may respond jointly if wish

Google sheet for respondents to ensure no duplication

If no one takes on work within set period, call falls, and work reverts to COSS advisor.

↙
Student carries out work as required → any questions about the scope to COSS legal advisor
→ any questions about law to supervisor

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1 per participating University?
(or more if high volume of work)
Uni staff or practicing solicitor

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Completed work to be reviewed by supervisor
And feedback given to student as appropriate

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Completed work to be sent to COSS legal advisor → DTAS/COSS advisors

↓
Advice to members/clients

Timescales:

Pilot to be run in Aberdeen, starting in January 2018, up to students' summer break.

Activities that could be undertaken

Students will act on a voluntary basis to assist communities who are facing certain legal issues to do with land. The exact nature of any information provided will depend on the stage of a community acquisition, but it could involve:

EARLY STAGES

- Information about suitable forms for an incorporated community body. Such a body would need to be locally accountable and, if appropriate, able to benefit from the Scottish laws that allow communities certain rights to a) acquire private land or b) acquire, use or lease public land (i.e. land owned by certain public bodies).
- Outline information could be given about the land acquisition process in general and specifically in relation to the statutory rights of acquisition that communities benefit from, e.g. outlining timelines and the process itself (which could perhaps involve registration of an interest in land and a local ballot). Explaining how a community might approach grant or other funding applications and the legal implications of raising money might also be explored.
- While these are generally matters that COSS advisors themselves are pretty well versed in, there is scope for SULU students to work with COSS advisors on these questions as they build capacity, and a good opportunity for students to learn from advisors and gain new skills.
- SULU students would NOT be asked to recommend a specific form of legal body, or to make commercial decisions of any nature (relating to grant funding or otherwise).

INTERMEDIATE STAGES

- Outline information about certain land issues that arise as a specific community mobilises towards the acquisition of land, perhaps providing an overview about the law on a site-specific issue (such as access routes to a site, or the rights and duties of neighbouring landowners), or outlining the legal differences between the options of owning, leasing or licensing land.
- Where SULU students are studying land law, conveyancing, or other relevant subjects, this could also include looking at particular burdens/rights of pre-emption in titles and setting out the circumstances under which these might be enforceable or not, and what the position with this is vis a vis the asset transfer provisions of the community empowerment Act.
- Finally, there may be questions about a community's options when the owner of a particular piece of land cannot be identified and, going forwards, in situations where groups are looking to understand who owns abandoned or neglected land.
- Working in partnership with DTAS/COSS on matters such as those outlined above, students may also be asked to carry out simple searches and/or obtain quick copies of title documentation using Registers Direct (the search tool of Registers of Scotland) and summarise any findings that flow from that.

- SULU services would NOT extend to undertaking speculative research on Registers Direct, ascertaining exactly who owns what, reporting on a title to land, or determining the existence or scope of a servitude right of access, for which professional advice would be more appropriate.
- Similarly, SULU students would NOT be asked to say whether or not any particular burden is/was still enforceable, but would just set out the circumstances in which it may or may not be, and/or provide any relevant case law on this.

LATER STAGES

- Explaining the land registration process to a community in general and highlighting specific community acquisition implications.
- Once groups have taken on assets, this could also cover more general property questions, for example with regards to law of nuisance, or boundaries, or encroachment, etc (again on the basis of setting out what the law is, rather than providing advice per se).
- SULU services would NOT extend to providing a conveyancing service to a community, which could only be provided by a registered professional, and it would certainly not involve registering documents at the Land Register of Scotland. (It should be noted that there are transaction fees payable to Registers of Scotland when dealing with land and there may also be tax implications to a land transaction: no specific advice would be given in relation to that and any costs would fall on the community body.)