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SCOTTISH UNIVERSITIES LAND UNIT (SULU)

www.dtascommunityownership.org.uk

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, gives students an opportunity to learn from DTAS/COSS experience in this area, and to 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 the spirit of the legislation. It is hoped that the partnership between DTAS/COSS and SULU contributes to this in a positive way.

What is expected from a DTAS/COSS perspective:

- Law students won't have any contact with DTAS members/COSS clients directly but will 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 or when to ask SULU for input on any given matter and their queries will be put to SULU by the COSS legal advisor.
- The partnership with SULU is advertised to DTAS members/COSS clients, and they are invited to get in touch with us via the COSS legal advisor if they have any particular questions where they think SULU might be able to help. We then decide 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 will be able to provide the students with feedback on their work to ensure that this is a valuable learning experience for the students, and also to ensure that the 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 disclaimers 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 the 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:

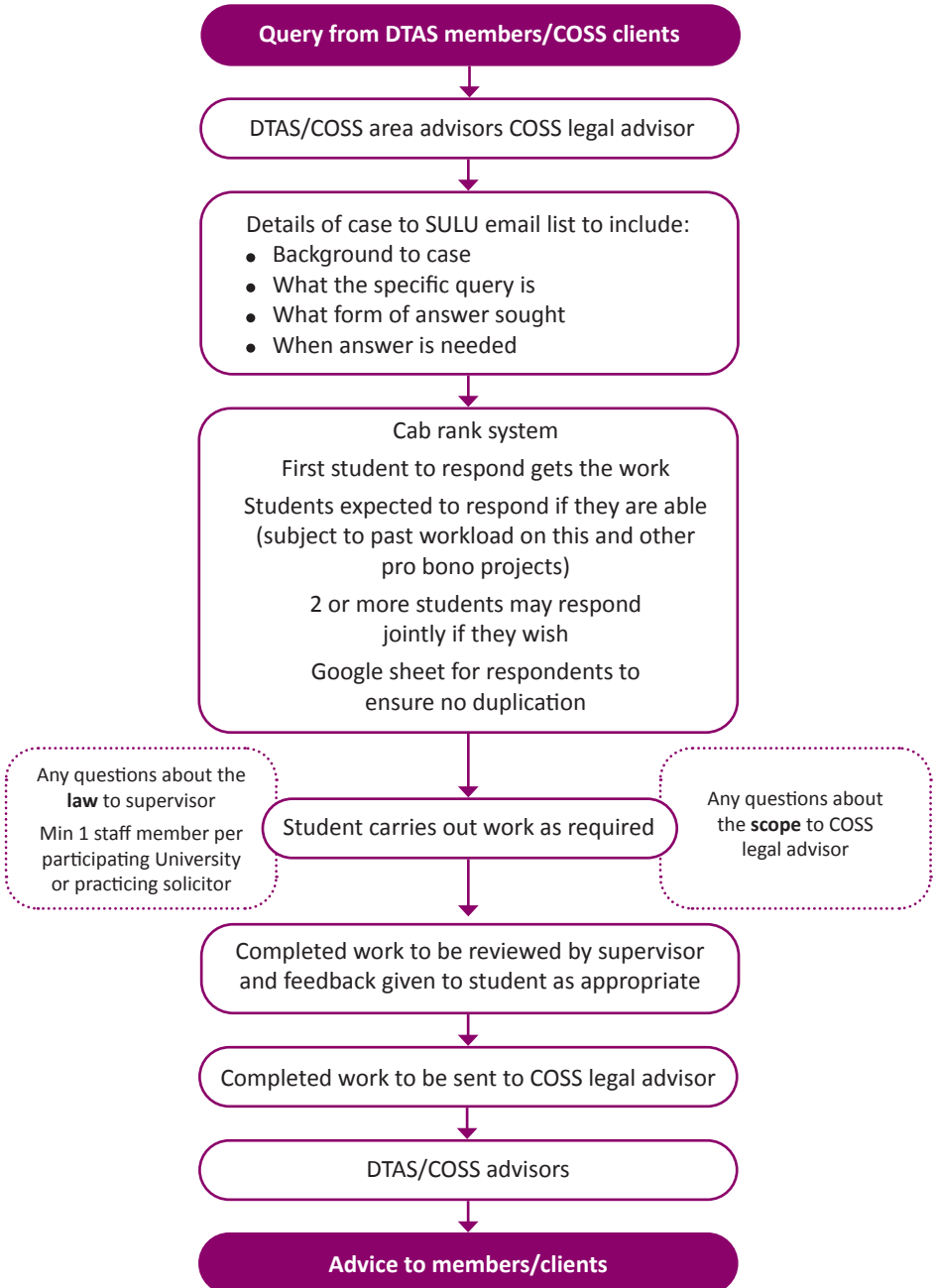
- SULU is open to queries from DTAS/ COSS, from Social Farms and Gardens, from Highlands and Islands Enterprise, from Community Land Scotland, and other relevant organisations.
- To keep lines of communication clear, everything is routed through the COSS legal advisor.
- In addition, when looking at Community Right to Buy, the Scottish Government's CRtB team will support the project by providing some early capacity building training to students. This is of course subject to the CRtB team's caseload and availability.

Support from legal professionals:

- SULU students must be supported by university staff or 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 to highlight areas where the students would have asked for support if it had been available.

Lines of Communication

The partnership between DTAS/COSS and SULU will work as follows:



Activities that can be undertaken

Students will act on a voluntary basis to assist communities who are facing legal issues to do with land. The exact nature of any information provided will depend on the stage of a community acquisition but can 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 Scots law that allows 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 can 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 can approach grant applications or other funding applications and the legal implications of raising money can also be explored.
- While these are generally matters in which COSS advisors themselves are pretty well versed, 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 will 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 progresses towards the acquisition of land, possibly providing an overview about the law on a site-specific issue (such as access 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 can also include looking at particular burdens/rights of pre-emption in titles and setting out the circumstances under which these can be enforceable or not, and what the position with this is in relation to the asset transfer provisions of the Community Empowerment Act.
- There will be questions about a community's options when the owner of a particular piece of land cannot be identified and where groups are looking to find out who owns abandoned or neglected land.
- SULU services do NOT extend to undertaking speculative research on ScotLIS, 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 is needed.
- SULU students will NOT be asked to say whether or not any particular burden is/was still enforceable but will 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 can also cover more general property questions such as relating to the law of nuisance, or boundaries, or encroachment (on the basis of setting out what the law is, rather than providing advice).
- SULU services do NOT extend to providing a conveyancing service to a community, which can only be provided by a registered professional, and it will not involve registering documents at the Land Register of Scotland. (It should be noted that there are registration fees payable to Registers of Scotland when dealing with land and there are also tax implications to a land transaction: no specific advice will be given in relation to that and all costs fall on the community body.)