

# **THE FACULTY OF ADVOCATES**



**A CAREER AT THE SCOTTISH BAR**

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## A CAREER AT THE SCOTTISH BAR

The legal profession in Scotland is divided into two branches – advocates and solicitors. Advocates are specialists in the art of advocacy, which is the expert presentation of a case in court and also involves advising clients on every aspect of litigation. The work of an advocate is, however, not confined to court cases. Advocates are often asked to provide opinions on a wide range of legal problems which do not involve a court dispute. Solicitors on the other hand usually carry on a more general type of legal practice than advocates. They normally practice in partnership with other solicitors. Advocates are sole practitioners who all work independently of each other.

When a person needs to consult a lawyer his first contact is with the solicitor. If the client needs the expert legal advice or advocacy which this requires, his solicitor will then consult the advocate. An advocate receives his work from solicitors who instruct him and who are responsible for payment of his fees.

The existence and standing of the bar depends upon its ability to provide the specialised and expert service required by the layman. There are over 460 advocates presently in practice at the Bar. There are about 720 advocates altogether, but many of those who are members of the Faculty of Advocates do not practice at the Bar. Many people find that to qualify as, and have the distinction of being, an advocate is an advantage to them in other careers at home and abroad.

It is not possible to be an advocate and a solicitor at the same time (there are about 8000 solicitors in practice in Scotland). An advocate may transfer to the solicitor branch of the profession and vice versa.

## THE WORK OF AN ADVOCATE

Advocacy is the most important aspect of an advocate's work. The good advocate will spend a considerable amount of time preparing cases for presentation in Court. In civil cases the advocate will have to prepare written pleadings, which are the foundation of a client's case: a task which requires a special skill.

The advocate has a right of audience before the House of Lords and the Supreme Courts of Scotland – the Court of Session (civil cases) and the High Court of Justiciary (criminal cases). Certain solicitors with extended rights of audience may also appear in these Courts. Advocates have, jointly with all solicitors, a right of audience before the lower courts – the Sheriff Courts (civil and criminal cases) and the District Courts (minor criminal cases). Advocates may also appear before a host of tribunals and disciplinary bodies, such as Industrial Tribunals, Planning Inquiries and Arbitrations.

The nature of an advocate's business will involve him or her in long hours of work, including evenings and weekends. Frequently the advocate will be required to prepare for a case or write an opinion at short notice.

In the early years of practice it is unusual for an advocate to specialise in only one or two areas of the law. The Scottish Bar is proud of the tradition that its members are able to advise on an extensive range of subjects and to present cases in Court which raise diverse legal problems. Over the years many advocates build up expertise in one or more particular fields, but because of their early experience as Junior Counsel dealing with all types of cases they remain able to act in any case which they are asked to handle.

There are openings for an advocate in other fields. An advocate may join the public sector; he or she may join the procurator-fiscal service or the legal section of a Government department, such as the office of the Solicitor to the Secretary of State for Scotland, or may work as a parliamentary draftsman in, for example, the Lord Advocate's Department. In the procurator-fiscal service he or she will be engaged in the preparation of all criminal cases, and the prosecution of criminal cases in the Sheriff and District Courts (as part of the public prosecution system which exists in Scotland). There are also opportunities within industry, commerce and in higher education. There are strong links in Scotland between the Bar and the Universities.

### QUALITIES OF AN ADVOCATE

An advocate must have complete integrity of character. He or she must carry the seven lamps of advocacy – honesty, courage, industry, wit, eloquence, judgment and fellowship.

The advocate should inspire confidence, be able to think quickly on his feet, and be able to express himself clearly and simply, orally and in writing. He or she must have a capacity for hard work and be able to turn his or her attention quickly from one area of the law to another.

The life and work of an advocate are varied, stimulating and demanding. Although the responsibilities can seem heavy, the practice of law at the Scottish Bar is rarely dull.

### PROSPECTS FOR AN ADVOCATE

The Bar does not offer security, a regular salary or automatic advancement. Reward depends upon the ability of the individual and that individual's own efforts in gaining a reputation and a good practice through the work which he or she is given.

As a self-employed person, the advocate must provide out of his or her own income for matters such as a retirement pension and insurance against permanent ill health, and must also pay for the running expenses of a practice.

A service company, known as Faculty Services Limited, exists to provide advocates with nearly all essential administrative and back-up services, including the provision of secretarial facilities, the employment of Clerks (who receive instructions, distribute work and deal with solicitors on behalf of advocates) and a computerised system for rendering and collection of fees. For these services, an advocate pays to Faculty Services Limited a small percentage, currently thirteen percent per annum, of all fees received. Nothing has to be paid to Faculty Services Limited until fees are received. This arrangement helps junior advocates to get started in practice. An advocate will also have to pay annual rates to the Faculty to cover the upkeep of the Advocates Library and the Faculty's other buildings and to help meet certain other essential overhead expenses. These rates are composed partly of a small lump sum, which is graduated according to seniority, and partly of a small percentage deduction, currently four and a half per cent per annum, from fees received through Faculty Services Limited, the amount of which is therefore graduated according to income. In comparison with other self-employed professions, total overhead costs are very small.

As financial reward depends so much upon the skill of the individual, it is impossible to give a satisfactory indication of the likely income of an advocate. In the first couple of years in practice, earnings may be quite low, but these can rise rapidly through merit, if a young advocate does his work well and is seen by solicitors to provide an efficient and professional service. Income at the Bar reflects the amount of time and effort which an individual applies to his or her work. The rewards come directly to the person who does the work and do not have to be distinguished amongst others.

There are certainly risks, and an advocate has less financial security than most solicitors in private practice. However, the independent nature of the job provides a stimulating alternative to office life. The personal satisfaction of working on one's own is an attractive feature of life at the Bar. For the successful advocate there are opportunities to become Queen's Counsel ("taking silk") after about 12 years of practice, and to take up judicial office.

An advocate who has been legally qualified for 10 years is eligible to become a sheriff. There are about 25 Supreme Court appointments made from the ranks of advocates and solicitors. There are also a number of appointments to tribunals.

## THE ORGANISATION OF THE FACULTY OF ADVOCATES

In order to practice at the Scottish Bar a person must be a member of the Faculty of Advocates.

The Faculty of Advocates is part of the College of Justice which was founded in 1532. The exact date of the organisation of advocates into a distinct professional body is unknown, though “advocates” appeared before the courts prior to 1532. In origin the Faculty is an independent corporation consisting of those admitted to practice before the Court of Session.

The Faculty maintains premises in Parliament House in the High Street, Edinburgh, where the Supreme Courts of Scotland are also to be found. These premises contain the world famous Advocates Library which was founded in 1682 and is the only copyright law library in Scotland.

Most advocates now have their chambers address at the Advocates’ Library in Parliament House. An advocate must also have a “box” in Parliament House to which papers may be delivered by solicitors.

The Faculty provides for its members nearly all the facilities which are necessary for practice. The library is open 24 hours a day, 365 days a year.

An advocate in practice must be self-employed. He or she cannot enter into partnership or association with another advocate or any other person. A junior (advocate) may however, be instructed with a senior (Queen’s Counsel) in a particular case.

The Faculty is a democratic body, decisions regarding the profession being taken at meetings of the Faculty Council (an elected body) or in general meetings of the Faculty. The Bar is administered by elected officers of whom there are six – the Dean, Vice-Dean, Treasurer, Clerk, Keeper of the Library and Chairman. The Dean is elected leader of the Bar. He has the primary responsibility for discipline of members of the Bar in professional matters.

As practice at the Bar involves the provision of a service to the public, a strict code of professional conduct has to be complied with by all practising members. A breach of professional conduct will result in disciplinary action.

An advocate may not tout for business. The advocate must accept instructions if free to undertake them unless a conflict of interest is involved. He may not refuse to work, for example, because he does not believe in the cause he is asked to present.

## HOW TO BECOME AN ADVOCATE

The process of becoming an advocate is currently under review, but at present consists of four stages. A person must (1) be admitted as an Intransit to the Faculty of Advocates (the process of “matriculation”); (2) satisfy the educational requirements of the Faculty; (3) satisfy the professional training requirements of the Faculty; and (4) be admitted as an advocate.

### (1) Matriculation as an Intransit

An Intransit will have a Degree with Honours, Second Class (Division 2) or above, in Scottish Law from a Scottish University\*; or a Degree in Scottish Law from a Scottish University\* together with a Degree with Honours, Second Class (Division 2) or above, in another subject from a University in the United Kingdom; or an Ordinary Degree with Distinction in Scottish Law from a Scottish University\*. A person becomes an Intransit by the process of matriculation which involves the submission of references and the presentation of a petition to the Court. At this stage a matriculation fee of £150 and Court Fee of £106 have to be paid.

### (2) Education

An Intransit must (a) pass or gain exemption from all the Faculty’s examination in Law; and (b) obtain or gain exemption from the Diploma in Legal Practice at a Scottish University.

Although an Intransit may sit the Faculty’s examinations in law for those examinations not covered by their Law Degree, the Faculty as a body does not offer any lecturing or tutoring or course of study.

An exemption from a Faculty examination will only be granted where the Intransit has obtained an equivalent pass in an appropriate University or professional examination.

### (3) Professional Training

An Intransit must (a) serve a period of training in a solicitor’s office of 21 months (in certain cases an exemption of 9 months is available); (b) serve a period (about 9 ½ months) as a pupil to a member of the Bar approved by the Dean of Faculty (called “devilling”) and (c) pass the Faculty examination in Evidence, Practice & Procedure.

\*At present this means Aberdeen, Dundee, Edinburgh, Glasgow and Strathclyde Universities, but it is proposed to extend these to cover other Scottish Universities offering LL.B degrees.

An Intrans training in a solicitor's office will be paid a salary according to scales laid down by the Law Society of Scotland. A Bar apprenticeship should normally not be confined to work connected with litigation, but should include general experience of the work of solicitors.

No fees are payable by, and no salary paid to, an Intrans for pupillage.

During devilling an Intrans may not engage in any activity which prevents him or her from devoting himself or herself to full-time pupillage, or in any activity which, in the opinion of the Dean, is inappropriate.

Each year the Faculty awards one or more Scholarships to Intrans who are about to commence pupillage. Information about these awards can be obtained from the Clerk of Faculty.

(4) Admission as an Advocate

An Intrans is admitted as an advocate after completion of stages (1), (2) and (3).

FURTHER INFORMATION

For further information about the Faculty of Advocates, and for copies of the Regulations as to Intrans, please contact:-

Scott Brownridge  
Intrans Programme Co-ordinator  
Faculty of Advocates  
Parliament House  
Edinburgh, EH1 1RF

Tel: 0131-260-5795

E-Mail: [scott.brownridge@advocates.org.uk](mailto:scott.brownridge@advocates.org.uk)

