

# Lay Representation in Scotland's Civil Courts

June 2015



Shelter  
Scotland



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# Executive Summary

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## Introduction

The Citizens Advice Service in Scotland and Shelter Scotland help many thousands of clients every year by providing advice on issues which may lead them to the civil court system.

For some, the advice offered can prevent issues escalating into the court system. For others, the advice and representation which our organisations offer will help them through the difficult court process to reach resolution. A key aspect of this is lay representation.

## Background

**A 'lay representative' is a person who is not:**

- (a) a solicitor**
- (b) an advocate**
- (c) someone who has a right to conduct litigation, or a right of audience**

## Current Definition

The civil court process can be daunting: the language, complex forms and buildings themselves are alien to most people. Lay representatives can make the process of pursuing or defending civil rights accessible through providing advice, support and practical help.

However, with no single organisation or body responsible for oversight of lay representatives, very little is known about the operation of the sector as a whole. It is not known how many lay representatives currently operate within Scotland's civil courts, how many individuals are assisted by the services they offer, or indeed the types of cases where lay representation is most prevalent.

This research aims to address that gap in knowledge. It is hoped that the 'on the ground' perspective offered here will help to inform the development of rules which acknowledge and support this increasingly relied upon form of assistance.

## Key Recommendations

Citizens Advice Scotland and Shelter Scotland strongly recommend that the status of lay representatives should be officially recognised in Scotland's civil justice system.

### 1. The definition of 'lay representative' should be clarified.

A review of the definition of lay representatives should take into account the duality of current practice: those who undertake the role as a one-off and those who undertake the role as a career.

### 2. Specific training should be delivered to Sheriffs and Summary Sheriffs on lay representation.

This should include training on both one-off lay representatives and those who undertake the role as a career with the aim of promoting acceptance of lay representatives through understanding what they can do to help court process.

The following recommendations refer to 'career' lay representatives.

### 3. Lay representative should be a defined role in Scottish civil courts.

This would promote the work of lay representatives and ensure that their role in court is more widely understood throughout the legal system.

### 4. Lay representatives should be given additional rights of appearance in civil courts.

This should include conducting proofs. Currently lay representatives can make oral submissions in rent arrears cases, but cannot cross examine. If a case reaches proof the lay representative cannot conduct the proof.

### 5. Training for lay representatives should be provided.

This should include training on court conduct and training on specific issues, e.g. eviction for rent arrears and money and debt. It would be beneficial if this training was provided by one body, and if the training met the National Standards. This could take the form of an SQA qualification.

### 6. The Scottish Government should explore the options for the accreditation of lay representatives.

This could involve individual organisations accrediting lay representatives – similar to the process used for lay representatives appearing under Home Owner and Debtor Protection (Scotland) Act 2010 – or a form of registration managed by a single body. Formal accreditation would provide a degree of quality assurance for court staff, solicitors and the judiciary in a minimum standard of quality which should be expected from a lay representative. Consideration should be given to a complaints structure for consumers within this framework.

### 7. The Scottish Government should facilitate a network and association for lay representatives.

This would enable additional professional development in addition to training and opportunities for peer support.

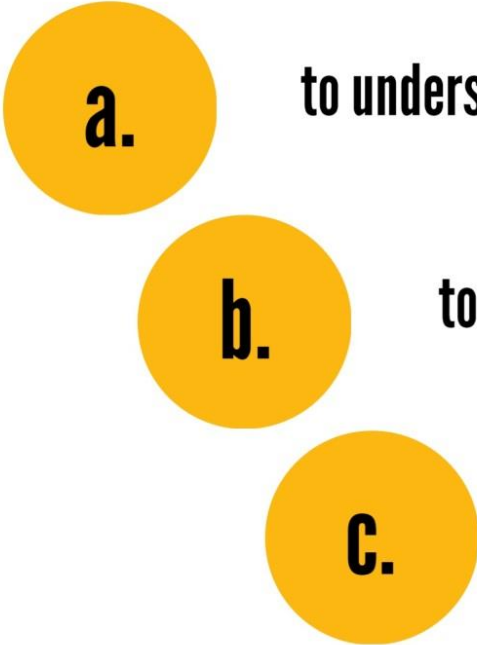
# The Research

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This report, based on research conducted by Citizens Advice Scotland (CAS) and Shelter Scotland, focuses on lay representation in the Scottish Civil Court system.

## Aims

In July 2014, Shelter Scotland and CAS designed an online survey which was promoted to lay representatives for completion over August 2014. The aims of the research were:

- 
- a.** to understand the experience of becoming a lay rep
  - b.** to understand the continuing experience of being a lay rep
  - c.** to understand more about lay reps: their background, experience and location

## Purpose

Reform to Scotland's civil court system is beginning to move at pace. The Courts Reform (Scotland) Act 2014, which received Royal Assent on the 10<sup>th</sup> November 2014, embodies many of the recommendations made in the Scottish Civil Courts Review (SCCR).<sup>1</sup> Those recommendations will be achieved in part by the Scottish Civil Justice Council (SCJC)<sup>2</sup> through an extensive rewrite of court rules and in part under the wider Scottish Government's Making Justice Work Programme.

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<sup>1</sup> Available at <http://www.scotcourts.gov.uk/about-the-scottish-court-service/the-scottish-civil-courts-reform>

<sup>2</sup> Established by the Scottish Civil Justice Council and Criminal Legal Assistance Bill 2013

Within these work streams, there are three with particular relevance to lay representation:

1. The new rules to be written on Simple Procedure – a process within which the SCCR recognised there was “scope for increased lay representation”<sup>3</sup> and which the SCJC is taking forward as a priority<sup>4</sup>
2. The recommendation in the SCCR that in-court advice services “should be developed and extended”<sup>5</sup> – a process identified for the Scottish Legal Aid Board (SLAB) to take forward
3. The relationship between access to online information and access to advice which has been identified as a priority under the Justice Digital Strategy<sup>6</sup>

It is possible that any or all of these may have an impact on lay representatives. Within the existing practice of lay representation in Scotland there is a fine line between the element of representation and associated advice which it would be wrong to ignore.<sup>7</sup> With so much moving forward under different work streams and programmes, CAS and Shelter Scotland felt it was important to understand the reality of being a lay representative in Scotland today: not simply the rules which currently exist but how those rules are operating in practice.

Lay representation has undoubtedly come to form a key element of the civil justice system. For those who undertake the role and for those who rely on lay representation to help them access justice the time has come for a serious review of how this branch of justice is governed, practiced and overseen.

It is therefore hoped that this research can help to inform the overall picture and help to ensure that in-court advice and lay representation in Scotland continue to make an effective contribution to access to justice in the civil courts.

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<sup>3</sup> SCCR Chapter 5, paragraph 158

<sup>4</sup> Identified as a priority in the Interim Report of the SCJC Rules Rewrite Working Group, available at <http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/scjc-publications/rrwg-interim-report.pdf?sfvrsn=2>

<sup>5</sup> SCCR Chapter 11, paragraph 36

<sup>6</sup> Under Objective 1 of the Strategy, available at <http://www.scotland.gov.uk/Resource/0045/00458026.pdf>

<sup>7</sup> For more information, see Citizens Advice Scotland supplementary submission to the Justice Committee of the Scottish Parliament on the Courts Reform (Scotland) Bill, available at [http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Inquiries/CR22a\\_Citizens\\_Advice\\_Scotland\\_supplementary\\_submission.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/CR22a_Citizens_Advice_Scotland_supplementary_submission.pdf)

# Lay Representatives: Background

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The prevailing definition of lay representatives to be found in legislation<sup>8</sup> is wide and vague:

**A 'lay representative' is a person who is not:**

- (a) a solicitor**
- (b) an advocate**
- (c) someone who has a right to conduct litigation, or a right of audience**

In Scottish civil courts there are two types of support which can be offered to litigants by lay people: lay assistance and lay representation. The role of a lay assistant is limited to offering moral support in court. A lay representative can do much more and in some instances has rights akin to a solicitor.

## What do lay representatives do?

Lay representatives play a crucial role throughout an individual's interaction with the civil court system facilitating a smoother process for both users and the court. This is achieved not just through the physical act of representation but also through the specialist advice and guidance offered at all stages of the process – pre-court, at the hearing, and afterwards.

There is no 'one size fits all' model, and it is important that different options are available which can be accessed by clients for the level of help they need and at the stage of the process they need it.

For some more confident court users the involvement of a lay rep might be minimal: advice on the legal merits of a case or simply guidance on which side of the courtroom a client should stand. For others the involvement will be more in depth: assistance in drafting court documents, late-stage negotiation with an aim of settlement, or help in framing legal arguments to make a case. Less confident users may rely on in-depth support through the whole process.<sup>9</sup>

The involvement of lay representatives can give court users confidence in an otherwise daunting environment. The benefit of the support they offer users is significant, as is the benefit to the court. With the help of in court advice and

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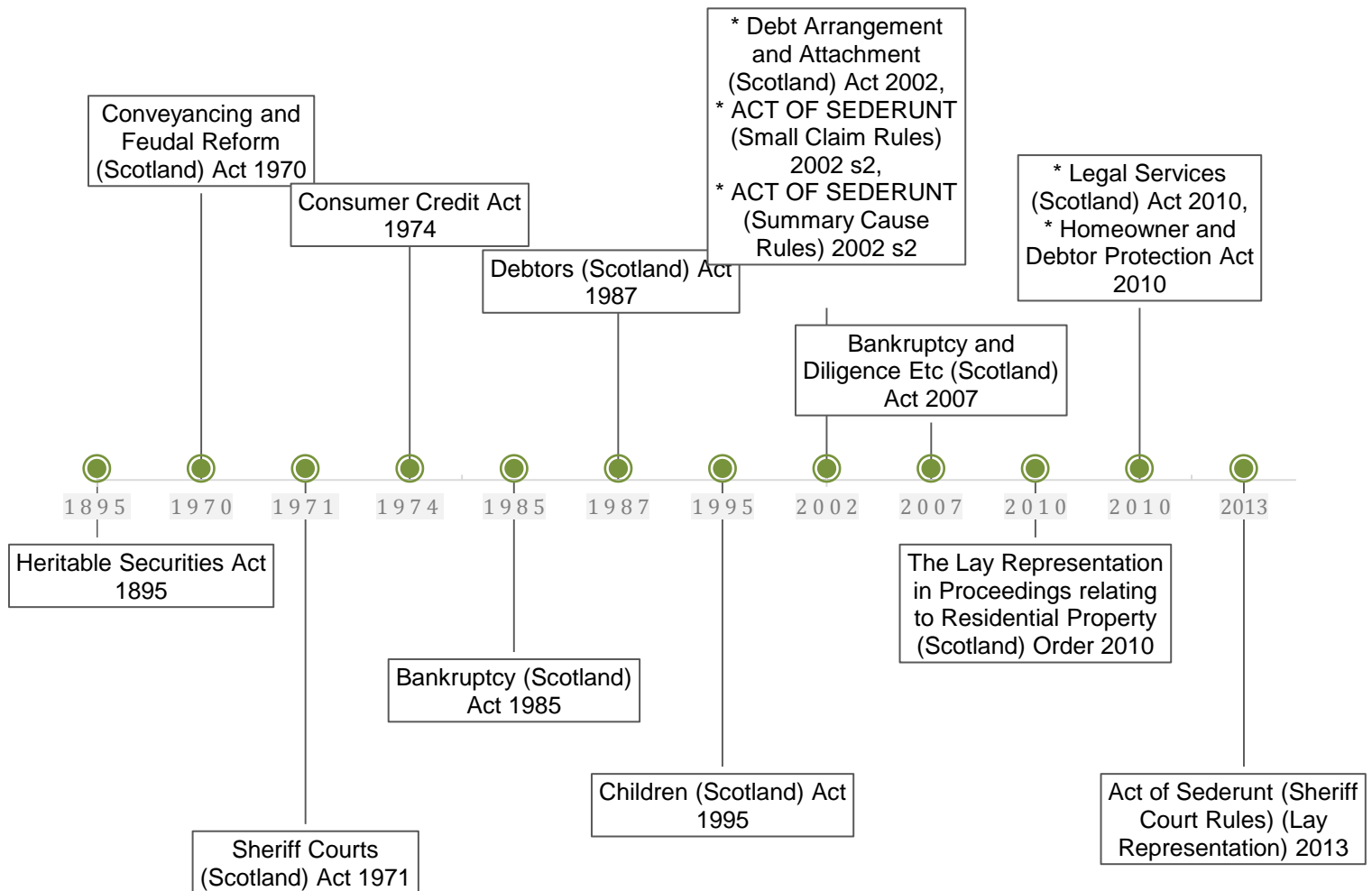
<sup>8</sup> See, for example, Act of Sederunt (Sheriff Court Rules) (Lay Representation) 2013 s1A.1(2)

<sup>9</sup> For a more detailed account of the work of lay representatives see [http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Inquiries/CR22a\\_Citizens\\_Advice\\_Scotland\\_supplementary\\_submission.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/CR22a_Citizens_Advice_Scotland_supplementary_submission.pdf)

representation the Sheriff is presented with a relevant and coherent account of the information they need during the stage of hearing before them whether achieved through full representation or behind-the-scenes intervention.

## The rules around lay representation

The rules governing lay representation in Scotland are varied and complex. They refer solely to court process and not to qualifications, training or competence.<sup>10</sup> The timeline of applicable rules has been added to across the years creating a piecemeal and un-coordinated structure:



Reform to Scotland's civil justice system is aiming to create a more streamlined and usable system. The current mess of legislation and rules does not fit that ideal. Moreover, it causes confusion for a lay representative trying to operate under the rules and a member of the judiciary attempting to decipher which should be given priority in the case before them.

<sup>10</sup> With the exception of the role of Approved Lay Representative under the Homeowner and Debtor Protection Act 2010 where lay representatives must be approved by a certified agency.



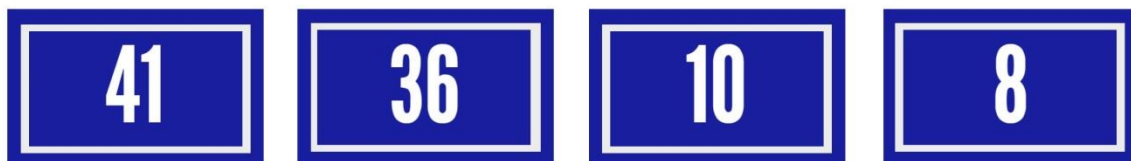
Throughout the survey, respondents commented on the confusion which the rules can cause – particularly when different Sheriffs interpret them differently. As one respondent outlined:

“The current acts are contradictory and confusing. There are multiple types of lay representation depending whether you are acting under small claims rules, Legal Services (Scotland) Act or the Conveyancing and Feudal Reform (Scotland) Act. Certain types of lay representatives can do everything that the client can do for themselves, others can only make oral submissions.”

This has led to a situation where only an experienced lay representative is likely to know easily which rules best suit a particular set of circumstances. The legislation which a lay rep relies upon can have a material impact on what they are able to do. For example:

	Provide moral support	Help manage court documents and papers	Take notes of proceedings	Make oral submissions to the court	Question a witness
Small Claims Rules (2002), Chapter 2	✓	✓	✓	✓	✓
Legal Services (Scotland) Act 2010, s127	✓	✓	✓	✓	X

# The Results: An Outline of Respondents



Number of Sheriff Courts at the time of the survey

Number of complete survey responses

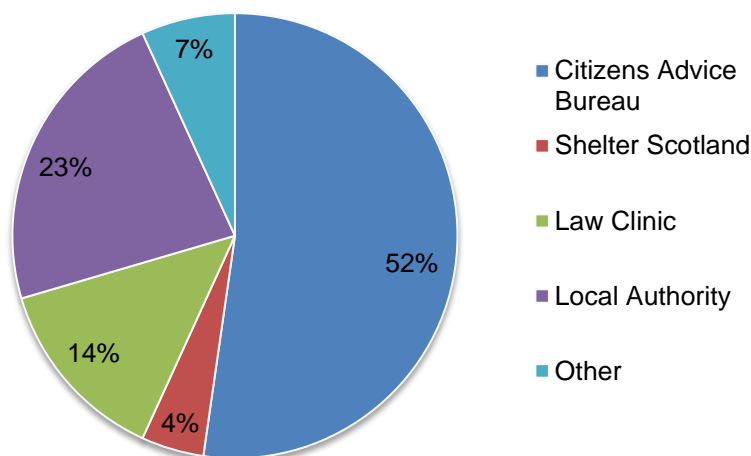
Respondents who provide lay representation in Edinburgh Sheriff Court

Number of Sheriff Courts with no respondent lay representatives

An aim of our research was therefore to build a picture of lay representation in Scotland by understanding more about respondents to better understand the sector. Although it is readily acknowledged that the survey was not completed by every individual working as a lay representative, we hope that the results will start to build an overall picture of lay representation in Scotland.

## Responses

The survey was open to any lay representative – not only those who carry out their work under the employment of CAB or Shelter Scotland. It was promoted within the Citizens Advice Service and Shelter Scotland through email and intranet and was also encouraged that the survey should be circulated to any relevant individual or organisation. Responses were submitted by individuals within a range of organisations and sectors:



In total we received **36 complete responses** and **9 partial responses** from individuals currently working within the civil court system. SLAB's current grant funding programme funds 26.25 FTE lay representatives and so our response rate indicates that there are lay reps who undertake work outside of this funding structure. We know that not all SLAB funded lay representatives completed the survey.

## Geography<sup>11</sup>

As well as a range of organisations, respondents also represented a wide geography of Scotland's Sheriff Courts. Of the **41 Sheriff Courts** open at the time of the survey<sup>12</sup>, only **8 were not covered** by a respondent lay representative. Some Sheriff Courts generated responses from multiple lay representatives of different agencies.

Between the 33 Sheriff Courts covered by respondent lay representatives, there were 79 indications of the availability of lay representation - for example **10 respondents from 4 agencies currently undertook lay representation in Edinburgh Sheriff Court**.

Responses also indicated that as well as working in more than one Sheriff Court venue, **it was not uncommon for respondents to work across Sheriffdom borders**. For example, some of those who undertook representation in the Sheriffdom of Glasgow and Strathkelvin also undertook lay representation in South Strathclyde, Dumfries and Galloway, North Strathclyde and Tayside, Central and Fife.

When accounting for where respondents indicated their provision of lay representation, there are discrepancies between the % of civil cases raised in a Sheriffdom and the lay representation available:

Sheriffdom	% of cases initiated in 2012-2013 <sup>13</sup>	Available Lay Representation by % of total <sup>14</sup>
<b>Glasgow and Strathkelvin</b>	19.7%	15.7%
<b>Tayside, Central and Fife</b>	19.3%	11.7%
<b>South Strathclyde, Dumfries and Galloway</b>	17.9%	13.7%
<b>Lothian and Borders</b>	15.9%	27.4%
<b>North Strathclyde</b>	13.7%	13.7%
<b>Grampian, Highlands and Islands</b>	13.4%	17.6%

<sup>11</sup> There were 43 responses to the question "Which Sheriff court(s) do you currently cover?". All 43 answers were used in this section.

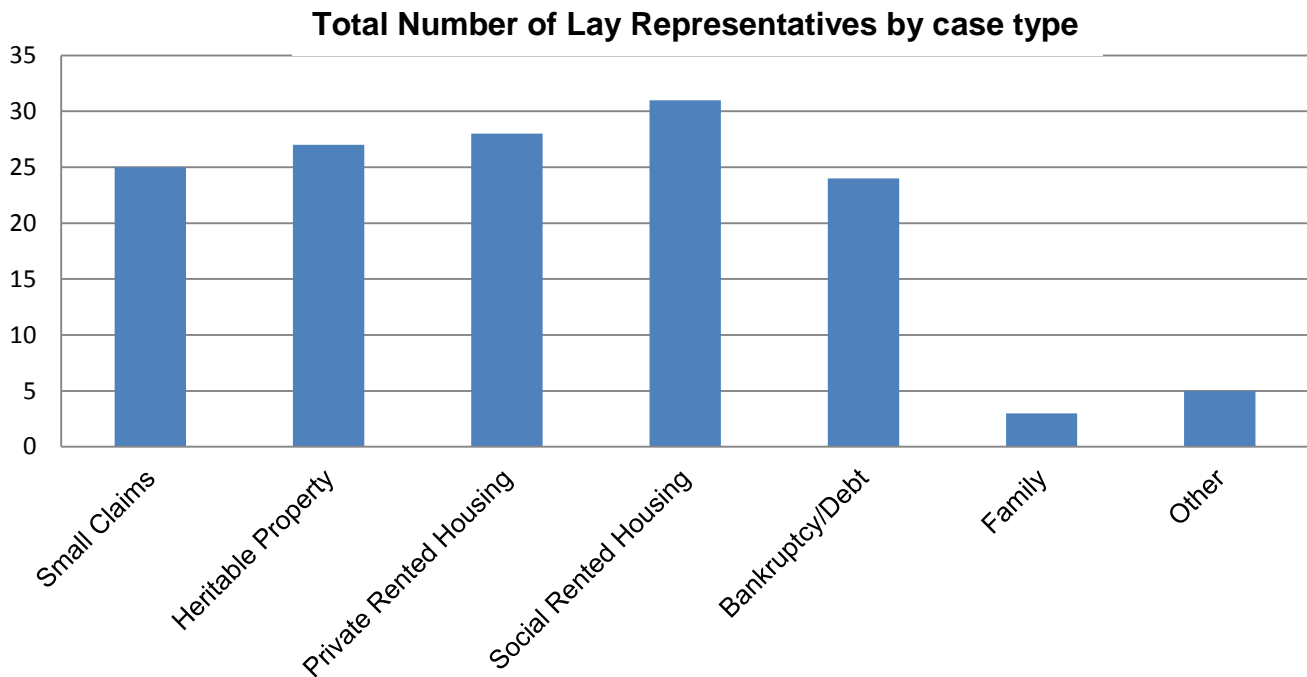
<sup>12</sup> Since completion of the survey, there are now 39 Sheriff Courts in Scotland

<sup>13</sup> Rounded to one decimal place. Scottish Civil Law Statistics available from <http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/Datasets/DatasetsCJS/civlaw1213>

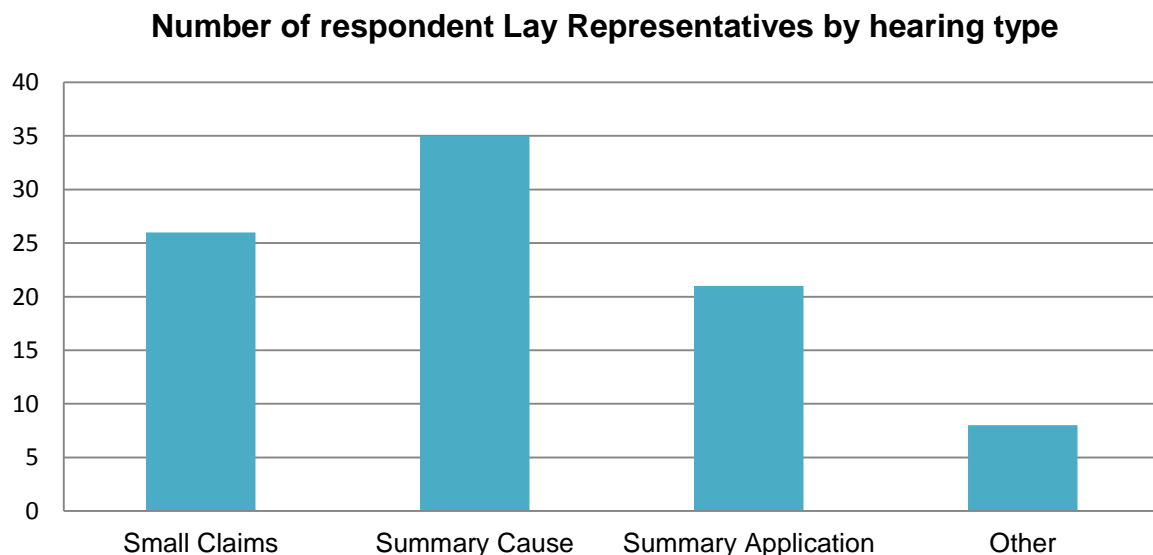
<sup>14</sup> Rounded to one decimal place.

## Case Types

It is clear from the results of the survey that **lay representatives will, generally, undertake representation in more than one type of case:**



Similarly, lay representatives will often undertake representation at more than one level. This included 4 references to representation at Ordinary Cause hearings under the category 'other.'



Often, lay representatives were asked by Sheriffs to participate in or give advice on case types which legislation does not allow them to formally participate in, for example proceeds of crime cases. This demonstrates a reliance on the services which lay representatives can offer – and a lack of understanding about the complexities of the legislation which governs their operation.

## Respondents

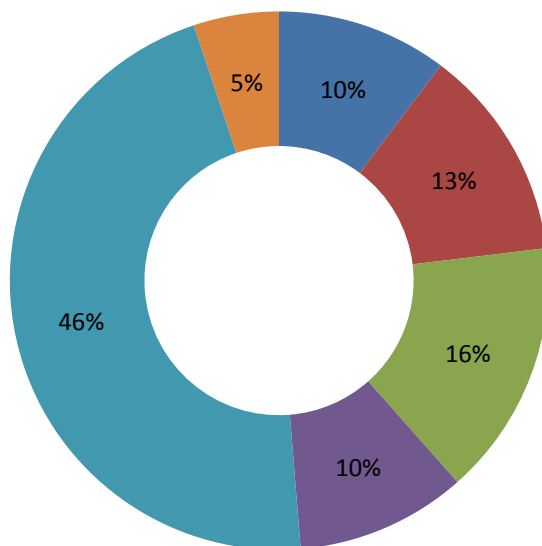
**"I have a Senior Management background in the Commercial sector"**

**"I have been involved in housing for 20 years, mostly homelessness"**

**"I am a retired solicitor and I now volunteer for CAB"**

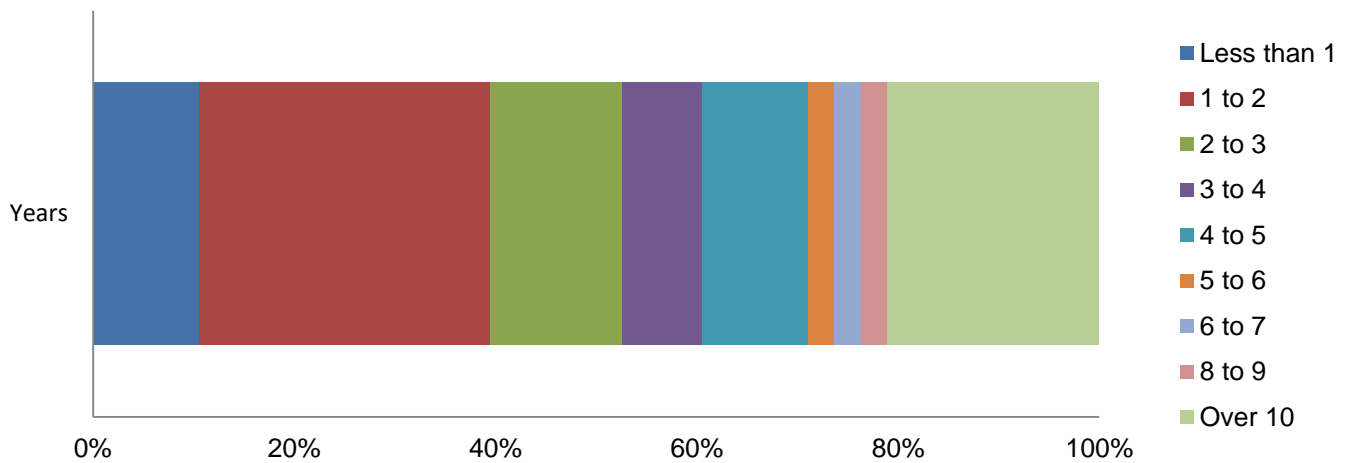
Respondents came from a wide variety of backgrounds. Although they did not always report having a legal background, often their previous experience was an excellent basis for lay representation (and associated advice) including experience in property and money advice.

The **highest proportion of respondents were not legally qualified** (43%), while 25% had undertaken some level of legal training and 16% were currently undertaking legal training:



- Legally Qualified but never practiced (LLB but not PGDip)
- Legally qualified but never practiced (PGDip)
- Currently studying law/training to be a lawyer
- Non-practicing solicitor
- Not legally qualified

An interesting finding of the survey was that, for some, lay representation was a career of noteworthy longevity: **22% of respondents had worked as a lay rep for over 10 years.**



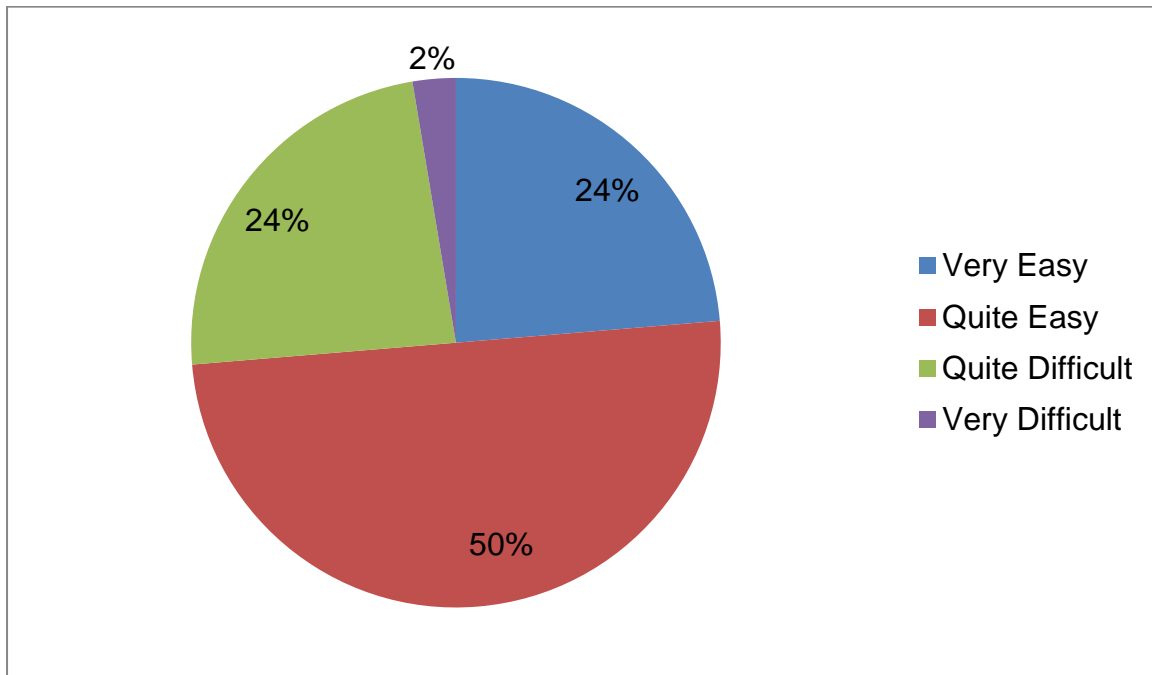
This is an important finding as it raises questions around how lay representation is defined. A two-tier system has developed: while there may be some who represent a friend or relative as a one-off occurrence there are many whose role as a lay representative is long lived and well established.

Should, then, the expectations of the court vary between a one-off representative and a career lay representative? And ultimately should the distinction which has developed be reflected?

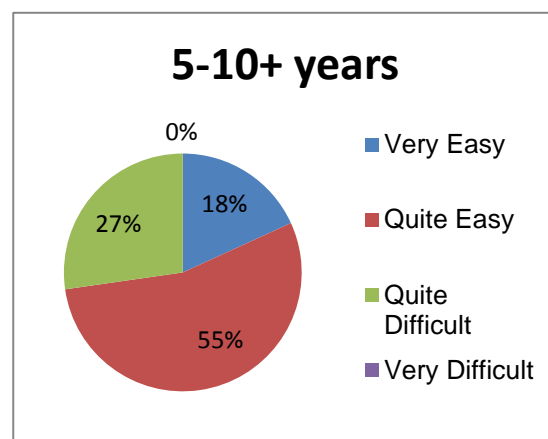
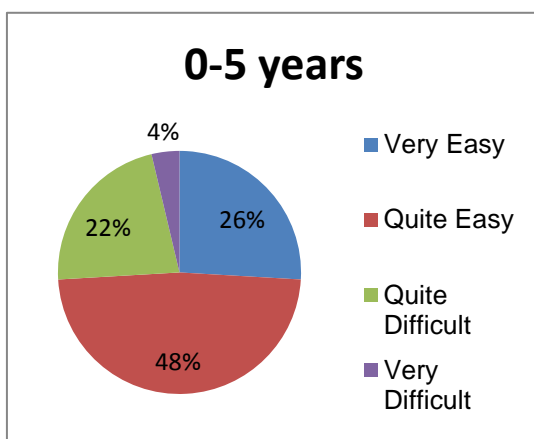
# The Results: Becoming a Lay Rep

## The overall experience

When asked the overarching question “**How easy was it for you to become a lay rep?**” responses were mixed:



It was a positive finding that the majority (74%) found it very easy or quite easy to become a lay representative. This does not appear to vary significantly when taking account of the length of time a lay representative has been in practice:



Those who found it 'quite difficult' or 'very difficult' were spread across Sheriffdoms, and were also split between rural and urban courts. The highest reported instances of difficulty were in the Sheriffdom of Glasgow and Strathkelvin where 57% of the

respondents from that Sheriffdom recorded a difficulty.<sup>15</sup> The lowest reported instances of difficulty were in the Sheriffdoms of Tayside, Central and Fife and North Strathclyde.

## The experience in more detail

In responses to questions about the process of becoming a lay representative, respondents broadly categorised their experience into two aspects – the formalities required by the court and the requirements of their employing organisation (eg Citizens Advice Bureau/Law Clinic).

The formalities of the Court should be uniform with the submission of a Form A1.<sup>16</sup> This is the only official process required by legislation. However, there was some evidence that this does not happen consistently with some respondents indicating they submitted a form for every client and others indicating that they submitted one form when they took up the role (in one case over 10 years ago). One respondent made the assumption that a Form A1 from a previous job in another Sheriffdom would carry and so did not submit a new form to their new Sheriff Court.

While there is at least a process to be followed for the Court – even if not followed uniformly – there is no such process outlined for employing organisations. There are **no guidelines for qualifications, experience or training** and so any requirements imposed by the employer of a lay representative are entirely at their own discretion. As a result, the process outlined by respondents varied significantly:

- **No formal process** ■ **Internal and informal verbal application** ■
- **Internal and informal verbal application followed by interview** ■
- **External application followed by interview (no training)** ■
- **External application followed by interview and assessed training** ■
- **External application with assessments, 2 interviews and observation in court** ■

While training was mentioned by some respondents as an expected part of their role which was provided by their employer, others did not experience the same level of preparation. Broadly, training fell into 5 categories:

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<sup>15</sup> As discussed further below, this could be as a result of the requirements imposed by an employing organisation rather than any impositions by the Sheriffdom itself

<sup>16</sup> See Appendix A for a copy of the form



- No formal process ■
- Self-Motivated and self-led without provided resources ■
- Computer-based module training ■
- Observation and ‘on the job’ training with the support of another lay rep ■
- Formal, assessed classes with full materials provided ■

Comments from respondents varied in relation to their experience but were broadly supportive of a more formal and robust process.

“the rules should be more prescriptive than they are”

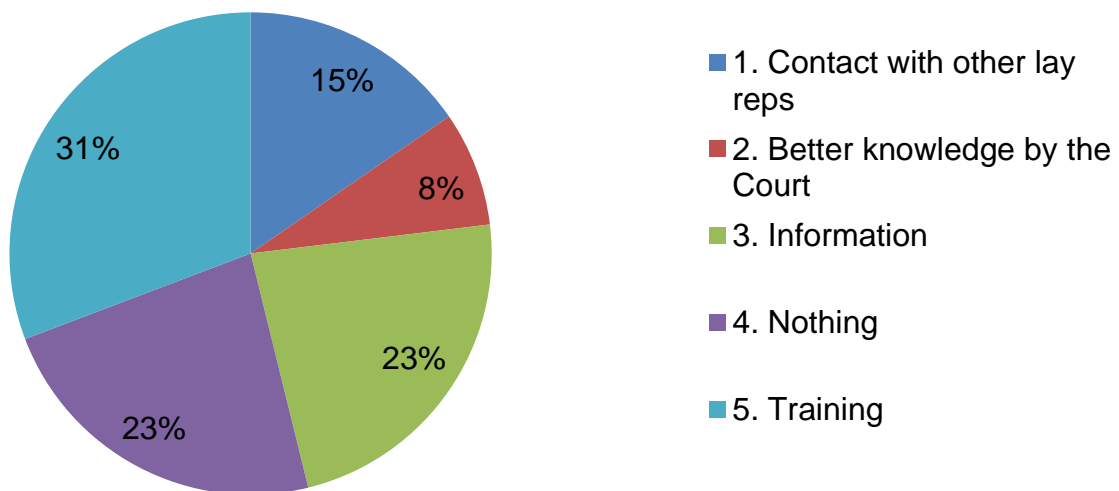
Respondent who underwent no interview or training

“I think the process was formal, but rightly so.”

Respondent who went through an extensive interview and training programme

### Improving the experience

We were keen to understand from those who had gone through the process of becoming a lay representative what would have improved the process for them. There were 25 answers to the question **“What would have improved the process for you?”** Responses were in prose but could be categorised into broad headings, with some responses falling into more than one category:



The responses were consistent with findings in the previous section: **respondents prioritised a formal and robust process over an informal and inconsistent one.**

## 1. Contact with other lay representatives

Responses which fell within this category highlighted the desire to belong to a wider network of lay representatives. As many work in isolation, this was seen to open access to advice and support while also adding to the sense of belonging to something bigger:

- “it would have been good to be able to have had the support of someone who was an experienced lay representative and be able to call on them for advice.”
- “An opportunity to have a mentor and to shadow experienced representatives. I was very much on my own at the early stages of this role and it was a challenge in becoming accustomed to the Court process”
- “Contact with other Lay Reps to discuss and clarify certain points. For example, do other HODP Lay Reps cover summary cause cases and how did they go about getting permission for this?”

## 2. Better knowledge by the Court

In some cases, respondents felt that better knowledge by the key actors within the court system about what the role of a lay representative entails would have greatly improved the process of being a lay representative. Without such understanding, lay reps were treated with suspicion and, at times, disregard:

- “despite informing the court [that I would be acting as a lay representative] beforehand, the response from the sheriff (& also the defendant's lawyer) was intimidating. The sheriff accused me of 'ambushing' him.”

It was felt that the education of Sheriff Clerks, Sheriffs and solicitors about what lay reps can and cannot do, the benefit they can offer to clients and the improvements to the smooth operation of the court process which they can bring would greatly help lay reps to undertake their role to maximum efficiency.

## 3. Information

The desire to have access to more information was a strong theme to emerge from the answers. ‘Information’ as a generalised category included specific reference to:

- sources of help for lay representatives
- general court procedure
- guidance about which rules should apply in which situation
- a glossary of ‘need to know’ terms
- an outline of the competencies expected of a lay rep by the court

An underlying trend to all of the responses about information was that, if current sources of information do exist, they are either organisation-specific, inaccessible in that costly subscriptions to database sources would be required, or do not exist in the necessary format.

## 4. Nothing

As the process which lay representatives went through varied so significantly, we were keen to understand the background of those who did not think there were improvements to be made to the process. Typically these respondents could be characterised as those who had gone through a robust process. Of the 7 respondents who can be so categorised:

- 5 went through an external recruitment process with interview
- 5 had previous experience in representing clients
- 4 had legal qualifications
- 4 went through extensive in-house training within their organisations
- 2 were non-practicing solicitors

The only respondent who was neither legally qualified nor had a background in representation did have an extensive background in money advice and debt (the field in which they represent clients) which requires a working knowledge of relevant legislation.

## 5. Training

Training was the most common request for something which would improve the process of becoming a lay representative. The phrases “in-depth training” and “formal training” were recurrent in the answers given. It was thought by some respondents that such training could be a useful tool to validate their role: “in-house training modules which give an overview of the legal process which can be referred to.”

From previous sections of the survey it is apparent that where training is done, it is often organisation-specific. One respondent highlighted the problems which this can cause with accessibility: “accessing good training in certain aspects proved to be difficult.”

# The Results: Being a Lay Rep

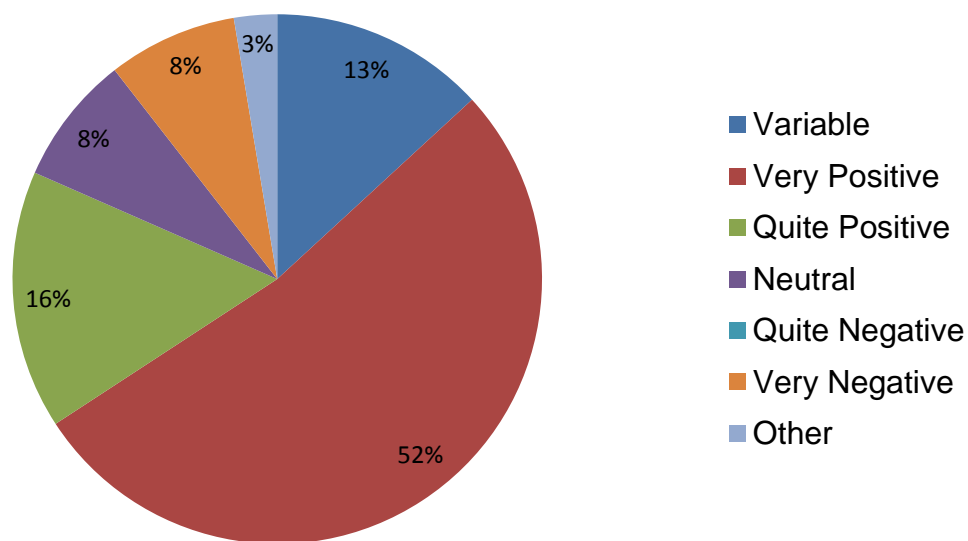
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A key part of the survey was in understanding the continuing experience of practicing as a lay representative in Scotland’s civil courts. As such, many of the responses were focused on relationships with other key actors within the system – Sheriffs and solicitors.

## Relationship with Sheriffs

Sheriffs are fundamental to the civil court process. Their view of lay representation is often seen as fundamental to the difference a lay representative can make: if lay representation is embraced and encouraged, the representatives can be allowed to make a difference.

Overall, responses to the question **“how would you describe the attitudes of Sheriffs towards lay reps?”** were mixed:



It was encouraging that the majority (68%) of respondents found the attitude of Sheriffs very positive or quite positive. 86% of respondents indicated that they had been given permission to address the Sheriff in every instance where a request had been made. However, there were some continuing difficulties expressed.

From the comments of lay representatives who found the attitude to be variable (11%), this fell into two categories. The first was a **variation between different Sheriffs**: “The main constraint is the inconsistent approach between sheriffs.” Some respondents expressed frustration that the attitude of an individual Sheriff can have an impact on what the project is able to achieve because of their freedom to interpret rules:

“I think sheriffs that see the business sense and the time saved by lay reps assisting buy into it..... If the rules were clearer .....it may be easier... if sheriffs were made to follow the rules (as many do not) and not having to "buy in" to a service or status then it would make more sense than again relying on their opinion [of an individual or project].

The impact of this attitude was characterised by another respondent:

“I have had sheriffs...in the past disregarding normal practice and allowing the respondents speak first and explain my case when I have made an application under the Debtors (Scotland) Act and the Debt Arrangement and Attachment (Scotland) Act. This has been particularly frustrating when the opposing solicitor has been unprepared and unable to explain my position and reasons for making the application in the first place.”

The variation in the application of court rules between Sheriffs was the most common response to the question “What do you find the most challenging aspect of your work as a lay representative?” with a third of respondents giving this answer.

The second category of variation was **difference in the same Sheriff’s attitude towards different lay representatives**. One adviser’s perception was that they were treated differently to another lay rep due to the latter having a law degree and a Diploma of Legal Practice. It was the adviser’s perception that the other lay rep was treated more favourably despite their having had extensive training.

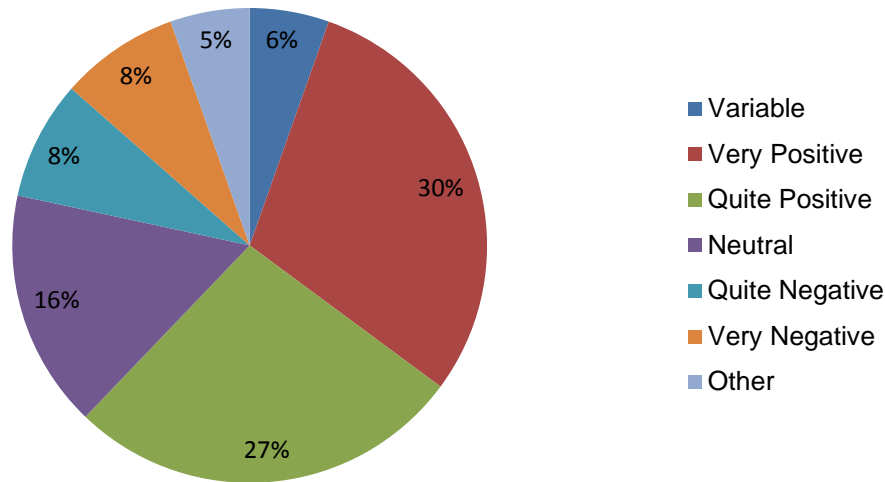
In fact, of respondents, **60% thought that the individual lay representative was the most important factor in achieving a Sheriff’s buy-in to lay representation**, while just 19% thought that support for lay representation was due to trust in the project/organisation to which the lay representative belonged:

- “the competency of the representatives is the most important factor”
- “if you are dependable and consistent then a sheriff will be more likely to accept your presence and benefits to the Court Procedures”

This is a further finding that lay representation is not awarded status as a role in its own right. Rather, lay representatives are still viewed as individuals with many lay representatives feeling the need to ‘prove’ themselves and gain acceptance.

## Relationship with solicitors

While the relationship between Sheriffs and lay representatives was viewed to be generally positive, the attitude of solicitors was not viewed in the same way:



This further highlights the level of acceptance of lay representatives within the system: while some solicitors see and appreciate the value of lay reps, others are far less accepting. It was clear from respondents' comments that **lay representatives were not automatically afforded the same level of respect as a solicitor** may be. This is mostly because it is assumed they do not have the same level of knowledge or expertise. Some had very poor experiences:

“There is considerable variation in the willingness of solicitors to engage with a lay rep. Most are very patronising outside of court and undermining within court despite the Law Society of Scotland guidance that they should not seek to take advantage of a party litigant. They would not refer to an opposing solicitor in the same terms in court.”

There was a clear theme throughout responses, similarly to the relationship with Sheriffs, that representatives felt required to ‘prove’ themselves:

“At the outset my experience was quite different, not all positive. However in my own view the respect from the court and my fellow solicitors has been earned and this is positive for all concerned.”

Respondents highlighted the importance of building individual relationships with one respondent saying they had to “take some “jokey” comments on the chin. No automatic acceptance into the club.”

There were some comments which linked the attitudes and behaviours of Sheriffs and solicitors, highlighting that **in some cases the attitude towards lay reps overall can become cultural:**

“Court environment isn't conducive to encouraging lay representation. This includes attitude and behaviour of solicitors appearing for other parties and sheriff clerks.”

However, the culture can change. More than one respondent suggested that if this culture change is Sheriff-led then change could happen quickly: “Sheriffs should become better informed...that would bring the solicitors in line pretty quickly.”

## Improving the experience

While some lay representatives have a difficult time, it should not be forgotten that there are many instances of good experience and good practice: “My own experience is that we are recognised as having a positive role in the Court by Sheriffs, Sheriff Clerks and other Court staff.” Adviser’s views reported that their **experience continues to vary between extremes**: on the one hand being embraced for the role played and on the other struggling to gain acceptance and respect. This in itself was a key finding of the research.

When asked the question **“Do you have any suggestions about improving the general relationship between Sheriffs and lay representatives?”** there were some positive and constructive answers. The most common response was around improving understanding through communication:

- “Having a meet & greet with Sheriffs & explaining our role & our motivation to carry out a Lay role”
- “Meetings to be arranged so they understand why the clients need lay reps and also for Sheriffs to advise what they expect”
- “Direct communication; proving that we are effective i.e. reducing loads on court and getting settlements”

These comments pointed to respondents feeling that their role was not well understood. As one respondent commented, they felt lay representatives are “undervalued by courts and sheriffs on the amount of work involved. [We] Carry out benefit checks and debt management, appeal decisions on housing benefit, arrange meetings with landlords to put affordable agreements in place before case returns to court.”

Much of the work a lay representative does is unseen by the court. Measures to prevent cases from getting to the stage of court form a large part of their work and so, when successful, those cases will not be on the court’s radar. Another portion of the work lay representatives undertake is in helping clients to prepare legal arguments or documents for court when that client then goes on to represent themselves. In these cases the court may never know a lay representative was involved, but their work will have made a difference to aid the smooth running of the case.

A want for the entirety of their work to be understood and not just the actual act of representation was further expressed in respondents' suggestions made around training Sheriffs to better understand the fullness of their role.



# Recommendations

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## Make it a "role"

Respondent who has been  
a lay representative for  
over 10 years

Citizens Advice Scotland and Shelter Scotland strongly recommend that **the status of lay representatives should be officially recognised in Scotland's civil justice system.**

**1. The definition of 'lay representative' should be clarified.**

A review of the definition of lay reps should take into account the duality of current practice: those who undertake the role as a one-off and those who undertake the role as a career.

**2. Specific training should be delivered to Sheriffs and Summary Sheriffs on lay representation.**

This should include training on both one-off lay representatives and those who undertake the role as a career with the aim of promoting acceptance of lay reps through understanding what they can do to help court process.

The following recommendations refer to 'career' lay reps.

**3. Lay representative should be a defined role in Scottish civil courts.**

This would promote the work of lay representatives and ensure that their role in court is more widely understood throughout the legal system.

**4. Lay representatives should be given additional rights of appearance in civil courts.**

This should include conducting proofs. Currently lay representatives can make oral submissions in rent arrears cases, but cannot cross examine. If a case reaches proof the lay representative cannot conduct the proof.

**5. Training for lay representatives should be provided.**

This should include training on court conduct and training on specific issues, e.g. eviction for rent arrears and money and debt. It would be beneficial if this training was provided by one body, and if the training met the National Standards. This could take the form of an SQA qualification.

**6. The Scottish Government should explore the options for the accreditation of lay representatives.**

This could involve individual organisations accrediting lay representatives – similar to the process used for lay representatives appearing under Home Owner and Debtor Protection (Scotland) Act 2010 – or a form of registration managed by a single body. Formal accreditation would provide a degree of quality assurance for court staff, solicitors and the judiciary in a minimum standard of quality which should be expected from a lay representative. Consideration should be given to a complaints structure for consumers within this framework.

**7. The Scottish Government should facilitate a network and association for lay representatives.**

This would enable additional professional development in addition to training and opportunities for peer support.

Overall recognition and support is essential moving forward, affording status to underpin the crucial role which lay representatives play within Scotland's civil justice system.

**Form A1 Form of Statement by prospective lay representative for Pursuer/Defender<sup>17</sup>**

Rule

2A.2(2)(b)

Statement by prospective lay representative for Pursuer/Defender\*

Case Ref. No.:

in the cause

SHERIFFDOM OF (*insert name of sheriffdom*)AT (*insert place of sheriff court*)[A.B.], (*insert designation and address*), Pursuer

against

[C.D.], (*insert designation and address*), Defender

Court ref. no:

Name and address of prospective lay representative who requests to make oral submissions on behalf of party litigant:
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Identify hearing(s) in respect of which permission for lay representation is sought:
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The prospective lay representative declares that:	
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(a)

I have no financial interest in the outcome of the case *or* I have the following financial interest in it:\*

(b)

I am not receiving remuneration or other reward directly or indirectly from the litigant for my assistance and will not receive directly or indirectly such remuneration or other reward from the litigant.

(c)

I accept that documents and information are provided to me by the litigant on a confidential basis and I undertake to keep them confidential.

<sup>17</sup> Available at <http://www.scotcourts.gov.uk/rules-and-practice/forms/sheriff-court-forms/small-claim-forms>

(d)	I have no previous convictions <i>or</i> I have the following convictions: (list convictions)*
(e)	I have not been declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 <i>or</i> I was declared a vexatious litigant under the Vexatious Actions (Scotland) Act 1898 on [insert date].*

(Signed)  
[Name of prospective lay representative]  
[Date]

*(Insert Place/Date)*

The Sheriff grants/refuses\* the application.

[Signed]  
Sheriff Clerk  
[Date]

*(\*delete as appropriate)*



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banking qualified conveyancing  
court practitioner helpline SmallClaims  
sollicitor commercial Property BenefitSystem officer journalist debt legal Housing  
precognition welfare retired BAinLaw  
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advice CaseWork SeniorManagement Employment  
Benefits MoneyAdviser  
homelessness Management