



**THE LAW SOCIETY
of SCOTLAND**
www.lawscot.org.uk

Pro Bono Survey 2015

Access to Justice Committee

August 2015

Principles of access to justice

The Access to Justice Committee is a Committee of the Law Society's Council that looks to promote and improve access to justice in Scotland, particularly for vulnerable individuals and groups. The Committee's work is guided by four principles. has established four principles for the justice system in Scotland. Our justice system should:

- Meet the needs of everyone and be based only upon legal need;
- Provide a comprehensive range of services to meet the needs of our population;
- Work with others to provide a holistic service to people in need; and
- Support and value those who use and work in the legal advice and information services.

The committee is made up of six solicitor members and six non-solicitor members with a Convener agreed by the Law Society's Council.

The Access to Justice Committee supports the principle of pro bono, though not as a substitute to adequate, publicly funded legal assistance. The Committee recognises the substantial contribution made by pro bono lawyers and law students across Scotland in helping to provide access to justice in a range of different ways across Scotland.

The Pro Bono Survey 2015 was intended to help us understand more about what solicitors considered pro bono to be, whether traditional face-to-face advice or court representation or other means, such as public legal education; to help us to understand the prevalence of pro bono overall; and to help us understand some of the motivations for undertaking pro bono or the reasons that solicitors choose not to undertake this work.

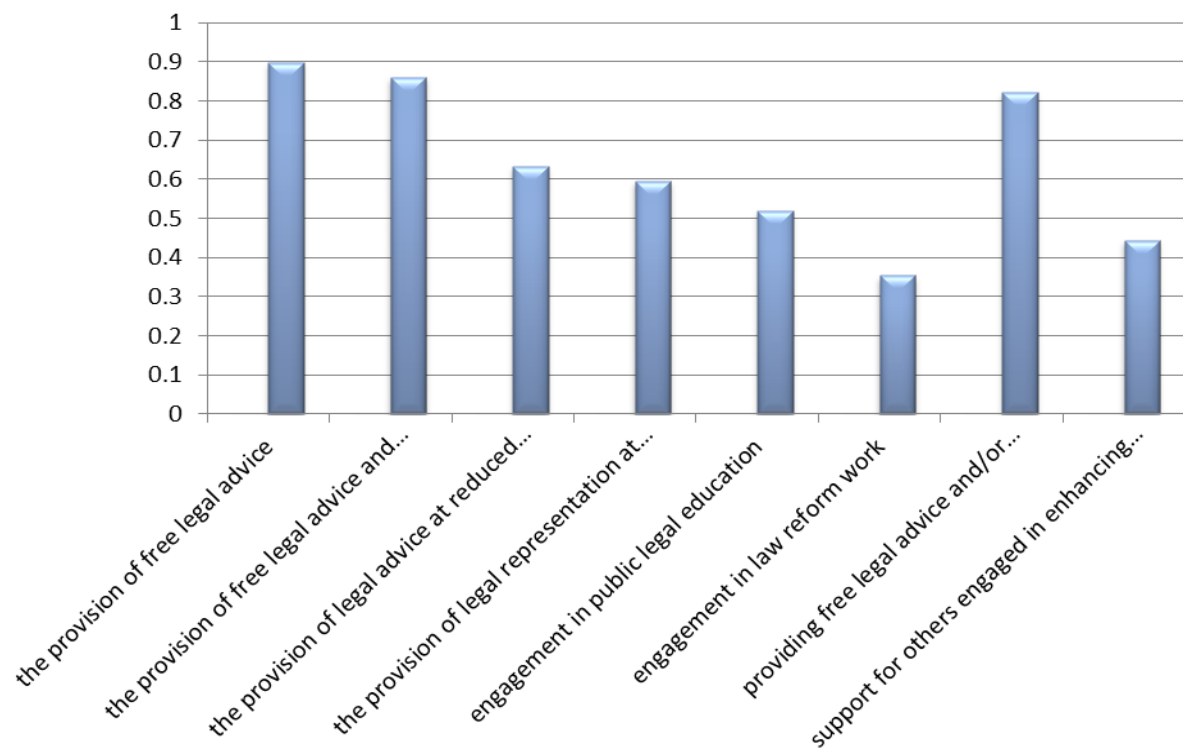
We intend to run similar pro bono surveys in the future, to help us to understand more about pro bono, particularly as the economic outlook overall changes. Some solicitors told us that the economic downturn saw an increase in the amount of pro bono done, as firms used spare capacity for good causes; others told us that the downturn made volunteering a luxury that couldn't be afforded; and some solicitors highlighted the elements of unpaid work in the legal aid system, exacerbated by the cuts undertaken through the recession.

We hope that you find these results useful, and if you have any thoughts regarding these or around pro bono generally, our Committee would be delighted to hear from you.

Stuart Naismith
Convener

Survey results

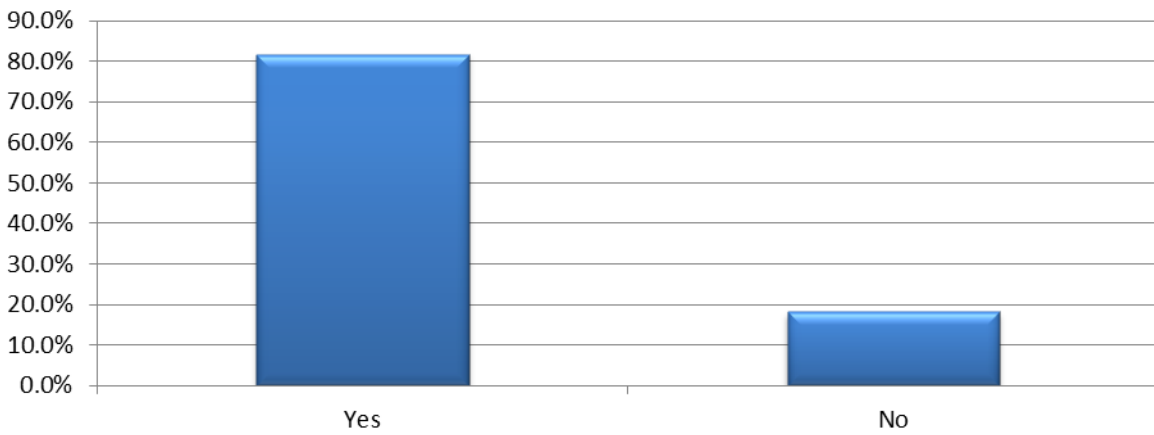
DO YOU THINK THE FOLLOWING FALLS UNDER THE DEFINITION OF PRO BONO?



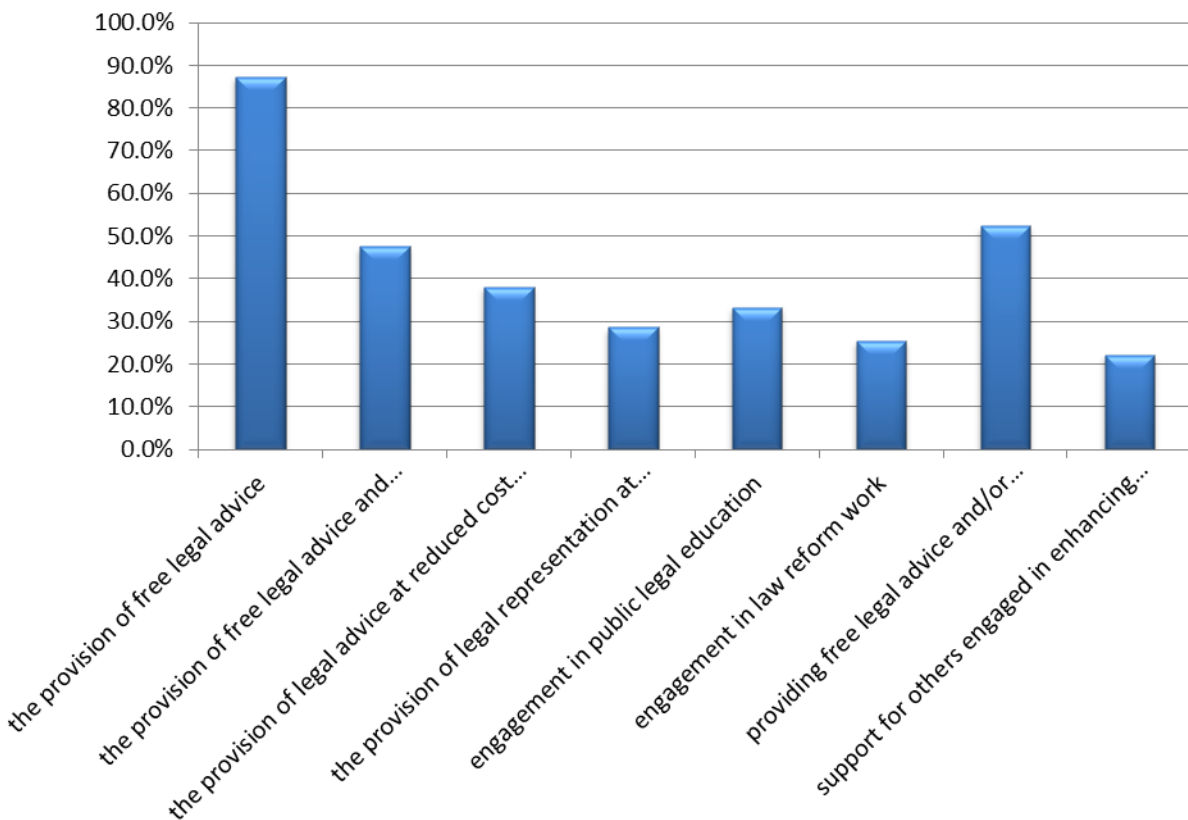
We do know that a number of solicitors do discount fees due to particular clients for reasons of access to justice (sometimes described as 'low bono'). There are a markedly smaller number of solicitors that would consider work done at a reduced fee to be pro bono: a margin of around 25% less than for work at no cost.

A number of solicitors talked about support for others working in pro bono: some described how they offered supervision to law students and others that offered a referral service to local advice agencies.

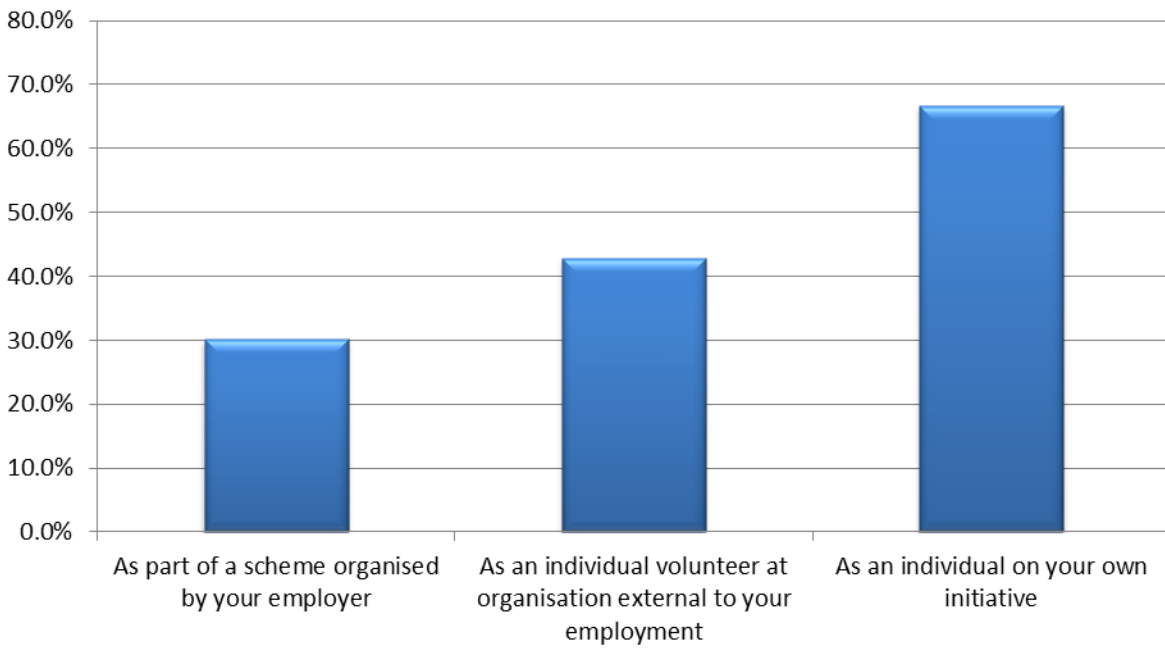
DO YOU CONSIDER THAT YOU HAVE UNDERTAKEN PRO BONO WORK AT ANY STAGE DURING YOUR CAREER?



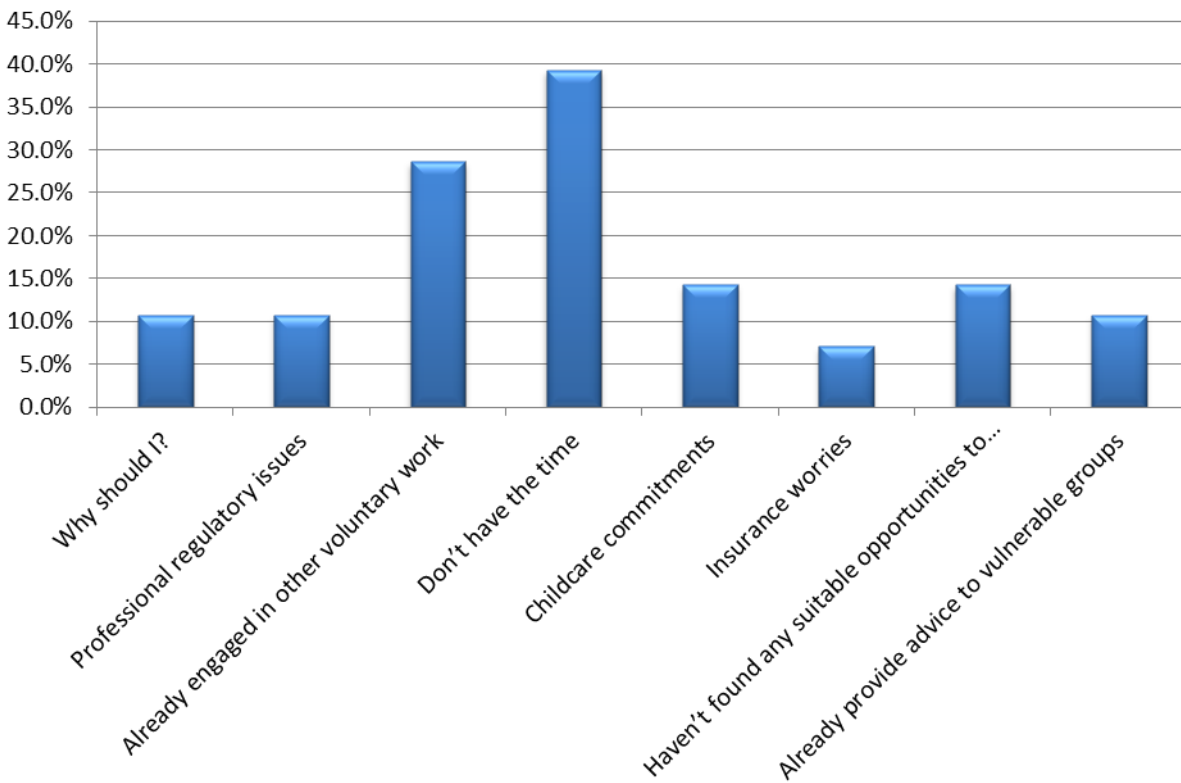
IF YOU HAVE UNDERTAKEN PRO BONO DURING YOUR CAREER, WHAT WAS THE TYPE OF PRO BONO YOU UNDERTOOK?



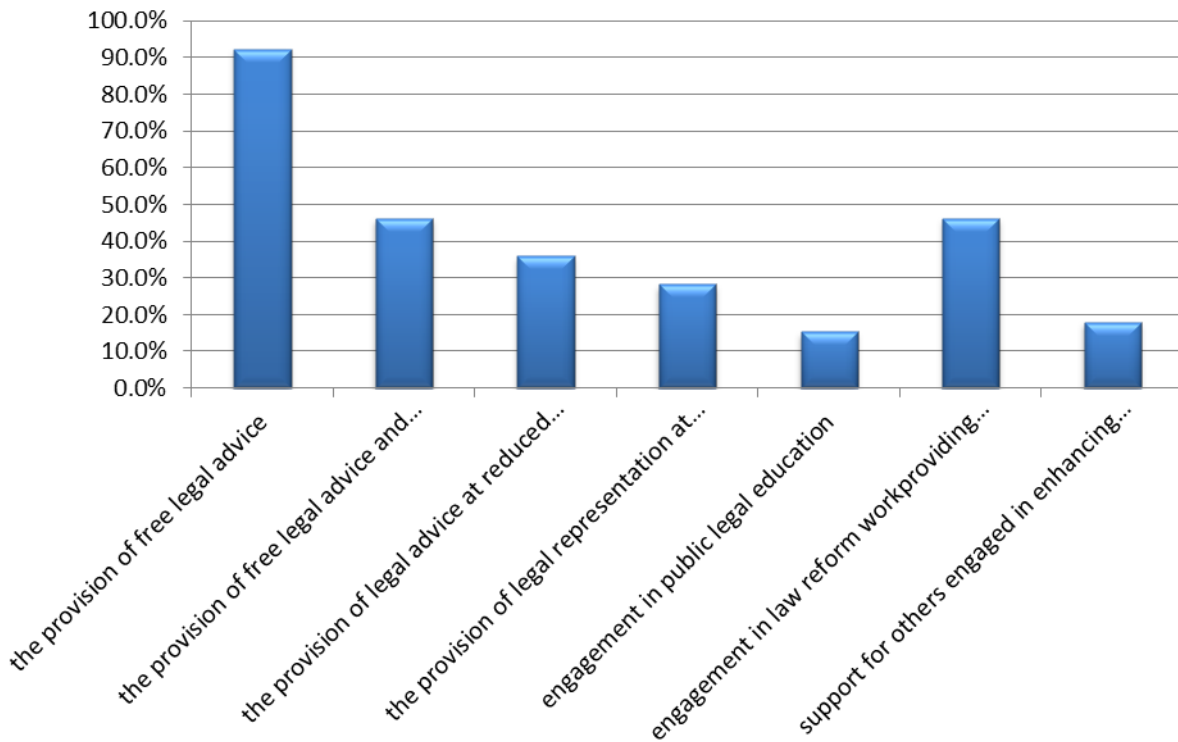
IF YOU HAVE UNDERTAKEN PRO BONO DURING YOUR CAREER, HOW WAS IT ORGANISED?



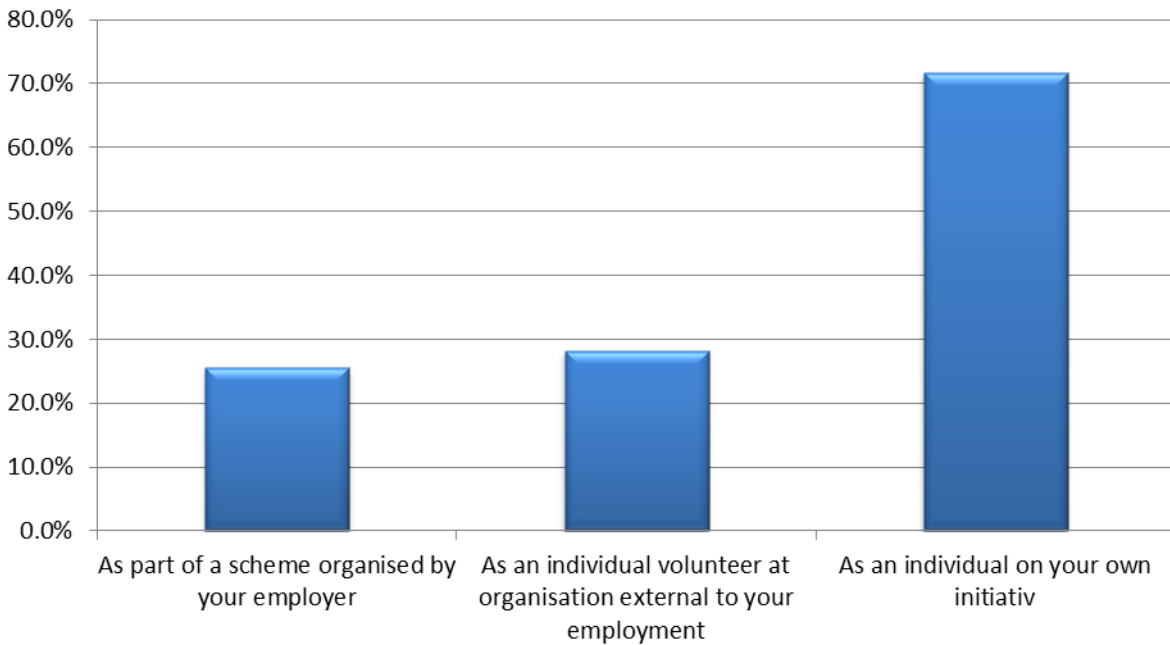
IF YOU'VE NOT UNDERTAKEN PRO BONO WORK DURING YOUR CAREER, WHY HAVE YOU NOT UNDERTAKEN PRO BONO WORK?



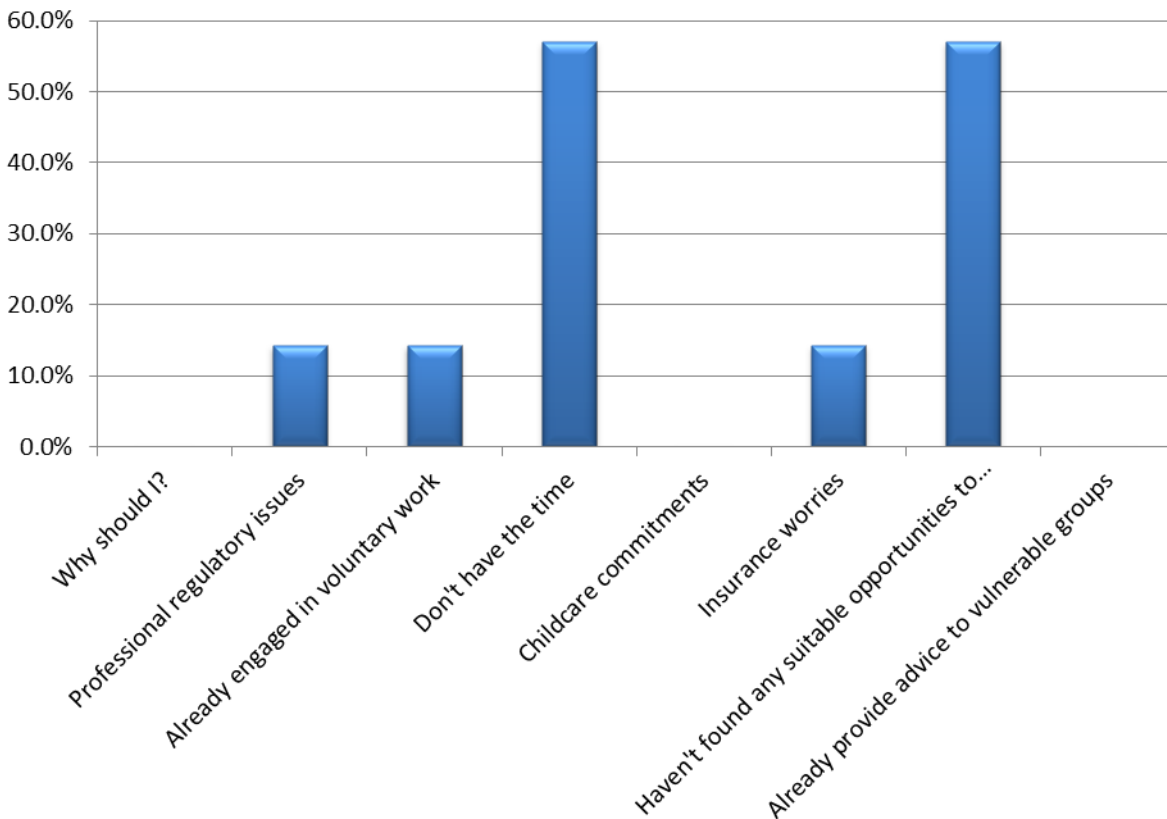
DO YOU CONSIDER THAT YOU HAVE PROVIDED PRO BONO IN THE LAST 12 MONTHS?



IF YOU HAVE UNDERTAKEN PRO BONO IN THE LAST TWELVE MONTHS, HOW WAS IT ORGANISED?



IF NOT IN THE LAST TWELVE MONTHS, WHY HAVE YOU NOT UNDERTAKEN PRO BONO?



The most frequent reasons for not providing pro bono were around not having the time (47%) and not being able to identify a suitable opportunity (45%). One recommendation may be to highlight pro bono opportunities to members more effectively. The Law Society has a number of channels available, such as the Journal, LinkedIn, monthly bulletin, targeted sectorial bulletins, Twitter, Facebook and LawScotJobs.

Advertising roles helping charities and other organisations might be suitable for [LawScotJobs](#), though some clarity around these being voluntary positions would be important to avoid confusion. Individual queries for pro bono support may be more difficult to advertise, though if suitably edited to ensure the anonymity of the party requesting help, could be done.

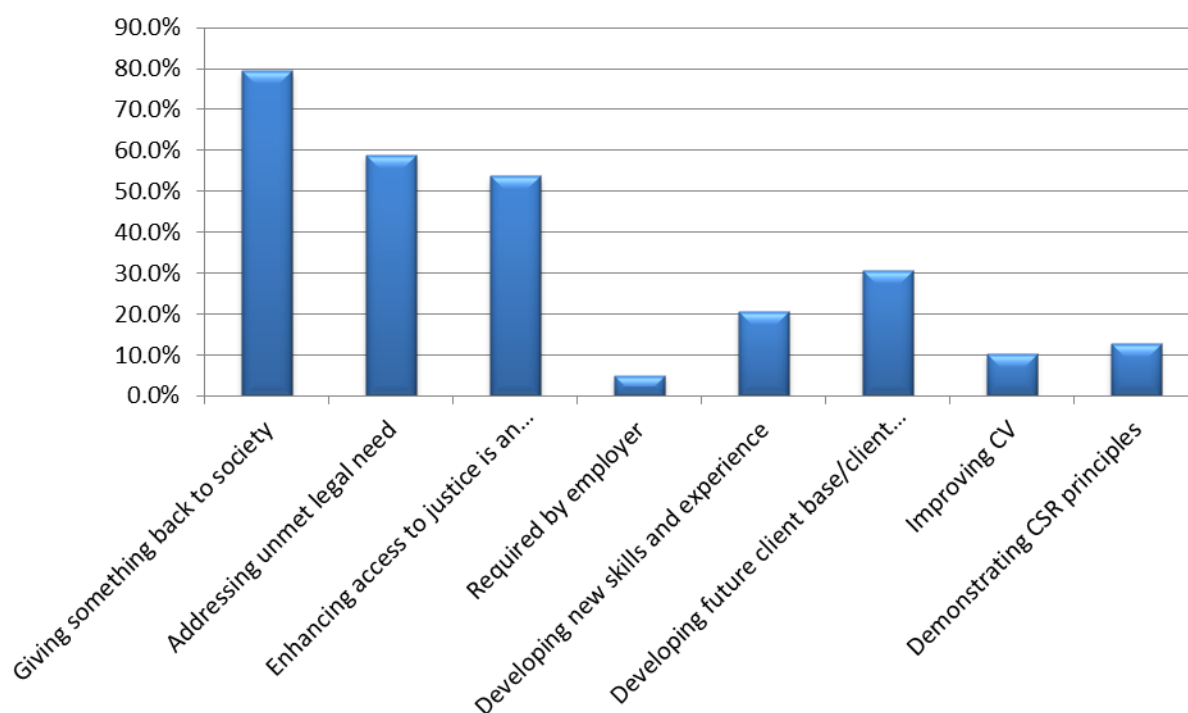
Other issues that might incentivise or disincentivise pro bono include insurance and CPD. On the former and for regulatory purposes, pro bono is considered in exactly the same way as fee paying work. The same insurance principles apply, and the same complaints process operates. This can be a challenge, in particular for in-house lawyers, who do not normally provide advice to the public direct and who, unlike counterparts in private practice, may not have the authority to do so.

Some jurisdictions have considered issues around in-house provision of pro bono (for instance, in England and Wales, much like Scotland, around a third of the legal profession works in-house). An example of this approach is a publication by [DLA Piper](#). It may be worth considering how or whether we could address the needs of in-house members, for

instance, how-to pro bono guides for in-house lawyers or for in-house employers, or considering indemnity insurance implications. Some members may not know, for example, that advice under the auspices of a CAB can fall under the indemnity umbrella of the bureaux rather than the individual.

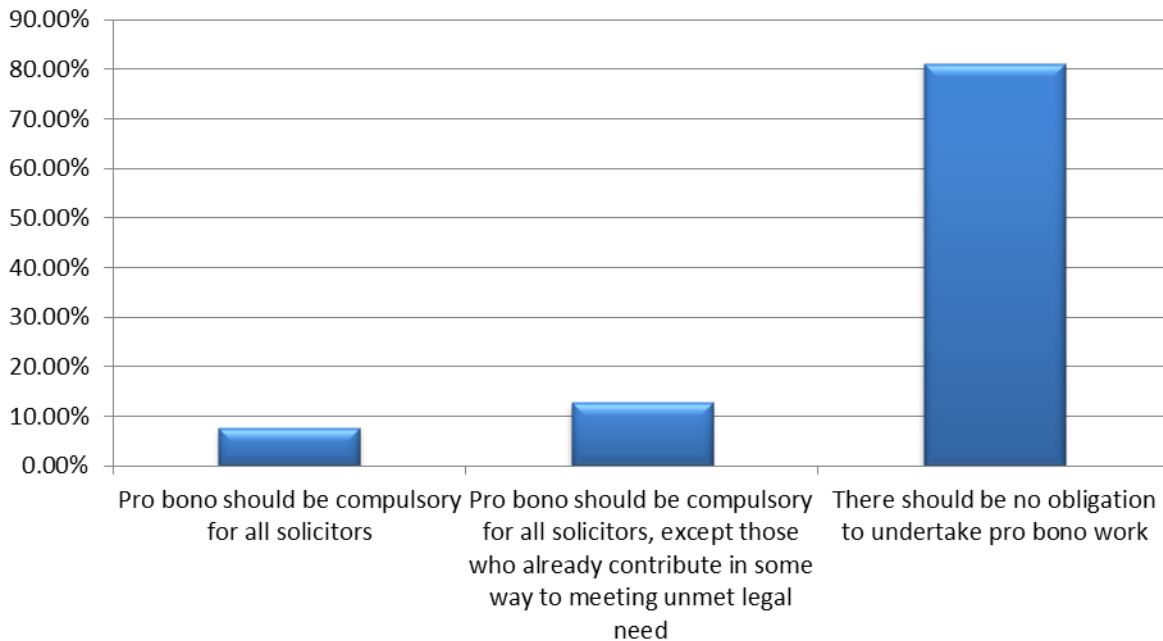
Similarly, some members may not be aware that pro bono can be considered as CPD, if part of the solicitor's learning and development plan and if verifiable. Again, this could be a useful area to highlight to members through a leaflet or other communications.

WHAT ARE YOUR MOTIVATIONS FOR PRO BONO?



It is heartening to see the motivations suggested by those that have undertaken pro bono. The principal drivers for undertaking this work are to give something back to society and to address unmet legal need. A number of solicitors work in public-facing roles that deal with vulnerable groups and at challenging times on a daily basis, for instance, working in legal aid, but there appears also to be a broad commitment across the profession towards the social purpose of the law.

WHAT IS YOUR OPINION OF THE FOLLOWING STATEMENTS?



Some jurisdictions rely heavily upon pro bono, partly because of professional responsibility and partly because of incomplete coverage of legal aid schemes. In England and Wales, the recent cuts to legal aid have placed pro bono in the spotlight, with calls for compulsory pro bono reported in the [Law Gazette](#).

In the United States, lawyers are responsible for [at least 50 hours of pro bono](#) annually, with some states having compulsory and others voluntary reporting of this commitment. The survey considered compulsory pro bono: 92% opposed compulsory pro bono (and 87% opposed compulsory pro bono with an exception for legal aid practice). Not least on this basis, we are opposed to a policy towards compulsory pro bono.