

Solicitor

Not to be confused with **Solicitor General** (disambiguation) or **Door-to-door salesperson** in American English.

(U.S.A)

A **solicitor** is a legal practitioner who traditionally deals with any legal matter in court in some jurisdictions. A person must have legally-defined qualifications, which vary from one jurisdiction to another, to be described as a solicitor and enabled to practise there as such. For example, in England and Wales a solicitor is admitted to practise under the provisions of the **Solicitors Act 1974**. With some exceptions, practising solicitors must possess a practising certificate. There are many more solicitors than barristers in England; they undertake the general aspects of giving legal advice and conducting legal proceedings.^[1]

In the United Kingdom, a few Australian states, Hong Kong, South Africa (where they are called *attorneys*) and Ireland, the legal profession is split between solicitors and barristers (called *advocates* in some countries), and a lawyer will usually only hold one of the two titles. However, in Canada, New Zealand, Singapore and most Australian states, the legal profession is now for practical purposes "fused", allowing lawyers to hold the title of "barrister and solicitor" and practise as both. Some legal graduates will start off as one and then also qualify as the other.^{[2][3]}

1 England and Wales

Main article: **Legal professions in England and Wales**

Before the creation of the Supreme Court of Judicature under the Supreme Court of Judicature Act 1873, solicitors practised in the Court of Chancery, attorneys practised in the common law courts and proctors practised in the ecclesiastical courts. After 1873 the offices of "attorney" and "proctor" disappeared as terms relating to legally qualified persons, being replaced by "Solicitor of the Supreme Court of England and Wales", except for the unique government offices of Queen's or King's Proctor (now generally Treasury Solicitor which is co-held with the title), and Attorney-General.^[4] Since the replacement of the judicial aspect of the House of Lords with the Supreme Court the full title of a solicitor is "Solicitor of the Senior Courts of England and Wales".^[5]

The term "attorney" is however still used under English

law to refer to someone legally appointed or empowered (who may but need not be legally qualified) to act for another person. Currently, the term is most commonly used to refer to someone so appointed under the provisions of the **Mental Capacity Act 2005** to act in this manner in a **Lasting Power of Attorney**. Practitioners in specialist professions, notably intellectual property, are also referred to as attorneys, for example Registered Patent Attorney or Registered Trade Mark Attorney.

In the English legal system, solicitors traditionally dealt with any legal matter including conducting proceedings in courts although solicitors were required to engage a barrister as advocate in a High Court or above after the profession split in two. Minor criminal cases are tried in **Magistrates' Courts**, which constitute by far the majority of courts. More serious criminal cases still start in the Magistrates Court and may then be transferred to a higher court.

The majority of civil cases are tried in county courts and are almost always handled by solicitors. Cases of higher value (£50,000 or above) and those of unusual complexity are tried in the High Court, and barristers, as the other branch of the English legal profession, have traditionally carried out the functions of advocacy in the High Court and Crown Court and Court of Appeal.

However, barristers have now lost this exclusivity and solicitors may now extend their advocacy to such courts. In the past, barristers did not deal with the public directly. This rigid separation no longer applies. **Solicitor advocates** with extended rights of audience may now act as advocates at all levels of the courts. Conversely, the public may now hire and interact with a barrister directly in certain types of work without having to go to a solicitor first.^[6] Registered Patent Attorneys and Registered Trade Mark Attorneys also have rights of audience in intellectual property matters.

1.1 Regulatory scheme

Solicitors in England and Wales who wish to practise must pay an annual fee to obtain a Practising Certificate. This fee is paid to the Law Society of England and Wales, which represents the profession. The Solicitors Regulation Authority, though funded by these fees, acts independently of the Law Society. Together, the two bodies make up the complete system of professional regulation for solicitors. Complaints about solicitors if not satisfactorily resolved by the solicitors' firm may be made to the

Legal Ombudsman.

1.2 Training and qualifications

The training and qualification required to enter the profession by being admitted as a solicitor is regulated by the Solicitors Regulation Authority. There are two graduate routes of entry into the profession. Prospective solicitors holding a qualifying law degree^[7] proceed to enroll with the Law Society as a student member and study the *Legal Practice Course*. Those holding a non-law degree but one which is a “qualifying degree” must in addition have completed a conversion course^[8] prior to enrolling on the *Legal Practice Course*. Once the *Legal Practice Course* has been completed, the prospective solicitor usually must then undertake two years’ apprenticeship, known as a training contract, with a firm entitled to take trainee solicitors.^[9] The *Legal Practice Course* and training contract can also be undertaken simultaneously although this is less usual.^[10] The training contract was formerly known as an articulated clerkship.

It is also possible to qualify as a solicitor without having attended university by being admitted as a Fellow of the Institute of Legal Executives (FILEX), and thereafter completing the required number of years of practical experience, and studying for the *Legal Practice Course*.

1.3 Distinction between barristers and solicitors, post-1990 changes

In England and Wales, the strict separation between the duties of solicitor and barrister was partially broken down, with the *Courts and Legal Services Act 1990* removing the monopoly of barristers to act as advocates and granting solicitors rights of audience in specified circumstances. Solicitors came frequently to appear in the lower courts and, subject to passing a test and thereby obtaining Higher Rights of Audience, increasingly in the higher courts such as the High Court of Justice of England and Wales and the Court of Appeal. While the independent bar continued to exist in a largely unchanged state, a few firms of solicitors employed their own barristers and solicitor advocates to do some of their court work. The rules preventing barristers from being directly instructed were revised to allow direct instruction by certain organizations such as trade unions, accountants, and similar groups. Additionally, barristers who have completed the Bar Council’s “Public Access” course can take instructions directly from members of the public, although there are some limitations on the type of work that can be done this way: for example, such barristers cannot take control of the conduct of litigation nor can they act in matrimonial matters.

Regulation of both barristers and solicitors was reviewed by David Clementi on behalf of the Ministry of Justice in 2004. He delivered his final recommendations in Decem-

ber 2004^[11] which included proposals for a more unified regulatory system and new structures for cross-profession work. Many of his recommendations were enshrined in the *Legal Services Act 2007*.

The breakdown in the strict separation between barrister and solicitor was expected to go further following recognition by the Act of the Legal Disciplinary Practice (LDP)^[12] (from 31 March 2009) and Alternate Business Structure (ABS)^[13] (from 6 October 2011) bodies.

2 Scotland

Scotland’s legal system is separate from those of England and Wales and Northern Ireland. In Scotland, the legal profession is divided between solicitors and advocates, the distinction being similar to that between solicitors and barristers in England and Wales, though Scottish solicitors have traditionally represented their clients in the lower courts (such as the Sheriff Court and the District Court), only being excluded from the High Court of Justiciary and the Court of Session. However, under Section 24 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, suitably qualified solicitors were for the first time in Scotland granted rights of audience in the Supreme Courts in Scotland as well as in the House of Lords and the Judicial Committee of the Privy Council as solicitor advocates.

In Scotland, solicitors are regulated by the Law Society of Scotland, which requires prospective solicitors to pass exams in a curriculum set by the Society. Ordinarily, this is done by obtaining a Bachelor of Laws (LLB) in Scots law at a university approved by the Society, though it is also possible to sit the Society’s own exams. Prospective solicitors are then required to take a one-year course provided by several Scottish universities and qualify for the Diploma in Professional Legal Practice, and then undertake a two-year traineeship with a law firm before they can qualify as a solicitor. As the Faculty of Advocates used to require an M.A. degree of its candidates, it used to be common to take a five-year combined MA LLB curriculum at the Scottish universities. Those intending to become solicitors who studied law as a first degree were at one time awarded a BL degree.

Prior to the formation of The Law Society of Scotland, solicitors were in most areas organized into a local Faculty of Procurators or Faculty of Procurators and Solicitors. These societies still exist, but their influence has waned. Whereas membership was once required in order to practise law in a particular locality, as long as a solicitor is registered with The Law Society of Scotland this is no longer the case. The local societies are now more likely to provide their members with a well-stocked law library, continuing professional development courses (all solicitors in Scotland are required to complete 20 hours of continuing professional development each year), and

lobby on behalf of their members with The Law Society of Scotland and The Scottish Government regarding future legal developments.

In Glasgow, the Royal Faculty of Procurators still exists. In Edinburgh, both the Society of Writers to Her Majesty's Signet (also known as the W.S. Society), whose members refer to themselves as a Writer to the Signet (W.S.), and the Society of Solicitors to the Supreme Courts (S.S.C.) are still in existence. In Aberdeen, solicitors may belong to the Society of Advocates in Aberdeen. Its members are formally referred to as "Advocate in Aberdeen" to distinguish them from regular Scottish advocates.

In the 18th century, Dr. Samuel Johnson marked the change in designation of the lawyers in Glasgow with a jibe about their moving from "procuring" (a term which traditionally meant pimping) to "soliciting" (which was and is used as shorthand for prostitution). This was a play on the title "Procurator," meaning agent, a word still used in the Scottish courts, particularly when one Scottish solicitor tells a court that he is appearing only as the agent of another solicitor.

Solicitors in Scotland have full rights of audience in the Sheriff Courts throughout Scotland in both criminal and civil cases. They also have rights of audience in the District Courts (the lowest criminal court in Scotland), although these are now being replaced by Justice of the Peace Courts, in which a solicitor also has a full right of audience. When in court, a solicitor will normally wear a suit and tie together with a Scottish bar gown (a form of black robe).

3 Ireland

Solicitors in Ireland are represented and regulated by the Law Society of Ireland. It was formally established by Royal Charter in 1852. The legislative basis for its current role is set out in the Solicitors Acts 1954–2002.

In Ireland it is quite possible to become a solicitor without holding a law degree; a few practising solicitors have no degree of any kind. Instead, individuals sit professional examinations which are set at degree level standard and undertake an intense apprenticeship program.

Irish independence in 1921 was marked more by continuity with the British legal system than with change. The legal profession remained divided between barristers (or *abhcóidí* in Irish) and solicitors (or *aturnaetha* in Irish). There was some blurring of the distinction between their roles over the years. Notably, under Section 17 of the Courts Act 1971, solicitors were granted a right of audience in all courts, although in practice relatively few solicitors act as advocates for their clients in the Superior Courts.

4 Australia

Regulation of the profession in Australia varies from state to state. Admission to practice is state-based, although mutual recognition enables a practitioner admitted in any state to practise nationally. In some states, the distinction between barristers and solicitors is nominal and reflects individual preferences and membership of professional associations. In others, at least in a practical sense, the distinction is clear from the type of practice practitioners have, even if they are entitled to practise in the other branch of the profession. Thus, while members of the bar practise only as barristers, a practitioner is admitted as a "barrister and solicitor." Thus, every solicitor is also a barrister, although many prefer to brief counsel rather than appear in courts or tribunals themselves. The trend to a fused profession is similar to that outlined above in England and Wales.

The states of New South Wales and Queensland, however, maintain strongly independent bars, call to which requires extra training. In those states, solicitors' rights of audience before superior courts are theoretically unlimited, but infrequently exercised in practice. Victoria also has an independent bar but solicitors have full right of audience before all courts.

5 Hong Kong

Hong Kong has maintained the distinction between solicitors, regulated by The Law Society of Hong Kong, and barristers, regulated by the Hong Kong Bar Association. A person intending to become a solicitor must have a professional law degree, either LL.B. or JD or the equivalent, and complete the one-year Postgraduate Certificate in Laws (P.C.L.L.) course. They must also complete a two-year trainee solicitor contract with a law firm. Solicitors enjoy rights of audience in the lower court and in chamber hearings in the High Court. For hearings in open court in the High Court and the Court of Final Appeal, only solicitors who have been certified as solicitor advocates may appear.

6 Canada

In the English-speaking common law jurisdictions of Canada, the profession of barrister and solicitor have been fused; all those called to the bar are lawyers, and admitted as solicitors. While many barristers and solicitors choose to practise within the scope of one or the other traditional disciplines, many others choose a cross-discipline practice. In Quebec, however, like America and modern France, there is no tradition of split professions, though a distinction is sometimes made between an *avocat plaidant* "trial lawyer" and an *avocat-conseil* or

conseiller juridique “legal consultant”.

7 Japan

In Japan, *Shihō-shoshi* (弁護士), the second tier legal profession who are prohibited from giving legal advice but are only allowed to prepare documents on behalf of their clients, describe themselves as Japanese “solicitors”. Their attempt to register the word “solicitor” as their trade mark in Japan, however, was thwarted by the Japanese Trade Mark Office rejecting the application on the basis that the word was generic.

8 United States

Historically, solicitors existed in America, though the term referred to a lawyer who argued cases in a court of equity, as opposed to an attorney who appeared only in courts of law.^{[14][15]} With the chancery or equity courts disappearing or being subsumed under courts of law, solicitors became obsolete by the late 19th century. In more modern American usage, the term solicitor is understood to refer to government lawyers. For example, the title “solicitor” is still used by town, city, and county lawyers in Delaware, Georgia, Massachusetts, Maryland, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, and West Virginia. In the Commonwealth of Massachusetts, the professional organization for government lawyers is the City Solicitors and Town Counsel Association. On the federal level, departmental solicitors remain in the Department of Labor, Department of the Interior, and the Patent & Trademark Office, and the Solicitor General of the United States is the lawyer appointed to represent the federal government before the United States Supreme Court. In the U.S., “solicitor” is also used synonymously with *salesman* (with a pejorative connotation roughly equivalent to the British English word *tout*) as in the signed warning on public places of accommodation, “no soliciting”.

In South Carolina, the position of “Circuit Solicitor” is analogous to that of *State’s Attorney* or *District Attorney* in other jurisdictions.

9 See also

- Barrister
- Conveyancer
- Legal executive
- Licensed conveyancer
- Solicitor General (disambiguation)

- Civil law notary, a similar position in the legal profession in civil-law countries

10 References

- [1] A Dictionary of Law (7 ed.), J Law and EA Martin, Oxford University Press, 2009, eISBN 9780191726729
- [2] 'Converting from Barrister to Solicitor'
- [3] 'Ex-Freshfields solicitor switches to the Bar'
- [4] *Oxford English Dictionary*
- [5] Solicitors Journal 5 October 2009
- [6] Public Access
- [7] “SRA - Academic Stage”. Solicitors Regulation Authority. Retrieved 2009-01-04.
- [8] “SRA - Conversion Course”. Solicitors Regulation Authority. Retrieved 2009-01-04.
- [9] “SRA - Training contract information”. Solicitors Regulation Authority. Retrieved 2009-01-04.
- [10] <http://www.lawsociety.org.uk/law-careers/becoming-a-solicitor/training-contracts/>
- [11] “Clementi Review of Legal Services”. Legal Services Review. Retrieved 2009-04-22.
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- [13] Law Society Practice notes - Alternative business structures
- [14] “Glossary of Terms”, *Arkansas Territorial Briefs and Records*, William H. Bowen School of Law, University of Arkansas at Little Rock, s.v. “Chancery”, retrieved on 12 June 2009: .
- [15] Frederic Jesup Stimpson, *Glossary of Technical Terms, Phrases, and Maxims of the Common Law*, s.v. “Solicitors”, (Boston: Little, Brown and Co., 1881), 273.

11 External links

- The Law Society of England and Wales Directory Of Solicitors
- The Irish Law Society Directory Of Solicitors
- Solicitors.com - Independent resource for finding a solicitor in the UK – Legal News and Features

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