

Response by JPC Clark on behalf of Blackadders LLP to consultation documents by Scottish Legal Complaints Commission relative to its 4 year strategy document "Improving Trust and Confidence in Scottish Legal Services".

I will preface my remarks by explaining that I am the Managing Partner at Blackadders LLP, a law firm with a national presence and turnover of in excess of £11m per annum. A large part of our practice, although we have a significant business practice, is what might be termed "retail" and includes the areas attracting a large proportion of complaints to SLCC – family law, executries and residential conveyancing.

In the course of my work as Client Relations Manager (CRM) I am accustomed to dealing with complaints, sometimes settling them, even if I think they have no merit, on an economic basis, but a few end up at the Commission. I am a panel member for the Legal Defence Union and act for other solicitors who are not Legal Defence Union members in relation to complaints which they receive.

The investigation staff at the Commission are bright, pleasant, reliable and helpful and, although I do not always agree with their conclusions, the quality and standard of work is generally high, and has certainly improved over the last 3 to 4 years.

It is difficult to resist concluding that the Commission is running a political agenda to develop its own importance at the legal profession's expense. The Commission's function is quasi-judicial (as we were reminded recently by Lord Malcolm in the Bartos decision) created by statute and deals with legal issues so it must be fairly legalistic in the same way that medical matters require medical knowledge. It requires people who understand and who can determine complex technical issues to be employed. The Commission exists to sift complaints which have not been dealt with by lawyers themselves to the satisfaction of the complainer, and to the extent that a complaint survives the sift, the Commission has power to decide a service was inadequate and / or refer conduct to The Law Society of Scotland ( LSS). In the former circumstances it can, if the matter is not settled, determine and order redress.

Whilst it is axiomatic that complaints should be minimised or satisfactorily resolved for public benefit "Improving Trust and Confidence in Scottish Legal Services" is not a function of the Commission, nor is it a function of the Commission to "influence standards of service for Scotland's diverse clients". The expression "at the heart of building trust and confidence in Scottish Legal Services is ensuring that high quality customer service is offered to a diverse range of users" is an indicator of where the Commission seems to see itself in future -as the monitor which imposes professional standards upon the legal profession i.e. its regulator.

'High quality customer service' is a subjective test, and is not the opposite of Inadequate Professional Service (IPS), which is the objective test the Commission is tasked with determining.

Turning then to your various questions:-

4A "build trust". It is not the Commission's role to supply information to consumers in relation to 'buying choices', nor to seek to influence the market. Otherwise the focus is correct.

2. "promote strong relationships". It would not seem to be for the Commission to set expectations beyond providing an adequate service. It is not the function of the Commission to be involved in expectations in relation to cost other than to ensure in terms of the rules that clients are clearly told about cost – either fixed fees, the formula for setting fees, no win, no fee or Legally Aided. The amounts themselves are a matter of contract.

Accessing and auditing data on all complaints raised directly with lawyers. It is not the function of the Commission to concern itself with complaints which have been resolved by lawyers themselves. In relation to my own firm, I might offer a discount, an apology or do some other work for free, even when I feel there is no merit in the complaint, because it is economic to do so. It would be particularly perturbing if this information was to be published in any way that allowed law firms to be recognised. Unless the complaint is eligible and either settled or determined against the practitioner, at the

Commission, it has no place in the statistics of the Commission as being anything other than “without merit”.

It seems unlikely that solicitors would look to voluntary mediation instead of SLCC becoming involved. Mediation supplied by the Commission is ‘free’ to solicitors to the extent that there is no additional charge and of course is free also to complainers. Any mediation where an award of expenses might be made against a complainer would be unlikely to be appealing, given that they already have a “free bet” at the Commission and suffer no adverse financial consequences if their complaint does not result in any award of compensation or other redress.

In relation to “deliver early resolution and redress”, I refer to the strategy document and also the interview given by Mr Stevenson, Chief Executive, in The Journal of the Law Society of Scotland. Publication of decisions and sanctions is important, not just so that parties can self-assess the likely outcome of a complaint, but so that the Commission can be held to account in its quality and consistency of determinations.

The facility to resolve complaints by mediation or agreed settlement based on an investigation report at the earliest stage is sensible. In my experience these should be accepted, but complainers will not necessarily accept them or may use the proposal as a lever for further bargaining. Power to impose the settlement proposal on both parties but without penal levy ( ie the equivalent of a fiscal fine) should be considered for appropriate cases , probably lower than £1500 in value to avoid the risk that solicitors think these decisions are revenue raisers in disguise. In, eg ██████████ I apologised and offered at eligibility to settle this for the full amount sought , even though there was no substantial merit in the complaint , which involved a small award of court expenses. The complainer refused to accept that , the offer was withdrawn, and the complaints investigator is being put to the trouble of an Investigation Report . In this case , if the investigator had had authority to accept the offer on behalf of the complainer , the matter would have been disposed of , economically for both , months ago.

It is laudable but optimistic to hope that complaints can be resolved within 6 months. Mr Stevenson candidly accepts that he did not realise that service complaints could be so difficult. Complaints such as ██████████ - still not resolved and ██████████ , resolved in December 2015 are examples of technically complex matters with well off, sophisticated , intelligent complainers. In each case agreeing the narrative of the complaint itself took many months. In complaint ██████████ which has landed on my desk within the last two weeks, the complaints investigator told me he had spent months agreeing a narrative with the complainer. Consideration might be given as to how this could best be improved.

Mr Stevenson suggests that there might be rigid time limits for solicitor responses and the existing 28 days given to deal with an initial complaint seems appropriate. The biggest cost in my experience in dealing with service complaints is the loss of productive time. However, I have frequently asked for extra time to respond at eligibility, in the hope that dealing fully with the matter at eligibility will avoid the need for an investigation and further delay. I have enjoyed success in that, not always by completely answering the complaint, but at least setting the scene for a mediation which would have not been possible without having gone through the sift. The flexibility of investigators to give extra time in cases where they think it will be of benefit is to be encouraged. They may take into account the experience of CRMs' previous dealings. LSS has a reputational problem with a statutory response time because having insisted on a reply within , say 14 days, in terms of law, it can on occasion then take months for progress to be made. The reputation of LSS in the eyes of its membership diminishes, and it would be a risky strategy for the Commission in the context of “promoting strong relationships” to do the same.

It is vital that the Commission attract the right people to deal with complicated service complaints. It is also important that the Commission understand more about conduct. Solicitors are much more likely to resolve complaints willingly if there is no accusation of misconduct. Although the judicial commentary in *Bartos* might be incorrect, it may be an opportunity for the Commission in some cases to deal with what might otherwise be routinely sent to LSS as potential conduct complaints, i.e. minor breaches of the communication rules such as overlooking to issue Terms of Business as IPS. In particular, the holding up of complaints and imposition of extra work on LSS pending trivial items such as this being dealt with causes delay – see ██████████ and ██████████ as examples where the

process could have been sped up considerably by the Commission understanding the conduct points. The Court has determined that the threshold is low, but it is not that low.

An average of 6 months for eligible service cases without a conduct element might be a realistic first step and in its own way an audacious goal.

"drive improvement" It is clearly to the benefit of all that there be legislation which ensures a background of high quality legal services in Scotland. It is however respectfully submitted it is not for the independent and impartial Commission to be lobbying for changes to conduct standards, but to support LSS, over which it has oversight, in seeking a more efficient and joined up regulatory scheme.

"develop high performance" I have nothing useful to add.

5 -draft operating plan - as I have mentioned above, I am concerned that 'promoting our role and increasing our visibility' is beyond the Commission's statutory purpose. In very particular, it seems odd that objective 1B is only given category "B". I would have thought that a 4 year marketing strategy would have demanded that the answers to questions 1B were known before any implementation so that any disadvantaged group could be targeted, rather than guessing or running a general awareness campaign.

In 1C, the collection of client feedback (complainers complain, most satisfied clients probably won't bother to respond to survey – I know I don't, nor do many of our clients, but they keep coming back) to 'encourage a customer focused approach by law firms' might be sound business advice but is a financial and operational imposition, the thin end of a wedge and is not a function of the Commission.

In relation to 2D it may be necessary to issue guidance as to how terms of business letters look if there is a perceived lack of clarity. The Practice Rules state what they must contain. Experience tells each firm what the other terms should be. Some matters are difficult and complicated and the prescription of a "key facts" document would, say, in a complex litigation or a contested executry not be as straightforward as the client information which can be given by example in an FCA compliant document. However 'Q&A' sheets should be encouraged, especially where they focus on, for example, scenarios where insurers can settle cases, when inappropriate instructions cannot be followed, duties to the Court and third parties and other communication of ethics and practice type issues.

4E – Trend analysis has to be managed very carefully. Firms, who practice in the statistically riskier areas may relatively speaking attract more complaints. The important statistic as far as the Commission is concerned is in relation to cases which have merit and have not been resolved by the firm itself. The use of expressions such as "polluter pays" is of concern to firms who handle complaints well (and that includes where the circumstances demand vigorously resisting them at the Commission, or appealing) and who do not have determinations made against them or levies imposed upon them. Informing 'buying choices' with data of this type would be inappropriate. Data Protection issues aside, you should expect to meet resistance to auditing of data if it were thought that that was the likely outcome. If this matter were to filter into, for example, levy rates for revenue raising by the Commission, then in higher risk areas firms would have in turn to be rewarded for low instances of complaint determination against them with 'no and low claims discounts', as the Master Policy gives. The amounts of levy involved would not seem to merit the sophisticated system and administration which would be required to execute this fairly.

6 – Draft budget – whilst containment of the levy is welcome, the increase appears only to be necessary because the Commission plans to promote itself beyond its statutory role, which is a matter of concern to those funding it. The use of reserves, a device that has its own obvious limits in terms of repetition is in that context undesirable, and disguises a substantial real increase in expenditure at a time when many other public sector entities, but who are funded by taxpayers, are obliged to make cuts in real terms.

1 – please see earlier comments regarding risk based assessment of levies. The amounts of money are not particularly large although if practising in-house lawyers who are solicitors wish to be practising solicitors they should continue to pay a levy.

I have to rely on the Commission's assessment of the likelihood of new entrants appearing, but you are correct that they should not be subsidised by those already subject to the Commission's jurisdiction.

There is insufficient detail given on unpaid redress for me to comment on it, although if the Master Policy is not covering it the individual amounts must be small.

7 L – Strategy seems to satisfactorily set out your commitment to equality and diversity.

**6 March 2016**