



**Law Society
of Scotland**



Atria One,
144 Morrison Street,
Edinburgh EH3 8EX
T: 0131 226 7411
F: 0131 225 2934
Textphone: 0131 476 8359

www.lawscot.org.uk

Neil Stevenson
Chief Executive
Scottish Legal Complaints Commission
The Stamp Office
10-14 Waterloo Place
Edinburgh
EH1 3EG

Our Ref: KL/LJ/LB
Date: 6 March 2017

Dear Neil

SCOTTISH LEGAL COMPLAINTS COMMISSION DRAFT BUDGET 2017/18

Thank you for providing us with a copy of your draft budget for 2017/18. We have now managed to look at the detail of your proposals. We consulted extensively with our members and the matter was considered in depth by our Board and Council.

In all the years of consulting with members on successive SLCC budgets, we have never experienced such anger and frustration in response. We received emails and letters from many different parts of the profession, from large firms to those in small high street practice, from in-house solicitors in both the public and private sectors as well as from those practising outside of Scotland.

At the heart of the concern is the proposal to increase the annual levy by 12.5%, almost eight times the rate of inflation. There is real frustration that the SLCC is coming forward with a substantial increase in its budget at a time when the public sector is facing pressure to control its costs and undertake such strict financial discipline. We find it difficult to believe that this kind of rise would be suggested or approved if the SLCC was funded by taxpayers' money instead of a levy on the legal profession. Whilst it is solicitors who fund the vast majority of the SLCC's spending, consumers should also be concerned as it is clients who ultimately pay through their solicitors' fees.

To put this concern in context, we have heard from members working in-house and those working outside of Scotland. Despite the fact these solicitors pay a lower levy to the SLCC, we know the proposed increase in costs is making it more difficult for them to justify the annual renewal of their practising certificate, especially when their day to day work may not require membership of the Law Society of Scotland. This concern is particularly acute in the public sector, including central and local government as well as the Crown Office & Procurator Fiscal Service, where huge pressure exists on budgets and every line of cost is open to scrutiny and challenge.



INVESTOR IN PEOPLE



We have also recently published a new independent report which shows the pressure facing those working in legal aid, with some of the smallest firms already finding it difficult to sustain their practices. This part of the profession provides a vital life line service to some of the most vulnerable in our society. In the context of fixed fees, many of which have been unchanged or reduced over the last 25 years, any rise in operating costs for these small businesses is difficult if not impossible to absorb.

This is why the Law Society has always been sensitive to the charges facing individual members. Our concern now is that a levy increase on the scale proposed by the SLCC could act as a 'tipping point' for some members and their employers. This is in nobody's interests.

The question therefore arises as to whether the SLCC is providing value for money and spending the £3million taken from the legal profession each year wisely and responsibly. In the introduction to the draft budget, the SLCC states that this plan "is aimed at delivering the second year of work under our Strategy for 2016 to 2020." However, over the last year, we have repeatedly highlighted concerns over those elements of the SLCC's strategy which focus on non-core activity. Given the scale of the levy rise being proposed, we would challenge the SLCC on the amount allocated for discretionary areas of work which sit outwith its principal duties.

With all the challenges facing the SLCC, it must focus on its core role as a complaints handling body. Other discretionary activity beyond that central role not only adds cost but distracts the SLCC from delivering the improvements it needs to make.

Turning to the detail of the budget, page 5 sets out the range of drivers for the costs and associated increase.

"A significant increase in complaints in 2015/16"

At the time of publishing the draft budget, the SLCC spoke to a 12% rise in the complaints it received in the business year. This is an extra two to three complaints a week. We find it difficult to understand how this cannot be absorbed in existing budgets. Indeed, the Commission's own figures show that almost two thirds of complaints received are ineligible and do not proceed. Therefore, the 2015/16 rise in complaints cannot be justification for such a significant rise in the SLCC's charging.

"We are predicting complaints may rise further in the second half of 2016/17 and on into 2017/18"

New figures provided to us suggest a 23% rise in the number of complaints received for the first six months of 16/17 compared to 15/16. Whilst we are always keen to work with the SLCC in understanding and addressing the root cause of solicitor complaints, we continue to note that the numbers of complaints being received relate to less than 1% of transactions carried out by Solicitors annually.

Even with this larger figure, this equates to less than five additional complaints a week across what we understand to be a core complaints team of 30-35. Given so many of these complaints

do not go forward to full investigation, let alone investigation by the SLCC, we would expect this modest increase in terms of actual work load to be accommodated within an existing budget of over £2.8 million. As is the case for other businesses and organisations seeking to control costs and provide value for money, it is possible to find significant changes in terms of process efficiencies and improved ways of working.

“Increased appeals and a judicial review relating to the above case are also increasing risk and projected costs considerably.”

We are deeply troubled by the SLCC’s use of the Anderson Strathern court judgment as justification for the increase in costs.

Following Lord Malcolm’s judgment and recognising the differing legal opinions received by the SLCC and the Law Society, we offered the opportunity to take a Special Case to the Court of Session in order to get legal clarity on the handling of complaints with hybrid issues. The SLCC rejected this offer on several occasions, despite the fact it would have provided a quicker, cheaper and more collaborative approach. As a result of this, we were left with no option but to pursue a number of appeals to the court.

Despite this and whilst the case decision is still pending, we have made clear how we will not pursue expenses if we are successful in our appeal. Even if we lose the appeal decision, we will not pursue a judicial review. Both of these commitments should make it easier for the SLCC to plan for and accommodate its legal costs without a significant increase in the levy.

Even with increased costs and, whilst recognising the SLCC’s reserves policy, we believe there is a case for looking again at funding such one off costs from reserves and then rebuilding up reserves slowly over future years.

It had been predicted that ‘Alternative Business Structures’ may have been authorised in the 2016/17 business year

As you will know, we have now been approved as a regulator of licensed legal service providers. Following some further work with the Scottish Government, we hope to get authorisation to receive applications and commence licensing later this year. Whilst we appreciate there are costs associated with the SLCC’s role as a complaints body for ABS regulators and licensed providers, we question how much the SLCC will ultimately have to incur. Again, we would have expected the SLCC to budget properly. Given the expected activity from 2016/17 has not been undertaken as planned, the budget allocated for this work would carry over and would not require a levy increase.

In any event, we continue to believe the SLCC’s set up costs should be met by the Scottish Government. This would be consistent to when the SLCC was first established in 2008. We hope the SLCC will continue to press the government on this point which, if successful, would ensure any such costs can be delivered without a levy increase.

Updated membership figures

We note that the SLCC has based its proposed budget on the membership profile as at November 2016. The figures quoted on the first table of page 22 of the budget represent the actual number of solicitors in each category as provided by our Registrar's team last year. However, there is always growth of total numbers of solicitors and changes in the profile of membership by the time of the SLCC levy in June. We have provided our current membership statistics along with our latest projections for the time of the levy;

	Nov 16	Feb 17	Jun 17	Cash change
Fee Amount	Actual		Projected	
FULL	6842	6838	6,900	£20,648
HALF	824	905	920	£17,088
INHOUSE	2,888	2,939	3,010	£13,054
OUTWITH	816	854	870	£6,264
TOTAL	11,370	11,536	11,700	£57,054

Whilst modest, these membership numbers for solicitors make a contribution to income for 2017/18 which could offset, at least in part, some of the proposed levy increase.

Finally and more broadly, we would ask you to look again at discretionary spend in areas such as IT, marketing and communications by seeking to use channels already offered by the Law Society and the Faculty of Advocates rather than seeking to replicate these. This offers further opportunities to control costs and reduce the proposed 12.5% levy increase.

For example, communications with client relations partners can be reached via our regular newsletters and events. Likewise, we communicate regularly with trainee solicitors and our broader membership. These channels are available for the SLCC to issue guidance and other information to members and do not need to be duplicated.

I hope this response serves to underline how seriously we and our members take the proposed increase in the SLCC budget and levy. I look forward to us continuing our dialogue on this over the coming weeks ahead of a final budget being laid before the Scottish Parliament.

Yours sincerely

Lorna Jack
Chief Executive