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Sent by email to consult@scottishlegalcomplaints.org.uk

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Dear Neil,

SCOTTISH LEGAL COMPLAINTS COMMISSION – DRAFT BUDGET AND OPERATING PLAN 2022/23

Thank you for providing us with your draft budget and operating plan for 2022/23 which we have now had a chance to consider.

The Law Society has, over many years, pressed the SLCC to take action to control its costs and minimise the amount solicitors must pay to finance what is an increasingly expensive complaints system. We have also raised concerns over whether the SLCC is sufficiently focused on its core role as a complaint handling body and the quick and effective processing of legal complaints.

We feel it necessary to return to both of these issues in relation to the proposed budget and operating plan for 2022-23.

The costs of the SLCC and proposed levy

It remains regrettable that, at the onset of the COVID-19 pandemic in 2020, and when solicitors faced uncertainty and a sudden and dramatic loss of income, the SLCC chose to increase the levy to record levels. This compared starkly to the Law Society's unprecedented £2.2 million package of support at that time, including a 20% cut in both the practising certificate fee and accounts fee.

Against that historic backdrop, we welcome the proposal by the SLCC to reduce its levy and see this as a positive step forward. Nevertheless, even with the proposed levy reduction, the SLCC is forecasting record total expenditure of £3.87 million. We question whether such a level of spending can be justified.

Looking across the last 10 years, the numbers of complaints submitted to the SLCC has increased by just 6%. This should be seen against considerable growth in the Scottish legal sector and the current record numbers of practising solicitors. Nevertheless, the SLCC's budget will have grown by 31% over that decade if the proposed budget is agreed.

Looking at the costs per complaint received, the SLCC is now forecast to cost 20% more than it did compared to five years ago, a level well in excess of inflation. Indeed, comparing the proposed budget and operating plan to figures from 2018-19, the SLCC is expecting it to cost more to deal with significantly fewer complaints. We therefore question whether the SLCC is going as far as it reasonably could in controlling costs.



In last year's budget consultation, the SLCC proposed a cash terms freeze in the levy. We argued strongly in our response to that consultation that the proposal fell far short of what could have been expected in response to the issues being faced by the sector.

We strongly argued that, rather than a cash freeze, the SLCC should instead be cutting its levy. We were therefore pleased when the SLCC listened to those representations and changed its plans with a levy cut. We hope the SLCC will, as with last year, look harder at its budget following the close of the consultation to see where further efficiencies can be achieved and for such savings to deliver a larger levy reduction.

The focus of the SLCC on complaints handling

The SLCC plays a critical role as a complaint handling body and a gateway organisation for the passing of conduct complaints to professional bodies. The efficient and effective handling of complaints must always remain the number one priority for the SLCC.

However, we note that in paragraph 1.7 of the consultation papers, this core task is only listed as the third of three bullets relating to areas of work. Indeed, we note this core role comes after 'responding to the debate on reform' of the regulatory landscape and is casually referred to as 'business as usual'.

Further in the consultation, paragraphs 4.25-4.28 list "seven areas we [the SLCC] need to prioritise". The core role of the SLCC in administering complaints does not even appear to feature as a priority, with only a vague reference in the last stated priority to 'coordinating and integrating work'.

We do not question the right of the SLCC to, for example, make its views known in the debate on regulatory reform which is ongoing. However, we believe it is vital that, at a time of limited resources and choices on priorities, the SLCC must always prioritise the central role handed to it by parliament and which consumers and legal professionals depend on it to do well; namely the quick and successful processing of legal complaints.

We believe the final operating plan needs to reflect to this. Otherwise, there is a risk that the SLCC is being distracted from delivering on its central and fundamental purpose.

The failure of solicitors to respond to statutory requests for files

We note and share the desire of the SLCC to address this long running issue which causes unacceptable delays to conclude some complaints. Whilst the number of such cases remains small, we realise they can generate substantial costs from court action, costs which the profession as a whole must bear.

As you know, the Law Society and SLCC agreed a new protocol for how to deal with cases where solicitors do not provide the necessary information to process a complaint. We are clear that we consider it unacceptable for a solicitor to refuse to engage with the statutory complaints process, whether that involves the SLCC or the Law Society.

We continue to communicate proactively with the profession around this issue and want to see significant progress in this area over the year ahead. As always, we are keen to work with the SLCC to see what further useful action can be undertaken.



Approved regulator levy

Since 2018, the SLCC has charged the Law Society approved regulator (AR) fees of £34,000. This is over and above the funding provided by the Scottish Government to ensure the SLCC is properly set up to undertake its responsibilities under the Legal Services (Scotland) Act 2010.

As you will know, the Law Society was only recently authorised by the Scottish Government to accept licence applications for licenced legal service providers. We expect to open the scheme for applications later in 2022.

In previous years, we have objected to the substantial sums levied on the Law Society in terms of approved regulator levies when it is impossible to recoup charged from any licenced providers. This currently remains the case.

It remains unclear to us what previous AR fee sums have been used for and consider the additional £10,000 proposed to be charged to be wholly excessive and unacceptable in the circumstances. We believe this sum should be reduced to nil.

Reforming complaints through regulations

In last year's consultation response, we spoke of the positive and collaborative work we undertook with the SLCC in developing a package of suggested reforms to the complaints system and which could be delivered by way of secondary legislation.

Whilst we were pleased when the Scottish Government consulted on that package last year, it remains frustrating to us that it could be the summer or even autumn before changes are brought to parliament for approval. This will be a full five years after work on this package commenced, despite all parties recognising the weaknesses seen in the current complaints system.

Given the delays in getting to this point, it is important for the SLCC to prioritise its resources so it is ready to implement and make the most of the final package of reforms which is taken to and, we hope, approved by parliament. While these changes are still likely to be limited in scope, we stand ready to work with the SLCC to ensure they are properly understood by the profession and that changes benefit consumers and solicitors alike.

Yours sincerely,

Diane McGiffen
Chief Executive