

# Regulation of Legal Services (Scotland) Bill SLCC Consumer Panel Stage 1 briefing

## Consumer focused regulation

We welcome and share the Scottish Government's aim to create a "modern, forward-looking regulatory framework for Scotland that will best promote competition, innovation, and the public and consumer interest in an efficient, effective, and efficient legal sector". Reform in this area is much needed.

The internationally accepted [Consumer Principles](#) require regulation to be clear, accountable and consumer focused. We believe that a single regulator, responsible for the whole system of regulation, complaints and redress, and independent of those it regulates, working across the whole legal services market, remains the best way to achieve this.

We supported the recommendation of the Robertson Review to create an independent regulator. The Panel has strongly advocated for this model throughout the debate on regulatory reform and we continue to believe it is the simplest, clearest, and most appropriate regulatory model to help deliver regulation that acts in the public interest and puts consumers at its heart.

However, although this Bill will not achieve that aim, we do believe it would make significant important improvements to the current system of regulation. In particular, we welcome improvements to the transparency and accountability required of the professional regulators, and to the functioning of the complaints system, which is often the place where most consumers come into direct contact with the regulatory system.

**While the Bill does not propose an independent model of regulation, the panel is of the view that MSPs should support the general principles of the Bill to allow for reform of the current system.**

We are and remain concerned that despite the Committee and Government's recognition of the importance of the consumer voice, there has been little focus on consumers or their needs in this debate so far. There has been little engagement with consumer groups, minimal research into consumer needs and much of the discussion has been focused on the legal profession and judiciary rather than users of legal services. Many of the issues raised in the Stage 1 report focus on whether further concessions should be made to proposals which are already a significant compromise. We urge MSPs to bring the voices of their constituents as consumers

of legal services to this debate and help to deliver a regulatory system that truly does put consumers at its heart.

## **A complex and unclear landscape for consumers**

The current regulatory landscape for legal services is incredibly complex and difficult for a consumer to understand. The Consumer Principles set out key aims to make regulation more accessible, accountable, and transparent to the public. We believe the complexity of the current and proposed regulatory landscape actively works against this. A system which is difficult to understand, lacking in transparency or challenging to navigate can cause confusion, suspicion, and disengagement. In terms of access to justice, this is of significant concern given the importance of public confidence in legal services and their regulation.

Short of creating a single, independent regulator to regulate in the public interest, making independent regulatory committees responsible for any regulatory activity discharged by the professional bodies should ensure greater independence and accountability and could bring a public interest focus to the regulatory landscape and help to drive consumer confidence, choice, and accountability.

The model proposed in this Bill sets up a complex system of checks and balances across the multi-agency regulatory landscape. There is already discussion of amendments to the proposed system and it's vital these amendments do not further reduce the focus on the public interest or the need for a strong consumer voice within the regulatory system. In addition, it's crucial that consumer awareness and education of the new system of regulation is also considered, and that simplification is progressed where possible without reducing transparency.

In line with the Consumer Principles, we believe all bodies delivering statutory regulatory duties (including regulators/ regulatory committees, complaints bodies and discipline tribunals) should be accountable and transparent. This includes publishing budgets and annual reports to Parliament, and consulting on their regulatory plans with appropriate stakeholders, including groups representing consumer interests. The Panel feels this is of crucial importance for consumer knowledge and confidence in the system and its constituent parts. It is a key cornerstone of the Consumer Principles that regulation should be accessible, accountable and provide the information consumers require. It is therefore appropriate that all bodies discharging statutory duties should be subject to Freedom of Information legislation.

While we welcome the proposals to bring greater transparency and accountability, we are concerned that the case for a two-tier system of legal regulators subject to different levels of transparency and accountability has not been made and is not in line with the Consumer Principles.

We consider that transparency and accountability should extend to all involved in the regulatory landscape, so we echo the Committee's request for clarification "on what mechanisms are in place within the current system to "oversee the overseer" and ensure that all decisions are transparent and open and there are sufficient checks and balances in place".

Regulators need to be accessible and responsive to consumer voices. Given the likelihood of the Lord President assuming further powers in relation to legal services regulation through Stage 2 amendments to the Bill, we welcome Lady Dorrian's comment in her evidence that the Lord President "considers that the interests of consumers are vital" and note Lord Erich's view that "although the Lord President's door would no doubt be open if consumer groups wished to meet him, the formal structures are different, as they involve consumer groups engaging at the professional body level or through the consumer panel of the Scottish Legal Complaints Commission. We are not saying that the current regulatory framework is ideal; there are many ways in which it could be improved, and it may be that a process with more consumer involvement would improve it."

## **A strong consumer voice**

We strongly welcome proposals for an expanded role and remit for the Consumer Panel to matters relating to legal services regulation in Scotland more broadly. We believe this will help achieve the stated policy intention of placing consumer interests at the heart of legal services regulation.

We want to see the new regulatory model not only embed a consumer voice but ensure provision of sufficient resources to support research and engagement with consumers themselves. This will address the lack of work which has been done in this area in Scotland, as highlighted by the Robertson review. Although the Consumer Panel was established by statute in 2014, no provision was made for its funding. Currently, secretariat support and resource for any projects identified by the Panel are met from SLCC resources. That has limited the Panel's scope to deliver new consumer insights.

The expansion of the Consumer Panel's remit means a rethink of the Panel's resourcing, capacity and independence is needed. The Panel's expanded remit has implications for what is needed in terms of resources required for its secretariat and to carry out dedicated consumer research and engagement to support its role. It also has implications for the support required for Panel members themselves to allow them to fulfil their enhanced role.

Currently Panel members are volunteers, meaning that the Panel's work is effectively being subsidised by the organisations those on the panel represent, many of them from the not-for-profit or third sector. With an enhanced role for the Panel being proposed both these elements in terms of secretariat support and support for Panel members need to be further addressed and adequately resourced going forward.

Equivalent consumer panels in other sectors and jurisdictions (e.g. the Legal Services Consumer Panel in England and Wales, the Communications Consumer Panel, the Financial Services Consumer Panel), receive appropriate funding from the relevant regulated sector to discharge their important duties.

We would urge MSPs and Scottish Government to consider as the Bill progresses, how it can meaningfully address these significant issues which the Panel has raised.

The current voluntary and subsidised nature of the Panel is not unsustainable at its current level if its role and remit is to be enhanced and this needs to be addressed.

Ongoing and appropriately resourced engagement, outreach, consultation and co-design is a core requirement to help to genuinely shape a legal services market that can meet the current, potential and future needs of legal services users.

We believe it's a real strength that our Panel includes members who bring a deep understanding of the groups or communities they work with or represent. That includes groups who could be likely to be at risk of vulnerability when using legal services. The regulatory system must be open to, and willing to resource, much needed consumer input from those without a detailed understanding of the regulatory system or legal issues, but who have vital insight to share on how to make regulation work for those most likely to experience consumer detriment or harm.

The Bill and the regulatory system it creates also needs to recognise that legal services consumers individually and as a market are often vulnerable due to the nature of the legal issue they are dealing with, including bereavement, divorce, criminal charges or immigration issues. We are aware from our work with the SLCC that there are groups who are likely to be under-represented amongst those who feel able to make a complaint. However, those people may well be among the most vulnerable of consumers, and those most likely to experience consumer detriment or harm. In order to genuinely discharge its duties, the Panel must be resourced to recruit, to involve and to engage with those groups and their representatives.

## **A customer friendly complaints process**

A focus on customer journey would suggest a significantly more streamlined and customer-friendly regulatory system than exists or is proposed, particularly for those areas of the system which consumers are most likely to come into contact with.

The complaints process is complex and difficult to understand. The process often feels too legalistic, requires the use of terminology unfamiliar to many consumers and can make them feel the odds are stacked against them from the start. Complexity also results in a process which is slow and inefficient, and this is clearly not in the interest of consumers of legal services – nor indeed any practitioner involved in a complaint. We welcome proposals to allow for a swifter, more efficient complaints handling process, but agree with the Committee that the proposals do not go far enough.

We regularly review the feedback which the SLCC obtains from the users of its services, both consumers and lawyers. Many comments relate to the length and complexity of the complaints process. Proposals to streamline initial decisions on whether a complaint is eligible for investigation are welcome, as a swifter process could increase the likelihood of early and consensual resolution between parties.

We also consider that the professional bodies' regulatory role in complaint handling, alongside their role as representative bodies for their respective professions, causes suspicion and mistrust on the part of complainers – we see this frequently in the SLCC's customer feedback.

Taking a customer journey approach and reducing system-generated barriers would help to ensure that the complaints process delivers the intended effective and efficient redress route for consumers. We believe the measures proposed in the Bill should help to improve the efficiency of parts of the complaints process, but do not go far enough.

We agree with the Committee's view that there is compelling evidence that the complaints process is complex and confusing and that "Scottish Government may have missed an opportunity to take a simpler, more user-friendly approach in creating a single streamlined complaints process which would have benefited consumers and regulators alike". We welcome the Committee's strong recommendation that the Scottish Government looks again at how the process can be further simplified.

We strongly welcome the Committee's rejection of arguments supporting the introduction of a fee for making a complaint which would reduce access to justice for legal service users who could not afford to pay such a fee.

## **Our recommendation**

This Bill is a compromise, and we would have liked to see Parliament making a bolder statement about the need for consumer-focused regulation in the public interest. However, the Bill does make some important improvements to the current regulatory and complaints system which we welcome and want to see implemented.

**While the Bill does not propose an independent model of regulation, the panel is of the view that MSPs should support the general principles of the Bill to allow for reform of the current system.**

Given the likelihood of significant amendments being brought forward at Stage 2, we also call on the Committee to consult or take further evidence on the implications of those amendments before considering them. Such amendments could have a significant impact on the overall system of checks and balances within the Bill and require appropriate scrutiny. We would be happy to provide any further input which the Committee might find helpful.

## **About us**

The SLCC Consumer Panel is an independent advisory panel, set up to assist the Scottish Legal Complaints Commission in understanding and taking account of the interests of consumers of legal services. The Consumer Panel is there to be a representative voice on behalf of consumers. Panel members include representatives from Citizens Advice Scotland, the Competition and Markets Authority, Consumer Scotland, Scottish Women's Aid, Which, Young Scot and academia. Individual members may also provide briefing on issues of particular interest to their organisation or service users.

Find out more about our work: <https://www.scottishlegalcomplaints.org.uk/about-us/consumer-panel/>. Contact us: [consumer.panel@scottishlegalcomplaints.org.uk](mailto:consumer.panel@scottishlegalcomplaints.org.uk)