

## **SLCC Response to the Finance and Public Administration Committee's call for views on the Financial Memorandum of the Regulation of Legal Services (Scotland) Bill**

### **About the SLCC**

The Scottish Legal Complaints Commission (SLCC) is an independent statutory public body providing a single point of contact for all complaints against legal practitioners operating in Scotland. The SLCC investigates and resolves complaints about inadequate professional services, refers conduct complaints to the relevant professional organisations and has oversight of complaint handling across the legal profession.

### **1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?**

Yes, we responded to the consultations on both Legal services regulation reform in Scotland (<https://consult.gov.scot/justice/legal-services-regulation-reform-in-scotland/>) in December 2021 and Complaints against lawyers and legal firms in Scotland (<https://consult.gov.scot/justice/amendments-to-legal-complaints/>) in February 2021. While the latter related to changes proposed to be made by statutory instrument in the absence of primary legislation, it provided a detailed analysis of potential changes to the complaints process operated by the SLCC and included details of expected costs and savings arising from those amendments. Many of those changes have been carried forward, albeit in a different form, into the Regulation of Legal Services (Scotland) Bill. In both of our responses we commented on the financial assumptions made.

We have also had the opportunity to discuss the financial assumptions further with the relevant Scottish Government policy/ Bill team as the Bill and the accompanying financial memorandum have been developed.

### **2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?**

Yes, we are broadly satisfied that our comments have been accurately reflected in the FM.

### **3. Did you have sufficient time to contribute to the consultation exercise?**

Yes.

### **4. If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.**

The Bill makes significant changes to our duties and functions and will therefore have financial implications for our organisation. Some of these changes are challenging to estimate at this time and there are still some unknown factors in their implementation. That said, we are broadly satisfied that both the likely transition costs and the ongoing costs and potential savings of the proposed changes to the complaints process operated by the SLCC and to the proposed new powers for the organisation are accurately reflected in the FM.

There is one exception to that, which is in relation to the expansion of the independent Consumer Panel's remit across the regulatory system (see paragraph 116 of the FM).

The Consumer Panel was set up in 2015 and is supported by the SLCC. In that time, it has made a significant contribution to the consumer focus of the SLCC's work, and to the wider debate on legal services regulation and consumer issues more broadly.

We welcome the expansion of the Panel's remit and we believe it could bring much needed insight and challenge, and could help to address the dearth of consumer research, insight and voice identified by the independent Robertson review into legal services regulation.

However, it needs to be appropriately resourced if it is to carry out that function, including engaging with groups representing vulnerable consumers, researching consumer needs and trends and engaging with bodies across the regulatory system. Its ongoing costs are currently met from the SLCC budget, funded by practitioners, which has not always been without controversy or question. It has no independent secretariat and Panel members are volunteers, meaning that, in reality, its work is subsidised by the organisations they represent, many of them third sector. That is in contrast to the equivalent body in England and Wales where Panel members are remunerated, there is an independent secretariat hosted by the Legal Services Board and the Panel has a substantial ring-fenced budget for research and engagement activity.

The Financial Memorandum makes no mention of the increased cost of the Consumer Panel's expanded remit, which we believe is a significant oversight. As a core part of the regulatory system, it is vital that the Panel's role is recognised and supported, and that it is given the respect and resource needed to discharge its functions. We have raised this issue directly with the Bill team.

## **5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?**

Subject to the comments above, we broadly consider that the estimated costs and savings set out in the FM are reasonable and accurate as they relate to both likely transition costs and the ongoing delivery of our statutory duties and functions (with the caveat above in relation to resource for the Consumer Panel).

We are, however, concerned by the statement on p59 of the FM which states, “The measures in the Bill are designed to reduce the cost of the legal complaints system on both the legal sector and consumers, the estimated cost of the Commission is anticipated to range between £3.5m and £4m per annum.” While we agree with the policy intention and the potential for a reformed system under the proposed legislation to improve efficiency and deliver cost savings in complaint handling, we believe this statement could be misleading.

Firstly, depending on implementation plans, we may be operating a new and legacy complaints system in parallel for some time, and if required, this will need to be budgeted for. Savings will therefore be phased in over time. Secondly, during that period, and on an ongoing basis, there will be other pressures, including the Scottish Government public sector pay deal and general inflation, that may mean that savings are offset by new costs. Finally, it does not take into account the expanded role and remit of the Commission, and the cost of discharging its new powers.

This is important because comparisons of rising costs over time rightly often feature prominently in discussions about organisational performance and efficiency, particularly when those costs are met via a levy on a regulated sector. However, they must be considered in context, particularly in light of the high volatility we have seen in inflation rates and staff costs in recent years.

We would also note that as a NDBP we have a public sector no compulsory redundancies rule, so would only be able to achieve significant cost savings (other than expected savings on legal and court costs) through staff redeployment or over time through natural wastage.

What the above means is that while savings may not translate into a reduced budget, it does mean that steps are being taken where that is more likely than under the current model, or failing which, future costs are likely to rise less steeply than under the current model.

Finally, it is important to note that these costs are only reasonable and accurate on the basis of the provisions made in the Bill as introduced. If amendments are made to the Bill to once again reduce or restrict the proportionality or flexibility of the complaints process we have to deliver, then costs will inevitably rise. In particular, changes to the proposals on reviews/ appeals could lead to costs going up even further than the current model. If that is the case, an updated FM will be required to accurately set out those costs for all stakeholders.

There is one area where we are concerned that the estimated costs set out in the FM may not be accurate. That is in relation to regulatory costs for the Relevant

Professional Bodies, as outlined in paragraphs 94-112 of the FM. A particular challenge of the mixed regulatory and representative roles of the RPOs is that budgets for regulatory activities are currently not clearly disaggregated. We note that where those estimates are available, the FM cites estimated total regulatory costs for RPOs, including an estimated share of support functions and services, which is appropriate. However, without clear disaggregation of costs within RPOs there remains a high degree of uncertainty about current regulatory costs and therefore the potential additional costs or savings which the Bill's provisions could achieve.

**6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?**

We are broadly satisfied that, assuming the Bill was to be passed as introduced, the initial transition costs of the Scottish Legal Services Commission, which are outlined in the FM and are to be met by the Scottish Government, would be sufficient to cover transition costs.

In relation to ongoing costs for the Commission, those will continue to be met from levies on the regulated sector, as is currently the case. Those costs are demand-led and already fluctuate year on year based on complaint numbers and any changes in other significant costs, for example, inflation or rising staff costs (which are subject to the public sector pay policy). The Commission sets a budget based on its requirements to meet demand for its services and then levies the sector accordingly.

As outlined in response to Q5, there are some factors which could impact ongoing costs and therefore the Commission's budget and subsequent levies on the sector. Those are:

- implementation plans, including whether we are required to operating a new and a legacy complaints system in parallel for some time
- our ability to realise efficiencies in complaints staffing through staff redeployment and natural wastage
- rising costs due to inflation and particularly rising staff costs
- the expanded role and remit of the Commission, and the cost of discharging its new powers.

Again, we must stress that the anticipated costs and savings are only reasonable and accurate on the basis of the provisions made in the Bill as introduced. If amendments are made to the Bill to once again reduce or restrict the proportionality or flexibility of the complaints process we have to deliver, then costs will inevitably rise. If that is the case, an updated FM will be required to accurately set out those costs for all stakeholders.

**7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?**

Yes, subject to comments above at Q5 and Q6 about implementation plans. It is not yet clear what the expectations are for implementation of the changes to the complaints process, and to the Commission's powers, or what the expected transition and implementation timescales will be. The way transition costs are phased across the whole transition period will be crucial in ensuring we can prepare for implementation, and some important aspects of implementation have key interdependencies.

For example, the FM states that "with the introduction of entity regulation the Commission will be able to introduce a fairer system, through a levy on both individual legal practitioners and legal businesses, based on their financial turnover, and licenced providers". We agree, and that forms a crucial aspect of our future funding model. However, that is dependent on the relevant regulatory scheme for authorised legal businesses (ALBs) being developed and launched to allow for those entities to be registered and regulated before they can be levied. We note that Section 48 of the Bill sets out that "The Law Society must prepare its ALB rules in accordance with section 41 within such period (not exceeding 3 years from the date on which this section comes into force) as it may agree with the Lord President". This means that it could be some years before we are in a position to be able to levy authorised legal businesses (as outlined in Section 64 of the Bill), and therefore in the meantime relevant costs will continue to fall on individual legal practitioners.