

## **Regulation of Legal Services (Scotland) Bill – SLCC Consumer Panel response to Stage 1 call for evidence**

### **1. What are your views on:**

- **the principal recommendation of the Robertson Review that an independent regulator should be created to regulate legal professionals**
- **the Scottish Government’s decision to “build on the existing framework” rather than follow that principal recommendation**
- **whether there is a risk that the proposals could raise concerns about a potential conflict of interests**

We supported the recommendation of the Robertson Review that an independent regulator should be created to regulate all legal professionals. 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.

For example, it would likely have been possible for a single, independent body, to be subject to the new Consumer Duty, as the SLCC will be. The Consumer Duty places a statutory duty on Scottish public authorities to improve how consumers are considered during policy and decision-making. However, it is not clear that the duty could be applied to existing regulatory bodies such as the legal professional bodies.

The 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, is the best way to achieve this.

The Panel has also questioned the dual role of the Relevant Professional Bodies playing the part of both regulator and representative of their respective professions. It is hard to see how such a position can be considered impartial when it comes to regulation. This can also cause suspicion and mistrust on the part of complainers.

### **2. What are your views on the current regulatory landscape for legal services in terms of complexity or simplicity?**

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.

**3. What are your views on the proposed division of regulators into two categories and the requirements which these regulators will have to comply with, as set out in Part 1 of the Bill?**

We believe that a single regulator, responsible for the whole system of regulation, complaints and redress, and independent of those it regulates, is the best way to achieve regulation in the public interest. Short of this, we believe that independent regulatory committees responsible for any regulatory activity discharged by the professional bodies, ensure greater independence and accountability and can bring a public interest focus to the regulatory landscape and help to drive consumer confidence, choice and accountability.

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 in Parliament, and consulting on their regulatory plans with appropriate stakeholders, including groups representing consumer interests.

To operate independently, professional regulators or regulatory committees must be suitably resourced. In order to be consumer focused, they will, at time, have priorities which are not shared by the representative body (for example, wanting to carry out consumer research). They must be able to discharge their duties, in line with their statutory objectives, even when the representative body does not share their priorities. To do that, they need to have dedicated resources they can deploy at will.

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.

On that basis, 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.

**4. Section 19 of the Bill gives Ministers the power to review the performance of regulators' regulatory functions. Section 20 sets out measures open to the Scottish Ministers. What are your views on these sections?**

-

**5. What is your understanding of the experiences of other jurisdictions, for example England and Wales, where independent regulators have been introduced to regulate legal services?**

-

**6. What are the main deficiencies in the current complaints system and do you believe the proposals in the Bill are sufficient to address these issues?**

The complaints process is the part of the regulatory system consumers are most likely to come into direct contact with. The Panel has significant concerns over the current complaints process which 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.

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. Decisions on whether a complaint is eligible, for example, should be achieved through a quick and uncomplicated sift to establish whether there is a good reason why a complaint should not be considered further. It is disproportionate that this part of the process often takes longer than the investigation of a complaint, and it has a significant impact on the overall time for a complaint to reach a conclusion. We also believe 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.

We specifically welcome the (re)introduction of hybrid issues of complaint, as it increases the potential availability of compensation for consumers, where a decision is made in their favour.

The Consumer Principles emphasise the need for transparency within all markets to allow consumers the ability to make informed choices. Comparison websites for the legal services market exist in other countries, including information on complaint histories. The current legislation prevents the SLCC from reporting on such matters

and we consider that this hinders a fuller transparency of the legal services market in Scotland.

We therefore welcome the additional scope for the SLCC to publish information about firms experiencing a number of complaints, where that information is in the public interest. This proposal provides an opportunity to provide a key additional consumer protection, currently not possible within the existing legislation, to avoid consumers being exposed to a known risk, and should allow consumers to make more informed choices about the provider they choose.

- 7. What do you consider the impact of the Bill's proposed rules on alternative business structures might be:**
- a. generally?**
  - b. in relation to consumers of legal services?**

Choice is a key aspect of the Consumer Principles, so we welcome any move to create greater choice in the legal services market and to remove any barriers to new models that could increase choice or access for consumers. We are very concerned that legislation to achieve this was first passed by Parliament in 2010 but it is still not possible for a new business to operate in Scotland under this scheme, when consumers in England and Wales have been able to access such businesses since 2007.

In addition, the way the scheme has been developed separately and providers having been described as 'alternative' business structures is likely to be confusing for consumers, who may not be clear what services such providers can offer and how they are regulated. A clearer and simpler approach would be a single regulatory system for both individually regulated professionals and all types of regulated legal entities, rather than separate regulatory schemes (and therefore also parallel complaints schemes) for authorised legal businesses and licensed legal services providers. That would provide clearer information for consumers about the regulatory protections in place and would have avoided any implication that certain types of business are 'alternative' or otherwise, which may have an impact on consumer choice.

- 8. What are your views on the provision of:**
- a. "Entity regulation" (as set out in Part 2 of the Bill)?**
  - b. title regulation for the term "lawyer" (section 82)?**

For many types of legal service, consumers often believe they are contracting with a law firm, rather than an individual practitioner. They expect the firm to deliver an adequate service, and to take responsibility for anything which does not go to plan, regardless of who carries out the work. From a consumer perspective, entity regulation makes sense.

Consumers are unlikely to be familiar with which titles are protected and which are not. What is important is clarity over what a consumer can expect from any regulated firm or practitioner, regardless of their title.

It's vital that any protections for titles are accompanied by powers to take action where they are breached. In these situations, consumers may be at risk of detriment or of making an uninformed choice by assuming a provider is regulated when they are not (consumers may choose to use an unregulated provider, but they should have the information to make an informed choice about the implications of that).

## **9. Do you have any further comments on the Bill and any positive or negative impacts of it?**

### **Consumer Panel**

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.

As an example, the Legal Services Consumer Panel in England and Wales (LSCP) is supported by a small policy secretariat hosted and funded by the Legal Services Board as part of its annual levy on approved regulators. Its budget for 2023-24 is £251,570, which includes Panel member remuneration, secretariat costs and research and event costs (see [www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2023/05/LSCP-Work-Programme-2023-24.pdf](http://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2023/05/LSCP-Work-Programme-2023-24.pdf)).

As examples of the type of added value an adequately resourced and supported Consumer Panel could bring to the regulatory system, the LSCP commissions an annual tracker survey on how consumers are choosing legal services to inform its

work and the work of the regulators as well as carrying out other topical research studies. In addition, it has recently published a report outlining what more could be done to embed a consumer focused culture amongst legal services regulators across all parts of the regulatory process

(<https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2023/06/Consumer-focused-regulation-report-FINAL.pdf>).

Similarly, the Communications Consumer Panel (CCP) ([www.communicationsconsumerpanel.org.uk/](http://www.communicationsconsumerpanel.org.uk/)) is a good example of a Panel resourced to be able to engage with the wider consumer environment. Sitting within Ofcom but with its own separate resourcing and secretariat, it can be a critical friend to the regulator and can carry out its own research. The Chair of the Panel has regular meetings with a variety of stakeholders including advocacy bodies and likewise wider 'hub' meetings are run in each of the devolved nations focussing on different issues. The CCP's total expenditure for 2021-22 was £644,459 covering Panel member fees and expense plus secretariat, research, engagement and communications costs (see <https://www.communicationsconsumerpanel.org.uk/annual-report-current-year/current-year>). The CCP also exists alongside an advisory committee for older and disabled people.

Finally, the Financial Services Consumer Panel (<https://www.fs-cp.org.uk/>) is an independent statutory body, set up under the Financial Services and Markets Act to represent the interests of consumers in the development of policy for the regulation of financial services. It advises the Financial Conduct Authority, engages with stakeholders to inform its views and commissions research to support its own independent projects. The FCA Board agrees a Budget for Panel members' fees, expenses and any consultancy or research work it commissions. The Panel is supported by a Secretariat of 5 FTE staff. Its total expenditure for 2021-22 was £385,000 (see [https://www.fs-cp.org.uk/sites/default/files/fca\\_consumer\\_panel\\_annual\\_report\\_2022\\_2\\_0.pdf](https://www.fs-cp.org.uk/sites/default/files/fca_consumer_panel_annual_report_2022_2_0.pdf)).

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.

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 representative.

## Indicators for consumer-focused regulation

The Bill's stated policy intent is to "to provide 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" (Policy Memorandum, page 2) and the Bill introduces a regulatory objective "to protect and promote the interests of consumers and the wider public interest" (Section 2(1)(b) of the Bill).

To assess the extent to which the Bill's provisions would help to achieve this, we have assessed the proposals against the Legal Services Consumer Panel in England and Wales (LSCP)'s recent publication, Consumer Focused Regulation in Legal Services (<https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2023/06/Consumer-focused-regulation-report-FINAL.pdf>). It sets out a series of indicators which can be used as a guide to achieve good practice in consumer-focused regulation. The indicators are divided into six categories which correspond to different parts of the regulatory process:

- Governance (decision-making processes and transparency)
- Strategy (linking strategic priorities with consumer outcomes and vulnerable consumers)
- Consumer research and engagement (linking consumer research with strategic priorities, consumer segmentation, consumer engagement and communication)
- Policy development and implementation (linking policy priorities with consumer research and monitoring and evaluation)
- Approach to consumer protection (ease-of-use of complaints procedures, enforcement and proactive supervision and transparency and accessibility)
- Responsive regulation (price and quality transparency, horizon scanning and collaborative research and engagement).

We believe this Bill has the potential to help drive significant progress against many of these indicators, but crucially only if the proposed improvements in transparency, accountability, independent regulatory decision-making, consumer insight and engagement, consumer protection, and complaints and redress processes are all retained in the final Act and implemented by regulators.

## Unregulated legal services

We believe that a basic level of consumer protection and redress should be available to those using any legal service so we very much welcome the proposal to allow for complaints against unregulated legal services and to set up a voluntary register. This could also help to facilitate consumer choice and improve access, while providing appropriate levels of consumer protection. However, we are concerned to ensure that these proposals don't limit access to much-needed free advice and support by placing additional regulatory burdens on the organisations who provide it and would caution against any such burdens being placed on non-for-profit services.

In addition, given the CMA's current work in relation to unregulated legal services (<https://www.gov.uk/government/news/cma-investigates-will-writing-and-other-legal-services>) and that these services can often be provided online or virtually it is crucial that consumers interacting with these services should not receive a lesser degree of consumer protection or redress. Therefore, it's vital that any voluntary register is appropriately utilised and monitored to ensure consumers and particularly vulnerable consumers are not subject to detriment through any use of unregulated legal services.

### **Learning from complaints**

When raising a complaint, most consumers say they want anything which has gone wrong for them put right, and to ensure the same issue doesn't happen to others – they want both appropriate redress and continuous improvement. That can only be achieved through prevention, quality assurance and a system focused on learning from what has gone wrong.

We believe some of the measures in the Bill could help to achieve this, so we welcome new powers for the SLCC to set guidance and minimum standards on complaint handling and issues that trends show lead to complaints. We would welcome a role for the Consumer Panel in this work, as we believe this guidance should be informed by insight into consumer needs and expectations.