

Neil Stevenson
Chief Executive
Scottish Legal Complaints Commission
LP86
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Our Ref: PY/KL/LB
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Dear Neil

SCOTTISH LEGAL COMPLAINTS COMMISSION (SLCC) – DRAFT STRATEGY 2016-2020

Thank you for giving us the opportunity to provide comment on your draft strategy.

As you will be aware, the Law Society undertook a major review of its own strategy in 2014-15. This culminated in the publication of “Leading Legal Excellence”. As a result, I am well aware of the body of work involved in creating a new strategy and it is to the credit of the SLCC that you have chosen to consult with us and others in advance of any final decisions.

Before commenting in detail on your proposed strategy, I would refer you back to my letter of 10 March 2016 in response to your draft annual plan and budget for 2016-17. This response should be seen in conjunction with that letter as many of the points are similar.

Your draft strategy sets out the aims and objectives for the SLCC for the next four years and provides a clear idea of your proposed priorities. What is missing is an idea of the basis or assumptions upon which this strategy has been created.

When the Law Society published its strategy, we were clear about the context in which our aims and objectives sat. We set out the economic, social, political and legal environment in which we were working, which attempted to provide some of the rationale for our new set of aims and objectives. This kind of context is missing from your own strategy and does, in part, make it difficult to understand the basis and reasoning for your approach.

The SLCC is not a new body. It has existed now for eight years and has built up considerable knowledge and expertise in complaints handling. In developing your strategy, I am sure you would have considered trends in the market and in



complaints. It therefore would be very helpful to have a more explicit idea of that context.

Turning to the strategy itself, we note your proposed overarching aim to “improve trust and confidence in Scottish legal services”. This, in itself, gives the impression that there is a major lack of trust in legal services or the legal profession. Our own public polling, carried out independently by Ipsos MORI, tells a very different story. That research found that over 90% of people who had used a solicitor had been happy with the standard of service received. 93% had trust in their own solicitor and 87% had trust in the profession as a whole. Whilst these figures should not be taken for granted, they underline the extremely strong position which underlies consumers’ views of the legal profession.

Whilst the SLCC’s handling of complaints is an essential component of the legal profession and the protection of consumers, your own direct handling of complaints will always have a limited impact on overall levels of trust. After all, only around 0.01% of activity in Scottish legal services will give cause to a complaint for the Commission to handle. To that end, it would be useful to know what measures will be used to determine overall trust? Whilst a number of operational measures are given in the slide titled “success”, these would not appear to provide data on overall trust levels.

A good comparison organisation would be the Scottish Public Services Ombudsmen which handles complaints about councils, the NHS, housing associations and many other public agencies. It is a body which handles almost five times as many complaints as the SLCC and with only 20% more annual expenditure.

The SPSO has a clear overarching vision to enhance public confidence but it is firmly rooted in “*providing a trusted, effective and efficient complaint handling service*”. Its annual report is dominated by sections on improving complaints handling and casework performance. We believe the approach and emphasis by SPSO provides an excellent example for the SLCC to consider and follow.

In terms of the priorities listed and, as with your draft annual plan, we also have serious concerns.

The Scottish Parliament created the SLCC in 2007 and gave it a vital public interest role as an independent gateway for legal complaints and as an investigative body for service complaints. This proposed strategy does not give sufficient importance or focus to these core statutory roles and risks giving the impression that the SLCC is increasingly motivated to spend time and resources on discretionary activity outwith its formal remit.

A clear illustration of this point is that four of your five priorities do not even mention the word “complaints”. Where the issue of complaints does appear, it is listed only in priority four. For a body which has been established to handle complaints, whether

investigating service complaints directly or passing conduct complaints to the relevant professional body, we find this astonishing.

Whilst there is welcome mention of delivering early resolution of cases, there is nothing within the proposed top line priorities in terms of improving your own performance of complaints handling. Instead, there is increasing attention given to consumer issues where there are other bodies which have the knowledge, experience, understanding and resources to carry out this work. Whilst a commitment is given to improving performance under Slide 9, this very much appears as an afterthought.

It is also important to stress that the SLCC must be, and be seen to be, independent and impartial when it comes to handling complaints. Whilst we recognise the need to work in the interests of consumers, it must also pay equal attention to the legal profession and its professional bodies. It is not sufficient to seek to build trust amongst the public. For the system to work and work effectively, the profession must also have trust in your ability to address matters fairly and without any predetermined bias towards one side.

Looking in more detail at your priorities, we would question the prominence placed on many of them and indeed, their inclusion at all.

Whilst the overarching aim of the first objective to “build trust” is laudable, this is best delivered by ensuring there is the most effective and efficient complaints handling process possible. It is not delivered through the concentrated self-promotion which is listed under this objective. The SLCC has existed now for over eight years and is well established. A simple online search for complaints against solicitors in Scotland immediately signposts people to the Commission. Solicitor terms of business letters must clearly highlight the SLCC and your role. There is no evidence to suggest an underlying need for a major programme of awareness raising. To focus so clearly on your own profile risks leaving both the consumers and the legal professional bodies who rely on you to carry out a critical task with the impression that the SLCC has a larger agenda.

Rather, we believe the SLCC should use this section to set out its clear commitment and focus on its core statutory task by setting an aim to more effectively and more efficiently handle complaints, using much of the material provided in Slide 9 but making it clear how this is and remains the SLCC’s number one priority.

Section 2 on promoting strong partnerships includes a number of bullet points which we support, namely around encouraging good practice and voluntary mediation. However, there are other elements which clearly fall well beyond the SLCC’s remit. It suggests that you wish to undertake work on service standards where your role does and should continue to be focused on complaints handling standards. The promise to access and audit complaints data on individual firms is good for determining trends or for highlighting best practice in terms of complaints handling.

However, this cannot move into audit of and recommendations for individual firms. This appears to be a solution in search of a problem. It also cannot be fair that levies raised from across the profession, including from firms with a competitive advantage based on terrific customer service, are used to improve the competitiveness of their competitors. Instead, we would welcome a focus on identifying general trends that you derive from your core role and providing that information to professional bodies like the Law Society and the Faculty of Advocates so we can consider any relevant changes to our own rules and guidance. In addition, we do not think that you have the vires to do this.

We are broadly comfortable with section 3 on delivering early resolution and redress although again, many of these elements would benefit from being highlighted at a far earlier point in the SLCC's list of strategic priorities. The final bullet of this section on exploring how clients can receive awards where a firm goes out of business is one which our two organisations have discussed on a number of occasions. Whilst we think it important to ensure consumers are protected, there appears no immediate answer and we look forward to exploring this matter further. We should make it clear up front that we do not support the creation of another fund or insurance scheme which will simply serve to confuse with insurance and funds already administered by bodies like ourselves.

Section 4 on driving improvements includes a number of areas which are welcome, such as bullet three on early resolution. However, there are further areas which fall outwith the SLCC's remit. It is not for the SLCC to "lead the debate on the overall regulation of legal services", it is to concern itself with complaints handling. Regulation of solicitors includes education standards, admissions, standards setting, compliance with rules, discipline over misconduct, areas which the SLCC has neither the expertise nor duty to involve itself in. It also duplicates the work of others. It is inequitable for Scottish Solicitors to have to pay twice for such activity. Similarly, the plan to encourage discussion on the use of technology goes well beyond the core responsibility of the SLCC and is duplicative of work on-going elsewhere.

We would welcome a clearer commitment here to work with us and others in securing parliamentary time for a more flexible and enabling legislative framework. As you know, we have made this a priority in our own strategy and have held a number of very positive discussions with the Scottish Government. We are aware of the improvements which you would want to make and which would require changes to primary legislative.

In the context of a busy parliamentary schedule and with increasing demands on MSPs' time following the further devolution of powers to Holyrood, it will be incumbent upon all of this, the SLCC included, to argue strongly in favour of a new Bill as an early priority for the new parliament after the May elections. It would be best for the SLCC to join forces with us rather than duplicate effort.

Finally, we do welcome the emphasis given to delivering high performance as shown under section 5. This chimes very much with our own aim of excelling as a world class professional body. In particular, we welcome the commitment to finding even small efficiencies in time which, taken together, have the potential to make a big difference.

We also welcome the promise to effectively manage finances. The 2007 Act creates a unique funding arrangement for the SLCC. The fact the SLCC is financed by the legal profession rather than general taxation must not be an excuse to avoid taking the difficult decisions being seen in other parts of the public sector. To that end, it would be helpful for the SLCC to give a clearer commitment to learning from other complaints handling bodies, to learn about best practice in terms of cost efficiencies, in order to minimise the annual levy in the future. This is especially important given the recent trend in the SLCC's annual plans of using reserves to fund operational activity.

We strongly welcome this opportunity to provide comment on your draft strategy. As with our response to your draft annual plan and budget, we believe there is a pressing need for the SLCC to clearly focus on its core statutory responsibilities, duties which our members and the public rely on you to do and do well.

Much of this draft strategy, as with your annual plan, includes discretionary activity which is well beyond that core remit. At best, it risks giving the impression that the SLCC is not giving due importance to its statutory responsibilities. At worst, it risks distracting the SLCC and its staff from making the operational improvements which are desperately needed in order to better handle complaints and provide a more effective service.

I hope these comments are helpful. As always, we stand ready to work in partnership with the SLCC and, through our legislative change project, focus on structural improvements to the whole system of complaints handling.

With best wishes,

A handwritten signature in black ink, appearing to read 'Lorna B Jack', written in a cursive style.

Lorna Jack
Chief Executive

cc: Christine McLintock, President, Law Society of Scotland
Bill Brackenridge, Chairman, SLCC