

# Scottish Legal Complaints Commission

## SUMMARY: PRIORITIES FOR REFORM

May 2017



### INTRODUCTION

This paper summarises the proposed priorities of the SLCC in relation to potential reform of the regulation of legal services in Scotland. Our main paper, *#ReimagineRegulation*, and its supporting appendices, provide more detail on: our role; our performance; how we consulted and engaged with others in the development of the paper; relevant academic research; and a summary of the debate on legal regulation since the Scottish Parliament was created: [www.scottishlegalcomplaints.org.uk/reimagine-regulation](http://www.scottishlegalcomplaints.org.uk/reimagine-regulation).

The proposals are based on the preferred policy view of the SLCC that there should be a wide ranging review based on the principles of good regulation, the rule of law, the needs of the sector and the needs of the consumer. The required outcomes of regulation should be considered and documented before solutions, allocation of responsibilities, and enacting legislation, are considered.

### PRIORITIES (from *#ReimagineRegulation*)

In our original paper we detailed six clear priorities. These have been re-phrased/re-ordered slightly in this summary to ensure clarity as a stand-alone paper. For each suggested priority we pose questions to aid the debate:

#### 1. Unravelling the current complex complaints maze

*To achieve faster, more efficient, and more targeted complaints handling the review must focus on a simplified customer journey, rather than on institutions and legislative detail. Key issues may be:*

- a) Is it time for a single independent body to handle all aspects of complaints?
- b) If not, how could stages and hand-overs be dramatically reduced - for example, a single investigation covering service and conduct, even if conduct is still prosecuted at an Independent tribunal?
- c) How many chances of appeal should there be, and is it time to consider the Sheriff Appeal Court as a more proportionate forum than the Court of Session for complaint related disputes?

#### 2. Reducing statutory detail that focuses on processes, not outcomes for people and businesses

*To achieve proportionate, agile, risk-based regulation the review should focus on suggesting a 'framework' Act enabling effective regulation and complaints handling. The focus must be on the development of principles and required outcomes, and avoiding recommending or encouraging detailed legislative drafting. Key issues may be:*

- a) What areas of legal service and legal regulation merit legislation, based on the 'better regulation' principles?
- b) What specific high level principles/outcomes are we trying to achieve with complaints and redress, and other core regulatory tasks? For complaints, this might be requiring the relevant bodies to establish a process which is independent, fair to all parties, efficient, effective, proportionate to the complaint, etc.
- c) If there is more delegation, how are rules then set by the various bodies to specify the process(es) - for example, should there be a statutory duty to consult publicly on such rules?

#### 3. Embedding the consumer principles

*To achieve effective and sustainable business markets which work for the consumer the review should focus on embedding the 'Consumer Principles' into legal regulation. Key issues may be:*

- a) How can the appropriate balance be achieved between 'professional regulation' of individuals, 'entity regulation' of businesses and 'market regulation' of the sector (competition etc.) – the current

system is predominantly the former (although with elements of the latter two ‘bolted on’) while many sectors now see the latter two as critical to quality and protection?

- b) How do we ensure the consumer principles are delivered in practice to assist a thriving and sustainable market?
- c) Should an amended version of the regulatory and professional principles in the 2010 Act, together with the consumer principles, be applied to all aspects of legal regulation?

#### 4. Targeting risk, and not seeing all legal services as the same

*To achieve targeted, effective and proportionate regulation and complaints handling the review should consider a focus on risk and a move from a ‘one size fits all’ approach. Our paper details areas which may be over-regulated, and areas of public and consumer risk which do not appear to be being sufficiently targeted. Key issues may be:*

- a) Should we move from ‘one size fits all’ regulation to a focus on the areas of greatest consumer risk?
- b) How do we engage consumers, lawyers and experts on the approaches that would tackle these ‘high risk’ consumer areas?
- c) What are the core statutory functions needed by regulatory/complaints bodies, and what discretion should they have for other work beyond that?

#### 5. Ensuring that when redress is awarded the client receives it

*To ensure consumer compensation is paid, and legal fees are fair, the review should specifically consider issues around redress and around problems with fees (and the ‘taxation’ system). Key issues may be:*

- a) How do we ensure that compensation awarded by a statutory body is always paid to the consumer, and the best methods of delivering this?
- b) How best address the issue of unfair fees – improving access to ‘taxation’ or awarding new powers to another body capable of addressing this key consumer issue?

#### 6. Learning from complaints and data to improve future outcomes

*To achieve a focus on quality improvement, rather than action after the event, the review should focus on the opportunities from the ‘big data’ approach and consider how to develop a regulatory system based on data, risk, and analysis. Key issues may be:*

- a) How can we ensure that learning from complaints improves standards for all clients, moving from reactive regulation to the quality improvement approach one sees in industry?
- b) Should the SLCC have the power to issue rules on how lawyers should handle complaints at first tier, and the power to impose ‘strict liability’ offences where lawyers do not have, or follow, their own internal process?
- c) How might information and intelligence sharing be better delivered, reducing risk for consumers?

## PRIORITIES (budget consultation & in response to review)

In our recent consultation on our Operating Plan (Jan 2017) several helpful issues arose which are worth consideration. New issues were also flagged to us in response to the announcement of the review:

**Finance / apportionment** – what arrangements are in place for the approval of the budgets of all bodies in the sector, and for ensuring best value against prescribed statutory duties? Issues were raised also about the costs for in-house and legal aid solicitors. There are different issues in terms of risk/cost to regulate in relation to these groups. However, there should be discussion in terms of the aggregate cost of practice (all statutory fees) and the balance between the whole sector paying, or a greater move to ‘polluter pays’.

**Governance** – with so many bodies involved who has oversight of the whole system in terms of priorities and performance?

**Core statutory duties** – there has been debate about the ‘core statutory duties’ of the various bodies vs tasks some suggest are ‘periphery’. How are clear roles assigned?

**Regulation vs representation** – the combined role of bodies can cause confusion as to what voice they are speaking with.

**Consumer input and research** – there is a huge shortage of high quality consumer input and research into the legal regulatory debate in Scotland compared to other sectors/countries.