

# Regulation of Legal Services (Scotland) Bill

## Stage One Briefing

### **We urge the Parliament to agree to the general principles of the Regulation of Legal Services (Scotland) Bill**

We believe the current regulatory system can be improved. We supported the outcome of the independent Robertson review which recommended a streamlined model of regulation, independent of the legal profession. However, we recognise that views were polarised on this recommendation between consumer groups and the legal profession when the government consulted. The current proposals are, therefore, a compromise. They are not what either side of the debate would have asked for. Despite that, the Bill is a very welcome and significant step forward in a number of areas, and we now want to see it delivered and implemented to realise those benefits for consumers and lawyers alike.

### **Why the Bill is needed**

It is now 15 years since the current complaints and regulatory system was created. While there are different views on some of the details, stakeholders are agreed that reform is needed. This Bill is an opportunity to achieve that in some important areas.

In its Stage 1 report, the Equalities, Human Rights and Civil Justice Committee noted that there is “broad agreement from witnesses that the current system for legal services complaints is overly complex, slow and requires reform”.

The proposals in the Bill to reform the complaints system seek to reduce complexity and prescription and to increase flexibility. This will help to drive efficiency and proportionality as far as possible within the current model.

Currently, the system simply doesn't meet the public or the profession's needs or expectations of an effective, efficient complaints system. The statute governing its operation is inflexible and overly prescriptive, meaning that lower-level consumer complaints likely to result in small levels of compensation require to be treated the same as issues of significant wider public interest.

This complexity has a real influence on the personal impact of complaints on both parties. For consumers, a system that is difficult to understand can reduce agency, and sow doubt and suspicion as well as increasing the time it takes for their complaint to be dealt with. For legal practitioners, it can cause frustration and a loss of confidence while complaints are investigated which can impact on ongoing work. It also increases the cost of the system for the regulated professionals who fund it.

The system is also overly legalistic, requiring the use of legal terminology in decision documents which can be at best confusing, and at worst offensive for consumers. This – along with the disproportionate appeal route to the highest civil court in Scotland – works against the benefits of swift administrative justice that the system was intended to offer.

The changes proposed in this Bill will make significant improvements in all of these areas, resulting in a complaints system which is more flexible, proportionate, efficient and responsive.

## **What the Bill will achieve**

We believe this Bill will create a complaints system closer to the public, the profession and Parliament's expectations of an appropriate system for delivering consumer redress and administrative justice. It does not deliver the fuller benefits of a single system recommended by the independent review and which we have argued for. However, it makes significant improvements in a number of areas.

### **A focus on customer journey**

The combined proposals would be a significant step towards creating a process that focuses on customer journey, retaining the single gateway for complaints and reducing handovers between organisations. This will benefit consumers bringing complaints to us.

### **A more proportionate and efficient approach**

The changes proposed would allow us to operate a flexible, agile complaints process that allows a proportionate approach to different types of complaint. This will also lead to greater efficiency, which benefits the profession who fund the complaints system. Without stripping out process prescription in the existing legislation, there is little chance of improvement in the cost or efficiency of complaints handling.

This would be achieved particularly through a streamlined 'triage' process which would allow complaints requiring further investigation to proceed swiftly to either resolution or to the relevant regulator. It would also ensure complaints without merit are dealt with efficiently to avoid clogging up the system and causing unnecessary delay.

Reduced cost is also specifically linked to reduced legal and court fees with the replacement of appeals to the Inner House of the Court of Session with an internal review function, which is consistent with the usual ombudsman approach and, as the Committee noted, "can be disproportionate given the issues involved".

### **A more accessible approach**

We believe this change to the appeal route will also increase access to justice as the proposed review committee is a less costly and difficult process than an appeal in the Court of Session for either complaint party to access. That is particularly the case for unrepresented complainers who bring the majority of appeals against our

decisions and can end up liable for significant costs in doing so. Those are costs we either have to pursue them for, or write off and cover from our levy income.

## **Removing the trade-off between public protection and consumer redress**

The current system requires an unhelpful mutually exclusive distinction to be drawn between 'service' and 'conduct' issues in a complaint which can cause a trade-off between consumer redress and public protection. Currently, complainers have less scope to receive compensation when issues are investigated by the professional bodies via the 'conduct' route, but issues which may have wider public protection consequences are less likely to be addressed if redress for the individual complainer is prioritised.

The provisions to clarify that a single element of the complaint may constitute both a conduct complaint and a services complaint (and, where appropriate, a regulatory complaint) would ensure that both public protection and consumer redress can be pursued. We worked with the Law Society of Scotland to agree this proposal.

## **A greater focus on prevention and continuous improvement**

When raising a complaint, most consumers say they want anything which has gone wrong for them put right, but also to ensure the same thing doesn't happen to others in future. The current model focuses primarily on intervention when things have already gone wrong. The proposed model brings a greater focus on continuous improvement and the prevention of failures.

A greater focus on prevention and continuous improvement will be achieved through new powers for us to set minimum standards for complaint handling and trends in practice which lead to the making of complaints. This would help to drive improved complaints handling within firms, resulting in fewer complaints reaching us. As drafted, the proposals would require us to consult regulators ahead of issuing any guidance to either firms or regulators themselves.

We would also have the ability to investigate and address systemic issues which could affect current and future legal service users. In addition, where public protection supports it, and subject to specific safeguards, we would be able to publish details of upheld complaints and the names of the practitioners responsible to alert and protect consumers to a potential risk. There will also be increased protection for consumers using a wider range of legal services, including currently unregulated providers.

All of this will reduce consumer detriment and harm and improve the service consumers receive. It will also support the sector as a whole by more effectively addressing challenges in individual firms to reduce the collective cost burden of complaints on the profession.

## **Regulation of legal services via entity regulation**

In practice, consumers often believe they are contracting with a legal service or law firm, rather than an individual practitioner. There is also a role for business owners,

who have the greatest ability to improve services for consumers, to take responsibility for what happens in their firm, regardless of who carries out the work.

Our experience from dealing with service complaints is that they often relate to a firm's ways of working (e.g. arrangements for communication with clients, complaint handling processes, administrative checks etc.) which is often best regulated, addressed and improved at entity rather than individual level.

## **Progressing the Bill to Stage Two**

We hope Parliament sees the benefit these measures will bring for both consumers and practitioners of legal services and will agree the general principles of the Bill.

As with any legislation, we expect there to be proposals to amend the Bill at Stage 2. We have been working with Scottish Government to propose some minor drafting amendments to ensure we can efficiently implement the Bill's policy intent.

We have also requested some new powers in relation to a specific issue discussed by the lead Committee during its Stage 1 scrutiny, that is dealing with solicitors' non-compliance with statutory requests for information, which causes significant additional cost and delay in the system. Few levers currently exist to deal with this beyond costly and time-consuming court procedures. We hope the Minister will bring forward amendments at Stage 2 to help ensure we get access to the information we need in a timely way to handle complaints efficiently, or to be able to conclude complaints when that information is not forthcoming.

We also expect to see some amendments to improve the proportionality and efficiency of the process for dealing with conduct complaints. While responsibility for this sits with others we see the impact of this on complaint parties through both our complaint handling and oversight functions, so those changes would be welcome.

However, the model proposed in this Bill is already a compromise between more wholesale change in the public interest supported by consumer bodies and the SLCC, and concessions made to the existing model of professional regulation to address concerns raised by the legal profession.

MSPs will be aware of the strong voice from the legal profession they've heard in the Stage 1 evidence, through briefing and in the media. While it's vital that the voice of the profession is heard, it's equally important that the views of consumers are listened to and help to shape regulation.

In building on the existing framework, the proposed model retains much of the complexity, cost and potential conflicts of interest of the current system. For that reason, any further concessions that reinsert complexity or prescription, or reduce or remove the improvements proposed in the Bill, should be fiercely resisted. This will ensure that the intended overall benefits of the Bill remain.

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