

SLCC Consumer Panel Response to Licensed Providers Regulatory Regime Consultation – 17 May 2016



Introduction

The Consumer Panel is grateful to the Scottish Government for the opportunity to comment on the Licensed Providers Regulatory Regime Consultation.

About the Consumer Panel

The SLCC Consumer Panel (“the Panel”) was established by section 11A of The Legal Profession and Legal Aid (Scotland) Act 2007 (“the Act”) which came into force with effect from 1 January 2015.

The Panel has an advisory role and does not have decision-making responsibilities.

The key activities of the Panel, as set out in the Act, are to:

- Make recommendations to the Commission for improvements to the Commission’s policies and procedures;
- Make suggestions to the Commission of topics for research connected to consumers;
- Express views on such matters relevant to the Commission’s functions as the Commission directs.

The Panel also assists the Commission to understand fully, and take account of, the interests of consumers in its policy and process developments and decisions and provides the SLCC with feedback, from a consumer perspective, on the effectiveness of the Commission’s policies and practices.

The Panel also responds to relevant consultations as appropriate, including those in relation to the SLCC’s Rules.

The Panel’s membership comprises members who represent experience of the wide range of consumers of legal services and/or best practice in complaint handling.

The Panel’s response

In responding to the Scottish Government’s consultation in relation to the proposed regulatory scheme for licensed providers, the Panel should like to make the following comments:

1. The Panel welcomes the new Law Society of Scotland regulatory scheme for licensed providers 2016. The scheme will promote choice and enable the development of a more competitive environment for consumers of legal services.
2. Some aspects of the scheme (particularly on information provision to consumers) could more strongly reflect the key consumer principles that the Consumer Panel supports. Given that a key consumer principle is to provide information that is accurate and useful (see <http://www.legalservicesconsumerpanel.org.uk/ourwork/ConsumerEngagement/documents/UsingConsumerPrinciples2014.pdf>) the Panel would like consumers of legal services to be provided with clear information that helps them reach effective decisions. For example, Chapter 3 of the Regulatory Scheme for Licensed Providers sets out in detail the application of practice rules, fundamental principles and client care. In section 3B5 on client communication, the Panel would suggest that information about fees is presented in a clear and consistent way to enable consumers to compare the estimated or fixed costs of licensed providers. For example, the Financial Conduct Authority requires regulated organisations to present information as a Key Facts Illustration (KFI) in a standardised format, set out in columns, making the financial information clear for consumers. The requirements are set out in the FCA handbook of rules and guidance.

We understand that the new scheme largely mirrors the Society's regulatory framework for solicitors: and that consistency between schemes is desirable, to maintain a fair operating environment for firms providing similar services. Requiring compliance with new provisions on information provision could put ABSs at a disadvantage unless similar requirements were placed on solicitor practices. Nonetheless the Panel considers that best practice for providing consumers with information should be adopted by ABSs and suggests this could be supported by the Society through the guidance that accompanies the Scheme rules. It is the Panel's view that any future reviews of the regulatory scheme for solicitors (as individuals or entities) or licensed providers should include consideration of the consumer principles and how they can be embedded in legal services regulation.

3. Guidance could also set out that clear information should be provided to show that a licensed provider is regulated. This could be part of the client communication and should be accompanied by consumer education to help consumers differentiate between regulated and unregulated providers.
4. Information on quality will be important to enable consumers to compare services. This could include past performance of potential providers which would help consumers to find the right professional help for their circumstances. It would be useful, for example, to have information on the number and areas of complaint made to licensed providers, the learning from them and action taken to prevent similar problems in future. Information on satisfaction with quality, service and professionalism would be helpful. Requiring licensed providers to give consumers succinct, accurate, timely information, in addition to information about their rights and routes to redress, will aid consumers to make more effective choices of licensed providers. Choice is another consumer principle used to assess the consumer interest. Giving consumers meaningful choice encourages licensed providers to compete by offering a range of services that are responsive to

people's needs. Consumers should be empowered to make informed choices, which in turn shape how the market operates. It will be important to monitor choice behaviour as this scheme is implemented, to develop a good understanding of the extent to which consumers can and will drive competition.

5. With reference to the Policy Statement by the Law Society of Scotland, the Panel will be interested to view the results of research on the geographic availability of legal services being carried out for the Access to Justice Committee. In relation to section 4 on the adoption of best regulatory practice, the Panel would like the Society to conduct an assessment of consumer risk in relation to the Licensed Providers Regulatory Regime. This has not been carried out in the preparation of the documentation but could be scheduled during 2016/2017 and inform the implementation of the Regime.
6. In relation to the Law Society of Scotland description of (C) Representative Functions, the Panel would like to see the research work on key issues to better understand the views of the public and stakeholders towards the legal profession mentioned in section 2. It would be useful to track perceptions of consumer trust and confidence in the legal profession.
7. There is scope for a greater level of attention to be given to addressing consumer vulnerability in the scheme (see <http://www.legalservicesconsumerpanel.org.uk/ourwork/vulnerableconsumers/Guide%20to%20consumer%20vulnerability%202014%20final.pdf>) People may be at their most vulnerable when seeking legal advice but also feel vulnerable in dealing with solicitors.