

Cover note to consultation response (pages 2 to 7 of this document)

- The following submission is published to ensure full transparency.
- The substance of these allegations have been previously robustly reviewed, including through:
 - An employment dispute, dating back to 2014/15 – including investigation by the previous Board and Chair of the SLCC
 - An Employment Tribunal, which found in favour of the SLCC
 - An appeal of the Employment Tribunal by the individual, which was refused by the court
 - An Audit of management data by our internal auditors – Scott Moncrieff
 - An investigation led by our Board and Audit Committee, following further allegations send to the current Chair in 2019
 - Reporting to, and examination by, our external Auditors, Deloitte, as part of the audit of our 2018-2019 accounts.
- The ongoing employment tribunal was noted in our Annual Accounts in relevant years: <https://www.scottishlegalcomplaints.org.uk/about-us/how-we-are-funded/our-annual-accounts/>
- Audit Scotland publish the SLCC's Annual Audit Reports. These allegations were intimated to our auditors as part of the 2018-2019 audit, but the final audit published in October 2019 indicated ***“no concerns have been identified regarding fraud”*** – see <https://www.audit-scotland.gov.uk/report/scottish-legal-complaints-commission-annual-audit-report-201819>
- Immediately upon receipt of the repeated allegations robust and transparent processes were again put in place. The submission was shared immediately with our:
 - Risk and Audit Committee Chair
 - Board and Board Chair
 - Internal auditors – Scott Moncrieff
 - External auditors – Deloitte
 - Sponsor team at the Scottish Government
- Subsequent discussions have taken place with each.
- The SLCC will at all times take appropriate and robust steps around any allegations, following guidance in the Scottish Public Finance Manual and Audit Handbook and in association with our internal auditors, external auditors, and Scottish Government Sponsor team. This will be proportionate to the seriousness, context, and history of the allegations.
- We must also focus on our core role of supporting those who use our service and delivering our statutory functions.

The Board
The Scottish Legal Complaints Commission
The Stamp Office
10-14 Waterloo Place
Edinburgh
EH1 3EG

19 March 2020

BY EMAIL ONLY

Dear Sir

Response to Budget Consultation – 2020-2021

Before setting out my response on the current budget proposals, and the basis upon which it proceeds, I consider it appropriate to make a number of overarching observations at the outset of this response.

Firstly, this response is not offered as a criticism of the SLCC staff. For the most part my experience has been that the SLCC's staff are diligent and honest in the performance of their respective duties. However, as will become apparent from the terms of this response, the failings, duplicity and dishonesty that I have identified rest solely with the SLCC's Senior Management Team (SMT) and **[REDACTED – job title]**. Above all responsibility must rest with the SLCC's Board for successive failures to provide effective scrutiny of the SMT.

Secondly, the writer accepts that the SLCC's accounts and budgets are subject to scrutiny and audit. However, such scrutiny and audit processes do not look behind the bare figures and consider operational matters that give rise to certain claims and expenditure. This will be illustrated in detail below.

This is the first time that I have felt the need to respond to the SLCC's budget proposals. My reasons for doing so are somewhat unique. I appreciate that the SLCC will attempt to discredit myself and this submission due to the fact that I am a former employee of the SLCC. That the SLCC may do so, or at least attempt to do so, is inconsequential. The facts that will be set out below cannot be discredited.

My period of employment at the SLCC has given me an insight into how the organization functions, the culture that pervades the organization and the dishonesty and hubris that underpins the approach it takes to finance, amongst other things.

The reason for this response is simple. I am aware that dishonesty, perhaps even fraud, has underpinned the SLCC's budgets since the financial year 2017/2018. This dishonesty cost the professions that fund the SLCC in the order of £360,000 in that year alone. However, this increase has been incorporated into the subsequent operating budgets for 2018/2019 and 2019/2020. This fraud, and that term is used advisedly, has now cost the profession in excess of one million pounds. However, the reality is likely to be much worse. The financial year of 2018/2019, building on the existing fraudulent increase, further increased the operating budget by roughly £170,000. The financial year 2019/2020, retaining the previous increases, added an additional £327,000.

These respective financial years, when taken collectively, represent a probable fraudulent overcharging in the region of £1,750,000, which the profession has shouldered through the annual levy. The proposed budget for 2020/2021, which builds upon previous increases, proposes that a

further £235,876 be added to the levy. This will fraudulently add an additional £1 million to the professions liability to finance the SLCC.

The scale of this overcharging, over the past three financial years, and the proposals for the coming financial year, are of such a scale and severity, the implementation of this budget cannot be allowed to proceed. The SLCC, the Board and the Senior Management Team and their respective involvement in the SLCC's financial matters must be independently investigated at the highest level. The professions should not be obliged to continue financing the SLCC's mismanagement, fraud and the Board's inability to provide effective oversight and governance. This writer will happily co-operate with any such independent inquiry. This is not a matter that can be dealt with internally within the SLCC.

As noted above, serious issues with the SLCC financing arose in the financial year 2017/2018. By way of background, complaints against the professions have been steadily falling since 2000//2001. The years 2001/2002 to 2005/2006 saw increases however this was due to complaints about endowment policy mis-selling being dealt with through the Law Society's complaints process. When these investment complaints are stripped out of the headline figures, complaints continued to fall over this period. This general trend continued when responsibility for dealing with complaints about legal services passed to the SLCC.

This trend continued until the reporting year 2015/2016. For the following financial year it was recorded that there had been in the region of a 12% increase in complaints. This was the basis for the SLCC putting forward proposals to increase the levy on members of the profession so as to realise an increase in income in the region of 13%. No explanation was offered as to why there had been such a spike in complaints and it is apparent from Board Minutes that the Management claim that such an increase had taken place was taken at face value. There was, in fact, no increase in complaints. The writer's own analysis indicates that complaints were continuing to fall in line with the trend established over the previous 15 years. Following consultation the SLCC implemented an increase of £360,400.

In simple terms, there has been no increase in complaints, there has only been an increase in what is called a "complaint". The writer would now call upon the SLCC to justify the proposed and previous increases in the levy to enable it to deal with a mere reclassification of what is called a complaint.

As noted above there is often a disconnect between the reporting of figures and what lies behind those figures. It appears the SMT produced a report showing an increase in complaints. However, what this report did not show and what the SMT did not disclose at any point to the Board, was that the [REDACTED – job title] had implemented an operational change that resulted in a large number of enquiries, that had previously been dealt with at an early stage to resolve and explain why the issues being raised in the enquiry would not amount to an eligible complaint with the terms of the Legal Profession and Legal Aid (Scotland) Act 2007.

These enquiries were previously dealt with by a Manager assisted by junior members of staff. The justification for this change was that there had been problems with dealing with cases of this type in this manner. The writer recently asked for clarification and more detail on these claims by way of a Freedom of Information request. The SLCC rejected this application on the grounds it was "Vexatious". The writer is however aware that there had been no difficulty arising from dealing with enquires in this manner. These processes had been in place for many years, were closely monitored and evidence based. There is a great deal more information in respect of this change in process, however the writer considers this is more appropriately reserved for independent inquiry. Suffice to say at this stage, the reported increase in complaints only came about when responsibility for dealing with incoming complaints came under the management of the [REDACTED – job title]

(now promoted to [REDACTED – job title]) and [REDACTED – job title] implementation of this operational change. It is not known if the [REDACTED job title] sought approval of this operational change from the SMT. The writer has his own thoughts as to why the then [REDACTED – job title] implemented this change, however this again is best reserved for an independent inquiry.

This *increase*, which never actually existed, has subsequently remained within the SLCC financial budget and has been built upon in subsequent years with substantial annual increases in the annual levy. All have been premised on an alleged increase in complaints. The writer has every reason to believe that all subsequent claimed increases in complaint numbers are equally ill-founded; at the very least an independent inquiry should establish the veracity of all such claims.

It is important to note at this point, that the types of cases being dealt with in this manner were cases where it was clear that the issues being raised by the “complainer” were not matters suitable for investigation by the SLCC or which simply did not amount to a complaint about the provision of legal services as defined by the 2007 Act. Invariably such matters related to misunderstanding about how legal processes worked, what the role of a legal practitioner involved was or which related to the actions of a practitioner’s client(s) rather than to anything done or not done by the complainant about practitioner.

A further operational change dovetails into the above change. In or around January/February 2015, the then [REDACTED – job title], apparently unilaterally, decided that new incoming cases would not be allocated to Case Investigators and Case Support Officers. In subsequent months the number of unallocated cases grew out of control. This was clearly of great concern to the Board (see minutes). The [REDACTED – job title] offered various explanations for this state of affairs; increase in complaints numbers and changes to staffing levels being amongst them. However, like any such organisation, incoming complaint numbers will always vary throughout the year as will staffing levels. There was nothing during this period that was exceptional in nature that would differentiate early 2015 and onwards as anything different from any previous year for the SLCC. The only operational change was the [REDACTED – job title] decision to stop allocating cases. When questioned about this by the writer, the [REDACTED – job title] advised that this was an operational matter that [REDACTED – job title] did not have to report to the Board.

This is an important issue for a number of reasons. The allocation of cases ensured that action was taken on cases at the earliest opportunity and progress of cases could be monitored against KPI’s. When the unallocated cases grew out of control (it is important to stress unallocated were numbered in the hundreds), the existing KPI’s were redundant as cases were already months old before they were taken on by an investigator.

The allocation of cases served a second purpose. It ensured cases were dealt with at the appropriate level. The manager reviewing all incoming work would determine which cases were appropriate to be dealt with by explanation to the complainer without the need to formally assess the issues raised. However it also ensured that cases were dealt with in the most efficient manner by allocating according to Case Investigator’s workloads and availability, but also taking into account an Investigator’s expertise in specialised areas or because of an Investigator’s knowledge or experience of dealing with a complainer or group of complainers.

For clarity, prior to this operational change, the SLCC never had a single unallocated case.

In this, as with the previous operational changes, the previous and current Board have failed to provide the level of governance and oversight to be expected. Significant changes were being reported by the SMT to the Board in terms of numbers of incoming complaints and a burgeoning number of unallocated cases. However no credible explanation was offered at any point to explain these changes. Neither the previous or current Board explored the issues further and both have simply accepted the explanations provided by the SMT, and passed on the costs with alacrity to the profession.

The costs associated with these failings cannot be underestimated. The growing number of “complaints” required more staff. The cost was passed on the profession in all budgets since 2017/2018. When the levels of unallocated cases continued to spiral out of control, the SLCC allocated the assessment of eligibility of some of these cases to external Reporters at additional expense. Again the SLCC passed the cost of this on to the profession. To explore matters further the SLCC engaged the services of an external consultant to assist in modelling workloads and flow of work. Again the cost was passed on to the profession. To be clear the professions were in effect paying twice for cases to be dealt with. More staff were appointed to deal with the alleged increase in complaint numbers (which did not in fact exist), when this failed to clear the SLCC backlogs, external Reporters were paid on a per-case basis to clear the backlog of cases requiring eligibility assessment.

These additional costs have been borne by the profession over successive financial years and the current budget proposals indicate the SLCC’s intention to continue overcharging the profession to subsidise its own mismanagement, misfeasance and dishonesty.

For clarity, these issues of concern have been raised by the writer with both the current Chief Executive and Chair of the Board (in the case of the former at least on other former member of staff has raised concerns about the role operational changes have had in increasingly poor performance). Neither have taken any action; their only response has been to promote the former [REDACTED – job title] to [REDACTED – job title]. Again the profession has covered the cost. This budget consultation is not the appropriate process to consider whether the failure of management and Board constitute misconduct, however these are matters that should be explored in full by the appropriate and respective authorities.

The writer has considered carefully the detail of the proposed budget. However, given the underlying false premise upon which it is based there is little to be gained by dissecting the various line items. However a number of observations do require to be made. Again, the writer would reiterate that a lacuna exists between the bare figures and what is attributed to them and what in reality lies behind them.

The writer notes that this budget claims to build on previous savings in 2018/2019 in respect of employers contributions to the Lothian Pension Fund. This is attributed to negotiating a reduction in the rate of employer contributions. This explanation does not however give the full picture. This scheme latterly only had three eligible members. One part-time member of staff retired. The SLCC would therefore not have been responsible for employee contributions in respect of that employee. However, the greatest reduction in employer contributions was only realised as a result of terminating the employment of the most expensive member of staff that was a member of that scheme, this writer.

The writer notes that there is a small increase in costs in respect of the Board Members (+£4,000). This must be seen against “savings” in the previous two financial years (-£2,000 in 2019/2020 and -£15,000 in 2018/2019). However, the mere reporting of this level of funding provides only part of the picture.

The writer notes that under the previous [REDACTED – name and title], Board expenditure was consistently higher than the previous and subsequent Board memberships and Chairmanships. There is a relatively simple explanation for this. [REDACTED – name] instigated bi-monthly “Performance Call Meetings” of the Board, these commenced in June 2013. In effect the professions were being asked to fund twice as many Board meetings than the previous and subsequent Chairs considered necessary. The current CEO has confirmed to the writer that the current Chair did not consider such meetings necessary. The savings suggested in previous budgets could be better characterised as over-spending of an unaccountable Board and unjust enrichment of Board Members. The writer would ask the SLCC to publish the costs incurred as a

result of [REDACTED — name] decision to implement such meetings. More importantly the writer would ask the SLCC to quantify what these meetings actually achieved.

It was during [REDACTED – name and title] that performance of the SLCC deteriorated and failed to meet every KPI. Cases took longer to deal with and case related costs increased. Other than successfully submitting expenses claims for attendance, Members attending these meetings do not appear to have contributed or achieved anything meaningful. The writer notes that despite these meetings falling within the SLCC publication policy, the Minutes of these meetings are not published by the SLCC. This was notified to the CEO by the writer, however remedial action was not taken. The writer would now call on the SLCC to publish all minutes and supporting documentation so that the purpose and results of these meetings can be openly evaluated.

The writer also notes, and this is recorded through Board Minutes, that additional resources were spent by the previous Board, in dealing with what were referred to as “quorate” cases. This was, one can only surmise, a deliberate attempt to obfuscate. The cases in question were not “quorate”, they were “inquorate” and required double expenditure to remedy a problem that arose from sloppy internal clerking procedures. The writer would call on the SLCC to quantify the costs of dealing with these cases and explain why this was not reported to the relevant professional bodies at the time. The writer would also note that not all such cases were dealt with and it is likely a large number of cases during that time continue to be defective in terms of due process having been observed. These cases have never been reported upon. This is yet one further example of mismanagement and expenditure that is commonplace for which the SLCC has remained unaccountable insofar as the lacuna between financial reporting and the causes for expenditure which permits such lack of transparency.

The writer would also highlight an additional concern, though the writer accepts that the evidence for this is anecdotal, the writer has no reason to doubt the accuracy of the information reported to him.

The writer has been informed that Case Investigators have been “encouraged” by management to admit cases for investigation which would previously have been determined to have been Frivolous, Vexatious or Totally Without Merit (FVTWOM). The reason for this was due to the increasing backlog of cases awaiting eligibility assessments and because it is easier and quicker to admit a complaint than to complete an eligibility assessment and s.2(4) Report finding a complaint to be FVTWOM. Management relies on the reality that for many practitioners, appealing against such a decision is for many prohibitively expensive and equally time-consuming. However cases such as *Benson v The Scottish Legal Complaints Commission* ([2019] CSIH 33), would appear to give some weight to this allegation.

This change in policy is driven by pressure on the [REDACTED — job title] (formerly [REDACTED — job title]) to reduce the number of unallocated cases awaiting an eligibility assessment. However, this approach reinforces the SLCC’s claim that there has been an increase in complaints. In reality, in operational terms, it merely shifts the problem unallocated cases awaiting eligibility assessment to assessed cases awaiting investigation. One set of statistics sees a short term improvement, merely to pass the problem to the next part of the process.

The writer also notes the SLCC claims of increased work output. This is misleading. Due to the backlog of cases awaiting allocation and initial assessment (which ran into the hundreds of cases), when these cases were received and their age when they are assessed distorts the SLCC’s statistics. These cases straddle reporting years. The writer notes that the SLCC no longer publishes performance data online, the last reported data only covers up to Quarter 2 of 2017/2018. The writer would call upon the SLCC to publish all performance data. In addition data on case journey times and the ages of cases requires publication to assess the SLCC’s overall performance.

The writer would conclude that problems within the SLCC, the misrepresentation of data, the attitude to increases in funding and expenditure, the lack of justification for increases on the annual levy and the failures of Senior Management and the Board, have rendered the SLCC no longer fit for purpose. My approach to these criticisms is not personal although I appreciate and anticipate they will be characterised as such in any response to this submission. It is my intention to share this submission with the professional bodies who, given their statutory obligation to fund the SLCC, deserve to know how their resources are used by the SLCC.

The SLCC and professional bodies have rightly called for reform of the 2007 Act to allow for a more dynamic approach to complaint handling. The writer would agree that such reform is long overdue. However, the SLCC having shown itself unfit, should no longer be permitted to part of any future regulatory landscape.

The writer would reiterate the opening observations of this submission. For the most part, the SLCC's staff perform as well as they can within the framework in which they work. The SLCC's failings and duplicity lie solely with Management and Board of the SLCC. The writer appreciates that in the ordinary course of business, a Board should be able to rely upon the honesty of its management team. In the context of the relationship that exists between the professional bodies, those they represent, and the SLCC, it would be a reasonable expectation that all could rely on the professionalism, diligence and integrity of the latter. Unfortunately neither scenario meets this legitimate expectation.

This budget cannot be allowed to proceed in the usual manner. Given the issues raised, all of which are independently verifiable, the SLCC can no longer participate in this process and matters now require truly independent scrutiny. The SLCC should receive no additional financing until a comprehensive and independent inquiry establishes the veracity and legitimacy of this and previous budgets and all subsequent expenditure.

Yours faithfully

[REDACTED – name of respondent, removed as per their request in cover email]