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14 March 2024

Dear Neil

SCOTTISH LEGAL COMPLAINTS COMMISSION – DRAFT BUDGET AND OPERATING PLAN 2024/25

Thank you for providing us with your draft budget and operating plan for 2024/25. Both the Law Society's Council and Regulatory Committee have considered the material you published in January and we are grateful for this opportunity to provide feedback.

We note the SLCC is forecasting an overall increase in its expenditure of 15%, with spending to increase by over half a million pounds. This is resulting in a proposed general levy increase of 13%, with similar percentage increases for those paying a discount rate.

We recognise the importance of the SLCC having the funds necessary to deliver its statutory responsibilities. Nevertheless, we believe any and all increases in terms of expenditure and levies on the profession need to be fully justified, and that every effort is made to deliver efficiencies where they can be realised. Equally, we recognise that the timing of this consultation and the final decision of your Board comes against the backdrop of the passage of the Regulation of Legal Services (Scotland) Bill which, depending on what is finally agreed by the Scottish Parliament, is likely to generate additional work.

We would ask that the following points be considered by your Board as it agrees a final operating plan and budget.

- Use of reserves

As referenced on page 11 of your paper, the SLCC's current reserves policy requires you to hold three months operating costs as reserves. Three months' operating costs would, on the basis of your operating budget forecast, equate to approximately £1.125m. However, the SLCC is projected to hold reserves of £1.327m by the end of your 2023/24 financial year and add to this in the following financial year.

While we recognise the need for a degree of flexibility on the level of cash reserves retained by the SLCC, we do not believe an excess of over £200,000, almost 18%, can be justified, especially when overall costs on the profession are to rise significantly.

We would therefore recommend that at least £143,000 of reserves be utilised to support the contingent “reform costs and uncertainty budget” in the overall expenditure budget, with the equivalent amount returned to the profession through a lower general and discounted levy. It is important that levy payers will not be burdened with costs that may not materialise in 2024/25 and even if this contingent spend is required your closing reserves will remain comfortably in excess of your policy.

- Focused one year strategy

Page 3 of the consultation paper sets out how, because of the uncertainty arising from the Regulation of Legal Services (Scotland) Bill, the SLCC is *“proposing a very focussed operating plan based on our key statutory functions.”*

We welcome this decision to focus the SLCC’s activity on core statutory responsibilities. Indeed, you will recall how this has been a key request of the Law Society over a number of years. Previous consultation responses from us have encouraged the SLCC to ensure all of its activity and expenditure is rooted in the specific and very important responsibilities entrusted to it by parliament, rather than spending money on discretionary activity which is outside its core remit.

We recognise that the role of the SLCC may evolve following the passing of the Bill. Nevertheless, we would encourage the SLCC to use the example of 2024/25 and retain a focus on its core statutory work over the coming years.

Turning to one specific aspect of your proposed operating plan for 2024/25, we note how the SLCC intends to do “follow ups” on previous oversight reviews, including that of the Master Policy and our conduct complaints process.

On the latter, we have already sought to keep the SLCC informed with respect to the substantial progress made in response to your audit report, which was published less than 12 months ago. On the Master Policy, you will recall the position we set out to you, where we explained how certain recommendations from that review could undermine the very existence of a Master Policy and the concept of a single, profession wide system of insurance that helps to protect consumers when something goes wrong. Such recommendations, if enacted, could have resulted in an open-market for insurance, vastly increasing costs for firms, particularly smaller high street practices and potentially undermining their ability to operate.

Whilst there were elements of your audit report we were able to accept and take forward, we were equally able to set out our sound reasoning as to why we would not accept other recommendations which we saw as, at best, unreasonable and at worst potentially damaging to the legal sector.

In a bid to be constructive, we have invited the SLCC to observe the relevant stages of the tender process for the Master Policy, which is due to conclude in 2026. While Section 39 of the

Legal Profession and Legal Aid (Scotland) Act 2007 does not give the SLCC oversight powers over this tendering process, we recognise the interest the SLCC has in these matters.

Given all of this, and the considerable other demands on the SLCC, particularly with the ongoing work arising from the Bill, we question the need to revisit these earlier reviews as set out and suggest this should not be considered a priority for 2024/25.

- WW & J McClure / Jones Whyte LLP

On page 13 of the budget papers, the SLCC sets out a number of key drivers of added costs. This includes an anticipated added pressure from additional complaints from WW & J McClure going into administration.

We note specifically that the SLCC has chosen to repeat a suggestion that "100,000 people" may be affected by the events at McClures. However, it goes on to admit that it has *"access to very limited information on the global management of this firm collapse."*

As you will appreciate, the ongoing situation with McClures is a complex regulatory issue. We recognise the huge concern and distress which many former clients of the firm have faced. While we remain constrained in terms of what we can say due to the restrictions which exist from the Legal Profession and Legal Aid (Scotland) Act 2007, we take our regulatory and public interest responsibilities on this matter extremely seriously.

Given the high-profile and sensitive nature of this issue, we believe it important to ensure all comments are based in evidence and fact. We note that Jones Whyte, on its own website stated that "at the time of the administration, we [Jones Whyte] estimate there were in excess of 100,000 files created by McClure Solicitors."

Given many clients are likely to have multiple case files, care is obviously needed to avoid conflating the number of people affected with the number of files. To that end, we would like to understand and get confirmation of the basis on which SLCC has forecast the expected work arising from McClures, especially given the anticipated additional costs.

It is also important to remember that the business of McClures was split across both the Scottish and England and Wales jurisdictions, with most clients based south of the border. The number of cases which could arise in terms of complaints will also depend on the type of work carried out.

I know we are due to meet soon to discuss these matters further. As part of that, it would be good to discuss how the forecasting of additional work arising from McClures is being carried out.

- Reforming complaints through legislation

Following years of hard work and perseverance by both the Law Society and the SLCC, it is obviously good news that legislation to reform the regulation of legal services looks set to be agreed by the Scottish Parliament later this year. These reforms include significant changes to the complaints system and which have formed the basis of considerable discussion and collaboration between our two organisations, stretching back to 2017.

Action 23 of the SLCC's proposed "focused" strategy says *"once the legislation is finalised, we [the SLCC] will need to review it and create costed implementation/transition plans to discuss with Government re transition funding."*

As you know, we hope the Stage 2 process will allow for the Bill to be strengthened, particularly in terms of giving the Law Society additional powers and flexibility which would, in turn, allow us to deal with complaints cases more quickly. However, the reforms to the SLCC's complaints handling processes are already set out in the Bill as introduced.

To that end, and given so many of these reforms have not been challenged, we would encourage the SLCC to use its final budget and plan to set out more clearly, even on an indicative basis, how it envisages delivering the reforms, the costs and any medium to long term savings, given these changes are intended to simplify and speed up the system.

- Approved regulator levy

Since 2018, the SLCC has charged the Law Society approved regulator (AR) fees totalling £54,000. This is over and above the funding provided by the Scottish Government to ensure the SLCC is properly set up to undertake its responsibilities under the Legal Services (Scotland) Act 2010. The SLCC is proposing to charge the Law Society a further £10,000 approved regulator fee for 2024/25, thus taking the total amount levied to £64,000, all despite the licensed provider regime not yet being operational.

On page 15 of the consultation paper, the SLCC sets out how the funding received from the approved regulator levy last year supported *"training for staff and Board members, updating of templates letters and processes, legal advice and consultation on the new rules covering ABS, the preparation of call handling scripts, website updates, case management system updates, and other factors"*. A detailed breakdown of expenditure would be valuable.

Given the levies already charged and the work undertaken, coupled with the additional set up costs provided via the Scottish Government, we would once again object to the proposal to charge another £10,000 approved regulator levy, especially given the Society continues to be unable to recoup this cost from any current licence providers.

I look forward to our forthcoming meeting.

Yours sincerely

Diane M'G

Diane McGiffen
Chief Executive