

Scottish Legal Complaints Commission
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Kaukab Stewart MSP
Convener
Equalities, Human Rights and Civil Justice Committee
Scottish Parliament

By email only to: EHRCJ.committee@parliament.scot

15 November 2023

Dear Convener,

Regulation of Legal Services (Scotland) Bill

Thank you for the opportunity to give evidence to your committee yesterday. I found the questions very helpful in giving me the chance to set out what we see as some of the very welcome benefits of the Bill, as drafted, as well as some of the challenges we see remaining in the proposed complaints and regulatory system.

I write to provide some further detail on the areas where we have been discussing with the Scottish Government potential amendments to the Bill to be brought forward at Stage 2. This is in response to the question by Paul O’Kane towards the end of the session.

All but one of these issues can be considered technical updates to support operational implementation rather than changing the policy intent in relation to each section. In the main, we have proposed minor amendments to the existing wording of provisions to make sure the provisions give practical effect to the policy intent. Our comments come from our experience of operationalising legislation and the complexities that arise at that stage which are often hard to envisage in the drafting.

The particular areas these discussions relate to are:

- ensuring we have clear powers to make complaints in our own name
- ensuring we continue to be able to access required confidential and privileged information in appropriate cases
- ensuring eligibility decisions are the ‘quick sift’ envisaged by the Bill

- ensuring we can recognise where practitioners have made appropriate efforts to resolve a case fairly
- ensuring that, where appropriate in the public interest, we can use the power proposed to publish a single report in relation to multiple services complaints against a practitioner
- ensuring that we have the necessary powers to monitor compliance by practitioners with any minimum standards we set.

There is one area where we have made a request for amendments to give us further powers which is not already contained in the Bill. This relates to my answer to Fulton MacGregor's question regarding practitioners' compliance with our statutory requests for information. As I explained, this has been a significant and sustained issue about which we remain deeply concerned. It is a significant cost to the organisation, and the profession which funds us, and it undermines public confidence in the sector and in regulation.

We take all possible steps within our current powers to address this issue, but we believe that some additional, proportionate powers to encourage or compel practitioners to respond would provide us with additional helpful tools to drive compliance. We remain open to what those solutions might be and are discussing a range of options with the Scottish Government. By way of example, those include powers that might help us to secure the information we need to investigate a complaint, such as a power to fine or to publish details of firms not complying with statutory requests. We have also discussed powers to conclude cases in the absence of that information.

I hope that helps to give a fuller answer to Mr O'Kane's question, but I would be very happy to provide any further information on this, or any other issue, if that would be helpful to the Committee.

Yours sincerely

Neil Stevenson
Chief Executive