



Karen Adam MSP
Convener

Equalities, Human Rights and Civil Justice Committee
Scottish Parliament
Edinburgh, EH99 1SP

By Email only

15 April 2024

Dear Ms Adam,

Regulation of Legal Services (Scotland) Bill at Stage 2

I am writing to you in relation to the Regulation of Legal Services (Scotland) Bill in my capacity as Chair of the SLCC Consumer Panel. The SLCC Consumer Panel is an independent advisory panel, established by statute in 2014 to assist the SLCC in understanding and taking account of the interests of consumers of legal services. This includes providing feedback to the SLCC, from a consumer viewpoint, on the effectiveness of policies and procedures. Panel members include representatives from Citizens Advice Scotland, the Competition and Markets Authority, Consumer Scotland, Scottish Women's Aid, Which, Young Scot and academia.

The Panel has been closely following progress towards this Bill and has continued to do so as it makes its way through the legislative process. I have attached a short briefing summarising the Panel's views on the Bill to date and highlights key issues and concerns which the Panel continue to have in relation to the Bill as it currently stands. These focus around the following key points:

- Funding for consumer insight and research to support regulation
- Complexity of the landscape for consumers
- Transparency and accountability
- Regulator accessibility and responsiveness to consumer voices
- Consumer friendly complaints process.

In relation to the first point this relates directly to the proposed extension of the Panel's remit within the draft Bill which we welcome. However we continues to have serious questions and concerns in relation to the proposed extension of its remit in the Bill without sufficient clarity being provided in relation to its funding and resourcing going forward. This is something we

are keen to see addressed within the Bill to provide clarity for all concerned, further detail on this issue is contained in the attached briefing.

We have a meeting scheduled with the clerks of the Committee on 24th April where we would be happy to pick up on the points outlined in this letter and the attached briefing. We hope you find the information attached useful in the Committee's ongoing scrutiny of the Bill.

Yours sincerely

Gillian Fyfe
Chair
SLCC Consumer Panel

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<https://www.scottishlegalcomplaints.org.uk/about-us/consumer-panel/>

Regulation of Legal Services (Scotland) Bill

SLCC Consumer Panel Stage 2 briefing

General views on the Bill and debate so far

We welcome and share the Scottish Government's aim to create a "modern, forward-looking regulatory framework for Scotland that will best promote competition, innovation, and the public and consumer interest in an efficient, effective, and efficient legal sector". Reform in this area is much needed.

The internationally accepted [Consumer Principles](#) require regulation to be clear, accountable and consumer focused. We believe that a single regulator, responsible for the whole system of regulation, complaints and redress, and independent of those it regulates, working across the whole legal services market, remains the best way to achieve this.

We supported the Robertson Review's recommendation to create an independent regulator. We continue to believe it is the simplest, clearest, and most appropriate regulatory model to help deliver regulation that acts in the public interest and puts consumers at its heart.

Although this Bill will not achieve that aim, we do believe it would make some improvements to the current system of regulation. In particular, we welcome improvements to the transparency and accountability required of the professional regulators, and to the functioning of the complaints system, which is often the place where most consumers come into direct contact with the regulatory system.

We are concerned, however, that the majority of the attention and concessions in the debate so far have been made to the views of the legal profession, while there has been limited engagement with the views of consumers or consumer groups. Similarly, there has been minimal research into consumer needs, although research funded and carried out by Consumer Scotland and Citizens Advice Scotland begins to address that.

If the Bill is to achieve a consumer-focused regulatory system, then those views need to be listened to and the balance of attention needs to be on whether the Bill meets the needs and expectations of users of legal services.

The model proposed in this Bill requires a complex system of checks and balances across the multi-agency regulatory landscape. This is only necessary due to the decision not to create a single, independent regulator. There is already discussion of amendments to the proposed system and it's vital these amendments do not further reduce the focus on the public interest or the need for a strong consumer voice within the regulatory system.

Funding for consumer research and insight to support regulation

Much has been made in the debate on the Bill of the need to ensure the views and needs of consumer are taken into account in shaping regulation. This can only happen if resource is dedicated to support this work.

The expansion of the Consumer Panel's remit (see table at the end of the briefing) is very welcome, but it means a rethink of the Panel's resourcing, capacity and independence is needed. This includes:

- resources to carry out dedicated consumer research and engagement
- resources required for its secretariat to support the Panel's work
- plus the support required for Panel members themselves to allow them to fulfil their enhanced role - members are volunteers, meaning that the Panel's work is effectively being subsidised by the organisations those on the panel represent, many of them from the not-for-profit or third sector.

Equivalent consumer panels in other sectors and jurisdictions (e.g. the Legal Services Consumer Panel in England and Wales, the Communications Consumer Panel, the Financial Services Consumer Panel), receive appropriate funding from the relevant regulated sector to discharge their important duties.

We are concerned that there has been no suggestion of how that additional work will be resourced. We understand the Panel's work and the secretariat that supports it will continue to be funded from the SLCC's general funds which come from the general levy on the legal profession.

We are concerned that these arrangements, or the need for this funding to increase to support the Panel's extended remit, have not been made explicit to all stakeholders in the debate. We are concerned that this might lead to either false expectations of lower regulatory costs or pushback from the profession when the SLCC sets its budget to cover such costs. As such, we would like to see this expectation for sufficient funding to be made explicit in the Bill. We understand the Scottish Government will propose amendments at Stage 2 to do so and we would support this approach, as would the SLCC.

A complex landscape for consumers

The Consumer Principles set out key aims to make regulation more accessible, accountable, and transparent to the public. The current regulatory landscape for legal services is incredibly complex and difficult for a consumer to understand. It will be made even more so by this Bill, as a direct result of the need to add additional checks and balances instead of creating a single independent regulator.

We believe the complexity of the current and proposed regulatory landscape actively works against this. A system which is difficult to understand, lacking in transparency or challenging to navigate can cause confusion, suspicion, and disengagement. In terms of access to justice, this is of significant concern given the importance of public confidence in legal services and their regulation.

Transparency and accountability

In line with the Consumer Principles, we believe all bodies delivering statutory regulatory duties should be accountable and transparent. This includes publishing budgets and annual reports to Parliament, consulting on regulatory plans with appropriate stakeholders, including consumer groups, and being subject to FOI.

We are concerned that the case for a two-tier system of legal regulators subject to different levels of transparency and accountability has not been made and is not in line with the Consumer Principles. This lower level of transparency could also make it harder for the case for a review of a Category 2 regulator to be made, or a review completed, as less information about their performance will be in the public domain.

We also believe that transparency and accountability should extend to all involved in the regulatory landscape, so we echo the Committee's request for clarification *"on what mechanisms are in place within the current system to "oversee the overseer" and ensure that all decisions are transparent and open and there are sufficient checks and balances in place"*. This includes the Lord President in relation to existing and proposed new powers which will have significant consequences for consumers, especially those relating to reviews of a regulator.

Regulator accessibility and responsiveness to consumer voices

Given the likelihood of the Lord President assuming further powers in relation to legal services regulation through Stage 2 amendments to the Bill, we welcome Lady Dorrian's comment in her evidence that the Lord President *"considers that the interests of consumers are vital"* and note Lord Erich's view that *"although the Lord President's door would no doubt be open if consumer groups wished to meet him, the formal structures are different, as they involve consumer groups engaging at the professional body level or through the consumer panel of the Scottish Legal Complaints Commission. We are not saying that the current regulatory framework is ideal; there are many ways in which it could be improved, and it may be that a process with more consumer involvement would improve it."* We'd like to hear views on how this could be achieved.

A customer friendly complaints process

Taking a customer journey approach and reducing system-generated barriers would help to ensure that the complaints process delivers the intended effective and efficient redress route for consumers. The measures proposed in the Bill should help to improve the efficiency of parts of the complaints process, but do not go far enough. Professional bodies' role in complaint handling, alongside their role as representative bodies, also causes suspicion and mistrust on the part of complainers – we see this frequently in the SLCC's customer feedback.

We agree with the Committee's view that there is compelling evidence that the complaints process is complex and confusing and that *"Scottish Government may have missed an opportunity to take a simpler, more user-friendly approach in creating a single streamlined complaints process which would have benefited consumers and regulators alike"*. We welcome the Committee's recommendation

that the Scottish Government looks again at how the process can be simplified and we look forward to seeing further comments on how this could be achieved.

Key research findings

Both Consumer Scotland and Citizens Advice Scotland have published research into public views on regulation and complaints. Their findings include:

- High trust and confidence in legal professionals who are seen as professional and knowledgeable, but also expensive and difficult to understand. Few described legal professionals as empathetic or consumer focussed.
- Over a third of adults in Scotland have low levels of legal confidence, meaning they are not confident they can achieve good outcomes across a range of common legal scenarios, and almost a quarter perceive the justice system in Scotland as being not very accessible.
- A reliance on personal recommendations from friends and family and local providers in accessing legal services – most people don't shop around.
- Almost a third felt they had lacked information on choosing a solicitor and did not feel informed about whether they would be charged reasonable fees.
- A majority of people thought the service they received was good value for money and were happy with the professionalism of their provider, the quality of advice and the explanations provided to help them understand.
- Less than half were confident that they knew how to make a complaint and a third of those who were confident gave answers suggesting an incorrect understanding of the correct route for first tier complaints.
- Almost three quarters said it was unacceptable for the same organisation to regulate and represent the profession.
- Two thirds of respondents would prefer an independent regulator to oversee the legal profession with almost three quarters saying it would increase public confidence in legal professionals' work.

About the Consumer Panel

The SLCC Consumer Panel is an independent advisory panel, established by statute in 2014 to assist the SLCC in understanding and taking account of the interests of consumers of legal services. This includes providing feedback to the SLCC, from a consumer viewpoint, on the effectiveness of policies and procedures, including:

- Making recommendations on how the SLCC can improve policies and processes
- Suggesting topics for research connected to legal consumers
- Expressing a view on matters relating to the SLCC's functions such as consultations

Panel members include representatives from Citizens Advice Scotland, the Competition and Markets Authority, Consumer Scotland, Scottish Women's Aid, Which, Young Scot and academia.

Find out more about our work: <https://www.scottishlegalcomplaints.org.uk/about-us/consumer-panel/>. Contact us: consumer.panel@scottishlegalcomplaints.org.uk

Consumer Panel – changes to remit, powers and requirements in the RLS(S) Bill

The extension of the Panel’s remit and scope is significant and broadly fall into two categories:

- the overarching widening of the Panel’s remit beyond complaints and the SLCC to the whole of regulation and the regulatory bodies, and
- a number of new areas where the Panel will become a statutory consultee for Ministers and RPOs on areas well beyond its current remit.

In total, that’s a significant shift in the breadth, number and frequency of issues the Panel will have to consider and comment on.

Section	Content	Implications
5(2)(c)	Consultee on regulations re: regulatory objectives	Reactive in response to request from Ministers (expected to be removed by amendment at stage 2)
8(8)	Consultee on regulatory categories	Reactive in response to request from Ministers (likely to be amended at stage 2 but no change to Panel role)
13(4)(b)	Consultee on RPO Annual Report	Reactive in response to request from RPOs
14(6)	Consultee on rules re: compensation funds	Reactive in response to request from RPOs
14(9)(c)	Consultee on regulations re: compensation funds	Reactive in response to request from Ministers
18(4)(a)(ii)	Consultee on rules re: indemnity arrangements	Reactive in response to request from RPOs
41(5)(e)	Consultee on rules for authorised legal businesses	Reactive in response to request from RPOs
66(2)(a)	Consultee on SLCC rules	Reactive in response to request from SLCC
75	<p>Panel remit extended to:</p> <ul style="list-style-type: none"> • make recommendations to SLCC on its functions • make recommendations to RPOs on any regulatory functions • express views as it considers appropriate. <p>Also makes clearer the Panel’s independence from SLCC.</p>	Moves Panel from focus solely on complaints and SLCC functions to a wider view across the regulatory system and a clear power to ‘make recommendations’ to RPOs.