

**Scottish Legal Complaints Commission**

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The Clerk  
Justice Committee  
Room T3.60  
The Scottish Parliament  
Edinburgh  
EH99 1SP

**30<sup>th</sup> November 2009**

**Our ref: JI**

Dear Sir

**Legal Services (Scotland) Bill  
Justice Committee – Stage 1 Scrutiny**

I refer to the recent publication of the Legal Services (Scotland) Bill (“the Bill”) and to the request for submission of comments on the Bill from interested parties.

The SLCC has an important role in acting as the Gateway for complaints about legal services practitioners in Scotland and, as such, has an interest in the changes proposed by the Bill regarding complaints about licensed providers and others. The Bill envisages the SLCC having an enhanced role and involvement in the investigation of complaints about the new entities and we therefore wish to submit our views on the Bill and to be considered for invitation to give oral evidence before the Committee on 5 January 2010.

**General comments**

It is noted that the SLCC will act as the Gateway for all legal services complaints about licensed providers. Our future remit will encompass various different types of complaint including service, conduct, regulatory and handling.

We see that the Bill provides for service and conduct complaints to be investigated by separate bodies as is currently the case under existing legislation.

Whilst we appreciate that the reasons for service and conduct complaints being treated separately were examined when the Legal Profession and Legal Aid (Scotland) Bill was under consideration, we would question whether it is necessary or desirable for consumers or practitioners for such a separation to continue under the proposed legislation.

We are of the view that the interests of the consumer and practitioner would be better served if only one organisation was to have the right to investigate conduct complaints in addition to service. In our experience, consumers tend not to distinguish between the services and conduct aspects of a complaint. It follows that there is an expectation that all the circumstances of a complaint will be examined by one body, which would not be the case if the proposed regulatory framework was adopted. Simplification of the framework would also prevent practitioners responding to two different bodies.

The Bill as structured seeks to incorporate the provisions of the 2007 Act which may be regarded as overly complicated. There is an opportunity to simplify the complaint process by giving the obligation to investigate both service and conduct complaints to a single legal complaint handling body.

Streamlining in this way could still mean that ultimate disposal of a conduct complaint may still rest with the regulatory body. However we would like to present the case for streamlining the investigation aspect as a minimum.

### **Areas of concern**

The following is a summary of other issues we would wish to address in more detail orally.

- 1 A strength of the SLCC system is that it offers a single Gateway through which all complaints pass. Moreover it is strength that the SLCC determines how each complaint is to be handled. Where a complaint about the services of a licensed provider also involves the conduct of a non legal professional, we have a concern that the Bill does not make adequate provision for the actions to be taken by the SLCC as that Gateway. Such a complaint may form part of a larger complaint falling within our remit. Whilst the Bill allows Scottish Ministers to make future regulations, we think that the Bill should clarify if it is to be part of the SLCC's Gateway function to assess the eligibility and nature of such complaints and if so, to decide to which regulatory body the complaint should be passed. We are not convinced memoranda of understandings between regulators will deal effectively with conflicts.
- 2 The Bill incorporates Parts 1 and 2 of the Legal Profession and Legal Aid (Scotland) Act 2007 when dealing with complaints about licensed providers and approved regulators. It is not clear, however, if the substitution of the approved regulator for the relevant professional organisation applies generally for all purposes of the Bill or only in relation to the specific circumstances covered by the new Sections 57A and 57B (complaints about licensed providers and regulatory complaints). This has an impact on various areas of the SLCC's functions including "handling" complaints about an approved regulator and the exercise of our oversight and monitoring functions. Some guidance is sought on whether Parts 1 and 2 of the 2007 Act are adequately applied to all situations which are likely to be dealt with by the SLCC.
- 3 It is possible that a complaint about a licensed provider may involve members of different professions. In that case there may be difficulties where more than one regulator has to investigate a complaint simultaneously and where the approved regulator is not the relevant professional organisation. An approved regulator may have a dual role as regulator and as the relevant professional organisation, but it may be that the approved regulator is not the relevant

professional organisation. In our view, the Bill should contain adequate provisions for the passing of conduct complaints by the approved regulator to the relevant professional organisation and for the affected bodies to liaise with each other to determine the priority of investigation and agree any necessary measures for cooperation between the bodies to ensure that any delays or conflicts in investigation are minimised. We suggest the SLCC has a role as a neutral Gateway body in this respect.

- 4 There appears to be an error in subsections (4) and (5) of the new Section 57B (as applied by Section 65 of the Bill). These subsections refer to “a conduct complaint against a licensed provider”, but in terms of the new Section 57A (4) “A conduct complaint cannot be made about a licensed provider...”. We think some amendment of the wording in these subsections is required to correct this anomaly.
- 5 We have identified some situations where we believe it will be necessary for Scottish Ministers to make regulations to facilitate and improve aspects of the complaint process. We are unsure if it is appreciated how onerous such decision making may be.

I do not propose to comment in detail in this letter further on these or on other aspects of the Bill where amendments may be desirable. I would however welcome the opportunity of supplying oral evidence to the Committee.

As the SLCC is to be an integral part of the proposed complaint process, I would be grateful if you would consider inviting the SLCC to give evidence before the Justice Committee and I look forward to hearing from you about this. In the event that you do not consider our appearance before the Committee to be necessary, it would be our intention to submit written representations containing further details of our views on the Bill by 18 December 2009.

Yours sincerely

Jane Irvine  
Chair