

A response to the review group's 'call for evidence'

A roadmap for improvement

March 2018



A. Background to our recommendations

The SLCC welcomes the call for evidence from the Independent Review of the Regulation of Legal Services, both as an opportunity for us to comment further as an organisation but also as a way of opening up the debate to a wider audience to help ensure a range of knowledge and interests inform the final proposals.

Our earlier paper *#ReimageRegulation* was published in July 2016. In it we set out a compelling case for change and gave details of: our role; our performance; how we consulted and engaged with others in the development of our proposals; relevant academic research; best practice in regulation (in particular drawing on health sector expertise); relevant consumer studies; and a summary of the debate on legal regulation since the Scottish Parliament was created: www.scottishlegalcomplaints.org.uk/reimagine-regulation.

The detailed thinking and analysis in that paper and its appendices remains relevant, and we would urge the review group to focus on tackling the six main issues we highlighted, which we believe benefit consumers and legal professionals.

In this two-page summary, the SLCC now sets out specific recommendations for the reform we believe must be included within the final recommendations of the review if improvements are to be delivered for consumers and the sector. We respond on all of the issues raised in the summary on page two of the call for evidence document, but do so under a structure which focusses on what we believe are the priorities. A little more detail is provided in an eight page appendix, available online.

B. The overall goal of the review recommendations must be to deliver:

Better outcomes for consumers and the legal market achieved through agile, “future proof”, responsive and proportionate regulation that manages risks, aids choice, improves quality of services and is transparent and accountable in its operation.

C. Key policy recommendations must assist in:

- 1 Delivering a better statutory framework:** simple, understandable, agile, proportionate, affordable, fair
- 2 Enabling a focus on the needs of consumers and clients, including reducing risk and improving quality:** using data sharing, co-production, and consumer research to identify issues, and then target interventions
- 3 Affording opportunities to innovate, and delivering greater and more informed choice:** legal services can be provided in a variety of ways and innovation is encouraged, leading to greater consumer choice and a sustainable market
- 4 Increasing trust and confidence in regulation and the sector:** an independent, transparent and accountable model, with joined-up and co-ordinated 'end to end' regulation and redress
- 5 Ensuring better protection and faster redress:** a single gateway, enabling fast and proportionate processes, ensuring redress is received when appropriate, and avoiding duplication and delay

D. The policy recommendations will become the roadmap for specific improvements:

SPECIFIC IMPROVEMENTS: the detail of these can be developed after the top level policy recommendations are set in the final review report, as part of the planning for legislation and, in due course, implementation...

A new Act should be drafted:

- Providing a single legislative framework for all aspects of regulation and complaints
- Embedding the 'better regulation' principles and the 'consumer principles'
- Setting out clear high level outcomes for market, entity, and individual regulation
- Focussing on an agile framework and principles, not a prescriptive set of processes
- Establishing a single 'start to finish' complaints body, entirely separate to representative functions
- Containing a 'review clause'

The legislation must focus on risk to the public and the integrity of the justice system:

- Moving the focus of regulation to ongoing assurance, and quality improvement
- Encouraging regulatory resources to be directed according to risk
- Allowing data sharing between all bodies involved in the regulation of the sector
- Ensuring co-production of rules, professional standards, and standards of service by all involved in regulation and underpinned by consumer research
- Responsibility for consumer research should be allocated, with funding arrangements made clear

Innovation and sustainability are critical for regulators and markets:

- The 'digital first' approach now taken across government should be enabled by the new framework – relating to both how regulation is delivered, and in ensuring the growth of the digital market in legal services can be encouraged and accommodated
- The act should enable regulated businesses and persons without trying to predict what the market will need, instead allowing flexibility to accommodate that
- Flexibility should be given on regulatory fee structures, subject to rigorous consultation
- Market regulation requirements should be introduced – to promote competition and choice
- A move to data driven regulation allowing greater targeting (and therefore efficiency)

A cohesive regulatory model must be delivered, with all bodies remaining after the recommendations of the independent review are implemented having harmonised:

- Business planning and reporting years, and rigorous public consultation requirements
- Responsibilities under the Regulatory Reform (S) Act 2014 and Freedom of Information (S) Act 2002
- Streamlined accountabilities to the Lord President – with that post's role defined and a public report required on how the post's regulatory functions are dispensed
- Accountabilities to parliament and Audit Scotland - overseeing all spend raised from statutory fees
- Duties to publish relevant regulatory information to guide consumers, and to require entities to do so

The proportionate and effective handling of complaints and redress are a key priority for change:

- A single body should manage all aspects of complaints, up to prosecution for conduct
- A single investigation should take place (abolishing the 'service' and 'conduct' split at stage 1)
- Framework legislation should allow the complaints body to set proportionate pathways for different types of complaint (public protection, value, etc) and define 'tools' and outcomes, not processes
- For all complaints, the burden of proof should be 'on the balance of probabilities'
- There should be the power to move from a complaint into an audit if systemic issues are identified
- Regulators and complaints bodies should have access to the 'first tier' complaints records of firms
- When redress is awarded by a statutory regulator or complaints body the client should receive this
- The system of taxation of fees must be reformed and resourced

POLICY RECOMMENDATIONS: key themes that matter to the public and those delivering legal services...

1. Delivering a better statutory framework: simple, understandable, agile, proportionate, affordable, fair

2. Enabling a focus on the needs of consumers and clients, including reducing risk and improving quality: using data sharing, co-production, and consumer research to identify issues, and then target interventions

3. Affording opportunities to innovate, and delivering greater and more informed choice: legal services can be provided in a variety of ways and innovation is encouraged, leading to greater consumer choice, adaptation to globalisation, and a sustainable market

4. Increasing trust and confidence in regulation and the sector: an independent, transparent and accountable model, with joined-up and co-ordinated 'end to end' regulation and redress

5. Ensuring better protection and faster redress: a single gateway, enabling fast and proportionate processes, ensuring redress is received when appropriate, and avoiding duplication and delay

AN AMBITIOUS GOAL:

Better outcomes for consumers and the legal market achieved through agile, future-proof, responsive and proportionate regulation that manages risks, aids choice, improves quality of services and is transparent and accountable in its operation.