

Colin Bell
Chair
Scottish Solicitors' Discipline Tribunal

3 September 2024

Dear Mr Bell,

Standard of proof consultation

The Consumer Panel's view is that the Tribunal should apply the civil standard of proof in professional misconduct proceedings.

As set out in the Tribunal's mission, protecting the public from harm and maintaining public confidence in the legal profession should be at the heart of decision making in these cases. This would ensure the focus of proceedings and any sanction is on a practitioner's fitness to practice, and any potential implications for public protection.

The consultation paper notes that the civil standard is now the norm for almost all professional disciplinary bodies, including legal practitioners in other parts of the UK and professionals such as health professionals, teachers, social services workers and actuaries. Given the importance of legal services to access to justice and the potentially significant implications for consumers when things go wrong, we can see no reason why Scottish solicitors should be subject to a different standard of proof than other professions.

We would agree with the arguments set out in the consultation paper that it is not in the public interest for solicitors to avoid a disciplinary sanction when it is more likely than not that they are guilty of professional misconduct and that this could be perceived by the public as working in the interests of the profession and not the public or consumers.

Applying the civil standard of proof to misconduct proceedings would also mean the same standard would be in place throughout the complaints process, making it less confusing for consumers to understand.

We welcome the Tribunal's commitment to seeking input from the public on this issue. It is not clear from the stakeholders listed as consultees how this public consultation is being undertaken, but we look forward to seeing public views being taken into account as the Tribunal considers this issue.

Yours sincerely,

Gillian Fyfe, Chair
SLCC Consumer Panel

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