

**RESPONSE by Scottish Law Agents' Society
to the SLCC draft Budget 2021/22**

We welcome the opportunity to respond on behalf of our members. Our Society has been involved for many years in the ongoing issue of how best to deal with complaints against solicitors. We believe that the system for doing so must be fair, transparent and efficient.

In a letter to us, dated 7th January 1999, Martyn Evans, the director of the Scottish Consumer Council, enclosed his organisation's report *Complaints about Solicitors* which, he said, was based on a survey of "people who had recently used the Law Society of Scotland's complaints procedure to make a complaint about a solicitor."

Mr Evan's letter stated that "if consumers are to be confident that the procedures are entirely fair, we believe the research suggests that the way forward should be to establish an independent body to deal with complaints about solicitors in Scotland. The report's main recommendation is that the Scottish Parliament should establish a review of the current procedure with a view to establishing an independent body to deal with complaints about solicitors in Scotland."

Implicit in Mr Evans' letter was the suggestion that in dealing with complaints the Law Society of Scotland was not independent (of solicitors, presumably; no doubt those who had had complaints rejected felt that the Law Society was biased against them in that it was representing the interests of those against whom complaints were made). Echoing Mr Evans's comments, in her report from June 2007 the Scottish Legal Services Ombudsman, Jane Irvine said that "Clients simply do not believe an institutional "members" body can deal with consumer complaints fairly."

As we all know, Mr Evans' consumer organisation was successful in having the Scottish Government establish a body separate from the Law Society. This body, the SLCC, became operational in October 2008, undertaking much of the work previously within the remit of the Client Relations Office of the Law Society. Ms Irvine became its Chair. Personnel from the Society switched employer. Mr Neil Stevenson left the employment of the Society in 2015 and took up employment with the Commission as its CEO.

To what extent is the Commission busier than the C.R.O? As far as numbers of complaints are concerned, Ms Irvine advised in her 2007 report that "in the year 2006/2007 the Law Society of Scotland received 3623 complaints" of which "3245 were dealt with within the target period of 43 weeks".

Let us compare these figures with the SLCC. In 2018-19 there were 1326 incoming complaints. Last year's SLCC budget predicted 1392 complaints in 2019-20. In fact there were only 1036. The same budget forecast 1462 complaints in 2020-21. This year's budget has adjusted that prediction to only 1100. This year's budget also predicts 1200 new complaints in 2021/22. Having regard to the unreliability of the other predictions, might this also be too high?

The SLCC admits that the number of new complaints that it has received has reduced; “significantly” in March to June 2020 with a rebound but still leading to a lower rate of complaints than in previous years.

So, the SLCC’s current draft budget is based on 1200 new complaints in 2021/22, less than a third of the number of new complaints that the Law Society received in 2006/07. This, incidentally, despite the scope for complaints having been widened to three years after the event or agency which gave rise to the complaint; in the days of the Law Society it was only one year.

A year ago the SLCC used an anticipated increased in complaints to justify an annual levy increase of 3.5% (which it got, naturally, despite objections from various quarters, including SLAS). As can be seen above, this prediction of numbers was wildly inaccurate. The 3.5% increase should never have been imposed because it was predicated on hugely erroneous forecasts. The SLCC simply got it wrong. In June 2020 at our AGM we passed a motion of no confidence in this budget and events have proved that we were right to do so.

Now, astonishingly, despite a drop in the number of complaints the SLCC wants to keep the levy the same as last year; the justification for this is impossible to find; it is said that there is a reduced income due to lawyer numbers, reduced bank interest (which is insignificant) and reduced complaint levy income. But if there are fewer complaints (which is undoubtedly the case, according to the SLCC’s own statistics) why does it need the same level of income? This is irrational. The current levy is already too high, it was based on errors and should never have been granted.

We should add that some of the factors referred to in this year’s draft budget documents seem to us to be utterly irrelevant; eg. Brexit and Indyref2. An increase in public sector pay should be irrelevant too given that the SLCC is not funded by the public purse.

The position of the Scottish Law Agents’ Society is simple; the annual levy should be cut to reflect the drop in new complaints. This is applying exactly the same logic employed by the SLCC itself to justify increases; this cuts both ways. **We suggest a reduction of 10%.**

The level of complaints seems to us, however, to be far less important than the overall cost of the organisation; the fact is that the number of complaints (whether it be 1036, 1100 or 1200) is extremely low compared to the levels being processed latterly by the Law Society. Yet the SLCC has an annual budget of around £4,000,000, over 70% of which goes on staff costs.

So how many staff is the Commission using? The SLCC’s accounts for 2019/2020 state that in the year ending 30th June 2020 there were 59 FTE (full time equivalent) staff. In the previous year it was 61. If we assume that the current number is 60 and the new complaints are divided equally between them each staff member will have 20 of these 1200 new complaints. If we assume that there are 260 working days in the year and that each employee has a total of 6 weeks’ holiday (30 working days in total) that means that, on average, it is taking a staff member more than 11 full working days of time to process each complaint (230/20). This seems extraordinary; why are there so many staff?

Also, if our arithmetic is correct, each of these 1200 new complaints will cost an average of £3300 to process (£4,000,000/1200). By any reasonable standards this is startlingly inefficient. Putting it in context, it would be cheaper if the SLCC just paid £3000 at the outset to every single person who complains, even those whose complaints are frivolous, vexatious or totally without merit.

The plain fact is that, there simply are not enough complaints against solicitors in Scotland to justify funding a separate organisation to deal with them. The low numbers (which are statistics that we should be celebrating) simply do not merit the administrative costs of having the SLCC. The Commission does not even determine all these 1200 complaints, only the service complaints, which makes its costs even more disproportionate and excessive. In addition, the SLCC chooses to undertake work that the Law Society already covers perfectly well, such as advising solicitors on how to avoid complaints. The Commission's "Complaints Analysis Tool" (a set of 8 questions the first of which is "What is the Complaint?") is, for example, indicative of an organisation undertaking needless activities.

Martyn Evans and Jane Irvine correctly identified the *raison d'être* of the SLCC as being to address an alleged perception by the public that the Law Society could not fairly deal with complaints against its own members. Leaving aside whether that perception was in fact a misperception one has to ask whether the public is any happier with the SLCC. We have our doubts. With regard to the figures referred to by Ms Irvine and by the Commission itself the Law Society seems to us to have been far more efficient than the SLCC in processing complaints. Our view is that it should revert to doing so, losing its representative role and retaining a solely regulatory function in order to address Ms Irvine's point that "Clients simply do not believe an institutional "members" body can deal with consumer complaints fairly."

The Scottish Law Agents' Society, 17th March 2021