

# Regulation of Legal Services (Scotland) Bill

## SLCC Consumer Panel Stage 3 briefing

### Our views on the Bill

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 most of the attention and concessions in the debate so far have been given 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. We believe this is a missed opportunity. However, within the model proposed it is vital that there is a strong focus on the public interest and 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 significant expansion of the Consumer Panel's remit 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 members 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.

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 welcomed and supported an amendment by Maggie Chapman MSP at Stage 2 to make the need for this funding explicit in the legislation, and for the opportunity for that to be highlighted to all stakeholders in the debate. This will help to ensure that the Panel is adequately resourced to deliver its new role effectively, and to ensure the voice of consumers remains at the heart of regulation.

**We call on MSPs to publicly support the need for the consumer voice to be heard and for adequate funding for the Consumer Panel's work to support this.**

## **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.

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 supported the requirements in the Bill for some regulators, including the Law Society of Scotland, to be 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. This includes the Lord President in relation to existing and proposed new regulatory powers which will have significant consequences for consumers, especially those relating to reviews of a regulator.

**We call on MSPs to support the requirements for Category 1 regulators to be subject to FOI and to seek to extend this to Category 2 regulators (including the Faculty of Advocates) and to the Lord President in relation to his regulatory role.**

## **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 in its Stage 1 report 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 do not believe this has been addressed in the Bill.

## **Post-legislative review**

We welcomed the proposal made by Tess White MSP at Stage 2 for a requirement for Scottish Government to review the operation and effectiveness of this legislation. As outlined above, we have significant concerns about the likelihood of the regulatory objectives of the Bill, and consumer needs, being met. We would therefore welcome a review which scrutinises how reforms to the regulatory and complaints system have been implemented, how these new systems are working, and the extent to which they are improving outcomes for consumers. The Consumer Panel should be a statutory consultee in relation to any such review.

**We urge MSPs to support proposals for a post-legislative review and for the Consumer Panel to be a statutory consultee.**

## 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 and academia.

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