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Lorna Jack  
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Law Society of Scotland  
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**31 March 2017**

Dear Lorna

**SLCC Consultation on Operating Plan and Budget for 2017-18**

Many thanks for your letter of 6 March responding to our consultation.

As you may be aware, the SLCC Board met on 21 March to make a final decision on our proposals and all responses – including yours – were fully considered at that meeting. After much discussion, our Board decided to implement the proposals, including the 12.5% rise in the SLCC levy for next year.

Our Board gave very careful consideration to the points which you raised. However, before turning to consider those individually, our Board expressed general disappointment that, in its invitation for comments from its members, the Society had not circulated the SLCC's consultation paper or a link to that. It was also noted that there was no indication of the number of responses the Society had received, nor had the responses themselves been published.

Turning to your concerns about the impact of the levy increase, particularly in relation to in-house solicitors, those in the public sector, and legal aid practitioners, our Board agreed that a more risk-based charging mechanism should be explored for the SLCC, and around the total cost of practice for solicitors. To that end it has been proposed that a project be added to the Operating Plan for 2017-18 to investigate options for a more sophisticated and proportionate charging regime. This could examine looking at how costs could be best attributed to the those areas which are the key drivers of complaints, and therefore costs (conveyancing, family law, litigation, will and executries and criminal law), to achieve the efficiencies that you indicate are needed by the in-house sector. We will, of course be happy to engage with the Society as part of that exercise.

Whilst I appreciate that this will only have potential benefits for those groups in future years, it is perhaps worth noting, as an example, that the rise in the annual levy for in-house solicitors next year from £95 to £107 represents a reduction of over 5% from a levy of £113 which was in place back in 2012/13. As you know, whilst in the intervening years we have reduced or frozen this level, this was only achievable through drawing on our limited levels of reserves – an option which was always going to be unsustainable going forward.

Our Board expressed surprise at your reference to the SLCC delivering “non core” elements of our strategy, and reference to these as “discretionary” and “outwith its principal duties”. As

you are aware, the SLCC has a wide range of statutory duties alongside direct complaint-related work – including our statutory duty to oversee certain functions of the Society itself. These are not discretionary, nor is compliance with a range of other legal requirements the SLCC is subject to. In our Operational Plan for 2017-18 we have specifically aligned each activity to the statutory basis under which it falls.

Your response lists a number of points under various headings, and I propose to address those in turn:

### **A significant increase in complaints in 2015/16 and predictions on into 2017/18**

This rise in complaint numbers which we identified at the end of our 2015/16 operating year has continued to increase. As you acknowledge, the first six months of this year indicated an actual rise of 23%. This upwards trend is continuing; the figures most recently reported to our Board show that in February we had our second highest monthly level of new complaints. Joint work to consider why complaints are increasing, and how the common causes of complaints can be tackled, will be important. Every complaint is important to the solicitor, and the complainer, involved.

Whilst it is the case that a proportion of complaints are ineligible, the implication that these therefore can be easily dealt with fails to appreciate the complexity of the eligibility process. We have set in detail the steps which require to be taken before deciding that a complaint is ineligible in the current edition of the Law Society Journal. On average, the process for deciding the eligibility of a complaint currently takes longer than the formal investigation of the complaint – it is by far our most resource-intensive activity. We do not believe that this was how the eligibility process was designed to operate. However, without the legislative change required, this part of the process will continue to be both time and staff intensive and any increase in complaint numbers can only result in a direct and significant impact on our costs.

Prior to deciding the budget, our Board again examined each stage of the eligibility process. This included recent changes which have been piloted and their impact, a presentation from our external legal advisers on the minimum requirements of the Legal Profession and Legal Aid (Scotland) Act 2007, and a presentation on the statistical model we have developed, with outside expert help, to assess process throughput. We will continue to strive for efficiency but must deliver multiple decisions at eligibility which can withstand appeal (a single unsuccessful appeal often equating to the cost of a full-time member of staff for a year).

### **Increased appeals, etc**

Our Board noted with some concern the suggestion that the agreement of “no costs to or by” meant there would be no cost to the SLCC – we still require to pay our own costs which have already been extensive (equivalent to the cost of processing around 72 eligibility decisions, so far). It was also noted that there continues to be the threat of a significant number of future appeals and that the Society’s position on withdrawing the Judicial Review was unclear. Your letter appeared to contradict what had been said at the most recent meeting between the Law Society and the SLCC and our respective lawyers, where the Society specifically refused to withdraw the Judicial Review, but wished to await the outcome of the first appeal. In short, our Board agreed that, as things stand currently, the Society’s litigations against the SLCC had to be considered a significant contributory driver of cost and therefore its inclusion in our budget could not be avoided.

### **Alternative Business Structures**

While noting your position, our Board considered that, pending further clarity from the Scottish Government on timescales and funding, this remained something which had to be factored in. As soon as we are made aware of any timetable we will consider how we can openly consult on budget in this area.

### **Updated membership figures**

Our Board noted your projections for increasing membership, but also noted that you had asserted earlier in your response that numbers could decline if fees were increased. On balance, our Board considered that the current arrangement, whereby reliance was placed on the figures provided by the Society in November each year, was the most appropriate way to budget.

In relation to “discretionary spend”, we would again refer to the way in which the activities within the 2017/18 Operating Plan have been clearly and individually aligned to our statutory duties – which extend beyond that of complaint handling. Mapping costs to specific statutory duties for both organisations may be a useful part of the risk-based cost of practice review we anticipate.

As you are aware, where appropriate we do look for opportunities to share costs with a wide range of our stakeholders on joint initiatives. However, that has to be balanced with the fact that we are an independent body and there will inevitably be areas where it is appropriate that our output – our statutory guidance under section 40 of our Act, for example – is conveyed by ourselves.

With complaints rapidly rising we believe a collaborative dialogue on tackling the common causes of complaint would be valuable. We appreciate the Society does not consult on its operating plan or budget (except by discussion at an AGM of your members) but we would encourage a focus in your plans for next year on your core regulatory responsibility - supporting and ensuring standards in the areas leading to the most risk for, and complaints by, the public.

Finally, I should like to thank you again for contributing to our consultation and I look forward to working further with you, and your colleagues, in the year ahead.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. Stevenson', is positioned below the closing text.

**Neil Stevenson**  
**Chief Executive**