

SLCC Response to the Law Society of Scotland consultation on Principles and outcomes focused regulation

We welcome the Law Society of Scotland opening up the debate on the future of solicitor regulation in Scotland. We agree that there are lessons to be learned from other jurisdictions in plotting the way ahead, as shown by the detailed papers from the Nova Scotia Barrister's Association and the Solicitors Regulation Authority. As the papers indicate, there is much that would require detailed consideration in any change to the regulatory system, so we have focussed our comments around our own area of expertise- complaints about service and conduct.

Our role affords us a valuable independent and impartial perspective on standards of service and conduct in the profession. We understand how consumers experience legal services in Scotland and we work with the profession to promote best practice. We also oversee the handling of conduct complaints. The Legal Ombudsman, our counterpart in England and Wales, already works in a principles and outcome focussed regulation (POFR) environment and our response is informed by discussions with them around the opportunities and pitfalls of POFR.

We would welcome the adoption of POFR system and believe it could help build trust and confidence in the legal profession in Scotland. Outcomes seem to be a better vehicle than rules in reflecting the experience of consumers and encouraging improvement. Establishing an outcomes focussed system could stimulate fruitful engagement between practitioners and the public in defining the outcomes. Rather than an exercise emphasising the technical aspects which are the typical starting point for regulators, this could be a more imaginative reworking of regulation to align it more closely with the needs, rights and expectations of the public and hence with improved satisfaction and business growth.

There is a risk that any new system becomes yet another regulatory burden on the profession. Indeed, the data on page six of the SRA's report suggests that English and Welsh practitioners feel that the time and cost of meeting the new compliance regime has been too great. It will be a lost opportunity if the new regulatory system becomes merely a question of buying in software and consultants to tick the right boxes. The SRA report indicated a lack of clarity around what is expected of practitioners, especially in smaller firms, might lead to additional layers of documentation and expense. The aim must instead be to drive changes in culture and mindset around risk and customer service to unlock benefits for both public and profession.

There is a huge opportunity under outcomes focussed regulation for solicitors and firms to ensure their culture places clients at the centre. Delivering the outcomes clients expect from a competent solicitor means developing good business practice. [Research from the Legal Ombudsman](#) indicates that handling complaints effectively can increase profitability by up to 3%.

Poorly designed and executed outcomes focussed regulation would certainly add to the regulatory burden. A system which recognises the practical challenges of regulation whilst encouraging innovation in risk management and customer service would align regulation with innovation and growth. The SRA research highlighted that solicitors recognised that

many of the changes which POFR required were activities which they would have done anyway because they promote vibrant and sustainable business.

The profession must be given support in any move to PFOR. In order to allow solicitors to focus on excellence and innovation in service and to identify and tackle risk more boldly and imaginatively, existing regulatory commitments and structures should be comprehensively re-examined and reduced. Unless the opportunity is taken to reduce other requirements and to free up resources to grapple with risk and to grasp innovation, POFR may have a negative impact.

We recognise that how we engage with and support the profession would need to change to. Over the past few years we have placed more emphasis on our oversight work. We've identified the [key risks in different business areas](#) and increased our outreach and training, working closely with the Law Society. In particular we have recognised that smaller firms may be more exposed to the three biggest areas of complaints (conveyancing; executries, wills and trusts; and family law) and we recognise the challenges which these firms may have in resources and ease of access to training and guidance. We are already developing new ways of working with smaller firms and sole practitioners. Under POFR we believe that the importance of such work will increase.

As we commented in the [recent consultation on mandatory training](#), we would welcome steps to develop the Client Relations Manager (CRM) role in improving service standards and in ensuring that customer service risks and opportunities have a prominent place in the governance and business planning approaches of all firms. We know there is more the SLCC could do to help here and we would be pleased to receive suggestions from the Law Society and from firms and practitioners in this area.

Whilst recognising the risks, we suggest that with public engagement and thoughtful and imaginative implementation POFR offers an improved system of regulation for the public and the profession. We're keen to work with the Law Society and other stakeholders to explore this opportunity.

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