



## **RESPONSE TO SCOTTISH GOVERNMENT'S REVIEW OF LEGAL REGULATION IN SCOTLAND**

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**March 2018**

Having welcomed the opportunity to participate in a roundtable discussion with the review panel earlier in this process, we are pleased to be able to take this further opportunity to make a formal response to the review's call for evidence.

We have grouped our comments under the following three headings:

- The SLCC
- The Consumer Panel
- The wider market

We have included comments received from users of the complaints process which re-emphasise some of the points we wish to raise, and would also draw the Review panel's attention to our previous consultation responses which can be found at

<https://www.scottishlegalcomplaints.org.uk/about-slcc/who-we-are/consumer-panel/consumer-panel-consultation-responses.aspx>

**The SLCC**

The Panel has concerns over the SLCC's process which is over-complex, primarily as a result of the current legislation but also resulting from subsequent Court of Session decisions which have caused the process to become more complicated. The overall result is a process which is difficult to understand.

You suggest that an individual can use the complaints procedure without the need for professional legal advice/representation. Whilst I consider myself to be reasonably intelligent, I could not, as a layperson, have identified the specific process and communication failures and failed obligations and communicated them as effectively as my solicitor did...

Complexity also results in a process which is slow and this is clearly not in the interest of consumers of legal services – nor indeed other parties involved in a complaint. We are particularly concerned where this relates to vulnerable consumers and the barriers which this creates in particular for those with learning difficulties or mental health issues.

It took too long to get the process started with too much legal jargon for a layman.

One of the major shortfalls we identify in the current process is the duplication caused by different bodies being involved in the process and, in some cases, investigating different aspects of the same complaint – duplication to any degree inevitably builds delay into the process.

Do not take so long. I realise there is a back log but no one wants to wait as long, hence I cancelled my complaint.

The most recent data provided to us by the SLCC shows that the average time to conclude a complaint is over 10 months. This does not include cases which are then also investigated by other bodies, such as the Law Society of Scotland or the Faculty of Advocates.

One of our activities as a Panel is to review the feedback which the SLCC obtains from the users of its services. Many of these relate to delay, and in particular to delays in the Eligibility process.

The timescale is too long. It took over 3 months for my complaint to be allocated, that's far too long. Initially it was supposed to be 6 weeks then a further 20 weeks was applied.

We consider that the Eligibility process in particular should be quicker and more efficient. It should be a quick sift to establish whether a complaint is in the process for investigation or not – it is disproportionate that this part of the SLCC's process takes longer than the investigation of a complaint.

The language of the legislation also causes the Panel concern, particularly in relation to the impact this has in relation to the use of Plain English. The use of terms such as “frivolous”, “vexatious” and “totally without merit” are not consumer-friendly and again pose particular barriers for those with vulnerabilities.

Finally, the Panel should like to voice its concern at the court ruling in relation to hybrid complaint issues and the result that some issues now require to be looked at as purely conduct matters, thus reducing the level of redress available to complainers. We urge that any new regulatory scheme would address the consumer detriment which this ruling has caused.

### **The Consumer Panel**

The Consumer Panel was established by statute, but no provision was made by the Scottish Government for funding the Panel. Currently, any projects identified by the Panel and work proposed are met from already pressed SLCC resources.

In particular, the Panel would wish to have access to funding to enable the procurement of research. This will address the lack of work which has been done in this area in Scotland, as opposed to England and Wales.

We also consider that the scope and remit of the Panel should be widened further than legal complaints and follow a model which is closer to the Consumer Panel of England and Wales.

### **The wider market**

The consumer principles emphasise the need for transparency within all markets to allow consumers the ability to make informed choice between practitioners. Comparison websites

for the legal market exist in other countries, including comparison information on complaint histories. The current legislation prevents the SLCC from reporting on such matters and we consider that this hinders a fuller transparency of the legal market in Scotland.

As a Panel we have often have reflected on the lack of information/evidence on how consumers experience the legal services market in Scotland. In this regard we would point the review panel to the recommendations in the recent CMA market study for England and Wales and would suggest that, while we have no evidence to suggest that consumers find the legal services market in Scotland any easier to engage with than consumers south of the Border do, it seems likely that the recommendations relating to improved transparency (including on fees) could be beneficial to consumers in Scotland too.

The Panel also questions the dual role of the Law Society under the current regime, in particular the fact that the Society plays the part of both regulator and representative of the solicitor profession. We question how such a position can be considered impartial when it comes to regulation. We also consider that this causes suspicion and mistrust on the part of complainers.

Stop believing that lawyers tell the truth. Believing the lies and deceit gathered from lawyers is NOT an investigation. Look at the wider picture.

I feel the SLCC is a body that is set up to appease the public who wish to complain against a solicitor or firm but have no real powers or authority and is in fact a body to protect the legal system and dishonest lawyers.

Finally, the Panel notes the delay in implementing Alternative Business Structures (ABS) in Scotland and would ask that the review panel considers the extent to which consumers in Scotland are disadvantaged in comparison with consumers in England and Wales where ABS has been in place for some years.

In conclusion, the Panel would note its view that there is scope for a greater level of public engagement than has been included in the review to date. While widespread engagement

has been made with the legal profession, there appears little input from those who use legal services. This, we feel, may mean that any final analysis is unlikely accurately to reflect consumers' views and concerns and, in turn, may not identify what requires reform.

The Panel looks forward to reading the outcome of the current review in due course but would, in the meantime, welcome a further meeting with the review panel to discuss these and any other relevant issues should that be considered useful.