

Regulation of Legal Services (Scotland) Bill

Stage 3 Briefing

We urge MSPs to pass the Regulation of Legal Services (Scotland) Bill

We believe the current regulatory system can be improved. We supported the outcome of the independent review which recommended a streamlined model of regulation, independent of the legal profession. The current proposals are a compromise, often to the detriment of changes consumer bodies have long called for. However, the proposals do provide a welcome and significant step forward and we now want to see them implemented. This must be without further compromise if the Bill is to achieve the intended benefits for consumers and lawyers alike.

Why this Bill is needed

It is now 18 years since the current complaints and regulatory system was created. While there are different views on some of the details, stakeholders are agreed that reform is needed. This Bill is an opportunity to achieve that in some important areas.

The proposals in the Bill to reform the complaints system seek to reduce complexity and prescription and to increase flexibility. This will help to drive efficiency and proportionality as far as possible within the current model.

Currently, the system simply doesn't meet the public or the profession's needs or expectations of an effective, efficient complaints system. The statute governing its operation is inflexible and overly prescriptive, meaning that lower-level consumer complaints likely to result in small levels of compensation require to be managed in the same way as issues of significant wider public interest. This works against the benefits of swift administrative justice that the system was intended to offer.

This complexity has a real impact. For consumers, a system that is difficult to understand can reduce agency, and sow doubt and suspicion as well as increasing the time it takes for their complaint to be dealt with. For legal practitioners, it can cause frustration and a loss of confidence while complaints are investigated. It also increases the cost of the system for the regulated professionals who fund it.

Everyone agrees that reform is needed in this area, and we've worked with government to propose changes that will make a real and tangible difference to those using or subject to the complaints system. The changes proposed in this Bill, and in some of the amendments now proposed by the Minister and others, will make significant improvements, resulting in a complaints system which is more flexible, proportionate, efficient and responsive.

However, we know some stakeholders have spoken out against some of these improvements and there are amendments which we believe create further complexity. Any proposals to reverse or further complicate much-needed changes must be resisted if the Bill is to be successful in its aims and not create further complexity and cost.

What the Bill will achieve

We believe this Bill will create a complaints system closer to the public, the profession and Parliament's expectations of an appropriate system for delivering consumer redress and administrative justice. It does not deliver the fuller benefits of a single system recommended by the independent review and which we have argued for. However, it makes significant improvements in a number of areas.

A focus on customer journey

The combined proposals would be a significant step towards creating a process that focuses on customer journey, retaining the single gateway for complaints and reducing handovers between organisations. This will benefit consumers bringing complaints to us.

A more proportionate and efficient approach

The changes proposed would allow us to operate a flexible, agile complaints process that allows a proportionate approach to different types of complaint. This will also lead to greater efficiency, which benefits the profession who fund the complaints system.

The replacement of appeals to the Inner House of the Court of Session with an internal review function, which is consistent with the usual ombudsman approach, should reduce cost and improve access to justice.

A greater focus on prevention and continuous improvement

When raising a complaint, most consumers say they want to ensure the same thing doesn't happen to others in future. The current model focuses primarily on intervention when things have already gone wrong.

The proposed model brings a greater focus on continuous improvement and the prevention of failures through new powers for us to investigate and address systemic issues which could affect current and future legal service users.

In addition, where it is in the public interest, and subject to specific safeguards, we would be able to disclose information about complaints, for example, to protect consumers from a potential risk of harm or detriment.

All of this will reduce consumer detriment and harm and improve the service consumers receive. It will also support the sector as a whole by more effectively addressing challenges in individual firms to reduce the collective cost burden of complaints on the profession.

Our views on the Stage 3 amendments

We have not commented on all amendments – only those which have a direct impact on our powers or the wider regulatory system as it affects our work, or where we wish to specifically highlight strong support or opposition to the proposals.

Group 1: Regulatory functions: complaints etc

- **Oppose amendments 129 and 141**

Amendments 129 and 141 seek to restrict complaints about those discharging regulatory functions, including those working or acting for the SLCC. These proposals haven't been subject to consultation, and we've haven't had time to fully consider their impact, but we have concerns about the drafting and the implications for dealing with potentially serious issues, should they arise. It appears they could lead to a situation where there may be no route to investigate or discipline a lawyer acting in that capacity, however egregious the act. Finally, in relation to the SLCC's own lawyers, we are uncomfortable applying standards and processes to others which we would not be willing to submit ourselves to.

Group 4: Minor and technical amendments

- **Support amendments 18-21**

Amendments 18-21 clarify procedures for matters identified by regulators to be investigated.

- **Support amendment 27**

Amendment 27 makes a minor change to the requirement for consultation on the SLCC's annual report. The SLCC is already required to consult on its budget and operating plan, which set out our plans for the year ahead, and to lay those in parliament, so we continue to believe that advance consultation on our annual report is time-consuming and unnecessary. However, this amendment ensures that consultation does not interfere with or delay the external audit of our accounts and the laying of our annual report and accounts in parliament.

Group 6: Complaints: process

- **Support amendments 5, 9 and 84-89**

Amendments 5, 9 and 84-89 tidy provisions relating to the requirement for the SLCC to provide notice to parties throughout the complaints process.

- **Support amendments 6-8**

Amendments 6-8 make changes to the list of SLCC decisions which can be reviewed. They ensure that parties can request a review when we make a final decision on a case, but that cases are not delayed from progressing to be investigated.

- **Support amendments 12-13**

Amendments 12-13 ensure we can request practitioner details in order to deal with all types of complaints.

- **Oppose amendment 14**

The changes proposed in the Bill would allow us to operate a streamlined triage process which would allow complaints requiring further investigation to proceed swiftly to either resolution or to the relevant regulator, and those which do not are dealt with efficiently to avoid unnecessary delays. The Bill requires the SLCC to set out criteria for this in its rules.

We also believe the Bill provides an opportunity to remove some of the language that consumers frequently tell us they find legalistic and offensive (such as 'frivolous' or 'totally without merit') when we tell them that their complaint is not eligible for investigation. A robust triage process will be created through rules, and in consultation with all stakeholders, but using more consumer-friendly language.

We believe this amendment reinserts unhelpful prescription into the Bill and removes some of the progress made in making the language of complaints more accessible.

- **Support amendments 15-16**

Amendments 15-16 ensure regulatory complaints are covered by relevant provisions in the Bill.

- **Support amendments 22-23**

Amendments 22-23 ensure that the SLCC and regulators can disclose information about complaints where it is in the public interest to do so. This could include, for example, being able to share clearer and more detailed guidance and advice with consumers where a firm ceases, or where we see a trend in complaints that suggests a consumer protection risk.

- **Oppose amendment 135**

The Bill includes new powers for us to set minimum standards for complaint handling and trends in practice which lead to complaints. This should help to improve service and complaints handling within firms, resulting in fewer complaints reaching us and reducing the collective cost burden of complaints on the profession. It will also reduce consumer detriment and harm, and improve the service consumers receive.

These proposals have already seen significant changes throughout the passage of the Bill to build in additional consultation with the legal profession and legal regulators to ensure their views are heard in shaping any proposals.

We believe the further step proposed here is unnecessary – particularly as the Lord President is already named in the Bill as a statutory consultee for any proposed standards.

We also believe that the drafting is unclear about what the Lord President would be asked to determine and on what basis.

Adding even more stages to the process adds cost to the system, and potential delay in addressing emerging consumer protection issues.

Group 7: Register of unregulated legal services providers

Support amendments 130-133 and 142

These amendments set out a process for Ministers to require specified unregulated providers to make a request to be entered onto the register. We believe this is a proportionate and risk-based approach.

Group 10: Review of the Act

Amendment 137 proposes a post-legislative review, which we support in principle and would contribute to when consulted.

Our message to Parliament at Stage 3

We are very grateful to the Equalities, Human Rights and Civil Justice Committee for its detailed consideration of the Bill at Stages 1 and 2, and for ensuring a focus on the needs of both the public who use legal services, and legal services practitioners.

The model of regulation and complaints proposed in this Bill is a compromise between more wholesale change in the public interest supported by consumer bodies and the SLCC, and concessions made to the existing model of professional regulation to address concerns raised by the legal profession.

MSPs will be aware of the strong voice from the legal profession they've heard through briefing and in the media. While it's vital that the voice of the profession is heard, it's equally important that the views of consumers are listened to and help to shape regulation.

In building on the existing framework, the proposed model retains much of the complexity, cost and potential conflicts of interest of the current system. For that reason, we urge MSPs to resist any further concessions that reinsert complexity or prescription, or reduce or remove the improvements proposed in the Bill. This will ensure that the intended overall benefits of the Bill – to *“provide 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”* are achieved.

We urge the Parliament to pass the Regulation of Legal Services (Scotland) Bill

We would be happy to answer any questions or provide any further information the Committee may find helpful. Please contact Vicky Crichton at Vicky.Crichton@scottishlegalcomplaints.org.uk or call 0131 201 2130.