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Our Ref: KL/GM/LB  
Date: 12 March 2018

Dear Jim

## **SCOTTISH LEGAL COMPLAINTS COMMISSION BUDGET AND LEVY CONSULTATION 2018/19**

Thank you for providing us with a copy of your draft budget for 2018/19. This has now been considered by our Regulatory Committee, Board and Council. As with previous years, we have also sought the views of our members and this response has been developed on the basis of the feedback we received.

From the outset, we are extremely frustrated to see the SLCC once again returning with a proposed increase in its budget and the levy which is well in excess of inflation.

As you know, there was deep anxiety both within and outwith the legal profession last year when the SLCC chose to pursue a 12.5% increase in the levy paid by solicitors. Despite all the concern expressed and all the representations made, not just by the Law Society but by solicitors and many of their political representatives, not a single change was made to your budget following the statutory consultation.

At the time, we explained our concern that the current lack of oversight or control meant the SLCC was free to charge whatever it wanted, irrespective of economic conditions, irrespective of the arguments presented and irrespective of the objections made. There was simply no formal mechanism to intervene, either by those who were required to finance the SLCC or the Scottish Government or parliament.

As in previous years, we are struck by how the SLCC expenditure continues to rise when other complaints handling bodies in the public sector are making efficiencies and controlling spending. For example, the Scottish Public Services Ombudsman has



controlled its costs, reducing total expenditure since 2014/15. The Legal Services Ombudsman in England and Wales reduced its operating expenditure by almost 23% between 2013/14 and 2016/17.

Against that backdrop, we hoped the SLCC would have used this year's budget consultation to show it had listened to the concerns of last year and would provide some assurance that it had adjusted its approach accordingly. Instead, the draft budget does not appear to show that any of that feedback has been taken on board. Hence we now face a further levy increase of up to 10%, over and above last year's rise and which will have to be paid by the vast majority of Scottish solicitors.

Indeed, taking into account changes in the levy over recent years and assuming the 10% rise for private practice, many solicitors will have seen an overall levy increase of almost 24% since 2015/16. This is an astonishing figure and I am not aware of any other such public bodies in the UK increasing its charges to such a degree.

### ***Drivers of costs***

In your draft budget, it is stated that a "*key driver of cost is the ongoing increase in complaints numbers*". Indeed, there was a suggestion last year that the 12.5% levy rise in 2017/18 arose from a similar percentage rise in complaints as shown in the annual report from the previous operating year. However, the latest SLCC annual report shows an increase in complaints of only 2%. Of these, around two thirds are ineligible or dismissed. There is therefore simply no justification of a further rise of 8.5-10% on the basis of case volume.

The budget documents also say there are rises in the numbers of complaints reaching later stages of the complaints process. However, figures from the last SLCC annual report show the total number of complaints requiring an SLCC investigation (either as service only complaints or a hybrid) actually fell from 336 to 276. Even taking account of those progressing into a full investigation, only 95 got to a determination stage, down from 102 in the previous year.

Therefore the nature of the complaints being received simply cannot justify the SLCC's planned above inflation rise in its budget and levy.

We also note that the above inflation rise in spending comes despite the admission that legal costs are expected to fall.

It is important to stress that the costs of previous litigation born by both our organisations could and would have been reduced had the then SLCC Board agreed to our request to a joint special case to the Court of Session. This would have provided a quicker and cheaper mechanism for resolving the legal differences which emerged from the Anderson Strathern case on hybrid complaints issues. In its budget paper, the SLCC says that "*the Law Society's actions would drive costs for all lawyers, but they took the decision to proceed.*" We would contend that those costs were created because of the SLCC's refusal to move forward in a collaborative manner which left us facing no option other than to proceed with the necessary appeals in order to get the kind of legal clarity which both our organisations have



benefited from over the last year. Indeed, the SLCC made clear to us at the time that it was its preference for the Law Society to go down the appeals route.

### ***Levy apportionment***

We note the specific request for feedback on the apportionment of the levy between different parts of the legal profession. However, we believe this diverts attention away from this central issue. In all of the scenarios presented, the SLCC proposes to introduce another above inflation levy increase for a substantial part of the profession. Rather than seeking views in a way which will inevitably and understandably see different parts of the profession argue for a reduced impact on their own specific area, we believe it is the overall increase which must be resisted. Rather than deciding which solicitors in which part of the profession should be forced to bear the brunt of the proposed rise, we believe we are now at a critical point where no solicitor, irrespective of where they work and what they practice, should be forced to finance another above inflation increase in SLCC spending.

This is particularly important given the potential impacts of an increased levy on various parts of the solicitor profession. Those in a private practice work in highly competitive market where there is ever increasing pressure on client fees and where competition exists, not just within Scotland but across the UK and internationally. Any above inflation increases in the costs of practice, costs which must ultimately be met by clients, risks making Scotland's firms and the wider Scottish legal market less competitive when compared to other jurisdictions. Equally, members working in legal aid face fees which are static or declining in real terms. Additional above inflation costs which cannot be absorbed risks making their practices simply unsustainable.

Within the in-house sector, we know of members who are now required to finance the costs of their professional qualification from their own personal finances. Others working in the public sector face extreme financial pressures and where additional costs can only be met by cuts in other areas. Additional and unnecessary costs risk solicitors and their employers questioning the need to retain such professional qualifications.

Such pressures are even more severe for members working internationally, particularly those living and practising in other parts of Europe, where the UK's withdrawal from the European Union could result in increasing own costs, even without an increase in the SLCC levy but where such a rise will exacerbate an already sensitive and difficult issue.

These pressures from across the profession underline why it is so important for the SLCC to control its costs and ensure no part of the profession is forced to pay another above inflation rise in the levy.



### ***Approved regulator levy***

This year's draft budget proposes an annual levy on the Law Society in its capacity as an approved regulator. We accept that the wording of 2010 Act means the status of the Law Society as an approved regulator means it is liable for a levy. However, we remain confused as to the purpose of the fee and whether it is to finance possible complaints against the Law Society as an approved regulator or whether it represents the financing of the costs in establishing the basic systems necessary for dealing with such complaints.

If it is the latter then we are clear that such start-up costs should be borne by the Scottish Government. This would be consistent with the period which followed the passing of the 2007 Act when the Scottish Government paid for the necessary costs to establish the SLCC. This is especially important given the Scottish Government has chosen to exercise its powers under the 2010 Act and to delegate its responsibilities to investigate eligible complaints against approved regulators to the SLCC.

If the fee is to cover costs of complaints against the Law Society then there is certainly no justification for the proposed fee of £20,000 when we are not authorised to act as an approved regulator and cannot receive any or determine any license applications, let alone undertake further regulation of such entities.

It is frustrating to us that, seven years on from the Scottish Parliament passing a law to allow for licensed legal service providers, there remain no such entities in Scotland and no regulation system in operation to allow for such entities. Whilst we are keen to see progress on this as soon as possible, the practical reality is that it is likely to be some months before the Law Society is authorised by Scottish Ministers.

To that end, the potential for a complaint to be made against us in our capacity as an approved regulator is extremely low. Indeed, it is difficult to envisage the circumstances in which a valid complaint could be made given our current status. Given this and the fact we have no licensed providers from which any approved regulator levy could be recouped, we consider it wholly inappropriate that the SLCC is now proposing a five figure sum as an approved regulator levy. In its budget documents, the SLCC lists as an important principle that "levies from solicitors and advocates collected under the 2007 Act do not subsidise new regulators and new business models." However, in introducing a £20,000 approved regulator levy at this stage, the SLCC is expecting that principle to be waived when it comes to our own charging.

We would therefore argue that the SLCC amend its budget to propose a nil approved regulator fee or a de minimis figure. If the SLCC insists on such a substantial figure then it must, at the very least, provide far greater reasoning for such costs. We also believe the SLCC should seek a grant or loan from the Scottish Government under Section 30(3) of the 2007 Act and seek to recoup such costs over future years.



### ***The opportunity for an improved complaints system***

Both our organisations are actively engaging with the ongoing independent review of legal services regulation, led by Esther Robertson. This process continues to offer the best opportunity to develop a consensus on structural changes to improve the system of legal complaints in Scotland. Given the timescales involved in that review, coupled with the period involved in developing, consulting and passing any new legislation, it is important for us to pursue shorter term reforms to deliver quicker and more efficient processes for dealing with legal complaints. This is particularly important given the year on year increases we are seeing in the costs which solicitors, their employers and their clients must pay to fund the current complaints system.

We were pleased to work with the SLCC and, through that collaboration, develop a range of possible reforms which could be delivered more quickly and without the need for primary legislation. We know that Esther Robertson has passed our joint letter to Annabelle Ewing as Minister for Community Safety and Legal Affairs. We hope the SLCC will now join us in encouraging the Scottish Government to accept these recommendations and implementing them as soon as possible. That way, we can help reduce the unacceptable delays which can cause distress to complainers and complainants. They could also bring efficiencies which would, in turn, deliver budgetary savings within the SLCC.

We hope these points will be properly considered. We also hope the new SLCC Board will demonstrate a willingness to not only consult but act on the basis of the feedback received in this consultation.

Personally, I am keen for an opportunity to discuss these and other issues with you in person given your appointment as the new chair of the SLCC last January. In light of the significant concerns I am raising on behalf of the Law Society, I would again emphasise my desire for an early meeting and hope this can be arranged before you and the SLCC Board agree a final budget for laying before the Scottish Parliament.

Yours sincerely

Graham Matthews  
President