

S.L.A.S. Response to S.L.C.C. Budget Consultation

Introduction and Background

The Scottish Law Agents Society welcomes the opportunity to respond to this Consultation. The S.L.C.C. is aware of our Society from past Consultations and dealings with us and we have had meetings with the S.L.C.C. from time to time which have been frank but useful.

As the S.L.C.C. is aware, we are a wholly voluntary national representative body for solicitors. Unlike the Law Society of Scotland (L.S.S.) we are not also required to represent the public interest but nevertheless we frequently find ourselves doing so as a caring profession promoting the interests of our clients on various issues.

Our members act for clients and seek fairness for them day in and day out but seek fairness for their role as solicitor too. That is not a conflict of interest. It is in the public interest that there is that balance.

General impression from the Plan

The S.L.C.C. is becoming unfocused on its core mission, and that is demonstrated by the pages of aspiration and wider ambition instead of close attention to the detail of its core function and how to improve it.

Specific Points

1)The S.L.C.C. disregards the Scottish Government (S.G.) medium term financial strategy despite quoting it. S.G. do want the changes in the 2025 Act but the timescale has to be balanced against this S.G. Financial Strategy. Expecting solicitors to accept a 12.5% rise in levy being over 4 times the rate of inflation is reckless spending outwith the Government strategy.

2)The S.L.C.C. disrespects the legal profession by displaying a biased attitude to it in terms of this massive hike. It has to be compared with how the public and consumers are being treated by its own Government e.g. a 3% increase in court dues on all users including consumers.

3)The S.L.C.C. highlights £300k of S.G. support but mentions it is not finalised. If this is not finalised by the time your Budget has been set then you have to assume it is not forthcoming until it is confirmed. The budget does not explain the £300k figure. The S.G. in the Financial Memorandum accompanying the Regulation Bill showed start up costs of the order of £645k. Please explain the difference and the S.G. explanation for it.

4)Whatever the amount it is not presently shown as ring fenced but must be shown as ring fenced to fund what S.G. needs to fund. That funding should be for new functions like the new register of unregulated Legal Service Providers (L.S.P.s) and new complaints system applying only to them which will be owned or controlled by non-solicitors. Expecting solicitors to pay for that is grossly unfair to solicitors. The S.L.C.C. should be ring fencing the cost of that work to be charged in due course to the unregulated L.S.P.s who should be made liable for it.

5)The S.L.C.C. must disclose what this S.G. funding is for and on what it will be spent. This must be transparent. If the S.G. Support is less than £300k (or £645k if that is still the real figure) The S.L.C.C. must not make it up out of the levy on solicitors. The S.L.C.C. must accept that if S.G. won't fund the total cost then those items cannot be implemented because of the S.G. decision not to properly fund those changes or start up costs. That must mean S.G. are happy to delay implementation.

6)The Review Committee (R.C.) system in the 2025 Act is not detailed enough to know whether the system will be compliant with Article 6 of E.C.H.R. and what it will cost to set up. We invite you to disclose immediately those details before concluding the Consultation. If the R.C. is just another Committee of similar composition to the other Committees then it is unlikely to comply with Article 6

as it will be an internal review only and not a proper appeal body looking at merits. Those details appear to be left to a new undisclosed Rule or Rules of The S.L.C.C. Rule 32 of the present Rules sets out those details for the Determination Committees. It is totally unsatisfactory for such details being left to secondary legislation when replacing an appeal process to the Court of Session. If this is indeed the case then the R.C. and the 2025 Act is fundamentally flawed, which necessitates a further review of the legislation.

7) For that the Chair appointed must surely be independently appointed and legally qualified and with experience of several years to act as a judge with another legally qualified member and one lay. The Chair and the legal member should be appointed by the independent Judicial Appointments Board and not the S.L.C.C. nor S.G. As there is no filter on the need for reviews these positions are likely to be not just part time but more likely full time. We cannot see how any budget can be finalised till the full structure is known and tested against compatibility with Article 6.

We urge the S.L.C.C. to disclose what the arrangements, details and cost are for the R.C. now.

8) We also urge the S.L.C.C. to take legal advice and Counsel's Opinion on the structure and those arrangements for this uniquely curious and seemingly arbitrary system which is designed to circumvent a proper appeal structure in defiance of Article 6 but which must not breach it. The S.L.C.C. quote Article 6 but seem not to appreciate nor understand what happens if you fall foul of it.

Without a clear structure tested for compliance with Article 6 the system risks failing compatibility and risks that **all** decisions may be challengeable under E.C.H.R. The cost of getting that wrong would be catastrophic with uncertainty on the legality of the R.C. and its decisions all in doubt with huge legal bills to defend challenges underwritten by the profession.

If the S.L.C.C. goes ahead without proper legal advice now, it will raise the spectre of not merely negligent but also wilful and reckless disregard of the profession's interests and consumer interests and raises the possibility of personal liability of senior management for the resulting costs. It would show a failure to act as a responsible regulator having just attained that status.

9) The S.L.C.C. must realise that until the legal position is settled and this doubt is resolved they cannot finalise any budget as the extra costs are impossible to predict. The S.L.C.C. will need to urgently disclose to the S.G. that they are unable to deliver on the 2025 Act benefits because of a material risk of a successful challenge. It will result in an unavoidable delay to implementation. The S.L.C.C. should act swiftly to point this out to Government and avoid expense of an internal review mechanism which does not comply and is just an addition to the system but is unlikely to avoid the need for a suitable appeal process to comply with Article 6.

Judicial Review still remains available for challenge of any procedural defects notwithstanding abolition of the appeal structure but the S.L.C.C. have not referred to that in their plans and budget.

The budget and plans must be suspended because of this potential for disaster and the profession is looking for responsible leadership from the S.L.C.C. as this is crucial for the profession, consumers and the credibility of the S.L.C.C. itself.

Incidentally this Article 6 requirement was covered in our response to S.G. on the Reform Bill but S.G. and S.L.C.C., who should have read our concerns, have each chosen to ignore it thus far. That is a major failure leading directly to this situation in which S.L.C.C. finds itself. It will also be in the public interest and consumer interest potentially as all decided cases not complying with Article 6 will be challengeable by solicitors and complainers and that is not justice for either.

Finally, The result of what is proposed will be an entirely predictable explosion of reviews. This in turn will lead to higher costs for the profession, which will inevitably be passed on to consumers of legal services.

Everyone will want one and it encourages irresponsible reviews at the expense of real consumers having to wait in a clogged up system. It is a recipe for disaster and will deluge a process already not coping with existing complaints. That is irresponsible and limits on review must be part of the system or it will paralyse it.

10)The crucial role of S.L.C.C. in running an independent legal complaint system showing favour to neither complainer nor solicitor seems incompatible with its expanded roles as a super champion of consumer rights. That champion role permeates the view of the S.L.C.C. attitude. Time has perhaps come for it to chose between which roles it wishes to pursue in future as those roles are now looking incompatible.

Those are the main points of our response but there are other points worthy of comment.

First; The Independent Consumer Panel.

If it is truly independent then why do you explicitly state that you will “ensure” what it does? Why are solicitors paying for salaries to consumer panel staff when not paid previously? We object. These should be paid by S.G. If truly independent of the S.L.C.C. then why are we paying these?

Second; Section 17 cases

The continued and repeated reference to some Section 17 cases (whereby solicitors do not give disclosure to the S.L.C.C.) is not understood in this budget. The vast majority of solicitors comply and have no need of continued reminding that some do not. This is S.L.C.C.’s problem but crucially they have the tools to do the job, so please use them.

Third; Existing Appeals pre 2025 Act

We are told that the S.L.C.C. will process 26 new appeals as well as process an existing 26. The S.L.C.C. state that it will “**where possible, learn lessons from them**”. The words “where possible” are odd but are revealing. They indicate an unwillingness of the S.L.C.C. to learn all lessons or put all lessons into practice. This is not impressive and the S.L.C.C. should have the humility to concede when things do not go their way and learn every lesson and follow through. Also the S.L.C.C. will recover expenses following success from the firm concerned so again why the mention of the expense what should be recoverable unless you do not have a good case. There are serious questions over why there are so many appeals. The S.L.C.C. seems over-litigious and willing to defend any cases no matter how indefensible. It seems either not to take legal advice or does so when it is too late to avoid cost. Something is not sitting right about this and we need explanation and request a detailed response.

Fourth; Reserves

The S.L.C.C. reveals that it has reserves of £1,477,000 which is a staggering amount to be kept for a rainy day. Well that rainy day has arrived so why can some of this not be used to fund appropriate changes by the 2025 Act? By appropriate we do not include start up costs appropriate for S.G. Has the S.L.C.C. taken Accountants’ advice on what is actually required or necessary as reserves.?

Fifth; “Polluter pays”

is a central principle to the S.L.C.C. but only as regards solicitors. The Complainer has nothing to lose under the present system and can be a heavy polluter acting either out of mischief or hate with impunity and disrespecting and making a mockery of the system. Real consumers with genuine

complaints see their complaints delayed by such unmeritorious cases. The S.L.C.C. need to stamp abuse out by applying the principle of polluter pays to all abusers of the system.

Sixth; Licensed Provider Levy

The budget states there is no info from the L.S.S. on the likely size of the new L.P.s or model and expresses concern that there is no advertising campaign or major engagement with possible new entrants. It refers to planning to rapidly increase the number of L.S.P.s that contribute to costs of the regulatory scheme and is concerned the market may remain small for first 3-5 years.

The S.L.C.C. is displaying bias in favour of new L.S.P.s over existing practices and L.S.S. is quite rightly not biased nor will spend solicitor contributions on advertising for the benefit of other commercial players. Like the L.S.S. the S.L.C.C. should let the market decide and not overreach its remit.

Seventh; Inconvenience and distress tariff.

Compensation for inconvenience and distress has been static since 2008 with no inflation revision. They propose increasing by 60-62.5 %. It is not necessary to do this in a single step when there are other large increases in the levy and surely the original figures had some inflation proofing taken into account.

Eighth; Training of Staff.

A recent F.O.I. request by S.L.A.S. reveals that only 12 out of 37 S.L.C.C. Case Investigators are legally qualified. Poor quality investigations by Case or complaint Managers, poor Investigation Reports following thereon and some very questionable Determinations by some of the Determination Committees all play their part in the negative view solicitors take of the S.L.C.C. system. We suspect poor qualification and training requirements for staff and Members as a major problem. The Budget only mentions training for staff and tellingly there is no mention of that being relevant legal training.

In relation to Determination Committees the artificial restriction on lay persons forming a majority very probably has a lot to do with poor legal determinations.

Last but not least; Core mission

Forget your ambition to be the most powerful consumer body in the world not funded by tax on the general public nor consumers. Instead channel that ambition into what the S.L.C.C. was originally set up to be per the S.L.A.S. vision for the S.L.C.C. which is -

To be the world's best and exemplary complaint resolution body acting with quasi-judicial independence and fairness favouring neither complainer nor solicitor, with

- 1) staff trained or qualified legally and in consumerism who can apply legal reasoning and principles to their decision making in their investigations and reports, and;
- 2) Members who sit on determination committees whom, if lay, are all either qualified in or suitably trained in the basic legal concepts and principles applying to this field with relevant experience of sitting on other Tribunals.

Written on behalf of The Council of the Scottish Law Agents Society (S.L.A.S.)

Submitted by the Council and Office holders of S.L.A.S.