



Neil Stevenson  
Chief Executive  
Scottish Legal Complaints Commission  
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16 March 2023

Dear Neil

## **SCOTTISH LEGAL COMPLAINTS COMMISSION – DRAFT BUDGET AND OPERATING PLAN 2023/24**

Thank you for providing us with your draft budget and operating plan for 2023/24.

Both the Law Society's Board and Regulatory Committee have had a chance to consider the material provided in your consultation papers. We hope the following points can be considered as you seek to agree a final operating plan and budget for the coming year. We focus on four key areas: costs, the complaints levy, the approved regulator levy and reforming complaints through legislation.

- *Costs of the SLCC*

The SLCC is proposing an increase in the general levy of 9%. Similar increases are proposed for those eligible for a discounted levy. This represents a substantial increase, with a further £300,000 to be taken from the legal sector to fund the SLCC.

This proposed increase comes at a time when legal firms and organisations employing in-house solicitors are facing major cost pressures. Given this, it is critical for the SLCC to demonstrate clearly that it is providing value for money and acting proportionately in the public interest.

If agreed, the proposed levy for 2023/24 will be more than 50% higher than in 2016/17. Meanwhile, the SLCC is projecting it will receive 1,278 complaints, just 10% more than it received in 2016/17.

A 50% rise in the levy for a 10% rise in complaints inevitably raises serious and searching questions about the efficiency of the organisation responsible for handling those complaints. These are concerns which we have raised with you before and our members continue to question the cost and scale of increases you propose given your statutory core purpose.

To set out some context, five years ago, the SLCC general levy represented 68% of the cost of the Law Society's own practising certificate (PC) fee. At that time, solicitors raised questions and concerns over the relative cost of the SLCC with total costs well in excess of those suggested when the legislation being taken through the Scottish Parliament.



The current levy proposals will now see the general levy rise to an even higher level, representing 83% of the Law Society's current PC fee.

For this money, the SLCC acts as a complaints handling body with some other limited oversight powers. Meanwhile, the Law Society offers a range of public interest, regulatory and member activities; setting standards for the profession, investigating conduct complaints and prosecuting for discipline, protecting client money, intervening in firms to protect client interests, providing valued professional practice advice, offering training and professional development, delivering a range of key equality and diversity work, offering wellbeing advice support, schools outreach, trainee support, guidance for those setting up a firm, work on legislation in both the UK and Scottish parliaments, work on legal aid and access to justice, helping thousands of people each year to get the help of a solicitor, and much more.

- *The need to save money and minimise costs*

Given the serious concerns raised over the overall SLCC budget, we welcome those projects listed within the operating plan which are designed to find efficiencies and reduce costs. We recognise how the SLCC is working towards operating from more appropriate and cheaper office accommodation. As the SLCC has rightly identified, this is important given the rise in energy costs and business rates. Nevertheless, we note these are expected to deliver savings of £28,000, representing just 0.66% of the total SLCC budget.

Therefore, we would question whether the SLCC is being as ambitious as possible in terms of identifying and delivering savings. We hope the SLCC Board will revisit this again before it agrees a final budget and set out, in more detail, how efficiencies can be delivered to allow for a more limited levy increase.

- *The complaints levy*

The SLCC has set out a proposal to retain the £5,000 complaints levy, but to introduce a new mechanism whereby the levy is increased to £7,000 in cases "where a firm is judged to have failed to respond to a statutory request without any appropriate mitigating explanation." The SLCC has specifically sought feedback on this.

We recognise that, in a small number of cases relative to the complaints system as a whole, the failure of some solicitors to respond to requests for information increases the time taken to complete the handling of complaints.

As you know, the Law Society and SLCC agreed a protocol for how to deal with cases where solicitors do not provide the necessary information to process a complaint.

This was followed up by a change in the solicitor practice rules. Rule B1.17, which came into effect on 4 January 2023, expressly states a solicitor's duty to co-operate with the Scottish Legal Complaints Commission (SLCC). This has been supplemented by additional professional practice activity which also takes into account the recent court case which considered the protection offered by legal profession privilege. Changes to the relevant guidance in relation to these matters will be published shortly.



Given all of this, we consider it premature for the SLCC to introduce a new higher rate of £7,000 in the complaints. We believe the protocol, practice rule, revised guidance and any subsequent action arising from these should be allowed to be embedded. Should there remain serious issues of non-compliance then we recognise the SLCC may wish to return to its suggestion at a future date.

If the SLCC does choose to pursue this change, we believe it should consult fully and publicly on the associated amendments to the complaints levy policy and which would, we presume, set out clearly the circumstances in which such a levy would apply.

- *Approved regulator levy*

Since 2018, the SLCC has charged the Law Society approved regulator (AR) fees of £44,000. This is over and above the funding which was provided by the Scottish Government to ensure the SLCC was properly set up to undertake its responsibilities under the Legal Services (Scotland) Act 2010.

As you will know, the Law Society was authorised by the Scottish Government to accept licence applications for licenced legal service providers last year. We expect to open the scheme for applications soon.

We remain unclear as to what the £44,000 already charged through approved regulator levies has been spent on. Accordingly, we cannot agree with the proposal to charge another £10,000 approved regulator levy, which we see as unnecessary and excessive, especially given the Society continues to be unable to recoup this cost from any current licenced providers.

- *Reforming complaints through legislation*

There has been excellent collaborative work between our two organisations over a number of years. However, we share a frustration that significant reforms to the legal complaints process, which could have been delivered by way of secondary legislation, were not taken forward earlier. We acknowledge the wish of the Scottish Government to now pursue these through the planned Legal Services Regulation Bill, as announced by the First Minister in the Scottish Government's legislative statement.

The legislation being brought forward by Ministers this year offers a critical chance to make improvements to the complaints system which the Law Society and the SLCC have been advocating for many years.

Our intention here is clear; to ensure the overall complaints system can be made quicker and simpler for all users. We believe it ultimately must also be cheaper for those required to fund it. This will require change to the processes which both our organisations are currently required to work to.

We hope that the strong and positive partnership between the SLCC and Law Society on this agenda will continue. While we have long supported legislative changes to your own processes which would particularly assist with the processing of complaints at eligibility stage, we are now at a point of seeking changes to our own processes which would allow us to reach the same correct and robust regulatory outcomes but to do so much more quickly. This would clearly be to the benefit of complainers, solicitors, the profession and the public.



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We look forward to exploring these ideas further with you ahead of the expected passage of the Bill through the Scottish Parliament later this year. We hope that, once approved and enacted, changes to the complaints system will allow for budgetary savings in the years ahead.

Yours sincerely

A handwritten signature in black ink that reads "Diane McGiffen".

**Diane McGiffen**  
Chief Executive



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