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17 March 2025

Dear Neil

Scottish Legal Complaints Commission draft operating plan and budget for 2025-26

Thank you for your letter of 14 January and for providing us with a copy of your draft operating plan and budget for 2025-26. Both the Law Society's Council and Regulatory Committee have had a chance to consider these documents and we are grateful for the chance to give our views.

Before providing specific feedback, we do want to recognise the particular challenge for the SLCC in developing its strategic and operational approach when the position around the Regulation of Legal Services Bill remains in such flux.

There has obviously been substantial progress on the Bill since the SLCC consultation was launched in January. The Stage 2 process through the Equalities, Human Rights and Civil Justice Committee is now complete, with the legislation significantly improved as a result of over 600 amendments made. The Scottish Government has been open about the outstanding issues it intends to address at Stage 3, although the timetable for the final stages of the Bill has yet to be fixed.

The eventual passing of the Bill will mark the culmination of a decade's work by the Law Society, the SLCC, and many others to secure long overdue reform to the regulatory framework, especially the complaints system. We recognise that differences of view existed between our two organisations on what the overall model of regulation should ultimately look like. However, there has been strong engagement and collaboration between the Law Society and the SLCC on many of the specific changes and, once enacted, there is a chance to deliver an improved complaints system for all.

We recognise that the SLCC had to initiate its consultation before the Stage 2 sessions commenced. With the knowledge of the discussions at the committee and the positive progress made, particularly around delegated powers, we believe the likelihood of the scenario of the legislation failing entirely, as set out in the SLCC consultation document, has lessened. We therefore believe it important for the SLCC's final plan to focus on the first scenario, where the legislation is passed and implementation starts.

To that end, all of us at the Law Society stand ready to work in partnership with you and your colleagues to make sure the reforms agreed by parliament are a success, to implement the reformed system swiftly, and ensure all those who rely on an effective and proportionate system see the benefits of the changes as quickly as possible.

Turning to our feedback on specific elements of your draft operating plan and budget.

Increase to the general levy

We note the proposal to increase the general levy by 4.5%. This means the levy will have risen by almost 30% over the course of three years. While recognising the need for the SLCC to have the resources to deliver its statutory role effectively, this increase represents a substantial added cost for solicitors, many of whom have limited or no ability to reclaim such costs via fees. Even if these costs can be passed on, it is the consumers of legal services who ultimately pay.

Accordingly, it is critical for the SLCC to demonstrate that it remains focused on efficiencies where they can be delivered, and that increased income is focused on its core statutory responsibilities. To that end, we welcome the specific focus of Section 5 of the plan on delivering efficiency and that this is backed up with the specific listed projects which flow from your review of best value.

Failure of solicitors to provide information

We note the information set out in the draft plan which once again highlights the issue of some solicitors failing to provide the SLCC with information when subject to a complaint, and the further enforcement action often needed under Section 17 of the 2007 Act.

We are clear that it is wrong for solicitors to fail to comply with their duties under the 2007 Act and to provide the SLCC with the information necessary to properly investigate complaints. This is a matter on which our two organisations have corresponded extensively, and on which we implemented a specific protocol in 2022 to help to address the issue.

In the draft plan, you have described the issue as “*systemic and widespread*”. However, such a description does not accord with the number of cases that the SLCC has been referring to our Complaints and Oversight Sub-committee under the agreed protocol.

While we look forward to continuing to work with you to address non-compliance, which delays the completion of complaints cases and creates added cost, we believe care is needed in the language used to describe the true scale of the issue at hand. We also

believe a distinction needs to be made between cases where a solicitor refuses to engage at all and those where a solicitor may have reasonable grounds for needing more time to provide the information requested.

Collapse of WW & J McClure Limited

In your letter, you state *“last year saw our highest ever level of incoming complaints, largely driven by issues coming from the collapse of WW & J McClure Limited.”*

In your 2024/25 budget and operating plan, you said, *“we are also concerned there are a large number of potential complaints coming from the situation around the former firm of WW & J McClure Limited. Figures of around 100,000 potentially affected parties have been cited.”*

We recognise that legal obligations from the 2007 Act may create limitations on what the SLCC can say publicly on specific cases. Nevertheless, given WW McClure was identified both this year and last year as a major driver of cost, it would be useful to know if the projected costs from the 2024/25 budget materialised and, if not, whether savings have flowed into the budget for this coming year.

Register of unregulated providers

The draft plan makes reference to *“initial scoping and costing of establishing and running a voluntary register of unregulated legal services providers”*.

As you know, we have been concerned for some time over the unregulated legal services market where clients can be at significant risk if and when something goes wrong. In such cases, individuals will not have recourse to the dedicated statutory complaints process and cannot access compensation funds.

While we welcome the efforts in the Bill to respond to this, we have been open in questioning the effectiveness of a purely voluntary register with, it seems to us, little benefit to a firm in choosing to register. However, as the SLCC works to establish and operate a register, we would appreciate a guarantee that the costs associated with this project will not be funded by the regulated solicitor profession.

UN Convention on Rights of a Child (UNCRC)

The draft operating plan makes reference to the work necessary to ensure that the SLCC is compliant with legal duties created from the UNCRC.

We recognise the importance of the UNCRC and, given the close interaction between the SLCC and the Law Society, it would be helpful to know more of what is proposed. In particular, it would be useful to understand what specific new duties may arise and what specific new costs could occur.

Costs arising from court appeals

Reference is made in the draft plan to the significant costs arising from dealing with appeals of SLCC decisions to the Inner House of the Court of Session. The document

states the Bill “*may allow increased flexibility and reduced cost from appeals, but this is not yet certain and opposition is being voiced by influential parties.*”

Part 2 of the Bill will mean that, rather than allowing appeals to the Court, the Commission’s decisions will be final (although matters can be referred to a review committee).

You will note that no amendments were proposed at Stage 2 to this specific element of the Bill. Given it appears unlikely this proposed reform will change at Stage 3, it would be useful to know what the anticipated savings are from this significant change in the appeals process and whether this has been factored into the 2025/26 budget.

Wilson v Scottish Legal Complaints Commission [2024] CSIH 40

On 25 December 2024, the Court of Session ruled on this case and found the current process of the SLCC in relation to determining conduct complaint eligibility was unlawful.

Specifically, the Court found that eligibility decisions about the component issues of a complaint can only be made by a committee of the SLCC or one of its committee members, and not by a case investigator. The Court recognised this may cause practical problems for the SLCC.

We have been working with you to consider the implications of the judgment and the operational changes which are necessary. We believe it would be helpful for the final operating plan to make reference to the SLCC’s work in this area and any added costs or savings which may arise.

Approved regulator levy

Since 2018, the SLCC has charged the Law Society approved regulator fees totalling £64,000. By any measure, this is a substantial cost. The SLCC is now proposing to charge us a further £10,000 approved regulator fee.

Our repeated objection to the approved regulator levy, especially at the recent level set, has come because we believe the SLCC has been unable to provide a convincing case for applying this cost. This year’s detail around the use of approved regulator levy money mirrors, almost identically, the wording used in the 2024/25 plan. It therefore remains unclear to us as to what new work, not already undertaken, is necessary by the SLCC to justify an additional £10,000 levy. Given this, we do not believe this new levy should be applied.

Financial overview and use of reserves

Finally, we welcome the SLCC proposal of a deficit budget, utilising the unused contingency reserve budgeted in 2024-2025. We are also pleased that the general levy set numbers used for the income budget are more aligned to those provided by the Law Society.



We note that the proposed increase in staff costs is in excess of 10% in addition to the carried-forward reform contingency. This represents a significant premium on the Scottish Government pay policy and national insurance increase in a plan that references flat caseload assumptions.

Given the additional income generated in 2024-2025, the unspent reform contingency, and the growing approved regulator levy reserve; we encourage the SLCC to continue in its drive for efficiencies and utilise revenue gains and reserves to minimise the financial burden on our members.

Thank you again for this opportunity to provide our feedback on the proposed operating plan and budget. We hope the SLCC will respond constructively to the points we have set out and the specific requests we have made.

Yours sincerely

Diane McGiffen
Chief Executive

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