



Reimagine Regulation: Ready for Reform

Over the past ten years discussions have continued about the best way to regulate legal services, to drive choice and innovation in the market, and to promote public confidence and protect legal service users from harm. In that time, little has changed to achieve this. The reforms that have been introduced have layered further complexity over already convoluted regulatory arrangements, or have proved unworkable in practice.

It's time for fundamental reform to create a regulatory system fit for the future – one that works for legal service users and providers, and meets society's need for a well-functioning legal services market.

What do users of legal services want and expect?

Most users of legal services don't think about regulation. They just want their problem solved, and to be able to find any legal advice or support they need to do that. They want that support to be provided by an individual or firm with the knowledge and expertise to help them solve their problem, at a fair cost and with a professional level of service. They want to know that they will be protected, and that if something goes wrong, it will be addressed. They want and expect to be able to trust that this will be the case.

Consumer principles

The consumer principles¹ are a useful guide to what users of legal services should be able to expect from regulation:

- People have **access** to the services they need. They can find them, understand them and afford them.
- There is meaningful **choice** for legal service users. There is reliable information on quality, cost and consumer protection so that people can make informed decisions about the legal provider they choose.
- Consumers get good **quality** outcomes and the regulatory system prevents poor quality service.
- Consumers are **safe** from unnecessary risks when they use legal services because the regulatory system works to protect consumers from harm.
- The **information** consumers get about their service is clear, accurate and timely. It can be easily understood and is accessible to all.
- Consumers are treated **fairly** because legal services embed the principles of equality and understand consumer vulnerability.
- Consumers' views and interests are **represented** in legal services. Regulators understand what consumers need and help services to respond.
- If things go wrong, it can be put right. Consumers can access prompt, effective and easy complaints and **redress** processes.

Public views

We asked the public² about their views on legal regulation and making complaints.

55%

of people said that they'd be worried about raising a complaint about a lawyer within the current system, where the organisations that regulate lawyers also represents them. When asked to put this into their own words:

36%

of responses included concerns about fairness, bias, and impartiality

18%

raised themes around lawyers sticking together or protecting each other

19%

raised concerns around whether their complaint would be taken seriously

12%

12% thought not understanding legal issues or use of legal jargon would be a barrier

I had a complaint but I did not pursue it because I felt that lawyers would protect each other

I would be concerned that the complaint would not be taken seriously or those dealing with the complaint may favour the lawyer without weighing up all the information

A Single, Start-to-Finish Complaints System

Since our creation in 2008, the SLCC has dealt with over 15,000 complaints about legal services. We've spoken to thousands of lawyers and heard the challenges they face. Every day we hear from people across Scotland about the impact on their lives when legal transactions go wrong. We know that the current complaints system isn't efficient or responsive enough, and we want to change that. We also know what a modern, accessible and effective complaints and redress system could look like.

A single process managing complaints from start to finish

Complaints are currently passed between multiple bodies, meaning complainers can often feel lost in the complaints maze. This makes the system inefficient, building in duplication and delay. A single body should be able to investigate complaints, make determinations, apply sanctions, and prosecute the most serious cases. Creating a single complaints process would mean a clear single point of contact for the public, and a more efficient service delivering swifter resolution for both parties, at a reduced cost.

An agile legislative framework that defines outcomes not processes

Each complaint is different – finding the right tools to resolve it requires flexibility in the process. The current legislative framework fixes multiple statutory stages, which are often disproportionate for individual complaints. An agile framework should ensure simple, lower value complaints could be dealt with quickly, and resources focused on those which are more complex, higher value, or have greater public interest or public protection concerns. There should be a single opportunity for appeal at the end of the process.

Fully independent and impartial complaints handling

Complaints handling should be entirely separate to representative functions. It is vitally important for public confidence that the body handling complaints is, and is perceived to be, independent of the legal profession. Our customer feedback shows that the involvement of bodies representing lawyers' interests gives the perception of conflict of interest and undermines confidence in the system.

A focus on quality improvement

Regulation should focus on continuous improvement and the prevention of failures, as well as managing those failures which occur. As well as dealing with unresolved complaints, the single complaints body should be able to set standards and guidelines for complaint handling across the sector. It should support and hold the sector to account for their implementation and appropriate use, and use them to drive learning and quality improvement.

A power to move beyond a complaint if systemic issues are identified

Complaints may bring to light issues of overall risk to the public which go beyond the terms of the individual complaint. A power to consider moving to an investigation or audit should be available to make sure potentially systemic issues are examined.

We believe the complaints system needs fundamental reform. But it is only one part of a wider regulatory landscape that needs to adapt to changing public expectations and a changing legal services market.

Why fundamental reform is needed

Legal services are regulated because of their vital importance in supporting the rule of law and access to justice. That places some regulatory burdens on them to ensure they meet the required standards, but also delivers certain privileges in terms of market access.

Over the past ten years, changes to the current system of regulation have been debated at length. Reforms which were passed by Parliament more than ten years ago remain unimplemented as the regulatory landscape becomes ever more complex. This means that regulation is not proportionate, consistent, accountable, transparent or targeted, in line with the regulatory principles. It means that regulation is costly to the sector, and those costs are passed onto legal service users. Anyone needing help in seeking redress is met with a lengthy and confusing process.

What's needed is a clear vision of what regulation is for, and what it needs to achieve.

We believe this means regulation in the public interest. The regulatory system should be developed in line with Better Regulation Principles so that it can achieve key outcomes, including:

- > ensuring access to justice
- > preventing consumer harm and detriment
- > promoting public, consumer and practitioner confidence
- > maintaining professional standards
- > providing redress when things go wrong
- > focusing on ongoing assurance and quality improvement.

The model of regulation we choose needs to be focused on delivering those outcomes. The legislation governing regulation needs to provide a framework that allows agility, proportionality and responsiveness. It needs to be fit for today's changing legal services landscape, and able to adapt to future challenges and opportunities.

We believe that the recommendations of the independent review of legal services regulation, *Fit for the Future*³, provide such a model. However, we are open to other models which would achieve those key objectives.

What reform could achieve

Reforming the regulation of legal services could have real benefits for all.

For lawyers and legal service providers it should mean more proportionate regulation, based on the work they do and the risk it carries for the public interest and for consumers. It should help foster innovation within the legal services sector. That innovation might include new legal services and providers in areas where access to justice is challenging, or where consumers currently avoid seeking legal support.

For those needing to access legal services it should provide greater confidence in doing so, knowing that the protections they expect are in place.

Most importantly, it should ensure that regulation delivers for the public good, reflecting the vital role that legal services play in our society.

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