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Wednesday 30 March 2016

Dear James,

Responding to your consultation submission

Thank you for your letter in response to our consultation on strategy, budget and operating plan of 15 March 2016. We are tremendously grateful for your frank, focussed, and thoughtful feedback.

We believe four key themes dominated the overall responses receive from stakeholders, and these all linked to points you specifically raised.

Firstly, with hindsight, we did not focus enough on communicating our aims for the complaints process itself and our performance there. We referenced our recent Annual Report in the consultation document - this had significant detail on our work in that area, but you strongly reminded us that if this focus was not duplicated in the strategy it could look as if our work was skewed – I think we can rectify that immediately, as there is a firm commitment to improvement we laid out on the first page which we can easily add detail and context to. That commitment extends to trying to achieve legislative change to make the process more efficient. We are grateful for your comments here.

We know 'lobbying' was not seen as our role by some, but when we see the costs and inefficiencies of the current statutory model we do feel it is right to at least flag this and make the case for change.

A second strand of comments was how much project work we undertake. Our operating plan had a similar number of projects and similar funding and staffing to the last two years, but in the context of the strategy it perhaps looked more substantive. We now have a great chance to add clarity in two ways – better describing the small scale of many projects and their value for solicitors and clients, and giving more overtly the link to the relevant statutory powers (something we removed in the final draft for the sake of plain English).

There are also some specific projects which received feedback and we are now going to reduce in scale, or remove entirely, from the 16/17 plan based on the helpful feedback. It may be we abandon these altogether, or if not that at least means they can be better discussed and evolved with stakeholders for a future plan. I'm still pleased we consulted on these, as in some of the areas we are asked why we're not undertaking work in this area we can show we have considered it but there was consensus this was not a priority. We hope that reducing the total number of projects also shows we are listening and that we agree that our complaints function remains our core focus.

We agree we could have better expressed our expertise, with our insight coming from 8,000 complaints but not the far greater volume of transactions your member group have in a year. We will amend the wording on this, and are working on many of the drafting suggestions you helpfully made.

Our Board were, however, frankly surprised that there was a suggestion it was not our job to contribute to debate on what standards and regulation should be. We have a bank of over 8,000 complaints, which lawyers, and consumers in their fees, have paid for and it says much about current approaches to regulation that this is not seen as a valuable resource to be mined for information to help future consumers. We do recognise in the Faculty's case the low level of complaints against your members as part of that larger number, but there are pertinent lessons for all. So some projects, like this work, stay firmly on the agenda.

Finally, there was much discussion about some of the consumer focus and language, and whether projects went beyond our role. In listing our statutory functions in your letter you omitted mention of the new Consumer Panel and its remit set up by order of Ministers - The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 and implemented last year. There was a disappointing lack of comment on consumer issues generally in the consultation responses. The Panel's creation has increased some of the consumer input and focus of our work – while our decisions on cases must be independent and impartial, those with less knowledge of the sector and legal process may need additional support to engage in the process. We believe we may need some research to understand what that is. We also see issues around consumer redress, clarity around fees and learning from complaints (seeing the same issues happen time and again to clients and solicitors and costing them both in terms of our process does not seem wise where there may be a simple fix). Making progress on these will save the sector and consumers money in the future. Even though not all the stakeholder responses in this area were positive, these are likely to remain strong themes of our work.

On one specific point, we were surprised at was your suggestion that the Commission needs to consider the 'background and standing' of those making determination decisions. It is Scottish Ministers who make these appointments, not the Commission. If you are critical of the current position this should be raised with the Minister. It is disappointing the court issued wording, in the case to which you refer, is perhaps open to misunderstanding on elements of the SLCC's role.

As your letter, and this response, go into the public domain under our consultation process I am sure you will understand it is important we responded on some of the specific issues you chose to raise. There are other points in your letter we would also strongly rebut, but hope we can address through our ongoing dialogue and we did not wish a negative tone to our response when we know you have aimed to be constructive and informative.

At the heart of many of the issues you helpfully raise is whether we get the balance of **various issues correct. We are very pleased to confirm that the feedback has made the SLCC reflect again, and we are now working on what we hope will be a**

significantly improved further draft which we would then like to discuss with you, giving you another chance to input before finalisation.

While we may continue to disagree on some detail I hope the next version which show a real change, reflecting many of your concerns, and that we can work together positively to finalise our plans.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. Stevenson', is positioned below the closing. The signature is fluid and cursive.

Neil Stevenson
Chief Executive

Cc:
Gordon Jackson – Vice Dean
Carole Ferguson-Walker – Faculty Solicitor