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Our Ref: KL/LJ/LB
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Dear Neil,

SCOTTISH LEGAL COMPLAINTS COMMISSION – DRAFT STRATEGY AND OPERATING PLAN

Thank you for your letter of 29 January, providing us with your draft strategy for 2020-2024 along with your proposed operating plan and budget for 2020/21. We are pleased to offer feedback on both documents.

A. SLCC strategy for 2020-2024

We have considered carefully the proposed strategy for 2020-2024. There is much in the content which we welcome and we look forward to collaborating with the SLCC in meeting some of the key outcomes.

Nevertheless, there are some areas where we believe the strategy could be enhanced. This can be summarised as;

- Rooting the SLCC vision in complaints handling.
- Addressing the cost impact of the SLCC.
- A greater focus on the prevention of complaints.
- Greater clarity around strategic successes.

We will address each of these in turn. These can also be considered in the context of the new proposed operating plan given it flows from the proposed new strategy.

Rooting the SLCC vision in complaints handling

The proposed vision presented by the SLCC is that "*every client receives a professional service, and every lawyer adheres to professional standards*". This is an admirable vision. However, we are surprised a body whose central statutory purpose is to handle complaints would not specifically mention complaints in its overall objective.

By comparison, the Legal Services Ombudsman in England and Wales has an objective to "*look at complaints about legal service providers in a fair and transparent way.*"

The Scottish Public Sector Ombudsman specifically references complaints in its overall vision.

The Financial Ombudsman Service is clear that its role is "*to sort out complaints between financial businesses and their customers*".

Yet there is no mention of complaints, either in the SLCC's overall vision; in three of the four strategic aims or indeed in any of the four listed internal priorities.

The SLCC has been given an important role by parliament to deal with complaints effectively and efficiently. It is essential for the SLCC's focus and activity to remain rooted in this core role. It must avoid being distracted or diverted from that which consumers and solicitors rely on the SLCC to do and do well.

Whilst we recognise that much of the strategy content does relate to the operation of the complaints system, the vision and specific aims would benefit from clearer references to complaints handling and improving the way the system operates for the benefit of complainants and the profession.

This is particularly true of the section relating to 'influence' and the debate on regulatory reform. We have worked closely and effectively with the SLCC on proposed reforms to the complaints system which can be delivered through secondary regulations in the Scottish Parliament. This is a good example of where the SLCC's experience can have a significant and positive impact in influencing those in a position of authority to reform the complaints system for the better.

We know these 'quick fixes' will not resolve some of the deeper challenges in the complaints process and that further reform through primary legislation is needed. However, the SLCC has chosen to undertake an active position on the much wider issue of the regulation of legal services, including public research. The new strategy suggests this will continue. We would question the appropriateness of the SLCC using scarce resources which are levied from the legal profession to lobby the Scottish Government on an agenda that reaches far beyond complaints handling and the complaints system.

For example, a lively debate exists in England and Wales around the reform of legal service regulation in that jurisdiction. The Legal Ombudsman, arguably the most comparable body to the SLCC, does not feature their role in that debate as a strategic aim. Even the Solicitors' Regulation Authority, which has taken a vocal position on the question of regulatory independence, recognised that the debate was not a core objective in its 2020-2023 strategy.

We believe the 'influence' section should be replaced with a more focused aim relating to complaints handling. If such an aim is to be featured then it should be

embedded in the issue of reform of the complaints system to ensure the knowledge and insight of the SLCC is focused on where it can best contribute to the debate.

Addressing the cost impact of the SLCC

The cost of the SLCC is significant and rising.

The financial memorandum which accompanied the Legal Profession (Scotland) Act 2007 estimated that the SLCC could be financed by an annual levy on the legal profession of approximately £1.2 million per year. The last annual report for the SLCC showed a total income of £3.5 million. These costs are, of course, largely borne ultimately by consumers via increased legal fees.

From our engagement with solicitors, we are aware of a widespread view that the SLCC is unconcerned at best and dismissive at worst of issues relating to its cost impact. We believe the creation of a new strategy offers an important opportunity to address and dispel that perception.

We note the reference to 'best value' under internal priorities and the listing of 'reducing cost per case' as a strategic outcome. These are welcome. However, given the ongoing concerns over the substantial rise in the cost of the SLCC to the legal profession and consumers, we believe the new strategy would benefit from a more explicit aim to find efficiencies and drive down costs. This should be seen in the context of our earlier comments on focusing the SLCC on its complaints handling role.

A greater focus on the prevention of complaints

We strongly welcome the elements of the proposed strategy which relate to preventing the causes of complaints. As you know, this formed a key area of focus for a recent joint meeting of the Law Society's and SLCC's senior leadership teams.

We have a shared interest in ensuring solicitors are, first and foremost, avoiding complaints from arising in the first place. We also want firms to be properly equipped to deal with complaints directly where possible.

Whilst we are pleased to see this featured in the strategy, we believe it could be featured as a higher priority. Indeed, on the basis of a 'prevention is better than treatment" approach, we believe 'prevent' should feature as the SLCC's first strategic aim.

This is underlined by the latest data from the SLCC annual report for 2018/19. This showed that of the 1,213 complaints received against solicitors, only 579 (48%) were considered valid complaints and accepted for investigation. This shows the degree to which the complaints system is being filled by complaints which are not valid but which, inevitably, still use up resource. By minimising non-valid complaints, the system can be better focused on those issues which do require the expertise of the SLCC and, in solicitor conduct cases, the Law Society of Scotland.

The focus around prevention and tackling the causes of complaints would therefore benefit from a recognition that work is also required to ensure consumers better understand what is a valid and what is an invalid complaint.

Greater clarity around strategic success

We welcome the fact the SLCC has set out strategic successes against each of its aims. This is important in ensuring there are clear, measurable outcomes. However, we feel that some of the successes listed represent actions to achieve an outcome rather than an outcome in itself.

For example, under prevent, 'lawyers engaging in face to face and online learning programmes' and 'published guidance is downloaded, cited and used' is listed as a strategic success. We would argue these represent solutions and actions in achieving a strategic outcome.

Taking this example, we feel that 'a reduction in the common causes of complaints' does represent a more appropriate strategic success and should therefore be listed as a priority. Indeed, we would encourage the SLCC to go further and consider whether a reduction in the numbers of complaints should be listed. This is particularly relevant given our earlier comments about the numbers of invalid complaints which use up resource within the complaints system.

Similarly, under 'innovate', the activities listed are positive and to be welcomed. However, the strategy would benefit from a clearer explanation of the purpose of this work. "Delivery of an ongoing change programme" and "testing of new ways of delivering our services" are important activities but it would be useful to see what the SLCC envisages as being the positive consequence or end outcome from this work.

We would also encourage the SLCC to consider other strategic successes listed and reflect on whether they do represent positive strategic outcomes.

B. The SLCC operating budget

General levy

The SLCC is proposing an across the board rise in the general levy of 3.5%. For partners in legal practice, this represents the fifth straight above inflation increase as shown in the following table.

Year	General levy (for partners)	Percentage increase year on year	Total expenditure (from accounts)	% change year on year
2015/16	£312	-	£2,818,000	-
2016/17	£316	+1.2%	£2,965,000	+5.2%

2017/18	£356	+12.7%	£3,167,000	+6.8%
2018/19	£386	+8.4%	£3,575,000	+12.9%
2019/20	£475	+23.1%	£3,719,950	+4.1%
2020/21 proposed	£492	+3.6%	£3,993,167	+7.4%

These figures show that, the SLCC's total expenditure will have increased by 42%. and if the 2020/21 levy is pursued, the levy will have increased by 58% for partners in private practice since 2015/16.

The SLCC often cites a rise in complaints to justify its increase in levy cost. However, we note that in 2018/19, the SLCC received 1,326 new complaints compared to 1,132 in 2015/16, a difference of 17%.

We continue to be opposed to the SLCC's above inflation increases in the general levy. We do not believe these can be justified on the basis of previous increases and workload volume. We believe the SLCC should look again at the most recent trends in complaints numbers and consider whether the levy increase can be reduced or, preferably, eliminated.

Approved regulator levy

The SLCC charged the Law Society an approved regulator fee of £20,000 in 2018, £8,000 in 2019 and now proposes to charge an additional £3,000 in 2020. This is over and above the funding which the SLCC has received directly from the Scottish Government to ensure it is properly set up to act in accordance with the Legal Services (Scotland) Act 2010.

As you will know, the Law Society is an approved regulator under the terms of the 2010 Act but is not yet authorised to accept licence application or to regulate these new entities. This has been the position for some time.

The proposed operating plan recognises that no approved regulator complaints have been received. Whilst the SLCC recognises that the current situation justifies a reduction in the approved regulator fee from £8,000 to £3,000, we argue the SLCC should go further and reduce this cost to zero for the coming year.

We believe the fundamental position has not changed from last year and that there is no justification for charging the Law Society a further levy over and above the significant charges made to us over the last two years. This is particularly important when the Society is currently prevented from having any licenced providers from which to recoup the costs.

The SLCC Consumer Panel

We welcome the fact the SLCC Consumer Panel is also seeking feedback on its proposed work plan.

As the document sets out, the panel's role is defined in Section 11A of the 2007 Act:

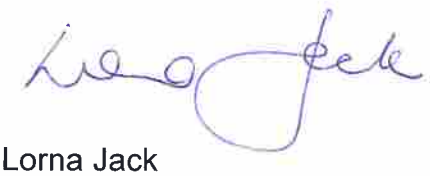
- To make recommendations to the Commission for improvements to the Commission's practice and procedures.
- To make suggestions to the Commission for topics for research connected with consumers and,
- To express views on matters relevant to the Commissions functions as the Commission directs.

The proposed work plan for the panel includes significant activity associated with the review of legal services regulation. The panel expresses a wish to "*influence the nature of the planned Scottish Government consultation on reforms*" and "*respond as a panel to the consultation and encourage others to do the same.*" The panel also focuses on "*responding to further debate on the Consumer Scotland Bill and the establishment of Consumer Scotland.*"

We recognise the expertise which exists on the Consumer Panel. However, we would question whether the activity listed is properly aligned with its statutory objectives.

There are already strong consumer interest voices in the debate on legal regulation. This includes Which?, Citizens Advice Scotland and the Competition & Markets Authority. Given the need for the SLCC to focus on its role as a complaints handling body, we believe the Consumer Panel would provide maximum value by focusing more on supporting the SLCC in this statutory function.

Yours sincerely,



Lorna Jack
Chief Executive