



The Rt Hon Lord Carloway
Lord President

Parliament House
Edinburgh, EH1 1RQ

15 November 2024

Karen Adam MSP
Convener of the Equalities,
Human Rights and Civil Justice Committee
The Scottish Parliament
Edinburgh
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Dear Convener

REGULATION OF LEGAL SERVICES (SCOTLAND) BILL

I thank you for meeting with me and the Lord Justice Clerk on 25 September. It was helpful to hear more about the Committee's work programme and to meet you and your officials.

As I mentioned when we met, the senior judiciary, through our officials, have had good engagement with Scottish Government officials and the Minister on this Bill. Throughout our engagement, we have made it clear to the Minister that it is important that the SG consults with all the bodies across the legal profession which may be impacted by these amendments to ensure that the system is workable.

The senior judiciary are buoyed by the progress that has been made. That is with one exception: the removal of the right of appeal against SLCC decisions to the Inner House of the Court of Session. At present, consumers are protected against unlawful decisions of the SLCC by a direct right of appeal to the Inner House. If section 58 remains in the Bill, that appeal route will be removed. Thereafter, in order to challenge any unlawful decisions, consumers will have to bring proceedings by judicial review, followed, if necessary, by an appeal to the Inner House. This is inevitably a more lengthy and expensive route to challenge wrongful decisions. It places consumers in a weaker position than they would otherwise be in.

A judicial review starts at the first instance judge in the Outer House. It thus can be appealed to a bench of three in the Inner House. There is a good chance of an appeal if the litigants involved were sufficiently motivated (and had the funds). In contrast, a final decision in a direct appeal to the Inner House is reached in a much shorter time-frame and at considerably less expense to the consumer (and indeed the SLCC) than that likely to be incurred in a judicial review.

After listening to the views expressed on this at Stage 1, we presented a compromise to the Minister. We proposed that, as set out in section 58, there should be an internal SLCC review mechanism but that, if a party remained dissatisfied, decisions of the SLCC internal review committee could be appealed directly to the Inner House.

The Minister has rejected this compromise. As promised, I am sending you further details in order to assist you and the other members of the Committee.

This compromise would take account of the concerns expressed, which have been about the current system, while ensuring that the consumer, or other party in need of the protection of the Court, has the quickest and most cost-effective route to a final decision.

It would enable decisions of the SLCC to be quickly reviewed internally, and at much lower cost to all parties than exists with the current system. It would give the SLCC the opportunity to remedy defects in their procedure or decision-making by internal review at an early stage without the need for involvement of the Court. However, if the consumer, or other party, considered that the resulting decision continued to be unlawful, they could appeal directly to the Inner House and, if need be, correct the decision, using a mechanism which is far cheaper and quicker than judicial review.

Statutory appeals to the Inner House against the decisions of regulatory bodies is the norm. The current proposals would take the decisions of the SLCC outwith the normal regulatory process applicable to such bodies.

I appreciate that a decision on this matter will be for the Parliament to take. However, as the Committee carefully considered this at Stage 1, I felt it was important to provide you with further details of this proposal in advance of your next phase of scrutiny of the Bill, in order that the Committee may be properly and fully informed on the issues.

I will copy this letter to the Minister for Victims and Community Safety.

Copy: Siobhian Brown, Minister
for Victims and Community
Safety