

Karen Adam MSP
Convener of the Equalities,
Human Rights and Civil Justice Committee
The Scottish Parliament
Edinburgh
EH99 1SP

19th December 2024

Dear Convener,

I am writing in relation to the forthcoming Stage 2 proceedings on the Regulation of Legal Services Bill. Consumer Scotland has previously provided oral evidence at Stage 1 of the Bill and a written briefing in advance of Stage 2 was provided in April 2024. In light of Committee membership changes, and the time that has elapsed since then, I reattach this briefing for convenience.

We welcome the Scottish Government's early lodging of amendments to inform consideration by MSPs and stakeholders. We address the impact of various amendments on key consumer issues in our letter below.

The Regulatory Landscape

It is important that consumers can have confidence in the regulatory system and know that their interests are protected in the event that providers go out of business, or poor service is received. There must be sufficient checks and balances to reduce the risk of harm to consumers and to allow them to resolve issues quickly and fairly when problems do arise. For these reasons we support the inclusion of the consumer principles within the overall regulatory objectives.

The decision not to implement an independent system of regulation, and to create a system of co-regulation, inevitably results in a degree of complexity for consumers. We note that the Committee identified concerns around there being two categories of regulator with different regimes - the Law Society of Scotland is designated as a category 1 regulator and the Faculty of Advocates and Association of Construction Attorneys as category 2. This categorisation adds complexity, and these concerns have not yet been adequately addressed.

We support the extension of the SLCC's standard setting and monitoring powers. We also support the widening of the Independent Consumer Panel's remit to allow it to look at legal services generally, and commission research into consumer issues, rather than simply focusing on complaints. We note that a number of Stage 2 amendments provide for extension to the Panel's remit and functions, and it is important that the Panel is provided with sufficient support and resourcing to deliver these. Expectations around the role, funding and remit of the Panel must be clear and understood across the sector.

We are pleased to see measures to introduce entity regulation for legal firms which has potential to broaden the ways in which services can be provided, improve access to justice and make support more widely available for consumers.

The Accountability Framework

The Bill seeks to put in place a number of checks and balances to protect consumers and promote accountability and transparency. We support requirements for Category 1 and 2 regulators to publish annual reports and comply with Freedom of Information requirements. We also welcome amendments requiring publication of information regarding the composition, governance, functions and processes of regulatory bodies. These measures should improve how the system works for consumers.

The Scottish Government has lodged a number of amendments to the Section 19 powers, which allow the performance of a legal services regulator to be reviewed. The amendments designate the Lord President as the recipient of any review request and transfer a number of powers from the Scottish Ministers to the Lord President. We welcome the review power, as it allows for independent oversight of the regulatory functions exercised by the professional regulatory bodies and provides an important check and balance, and a way of "overseeing the overseer" as the EHRCJ Committee stated in its report. We also welcome amendments, which we called for in our original briefing:

- allowing the Lord President to conduct a review on his own initiative
- providing for specific information gathering powers to support such a review
- requiring the Lord President to conduct appropriate consultation during any such review
- requiring the Lord President to give reasons for refusing any review request.

We believe that these review powers could still be improved by framing the power more positively. Rather than considering regulatory failures, which can only be identified after the fact, a regular review would enable regular consideration of how well the system is working and whether there are ways to improve consumer outcomes.

The undertaking of a review, in a consumer-facing sector, is a public function and a regulatory duty, and must be undertaken in a way that is accountable and transparent. Across other sectors, regulatory bodies are generally required to account for the way in

which they exercise their powers, publishing reports, and being subject to oversight. As the regulator of the legal profession in Scotland, with considerable new powers being provided under the Bill, it would be appropriate for the Lord President to report on how his office undertakes these specific regulatory review functions, and for him to be subject to the requirements of the Consumer Duty under the Consumer Scotland Act 2020 and of the Freedom of Information Act in relation to these specified public functions. We recommend further amendments are made to the Bill to achieve these objectives.

Complaints

There is broad agreement that the current complaints system is too complex. Our research indicated that many consumers struggle to understand the correct route for complaints. We support the recommendation of the Committee that any additional potential for simplification should be explored. It is important that any later amendments to the Bill do not reintroduce unnecessary complexity, and additional layers, to the complaints process as this will result in the system being more costly to administer and less responsive to consumer needs.

Experiences of consumers affected by regulatory failure

Consumer Scotland has been approached by a number of consumers affected by the cessation of the firm of WW & J McClure, which ceased to trade in 2021. While it is not our role to provide advice or redress to individual consumers, we do have a role in advocating for the needs of consumers more broadly. Following discussions with consumers, other regulatory bodies and the Scottish Government, we have continued concerns that consumers affected by the firm's failure are not obtaining positive outcomes. These concerns are more fully set out in [published correspondence](#) with the Law Society of Scotland and the Minister for Victims and Community Safety, which is available on our website. In summary, we are concerned that:

- Consumers may be unaware that the firm has ceased to trade. Some three years after the event, some consumers have not yet been informed of this or of the transfer of their files to a successor firm
- Once consumers are made aware, they will require support and assistance to understand the implications of this and to establish whether any action is required by them
- Consumers may struggle to pay for any further action they are required to take. Although legal aid may, in principle, be available, we understand that no claims have yet been made
- Consumers, and especially those in vulnerable circumstances, may experience difficulties in navigating a complex landscape. This is particularly important as the demographic characteristics of the former firm's clients may indicate that, as time

elapses, they will be more likely than the average consumer to experience issues in relation to illness, disability or capacity. In many cases, we are aware that bereaved family members are having to deal with these legal matters without having any prior understanding of the commitments entered into by their late relatives.

In correspondence with Consumer Scotland the Minister has stated that the Bill *“will streamline the legal complaints system, which many stakeholders have called for, making the process faster and simpler for the consumers and legal practitioners who find themselves involved in it, such as those affected by McClures.”* We agree that some measures in the Bill may potentially improve outcomes for future consumers and welcome this.

However, the measures will not apply retrospectively, and we consider that consumers affected by the closure of McClure’s need speedy help. We are concerned that consumers affected by the firm’s closure are continuing to fall between gaps in the regulatory landscape. Throughout Stage 2 consideration of the Bill, it is important to keep in mind the experiences of consumers, and to explore whether the Bill creates the transparent, accountable and effective regime that consumers need in order to confidently use legal services.

According to its Policy Memorandum, the Bill seeks to create a more proportionate, accountable and flexible regime which places consumers at the heart of the system. To do this, regulators and oversight bodies need to both understand consumer experiences and assess regulatory performance. It is important that the Bill puts in place adequate measures to facilitate this and to secure the effective operation of the regulatory system.

Yours sincerely

Sam Ghibaldan
Chief Executive