

**Scottish Legal Complaints Commission**  
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Karen Adam MSP  
Convener  
Equalities, Human Rights and Civil Justice Committee  
Scottish Parliament

9 December 2024

Dear Convener,

### **Regulation of Legal Services (Scotland) Bill**

I write in reference to the letter of 15 November 2024 from the Lord President in relation to proposals for the replacement of the right of appeal against Scottish Legal Complaints Commission (SLCC) decisions to the Inner House of the Court of Session with an internal review committee.

We wholeheartedly concur with the Lord President's aim to deliver "the quickest and most cost-effective route to a final decision". We believe the proposals in the Bill do just that.

We were pleased to see the Committee support those proposals in its Stage 1 report. We would agree with its statement that the proposals "should provide a more proportionate, accessible, swifter and cost-effective approach and resolution which will benefit both consumers and those against whom a complaint is made".

In establishing the SLCC, Parliament created an alternative route to redress for consumers that did not require (but crucially also does not prevent) them to go to court to pursue it. It is a service which is free and accessible to use. We believe the current statutory appeal route undermines this approach.

The current appeals process is far from accessible for consumers. It is not uncommon for us to receive correspondence from consumers who are confused or struggling to bring an appeal against an SLCC decision, such as this recent example:

*“I am finding it very difficult to find a firm of solicitors who are willing to take on an appeal against an SLCC decision. It appears to be something they are unwilling to do; some cite lack of expertise in these matters, others perhaps are unwilling to act against another solicitor (I found one firm who will represent solicitors in these cases but not other private clients).”*

A significant proportion of our appeals are brought by unrepresented complainers who may not have received advice on their likely prospects of success or the potential for them to be found liable for significant costs if they are unsuccessful.

We have also heard from unsuccessful appellants who have had costs awarded against them who claim to have been unaware that in bringing an appeal they could be held liable for tens of thousands of pounds of costs. In many cases we are unable to recover these costs.

We are required to notify all parties of their right to appeal but many, despite our explanations, do not appreciate the significant expenses liability they may incur. It is our standard practice to provide information to all parties on appealing a decision, including on the potential for an unsuccessful appellant to be found liable for expenses extending to several thousand pounds. The same information is published on our website: [www.scottishlegalcomplaints.org.uk/your-complaint/appeal-a-decision/](http://www.scottishlegalcomplaints.org.uk/your-complaint/appeal-a-decision/).

We cannot, however, provide legal advice or advice as to the likely amount of any expenses award in any given case. While it may be obvious to the courts and to legal practitioners that generally ‘expenses follow success’, it is often not to the individual members of the public who have raised these actions.

While we accept the Lord President’s point that judicial review can be lengthier and more expensive route to challenge wrongful decisions, we respectfully submit that it is also fundamentally a different route, and one which is typical for ombudsman and complaint body decisions about service complaints.

The Lord President notes that “statutory appeals to the Inner House against the decisions of regulatory bodies is the norm”. While that is the case for decisions made by the regulators of other professions such as the General Teaching Council for Scotland or General Medical Council, the right of appeal in those contexts is generally restricted to decisions of the relevant tribunal or ‘fitness to practice’ panel, which are likely to have a significant impact on the professional’s right to practice.

Under the proposals in the Bill, the right of appeal to the Inner House would continue to be available for decisions made by the Faculty of Advocates Discipline Tribunal and the Scottish Solicitors' Discipline Tribunal, which are much more closely analogous to the appealable decisions in the context of other professions. That is, we agree, the correct route for appeals of these type of regulatory bodies, given the impact their decisions can have on a lawyer's right to continue in practice.

However, we do not agree that removing this route of appeal from the SLCC "would take the decisions of the SLCC outwith the normal regulatory process applicable to such bodies." The SLCC makes decisions about the eligibility of complaints for investigation, and about appropriate redress for consumers in relation to complaints about the service provided by legal practitioners.

Approximately 75% of appeals brought against decisions of the SLCC in the period from 2020 to 2024 have concerned decisions taken in the exercise of the SLCC's eligibility or sifting function, which relate only to whether or not a complaint should be investigated, with only a small proportion relating to the final determination of service complaints. Equally, the powers available to the SLCC when upholding service complaints (focused on providing redress for consumer loss, inconvenience or distress) are materially different in nature from the disciplinary sanctions available to other regulatory bodies which may form the subject of appeals to the Inner House.

The Lord President is, of course, ideally placed to provide an overview of the legal landscape for regulatory and complaints matters. However, we would note that bodies akin to SLCC which deal with consumer complaints about service matters in vital professional and public services, such as the Legal Ombudsman for England and Wales (which submitted [written evidence](#) to the Committee), the Financial Ombudsman Service and the Scottish Public Services Ombudsman, do not have a statutory right of appeal of their decisions to the court. This is the norm for hundreds of ombudsman bodies across the UK and internationally. It is not clear why legal services complaints should be different in this regard from complaints about banks or hospitals. While these bodies can and do see judicial reviews brought against them, our understanding is that these are far from common.

To illustrate the proposals made to the Committee, the current situation is that a complainer must apply to the Inner House of the Court of Session for leave to appeal a decision of the SLCC. The application for leave to appeal process is itself an involved, time-consuming and expensive procedure (generally involving detailed pleadings, notes of argument and an oral hearing), which is not significantly less onerous than the appeal itself. If successful in obtaining leave, the appellant must

then bring an appeal to the Inner House. While it is correct to say that where an effective alternative statutory remedy exists, applications for judicial review would not normally be permitted, it remains the case that judicial reviews can and have been raised against SLCC decisions.

The proposal in the Bill is to remove the statutory right of appeal to the court and replace it with an internal review committee which would, as the Lord President states, “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.” Judicial reviews of SLCC decisions would be possible, but crucially that route would not constitute an ‘appeal’ of an SLCC decision and there are good reasons to expect that judicial review proceedings would be brought considerably less frequently.

The proposal suggested by the Lord President would multiply the stages possible following a decision of the SLCC, allowing for the proposed internal review committee to be followed by the existing route of appeal via a request for leave to appeal to the Inner House, and, if successful, an appeal. Again, while an application for judicial review would not normally be permitted where an effective alternative statutory remedy exists, it would be possible.

In summary, as previously outlined to the Committee, we do not believe the current approach, or that proposed in the Lord President’s letter, provides an appropriate, accessible, proportionate, efficient or cost-effective approach to dealing with consumer complaints about legal services. We would highlight the costs outlined in the Bill’s financial memorandum in relation to appeals and the implications of reinserting a multi-stage approach into the legislation. Most importantly, however, we would recommend the Bill’s proposals as the best way to balance giving an opportunity to remedy any defects in procedures or decision-making with an efficient, effective and accessible consumer complaints process.

If we can helpfully provide any further information on this issue, please do not hesitate to contact me.

Yours sincerely

**Neil Stevenson**  
**Chief Executive**