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17 January 2025

Dear Convener,

Regulation of Legal Services (Scotland) Bill – amendments relating to conduct and regulatory complaints

As the non-solicitor convener of the Law Society's Regulatory Committee, I wanted to write to you about the amendments recently tabled by Tess White MSP. Taken together, these amendments would remove all of the Law Society's powers to investigate conduct complaints against solicitors and regulatory complaints against firms, and instead give these powers to the Scottish Legal Complaints Commission (SLCC).

We strongly support the desire to simplify the legal complaints system. However, we believe the amendments tabled by Ms White offer the wrong solution to the problems we see in the complaints system today. These problems exist, not because of "who" regulates but because of the unnecessarily complex and cumbersome processes which the Law Society, and others, are required by statute to follow.

This is why we have fought, for the best part of a decade, to get the reforms needed so complaints can be dealt with more quickly, for the benefit of everyone. With this Bill, we have a chance to do that.

- *The Law Society's role in complaints*

The responsibilities to investigate and prosecute conduct complaints are ones we take extremely seriously. We have built up a substantial base of expertise in undertaking this task, and take action whenever a solicitor's conduct has fallen below the standard required. In addition, we take action against solicitors where it is appropriate to do so, not because of a complaint from a member of the public but because the Law Society itself has identified wrongdoing. In the last three years, we have initiated over 80 complaints of our own against solicitors.



Our decisions around complaints are all overseen by a dedicated committee made up of public interest lay members as well as experienced solicitor members. This is similar in set up to the SLCC's complaint determination committees which also have solicitor and non-solicitor members and, by statute, are required to be chaired by a lawyer member of the committee.

Our processes around complaints handling also have substantial external oversight, with appeal mechanisms to the independent Tribunal and the right of complainers to take handling complaints to the SLCC. In the last three years, the number of times the SLCC has upheld a handling complaint and required us to reconsider has amounted to only 1% of all the conduct cases we have dealt with.

- *The problem needing fixed*

The problems we see in the complaints system today stem from the complex, cumbersome and confusing processes which the Law Society is currently forced to follow.

A simple example is that we must follow the same investigation procedure for every conduct complaint we receive, regardless of the seriousness of the matter, which causes delay and adds cost to the system. Even when we ourselves identify wrongdoing through our own regulatory work, we have to go through unnecessary processes before we can even start the process of taking forward disciplinary action.

We have also been stymied by the existing legislation which is too reactive in nature and gives us too few powers to regulate proactively to try and prevent problems from arising in the first place.

- *How the Bill helps*

The Bill as lodged contains many important steps to speed up and improve the complaints system. The eligibility process overseen by the SLCC is improved, meaning conduct complaints reach us more quickly. We will also be able to raise complaints ourselves more easily. More widely, the Bill delivers us critical new powers to regulate law firms at a business level, powers we have sought since 2015 and which exist in other parts of the UK. These entity level powers will allow us to regulate more comprehensively and more proactively.

Recent Scottish Government amendments would build in further improvements, especially around early disposal, all to help ensure complaints can be dealt with more quickly. Plus, we continue to press for powers to suspend a solicitor pending the outcome of a complaint to better protect the public, and more powers to investigate earlier when we identify possible wrongdoing ourselves.



We also seek amendments which address the longstanding legal restriction which prevents us from talking publicly about complaints cases, a restriction which goes against the principle of transparency and damages public confidence.

- *Structural change could delay all of this*

We fear the amendments tabled by Ms White would inevitably require a substantial change programme as responsibilities for conduct matters were moved over to the SLCC.

Such a transfer of responsibilities from one organisation to another risks leaving consumers having to wait even longer for the improvements they need and deserve. Structural change, with all the time and cost it involves, will delay the delivery of the process improvements instead of allowing to get on and start delivering as soon as the Bill becomes an Act.

We believe the Bill should leave the SLCC to concentrate on dealing with service complaints thoroughly, swiftly and effectively. This would, in turn, allow the Law Society to continue its strong track record of protecting the public interest by addressing issues of professional misconduct and prosecuting for disciplinary breaches.

Best Wishes

David A Gordon
Non-Solicitor Convener
Regulatory Committee

cc Siobhian Brown MSP, Minister for Victims and Community Safety