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Equalities, Human Rights and Civil Justice Committee

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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
23rd Meeting 2023, Session 6

CONVENER

*Kaukab Stewart (Glasgow Kelvin) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)
*Meghan Gallacher (Central Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Paul O'Kane (West Scotland) (Lab)
*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rosemary Agnew (Scottish Public Services Ombudsman)
Colin Bell (Scottish Solicitors' Discipline Tribunal)
Neil Stevenson (Scottish Legal Complaints Commission)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 14 November 2023

[The Convener opened the meeting at 09:45]

Regulation of Legal Services (Scotland) Bill: Stage 1

The Convener (Kaukab Stewart): Good morning, and welcome to the 23rd meeting in 2023 of the Equalities, Human Rights and Civil Justice Committee, in session 6. We have received no apologies this morning.

Our first agenda item is the third evidence session on the Regulation of Legal Services (Scotland) Bill. I refer members to papers 1 and 2. Members will note that the further correspondence that we have had with the Minister for Victims and Community Safety is in annexes B to D of paper 1. The Delegated Powers and Law Reform Committee took evidence from the minister at its meeting last week and has subsequently written to the Lord President of the Court of Session for his thoughts on potential changes to the delegated powers provision in the bill. That letter is in annex E of paper 1. The DPLR Committee expects to report to this committee in advance of our evidence session with the minister on 5 December.

I welcome to this morning's meeting Rosemary Agnew, who is the Scottish Public Services Ombudsman; Colin Bell, who is chair of the Scottish Solicitors' Discipline Tribunal; and Neil Stevenson, who is chief executive of the Scottish Legal Complaints Commission. You are all very welcome.

I invite each of our witnesses to make brief opening remarks, should they wish to. I start with that offer to Rosemary Agnew.

Rosemary Agnew (Scottish Public Services Ombudsman): Good morning, and thank you very much for the invitation.

As you will probably have seen from our submission, the SPSO's expertise is not in the area of the Legal Complaints Commission but is in complaints handling more generally. Although we do not have any comments on the regulatory side of the bill, we—my organisation and I—have extensive experience of handling complaints. In particular, we have long-standing experience of setting and monitoring complaints-handling standards and the benefits that can be achieved from that over time. We know about the importance of and have experience in driving best practice through monitoring, supporting and having direct intervention in how complaints are handled. Finally, I can draw on my stakeholder engagement with other ombudsman schemes and other complaints-handling bodies across a range of sectors, because some aspects of complaints handling are fairly standard issues across them all.

I would like, specifically, to give a perspective on complaints handling and those elements of the bill.

Colin Bell (Scottish Solicitors' Discipline Tribunal): Good morning, and thank you for the kind invitation to be here. I am speaking to you today as chair of the Scottish Solicitors' Discipline Tribunal, or the SSDT, for short. For the record, I am a practising solicitor. The SSDT is a totally independent judicial body that mainly deals with the serious disciplinary issues that arise from time to time in the solicitors' branch of the legal profession.

The SLCC may refer conduct complaints to the Law Society of Scotland, which then investigates the complaints and prosecutes the most serious ones to the tribunal—the SSDT. The most severe sanction that we have available to us is the ability to strike an individual from the roll of solicitors in Scotland. Importantly, the tribunal has 50 per cent lay participation, and hearings normally sit with two solicitor members and two non-solicitor members. All SSDT members are appointed by the Lord President of the Court of Session. The hearings are held in public, and our decisions are published on our website.

The SSDT is pleased to see some aspects of the bill and is working with the Scottish Government on a number of other practical fixes to ensure the smooth running of the tribunal. The tribunal has some concerns about higher-level issues such as entity regulation, which we might come to.

The tribunal is proposing solutions for the way in which it can best fulfil its function in the new system, bearing in mind principles such as transparency, public confidence, independence, fairness, consistency, proportionality and, of course, natural justice.

Neil Stevenson (Scottish Legal Complaints Commission): Likewise, we are really grateful to be here today, so I thank you. As members will know, the SLCC is the gateway for complaints about all lawyers. We resolve service complaints and can award compensation. After performing initial tests and classification, we pass conduct complaints on to professional bodies, as Colin Bell has described.

We have 15 years' experience, have resolved more than 18,000 complaints and have worked

with 36,000 individuals. It is worth noting that the majority of those people are vulnerable either through personal circumstance or because of the legal situation in which they find themselves that has led to the complaint. We have supported consumers in receiving hundreds of thousands of pounds in compensation and, perhaps more importantly, thousands of people in receiving apologies and getting work put right. We perform strongly—we have far faster complaints-handling times than many public ombudsmen—but we are often hampered by legislation that is prescriptive and requires us to treat all complaints the same.

As for the bill, it is really important that the legislation that is passed by the Parliament is good law and is well drafted. We also see it as really important that it works for people in practice and for the operational processes that are needed to deliver it. I want to give you a real example of the difference between those. Under the current legislation—the Legal Profession and Legal Aid (Scotland) Act 2007—we are required to apply a test to determine whether a case is

"frivolous, vexatious or totally without merit".

We must make a ruling on that in all cases. That is good law, and the term is used in other legislation. However, coupled with the requirement in the 2007 act to give detailed legal reasoning against each case, we are required to use that terminology with individuals.

I want you to imagine what is a typical situation for me in which a mother has lost custody of her children. She is distressed at how the process has unfolded and is concerned about whether her lawyer did a good job. I want to be able to explain in plain English that, having reviewed and investigated the case, I have found that the solicitor did everything that they could, that her concern is about the court decision and that she will need a court remedy to find a solution. Instead, I have to tell the woman, who is distressed and unhappy, that her complaint is "totally without merit" or "frivolous", because, if we do not use the legal terminology, that will be held against us if the case is appealed. That is distressing for parties, and it undermines confidence in the system, because it does not make us look like a service that is focused on users. That is just one example of good law that does not work in practice. A lot of my responses to questions will be about ensuring that the new system works in practice.

We have three global views on the bill. First, it is perhaps not as bold as we would like it to be—the SLCC supported the Roberton review and the idea of a single complaints process—but it makes really good progress towards a fairer and more transparent system. To some extent, we have to decide whether to continue with an academic debate or to bank improvements that we can deliver immediately for consumers and practitioners.

Secondly, the bill is a big compromise—you will have seen that yourselves—between the views of consumer bodies and the profession. We do not want the progress in the bill towards the pressing need for change that consumer bodies have articulated to be eroded as it goes through the parliamentary stages.

Thirdly, I ask that we reflect on what happened in 2007 and 2010 when legal regulatory bills went through the Parliament. Very simple initial drafting was then hugely complicated by amendments. Although all were well intentioned, they had an operational impact that was not anticipated on how the system was delivered in practice. The 2010 legislation, 13 years later, has still not been implemented because it is too complicated, and that is not good law.

I hope that that helps in setting the context to my answers to some of your questions. I am really excited to hear about what you are interested in and your aspirations for and concerns about the bill.

The Convener: I thank the panel members for their opening remarks. I hope that we can get underneath the issues in some detail, so, when you are responding to questions, please stick to the question, because my colleagues will come in on other areas.

To start us off, will the witnesses outline their views on arguments that a single independent regulator for the legal profession would be beneficial? Colin, do you have a view on that?

Colin Bell: Yes, I do.

The Convener: Would you like to share it?

Colin Bell: I am here, of course, on behalf of the tribunal—the SSDT—and it takes a neutral stance on that question. Clearly, it is not an option chosen by the Scottish Government, but our view is that we have to work together to make the system, whatever it might be, work as well as possible for consumers and solicitors alike. There are differing ways to achieve that, as we have discovered. Different bodies have different views. Essentially, we want to work to achieve the best possible system.

Rosemary Agnew: That is an interesting question. It is one of those questions where there is an easy answer of yes or no, but, to get under the skin of it, it is more about what we are trying to achieve through the bill. For me, it is about trying to achieve less complexity for the complainer. I am coming at it from the complainer point of view. Often, a complainer will not say that they wish to make a complaint about the conduct of a solicitor;

it will be through the lens of the service that they have received.

The difficulty with saying yes to establishing a single regulator is that looking at service issues is very different from looking at conduct or fitness-to-practise issues. Reflecting on my own legislation—the Scottish Public Services Ombudsman Act 2002—service is about the entity that is in jurisdiction, so it would be about the law firm. There is often an individual named, but that is not uncommon, if somebody has dealt with one person. That is looking at the level of service, and, as Neil Stevenson outlined, in a service context, you can provide redress and you can achieve all the things such as making an apology, trying to put the person back to where they were and, to a large extent, getting a sense of justice of having gone through this.

The regulatory side for individuals is a different thing. To give an example from my day job, we look at a lot of complaints about the national health service in Scotland, and there is often something about an individual doctor because that is the person whom the complainer dealt with. However, we do not regulate doctors—that is the job of the General Medical Council—so, if there are issues about an individual's capabilities, fitness to practise or conduct, there is a mechanism whereby, if needed, that can be sent somewhere else or we can signpost individuals.

For me, it is not about the single entity but about ensuring that the right people look at the right things. I am not convinced that the single entity does it. In a complaints context—this is where, perhaps, there was a missed opportunity from the Roberton report—a single complaints body is a different issue to a regulatory body. It is the outcome of an investigation that might result in service issues—there can be a remedy for that—or it might result in something that, we think, is conduct and needs to go to a different entity to be looked at because it has a different purpose.

10:00

The Convener: That was really interesting.

Neil Stevenson: The SLCC did support the independent regulator model. We are now looking at the legislation, out of which we want the best solutions, but, initially, we supported an independent regulator. We believe that it offers something that is clean; is easily understandable to consumers and the sector; best meets the better-regulation principles; and follows the international direction of travel for regulation, which we have seen continue apace, even since the Roberton report. It offers opportunities for efficiency. I think that we will end up discussing a complaints system about which you might, perhaps, still be asking why a simple complaint could go through four statutory bodies. A single regulator would have dealt with that. If we are going with the model in the bill, we need to ensure that a complaint can pass as efficiently as possible through those four bodies.

A crucial difference is that a single regulator would have looked at the legal services market as a whole, and that is fundamentally different from a body that looks after one profession. Let me explain that. In debates about access to justice, a body that is responsible for lawyers will tend to ask how lawyers can help with access to justice, whereas a body that is responsible for the whole market will look at citizens' needs; which legal needs are being met and which are unmet; and what might be done to increase supply.

I think of an analogy from when the Scottish Parliament was looking at improving dental health in young people. There was a regulatory position that only dentists could be involved in teaching toothbrushing, because it involved going into the mouth and you needed a prescription. The Scottish Parliament led the way in the United Kingdom in creating NHS childsmile nurses, and that has massively improved dental health. That did not come from a dentists' body; that came from stepping back and looking at what citizens needed and at what types of professionals or solutions might help with that.

We supported an independent regulator, but, equally, if we are just debating the current bill, we are keen to deliver practical improvements, too, and that links to today's debate.

The Convener: I will bring in my colleague Annie Wells, who is joining us online, this morning.

Annie Wells (Glasgow) (Con): Good morning, panel. I apologise for not being there in person.

Colin Bell touched on entity regulation in his opening remarks. Can you give us your views on the need for entity regulation, as proposed in the bill?

Colin Bell: Yes, indeed. Thank you for the question.

The tribunal is broadly in favour of entity regulation. For example, there might be a situation in which a firm has some kind of systemic problem—it is not controlling a client account correctly or there is potential misuse of the client account, if I can put it that way. In those circumstances, it might be appropriate that a complaint be made against the entity, but—this is where the tribunal has a difficulty with the bill, as drafted—there might also be the element of a conduct complaint against an individual solicitor, or more than one solicitor.

Our understanding of the bill is that an entity complaint would have a different destination from a conduct complaint. The conduct complaint could land at the SSDT, with all the checks and balances that it has in place—we have 50 per cent lay participation, we are independent and we are a judicial body—whereas, as I understand it, the entity complaint would be determined by the regulator. I am not aware that there would be any right of appeal.

The tribunal's position is that it might be worth looking at something like the English system, in which there can be a complaint against an entity and a complaint about an individual's conduct. It might be that those two complaints would be heard simultaneously or, for whatever reason, they might not. In principle, we have concerns that regulatory complaints, as they are termed, would have a different pathway from conduct complaints. I hope that that answers your question.

Annie Wells: Yes, thank you. Would any panel member like to add to that?

Neil Stevenson: Yes, thank you. The SLCC has supported entity regulation since 2014, when the Law Society of Scotland originally consulted on it. As Colin and Rosemary have outlined, service issues often relate to the way in which a firm acts. A delay in responding could be a personal failure, but will more commonly be a systems issue in the business, so we support entity regulation.

My one extra comment is that the provision is layering on top of entity regulation in the 2010 act for a slightly different type of legal business. We support entity regulation—it is logical in the bill—but it links back slightly to the argument that with a single regulator you would need only one regulatory scheme for businesses instead of two, which is what is being proposed with the additional scheme. However, we are supportive of it.

The Convener: Annie, do you have any supplementary questions?

Annie Wells: I have just one more question, if I may, convener. What are the witnesses' views on making it an offence to use the title "lawyer" with intent to deceive in connection with providing legal services to the public for fee, gain or reward? I do not know who wants to come in on that first.

Colin Bell: I am happy to come in briefly on that one. The tribunal is aware of situations in which we have used the power to strike an individual off—a power that I referred to in the introductory statement—but they then practise as a lawyer. There are difficulties there from the point of view of public confidence and public perception. In broad terms, the tribunal is in favour of some kind of power to act swiftly in such situations.

Neil Stevenson: The SLCC believes in the public protection concept, but it comes down to enforcement. Colin has described a situation in which an issue is already in front of a regulator, but the provision in the bill is a new power. Who will police it more generally? It is not just about ex-solicitors; it is also about other people who use the title. If it is not clear who will police the provision and where the funding will come from, it might be a weak power, in practice.

Secondly, it would be interesting to understand in more detail how consumers are confused by terminology. There are two categories of solicitors: those with practising certificates and those without. Those who do not have practising certificates are not allowed to provide legal services, but they still get to use the title "solicitor". On the one hand, you are saying that people cannot call themselves a lawyer because that is confusing, but that lawyer might be delivering a service that is not regulated and that they are entitled to offer. On the flipside, you would have a solicitor able to use a title while being prohibited from offering a legal service.

We need to step back and look at the issue of titles generally. We are not unsupportive of the provision but, perhaps, in isolation it could be confusing, as there are solicitors who are not allowed to provide legal services.

The Convener: Annie, are you content?

Annie Wells: Yes, I am. Thank you very much, panel.

Maggie Chapman (North East Scotland) (Green): Good morning, panel. Thank you for being here this morning. I want to take us into the realm of complaints and complaint handling and how we can tackle some of the issues that you have highlighted in your remarks.

Neil Stevenson talked very clearly about a compromise between consumers and practitioners. Will you say a little more about the issues that are currently faced in terms of complexity and lack of flexibility?

Neil Stevenson: Thank you very much for the question. We published our diagram of the complaints maze. There are few people, even among those who work in the sector, who can fully describe all the hoops that one needs to go through. There are, in the bill, some tremendous steps forward that will reduce complexity and give extra discretion to deal with particular situations, which should benefit consumers and practitioners.

On the flipside, the current situation will still exist. Where a consumer has a complaint, we will have to tell them that we will deal with the service element and that we will judge what is fair and reasonable in the circumstances in awarding

compensation. Another heading within the same complaint might go to a Law Society committee, where it will be considered based on the balance of probability as to whether there has been unsatisfactory professional practice. A third element of the complaint might be prosecuted by the Law Society at the Scottish Solicitors' Discipline Tribunal, on the basis of its being beyond reasonable doubt.

That is a lot of information to give to a member of the public who has phoned with an inquiry—often, as I said, they are in a distressed state. It might be about a will and executory that has gone wrong, or a family separation in the middle of a conveyance that has gone wrong—we know moving house is stressful. There are real steps forward in the bill, but a there is still a lot of complexity, which is the trade-off for not moving towards a single complaints process.

That might not fully answer your question, but does it start to answer it? What would you like more detail on?

Maggie Chapman: That is helpful. You speak very clearly from the point of view of the consumer, who is usually distressed or in difficulty. Is a single system the only way of dealing with that complexity from the point of view of the consumer?

Neil Stevenson: No—not at all. That said, we must not make excuses. The system will continue with two or three bodies in the process. We have to make that as efficient as possible and not always hark back to, "It could've been different". Equally—members will know this from other fields that they work in—as soon as multiple agencies are involved there are problems with hand-offs, handovers, computer systems speaking to each other, and duplication with separate case management systems in the bodies. You get all that naturally, even if it is well managed.

I am especially grateful for how you phrased the question, because we are worried about consumers, but a lot of the issues have an impact on practitioners as well. It is incredibly stressful to have a complaint against you. We know that solicitors take that very personally. Where there is a complaint, being able to deal with it quickly so that there is an answer for the consumer is important, but being able to reassure the practitioner is equally important. Even if it is going to be a bad outcome for the practitioner, dealing with it swiftly and helping them to get over it is often the kindest thing to do. An awful lot of the improvements around pace and flexibility to deal with different types of complaints will genuinely benefit both parties, although in slightly different ways.

Maggie Chapman: That is really helpful. Thank you. I will come to Rosemary Agnew on the same issue—the questions of complexity and lack of flexibility, and the impacts that the bill could have to mitigate those.

Rosemary Agnew: It is easy for us to talk about all the things that we would like to be better, but it is worth acknowledging that there are already some improvements. One of those is a significant reduction of process, through the bill. The current system has a lot of process, which is how we end up with a maze rather than a journey—you have to pick your way through it. I am well aware that the SLCC works hard at trying to guide and support people, but the issue is not just the complexity—it is also about all the things that Neil mentioned, maybe from a different consumer angle.

We touched earlier on vulnerability and people being in vulnerable situations. It is circular: having to go through a complaints process can create a vulnerable situation and having to repeat one's story and the issues, sometimes up to four times, is really not helpful, because trauma is relived each time.

It is not just about the complainer; as Neil said, there is an impact on the profession. It is worth acknowledging that there is an impact on complaints-handling bodies, as well. It is not about trying just to simplify; it is also about trying to make the journey less harmful for everyone concerned, and the focus right from the outset being on the outcome that we want to achieve and how we can support and help people.

There are things in the bill that will help, such as the flexibility to make rules. That will enable some of the language issues to be addressed, because we can represent things in ways that are perhaps more accessible to everyday folk. There will still be complexity in the relationship between the Law Society of Scotland and the SLCC, but it is recognised, at least, that that needs to be streamlined. The focus on outcomes is probably the positive step.

10:15

The one other area that is of benefit to consumers is the unpicking of the right of appeal to a Court of Session from the ability to ask for review and, ultimately, judicial review. That will put the situation on a par with what exists with other ombudsman regulatory-type bodies, because there will be much more focus on trying to achieve resolution and on being able to give flexibility. That also, in an alternative dispute resolution context, clearly separates the legal process from the complaint process. That is where the separation between the professions and complainers probably helps; it reduces some of the difficulty. It

is a big thing to go through a judicial review, but it is an even bigger thing to go to the Court of Session with a formal right of appeal. That is difficult to do; actually, the bill improves that area.

Maggie Chapman: Thanks. I will come back in later.

Meghan Gallacher (Central Scotland) (Con): Good morning, panel. I will stick with the complaints process aspect. There has been a lot of discussion so far about the complexities. At present, we do not have a complainers fee in Scotland. While I was looking ahead to today's committee session, I looked at examples in other countries. In South Australia, there is a complainers fee of £60, which I believe is returned to the complainer if they are successful. Given the pressures in the complaints system, including the delays and complexities that have already been discussed with the panel, has the SLCC thought about or discussed such a fee? We probably already know what the cons might be, but what are the pros and cons? I will start with Neil Stevenson.

Neil Stevenson: I have two strong views, both personal and organisational. It is a really good question. We understand why solicitors are looking at ways in which complaints might be reduced and some restriction might be put in place. Equally, the first point is about the principle. Although there are some examples of such fees, those are very rare. If we had a complaint about our bank, would we expect to be charged a fee to go to the ombudsman? If we had a complaint about our delayed ScotRail train, would we expect to be charged a fee to raise it? I do not think that we would, so what makes law different? The answer from some of the jurisdictions that still have a fee is that they still have professional-led regulation and are trying to put in place restrictions. That is legitimate in those models, but it is not the UK or Scottish approach to accessing redress, so I object to it on principle.

The second element is operational but has an element of principle. I said that most of the people who come to us have vulnerabilities. We have people with a brain injury and people who have suffered a personal accident. We have women who are fleeing domestic violence and who have problems with their solicitor around separation and divorce. If we were to put something in legislation, would we charge all those people a fee, even if they sometimes do not have access to bank cards or money, or would we have a means-testing system?

If we were to have a means-testing system, that adds complexity. We would need to set up a bureaucracy to apply that test and gather evidence from some of those people, including people who are homeless and so on. We would have to discount for some people and raise a fee on others. We would then hold that fee, so we would need new banking arrangements to hold an escrow account. We would then need banking charges to rebate it. That might discourage some complainers, but it would probably drive up the overall cost of the system, which is not what the lawyers who are proposing it are trying to achieve.

I recognise the legitimacy of the debate, but introducing a fee would be a really sad step. To be a little mischievous, and speaking as someone who is on lots of lawyers' Twitter accounts, I am not sure whether that is the service that they expect when they complain about other services in their lives. I think that, if they took a step back and you asked them individually, "Do you expect to pay a fee in advance if your flight is delayed and you need a refund?", many of them would say no. I would want to hear a really compelling case as to why legal services are truly different to that.

Meghan Gallacher: I will move on to the appeals process. Rosemary Agnew touched on it briefly in the previous tranche of questions. Under the bill, appeals against SLCC decisions would be made not to the Court of Session but to a commission review body of the SLCC itself. I wonder whether that could be seen as the SLCC marking its own homework. Would there be any impact on the independence of the appeals process? I am genuinely interested in that with regard to how we move forward.

Neil Stevenson: That is another great question. Again, it is really important that the matter is debated, because, whatever the eventual solution in the bill, part of the process of law is to air the issues and consider them seriously.

The first thing that I would say is that it is an absolute anomaly in the ombudsman world that there is a direct appeal to the inner house of the Court of Session, the highest court in the land. We are not aware of any other ombudsman in the UK that has that. The reason for that is that, when Parliament sets up ombudsmen, it is usually trying to create a faster and more proportionate route to justice than going to the courts. The courts always remain there for people, but the point of an ombudsman is to be faster. They have internal processes and checks and balances to ensure the quality of the decision making.

I am also concerned about a little bit of mythology that seems to have emerged in some of the comments on this area in the public. Before 2007, complainers had no right of appeal about the predecessor process. Lawyers appealed to the SSDT. The Parliament gave that power to the Court of Session in 2007. It did that at the amendment stage, in stage 3, I believe; it was not part of the original bill. It is not some long-standing jurisdiction of the court that has never looked any

different. Actually, what we are asking is that what we see as a mistake that was made at the very late stages of the previous bill, which takes us totally out of line with other ombudsmen, is put right in this case.

I also want to acknowledge some of the awkward situations that the Court of Session creates. When there is an appeal, because of the rules on who can appear in that court, I have to appoint both a solicitor firm and an advocate to represent me. We have had disputes in court that have been about a matter of mere hundreds of pounds in compensation but that have cost us £30,000 in legal fees. The court will award that against a member of the public if we win. We usually win our cases—our statistics are published in our annual review—so a member of the public can end up owing us £30,000 for an appeal process. Once that is awarded by the courts, as a public body, we are duty-bound under the public finance manual rules to make reasonable efforts to recover that.

That is a totally unacceptable level of risk for a member of the public to have to take on. It happens in real life. Also, in aggregate, the system has added more than £3 million in costs to us over the past 15 years. When the legal profession asks why our process is more expensive than other ombudsmen, the answer is that we are using the most expensive dispute resolution forum in the country for the final stage of the process.

My final comment—I will make it my final one, so that I do not rant too much; apologies for that—links back to the point about the test of whether cases are

"frivolous, vexatious or totally without merit."

If you have a court that scrutinises final decisions, you end up drafting in a legal manner, because the steer that Parliament is giving is that they expect the decisions to sit in that court and be analysed in that way. That has an effect right through the system on the type of reasoning that we provide, because we know that we can end up there.

Thank you for bearing with me. I know that you want to hear from the other witnesses as well.

Meghan Gallacher: Thank you.

Rosemary Agnew: Thanks for that, Neil. You may have left me a little bit to say.

It is worth going right back to the fundamental point, which is that the point of a complaints and redress scheme is to be an alternative to the courts. If you build the courts into the system, you have conflated two systems. In practical terms, for SLCC decisions, that means that it is not necessarily the final decision maker, which may end up being the court. That is not the case in any other ombudsman scheme that I know of. The whole point about alternative dispute resolution is that it should be the final decision maker. That is not to say that the court does not have a role, but it is more of a supervisory role over decision makers in a judicial review context—that involves looking more at how decisions are made than at the merits and technicalities, as happens with appeals.

The situation is problematic, because there is a disproportionate balance of power. It is not simply about cost; it is about the idea that people have to appeal by a legal route when the issue is all about the legal profession. The impression that that gives may put people off for reasons other than cost.

In practice, the internal right of review is much more customer and consumer-focused, because it can involve looking at things in a different way. It does not have to look through a legal lens; it can look through a decision-making lens and use the same language as that in which the challenge was brought. I accept that some will say, "Isn't that somebody marking their own homework?", but can you ever be completely at the end point? Occasionally, you will hear someone say, "There should be an ombudsman overseeing ombudsmen," or, "Who will oversee the overseers?".

We have to trust the body that we have put in place to be the decision maker. That does not mean that it is absolved of responsibility. How the mechanism is set up is critical. Although some may perceive it as not independent, the questions that I would ask are, "Do people feel that they have been heard and listened to?" and, "They may disagree with the final outcome, but have they been given a fair shot?"

There are ways in which you can put a review process in place. I have one for decisions that are made under my delegated authority. We call it an automatic right to review. It is not technically a right but, in my eyes, being a people-focused person, it is a right. People have a right to challenge us. If you go into the internal review approach with that thinking, you can co-design something to be set up so that people have confidence in it. That is not the same as always agreeing with the outcome of what has gone before. That is my rant. Thank you.

Meghan Gallacher: Thank you very much, panel.

The Convener: I will bring in Maggie Chapman to pursue that line of questioning.

Maggie Chapman: I will come to Colin Bell. Thinking about the tribunal process and its focus on practitioners, do you see challenges around the potential for conflict of interest in the connection

between the work of the tribunal, as proposed by the bill, and your membership or the cases that you would deliberate on?

Colin Bell: Well, we deal with cases that deal with conflict of interest, but that is a completely different matter. The tribunal is split down the middle between solicitors and lay representatives, so there is a fair cross section of society. The solicitor element is critical because, if you are determining the standards of the profession, it is important that you have members of the profession who can apply their experience to that. The definitions of unsatisfactory professional conduct and professional misconduct change over time, and it is very much a long line of behaviour that the tribunal has to deal with. You then have the 50 per cent of the tribunal that is made up of non-legal members, which takes away much of the difficulty that your question alluded to.

10:30

Maggie Chapman: That is helpful.

In your opening remarks, you spoke about the important principles of transparency, public confidence and so on, and you also talked about natural justice. Do you see the proposals in the bill as having those different routes? I am talking about the balance between consumer and practitioner interests again. Do you see any compromise—in fact, "compromise" is maybe not the right word. Do you see any challenge to natural justice with people having these different avenues, and is there an alternative model that you would have liked to have seen in the bill but is not included?

Colin Bell: Yes. I talked briefly about entity regulation. That could be a challenge, although not so much for the tribunal, if that is not coming our way. As was said earlier, there are good examples of the way in which the tribunal's business is being channelled in areas such as, for example, compensation. It has always been my view that the tribunal is not the appropriate forum to discuss compensation, even if that compensation arises from conduct rather than service. That is a positive step that may alleviate some of the tribunal's concerns on that front.

Complexity is always an issue, and we are very aware of cases that pass between various bodies, as Neil Stevenson said earlier. For example, a case could appear before the tribunal, and the tribunal might decide that there is no professional misconduct on the part of the solicitor. However, there may be a slightly lower level of unsatisfactory professional conduct. We are then under a duty to refer that case back to the Law Society. It seems sensible that, if the tribunal has heard the case and all the evidence, the tribunal should make the decision on that. That is one of the many examples that we have given in our written submission of where complexity could, we think, be reduced.

Maggie Chapman: Thanks for teasing that out—that is really helpful. I will leave it there.

The Convener: The power is to be granted to the SLCC to initiate complaints in its own name when it becomes aware of a public interest issue. I am interested in getting a practical example of that, please.

Neil Stevenson: I have been thinking about that. The default position under the legislation is that we are prohibited from talking about complaints, and it is a criminal offence to do so. However, there is a historical case that I can talk about because it was in the media at the time, and parties released information that made it obvious that the SLCC was involved. The case involved the collapse of Ross Harper some years ago. The SLCC started to spot a high number of incoming complaints about non-payment. Some of that was non-payment of advocates used by the firm or money not being distributed back to clients, and, indeed, some suppliers contacted us about not getting paid. Such complaints tend to start to build up, and you get 30 or 40 complaints.

Two things particularly hamper us in that type of situation. One is that we cannot tell anyone that we are starting to spot a public protection issue, because, in the legislation, there is an absolute prohibition on discussing cases. The second element is that, without a power to raise a complaint in our name, we cannot frame a complaint that says, "There might be a financial crisis or issue in this firm." We just have to keep looking at individual cases and, to an extent, keep accepting a response that a mistake had been made and that the payment will now be made.

As a complaint body, we operated very effectively when dealing with individual cases, but we were hampered when taking any public protection role. That firm went on to collapse, and thousands of clients were affected. That is not to say that our earlier intervention would definitely have helped, but this is definitely a failing of the current system: the extent to which it demarcates what each body can do meant that we had all that data and could not take steps to protect the public. That is why we support our having a power to raise complaints in our own name, as the Law Society already does. That body traditionally had that power but, with complaints coming to us, it was forgotten that we would have that data and that, therefore, it might be us who spotted those public protection issues first.

The Convener: Okay. Thank you for that.

Rosemary Agnew, what is your view on powers for professional organisations to investigate complaints on their own initiative where they arise from their regulatory monitoring systems?

Rosemary Agnew: The short answer is that I wish I had those powers myself. Again, I will try to give a perspective through a consumer lens. We as ombudsmen know that there are people who do not complain. There are many reasons for that, but, arguably, many whom we want to complain should. Doing something on your own initiative, very much with the public interest in mind, is about being able to focus on a particular situation or type of issue, which, often, you cannot do in the context of a single complaint because, for example, a lot of emotion comes in. You can focus on a particular issue in a particular area, and that is a way of shining a light on and giving voice to the voiceless, who are, in many circumstances, people in vulnerable situations.

I often ask myself why I do not get many complaints from female prisoners. I get plenty from other prisoners. If I had own initiative powers, I would look into that to find out whether something systemic is going on, and, with one investigation, a lot of people could benefit.

There is often a lack of confidence in complaints systems—although the systems are good ones, there is a lack of confidence among individuals to take a complaint through them. People might have challenging and chaotic lifestyles or just be unable to face the trauma of doing it.

This is not about having a pattern of complaints; it is about having the ability to use intelligence gathering and stakeholder engagement to focus strongly on an issue—it is a really good use of your organisation's resources, too—in order to get maximum coverage for something that you can achieve.

There is huge merit in being able to do such investigations as a way of addressing power imbalances and using resources really effectively. The UK and Scotland are a bit out of step with other ombudsmen schemes around Europe, I have to say. Most countries have that power, as do Northern Ireland and Wales.

The Convener: That is a really interesting example.

Neil Stevenson, you can come in—very briefly.

Neil Stevenson: This is a sub-point, but it is a great example of what the bill will do. At the moment, if the Law Society of Scotland wants to raise a complaint, it has to send it to us, we do the triage test and then we send it back. The bill cuts out several steps in the current process for allowing a public interest complaint to go forward. It is a great example of how the bill, although it does not solve everything about the system, includes lots of small changes that at least reduce the number of steps for particular individuals or in particular circumstances.

The Convener: Okay. Thank you.

There are proposals in the bill to give the SLCC new rule-making powers with the aim of improving complaints procedures. Is that an appropriate way to improve procedures, or should there be more detail in the bill? For example, we know that mediation is not compulsory, but should it be? It will be interesting to hear views on that. I will come to Rosemary Agnew first and then Neil Stevenson. Colin Bell, feel free to indicate if you wish to come in at any time.

Rosemary Agnew: I will start with a bit of a confession: I worked for the SLCC when it first went live. I found that doing so, and having to write policies and procedures, with so much being set out in the 2007 act was not quite impossible but was extremely challenging. As Neil highlighted, even these many years on, we still cannot do everything that is in the act. From that experience and my experience of other public-type complaints functions, I would say that the less detail in the bill, the better. The bill provides the framework and parameters rather than the process. That enables you, over time, to adapt your process for a changing environment.

I will give you a practical example of something that is in the Scottish Public Services Ombudsman Act 2002. It states that a complaint to the SPSO must be made in writing. That might have been okay in 2002, but it is far from okay now. However, removing that provision would require major legislative change.

If we want the SLCC to have flexibility, it needs to be able to make the rules and to write the processes without constantly going back to something that is in legislation that somebody else might interpret differently or about which somebody might say, "Oh, no—it means that you have to do this". The legislation should be about how you do it. There should be flexibility to write the rules in a way that will deliver the objectives of the legislation. I feel quite strongly about that.

The Convener: Thank you. That is on the record.

Neil Stevenson: First, I recognise the challenge that you have. You have to ensure that the legislation contains sufficient detail to set out what we are meant to do, and I understand that. The challenge in doing that lies in the breadth of work that we have to deal with. I will give you a specific example. We might have a customer who walks through the door saying, "I've been charged £500, but my letter of engagement said it was a £400 fixed fee". That is a lot of money for many citizens.

That is one level of what we deal with. However, we might also have a complaint come in that reads, “The solicitor who was representing me sexually assaulted me”. The work goes right up to that end of the spectrum.

Fundamentally different processes are needed to deal with those two types of complainer and to support them effectively, as well as to support the practitioners against whom allegations have been made. Trying to get into legislation the level of detail on exactly how to administer a case that will deal with that panoply of situations is really difficult, if not impossible, to do. For example, one of the tests that I have to apply would be to determine whether the allegation of sexual assault is frivolous. Can you imagine how a complainer would feel being asked that? Nevertheless, because it was considered that that test needed to be part of the process, it was stuck in the legislation. Therefore, the first element is the challenge of drafting for lots of different types of complaints.

My second point overlaps with what Rosemary said. The 2002 act is the ombudsman norm—that is, the legislation sets the jurisdiction and then the body develops a complaints scheme. That is seen in our equivalent in England, the Legal Ombudsman. That is not a power without safety checks. There is a statutory duty to consult, which includes consulting the Lord President. We have to publish the complaints scheme, so it is utterly transparent, and the scheme is subject to judicial review. We are not trying to have carte blanche to run our own system.

That approach lets us, for example, use the experience of 36,000 people to develop different streams for the differing seriousness of complaints, and to adapt to any emerging situation, whether that be the use of digital means for the issue of written complaints or a particular issue that a sector faces. I remember endowment misselling in the 2000s, when we wanted to be able to create a bespoke scheme to deal with the thousands of cases that arose in order to get redress for consumers as soon as possible. I strongly support that discretion, because the bill has in it the safeguards for how we draft the scheme.

Rosemary Agnew: I go back to the point about whether mediation should be compulsory. Mediation is a very specific thing. We do not think it appropriate to have the level of detail in the bill about what must and must not happen. If we return to the consumer side of the issue, most people want things to be put right and for there to be a resolution. As soon as specific rules start being put in the bill, the opportunity is lost to say to somebody, “What will put it right?”. A couple of phone calls might put it right. Without having to go through any process, you therefore give yourself the opportunity to resolve complaints rather than always have to go down the route of investigating them. As soon as it is stated in law that mediation must be compulsory, unless there is a good reason not to, you are not just cutting off that opportunity but are almost confining it to one way of doing things.

10:45

The Convener: Neil Stevenson wants back in.

Neil Stevenson: Very briefly. That links to the risk of late-stage amendments being made to the bill. Mediation is one of the services that we are proudest of, and we have made it work well. However, say that an amendment to the bill is lodged at a late stage to make mediation compulsory because that seems like a sensible idea in the process of dispute resolution. As we are also the gateway for conduct, that could force me to take a woman who has accused her lawyer of sexual assault to mediate with that lawyer before they can access the rest of the conduct complaints system. I think that Scottish Women’s Aid and others would say that that is fundamentally wrong. That is an example of something that might not look anomalous in drafting but, when you think about how it operationalises the process for real people, it could have a really disastrous consequence. That is why you need a bit of flexibility in the system. That said, we are keen for Parliament to support mediation, as there is so much potential in so many cases to use it.

The Convener: Thanks for that. You said that you do not have carte blanche. In your written evidence, you state that you have some concerns about the bill and the fact that responsibility for dealing with complaints remains split between bodies will prevent the complaints process being “seamless”. It would be helpful if you could give a wee example of that.

Neil Stevenson: Absolutely. The bill makes fantastic progress—I do not want to take away from that—but I go back to the situation that I described. Even though lots of steps will be cut out, which will hopefully mean that we can move faster, there could be someone who is having a service complaint considered by us under one legal test of “fair and reasonable”, and we might uphold certain facts and award a bit of compensation, but the complaint will also be at a Law Society committee in respect of unsatisfactory professional conduct. That committee might be looking at the same facts, albeit the conduct element, and make an award of unprofessional conduct. Then, the final element of the complaint could go to the tribunal and not be upheld because it must be beyond reasonable doubt. Something

that we have upheld as a fact to support a service complaint would not be upheld as a fact for the conduct element. It is perfectly acceptable in law that the law can find that something is both a fact and not a fact, but that is difficult for a complainer to understand, because, usually, those processes are separate. For example, there is a criminal offence around a driving misdemeanour, but it is a personal injury claim to get compensation. They do not see the processes so directly linked.

Also, even with those three bodies running at maximum efficiency, the process will end up taking 18 months to two years because each body has to do its stage and pass it on.

Tremendous progress has been made in the bill on cutting out steps, but, fundamentally, you will still have a system that is based on multiple bodies, so the issue is trying to balance the competing interests that the Government and you are wrestling with between consumer bodies and the profession.

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning. It has been fascinating so far, so thank you for your testimonies.

I would like to know the witnesses' views on the rules in the bill that will give the SLCC greater monitoring and standard-setting powers. That is in relation to the relevant professional organisations to investigate and determine complaints. I will start with Neil Stevenson, please.

Neil Stevenson: At the moment, we have an oversight power in relation to conduct complaints that is expressed in two forms. First, individuals, once their conduct complaint has been investigated, can ask us to review the case. We cannot interfere with a decision of the Law Society, but we can make findings on whether it has followed its own process and awarded compensation.

Secondly, we have a power of audit on conduct complaints. The idea was that, even in this multi-organisation system, one organisation would have the chance to see the whole process from start to finish from a consumer perspective and publish data on how it performed. That was the intention.

I must say that we have had very positive co-operation from the Law Society in dealing with the handling of complaints and a very positive response to many of our recommendations. However, we have had situations in which it has pushed back on recommendations or taken far longer than we wanted. We have published a report on complaint-handling times that is an example of that. Even if we would usually work formatively with the Law Society and engage it to reach consensus, we feel it appropriate to have that backstop power so that we have the ability to properly enforce that. Therefore, we support the change that is proposed in the bill. That links back to the fact that what the consumer bodies were arguing for—fully independent regulation—is not coming, but the bill provides that extra little step towards safeguards on professional regulation with those types of changes.

Karen Adam: Thank you. I will ask other members of the panel about that. Rosemary Agnew, would you like to respond?

Rosemary Agnew: This is quite a significant proposal, and, relating it to my direct experience, I have the powers to set complaints-handling standards. They are laid before Parliament, with principles, which has the effect of making them mandatory. There are a number of benefits to that. One is that anybody who makes a complaint should have pretty much the same type of process, with the same expectation in relation to timescales.

Although there is improvement to be made in consistency, the real prize in the system comes from improving complaint handling at the front line. When you have the monitoring powers that go with it, we have seen, over the years, that there has been a significant reduction in some areas of complaints coming to us that should really have been handled at local level.

The benefit of front-line complaint handling is that that is where the greatest learning for the organisation takes place, and that is where the fastest resolutions, solutions and redress can take place. It is the better place for the relationship to start to be mended where it has broken down.

Sometimes, people have no choice but to access some services. In that context, it is really important that there is good complaint handling at local level. If something comes to us before it has been through the local processes—we refer to that as a premature complaint—we refer it back. To give a specific example, 50 per cent of cases in the local authority sector used to be premature and had to be sent back. Now that percentage is in the low twenties, because the cases are handled at the front line.

There is also a knock-on benefit from that. Sometimes that can be a little difficult to explain. If there is good complaint handling locally and, in the first instance, an organisation has demonstrated learning and offered appropriate redress, that means that it has done everything that we would have done. It is then much easier for us to say, "Actually, we would've offered pretty much the same. We think that you've had a reasonable response". That shows that it is not just about money but about all the things that are to do with not putting people through a stressful process twice.

However, from a public purse perspective, it has enabled us to make decisions that say that there is no point in spending public money on reinvestigating something that has already been done well. That all flows from having the ability not just to set standards but to monitor them, to comment and to hold public bodies to account if they do not investigate complaints well.

Karen Adam: That was really helpful—thank you. I do not want to put words in your mouth, but do you feel that that is best practice?

Rosemary Agnew: Yes. In fact, it is not just best practice—it enables the development of best practice. You can share learning. We are part of sector network groups, because obviously we cover a lot, and, again, the local authority complaints-handling network is a good example of where organisations learn from each other. Given the SLCC's unique position of being the only body of its kind, it is able to get a view of the appropriateness of complaints handling in different contexts and, indeed, different-sized firms. After all, complaints handling is a very different thing for a sole practitioner or in a two-person partnership than it is in a huge national legal firm. It gives some protections for consumers, in that it gives them an assurance that their complaint will be handled appropriately. Then there is the final stage of being able to go to the regulator or a complaints body if they do not get the resolution that they need.

Karen Adam: Thank you. Colin, do you have an opinion on that?

Colin Bell: I have very little to add, other than the fact that it would not be appropriate for the SLCC to monitor the SSDT, for example, as it is a judicial body. Other than that, I cannot usefully add anything.

Karen Adam: Thank you.

I would like to know your thoughts on the proposal to allow the SLCC to investigate complaints about unregulated legal service providers where legal services are provided to the public for fee, gain or reward.

Neil Stevenson: Again, that is not something that the SLCC pressed for. It came from the challenge that Government was wrestling with around concerns expressed by the Law Society and the profession about an unregulated market and the progress that you would be able to make on public protection if you did not fully jump to an independent regulator. Our understanding of those powers is that they, in a sense, give a backstop so that, if there were a serious public interest complaint about a currently unregulated legal services provider, we would be allowed to investigate that and provide a remedy.

Perhaps more important—I do not know the Government's view on this—it is a very proportionate way of starting to do work in that market. If you were to start to see lots of complaints because that sort of mechanism now existed, that would facilitate a debate about whether a more complex structure was required. On the flip side, it would avoid overreaction and the creation of a prescriptive system as a first step in the regulation of other legal services.

Karen Adam: Does anyone else want to come in? If not, that is fine.

The Convener: Are you content, Karen?

Karen Adam: Yes.

The Convener: Brilliant.

This one is probably for Colin Bell. On the back of the previous question, I recall that in your response you indicated that it is not clear how complaints against legal entities will work, because the procedures are based on those for alternative business structures in the Legal Services (Scotland) Act 2010 and they have yet to be tested as no alternative business structures are in operation. Will you expand on that, please?

Colin Bell: Entity regulation is not new—as Neil Stevenson has said, it has been around for about 13 years—but the system under which it was brought in has never really got to the stage of being tested as such. To the best of my knowledge, the tribunal has never received a complaint against an entity. That might be good news—it might be that there have been no such complaints—but it seems to us that some thought is required as to how entities will be regulated, given that the legislation is now, if I can put it this way, slightly out of date. That is really the sum and substance of it.

The Convener: Okay. If you were directing our thoughts on that, where would you take us?

Colin Bell: I suspect that you would need to have dialogue with the Law Society and all the other stakeholders to find out whether this could be introduced in regulations, for example, rather than in primary legislation. Some new form of regulation is probably the best way forward.

The Convener: Okay. Thank you very much.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, panel. Thank you very much for your evidence thus far.

This question is probably for Neil Stevenson. The SLCC has indicated in its submission that

> "the Bill provides no … powers to ensure we get access to the information we need in a timely way to handle complaints efficiently, or to be able to conclude complaints when that information is not forthcoming."

Will you expand a wee bit on that part of your submission?

11:00

Neil Stevenson: First, I am not sure of the etiquette here, but we have been having on-going discussions with the Scottish Government in drafting in that area, and we know that it is receptive to such discussions. We are working on that.

The net challenge is that around 300 solicitors a year do not respond when we issue a statutory notice requiring them to give us files. As that is a legal notice, they are, by not responding, breaking the law. That sounds melodramatic, but the fact is that they are not complying with statute. That is a huge cost to us because, again, our remedy was put into the courts; as a result, we have to go to the Court of Session to get an order for the solicitor to comply.

Indeed, we have had a situation a few times recently where, even with an order of that court, the solicitor has not gone on to comply, and we have ended up in contempt of court proceedings. In fact, we have a solicitor who was held in contempt of court on one case and then, on the very next issue that we needed to investigate, again did not comply with our section 17 order, which is our statutory request for files. We are talking about 300 solicitors a year, and already this year, I have spent over £100,000 in legal fees just on getting solicitors to meet an absolutely basic duty of their regulation.

The flipside is that we understand the personal impact of a complaint on individual solicitors. There will be an element of panic, an element of putting their head in the sand and an element of being very busy servicing clients and perhaps not prioritising their regulatory duties. However, it is an issue that needs to be addressed. In systems where there is a more proportionate middle step, you get a quicker response. We are slightly stuck between sending our own reminder letters and jumping to the inner house of the Court of Session—it is a big leap up the legal enforcement scale. We hope that, if we were able to write and say, “We will apply a £500 statutory fine if you do not comply within the next 14 days”, a tranche of those not responding would suddenly see an immediate and tangible consequence and, instead of our having to give out fines, we would get the files. That is what we want in order to be able to move the case on for parties.

Recently, I attended an international conference with regulators from other jurisdictions and heard that, in some countries, if you do not respond to your regulatory requirements, there is an administrative suspension of your practising certificate. Why should you get the economic benefit of being able to deliver a reserved set of services that only you can deliver, if you are not willing to comply with your own regulatory arrangements? We are not proposing that sort of approach, but, again, the threat of suspension was often what triggered getting the file. That is what everyone wants, because it sorts the issue for the complainer and it starts relieving the stress on the practitioner.

We see the systemic problem of 300 solicitors a year not responding to the initial request as a significant cost. We just want more proportionate things that help solicitors comply. This is not about punishment; it is about nudges that will get the system moving so that a case does not sit for 60, 70, 100 or 200 days with us as we wait to get the file.

My final point on this is that it undermines public confidence. If I have to go back to a member of the public and say, “The solicitor is not complying with their regulations, but there is nothing that we can do”, where does that leave public confidence in the system?

We hope to have really positive discussions with the Government on the matter. I am really grateful for the question, because it is an important issue that needs to be tackled.

Fulton MacGregor: You said that the figure was about 300 a year, but what is that as a percentage? Is 300 quite a big part of your caseload, or is it tiny? I just want to understand the context.

Neil Stevenson: It is probably about a quarter. I think that, last year, there were around 1,200 complaints.

A system should not be there to assign blame. As I have said, I understand the pressures on those practitioners, and we have sympathy for them. In our reminders, we will also refer them to mental health advice services through LawCare, which provides support for solicitors. I do not want to come across as unsympathetic, but equally, it is really important to everyone to keep a complaint moving. After all, when it comes to parliamentary scrutiny, someone will turn round and ask why complaints are taking a year and a half, even though that is not our working time but the time spent waiting for files.

Fulton MacGregor: A quarter is quite a significant number.

Although my line of questioning has been on the SLCC’s submission, I want to give Rosemary Agnew and Colin Bell an opportunity to come in on what we have discussed, if they want to.

Colin Bell: I hear what Neil Stevenson is saying, and I make no apology for solicitors who

do not comply with their regulations and duties. At the tribunal level, we have a similar problem. Most respondents who appear there engage in the process, but I am sad to say that a number do not. Of course, we have to be careful to balance the interests of justice in considering whether to proceed in their absence, but delay is something that we are keen not to tolerate.

Rosemary Agnew: I completely support what Neil Stevenson has said. I have powers to ask for information and, if that information is not forthcoming, it is treated as contempt. The final place is the Court of Session, but it is not quite the same arduous journey as has been described. I have never had to use that route, because being able to set the rules and standards means that you can put in place some form of escalation that enables you to address the issue yourself much quicker.

This comment might seem at a slight tangent, but bear with me: there is a connection between getting information and being able to monitor the complaints-handling practice. It is worth bearing in mind that, by the time a complaint reaches the SLCC or something reaches me, it should already have been through a local process. If you are setting the complaints-handling standards, and if you are advising on and monitoring good practice, good record keeping and having a good complaint file are fundamental. It should not be as difficult to put the information together to respond to the SLCC. Therefore, I would say that a combination of intervention and support-type powers would be of benefit.

Fulton MacGregor: Neil, I am not picking on you—it is just the way that my questions have landed. In your submission, you welcome the expansion of the consumer panel's remit across the regulatory system, but you have also raised concerns about its resourcing. Will you talk a wee bit about the panel and the resourcing? As with my previous questions, this question was based on your submission, but I will come to the others, too.

Neil Stevenson: Thank you for that—that is very kind. I am not feeling picked on; indeed, I was worried that you would be getting sick of the sound of my voice. Perhaps my answer to this one will be shorter.

Scottish Government research has shown that, since 2003, there has been a lack of consumer research on the legal services market in Scotland. That hinders decision making on a number of levels. In 2014, our consumer panel introduced a bit of an add-on and a bit of focus on complaints. We strongly support the expansion of consumer input; indeed, the Roberton review focused on the need for consumer input so that services are designed for citizens and not entirely from a legal perspective.

As for the funding issue, yes, we are funded by a statutory levy on solicitors, so if that panel sits with us and we are funding it, the funding will come from that levy. I suppose that it is similar to what I said in response to an earlier question, when I said that it is good that the issue is being debated; whatever the answer might be, it is good that this is being debated as part of the decision making. I say that, because we have had a lot of pushback from the Law Society in responses to our budgets on the funding of activities that it sees as not being directly related to complaints. Therefore, we know that there is a slight tension with regard to consumer research being funded out of the levy.

My final point is that this sort of thing is fairly common in other industries. If you look at water, electricity and other such providers, you will see that an element of their funding goes into consumer research, in recognition of the economic benefit that comes from being a provider with sole ability to provide certain services.

The Convener: Fulton, I am conscious that we are running slightly over time. If panellists have something to offer directly, that will be great, but if not, I will move on. Are you content, Fulton?

Fulton MacGregor: Yes.

Paul O'Kane (West Scotland) (Lab): Good morning, panel. It has been interesting to hear your perspectives. The committee is interested in how the bill might change as it goes through the parliamentary process, particularly in light of the amendments that have been suggested or discussed by those who have given evidence and the Government. I will start by asking about amendments.

As we have heard this morning, the Scottish Legal Complaints Commission has backed the oversight powers for ministers in the bill. That is in contrast to the views of the Law Society and the Faculty of Advocates. However, the Government has intimated that it may lodge amendments to change the nature of that oversight. Mr Stevenson, I would like to get a sense of why the Scottish Legal Complaints Commission arrived at its view. What is your view on the proposed amendments? The expression "watering down" has been used. Might the amendments change the nature of those powers?

Neil Stevenson: It is a complicated issue. There are two sets of oversight powers. Some sit with the SLCC—we have discussed those—but there are also oversight powers for ministers. We have not formed a strong view on the matter, because it does not have a direct effect on many of our duties under the 2007 act. We note that Roberton anticipated the issue and avoided it by proposing the setting up of a full independent

body. I suppose that that has potentially left the Government in a situation where consumer bodies are pushing for additional independent oversight and the profession is resisting, so the Government is looking for a mechanism to resolve that.

We have been following the strength of the response to the proposed mechanism. We have noted the minister's letter and we will discuss the matter again at a policy level when we see the detail of the response. However, we do not have a strong view on the matter, because it does not directly affect us. We will wait to see the next set of proposals.

Paul O'Kane: In your written response to question 9 in the call for views, you propose technical amendments. They have been suggested a lot as a way to tighten the bill. Can you provide an update on any discussion that you have had with the Government on such amendments and any progress to date?

Neil Stevenson: Yes. If you need the detail of that discussion, my colleague Vicky Crichton has done a lot of work on the matter and she will be happy to update you, but we have commented on various areas where a word could be changed to make something better or improve the flow, and we have had a very good response to that. Obviously, those proposals will need to come back to you. However, we are trying to separate out things that will refine the wording and the delivery of what is in the bill and the policy note from things that could be added to the system by sensible amendments only for them to have big operational consequences that have not been anticipated. I have tried to give some examples of where that has happened.

In a sense, the bill has come from a sense of compromise between consumer and professional bodies. We are urging that we hold on to that vision, rather than letting it be further changed by lots of amendments. We are a long way from this but, at the far end of the spectrum, we could get to a point where very small changes are made but there is a big cost to delivering the change process. Would that represent a real step forward? We want to have a more efficient complaints process and a greater element of independent oversight, and we do not want that vision to be lost. We could get into a debate about whether the changes that are made justify the cost of the change process.

Paul O'Kane: That is helpful. Colin, you said that there are nine practical and proportionate fixes that could provide a framework for your activities. Will you update us on those and give SSDT's view of the proposed amendments?

Colin Bell: Yes. We have had discussions with the Scottish Government. The tribunal clerk, Nicola Ross, is here today and she will happily provide you with whatever information you require on that. I have brought out one or two of the more important things during my evidence. As Neil Stevenson said, the issues tend to be rather technical and they are probably best left to correspondence. However, I am happy to provide whatever information you require.

The Convener: Are you content with that response, Mr O'Kane?

Paul O'Kane: It is useful to hear the degree to which consensus can be achieved. There is certainly an appetite for consensus. I am keen for the committee to get access to the further detail.

The Convener: Are you sure that you do not want to have a go at explaining some of that, Mr Bell? I understand that it is technical, but I suppose the challenge is to make it understandable. Part of our role is to understand, so I will push you a little further.

Colin Bell: How long do I have?

The Convener: You have about five minutes.

Colin Bell: Okay. First, on appointments, we think that the tribunal should have more input to the process for recruiting members.

Secondly, I will elaborate a little on UPC decisions. When the tribunal reaches a decision that professional misconduct has been established beyond reasonable doubt—Neil Stevenson mentioned that—it seems sensible to us that, rather than passing the case back to the Law Society, as the tribunal is obliged in law to do, it should be able to decide the case at that level and apply the appropriate unsatisfactory professional conduct sanction. That would be the end of the matter—subject to any appeal, of course.

11:15

Thirdly, we think that the tribunal should have the right to order a practitioner to do some retraining in particular areas.

Fourthly, publicity is always a difficult issue for the tribunal. As I said earlier, all our decisions are publicised, but we have to balance that against people's individual rights. We would like some clarity in the law on that. Again, these are technical provisions.

The fifth area is entity regulations, which we have discussed. The other areas are technical, apart from the last one, which is chair and vice-chair powers. That is an interesting one. As chair of the tribunal, I have to carry out certain functions that may not be in the legislation. It might be worth considering whether it would be advantageous to have those powers in the legislation.

The Convener: Can you give an example of such a power?

Colin Bell: Yes. When a case comes to the tribunal, I have to be careful at the very start to sift it to make sure that, if the facts of the case are proved, the tribunal will be able to make a decision on professional misconduct. That may involve a judgment decision. It is possibly correct that an appeal should be allowed against that decision, which is not the case at the moment. It is only fair to say that.

Other decisions that I may make on a lesser scale include decisions to carry out procedural hearings without the benefit of a full panel of tribunal members. Again, there are cost implications to that. People may wish the tribunal to have that power, but at the moment it is vested in the tribunal by virtue of the tribunal rules rather than being in legislation. Improvements could be made in that area in order to make the system more transparent and make it absolutely clear what decisions the chair or vice-chair may make on his or her own, without having to convene a full panel.

The Convener: Those comments are very helpful and you made them in less than five minutes, so there you go.

That concludes our formal business this morning. I thank the witnesses for their attendance and for giving very good evidence and making it easily understandable. It will certainly help with our scrutiny.

We will move into private session to consider the remaining items on our agenda.

11:19

Meeting continued in private until 11:34.

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