



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Equalities, Human Rights and Civil Justice Committee

Tuesday 28 January 2025

Session 6



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Tuesday 28 January 2025

CONTENTS

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REGULATION OF LEGAL SERVICES (SCOTLAND) BILL: STAGE 2..... 1

EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE

3rd Meeting 2025, Session 6

CONVENER

*Karen Adam (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Pam Gosal (West Scotland) (Con)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Paul O’Kane (West Scotland) (Lab)

Evelyn Tweed (Stirling) (SNP)

*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Clare Adamson (Motherwell and Wishaw) (SNP) (Committee Substitute)

Siobhian Brown (Minister for Victims and Community Safety)

Stuart McMillan (Greenock and Inverclyde) (SNP)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 28 January 2025

[The Convener opened the meeting at 09:30]

Regulation of Legal Services (Scotland) Bill: Stage 2

The Convener (Karen Adam): Good morning, and welcome to the third meeting in 2025, in session 6, of the Equalities, Human Rights and Civil Justice Committee. We have received apologies from Evelyn Tweed, and I welcome Clare Adamson, who is attending as a substitute member. Please note that Pam Gosal joins us online.

Our only public agenda item is continued consideration of the Regulation of Legal Services (Scotland) Bill at stage 2.

For anyone who is watching, I will reiterate the explanation of the process that I provided at the start of last week's meeting. Members should have with them a copy of the bill, the marshalled list and the groupings of amendments. Those documents are available on the bill's web page on the Scottish Parliament's website.

I will call each amendment individually in the order in which they are listed on the marshalled list. The member who lodged the amendment should either move it or say, "Not moved", when it is called. If that member does not move the amendment, any other member who is present may do so.

The groupings of amendments document sets out the amendments in the order in which they will be debated. There will be one debate on each group of amendments. In each debate, I will call the member who lodged the first amendment in the group to speak to and move that amendment and to speak to all the other amendments in the group. I will then call other members with amendments in the group to speak to but not to move their amendments and, if they so wish, to speak to other amendments in the group. I will then call any other members who wish to speak in the debate. Members who wish to speak should indicate that by catching my or the clerk's attention. I will then call the minister if she has not already spoken in the debate.

Finally, I will call the member who moved the first amendment in the group to wind up and to indicate whether he or she wishes to press the

amendment or to seek to withdraw it. If the amendment is pressed, I will put the question on it. If a member wishes to withdraw an amendment after it has been moved and debated, I will ask whether any member who is present objects. If there is an objection, I will immediately put the question on the amendment.

Later amendments in a group are not debated again when they are reached. If they are moved, I will put the question on them straight away.

If there is a division, only committee members are entitled to vote. Voting is done by a show of hands, and it is important that members keep their hands raised clearly until the clerk has recorded their names. If there is a tie, I must exercise a casting vote.

The committee is required to consider and decide on each bill section and schedule as well as its long title. I will put the question on each of those provisions at the appropriate point.

I note that our ambition is to conclude our stage 2 consideration of the bill this morning. However, if that does not happen, we will continue our consideration next week.

Section 51—Change of name to the Scottish Legal Services Commission

The Convener: Amendment 312, in the name of the minister, is grouped with amendments 335 to 346, 438 to 441, 538, 443 to 447, 539, 448, 540, 467, 499 and 523. I point out that amendment 335 is pre-empted by amendment 578, which is to be debated in the group on ineligible or premature complaints.

The Minister for Victims and Community Safety (Siobhian Brown): Good morning, convener and committee members. The first set of amendments in the group relates to the Scottish Legal Complaints Commission and is the outcome of extensive engagement with the SLCC, with the content of the amendments having been agreed.

Amendment 312 and consequential amendments 438, 467, 499 and 523 remove the provisions in the bill that would have removed the word "Complaints" from the name of the Scottish Legal Complaints Commission. Following engagement with stakeholders, including the SLCC, and reflecting the committee's recommendations, we acknowledge that our original intention to refer to the "Scottish Legal Services Commission" could be misleading for members of the public seeking to make a complaint about the legal profession.

Amendments 335 and 336 seek to make improvements to the complaints process by setting out what decision-making and delegation powers will be available to the Scottish Legal Complaints

Commission. They are also the outcome of extensive engagement with the commission, with their content having been agreed.

Amendment 335 allows the commission to delegate a decision under new section 2A(1) of the Legal Profession and Legal Aid (Scotland) Act 2007, as inserted by amendment 315, to initiate a complaint in its own name only to one of its committees or to one of the commission's members.

Amendment 336 allows any member of the commission to take a decision on the disclosure of information under section 41A, which is the power for the SLCC to disclose information relating to complaints, where authorised to do so by the SLCC, which—if agreed to—will be introduced by amendment 533, in the name of Stuart McMillan, in group 18.

Amendment 339 reflects discussions with the SLCC and removes the ability to review a decision that a complaint is eligible to be progressed by the SLCC. There will be other opportunities for a complaints decision to be reviewed, and complaints that are deemed ineligible will remain eligible for review following the decision. Amendment 339 seeks to find a balance between allowing important decisions to be reviewed while also streamlining the complaints process. Amendment 345 is consequential to that change.

Amendment 341 allows for a decision by the SLCC not to initiate the investigation of a services complaint or to close a case following a reasonable settlement offer from the practitioner to be a decision that is capable of being reviewed under new section 20A of the 2007 act. Amendment 346 is a consequential change.

Amendments 337, 340 and 342 to 344 are minor technical amendments.

Amendments 439 to 441 introduce flexibility into the membership of the SLCC board by allowing a minimum number of both lay and legal members, following concerns from the SLCC that it would be difficult for the board to maintain the non-lawyer majority if equal numbers of lay and legal members were required and the absence of a single non-lawyer member could make the board inquorate. These amendments set out the minimum number of lay and legal members rather than requiring a set number for each.

Amendment 439 sets out that the membership of the SLCC's board must be made up of at least eight but no more than 20 members in addition to the chair. Amendment 440 requires that the chair and at least four other members must be lay members. Amendment 441 provides that there must be at least three lawyer members.

Amendment 538 removes the requirement that the lawyer members of the SLCC's board must have at least 10 years' experience in any of the specified legal categories. Following discussions with the SLCC, that requirement was considered to be overly restrictive, preventing good candidates from being appointed. Therefore, amendment 538 provides additional flexibility regarding board appointments. Members are appointed only after consultation with the Lord President, in accordance with paragraph 2 of schedule 1 to the 2007 act. In addition, amendment 538 provides that there must be more non-lawyer members than lawyer members, but that difference must be no more than three.

Amendments 443 and 444 set out that each member of the SLCC board can be appointed for a period of not less than five years and not exceeding eight years, in keeping with the "Code of Practice for Ministerial Appointments to Public Bodies in Scotland", which allows for a maximum period of appointment, including reappointment, of eight years.

Amendment 446 adds the consumer panel to the list of mandatory consultees where the Scottish ministers propose to make regulations to amend the powers or duties of the commission. Amendment 448 will expand the functions of the panel to include making recommendations to the Lord President regarding any of the Lord President's functions under the bill. Amendments 445 and 447 are consequential.

I am happy to have worked with Maggie Chapman on amendments 539 and 540, which require the consumer panel to be adequately funded and resourced in order to effectively discharge its functions. The Scottish Government's expectation is for the SLCC to have the capacity to fund the consumer panel's extended remit as it deems appropriate, including the possibility of implementing an additional levy on the regulated profession. I therefore ask members to support all the amendments in the group.

I move amendment 312.

Maggie Chapman (North East Scotland) (Green): I thank the minister for the engagement that we have had on my amendments 539 and 540 in this group. The substantive amendment is 540, and amendment 539 would enable it to happen. I also thank the consumer panel and the SLCC for their correspondence on the issue, and I note their strong support for the amendments.

The consumer panel remains concerned that there is not always clarity about what would be sufficient resourcing, and it is looking to similar panels elsewhere that have funding and where there is administrative and secretariat support.

There needs to be an on-going conversation between the SLCC and the consumer panel to ensure that there is a shared understanding on that. I would welcome hearing the minister's view on that in her closing speech.

Amendments 539 and 540 will help to ensure that there is funding for the consumer panel to do the work that it needs to do. We need to ensure that the funding is sufficient and transparent. The panel is concerned that it might be seen as optional and discretionary, so we need a clear statement on that this morning. We have heard from the minister that it is the Scottish Government's intent that the panel be adequately funded to do the job that it needs to do, and that is the committee's intent, too.

I ask colleagues to support the two amendments in my name. I will support the other amendments in the group, which are in the name of the minister.

The Convener: As no other members wish to come in, I call the minister to wind up.

Siobhian Brown: I thank Maggie Chapman, and I acknowledge the concerns that the consumer panel has raised. We would not be able to get involved in the SLCC process—it will be up to its independent process to look at how the panel should be funded—but I am happy to work with the SLCC on that as we move forward.

Amendment 312 agreed to.

Section 52—Receipt of complaints: preliminary steps

The Convener: Amendment 313, in the name of the minister, is grouped with amendments 314, 315, 317, 318, 320, 330, 356, 362 to 371, 381, 449, 451, 460, 471, 474 to 477, 479 to 498 and 500.

Siobhian Brown: The amendments in this group are largely technical. The main amendment is 315, which, at the request of the SLCC, puts a matter beyond doubt by expressly providing that the SLCC can initiate a conduct or regulatory complaint. Amendments 314, 317, 320, 356, 381 and 479 are consequential on that change.

Amendment 313 is a minor amendment to ensure consistency of language.

Amendment 318 is a minor change that is consequential on the removal from the 2007 act of section 2(4), which relates to premature complaints, in favour of the SLCC covering the issue in its rules instead.

Amendment 492 and the related amendment 330 make a technical change to the bill to write out the necessary modifications of sections 48 to 52 of the 2007 act, so that regulators can use those in

connection with the investigation of a regulatory complaint in addition to a conduct complaint.

Amendment 493 corrects a cross-reference.

Amendment 362 changes the title of section 23 of the 2007 act to better reflect the content of the revised section, following amendment by the bill, to include reference to handling complaints, which are complaints about the handling of conduct and regulatory complaints.

Amendment 363 allows the SLCC to investigate the handling of a conduct or regulatory complaint by a relevant professional organisation after the six-month expiry deadline where it is considered that there have been exceptional circumstances.

09:45

Amendments 364 and 365 are minor and technical amendments. Amendments 366 to 369 make minor procedural changes to the consideration of handling complaints by the SLCC. Amendments 370 and 371 correct typographical errors, and amendment 449 corrects an incorrect cross-reference. Amendments 451 and 460 update cross-references to other provisions of the bill, and amendments 474 to 477 make further consequential changes. Amendment 471 sets out what decisions the Scottish Solicitors Discipline Tribunal is required to publish and provides it with the flexibility to publish any other decision that it feels is necessary.

Each of the following remaining amendments in the group are minor correcting technical or consequential amendments. They are amendments 480, 482, 483, 485 to 491, 495 to 498 and 500. I ask members to support the amendments in the group.

I move amendment 313.

Amendment 313 agreed to.

The Convener: Amendment 557, in the name of Paul O'Kane, is grouped with amendments 558 to 560, 643, 563, 316, 564, 565, 571, 573, 578, 582, 590, 605 and 640. I remind members that amendment 578 pre-empts amendment 335, which was previously debated in the group "Complaints: constitution etc. of Scottish Legal Complaints Commission".

I call Paul O'Kane to move amendment 557 and speak to all the amendments in the group.

Paul O'Kane (West Scotland) (Lab): My amendments in this group seek to retain the current preliminary steps that the commission must take in respect of a complaint, specifically to determine whether it is

"frivolous, vexatious or without merit",

and to reject it if so.

I will be clear at the outset that at this stage my amendments are largely probing, although I reserve the right to press them, depending on how our debate proceeds this morning. It is important that we have this debate, and I thank the SLCC and the Law Society of Scotland for their engagement on the issues and on my amendments.

The rationale behind my amendments relates to the efficiency of the complaints process and the system, in which, I think that we would all agree, we do not want there to be complaints that are not going to go anywhere. To speak plainly, complaints that are, by definition, vexatious or frivolous will jam up the system. Members will be aware that many complaints that are submitted fit that definition, and many of us would recognise that, from time to time, so are some of the messages in our inboxes.

It is important that such complaints are dealt with as early as possible and, if they meet the criteria, that they are disregarded to avoid causing an unnecessary backlog, additional work and bottlenecks downstream in the complaints process. That means that such complaints should be dealt with when they first hit the desk of the SLCC, rather than making their way through a longer process. I believe that it would be fairer to complainers and all parties involved in the complaints process to dismiss a complaint that is frivolous, vexatious or without merit at an earlier stage, rather than dragging it through a further onerous process, only for it to be dismissed for those reasons later.

If we accept the premise that we should keep the system efficient and deal with such complaints, the question becomes what test we should use to do that. I note the SLCC's intent to achieve that aim by bringing forward its own criteria through the powers that it will be granted under the bill. However, I have some concerns that we have not seen the proposed rules and criteria, although I understand that they would largely replicate the current tests for establishing whether a complaint is frivolous, vexatious or without merit.

I have heard concerns about the legalistic nature of the terms that are used in the amendments, and have also heard that some people may find them offensive. I will deal with those criticisms in turn.

That the terms used are legalistic nature in nature can be a benefit, because they are well established and understood, backed up by case law and clear examples. Any new set of rules that used different terminology may not be backed up by case law and could be subject to legal challenge and, indeed, judicial review. That could be unnecessarily onerous on the commission and those who are involved in complaints.

I understand the concern that the terms are offensive. I also understand that, through the bill, we are trying to make the process more user friendly and to support the administration of natural justice. However, I suggest that individuals who are upset when they hear that their complaint has been determined to be without merit are likely to be upset anyway, regardless of what terminology is used at that point in the process, because their case has been dismissed. I again point to the well-established meanings of those terms. We should perhaps try to expand and explain those meanings rather than change them at the first stage.

From my engagement with the SLCC, it appears that it understands that argument and is leaning towards using the test for its own rules, for many of the reasons that I have outlined, although I am happy to stand corrected on that if I have misunderstood. If that is the case, it would be beneficial to keep the current rules in statute to give them backing in law as part of the complaints process.

I welcome the contributions of other committee members and the minister on the issue. As I said, depending on whether there are assurances and commitments to examine the issue further prior to stage 3, I might not press my amendments. However, changing the preliminary steps in the manner that is set out in the bill could have significant risks and unintended consequences, so there might be merit in keeping much of the preliminary tests as they are.

I move amendment 557.

Siobhian Brown: Paul O'Kane's amendments in the group would place back in statute a requirement for the SLCC to determine whether a complaint was

"frivolous, vexatious or without merit"

before it could investigate a complaint. Placing in statute the eligibility process can make the process more time consuming for both the complainer and the legal practitioner, and it can have the effect of delaying a clearly serious complaint from being investigated swiftly, as the SLCC must proceed through the initial statutory stages or tests of assessing the complaint before an investigation can commence.

All that takes place simply to assess whether a case can be accepted by the SLCC as a complaint to be looked at—something that, in many complaints bodies, is a low-level administrative decision. As a comparison, in England and Wales, under the Legal Services Act 2007, the legal ombudsman is simply required, in relation to a complaint, to determine

"in the opinion of the ombudsman making the determination"

what is

“fair and reasonable in all the circumstances of the case.”

The bill retains categorisation of conduct and service complaints, as that determines who will investigate the matter. The bill will also allow the SLCC to consider whether a complaint is not eligible, according to rules that it sets, or has been made prematurely, and it will provide greater flexibility to the SLCC to make rules about complaints that are considered to be frivolous, vexatious or without merit. That approach is supported by the SLCC, and it will allow for a more proportionate and swifter consideration of legal complaints, including whether they are frivolous, vexatious or without merit. Ensuring that eligibility decisions involve a quick sift is essential in providing a prompt resolution that benefits both consumers and practitioners.

Amendment 316, in my name, is a consequential amendment in the light of other changes being made to the bill. It removes section 4(4)(b) of the 2007 act as a consequence of the removal of section 2(4) of that act, which prescribes the preliminary steps to be taken by the SLCC in making an eligibility decision.

The improvements that are proposed in the bill and in my amendments would allow the SLCC to operate a flexible and agile complaints process that allowed a proportionate approach to be taken to different types of complaint.

Paul O’Kane: The minister might well be coming to these points. I appreciate what she said about the flexibility that will be afforded to the SLCC in relation to its rules, but does she recognise my concern about the body of law around the specific terms? Is she concerned that, if the SLCC determined not to use those terms, that might cause significant challenges and further slow up the process? How does she intend to deal with that issue, given that the terms will not be in statute?

Siobhan Brown: On page 32 of the bill, section 41 sets out that, in order for the SLCC to apply the eligibility test, it will need to consult the Lord President, Scottish ministers, all the regulators and the consumer panels with regard to making those decisions. I appreciate that we do not yet have the exact detail to give to Mr O’Kane, but, as the process moves forward, there will be a consultation with all stakeholders.

Moving on, the improvements that are proposed in the bill and in the amendments in my name allow the SLCC to operate a flexible, agile complaints process that allows a proportionate approach to different types of complaints. The amendments in my name have been developed with the SLCC, which has 15 years’ experience of dealing with more than 18,000 complaints. It

understands where delays or blockages occur and where improvements could be made to the process.

The bill provides a proportionate and agile approach. Unfortunately, Mr O’Kane’s amendments in this group propose to reintroduce prescriptive provisions to the legislation, which would risk the improvements in the bill that would deliver efficiencies. Those efficiencies would be achieved through a streamlined triage process in particular, which would allow complaints that required further investigation to proceed swiftly either to resolution or to the relevant regulator, and complaints that were not eligible for investigation to be closed. That is in everybody’s best interests.

In its letter of 17 January to the committee, the Law Society said:

“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”

I am concerned that Paul O’Kane’s amendments would cut across those improvements.

It is important to note that the committee raised concerns in its stage 1 report that we must

“ensure a system is in place to efficiently deal with complaints without merit to avoid clogging up the system and causing unnecessary delay.”

That is still a key component of the proposed system, as the bill requires the SLCC to make rules about its practices and procedures, including with regard to decisions that a complaint does not merit investigation.

In making and varying these rules, the SLCC will be required to consult with the Lord President, the professional bodies, the consumer panels, other consumer groups and groups that represent the interests of the legal profession, as I mentioned to Paul O’Kane. The SLCC will also need to publish the rules. I consider that that provides sufficient checks to ensure that the committee’s concerns will be addressed.

The bill also provides an opportunity to remove some of the, at best, legalistic and, at worst, offensive language, such as “frivolous” and “totally without merit”, that the SLCC is required to use with complainers when it tells them that aspects of their complaint are not eligible for investigation. Rosemary Agnew, the Scottish Public Services Ombudsman, touched on that at stage 1. She noted:

“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.”—[*Official Report, Equalities, Human Rights and Civil Justice Committee*, 14 November 2023; c 10.]

Paul O’Kane’s amendments serve to add back the complexity and prescription and would increase inefficiency and delay. If his amendments are supported, it would raise significant concerns over the financial assumptions about efficiency improvements that will arise from the bill. I therefore ask Mr O’Kane not to press his amendments in this group. If he does press them, I urge members to oppose them. I ask members to support my amendment 316.

The Convener: I see that no other members wish to speak, so I call Paul O’Kane to wind up and to press or withdraw amendment 557.

Paul O’Kane: [*Inaudible.*]

The Convener: We will suspend for a few moments to deal with the technical problems that we are having.

10:00

Meeting suspended.

10:02

On resuming—

The Convener: Welcome back. I call Paul O’Kane to wind up, and to press or withdraw amendment 557.

Paul O’Kane: I will wind up on the amendments.

I think that we are all trying to push towards a similar outcome in this debate, which is that there should be a process early on in the system to weed out complaints that are viewed to be

“frivolous, vexatious or without merit”

and that there should be a robust definition of that.

I point to the view of many stakeholders—not least the Law Society, which is of the view that the proposal in the bill to remove the existing eligibility test is concerning. That is because it has been an important test that has helped to do exactly what we have been debating this morning, which is to take out those unmerited complaints at an early stage. The test has been used extensively by the Scottish Legal Complaints Commission and other bodies since it was created in 2007, with almost 100 complaints rejected in 2023-24 alone. As a committee, we are obviously interested in how the processes in the bill ensure access to natural justice and ensure that people’s complaints can be heard. However, I think that we are clear that there has to be a process.

The Law Society’s view is that the removal of the early test goes against the objective of making the system simpler and ensuring that genuine complaints are dealt with quickly. That view is in contention with what the minister suggested,

which is that we would achieve that objective by moving the test to the SLCC’s rules-based procedure. The Law Society’s view is that keeping the test in the legislation is the best way to ensure that the system moves quickly and that things do not become, in its words in material that it has provided, “choked off”.

My closing point is that we are talking about the same words and the same legal definitions, and about consulting broadly with a range of people to retain the processes around the

“vexatious, or totally without merit”

test. My concern is that I do not understand how taking the test out of legislation and putting it into rules retains the objective of speeding up the process. I do not see why we would move it into a rules-based system that is far more flexible if we were not going to change the definitions.

On that basis, I press amendment 557.

The Convener: The question is that amendment 557 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division. As this is our first division, I remind members to show their vote by raising their hand.

For

O’Kane, Paul (West Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Gosal, Pam (West Scotland) (Con)
McNair, Marie (Clydebank and Milngavie) (SNP)
White, Tess (North East Scotland) (Con)

Abstentions

Chapman, Maggie (North East Scotland) (Green)

The Convener: The result of the division is: For 1, Against 5, Abstentions 1.

Amendment 557 disagreed to.

Amendment 558 to 560 not moved.

Amendment 314 moved—[Siobhian Brown]—and agreed to.

Section 52, as amended, agreed to.

After section 52

Amendment 315 moved—[Siobhian Brown]—and agreed to.

Section 53—Ineligible or premature complaints

Amendments 643 and 563 not moved.

Amendment 316 moved—[Siobhian Brown]—and agreed to.

Section 53, as amended, agreed to.

Section 54—Commission process relating to complaints

Amendment 317 moved—[Siobhian Brown]—and agreed to.

Amendments 564 and 565 not moved.

Amendment 318 moved—[Siobhian Brown]—and agreed to.

Amendment 571 not moved.

The Convener: Amendment 572, in the name of Paul O’Kane, is in a group on its own.

Paul O’Kane: Amendment 572 is a relatively simple amendment that would leave out section 54(7) of the bill. As drafted, section 54(7) would repeal section 12 of the Legal Profession and Legal Aid (Scotland) Act 2007, which requires the commission to give notice in writing to complainers and practitioners of its determination to uphold or not uphold service complaints, the steps to be taken and any reasoning for its decision.

It is contrary to the principles of natural justice that the complainer and the practitioner are not provided with written notice of the commission’s decision. It seems wholly unfair and contrary to the aims of transparency and consumers’ understanding of the complaints process if people are not told what and why something has happened to their complaint.

The SLCC might opt to continue that practice anyway, but I cannot see any good reason why we would not want there to be a requirement to do that in all relevant circumstances and instances. Even if the intent is to continue to provide statements of reasons for a commission decision, not having it in statute as a requirement opens up the possibility that the commission could, at some point, decide or find a way not to provide statements of decisions if that is what it chooses to do. That would mean that complainers and practitioners would not have recourse to understand why a decision was taken and what further avenues might be open to them.

Given that I can discern no other part of the bill that places the burden on the SLCC, the most reasonable way forward would be to maintain the current provision requiring the commission to give notice. If tweaks need to be made to section 12 of the 2007 act as a result of other changes in the bill, there could be more amendments at stage 3. For the moment, it is important that the committee sends out a clear message, in line with the principles of natural justice and transparency, that some provision remains in the bill to continue providing statements of reasons for decisions.

I move amendment 572.

Siobhian Brown: Amendment 572 seeks to reinstate the express provision contained in section 12 of the Legal Profession and Legal Aid (Scotland) Act 2007 on how the SLCC must notify the complainer and practitioner of a decision to uphold or not to uphold a service complaint. The removal of section 12 is one of a number of changes that are made by the bill to enable the SLCC to deal with complaints with greater flexibility. The intention is that service complaints will not all be required to be dealt with by the committee members, but by SLCC committee members and members of staff as appropriate and as laid down in the SLCC’s practice and procedure rules.

The bill at section 66 provides a proportionate and agile approach, which makes provision for the SLCC to produce such practice and procedure rules for dealing with service complaints. It is intended that requirements that are broadly equivalent to those set out in section 12 will instead be set out in the rules. There will be no lessening of the SLCC’s responsibility in that respect.

Paul O’Kane: Will the minister take an intervention?

Siobhian Brown: Yes.

Paul O’Kane: I am grateful to the minister for taking an intervention. It perhaps speaks to the point in my previous amendment about understanding the difference between taking something out of legislation and putting it into rules. If we all agree with the principles that I described about natural justice and ensuring that people have a statement about why a decision has been taken, why would that measure not be included in legislation to ensure the security of that principle, because it would have legal backing? Why would we move it into rules? If the minister is confident in her assertion that the SLCC will include it in the rules, I do not see the issue with it remaining in statute.

Siobhian Brown: I will come to that further along, but as I said when we debated the previous group, the SLCC will have to go to consultation with the Lord President, Scottish ministers and consumer panels on the process that will be set up.

One of the main points is that the provision will also give the SLCC flexibility in future. As we saw at last week’s meeting, a lot of amendments and groups were about strengthening the legal process, but as the committee has acknowledged in its recommendations, we must also ensure that the voice of the consumer is not lost, and we need to simplify the process for their access to justice. Therefore, there will be no lessening of the SLCC’s requirements in that respect. Furthermore,

the SLCC has a duty to exercise its decision-making functions, in accordance with administrative law principles, including around the notification of decisions.

10:15

In making or varying these rules, the SLCC will be required to consult the Lord President, the professional bodies, the consumer panel, other consumer groups and groups that represent the interests of the legal profession. The SLCC will also need to publish the rules. I note Mr O’Kane’s concerns that, in the future, the SLCC could decide not to publish the reasoning behind its decisions. That would have to go to consultation with the Lord President and all the legal professional bodies as well, and I consider that that provides sufficient checks to ensure that the committee’s concerns would be addressed.

Amendment 572 proposes to reintroduce prescriptive provision into the legislation, which risks the improvements in the bill that would deliver efficiencies. The SLCC is supportive of the Scottish Government’s approach. I therefore ask members not to support Mr O’Kane’s amendment 572.

The Convener: Thank you. I ask Paul O’Kane to press or withdraw amendment 572.

Paul O’Kane: I do not intend to say too much more, other than that I think that this amendment is about ensuring that there is a provision in the bill to ensure natural justice—to ensure that people are informed about the reasons why decisions are taken. Given what we have just reflected on, there seems to again be a consensus that that is the right thing to do and that it is how we would want the system to continue to operate.

I am confused about what the difference is between ensuring that this is in statute and has a legal footing and simply putting it into the rules of the SLCC. The minister spoke about the importance of flexibility for the SLCC, but again I am not clear whether the intention would be that the SLCC would continue to provide the reasoning for decisions and that any changes to that would be subject to consultation. I am not entirely sure how removing it from statute would provide more flexibility.

As with the previous amendment, I am keen that we ensure that there is a statement of intent in the bill and that we ensure that those rules are followed because they are in statute rather than in a flexible process that would then be subject to the consultation that the minister has outlined.

On that basis, convener, I press amendment 572.

The Convener: The question is, that amendment 572 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Maggie (North East Scotland) (Green)
O’Kane, Paul (West Scotland) (Lab)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Adamson, Clare (Motherwell and Wishaw) (SNP)
Gosal, Pam (West Scotland) (Con)
McNair, Marie (Clydebank and Milngavie) (SNP)
White, Tess (North East Scotland) (Con)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 572 disagreed to.

The Convener: Amendment 524, in the name of Stuart McMillan, is grouped with amendments 338, 526, 527 and 533 to 536, 536A, 484 and 494.

Stuart McMillan (Greenock and Inverclyde) (SNP): Good morning, everyone.

Amendment 524 will repeal section 13 of the 2007 act, which has the provision that currently allows the SLCC to publish a report of a services complaint in certain circumstances. Amendments 526 and 527 are consequential to amendment 524.

Following my engagement with the SLCC, amendment 533, in my name, will allow the SLCC to confirm or publicise that it is investigating a complaint where it would be in the public interest to do so. That provision will significantly enhance the ability of the SLCC to be open and transparent regarding complaints about legal practitioners.

Amendment 534 will allow the SLCC to take a proactive approach to disclosing information regarding large-scale complaints, such as in relation to the case of McClure Solicitors, which colleagues will be aware of my interest in.

I hope that the ability to provide proactive information and disclose the outcome of complaints will significantly improve the information that can be provided to consumers of legal services and improve public confidence. The amendment will allow for greater information sharing between regulatory bodies, where it would support the exercise of the bodies’ regulatory functions.

In terms of what a regulatory body is, the amendment will allow the regulatory bodies to be listed by the Scottish ministers in regulations. Those regulations would be subject to the affirmative procedure. That power may be used only following consultation with all category 1 and 2 regulators—the commission, the consumer

panel, the Lord President, and other regulators. The results of that consultation must be published before regulations are laid in Parliament, and the Lord President must agree to the Scottish ministers' proposal to make the regulations.

I move amendment 524.

Siobhian Brown: I am pleased to have worked with Stuart McMillan on his amendments in this group, which amend the Legal Profession and Legal Aid (Scotland) Act 2007 to provide a more flexible power than currently exists for the SLCC to disclose information for the purpose of confirming receipt of a complaint, allowing the SLCC to proactively release information and providing the SLCC the ability to disclose the outcome of a complaint where it is in the public interest to do so. I support Stuart McMillan's amendments 524, 526, 527, 533 and 534.

I turn to my amendments in this group. Amendment 535 will provide the power for the Law Society of Scotland and other legal services regulators—relevant professional organisations—to disclose information about complaints that they are investigating, but only if they consider it to be in the public interest. The information may identify a practitioner or a firm to whom the complaint relates, but it may identify the complainer only with the complainer's consent.

Amendment 536 will amend section 52 of the 2007 act to allow information to be disclosed for the purpose of enabling or assisting any regulatory body that is specified for this purpose in regulations.

Mr O'Kane's amendment 536A seeks to amend my amendment 536. The Law Society has referred only to paragraph (b) of section 52(3) of the 2007 act. We agree that that allows disclosure in cases where the body is compelled to disclose it. However, paragraph (a) of section 52(3) provides that information may be disclosed

"for the purpose of enabling or assisting the relevant professional organisation to exercise any of its functions in relation to such a complaint".

The reference to functions includes duties and powers and therefore includes the power of a regulator under new section 51A to disclose information. Amendment 536A is therefore unnecessary, and I would urge members not to support it.

Amendment 338 will remove subsection (2) from section 53 of the bill, which amends section 13 of the 2007 act, which relates to service complaint reports, in consequence of the removal of section 13 by Stuart McMillan's amendment 524.

Amendment 484 ensures that qualified privilege applies to information that the commission may disclose about complaints in consequence of

amendment 533 in the name of Stuart McMillan and amendment 535 in my name.

Amendment 494 ensures that qualified privilege applies to information that regulators may disclose about complaints in consequence of amendment 535.

I therefore ask members to support my amendments, and the amendments lodged by Mr McMillan.

Paul O'Kane: I thank the minister for her engagement on the issue of disclosure of information to the public, specifically on amendment 536 in her name.

The improvements that we are making to the bill and legal complaints processes, such that information will finally go out into the public domain on on-going complaints, are welcome, both to protect potential consumers looking to engage services and to increase transparency around on-going issues.

The minister will be aware of my engagement on amendment 536 and of my early decision not to lodge similar amendments while I took advice and engaged with stakeholders on the question of whether that amendment would be sufficient to meet everyone's desired intent. I believe that amendment 536 provides an assurance relating to disclosure of information, which is, as I have said, important.

However, I have lodged amendment 536A in order to make it absolutely clear that information may be disclosed under the new section 51A that would be created by amendment 535. The stakeholders that I have engaged with believe that a small addition to the Government's amendment would provide sufficient cover for the disclosure of information about complainants and would ensure that that is absolutely clear. That fix would mean that some of the existing restrictions on the disclosure of information, which are found in section 52 of the 2007 act, would not apply when information is being disclosed under the public interest test, as set out by the minister's amendment 535. The last thing that we would want to do would be to create a power to disclose information when that is in the public interest, only for that power to be constrained and made potentially meaningless by restrictions in section 52 of the 2007 act. I hope that members will see the value in supporting a technical fix to ensure that the public interest disclosure power works well to improve the transparency that we all want to see.

Siobhian Brown: I will comment on Mr O'Kane's contribution regarding amendment 536A. I understand and appreciate his intentions. In order to clarify the position and to address the concerns that he raised, I would be happy to

adjust the explanatory notes to the bill to refer to the disclosure of information under section 51A of the 2007 act as an example of regulators' functions mentioned in section 52(3)(b) of the 2007 act. I would be happy to discuss that with the member in advance of stage 3, if that would be helpful.

The Convener: I call Stuart McMillan to wind up and to press or withdraw amendment 524.

Stuart McMillan: I thank the minister for the work that we have done on the amendments in this group. I am also conscious that the SLCC is supportive of the amendments, which it sees as being hugely beneficial to its work. I saw the SLCC's frustration at first hand at the public events that I held in Greenock regarding McClure Solicitors.

Marie McNair will later move amendments 526, 527, 533 and 534, because I must return to the meeting of another committee, which I convene.

I urge members to support my amendments and I press amendment 524.

Amendment 524 agreed to.

Section 54, as amended, agreed to.

After section 54

The Convener: Amendment 319, in the name of the minister, is grouped with amendments 331 to 334, 450 and 481.

Siobhian Brown: The amendments in this group relate to and have been shared with the Scottish Legal Complaints Commission. They also align with the committee's stage 1 recommendations.

Amendment 319 will allow the SLCC to close a services complaint when a practitioner accepts a settlement proposed by the SLCC but the complainer does not.

The SLCC will also be able to decide either not to initiate the investigation of a services complaint or to close a complaint, when it considers that the practitioner has offered the complainer a settlement that the SLCC considers to be fair and reasonable and when the SLCC is satisfied that the proposed settlement will remain available for 28 days after the decision not to initiate an investigation.

It is intended that the SLCC may close the case where it learns that the practitioner has made a reasonable offer prior to the complaint being lodged with the SLCC, but which the complainer has refused. The amendment is intended to speed up the redress process. The intention is for the power to be used where the practitioner has made

an offer that is unlikely to be exceeded by a full determination of the complaint.

Amendment 481 is a consequential change.

10:30

Amendment 331 will apply where the SLCC upholds a services complaint against a practitioner. Where the practitioner was a partner of a firm at the time when the service was provided, it will allow the SLCC, when upholding a services complaint, to give direction to take steps to redress the complaint to the practitioner's firm instead of to the practitioner. Amendments 332, 333 and 334 are all consequential to that.

Amendment 450 seeks to increase the transparency and amount of information that is contained in the SLCC's annual report. It will ensure that the annual report contains details of the work of each review committee and of the steps taken to ensure that each review committee is able to act independently of the SLCC when considering and determining each application for review. In addition, when preparing the annual report, the SLCC will be required to consult with the Lord President, the independent advisory panel of the SLCC and each category 1 and 2 regulator.

I ask members to support all the amendments in the group, and I move amendment 319.

Paul O'Kane: It is my intention to support most of the amendments in the group. However, I am sure that many members of the committee share my concerns about the provisions in amendment 450 that will require the SLCC to consult on its annual reports before they are laid. Given that annual reports are retrospective by definition, it seems slightly odd to have included that provision, which I think might add to the SLCC's bureaucratic workload. I am not aware of similar organisations having to undertake such a requirement.

In winding up, perhaps the minister might focus on her intention for the requirement to consult on a retrospective report and on whether she agrees with concerns that have been raised on the requirement. Perhaps she might consider making a firm commitment to support amendments at stage 3 to remove the requirement, which would allow us to move forward today and make the other improvements to the annual report that are contained in wider amendments.

At present, I am minded to oppose the amendment, but that might depend on the minister's responses on the requirement to consult.

The Convener: As no other members wish to come in, I call the minister to wind up.

Siobhian Brown: Thank you, convener. I know about Mr O’Kane’s concerns in that regard, which have also been raised by the SLCC. I am happy to discuss with him how we can move forward on the issue before stage 3, although I cannot commit to specifics at this stage.

Amendment 319 agreed to.

Section 55—Regulatory complaints against authorised legal businesses

Amendment 320 moved—[Siobhian Brown]—and agreed to.

Amendment 573 not moved.

The Convener: Amendment 525, in the name of the minister, is grouped with amendments 322 to 329, 386 to 390, 529 to 531, 392 to 394, 532 and 423 to 437.

Siobhian Brown: Amendments 322, 324 to 329 and 525 will amend new section 52B, on “Regulatory complaints: duty of regulator to investigate etc”, which the bill will insert into the Legal Profession and Legal Aid (Scotland) Act 2007.

Amendment 525 will allow, subject to notification requirements, relevant professional organisations to make a decision to discontinue an investigation of regulatory complaint or to reinstate the investigation of a discontinued regulatory complaint, but only if the organisation considers that it is in the public interest to do so. Amendments 322, 323, 325, 329, 386 and 387 will make minor technical corrective changes.

Amendments 324, 326 and 327 will place additional requirements on relevant professional organisations in respect of what they must include in their report of the determination.

Amendment 328 requires relevant professional organisations, in considering what action to take, if any, to take into account any decision taken by the SLCC in respect of a services complaint against the practitioner where that complaint arises from the same matter to which the regulatory complaint relates.

Those amendments are the outcome of engagement between the Law Society of Scotland and the Scottish Legal Complaints Commission.

Amendments 388 and 390 will alter new sections 33A and 33B of the 2007 act, as inserted by the bill. The new sections allow relevant professional organisations to investigate conduct or regulatory complaints arising from their regulatory monitoring without first sending them to the SLCC. The amendments require the relevant professional organisation, in either a conduct complaint case or a regulatory complaint case, to be satisfied that, if the matter were referred to the

SLCC, it would be considered by the SLCC to be either an eligible conduct complaint or an eligible regulatory complaint, respectively. Amendment 389 is a technical amendment that is consequential to amendment 390.

Amendment 529 inserts new section 33C into the 2007 act, allowing relevant professional organisations to recategorise a conduct or regulatory complaint, subject to notifying the commission.

Amendment 530 amends section 33 of the 2007 act. It outlines what actions relevant professional organisations should take where it becomes apparent that a complaint may have been wrongly categorised as either regulatory or conduct during the investigation of that complaint or during the mediation process, and that it should instead be a services complaint. Where that happens, the amendment requires relevant professional organisations to suspend the investigation, consult the SLCC on the matter and send over the relevant material to allow the SLCC to take over the complaint. In addition, the relevant professional organisation must inform the complainer and the practitioner that the complaint will now be led by the SLCC.

Amendment 531 will give all relevant professional organisations the flexibility, subject to notification requirements, to discontinue a conduct complaint remitted to it or to reinstate a discontinued conduct complaint, but only if the relevant professional organisation considers it to be in the public interest to do so.

Amendment 393 will have the effect of requiring the relevant professional organisation, after investigating a conduct complaint, to make a written report to the complainer, the practitioner and the SLCC on any facts of the matter found by the organisation and on what action the organisation proposes to take, if any. If the organisation does not propose to take or has not taken any action in the matter, an explanation of why that is the case must be outlined in the report. Amendment 392 is a consequential change.

Amendment 394 adds to section 47 of the 2007 act a requirement to the relevant professional organisation, in considering what action to take, if any, to take into account any decision taken by the SLCC in respect of a services complaint against the practitioner where that services complaint arises from the same matter to which the conduct complaint relates.

Amendment 532 is consequential and leaves out section 68(3) of the bill, which would have inserted new section 52A into the 2007 act in order to adopt the same approach as that taken in relation to regulatory complaints and new section

52B of the 2007 act, as amended by amendment 328.

Amendment 425 removes the provisions excluding the power of the Scottish Solicitors' Disciplinary Tribunal to act where a solicitor or legal business has been convicted of economic crime. The Economic Crime and Corporate Transparency Act 2023 creates an exception for an economic crime offence, because it was considered to be more of a deterrent if a solicitor could be fined by the SSDT, even after having served a jail sentence. The policy intention here is that the same deterrent of an unlimited fine should apply across the board and that the special provisions relating to economic crime are unnecessary. It is, of course, a matter for the SSDT to take account of the facts and circumstances in each case in the exercise of its powers.

Amendment 428 outlines that, where the solicitor has been convicted of a criminal offence in relation to the subject matter of the SSDT's inquiry, the SSDT must, when deciding whether to exercise a power under section 53(2) of the Solicitors (Scotland) Act 1980, have regard to the conviction. The amendment also removes other amendments to section 53 of the 1980 act, on SSDT powers, made by the Economic Crime and Corporate Transparency Act 2023.

Amendment 435 provides the Court of Session with the power to create an unlimited for solicitors or authorised legal businesses in relation to conduct complaints.

Amendments 423, 424, 426, 427, 429 to 434, 436 and 437 are all minor and technical amendments to the 1980 Act.

I urge the committee to support all the amendments in this group, and I move amendment 525.

Amendment 525 agreed to.

Amendments 322 to 330 moved—[Siobhian Brown]—and agreed to.

Section 55, as amended, agreed to.

Section 56—Services complaint: sanctions

Amendments 331 to 334 moved—[Siobhian Brown]—and agreed to.

Section 56, as amended, agreed to.

Section 57—Commission decision making and delegation

The Convener: Amendment 578, in the name of Paul O'Kane, has already been debated with amendment 557. If amendment 578 is agreed to, I

cannot call amendment 335, which was debated with amendment 312, because of pre-emption.

Amendment 578 not moved.

Amendments 335 to 337 moved—[Siobhian Brown]—and agreed to.

Section 57, as amended, agreed to.

Section 58—Commission review committee

Amendments 338 and 339 moved—[Siobhian Brown]—and agreed to.

Amendment 582 not moved.

Amendments 340 to 345 moved—[Siobhian Brown]—and agreed to.

Amendment 590 not moved.

Amendment 346 moved—[Siobhian Brown]—and agreed to.

Section 58, as amended, agreed to.

Section 59—Services complaints: reports

Amendment 526 moved—[Marie McNair]—and agreed to.

Section 60—Disclosure of information by practitioners etc. to the Commission and relevant professional organisations

10:45

The Convener: Amendment 347, in the name of the minister, is grouped with amendments 348 to 352, 644 and 645, 353 to 361 and 650.

Siobhian Brown: Amendments 347 to 355 will make changes to section 60, which is on disclosure of information by practitioners to the SLCC and relevant professional organisations. Section 60 will amend section 17 of the 2007 act, which allows the SLCC in certain circumstances to require a practitioner to produce documents, with the exception of documents that are subject to legal privilege, relating to the complaint. Despite that exception, amendments 347 and 350 will allow the disclosure of such documents by a practitioner with the client's consent.

Section 48 of the 2007 act enables a relevant professional organisation in certain circumstances to require a practitioner to produce documents, with the exception of documents that are subject to legal privilege. Amendment 353 will not prevent disclosure of such documents where the client consents to their disclosure.

Amendments 348 and 354 will expand the definition of "documents" to make it clear that it includes references to anything in which information is recorded in any form, in order to provide the SLCC with additional scope to compel

from a practitioner provision of relevant documents that might be helpful in determining a case.

Amendment 349 will introduce a power for the SLCC to uphold a services complaint where a practitioner has failed without reasonable excuse to comply with the requirement to provide information in relation to a complaint. In the stage 1 evidence sessions, the committee heard that around 300 solicitors a year do not reply on time to a statutory notice, which accounts for around a quarter of the complaints that are received. Although court orders are an option, they are not always effective, and there are recent examples of solicitors being held in contempt for failing to comply with a court order. Amendment 349 will enable the SLCC to proceed to determine a services complaint, in the event that a practitioner who is subject to a statutory notice to provide information or documents refuses or fails to do so within the specified time and without a reasonable excuse. The amendment will require the SLCC to notify the practitioner and their employer of their intention to determine the case, giving them at least 14 days to provide a reasonable explanation or the information. The SLCC may also draw an appropriate inference from the practitioner's failure to provide the requested information or documents within the required time.

Amendment 351 is a minor technical amendment.

Amendment 352 will require a relevant professional organisation, where it issues a notice requiring the production or delivery of documents directly to the practitioner, to also send a copy of the notice to their employing practitioner, where that is relevant, in order to ensure that they are aware that the request is being made.

Amendment 355 will allow the relevant professional organisations to determine a conduct or regulatory complaint, in the event that a practitioner who is subject to a section 48(1) notice to provide information or documents refuses or fails to provide the information or documents within the specified time and without a reasonable excuse. The relevant professional organisation is required to notify the practitioner and their employer of their intention to determine the complaint. The notice of intention must give the practitioner at least 14 days, or such greater period as the relevant professional organisation considers appropriate, to provide a reasonable explanation, or the information, before the case is determined.

Amendments 357 to 361 will make changes to proposed new section 17A that the bill will insert in the 2007 act. That will enable the SLCC to obtain a practitioner's contact details from the relevant professional organisation for certain purposes,

where it considers it necessary to do so in relation to a complaint.

Amendment 357 will extend the SLCC's powers to enable it to request contact details from the relevant professional organisation relating to the practitioner, practitioner's firm, employing practitioner or persons holding a specified role, or exercising a specified function, in the practitioner's firm or for the employing practitioner.

Amendment 358 will provide that relevant professional organisations must respond to a request under section 17(1) without delay, rather than "as soon as practicable". The SLCC requested that change in order to prevent delays in a complaint being progressed.

Amendments 359 and 360 will add assessment of the eligibility of a complaint to the list of purposes for which the SLCC can request practitioner's details from relevant professional organisations in connection with complaints.

Amendment 361 will make it clear that the relevant professional organisation is required to provide the contact details of practitioners that they hold, whether or not those practitioners are authorised to provide legal services. The amendment addresses the issue, which the SLCC identified, of trying to track down practitioners who have stopped practising since the complaint was made.

I appreciate the intention behind amendments 644, 645 and 650, which are in the name of Paul O'Kane, and which seek to ensure that regulatory bodies have sufficient powers to investigate complaints. I understand that the amendments are intended to provide that a relevant professional organisation may seek information prior to lodging a complaint. Such proactive regulation is, of course, important, but I consider that the bill already allows for that, so I view the amendments as unnecessary.

Section 67(3) of the bill, which will insert proposed new section 33A into the 2007 act, allows the Law Society, or any legal regulator, to raise a complaint in its own name without being required to first raise the complaint with the SLCC. The regulator has the power under section 48 of the 2007 act to require information that relates to investigation of the complaint.

Amendment 355, which is in my name, will allow the relevant professional organisation to determine a conduct or regulatory complaint in the event that a practitioner, who is subject to a section 48(1) notice, fails to provide the requested information or documents within the specified time and without reasonable excuse.

Amendment 531, which is also in my name, will allow the Law Society to discontinue a conduct

complaint where they consider that it is in the public interest to do so.

Those measures seek to ensure that the Law Society and other legal regulators have open to them the appropriate mechanisms to properly investigate complaints. Proactive regulation, which is already enabled by the bill, allows issues to be identified early, which can prevent harm to consumers or the public. The authorisation of legal businesses allows the Law Society to identify and address deficiencies early and take the necessary preventative action. Although in-house solicitors are subject to the Law Society's practice rules, they are also subject to an internal review of their performance and to annual appraisal by their employer.

I hold concerns that Paul O'Kane's amendments, as drafted, are overly broad and unrestricted. The granting of pre-complaint investigatory powers is not unprecedented, but must be exercised proportionately in order to maintain trust and to avoid undermining those who are being regulated. It is entirely inappropriate for the Law Society to have powers that might interfere with the prosecutorial independence of the Crown Office and Procurator Fiscal Service, and the Lord Advocate. That concern has been raised with the Law Society.

For the reasons that I have set out, I am unable to support amendments 644, 645 and 650, so I ask Mr O'Kane not to press his amendments. If they are pressed, I urge members not to support them. I ask members to support all my amendments in the group.

I move amendment 347.

Paul O'Kane: I will briefly speak to my amendments in the group, which are amendments 644, 645 and 650. The amendments would give powers to relevant professional organisations that were considering initiating a complaint to compel practitioners, firms or authorised legal businesses to provide information and documents relating to a matter that was under consideration for a complaint.

At present, regulators can require information only once a complaint has been received, which means that they are unable to require practitioners and authorised legal businesses to provide them with information in circumstances in which they might wish to consider initiating their own complaint.

Members will be well aware of instances in which regulators have been urged to be more proactive in safeguarding consumers and addressing concerns that have been raised. Many of us will have had casework in that regard. Currently, there is an immediate stumbling block, in that regulators cannot access documents until a

complaint has been initiated. Without having access to information that shows the need for a complaint, it can be a waste of time or a wasted opportunity to initiate a complaint.

There is an opportunity to allow regulators to function properly as regulators by finding out whether there is a complaint to be pursued. That could lead to enhanced consumer protections by allowing regulators to discover instances of concern earlier, to initiate complaints based on more evidence earlier and, thus, to intervene on behalf of consumers at a much earlier stage. Without my amendments, regulators might still be seen as being too reactive and not proactive enough in protecting the interests of consumers and dealing with instances of poor conduct.

It has been interesting to hear what the Government has to say on the principle. I accept that the minister recognises the principle and intent of my amendments and this discussion, and that she is keen that there be the opportunity for a more proactive approach in relation to compelling the provision of information, as we have debated.

I suppose that it might be a chicken-and-egg situation. If we give regulators the power to make their own complaints, how will they know whether to pursue a complaint without the information that they require? Therefore, I think that the issue should be further explored and discussed in advance of stage 3. On that basis, I am keen to continue to engage with the minister, if she is willing, in order to fully understand the impact of her amendments, where there might be gaps and whether we could do something in advance of stage 3.

Siobhian Brown: I thank Mr O'Kane for his comments. As I have always said, my door is open as we move to stage 3. I acknowledge what he said about the chicken-and-egg situation. I reiterate that section 67(3) will allow the Law Society or any other legal regulator to raise a complaint in its own name if it wishes something to be investigated, but I am happy to work with Mr O'Kane.

Amendment 347 agreed to.

Amendments 348 to 352 moved—[Siobhian Brown]—and agreed to.

Amendments 644 and 645 not moved.

Amendments 353 to 355 moved—[Siobhian Brown]—and agreed to.

Section 60, as amended, agreed to.

Section 61—Power of Commission to request practitioner’s details in connection with complaints

Amendments 356 to 361 moved—[Siobhian Brown]—and agreed to.

Section 61, as amended, agreed to.

Section 62—Services complaints: special provision for complaints against unregulated persons

11:00

Amendment 527 moved—[Marie McNair]—and agreed to.

Section 62, as amended, agreed to.

Section 63—Handling complaints

Amendments 362 to 369 moved—[Siobhian Brown]—and agreed to.

Section 63, as amended, agreed to.

Section 64—Annual general levy and complaints levy

Amendments 370 and 371 moved—[Siobhian Brown]—and agreed to.

Section 64, as amended, agreed to.

Section 65—Unregulated providers of legal services: voluntary register, annual contributions and complaints contributions

The Convener: Amendment 646, in the name of Tess White, is grouped with amendments 372, 647 to 649, 373 and 374.

Tess White (North East Scotland) (Con): Section 65 provides the SLCC with powers to introduce a voluntary register of unregulated providers of legal services. Amendments 646 to 649, from the Law Society, change the voluntary register of unregulated providers of legal services so that it becomes mandatory. I note that, at stage 1, some witnesses, including the Competition and Markets Authority and Professor Stephen Mayson, who carried out the independent review of legal services in England and Wales, argued for a mandatory register.

I am sympathetic to the Law Society’s view that a voluntary register that provides for the payment of levies and fees and subjects a service provider to a statutory complaints scheme is unlikely to attract a “meaningful uptake”. Those views were reflected in paragraph 146 of the committee’s stage 1 report, which calls on the Scottish Government to strengthen the provision and consider creating a mandatory register.

I have also engaged with the SLCC on the amendments and I recognise that it has several concerns about how such a register would work in practice. The SLCC is concerned about the uncertainty around who would be captured by the provisions and the scale of the resources that would be needed to communicate the requirement to providers. Those are reasonable criticisms from the organisation that will be tasked with the responsibility of a mandatory register.

My view is that the approach in section 65 is not sufficient. Although I recognise that some unregulated providers might sign up for regulation because it could give them a competitive advantage and provide consumers with assurances, that will not necessarily be the case for all. Providers who pose a risk to consumers are not likely to subject themselves to regulation.

The minister has other amendments in the group that the Scottish Conservatives are content to support at this stage, although they amend the proposed voluntary register provisions. I look forward to hearing the minister’s comments on my amendments and the policy intention behind them.

I move amendment 646.

Siobhian Brown: I note the committee’s positive response to the introduction of the SLCC’s power to investigate complaints against unregulated legal services providers. As I set out in my response to the committee’s stage 1 report, a body’s presence on the register will not affect the SLCC’s ability to consider services complaints about it or its practitioners. The SLCC will be able to consider a services complaint against any unregulated legal services practitioner, regardless of whether they or their employer are on the register. That will provide new protection for consumers, given that will writing and confirmation services can be provided by unregulated providers.

The intention behind the existence of the register is to provide what we might call a kitemark to those providers who wish to join the scheme, in recognition that those legal services providers are part of a consumer redress scheme. That would allow consumers to make an informed choice when selecting legal services.

The Scottish Government has previously considered the question whether the register should be mandatory for all unregulated legal services providers, as outlined in Tess White’s amendments 646 to 649. However, it is considered that enforcing such a measure would present significant challenges and the proposals in the bill take a proportionate approach. As highlighted, the fact that the register is voluntary will not affect whether the SLCC can consider a complaint relating to a particular unregulated

provider, or their employer, and an unregulated provider who is not registered could face a higher amount of the equivalent of the complaints levy. Therefore, rather than—

Maggie Chapman: I understand what the minister is saying about the complexities and potential challenges that could be produced if the register were made mandatory. However, she said that, with a voluntary register, consumers would have choice in selecting a provider from that register. How should the existence of that register be communicated to consumers so that they are aware that there is a kitemark? I do not see that as an automatic consequence of having a voluntary register.

Siobhian Brown: Absolutely. I take on board Maggie Chapman's comments. I think that the message should be communicated with a high profile, to ensure that anyone who seeks legal advice is aware of the register. When we move on to stage 3, I would like to discuss how we could strengthen that aspect as well.

I return to my earlier points. Rather than agree to Tess White's amendments 646 to 649, I ask members to support the approach that the bill takes to ensure that the regulation is proportionate, risk based and agile.

Turning to the other amendments in the group, the purpose of amendment 372 is to require, rather than to allow, the commission to create a register of unregulated legal services providers. The aim of this provision is to strengthen the position following the committee's stage 1 recommendation to create a mandatory register of unregulated legal services providers.

Amendment 373 will require the commission to use its resources to fund the register and to

"investigate, determine and review services complaints against unregulated providers of legal services."

Amendment 374 is a minor corrective amendment. Those amendments have been shared and agreed with the Scottish Legal Complaints Commission and they align with the committee's previous recommendations.

I therefore ask members to support amendments 372 to 374 in my name.

I ask Tess White not to press amendment 646 and not to move amendments 647 to 649. If they are pressed, I ask members not to support them.

The Convener: Do other members wish to comment?

Paul O'Kane: I am grateful, convener; folk might be glad to know that this may well be the last time that the committee will hear from me this morning.

I will speak briefly to Tess White's amendments, which I support in principle. I welcome many of the amendments in the group, in particular the minister's amendments, and specifically amendment 372, which requires the SLCC to establish the register. However, I agree with some of what we have heard, in particular that it is odd to have an opt-in form of regulation, given that signing up to the register that is created will not be mandatory. The risk is that that could expose clients who have no further recourse. In addition, I am unclear as to what the incentive would be in that regard. I appreciate some of what the minister has said, but where is the incentive for firms to sign up to the register in order to ensure that it is a meaningful tool with a purpose?

I note, and recognise, the SLCC's concerns about how the register might work in practice if it was mandatory, and the scope of what it would have to capture. However, as Tess White said, the committee made it clear in our stage 1 report that we wanted the Government to consider creating a mandatory, rather than voluntary, register. I add my voice to that call, in respect of what we might consider for further discussion in advance of stage 3.

The Convener: As no other member wishes to come in, I ask Tess White to wind up and say whether she wishes to press or withdraw amendment 646.

Tess White: I thank the minister for giving the background to the amendments, but, having listened to the discussion, I still feel that section 65 could use some improvement. I thank Maggie Chapman for asking how the existence of the register will be communicated. I also thank my colleague Paul O'Kane for saying that, while he supports the amendments in principle, it seems odd to have an opt-in register. He also raised the question of what the incentive would be to join it. Those are valuable points. I recognise, however, the positive comments from the minister that being on the register would be a kitemark, and something to be achieved.

Nonetheless, I hope that the minister will appreciate, bearing in mind the comments that she has heard from three committee members saying that further work is required on this area, that it would be useful if we could look at the amendments again, and go back to the Law Society and the SLCC to test whether there is an acceptable way through the issue.

I will withdraw amendment 646 and not seek to move my other amendments in the group, but I want to return to them at stage 3.

Amendment 646, by agreement, withdrawn.

Amendment 372 moved—[Siobhian Brown]—and agreed to.

Amendments 647 to 649 not moved.

Amendments 373 and 374 moved—[Siobhian Brown]—and agreed to.

Section 65, as amended, agreed to.

Section 66—Commission rules as to practice and procedure

Amendment 605 not moved.

The Convener: Amendment 528, in the name of the minister, is grouped with amendments 375 to 380 and 382 to 385.

Siobhian Brown: The policy intention behind my amendments in this group is to create clear rules for the SLCC when investigating a handling complaint. The rules will be available to relevant professional organisations and consumers, which will increase the transparency of the complaints process.

Amendments 376 to 378, 380, 383 and 384 all make changes relating to the rules about the SLCC's practice and procedure in dealing with complaints, including altering what such rules must include provision about.

Amendments 375, 385 and 528 are minor and technical tidying-up amendments, and amendments 379 and 382 are consequential.

The SLCC supports the amendments in the group. I therefore urge the committee to support the amendments.

I move amendment 528.

Amendment 528 agreed to.

Amendments 375 to 385 moved—[Siobhian Brown]—and agreed to.

Section 66, as amended, agreed to.

Section 67—Conduct or regulatory complaint raised by relevant professional organisation

Amendments 386 to 390 and 529 moved—[Siobhian Brown]—and agreed to.

Section 67, as amended, agreed to.

After section 67

Amendment 530 moved—[Siobhian Brown]—and agreed to.

Section 68—Conduct complaints: consideration by relevant professional organisations

Amendments 531, 392 to 394 and 532 moved—[Siobhian Brown]—and agreed to.

Section 68, as amended, agreed to.

The Convener: I suspend the meeting briefly for a comfort break.

11:18

Meeting suspended.

11:26

On resuming—

Section 69—Complaints: monitoring and setting of minimum standards by the Commission

The Convener: Welcome back to the Equalities, Human Rights and Civil Justice Committee. We will continue with stage 2 of the Regulation of Legal Services (Scotland) Bill.

Amendment 395, in the name of the minister, is grouped with amendments 396 to 411, 414 to 422 and 537.

Siobhian Brown: The first selection of my amendments in this group will amend section 35, new section 36A and section 40 of the 2007 act. New section 36A, as inserted by the bill, allows the SLCC to issue guidance to relevant professional organisations about how they are to investigate and determine conduct and regulatory complaints.

Amendment 397 introduces a requirement on the SLCC to consult the Lord President, relevant professional organisations, practitioners regulated by each organisation and any other persons whom the SLCC believes are appropriate before producing guidance that sets minimum standards. That responds to legal stakeholders' views.

Amendment 396 amends section 35 of the 2007 act to enable the SLCC to notify the relevant professional organisation of a concern, if, in the course of exercising its functions, such as monitoring practices and trends, it identifies a matter of concern relating to how practitioners or a practitioner's firm or employing practitioners deal with complaints.

Amendment 400 places an additional duty on the SLCC in respect of publishing any guidance that sets minimum standards by requiring them to publish a document summarising the consultation, any representations received and any changes made to the minimum standards as a result of the consultation, and the reasons for including the minimum standards in the guidance.

Taken together, amendments 401 and 403 allow the SLCC to issue guidance to relevant professional organisations relating to the standards that such organisations must set for practitioners in rules relating to how to deal with complaints. That replaces the current provision to set minimum standards directly for practitioners.

Those changes address the Law Society's concerns and will require oversight by the Lord President, as the Lord President's approval of any rules for practitioners is required before they can take effect.

Amendment 416 expands the range of consultees that the SLCC must consult in relation to any initial proposals for minimum standards to be set out in guidance, mirroring the requirements in respect of the proposed guidance on dealing with complaints.

Amendment 420 inserts new subsections into proposed new section 40A of the 2007 act, which relates to the enforcement of minimum standards. The new subsections (10A) and (10B) will enable the court to provide that the relevant professional organisation is not required to comply with some of the steps that are specified in the direction where the court considers that taking those steps would have a detrimental effect on the ability of the relevant professional organisation to comply with its regulatory objectives.

11:30

Amendment 421 removes provision on enforcement of minimum standards in relation to practitioners because other amendments have removed the power of the commission to be able to set minimum standards directly on legal practitioners.

Amendment 422 will provide the SLCC with the powers to request additional details from legal professionals to aid with monitoring trends and practices in the profession by enabling them to request information from the practitioner about complaints that they received during the three-year period before the request was made. The information requested must be for the purpose of monitoring practice and identifying trends or the issuing of guidance. The provision lists examples of the type of information that can be sought.

Amendment 419 expands on the publishing requirement that requires the commission to, at the time of publishing any guidance that creates minimum standards in relation to the client protection fund, publish a document summarising the consultation carried out, any representations received in response to the consultation, any changes made to the commission's initial proposals for the minimum standards as a result of the consultation and the commission's reasons for including the minimum standards in the guidance.

Amendments 395, 398, 399, 402, 404 to 411, 414, 415, 417, 418 and 537 are consequential to the substantive amendments in the group or are minor technical and tidying-up amendments.

I urge members to support the amendments in this group.

I move amendment 395.

Amendment 395 agreed to.

Amendments 396 to 411 moved—[Siobhian Brown]—and agreed to.

Section 69, as amended, agreed to.

Section 70—Compensation funds: setting of minimum standards by the Commission

Amendments 412 to 419 moved—[Siobhian Brown]—and agreed to.

Section 70, as amended, agreed to.

Section 71—Enforcement of minimum standards

Amendments 420 and 421 moved—[Siobhian Brown]—and agreed to.

Section 71, as amended, agreed to.

After section 71

Amendment 422 moved—[Siobhian Brown]—and agreed to.

Amendments 533 and 534 moved—[Marie McNair]—and agreed to.

Amendment 535 moved—[Siobhian Brown]—and agreed to.

Amendment 536 moved—[Siobhian Brown].

The Convener: I call amendment 536A, in the name of Paul O'Kane.

Paul O'Kane: On the basis of further discussion, I will not be moving amendment 536A.

Amendment 536A not moved.

Amendment 536 agreed to.

Section 72—Conduct complaints: power to impose unlimited fine and removal of power to award compensation

Amendments 423 to 437 moved—[Siobhian Brown]—and agreed to.

Section 72, as amended, agreed to.

Section 73—Faculty of Advocates: complaint of professional misconduct and publication of decision

Amendment 438 moved—[Siobhian Brown]—and agreed to.

Section 73, as amended, agreed to.

Section 74—Commission membership

Amendments 439 to 441, 538, 443 and 444 moved—[Siobhian Brown]—and agreed to.

Section 74, as amended, agreed to.

Section 75—Role of the independent advisory panel

Amendments 445 to 447 moved—[Siobhian Brown]—and agreed to.

Amendment 539 moved—[Maggie Chapman]—and agreed to.

Amendment 448 moved—[Siobhian Brown]—and agreed to.

Amendment 540 moved—[Maggie Chapman]—and agreed to.

Section 75, as amended, agreed to.

Section 76—Commission reports

Amendments 449, 537 and 450 moved—[Siobhian Brown].

The Convener: Does any member object to a single question being put on amendments 449, 537 and 450?

Paul O’Kane: Yes.

The Convener: I will put the question on each amendment individually.

The question is, that amendment 449 be agreed to. Are we agreed?

Amendment 449 agreed to.

The Convener: The question is, that amendment 537 be agreed to. Are we agreed?

Amendment 537 agreed to.

The Convener: The question is, that amendment 450 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Karen (Banffshire and Buchan Coast) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Chapman, Maggie (North East Scotland) (Green)
 Gosal, Pam (West Scotland) (Con)
 McNair, Marie (Clydebank and Milngavie) (SNP)
 White, Tess (North East Scotland) (Con)

Abstentions

O’Kane, Paul (West Scotland) (Lab)

The Convener: The result of the division is: For 6, Against 0, Abstentions 1.

Amendment 450 agreed to.

Section 76, as amended, agreed to.

Section 77—Minor and consequential amendments

Amendment 451 moved—[Siobhian Brown]—and agreed to.

Section 77, as amended, agreed to.

Before section 78

The Convener: Amendment 637, in the name of Tess White, is in a group on its own.

Tess White: Amendment 637 is a straightforward amendment that will require a review of the act to be undertaken five years after royal assent. It is based on a similar amendment on post-legislative scrutiny that was made to the Abortion Services (Safe Access Zones) Bill. I remember that, when I was on the Health, Social Care and Sport Committee, we discussed that issue at length. A review was seen as good practice then, and I think that it would be good practice for the Regulation of Legal Services (Scotland) Bill too, particularly as it is the most amended bill in the Scottish Parliament’s history. It was introduced in April 2023, 43 years after the Solicitors (Scotland) Act 1980 was created. I know from my engagement with the Law Society of Scotland that it has been making the case for change to the regulatory system for many years now and that the bill is long overdue.

I note that Esther Roberton, who led the 2018 review of the regulation of legal services, was also clear that some of the operational issues that the SLCC has experienced are a result of the complexity of the Legal Profession and Legal Aid (Scotland) Act 2007, which itself was heavily amended.

Post-legislative scrutiny is always important but, against that background, it is essential. A review would ensure that the regulatory system was working for the legal profession and serving the interests of consumers. It is really important to get the balance right, but there is a danger that things will get lost in the weeds for years to come once the bill is enacted.

I thank the minister for her engagement on my amendment. Following our discussions, I recognise that the Government has concerns about a review period beginning the day after royal assent. I am happy to discuss ahead of stage 3 the possibility of basing the time period on commencement, and I will seek stakeholders’ views on that.

I move amendment 637.

Siobhian Brown: I agree with Ms White that post-legislative scrutiny is vital. On amendment 637, I am happy to continue to engage on a review mechanism. However, as Ms White stated, I retain concerns that the time period refers to royal

assent rather than commencement. I will, of course, seek to swiftly commence the legislation if it is agreed by the Parliament, but the Scottish Government wishes to work collaboratively with stakeholders, as it has done throughout the progression of the reforms, to ensure that all the prerequisites are in place. To ensure that any review provides an accurate reflection and is more meaningful, I consider that basing the time period on commencement would present a stronger, more developed position. I urge Ms White not to press her amendment in the group. If she presses it, I urge members not to support it.

11:45

Tess White: I welcome the minister's commitment to engage on amendment 637 ahead of stage 3. Given her undertaking, I will withdraw amendment 637 with a view to bringing suitable wording back at stage 3.

Amendment 637, by agreement, withdrawn.

Sections 78 to 80 agreed to.

Section 81—Removal of practising restrictions: law centres, citizens advice bodies and charities

The Convener: Amendment 452, in the name of the minister, is grouped with amendments 453 and 454.

Siobhian Brown: Amendments 452 and 453 are minor technical amendments to section 32 of the 1980 act. The effect of amendment 454 will be that section 33 of the 1980 act, which is entitled “Unqualified persons not entitled to fees, etc”, will continue to apply to law centres, citizens advice bodies and charities. I ask members to support the amendments in the group.

I move amendment 452.

Amendment 452 agreed to.

Amendments 453 and 454 moved—[Siobhian Brown]—and agreed to.

Section 81, as amended, agreed to.

Section 82—Offence of taking or using the title of lawyer

Amendment 455 moved—[Siobhian Brown]—and agreed to.

Section 82, as amended, agreed to.

Section 83—Offence of pretending to be a regulated legal services provider

Amendment 456 moved—[Siobhian Brown]—and agreed to.

Section 83, as amended, agreed to.

Section 84—Offence of pretending to be a member of Faculty of Advocates

Amendment 457 moved—[Siobhian Brown]—and agreed to.

Section 84, as amended, agreed to.

Section 85 agreed to.

Section 86—Power of the Scottish Ministers to adjust restricted legal services

Amendment 458 moved—[Siobhian Brown]—and agreed to.

Section 86, as amended, agreed to.

After section 86

Amendment 459 moved—[Siobhian Brown]—and agreed to.

The Convener: Amendment 638 is in a group on its own. The amendment was debated last week, but there was an error in the version of it that appeared in the first marshalled list. That was corrected in the second marshalled list, which was produced for today. In those exceptional circumstances, the amendment has been put in a group on its own for today's proceedings to allow members to debate the corrected version before disposing of it.

I call Tess White to speak to and move amendment 638.

Tess White: Members will recall from last week's proceedings that amendment 638, which came from the Law Society, seeks to safeguard the interests of clients when an authorised legal business is unable to continue to operate. The amendment has already been debated, and the minister advised that she is happy to support it. As the convener said, because of a technical error in the first marshalled list, a correction has been made to include the missing subsections (3) to (6). Prior to disposing of the amendment today, we are revisiting it to ensure that members are aware of the correction. I understand that the Government has also been notified.

I move amendment 638.

Siobhian Brown: I reaffirm what I said when amendment 638 was debated last week. Following engagement with Tess White, I am content to support the provisions in the amendment. We might have to revisit it at stage 3 to ensure that the revised provisions will work fully with the wider legislation, and I look forward to engaging with Tess White further on that. The Government is willing to support her amendment 638. Accordingly, I will withdraw amendment 508.

Amendment 638 agreed to.

Amendment 639 moved—[Paul O’Kane]—and agreed to.

Section 87—Modification of other enactments

Amendment 460 moved—[Siobhian Brown]—and agreed to.

Section 87, as amended, agreed to.

Schedule 3—Minor and consequential modifications of enactments

Amendments 461 to 467 moved—[Siobhian Brown]—and agreed to.

The Convener: Amendment 468 is grouped with amendments 469, 470, 472 and 478.

Siobhian Brown: The amendments in this group seek to amend the Solicitors (Scotland) Act 1980 to bring clarity to the Law Society’s role in the investigation of conduct and regulatory complaints.

Amendment 468, which relates to conduct complaints, will do a number of things. It makes the necessary consequential and procedural changes following the bill’s introduction of a new power to allow the Law Society to initiate conduct complaints and investigate them without being required to first remit them to the SLCC. It will provide the Law Society with powers when investigating and determining conduct complaints, such as the ability to propose or accept a settlement in respect of a complaint and the ability to discontinue an investigation or reinstate a discontinued investigation. The amendment will provide avenues of appeal to the SSDT and, subsequently, to the court on those decisions.

The amendment will provide measures that may be taken by the Law Society if it makes a determination upholding a conduct complaint. Those measures include censure and the imposition of a fine or of conditions on a solicitor’s practising certificate.

The amendment will also make the system for conduct complaints more efficient, saving time and resources. The Law Society currently investigates complaints about “unsatisfactory professional conduct”, while the most serious complaints of “professional misconduct” are prosecuted before the SSDT. In cases where the SSDT is satisfied that the solicitor is not guilty of misconduct, it can decide that the solicitor is, however, guilty of the lesser matter of unsatisfactory professional conduct. In such cases, it is required to refer the complaint about UPC to the Law Society. Amendment 468 will give the SSDT a new power to deal with complaints about unsatisfactory professional conduct that

arise from an initial complaint of professional misconduct.

Amendment 469 makes provision in respect of regulatory complaints and mirrors the conduct complaints provisions in amendment 468. It will introduce the ability for an authorised legal business or a licensed provider to appeal to the tribunal against a decision by the Law Society to uphold a regulatory complaint. The decision of the SSDT will also be appealable to the court.

It is important that the Law Society, in its role as a category 1 regulator, can consider and determine regulatory complaints without being overly prescriptive about how such complaints will be processed, and that should be provided for in the practice rules. Amendment 470 will therefore require the Law Society to make rules about the procedures for making decisions in relation to complaints. Those rules must have the approval of the Law Society and they will not have effect unless they are approved by the Lord President.

Amendment 472 will make related modifications to the 1980 act, including requiring the Law Society to consult the commission before making any rule relating to the society’s functions under the 2007 act.

Amendment 478 will make consequential changes relating to conduct complaints to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. Those changes mirror the changes that will be made to the 1980 act by amendment 468, in so far as they relate to conveyancing and executry practitioners.

I ask members to support the amendments in the group. I move amendment 468.

Maggie Chapman: I thank the minister for lodging her amendments in the group. I support them all. However, I put on the record the comments that we have all received from the SSDT. It welcomes the changes and acknowledges that they are a product of many positive conversations, but it has pointed out that, because the changes are being made at this stage, some people may not have been able to fully assess the impact of the amendments.

Will the minister agree to have conversations about that with the SSDT and the committee before stage 3? I suggest that, once we have the bill as amended at stage 2, the committee ensures that all stakeholders that are affected by the amendments have had time to explore them in advance of stage 3, because we are making some significant changes.

Siobhian Brown: I assure Ms Chapman that I will be very happy to discuss that further in advance of stage 3.

Amendment 468 agreed to.

Amendments 469 to 472 moved—[Siobhian Brown]—and agreed to.

The Convener: Amendment 473, in the name of the minister, is grouped with amendments 501, 502, 506 and 509 to 521.

Siobhian Brown: Amendments 473, 509, 510, 516 and 520 will make a number of technical amendments to the Solicitors (Scotland) Act 1980, following substantive changes that will be made to that act by other parts of the bill.

Amendment 501 will amend the 1980 act in relation to the Law Society's function of keeping and maintaining a roll of solicitors, with changes including imposing requirements regarding the accessibility of the roll, reflecting modern practice and technology. Amendment 501 will also make similar changes to the 1990 act.

Amendment 502 will allow that, where the tribunal decides not to restore a solicitor's name to the roll, that solicitor can appeal the decision to the court. It also makes an equivalent provision relating to registered European lawyers and foreign lawyers.

12:00

Amendment 506 will allow the Law Society, subject to certain safeguards, to rely on a previous conviction being fact when investigating a discipline matter. That should prevent delay in conduct investigations.

Amendments 511 to 513 will make changes to schedule 4 to the 1980 act, which is on the constitution, procedure and powers of the tribunal. The main changes are about improving the complaints process and include: the introduction of a requirement that each solicitor member must have in force a practising certificate when appointed; a new requirement for a copy of every decision by the tribunal to be sent to the commission; and a duty on the Law Society to give effect to that decision.

Amendment 514 will allow that, where the tribunal dismisses a complaint of professional misconduct on the part of a solicitor, or of failure on the part of an authorised legal business before inquiring into the complaint, either the council or the complainer, as appropriate, can appeal the decision to the court.

Amendment 515 sets out that any decision of the court in relation to an appeal is final.

Amendment 517 will add to the Disclosure (Scotland) Act 2020 a list of offences that relate to the legal profession. That will have the effect of making convictions for those offences disclosable convictions under that act.

Amendments 518, 519 and 521 will make minor and technical amendments that relate to offences.

I ask members to support the amendments in the group.

I move amendment 473.

The Convener: As no members wish to come in, would you like to wind up, minister?

Siobhian Brown: If I may, convener, I will just make a correction to something that I said.

Amendment 514 allows that, where the tribunal dismisses a complaint of professional misconduct on the part of the solicitor or of failure on the part of an authorised legal business before inquiring into the complaint, either the Law Society—not the council, as I said earlier—or the complainer, as appropriate, can appeal the decision to the court.

Thank you, convener.

Amendment 473 agreed to.

Amendments 474 to 478 moved—[Siobhian Brown]—and agreed to.

Amendment 640 not moved.

Amendments 479 to 497 moved—[Siobhian Brown]—and agreed to.

Amendment 650 not moved.

Amendments 498 to 502 moved—[Siobhian Brown]—and agreed to.

The Convener: Amendment 503, in the name of the minister, is grouped with amendments 504 and 505.

Siobhian Brown: Amendment 503 provides that, where a solicitor holds a practising certificate subject to conditions, they must give the Law Society six weeks' notice of their intention to apply for a practising certificate. The Law Society will then have discretion to grant or refuse the application, or to issue a certificate subject to conditions. Those conditions can be varied or removed, or further conditions imposed, after giving the solicitor the opportunity to make representations. Failure to comply with a condition may be treated as professional misconduct or unsatisfactory professional conduct on the part of the solicitor.

In addition, amendment 503 will insert proposed new section 15A into the 1980 act to give the Law Society similar discretion at any time to vary, remove or impose any conditions in relation to a practising certificate in other cases where they consider it to be in the public interest to do so, or for the protection of the public. Similarly, failure to comply may result in a finding of professional misconduct or unsatisfactory professional conduct. The changes will also help to protect those who

use legal services by strengthening the Law Society's ability to suspend a solicitor's practising certificate in cases where it considers it necessary to do so in the public interest, or for the protection of the public.

Amendment 504 will introduce a new power for the Law Society, where a solicitor has been suspended for charging excessive fees, to terminate their suspension on its own initiative, and amendment 505 will introduce a similar new power where a solicitor has been suspended for failure to comply with accounts rules.

As we come to the end of stage 2, I want to thank members for their consideration and engagement thus far. I want to move swiftly to stage 3, so my door remains open to members who wish to discuss the bill ahead of the final stage.

I ask members to support the amendments in the group.

I move amendment 503.

Amendment 503 agreed to.

Amendments 504 to 507 moved—[Siobhian Brown]—and agreed to.

Amendment 508 not moved.

Amendments 509 to 520 moved—[Siobhian Brown]—and agreed to.

Schedule 3, as amended, agreed to.

Sections 88 and 89 agreed to.

Section 90—Ancillary provision

Amendment 521 moved—[Siobhian Brown]—and agreed to.

Section 90, as amended, agreed to.

Section 91—Interpretation

Amendments 522 and 523 moved—[Siobhian Brown]—and agreed to.

Amendment 641 not moved.

Section 91, as amended, agreed to.

Sections 92 and 93 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill.

That also concludes this morning's formal business. I thank the minister for attending. We will move into private session for the remaining item on our agenda.

12:11

Meeting continued in private until 12:21.

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