1. At the Committee’s meeting on 26 September 2017, the Committee asked whether the Law Society of Scotland (LSS) intended to implement recommendation 75 in Sheriff Principal Taylor’s Report – that solicitors who obtain clients from a claims management company should be obliged to satisfy themselves that the claims management company does not obtain clients by cold calling.

2. LSS is understandably very concerned about cold calling as a general issue, principally because of the potential for clients to be taken advantage of (vulnerable clients are particularly at risk in situation like this). As a priority, the issue of cold calling needs to be handled and LSS are very happy to support any positive action which achieves that. Realistically this is a matter outwith the control of LSS and its members and needs to be led by the government but LSS are happy to contribute in any way that assists.

3. As part of the general review of legal services that is about to take place, it seems clear that cold calling will be covered and it is to be hoped that a complete ban on cold calling follows from that exercise taking place.

4. In the short term, that does not solve the problem and we take the view that other options which provide a solution now need to be considered. From an LSS perspective, the real concern is that the problem being faced with cold calling is not really an issue which should be laid at the door of solicitors given that they have not created the problem and have very limited scope for sorting it. While it would be possible to introduce a system requiring solicitors to make enquiries about the source of claim and get verification about cold calling not having been involved, that would not be a full-proof system and simply adds to the administrative burden placed on solicitors. For a variety of reasons, LSS are keen that repeat offenders (in terms of cold calling) are targeted and the best answer appears to us to be a general ban on cold calling would be a much more immediate and effective solution and would allow solicitors to focus on reporting instances of cold calling which come to their attention. By doing that, any body/organisation that was designated as being responsible for monitoring this would be able to benefit from the input of solicitors on a case by case basis to maximise the effectiveness of the operation.

5. LSS are happy to issue guidance to members to clarify the position once it is clear what option is being taken and this was the recommendation made by Sheriff Principal Taylor in his original report. We are very aware of the issue our members and their clients face and are keen to help but the real concern is what can be done in the short term as there is an immediate problem caused by an influx of claims management companies to Scotland. Anecdotally we are aware of several claims management companies already focusing efforts on Scotland.
as a new market and that seems likely to get worse with the passage of time in the absence of any ban being introduced.

6. While we recognise that there may be certain advantages in trying to regulate claims management companies generally, we have some concerns about this in this situation given the timing issues and the difficulty in ensuring any regulation is effective. For those reasons alone, we take the view that the best solution is a ban on cold calling rather than trying to regulate claims management companies. LSS would ask the government to give serious consideration to a complete and immediate ban on cold calling but in saying that, we entirely accept and recognise that this is a matter for the government and will leave it in their capable hands to do what they consider best balancing the various interests held by affected parties.

Law Society of Scotland
15 November 2017