Thank you for your letter of 29 September. We are grateful for this opportunity to feed into the Committee’s consideration of petitions PE1660 and PE1661.

As the professional body for Scottish solicitors, we share the petitioners’ desire to improve the regulation of legal services. The Scottish legal sector has evolved considerably since the introduction of the Solicitors (Scotland) Act 1980, which is the main legislative framework governing the regulation of legal services. We are clear that reform is needed, both to protect clients’ interests and to ensure the legal sector, which contributes so significantly to the Scottish economy, can be competitive and continue to thrive.

We approach these issues with almost 70 years’ experience of delivering robust regulation of the legal profession. As the principal regulator of Scottish solicitors, we take our duty to protect the public interest extremely seriously, a fact demonstrated through the range of activity which we carry out.

First and foremost, we set high professional standards which all solicitors must meet, including a robust route to qualification along with practice rules and guidance which is regularly reviewed. Our highly trained financial compliance team inspect around 370 law firms each year to ensure compliance with our strict accounts rules. In 2015/16 and as a result of these inspections, we raised 17 complaints of our own to the Scottish Legal Complaints Commission (SLCC). Additionally we intervene quickly in firms when things go wrong, ensuring clients know who to contact, where their files are and offering the assurances they need. Even when clients choose to no longer pursue an initial complaint against their solicitor, we will raise our own complaint if it is in the public interest and in order to maintain standards. In total we raise around 30 complaints a year against solicitors to the SLCC.

By setting, maintaining and vigorously enforcing standards, we strive to ensure that consumer interests remain the central focus of our regulatory work and that consumer confidence in the Scottish solicitor sector remains high. A poll of the Scottish public in 2014 indicated that 90% of those surveyed are satisfied with the services provided by their solicitor and 82% would recommend their solicitor to others. That poll also demonstrated high levels of trust in the legal profession as a whole.

The case for change

We recognise that, despite the strong system of regulation in place, further work is needed to improve that system. This is particularly true around the area of complaints handling, where processes need to be simpler and consumer protection stronger. Given the regulatory framework and processes involved are set out within primary legislation, we are afforded little flexibility within the existing system. This is why we proactively approached the Scottish Government in 2015,
submitting a detailed paper which set out the case for new legislation to better protect consumers and allow the legal services market to thrive¹.

Our proposals include better regulation of legal firms and individual solicitors to improve standards in addition to a wider regulatory reach over other legal professionals. This is in response to the dramatic changes we are seeing in the Scottish and UK legal services market. New expectations from clients, new business models, the growth of cross border legal firms and increased technology are all serving to reshape that market. Yet most of the legislation covering the operation and regulation of the legal market is approaching 40 years old and did not anticipate the changes we are seeing today.

Whilst taking forward reform, we also believe it vital to preserve the elements and principles of the current regulatory framework which work well - the independence of the legal profession; a single professional body; independent discipline body. These must be protected.

We were delighted that, in response to our proposals, the Scottish Government established the independent review of the regulation of legal services, now being chaired by Esther Roberton. We believe this offers a real opportunity to develop a consensus on what reforms are required and how they can be effectively delivered.

**The complaints system**

We note the ultimate aim of both petitions is to urge the Scottish Parliament and Scottish Government to review complaints about providers of legal services in Scotland. We share the petitioners’ concerns and frustration in relation to the complex and unwieldy complaints process that currently exists from the existing legislation.

The introduction of the Legal Profession and Legal Aid (Scotland) Act 2007 created the Scottish Legal Complaints Commission (SLCC) which opened on 1 October 2008. The SLCC is a complaints handling body which operates independently of the Law Society and Scottish Government. It has important oversight powers in relation to the handling of conduct complaints by the legal professional bodies, including the power of audit in addition to other consumer protection matters. Under the provisions of the 2007 Act, the Law Society retains the responsibility for managing and investigating complaints relating to the conduct of Scottish solicitors.

We regularly engage with the SLCC and enjoy a close working relationship of mutual respect and recognition. We discuss shared matters of concern and ideas for improving the complaints process to the benefit of complainants and the legal profession. We are frequently in discussions with the SLCC and other stakeholders with regard to the various challenges which the 2007 Act raises in relation to legal complaints, in particular the complex processes at the gateway / eligibility stage which result in unacceptable delays.

We believe the whole system for managing legal complaints needs to be changed to make the processes involved easier and quicker for the consumer. We are currently in discussions with the SLCC regarding an interim solution which could be delivered through secondary legislation. This offers the chance to improve the system by speeding up the eligibility stage of the complaints process until such time as more permanent changes can be made.

Given that there is no ability for a complainer to make a complaint on the SLCC’s handling of a service complaint, we strongly believe there should also be independent oversight of the SLCC, particularly as the SLCC perform the oversight functions of the Law Society of Scotland and Faculty of Advocates relating to conduct complaints.

We note that during the Committee’s meeting of 21 September 2017 a number of members referred to the Law Society’s campaign which resulted in many solicitors contacting their local MSPs to express concerns over the increase in the SLCC’s budget for 2017/18. During this campaign, we raised concerns that the SLCC’s budget could not be formally objected to by Ministers or by Parliament. This emphasises the challenge about the lack of effective independent oversight of the SLCC. I enclose a copy of the standard letter which formed the basis for many of the emails sent to MSPs earlier in the year. We would be happy to provide further background information or meet members of the Committee to further clarify the circumstances that led to the campaign and our position.

We have provided some further information on each petition below:

PE1660

The petitioner argues that the existing appeals route against decisions by the SLCC, via the Court of Session, forms a barrier to those who wish to appeal.

We fully agree with this view. We recognise that the concept of pursuing legal action against a public body via the court can be a difficult and daunting process. The requirement to obtain the leave of the Court of Session can put the appeal option out of reach for the majority of complainers, even where they may have fully justified grounds for appealing. This compares starkly to the situation regarding conduct complaints dealt with by the Law Society. Here, if a complainer is not happy with the way we have handled a complaint then they have the option of taking a ‘handling complaint’ to the SLCC. Whilst this does not amount to an appeal, the SLCC can recommend the matter be re-opened for further consideration if due process has not been followed or the decision lacks reasoning. Furthermore, a complainer can appeal a decision directly to the separate and independent Scottish Solicitors’ Discipline Tribunal (SSDT).

There is no equivalent process for those complaints dealt with by the SLCC. The only recourse is through seeking leave of the Court of Session. We believe there is a case for reviewing this and hope the work being undertaken by Esther Robertson and her review group will consider this point.

The petitioner also states that the Law Society ‘appears to desire no involvement, nor introduce quality control’ in the SLCC’s handling of complaints’. It is important to stress that the current legislative framework provides us no role of oversight of the
SLCC, its processes or its decisions. Even where there may be occasions that we
disagree with a service complaint decision of the SLCC, there are no special
mechanisms which allow us to challenge or raise this other than the general
provision which are available to the general public.

We also note that comment is made in the background notes on the process by
which the SLCC lays reports before Parliament for information only. The provisions
of the 2007 Act (Schedule 1 paragraph 16) provide that the SLCC must lay their
annual report before Parliament at the end of each financial year. This is in addition
to the laying before the Scottish Parliament of the SLCC budget by the end of April
each year. These are laid for information only and Parliament has no statutory
powers to comment on or amend these in any way. As I have already outlined, we
do believe that greater oversight is needed of the SLCC and its performance, a fact
which came into stark focus during the budget issues earlier this year.

PE1661

Central to this petition is the call for a wholly independent regulator of legal services
in Scotland with no ties to the profession.

The Law Society of Scotland’s dual role of regulation and professional support has
been successfully carried out for almost 70 years. This issue was considered in
depth by the Scottish Government ahead of the 2010 Legal Services Act with a clear
conclusion that the model of having a single professional body was right for
Scotland.

At the core of any profession is a commitment to provide the best possible service to
the consumer while recognising it has a responsibility to act in the public interest in
all that it does. The regulation of the profession is the means by which the profession
ensures these aspirations are met.

Our dual role is essential in ensuring that Scottish solicitors deliver the highest
practical and ethical standards. To ensure we maintain a practical distinction
between our two roles, our regulatory function is clearly separated and works
independently of our professional support work. That regulatory activity is overseen
by the Regulatory Committee in accordance with the provisions of the Legal Services
(Scotland) Act 2010. This means it is an independent committee. The Law
Society Council is not permitted to unduly interfere with the work of the Regulatory
Committee, nor with the work of its sub-committees which are responsible for taking
specific regulatory decisions. This is all clearly set out in legislation. To strengthen
that independence, the Convener of the Regulatory Committee is chosen by the
committee and must be a lay member. Our current convener Carole Ford comes
from the teaching profession, bringing both an expertise in standards setting and
enforcement but also a clear commitment to the public interest. The committee she
chairs has an equal number of solicitor and non-solicitor members – another element
set out in legislation.

The concept of a single professional body, with both regulatory and professional
support functions, is a model seen in other sectors in Scotland and also in other legal
jurisdictions around the world.
Here in Scotland, we have the Institute of Chartered Accountants of Scotland (ICAS), the Royal Incorporation of Architects in Scotland (RIAS) and the Royal Institution of Chartered Surveyors (RICS). The teaching profession in Scotland recently moved from separate bodies into the single professional body that is the General Teaching Council. There is clear recognition across a number of professions that having a single professional body is the right approach, particularly given the size of Scotland.

Further afield, Law Societies and Bar Associations around the world have dual responsibility for regulation and professional support. These include the Law Society of Ireland, Law Societies in the provinces of Canada and states of Australia as well as bar associations in US states such as California, Florida and Texas. It provides a cost effective, practical, and coordinated professional approach which works in the interests of the consumer.

Nevertheless, we recognise the specific areas of concern which the petitioner highlights. The petitioner’s background information notes how the Law Society of Scotland cannot become involved in the decisions of the independent complaints handling body, the SLCC. If there is concern over the accountability of the existing independent complaints body, we do not agree that the way to correct this is to create a new regulatory body. Rather it would be better to create the kind of effective oversight of the SLCC which I have described earlier, the kind of oversight which the Law Society faces from our own Regulatory Committee, the SLCC, the SSDT and the Courts.

The background notes also assert that over 600 complaints were dismissed as a result of the court ruling in Anderson Strathem vs. SLCC (CSIH 71XA16/15). As a result of the ruling, which affected around 250 complaints already in the system, the Court of Session has now made a further judgment on the way these cases should be dealt with. We are working with the SLCC to implement the judgment which centres on the way the SLCC have categorised complaints.

We have worked constructively and collaboratively with the Parliament and other organisations throughout the passage of the Acts of the Scottish Parliament referred to in the petition background notes. As a professional body which has a statutory duty to protect and further the interests of the public and consumers, we have put forward proposals which demonstrate our commitment to these values.

As I have noted, the Scottish Government appointed an independent group to review the provision and regulation of legal services in Scotland, chaired by Esther Roberton. The Committee may wish to consider contacting the review group regarding opportunities for the public, including the petitioners, to present their views on the complaints process for consideration.

Thank you again for the opportunity to respond to these petitions. If we can provide any further points of clarification or aid the Committee’s consideration of these petitions further, please contact our Legislative Change Executive.

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https://www.scotcourts.gov.uk/search-judgments/judgment?id=fba635a7-8980-69d2-b500-f0000d74aa7