Thank you for your letter of 26 September about the Petitions Committee on 21 September about petitions PE1660 (Bill Tait) and PE1661 (Melanie Collins) relating to regulation and complaints in legal services.

We spoke on 27 October. For some reason, which neither of us could identify, we had not received the original letter, although had been expecting it and indeed had emailed on 10 October to ask if we were to receive such a letter. We’re very grateful, therefore, that you allowed us a short extension to respond.

We agree there is a strong case for reform in some areas, we have actively lobbied for this, and we’re confident the current Independent review of the regulation of legal services will address matters.

In this letter the SLCC sets out our general position on reform first, which significantly pre-dates the petitions, and then addresses some specific issues raised in the petitions.

THE SCOTTISH LEGAL COMPLAINTS COMMISSION

The Scottish Legal Complaints Commission (SLCC) is the independent gateway for all complaints about solicitors, advocates and commercial attorneys. We have experience of handling over 10,000 complaints, and last year alone awarded consumer redress over £324,000. An independent Consumer Panel also helps guide our work.

For a two-page summary of our work, and its impact on consumers see: https://www.scottishlegalcomplaints.org.uk/media/69464/annual_review.pdf

OUR PROPOSALS FOR REFORM

The SLCC has actively called for radical change to the regulation of the sector. In July 2016 we published our paper #ReimagineRegulation, which is available on our website: https://www.scottishlegalcomplaints.org.uk/reimagine-regulation.aspx. A detailed set of supporting appendices provide, among other things, a history of the Scottish Parliament’s involvement in these issues since the parliament’s creation. We hope this is of assistance to the Committee.

The SLCC robustly highlighted key areas for change which we believe could deliver better results for the sector and for the consumer:

1. **Unravelling the current complex complaints maze**
   Up to four statutory bodies can be involved in a single case, causing duplication and delay. We provide a visual representation of the ‘customer journey’ to highlight the current problems.
2. Reducing statutory detail that focuses on processes, not outcomes for people
   Complex and inflexible processes have lost sight of the principles of better regulation and distracted from a focus on the outcomes for the public and sector.

3. Ensuring that when redress is awarded the client receives it
   In too many cases redress is awarded but failings in the current system mean the complainer does not receive it, undermining confidence in the system.

4. Targeting risk, and not seeing all legal services as the same
   For example, conveyancing is a major driver of all regulatory costs across more than one statutory body – how do we either better support, or more proportionately regulate, in that area to reduce this consumer detriment?

5. Embedding the consumer principles
   Professional voices in debates in regulation are always informed, strong, and well resourced. We need to understand consumer’s need, and hear their voice, if regulation is to be credible.

6. Learning from complaints and data to improve future outcomes
   Modern regulation is about identifying and targeting risk, and creating proportionate and agile structures to tackle issues in fast moving markets. 10 years after our establishment we too often find it is the same basic issues causing problems with consumers, with little done (it being outwith the SLCC’s remit) to tackle the root cause.

SPECIFIC ISSUES RAISED IN THE PETITIONS

A key question is raised about a single regulator, or at least complaints body, and the SLCC believe this merits serious consideration. The cost and confusion caused by four different bodies, for a sector of only 11,000 professionals, is an issue in its own right.

Even if a single body is not eventually possible, debating that model will more sharply focus the discussion on the core purpose and aims of regulation in the sector, and the key mechanism to reduce risk and support a sustainable market, rather than starting discussion from the perspective of the current fragmented roles and responsibilities.

The SLCC also agrees oversight issues need considered. At the moment there is a fractured framework. For example, whilst the SLCC is overseen by an independent Board of Commissioners appointed by government, is subject to Freedom of Information, and comes within the remit of Audit Scotland, not every organisation involved in regulation is currently so transparent, nor under such financial scrutiny. At the moment no bodies, including the SLCC, come under the best practice promoted by the Regulatory Reform (Scotland) Act 2014. As we continue the journey of the modernisation of legal regulation a single approach to oversight, with consistent minimum legislative requirements, would be a positive outcome.
Several statutory levies are payable by lawyers, and the value of the fees, and the balance of spending between regulatory and representative functions, should be considered in the round. None of the bodies currently involved have their budgets approved by parliament. In all governance matters legislation is balancing the need for regulation independent from government with what are appropriate governance structures. As with many issues raised, this may be best looked at in the round, as from the lawyer and consumer perspective it is the total cost of regulation which is key.

The SLCC had already raised concern at the only route of appeal being to the Court of Session. This point was made in our paper last year about reform, and we believe the legislation should be amended to allow a more proportionate mechanism. This is part of reducing the current complaints maze, so there is a single investigation, and single set of decisions, and a single appeal.

The SLCC supports the emphasis placed on independent regulation. We believe expert input into regulation is absolutely essential, and that a regulator must be credible to the profession as well as the public. However, the best model for delivering this has been contentious in previous parliamentary debates. The overwhelming trend in UK terms for regulation has been around an ongoing journey from self-regulation to independent regulation (for example, only today, joint work has been published by the four UK health departments on the evolution of governance in the regulation of health professionals: https://www.gov.uk/government/consultations/promoting-professionalism-reforming-regulation para 4.18 onwards). These petitions highlight that this is likely to be the expectation of the public.

In all of this public and consumer voices are vital. There is a deeply worrying lack of independent research into consumer needs and detriments in Scotland in the legal sector. The SLCC’s Consumer Panel has been instrumental in flagging this in recent years. However, the government’s own previous review of legal regulation in 2006 had raised this as a concern, and the situation has, if anything, deteriorated further since then (for example with Consumer Focus Scotland no longer in existence and doing work in this field). A top priority should be the creation of a better evidence base from those who use services, alongside the professional voices.

Ignoring those consumer voices has consequences, and this is relevant to one specific issue raised in this petition. In debating the legislation that led to the creation of the SLCC consumer groups valued transparency, and that the SLCC should be able to publish decisions about complaints. However, after extensive lobbying by other interests a decision was made that not only would the outcome of complaints not be published, but that a new criminal offence would be created for any divulgence of information, an offence so wide that it covers even confirming if a complaint has been received. This is out of step with other professions and sectors, and other jurisdictions, where there is more discretion to publish when there is public interest. The SLCC understands the frustration of complainers, but must abide by the current legislative framework. As with most issues covered in the petition, we had raised this ourselves last year in our paper on reform.
LEVY

We noted in the discussion within the committee mention of our consultation on the levy for solicitors last year (the fees all solicitors, advocates and commercial attorneys need to pay each year, set to cover the cost of processing complaints).

Although in past years the SLCC had managed to reduce the levy, a significant increase was proposed last year. This was driven by a number of factors, the two biggest of which were a rise in complaints and a judicial review, and 17 appeals to the Court of Session, launched by the Law Society of Scotland.

The rise in complaints had been steep, with a 12% increase in complaints against solicitors within 12 months. This has now been followed in the subsequent year by a further 2% rise, and current predictions are that complaint numbers are continuing to increase. We recognise paying the cost of complaints is not popular with any sector, and as a member led organisation the Law Society would always challenge costs, but a more positive debate would have focussed on how to tackle the common cause of complaints and reduce harm to the public.

In terms of the number of litigations by the professional body, we were pleased to win the ‘test case’, and to have the court confirm SLCC had been acting in a way consistent with ‘good public administration’. We had publicly warned these litigations would cause cost, delay and worry to complainers and practitioners, and were unnecessary, as proved to be the case. We were disappointed that in their lobbying against the levy the Law Society did not mention its own actions were one of the big drivers of cost.

CONCLUSION

I hope our #ReimagineRegulation paper displays a body which is not only ‘up for’ change, but actively trying to stimulate a debate about how parliament, government, consumers and the profession can work together to create a better system in Scotland.

The SLCC is certainly confident that the independent review of legal regulation will actively consider the issues we have been raising over the last 18 months, and which the petitions support from a public perspective, and look forward to the final report on these complex issues currently expected in July 2018.

Reimagine Regulation - SLCC priorities for a consultation on legal services regulation

Reimagine Regulation - SLCC appendices to our main paper

SLCC Annual Review 2017