Dear Alison

POST-LEGALISITATIVE SCRUTINY OF THE LEGAL PROFESSION AND LEGAL AID (SCOTLAND) ACT 2007

Thank you for your letter of 20 December raising a number of issues in relation to the operation of the legal complaints system.

The 2007 Act sets out the framework for handling complaints and underpins the process followed by the Scottish Legal Complaints Commission (SLCC). It has been subject to some adjustment through regulations, attached, and these have addressed some of the challenges in delivering an efficient and effective service for consumers. For example, the establishment of a statutory consumer group was one of the key improvements made through subordinate legislation.

The SLCC is independent of Scottish Ministers and this is specifically set out in the 2007 Act. The Board is appointed by the Scottish Ministers, with the consent of the Lord President, and the circumstances under which a member can be removed are transparent. While it is funded through a levy on solicitors, the SLCC is also independent of solicitors and advocates.

More recently, the SLCC has been subject to an appeal by Anderson Strathern that led to changes in the way it dealt with “hybrid complaints” - complaints that could be considered both a service complaint and a conduct complaint. The SLCC can now deal with a complaint that is clearly only a service complaint; and an agreement will be made between the SLCC and Law Society of Scotland on which body should deal with complaints which may be considered “hybrid”. These changes affected a number of complaints already being dealt with by the SLCC under the categorisation of “hybrid” complaints and these complaints required re-categorisation to ensure they were being dealt with by the correct body. This decision to recategorise was also the subject of an appeal by the Law Society of Scotland which went in favour of the SLCC. This clearly had an impact on timeframes for dealing with...
complaints. We are assured by the SLCC and Law Society that the process of categorisation is running smoothly and both organisations are working well together to categorise complaints as efficiently as possible.

Meantime, the SLCC and the Law Society have recently proposed a number of changes to the system that might be made in the shorter term. These are currently being considered by officials.

You reference the Independent Review of the Regulation of Legal Services which is currently underway. This review, chaired by Esther Roberton, Chair of NHS 24 Scotland, was established in April 2017, with the remit to:

- consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector;
- recommend a framework which will protect the public and consumer interest, promote the principles of accountability, consistency, flexibility, transparency, cost-effectiveness and proportionality;
- ensure that the regulatory framework retains the confidence of the profession and the general public;
- undertake specific research into the extent of the unregulated legal services market in Scotland and investigate any impacts on consumers, as well as developing a better understanding of the structure of the legal services market.

The review group is made up of a range of representatives with experience of broader regulatory regimes, who have a background in consumer rights as well as the legal profession. It is a well-balanced group very able to consider the broad range of issues and interests relating to the regulation of legal services, including the complaints handling process. The way in which complaints against legal services providers are dealt with is an integral part of the issues being considered by that group.

In addition to those that form part of the review group, the Chair has met with a range of interested individuals and organisations, and continues to do so. The review also issued a call for evidence seeking to further broaden the input that will inform the resulting report, due in the Autumn.

It is therefore appropriate to await the outcome of that review which can inform Scottish Ministers on future wider reforms of both the way in which legal services are regulated and complaints managed.

I hope you find this helpful.

Yours sincerely

DENISE SWANSON