

Regulation of Legal Services in Scotland – MSP Briefing for Stage 2 Proceedings

Introduction

1. [Consumer Scotland](#) is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament.
2. The Equalities, Human Rights and Civil Justice (EHRCJ) Committee will consider Stage 2 amendments to the Regulation of Legal Services (Scotland) Bill over several meetings during May 2024. Consumer Scotland recognises that the co-regulatory model set out in the Bill attempts to balance and deliver the key priorities of stakeholders. Consumer Scotland considers that a single, independent regulator, responsible for the whole system of regulation, complaints and redress, working across the whole legal services market, would have had greater potential to improve consumer outcomes. However, we acknowledge that the Bill does seek to address current weaknesses within the regulatory system. The Bill already represents a compromise position and it is important that the focus on the needs of consumers and the promotion of the public interest is not diluted as the Bill progresses. **The reforms instituted by the Bill should result in tangible improvements in outcomes for consumers** who use legal services in Scotland.

How People in Scotland Use Legal Services

3. Consumers using legal services are often dealing with difficult or stressful circumstances. They can be vulnerable because of their [personal situation](#), such as experiencing bereavement or relationship breakdown or there may be issues with their capacity to make informed decisions due to illness or disability. Consumers also experience vulnerability in how they use legal services, due to the technical nature of legal information and the language and structures of the legal system.
4. Our recent research, [Using Legal Services in Scotland](#) shows that **almost half (48%) of adults in Scotland have experienced events in the last two years that may have resulted in them needing legal support**. Almost a third (31%) told us they have used legal services in this period, with 75% of those using the services of a solicitor, 5% using a Citizens Advice Bureau and smaller numbers using other sources of help. The widespread need for and use of legal services underlines the importance of getting the regulatory system right, so that it works for both consumers and providers.
5. As part of our research, **we asked people who had recently used legal services whether they thought it was acceptable for the same organisation to both regulate and represent lawyers. A clear majority (73%) said this was unacceptable**, with only 20% saying it was acceptable. For consumers to have confidence in the proposed co-regulatory model, **there need to be strong checks and balances in place and the system must be transparent, accountable and subject to appropriate oversight**.

The Regulatory Landscape and Framework

6. Consumer Scotland welcomes the regulatory objectives set out in the Bill, including the requirements for the professional regulatory bodies to protect and promote the interests of consumers and the wider public interest, and to promote access to justice. We support these bodies having to take into account the [consumer principles](#). To understand whether the regulatory framework is effective in achieving these regulatory objectives, **we need to put in place ways to monitor the effectiveness of the system. It must be clear who has the responsibility, and the authority, to assess the performance of the system.**
7. The decision not to implement an independent system of regulation inevitably results in a degree of complexity due to the presence of multiple bodies and their distinct processes. We note that the EHRCJ Committee identified concerns around the **creation of two categories of regulator with different regimes - the Law Society of Scotland is designated as a category 1 regulator and the Faculty of Advocates and Association of Construction Attorneys as category 2. This adds rather than reduces complexity** which is not in the best interests of consumers. These concerns have not yet been adequately addressed.
8. **We support the extension of the SLCC's standard setting and monitoring powers. We also support the widening of the Consumer Panel's remit** to allow it to look at legal services generally, and commission research into consumer issues, rather than simply focusing on complaints. **The Panel will require adequate support and resourcing** to deliver this. Expectations around the Panel and how it is resourced must be clear, with its functions, remit and funding understood across the sector.
9. We are **pleased to see measures to introduce entity regulation** for legal firms which has potential to broaden the types of provision, improve access to justice and make support more widely available for consumers.

Accountability and Oversight

10. **The Bill seeks to put in place a number of checks and balances to protect consumers and promote accountability and transparency.** We support requirements for regulators to publish annual reports and comply with Freedom of Information requirements. These measures should improve how the system works for consumers and give assurance about how well the system is operating.
11. The Bill currently allows for the performance of a legal services regulator to be reviewed following a request by the Scottish Parliament, the Competition and Markets Authority (CMA) or Consumer Scotland. The Scottish Government has said it will look to designate the Lord President as the recipient of any referral. This review power is an important check and balance, providing a mechanism for independent oversight of the regulatory functions exercised by the professional regulatory bodies. It provides one way of ensuring that there is a way of “overseeing the overseer” as the EHRCJ Committee noted in its report.

12. **There must be a robust evidence base that allows bodies to determine whether or not there are problems with a regulator that should be referred for a performance review.** In particular, good quality, timely evidence will be needed about whether the regulatory bodies are operating in a way that delivers the objectives set out in the Bill and whether the system is meeting the needs of all consumers, including those in vulnerable circumstances.
13. The review process is currently predicated on failure, in that it is designed to examine whether the professional regulatory bodies are meeting legislative requirements or acting in accordance with the regulatory principles. This misses an opportunity to put in place more positive measures.
14. We believe that **these review powers could be substantially improved in a number of specific ways:**
 - The Lord President should be able to conduct a **review on their own initiative**, as well as on the recommendation of any named body
 - The review power, rather than simply examining failures, could be framed more positively, allowing say, a **regular review aimed at examining whether the regulatory objectives are being met** and whether there are **opportunities to improve consumer outcomes** in the sector
 - The Lord President must be given appropriate **powers to obtain information** to determine whether the professional regulatory bodies are complying with their obligations.
15. The use of these powers **must be informed by an assessment of the needs and experience of consumers.** In giving evidence to the Committee, members of the judiciary noted that *there are many ways in which [the regulatory framework] could be improved, and it may be that a process with more consumer involvement would improve it.* The consumer voice in any review process could be strengthened if:
 - Consumer bodies were required to be consulted on the development of any rules and guidance put in place setting out how the review process will operate
 - Consumer bodies were provided with the opportunity to input into any individual review, ensuring their experience and knowledge can be drawn on.
16. The undertaking of a review, in a consumer-facing sector, is a public function and a regulatory duty, and must be undertaken in a way that is accountable and transparent. This **accountability could be improved** by ensuring that the Lord President should:
 - provide a statement of reasons setting out their decision to accept or reject any recommendation that a review be carried out
 - be required to report on how they have approached undertaking their legislative functions over the past year, as required of other regulators

- be subject to the requirements of the Consumer Duty under the Consumer Scotland Act 2020 and of the Freedom of Information Act in carrying out this review function.

Complaints

17. The regulatory system must allow consumers to obtain swift and effective redress when things go wrong. We support the reintroduction of hybrid complaints, which have elements of both conduct and service. We also support the removal of the current right to appeal and its replacement with an Internal Review function, similar to that operated by other Ombudsmen and other legal services complaints bodies in the UK.
18. **There is broad agreement that the current complaints system is too complex.** Our [research](#) indicated that less than half of adults in Scotland were confident that they knew how to make a complaint, A third of those who said they were confident also gave answers suggesting an incorrect understanding of the correct route for first tier complaints. The Bill sets out a more flexible and proportionate process for considering complaints. **We support the recommendation of the EHRCJ Committee that any additional potential for simplification should be explored.** It is important that any later amendments to the Bill do not reintroduce unnecessary complexity to the complaints process as this will result in the system being more costly to administer and less responsive to consumer needs.
19. Once any process is determined, resources must also be allocated to ensuring that consumers are aware of and can understand their routes to redress. This is especially important if unregulated legal services providers are to be brought within the scope of complaint processes.

Conclusion

20. The Bill puts in place a clearer set of regulatory objectives, aiming to protect the interests of consumers. It is important that consumers can have confidence in the regulatory system and know that their interests are protected in the event that providers go out of business, or poor service is received. There must be sufficient checks and balances to reduce the risk of harm to consumers and to allow them to resolve issues quickly and fairly when problems do arise.
21. The Bill seeks to create a more proportionate, accountable and flexible regime which places consumers at the heart of the system. However, to implement the consumer principles in practice, we need an effective system of monitoring, with an evidence base that allows us to both understand consumer experiences and assess regulatory performance. We know that consumers have concerns about whether co-regulatory systems can protect their interests. The oversight and transparency measures created by these reforms are necessary to ensure consumer confidence and to secure the effective operation of the safeguards set out in the Bill.