

# Citizen Participation and Public Petitions Committee

2nd Meeting, 2021 (Session 6), Wednesday, 1  
September 2021

PE1851: Justice for the public in the legal  
system

## Note by the Clerk

<b>Petitioner</b>	Melanie Collins and William Tait
<b>Petition summary</b>	Calling on the Scottish Parliament to urge the Scottish Government to urgently review and reform the Scottish legal system, including an update of the systems and practices to ensure bodies, authorities and institutions are fit for purpose.
<b>Webpage</b>	<a href="https://petitions.parliament.scot/petitions/PE1851">https://petitions.parliament.scot/petitions/PE1851</a>

## Introduction

1. This is a new petition that was lodged in Session 5 of the Scottish Parliament, on 4 March 2021.
2. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe A**.
3. While not a formal requirement, petitioners have the option to collect signatures and comments on their petition. On this occasion, the petitioner elected to collect this information. 34 signatures and 8 comments have been received. Members may wish to note that petitions lodged in Session 6 can collect signatures only.
4. The Session 5 Public Petitions Committee agreed to seek advanced views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe B** of this paper.

5. A submission has been provided by the petitioners. This is included at **Annexe C**.
6. Submissions have also been received from Gary Ballantyne and Caroline Kenneil. These are included at **Annexe D** of this paper.

## Scottish Government submission

7. The Scottish Government submission highlights it commissioned an Independent Review of Legal Services Regulation, chaired by Esther Roberton, to make recommendations to reform and modernise the current regulatory framework to ensure a proportionate approach, support growth and competitive provision in the sector.
8. Key stakeholder engagement took place between October 2017 and June 2018 and a call for evidence which took place between 29 January 2018 and 30 March 2018.
9. The submission notes the Scottish Government's [response](#) to the report, published in 2019 set out that it would seek to build consensus, where possible, on the way forward prior to deciding on a course of action.
10. It states, "Collaborative engagement with those from within the regulatory framework and organisations representing the consumer perspective has been instrumental in building consensus around issues for consultation on the matters arising out of the review".
11. The Scottish Government advises it had intended to bring forward a consultation in 2020 to seek views on those matters. However Ministers took a view that due to the combined pressures of EU exit and responding to Covid-19 the circumstances were not right to publish the consultation. It is anticipated that a consultation will be published in the next session of Parliament.
12. The submission highlights there is other work ongoing to progress some of the issues raised in the independent review, such as work to consider interim improvements to the complaints system ahead of wider reform. A consultation seeking views on potential improvements to the legal complaints system, within the current legislative framework of the Legal Profession and Legal Aid (Scotland) Act, ran from 23 December 2020 to 20 February 2021.
13. The Scottish Government is currently analysing the responses to that consultation and a report setting out next steps will be published in due course. It will update the Public Petitions Committee of key developments.
14. In relation to a judicial register of interests, the submission advises there is currently a petition (Petition PE1458) before the Justice Committee which calls for the introduction of a judicial register of interest.

15. The Cabinet Secretary for Justice most recently responded to this on [7 February 2020](#) and that response discussed the Scottish Government's view on a register of interests and existing measures in place regarding the judiciary.
16. In relation to law reform, the submission advises the Scottish Law Commission (SLC), established under the Law Commissions Act 1965, has the statutory function of keeping the law under review with the ultimate task of recommending reforms to improve, simplify and update the law of Scotland. The SLC's Programmes of Law Reform, which are agreed by Scottish Ministers, ensure that reforms are recommended across a broad spectrum of Scots law.
17. In November 2011 a Law Reform Working Group, consisting of officials from the Scottish Parliament, Scottish Government and Scottish Law Commission, was set up to consider the rate of implementation of reports of the SLC.
18. The submission notes the Group recommended that, in order to increase the implementation rate of Scottish Law Commission reports, a mechanism should be introduced whereby the Delegated Powers and Law Reform Committee ("the Committee") could be designated as lead committee in consideration of Bills implementing Commission reports where the conditions set out in this report were met.
19. In the spring of 2019 the Committee established a working group to review the Presiding Officer's determination for designating a Bill as an SLC Bill which may be referred to it for scrutiny.
20. The submission notes that after taking evidence from relevant stakeholders, the working group reported its findings to the Committee in February 2020. In turn the Committee has recommended changes to the Presiding Officer's determination in the light of experience to date to further help enable an increase in the implementation rate of Scottish Law Commission reports.
21. The submission advises that in relation to legal aid, the Scottish Government recognised that changes to primary legislation are required and, following an [independent review](#), undertook a full public [consultation](#) to help inform a Legal Aid Reform Bill between June – Sept 2019.
22. The findings and analysis of this [consultation](#) were published in June 2020. The submission notes that overall there is clear support for the guiding principles of reform that legal aid has the user at its centre and is flexible to adapt to emerging needs.
23. Working closely with stakeholders, the Scottish Government advises it will develop proposals, and give particular consideration to how more targeted and planned interventions can support user need, align with identified government priorities, and assist legal aid in being rightly recognised as an invaluable public service. This will be taken forward as part of a programme of wider reform around legal aid in Scotland.

24. The Scottish Government is currently undertaking a review of Mediation and wider Dispute Resolution. It advises there needs to be systematic reform in a number of areas to overcome the structural and cultural challenges identified by the Scottish Mediation Expert Group report entitled "[Bringing Mediation into the Mainstream in Scotland](#)" which was published in June 2019.
25. It is developing its policy on a collaborative basis with key delivery partners before exposing our proposals for Mediation and wider dispute resolution to Scottish Ministers and public consultation after the Scottish Parliament Elections in May 2021.
26. The SPICe briefing advises the [Scottish Government published a consultation on 23 December 2020](#) proposing improvements to the legal complaints system which could be put into effect by secondary legislation.<sup>1</sup> The proposals in this consultation, which closed on 20 February 2021, fall into three categories:
1. Changes to the process of complaint categorisation.
  2. Changes to the process of complaint investigation, reporting, determination and conclusion of cases.
  3. Changes to the rules for fee rebates (the SLCC can grant fee rebates to complainers where their service complaints are successful).
27. SPICe understands from the Scottish Government that the aim would be to bring forward secondary legislation covering these proposals early in the next session of the Parliament ahead of more wide-ranging reform on legal services (including legal complaints).

## Petitioner submission

28. In their written submission, the petitioners state that the issues within this petition "impact all living in Scotland".
29. They ask to provide oral evidence to the Committee, explaining that their evidence "is of such a concern it would be imprudent and unsafe to set it in text for free publication."

## Other submissions

30. Gary Ballantyne and Caroline Kenneil both raise similar concerns to the petitioners in relation to the Scottish Legal Complaints Commission and the Crown Office and Procurator Fiscal Service. Both believe legal members breach the rule of law both in and out of court.

## Action

31. The Committee is invited to consider what action it wishes to take on this petition.

**Clerk to the Committee**



## Briefing for the Citizen Participation and Public Petitions Committee

**Petition Number:** [PE1851](#)

**Main Petitioner:** Melanie Collins and William Tait

**Subject:** Justice for the public in the legal system

Calls on the Scottish Parliament to urge the Scottish Government to urgently review and reform the Scottish legal system, including an update of the systems and practices to ensure bodies, authorities and institutions are fit for purpose.

### Introduction

The petitioners argue that the system for complaints against solicitors in Scotland is not working. The petition states that:

“The Scottish Legal Complaints Commission (SLCC) has been in operation, at some financial cost to the tax payer, for twelve years and we would submit that there has been no improvement in the servicing of complaints as opposed to the old system through the Law Society. We would go so far as to suggest that the system is not fit for purpose and negatively impacts on the Scottish public. We believe every unfair dismissal of a complaint witnesses a member of the public paying a legal invoice for a sub-standard service.”

In 2017 the petitioners submitted two petitions on the same matter:

- [PE1660](#) – Scottish Legal Complaints Commission review (William Tait)
- [PE1661](#) – Complaints against solicitors (Melanie Collins)

### Scottish Legal Complaints Commission (SLCC)

The SLCC is an independent body set up by the Legal Profession and Legal Aid (Scotland) Act 2007 (2007 Act) to deal with complaints against legal practitioners in Scotland. It is funded by a levy paid by legal practitioners and acts as the initial gateway for complaints.

Once the SLCC has received a complaint, it assesses whether it is a:

1. Service complaint – i.e. related to the quality of work; or a
2. Conduct complaint – i.e. related to a legal practitioner’s fitness to carry out work, and behaviour outside of business.

The SLCC is only permitted to deal with service complaints. If a complaint concerns conduct, the SLCC passes it on to the relevant professional body to investigate. The SLCC can, however, investigate the way conduct complaints have been handled by a professional body (known as a "[handling complaint](#)").

For further details on the complaints system see the SPICe briefings for the petitioners' previous petitions (i.e. [for petition PE1660](#) and [for PE1661](#)).

## **Previous committee work and the Independent Review of the Regulation of Legal Services**

[The Public Petitions Committee decided on 21 September 2017 to consider petitions PE1660 and PE1661 together as they raise similar issues.](#)

Shortly before that, on 25 April 2017, the Scottish Government announced the launch of an [independent review](#), led by NHS 24 chair Esther Robertson, on the regulation of legal services in Scotland, including the complaints system.

According to the Scottish Government, the review follows:

“...concerns that the current legislative framework is not fit for purpose and has not kept up with developments in the legal services market. There are also worries that the current processes for people wishing to make complaints about their solicitor are too slow and too complex.”

[The Committee agreed on 22 March 2018 to defer consideration of the petitions until the findings of the Independent Review were published.](#)

[The report of the Independent Review was published on 23 October 2018.](#) It took the view that the current complaints system was not fit for purpose (see page 44). It recommended the setting up of a single regulator for all legal services which would also be responsible for developing a complaints process.

[The Scottish Government responded to the report on 25 June 2019.](#) The response stated that reform of the complaints process was required but that:

“there is little consensus on the extent to which wider reform is required, and how the structure of the complaints and redress process should be administered and formed”

It also indicated that:

“With this in mind the Scottish Government is working with the Law Society of Scotland, the Faculty of Advocates and the Scottish Legal Complaints Commission to attempt to identify improvements to the complaints process that may be made in the interim.”

The response also indicated that the Scottish Government would issue a public consultation on legal services regulation.

[On 12 September 2019, the Committee agreed to close petitions PE1660 and PE1661](#) on the basis that the Scottish Government was taking action to address the recommendations of the Independent Review.

[On 4 December 2021, the Scottish Government wrote to the Justice Committee indicating that it had decided to delay its consultation on legal](#)

[services regulation to the next session of the Scottish Parliament due to time pressures caused by the COVID-19 pandemic and Brexit.](#)

Subsequently, the [Scottish Government published a consultation on 23 December 2020](#) proposing improvements to the legal complaints system which could be put into effect by secondary legislation.<sup>1</sup>

The proposals in this consultation, which closed on 20 February 2021, fall into three categories:

1. Changes to the process of complaint categorisation.
2. Changes to the process of complaint investigation, reporting, determination and conclusion of cases.
3. Changes to the rules for fee rebates (the SLCC can grant fee rebates to complainers where their service complaints are successful).

SPICe understands from the Scottish Government that the aim would be to bring forward secondary legislation covering these proposals early in the next session of the Parliament ahead of more wide-ranging reform on legal services (including legal complaints).

### **Key organisations/people**

- The SLCC
- The Faculty of Advocates
- The Law Society of Scotland
- The Association of Commercial Attorneys
- The Scottish Government
- The UK Competition and Markets Authority
- Esther Robertson
- Citizens Advice Scotland
- Which?

### **Angus Evans**

Senior Researcher  
2 March 2021

SPICe researchers are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot).

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent

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<sup>1</sup> Section 41 of the 2007 Act gives the Scottish Ministers powers to make regulations amending the duties and powers of the SLCC.

changes.

**PE1851/A**

Scottish Government submission of 1 March 2021

I refer to your correspondence dated 21 January 2021, which seeks the Scottish Government's views on petition PE01851 by Melanie Collins and William Tait:

*“Calling on the Scottish Parliament to urge the Scottish Government to urgently review and reform the Scottish legal system, including an update of the systems and practices to ensure bodies, authorities and institutions are fit for purpose.”*

Whilst this petition is widely framed, the background focuses on the Scottish Legal Complaints Commission and the Independent Review of the Regulation of Legal Services. In addition it calls for a register of interest with reference to solicitors and the Judiciary. This response focuses largely on those areas, but also covers just some of the other areas where the Scottish Government has reviewed, responded to, or is considering reform of the Scottish legal system. The Scottish Government would be happy to consider providing additional information to the Committee in relation to further areas if helpful.

**Legal services regulation**

The Scottish Government commissioned an Independent Review of Legal Services Regulation<sup>1</sup>, Chaired by Esther Robertson, to make recommendations to reform and modernise the current regulatory framework to ensure a proportionate approach, support growth and competitive provision in the sector, whilst placing consumer interests at its heart.

The review process was fair, inclusive and independent. The key stakeholder engagement took place between October 2017 and June 2018. The Chair met with numerous stakeholders, numbering over 100 people. Groups representing consumer interests in the legal sector were engaged, as were key organisations within the justice system and members of the legal profession. A broad and formal gathering of views were received through the Call for Evidence which took place between 29 January 2018 and 30 March 2018.

The Scottish Government response<sup>2</sup> to the report, published in 2019 set out that we would seek to build consensus, where possible, on the way forward prior to deciding on a course of action. This was in recognition of the polarised views expressed at the primary recommendation of the review, and therefore we advised that we would issue a public consultation to inform the design and the extent of reform.

Collaborative engagement with those from within the regulatory framework and organisations representing the consumer perspective has been instrumental in building consensus around issues for consultation on the matters arising out of the review.

Included in those discussions were; the Law Society of Scotland, the Faculty of Advocates, the Scottish Solicitors Discipline Tribunal, the Association of Commercial

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<sup>1</sup> [Review of the Regulation of Legal Services \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk)

<sup>2</sup> [Independent review of legal services regulation in Scotland: our response - gov.scot \(www.gov.scot\)](https://www.gov.scot)

Attorneys, the Scottish Legal Complaints Commission (SLCC), the SLCC Consumer Panel, the Competition and Markets Authority, Citizens Advice Scotland, and the consumer group Which?.

The Scottish Government had intended to bring forward a consultation in 2020 to seek views on those matters. However Ministers took a view that due to the combined pressures of EU exit and responding to Covid-19 the circumstances were not right to publish the consultation.

Therefore due to the juncture of this parliamentary session, we anticipate that a consultation will be published in the next session of Parliament. The timing of any consultation is unlikely to have an impact on the timing of any potential legislation, again due to pressure on the legislative timetable presented by EU exit and responding to Covid-19, currently anticipated for the next session of parliament. The Minister for Community Safety wrote to advise the Justice Committee on 4 December 2020<sup>3</sup>, officials also wrote to advise the Public Petitions Committee.

There is other work ongoing to progress some of the issues raised in the independent review, such as work to consider interim improvements to the complaints system ahead of wider reform. A consultation seeking views on potential improvements to the legal complaints system, within the current legislative framework of the Legal Profession and Legal Aid (Scotland) Act, ran from 23 December 2020 to 20 February 2021. The Minister for Community Safety wrote to advise the Justice Committee of its publication on 23 December 2020, officials also wrote to the Public Petitions Committee. We are currently analysing the responses to that consultation and a report setting out next steps will be published in due course, we will update the Public Petitions Committee of key developments.

### **Judicial Register of Interests**

There is currently a petition (Petition PE1458) before the Justice Committee which calls for the introduction of a judicial register of interest. The Cabinet Secretary for Justice most recently responded to this on 7 February 2020 and that response discussed the Scottish Government's view on a register of interests and existing measures in place regarding the judiciary. It can be accessed [here](#).

### **Law Reform**

The Scottish Law Commission (SLC), established under the Law Commissions Act 1965, has the statutory function of keeping the law under review with the ultimate task of recommending reforms to improve, simplify and update the law of Scotland. The SLC's Programmes of Law Reform, which are agreed by Scottish Ministers, ensure that reforms are recommended across a broad spectrum of Scots law.

In November 2011 a Law Reform Working Group, consisting of officials from the Scottish Parliament, Scottish Government and Scottish Law Commission, was set up to consider the rate of implementation of reports of the SLC. The Group

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<sup>3</sup> [Letter from The Minister for Community Safety to the Convener \(4 December 2020\)](#)

recommended that, in order to increase the implementation rate of Scottish Law Commission reports, a mechanism should be introduced whereby the Delegated Powers and Law Reform Committee (“the Committee”) could be designated as lead committee in consideration of Bills implementing Commission reports where the conditions set out in this report were met.

More recently in the spring of 2019 the Committee established a working group to review the Presiding Officer’s determination for designating a Bill as an SLC Bill which may be referred to it for scrutiny. The working group was again made up of Scottish Parliament, Scottish Government and Scottish Law Commission officials. After taking evidence from relevant stakeholders, the working group reported its findings to the Committee in February 2020. In turn the Committee has recommended changes to the Presiding Officer’s determination in the light of experience to date to further help enable an increase in the implementation rate of Scottish Law Commission reports

## **Legal Aid Reform**

Despite significant financial pressures, the legal aid system in Scotland is one of the leading jurisdictions in Europe in terms of scope, eligibility and cost, with 75% of people financially eligible to some form of civil legal aid assistance. This is in contrast to just 25% in England and Wales where cuts to scope has left many areas of civil law such as family, housing and immigration largely out of scope

The Legal Aid (Scotland) Act 1986 is now more than 30 years old and the Scottish Government recognised that changes to primary legislation are required and, following an [independent review](#), undertook a full public [consultation](#) to help inform a Legal Aid Reform Bill between June – Sept 2019.

The findings and analysis of this consultation were [published](#) in June 2020.

Overall there is clear support for the guiding principles of reform that legal aid has the user at its centre and is flexible to adapt to emerging needs. Working closely with stakeholders we will develop proposals, and give particular consideration to how more targeted and planned interventions can support user need, align with identified government priorities, and assist legal aid in being rightly recognised as an invaluable public service.

We will be taking this forward as part of a programme of wider reform around legal aid in Scotland.

## **Mediation**

The Scottish Government is currently undertaking a review of Mediation and wider Dispute Resolution in collaboration with key stakeholders aimed at empowering our citizens, organisations and businesses to have access to a range of dispute resolution mechanisms to resolve disputes efficiently and effectively.

The Scottish Government is clear that that to normalise and increase mediation and other forms of Dispute Resolution in the civil justice system in Scotland, this matter needs to be dealt with on a whole system approach.

There needs to be systematic reform in a number of areas to overcome the structural and cultural challenges identified by the Scottish Mediation Expert Group report entitled “Bringing Mediation into the Mainstream in Scotland” which was published in June 2019.

We consider it necessary to fully understand the implications of the proposals before making decisions about reform.

To that end, we are developing our policy on a collaborative basis with key delivery partners before exposing our proposals for Mediation and wider dispute resolution to Scottish Ministers and public consultation after the Scottish Parliament Elections in May 2021.

## Petitioner submission of 24 August 2021

### PE1851/D – Justice for the public in the legal system

WRITTEN WITHOUT PREJUDICE AND FORMED FROM MY UNDERSTANDING AND OPINION.

Possibly the adage that “third time lucky” might imply some hope as this is the third format of this Petition. However experience suggests to the writer at some convenient point this Petition is likely to be set aside.

It is my understanding from a third party that the last Petition was forwarded by the Committee to a senior Scottish Government Minister who did nothing with it and refused to speak with one of the authors and their M.P.

So, we do not hold out hope, indeed, during a conversation with an MSP I contend it was revealed that at least one of the previous Committee Members hinted that the previous Petition was set for failure. I requested an investigation but was ignored.

The matters within the Petition are important and impact on all living in Scotland. Recently, I tried to get an opinion regarding an Official within the judicial system; a system that I believe is so designed to ensure progress is smothered.

This Petition requires oral input from the authors and other third parties, the matters are complex and involved. Much of the evidence is of such a concern it would be imprudent and unsafe to set it in text for free publication.

Therefore, it is suggested that by always setting the written word in front of the Committee adulterates the impact of the spoken word. Much of what will be revealed if progressed to an oral hearing, it is suggested will be impactful and raise great concern.

These matters and matters escalated beyond this Petition are of major importance to ALL living in Scotland.

This Petition is the starting block of this race and if successful will cause

potential consternation within the wider establishment echelons. It could start a tsunami of adjustment something which is unlikely to be welcomed by many but introduce fresh and fair thinking.

The writer wonders on this occasion if the Committee will at last be bold and grasp this nettle and improve Scottish lives for good. Confront the details orally and make a true assessment of the magnitude that goes well beyond what has been written on paper.

We will see if, in my opinion, stratagems are employed to squash this Petition; if so we will simply lodge a fourth, fifth and so on until we are heard.

The following submissions are also circulated in connection with consideration of the petition at this meeting—

- [PE1851/B: Gary Ballantyne submission of 12 March 2021 \(14KB pdf\)](#)
- [PE1851/C: Caroline Kenneil submission of 18 March 2021 \(101KB pdf\)](#)

The Scottish Parliament launched its new website before the start of Session 6.

All written submissions received on the petition before May 2021 can be viewed on the petition [webpage](#) on the archive website. Any submissions received since May 2021 can be viewed on the petition [webpage](#) on the new website.