

Regulation of Legal Services (Scotland) Bill

CAS response to call for views from the Equality, Human Rights and Civil Justice Committee

The Citizens Advice network in Scotland is an essential community service that empowers people in every corner of Scotland through our local Citizens Advice Bureaux (CAB) and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

Scotland's Citizens Advice network supports thousands of people across Scotland each year to understand their rights and responsibilities and seek access to justice, through holistic advice provision across a wide range of civil justice issues, including benefits, debt, housing, employment, and legal aid.

- The network currently provides more than 3,200 pieces of advice on legal proceedings in an average month.
- In 2021-22, the network supported clients in over 2,000 court and tribunal instances, with 86% of these cases won or upheld.
- On our public advice site, the Law and Courts pages have the highest number of unique page views (UPVs) across the whole site, accounting for 20% of all UPVs in 2022 (up from 18% in 2020).

Summary of Key Points

- CAS reiterates our view that the Robertson model of a single independent regulator would deliver the greatest improvements for consumers in terms of transparency, accountability, and clarity of process. We remain disappointed that the Bill has disregarded this model in favour of adding more layers of complexity to the existing landscape.
- We are also disappointed that the promise of a regulatory regime with consumers at its heart does not seem to be delivered in the substance of the draft Bill – with many opportunities missed to strengthen the consumer interest.
- We would like to see a clearer statutory role for consumer representation on the proposed regulatory committees (as distinct from generic lay representation), as well as consumer involvement in setting minimum standards for regulators.
- We query the rationale for affording a lesser degree of scrutiny and accountability to current category 2 regulators in the draft Bill.

- We welcome measures aimed at streamlining the complaints process including reducing complaints handling time, extending the remit to non-regulated for-profit providers, and introducing hybrid complaints. However, the retention of various layers and channels a complaint can take fails to deliver a simpler pathway for consumers, and we are concerned about the removal of compensation for conduct complaints, as well as removing the right to appeal SLSC decisions to an external body.
- We welcome the expanded remit of the SLSC's Consumer Panel but caution against the panel being seen as the catch all consumer scrutiny forum without increased resources to enable the panel to discharge these functions.
- Regarding ministerial oversight, we call for greater consideration of the evidence sources for these interventions to be triggered, and the capacity this may require from the named bodies as well as consumer bodies fielding this data.
- We call for urgent clarity regarding the definitions of 'fee, gain and reward', upon which third sector liability for entity regulation hinges. The variability of definitions of restricted and unrestricted legal services also poses concerns for the advice sector and we call for statutory consultation with these providers in the event of any change being considered.
- We welcome the intention of the draft Bill to stimulate diversification in the legal services market, but we remain unclear how or whether the current provisions would enable this in practice. It remains difficult to envisage how the provisions around ABS and practicing restrictions might address the significant gaps in provision which CAS has repeatedly highlighted, without corresponding consideration of the pressing issue of legal aid reform.

1. What are your views on:

- a. **The principal recommendation of the Robertson Review that an independent regulator should be created to regulate legal professionals?**
- b. **the Scottish Government's decision to "build on the existing framework" rather than follow that principal recommendation**
- c. **whether there is a risk that the proposals could raise concerns about a potential conflict of interest**

CAS welcomes this opportunity to restate our strong support of the 'Robertson model' as recommended in the independent review. We believe a single regulator, independent from both government and those it regulates, and responsible for admission, standards and monitoring, complaints and redress with regard to all legal services providers in Scotland, offers the best opportunity to place those who rely on legal services to protect and realise their rights at the heart of legal services regulation in Scotland, and would deliver the greatest potential benefits for the public.

CAS believes that the Robertson model would deliver the core outcomes of enabling access to justice, upholding the rule of law and protecting human rights and freedoms, strengthening the public and consumer interest, as well as securing the confidence and trust of the general public by embedding enhanced transparency, accountability, and a person-centred approach in the regulatory system. It would help consumers make informed choices about legal services on offer, enable them to evaluate their quality and value for money, and ensure effective consumer protection and redress through a fairer, simplified and consistent consumer journey.

We are, therefore, disappointed that the Bill disregards the principal recommendation of the Robertson Review and instead sets out to build on the existing framework. This proposed approach in the draft Bill would seem to prioritise concerns from the legal profession over the interests and concerns of the public and those who rely on legal services to realise their rights.

The proposals are presented as aiming to build consensus among key stakeholders and be proportionate and risk-based in line with the Better Regulation principles. We note that while the Scottish Government justifies many provisions in the Bill with reference to results of the Government's public consultation on the Robertson Review, the responses to the consultation were heavily skewed towards professional and regulatory bodies and legal services firms, with only 5% of responses representing consumer organisations.

In CAS's view it is difficult to see how the proposed model would fulfil the central policy objective of "placing the consumer interest firmly at its heart".

For instance, while the regulatory objectives have been revised to include the Consumer Principles and the PANEL principles, there is very little substance within the Bill as to how these principles should be enacted or monitored. The expanded remit of the reconstituted Scottish Legal Services Commission's (SLSC) Consumer Panel appears to be one of the few mechanisms for consumer voice and influence within the regulatory framework, while

other opportunities to embed the interest of consumers seem to have been missed (see our responses to questions 7 and 9).

We welcome steps aimed at streamlining the complaints process including shortening the complaint resolution time and introducing hybrid complaints. However, we have continuously emphasised that the current landscape of multiple regulators, complaints bodies and complaints processes is not easy for consumers to navigate, and we are disappointed that the proposals in the Bill do very little to simplify the journey – and in some ways add further layers of complexity. In our view the proposals in the Bill do not stand to improve accessibility or transparency for consumers who want to complain about a legal services provider.

In particular, CAS evidence, outlined below, indicates that retaining a model of self- or co-regulation in which the relevant professional bodies both represent the interests of the profession and are tasked with regulating their members will not strengthen the public's trust and confidence in the legal services sector.

CAS polling shows majority public support for an independent regulator of legal services in Scotland.

CAS commissioned YouGov to conduct public polling in late 2022¹ to better understand consumer views on a range of legal services issues, and to help address a gap in knowledge about the consumer experience of the Scottish legal services market as identified by the Robertson Review.

- After providing respondents with information about the role of the Law Society of Scotland (LSS) and the Faculty of Advocates (FoA) as current regulators of solicitors and advocates respectively – the polling found that **two thirds of respondents would prefer an independent regulator to oversee the legal profession**, compared with one in eight expressing support for the status quo ('don't know' at 21%).
- Asked to what extent an independent regulator would increase or decrease public confidence in legal professionals' work, **74% of respondents felt that having an independent regulator would increase public confidence** - either a little (39%) or a lot (35%). 23% of people we asked thought an independent regulator would have no impact on people's confidence in the legal profession, and only 3% believed it would decrease public confidence.

¹ Total sample size was 1,005 adults. Fieldwork was undertaken between 8th – 12th December 2022. The survey was carried out online. The figures have been weighted and are representative of all adults in Scotland (aged 18+).

2. What are your views on the current regulatory landscape for legal services in terms of complexity or simplicity?

CAS has consistently highlighted throughout discussions with the Scottish Government that the existing regulatory landscape for legal services is highly complex and difficult for the public to understand and navigate. For many consumers it is unclear what they can expect when they use the services of a legal professional or a legal services provider, how to choose one, what legal activities and matters are reserved or not reserved, and what to do when they are unhappy with the services they received.

Citizens Alerts, a real-time case reporting system operated by the Citizens Advice network in Scotland, illustrate this. The system allows citizens advice bureaux to submit case evidence to CAS demonstrating the impact of policies and services which they feel are failing to meet their clients' needs. The following Citizens Alerts exemplify some of the difficulties clients experience when faced with the complex regulatory landscape, often at times of significant distress:

- A West of Scotland CAB highlighted the case of a client who was the main carer for his young child. He had tried multiple times to contact his solicitor before a family court hearing regarding his ex-wife's visiting rights to their son but, despite receptionists promising him calls back from the solicitor, he never heard back. A few days before the hearing he received a letter from the solicitor stating they were closing his case due to non-engagement. The client then had to represent himself, as various solicitors he contacted were not willing to take on 'transfer cases'. The client sought advice from the CAB on how to get legal representation and his next steps in lodging a complaint against his previous solicitor.
- An East of Scotland CAB reported the case of a disabled single mother of four children, three of whom were disabled. The client was at risk of losing their home, which was adapted to their needs, as her abusive ex-husband was trying to force the sale of the house. She was shocked to find herself without legal representation as her legal aid solicitor changed careers, then the replacement solicitor retired, and the solicitor's firm closed her case. The client was then unable to secure another legal aid practitioner to take on her case, leaving her to face court proceedings on her own.

Issues with the complex landscape for consumers are further borne out in our analysis of YouGov polling we commissioned in 2022².

Of 1005 respondents, 27% had experienced a problem they felt could benefit from the services of a solicitor³ and did use one to resolve all or part of their problem. 7% of all

² Total sample size was 1,005 adults. Fieldwork was undertaken between 8th – 12th December 2022. The survey was carried out online. The figures have been weighted and are representative of all adults in Scotland (aged 18+). Some of the questions used in this poll were retained from YouGov polling we commissioned in 2020, allowing a comparative analysis of 2020 and 2022 results (see FN 5).

³ Our questions mostly focused on respondents' views, knowledge and experience of solicitors rather than advocates or other legal professionals due to the far greater likelihood of consumers using the services of solicitors.

respondents had experienced a problem they felt could benefit from the services of a solicitor but did not use one.

This distribution formed the basis for follow-up questions as detailed below.

Lack of transparency impacts on consumer choice and navigation of legal services market

- The 287 participants who had used a solicitor were asked which factors had influenced their choice of solicitor (multiple answers and an open response were possible). The most commonly cited factors were solicitors operating locally (36%), personal recommendation (34%), and having used the solicitor before (22%). Some participants also stated they used the solicitor provided by their union, or whoever was willing to take on their (legal aid) case, in effect forgoing consumer choice.
- We also asked these participants how informed they had felt about particular aspects of the solicitor's services prior to instructing them. A majority said they felt informed about the solicitor's experience (73%) and reputation (72%). However, **32% felt they had lacked information on which solicitor to choose and 34% did not feel informed about whether the solicitor would charge them reasonable fees.** It should also be noted that consistently more people had felt 'fairly informed' rather than 'very informed' about various aspects of solicitors' services on offer, indicating an information deficit.
- The 75 respondents who said they might have benefited from a solicitor to resolve a problem but did not use one were asked about their reason(s).⁴ The most common rationale for not instructing a solicitor despite considering it useful was uncertainty about cost, with 1 in 2 respondents feeling unsure whether they could afford the services of a solicitor (51%) and a quarter being concerned that their issue ending up in court would increase costs. Almost a quarter of people sought to resolve the issue themselves (24%) or used help from other sources (11%), while 1 in 5 were worried that involving a solicitor would escalate the problem.
- 14% of respondents who did not instruct a solicitor, despite considering it useful, used the open response category 'Other' to share that, among other reasons, cost and unaffordability of legal services, and not knowing where to find an appropriate, trustworthy legal professional had prevented them from using a solicitor. "I didn't know where to find the help I needed", "didn't know who to trust, couldn't find anyone" and "I gave up!" were some of the responses given.
- 682 respondents who had not previously used a solicitor were asked to consider what factors might influence their choice of solicitor in the future. Here, personal recommendation emerged as the predominant factor shaping consumer choice, with more than half of respondents saying it would help them pick a particular professional (52%). For 36% of these respondents, solicitors offering a free consultation would make them particularly attractive.

⁴ Multiple selections were possible.

These findings underpin our concerns about how judgements about providers are made in the Scottish legal services market. Respondents relying heavily on personal recommendation or prior relationship with a solicitor is not unexpected as solicitors' services depend on a high level of trust in matters that are often of great significance to the client, but it might also reflect a lack of other reliable ways to choose a solicitor. Lack of transparency about cost and concerns about affordability were also significant factors affecting people's choices.

These concerns are further underlined when comparing our 2022 polling with results from similar polling we commissioned from YouGov in 2020 (pre-pandemic).⁵

- Amongst participants who had experience of using a solicitor, our 2022 polling saw a 10-16% increase in the numbers of people who felt they had lacked information about various aspects of their solicitor's services, than when we asked in 2020.
- Among participants who decided not to instruct a solicitor despite feeling it would be beneficial, cost concerns related to solicitor fees (up 16%) and going to court (up 7%) had become the two most commonly cited reasons in 2022 that prevented people from using a solicitor. This coincides with the current cost-of-living crisis but could also highlight that consumers lack reliable information on fees and costs of professional advice/representation and litigation.
- Worries about escalating the problem as a reason for not using a solicitor have also more than doubled with an eye-catching 122% increase from 9% in 2020 to 20% in 2022; as a broad response category this could potentially comprise worries about aggravating relations with the other party and/or losing control of time and financial resources when involving a solicitor in a problem or dispute.
- Among all participants who had no prior experience of using the services of a solicitor **we saw an 88% rise in respondents who said they would never use the services of a solicitor**, from 10% in 2020 to 18% in 2022. While we cannot fully understand underlying causes of this increase from our polling, it could further highlight a decline in confidence and trust in the profession.

Decline in consumer satisfaction and low confidence regarding legal complaints

In the YouGov polls we commissioned in 2020 and 2022 we asked respondents questions relating to the quality of advice and service they had received from a solicitor – those who had never used a solicitor were instructed to select 'not applicable' as their response.

In 2022, 40% of participants chose 'not applicable', 43% said they were happy about the service and advice received, 8% were neither happy nor unhappy, and 7% expressed unhappiness about their solicitor's advice and/or service (3% don't know).

⁵ Total sample size was 1,028 Scottish adults. Fieldwork was undertaken between 5th -9th March 2020. The survey was carried out online. The figures have been weighted and are representative of all Scottish adults (aged 18+).

Among the respondents who had experience of instructing a solicitor, levels of satisfaction with solicitors' advice and services in Scotland were relatively high, with almost 72% of people who had relied on a solicitor feeling very or fairly happy with the services they received, compared to 11% of clients who expressed unhappiness about their experience.

- However, compared with our 2020 polling results, the 2022 findings show a **9% fall in respondents who reported being happy with the services and advice** they received from their solicitor against a **60% rise in respondents who felt unhappy about services received**. Both findings taken together are a potential cause for concern. While we cannot be sure of the reasons behind this decline in consumer satisfaction, it could be partly linked to people feeling generally less well informed about key aspects of solicitors' services as we highlighted above.
- The participants who reported being very happy or fairly happy with their last solicitor's advice and services were asked whether or not they would recommend them to others. 78% of these respondents would recommend their solicitor to others or have already done so and would happily do so again, against 12% of respondents who, despite stating they were happy with their last solicitor's service, would not recommend them or would not do so again (don't know 10%).
- However, our findings highlight, once again, that people were less likely in 2022 to have recommended their solicitor to others than in 2020 (16% decrease). This is partially explained by a slight (5%) increase in the number of those who had not yet recommended their solicitor but would happily do so. However, surprisingly, in 2022 twice as many respondents said they had recommended their solicitor but would not continue to do so, than in the 2020 polling. While we may not be able to fully understand the factors underpinning this unexpected change from our polling, it could indicate a drop in consumer confidence amongst this group.
- Respondents who had reported being unhappy with the quality of service they had received from their solicitor were asked whether or not they had made a complaint, and if so, to whom – multiple responses were possible. More than half of all complaints actually raised were addressed to the solicitor in question themselves (56%), and around 16% to the solicitor's firm or company. About a quarter of respondents directed their complaints to the LSS, while none had complained to the SLCC.
- Given the small sample size of respondents to this question, the results should be read with caution. However, the proportion of respondents who complained directly to the LSS compared to the SLCC would appear to demonstrate a lack of clarity amongst consumers as to the correct channels for complaints reporting, and support moves to strengthen the SLCC's position as a single gateway for legal services complaints.
- An important finding we can draw from these figures is that despite being unhappy about the quality of advice/services received, **the great majority of unsatisfied clients (7 in 10) did not complain**. Our poll did not test the public's knowledge of the various complaints processes currently available to consumers nor do we know the basis nor substance of respondents' complaints – we can only speculate that the low uptake in legal complaints might relate to a lack of awareness about consumers' right

to complain, about complaints procedures as well as possible outcomes. Alternatively or additionally, unsatisfied clients might feel sceptical whether raising a complaint would achieve a positive outcome for them. Whatever the reasons, the findings raise questions about the accountability of solicitors from a consumer point of view.

Growing advice need regarding legal professionals

Concerns about the complexity of the current landscape of legal services regulation which make it difficult for consumers to navigate the market and access justice are also evidenced in quantitative data from the Scottish CAB Service.

- The Citizens Advice network in Scotland currently provides more than 3,200 pieces of advice on legal proceedings in an average month across the country. In 2022, citizens advice bureaux provided 39,509 pieces of advice on legal proceedings to almost 15,000 individual clients, which was broadly consistent with the volume of advice on legal proceedings provided in 2020 and 2021.
- However, advice on solicitors and advocates has increased by 11% since 2020, with over 5,000 pieces of advice provided on this issue in 2022. Within advice on solicitors and advocates, 'access to a legal practitioner' has grown by 17% to 3,149 pieces of advice issued in 2022, representing a key area which clients require support with.
- An uptick in advice need related to solicitors and advocates also registers in our most recent monthly advice code data which shows a 50% increase in this advice category between June 2022 and June 2023 when advice on solicitors and advocates amounted to 17% of all legal proceedings advice sought.

Overall, our data and evidence raises concerns about consumers' understanding of and public confidence in the current legal services market in Scotland and how it is regulated. Our findings reinforce and complement findings in the Robertson Review and the Europe Economics Report⁶ which considered there was a significant potential for "market failure" in the provision of legal services in Scotland – where consumers face difficulties making a well-informed purchasing decision when it comes to legal services, especially in times of distress and vulnerability; where too many receive or feel they have received unsatisfactory service; and where consumers cannot or do not readily make use of existing legal complaints mechanisms to seek redress.

⁶ [\[ARCHIVED CONTENT\] Review of the Regulation of Legal Services \(nrscotland.gov.uk\)](#).

3. What are your views on the proposed division of regulators into two categories and the requirements which these regulators will have to comply with, as set out in Part 1 of the Bill?

CAS would like to reiterate our support for a single regulator, independent of both the government and those it regulates, and responsible for admission, standards and monitoring, complaints and redress relating to legal services providers in Scotland. As set out above, we believe this model would best deliver regulation in the public interest, improve access to justice for all, and strengthen public confidence.

The model proposed in the Bill falls significantly short of this, as, crucially, the existing regulatory bodies retain their regulatory functions alongside their role as membership organisations for the legal professions. Under such a model, CAS believes that independent regulatory committees should be established, as a matter of principle, by all regulators – not just category 1 regulators. While we understand that the distinction between category 1 and 2 regulators is based on differences in how consumer-facing their members' services are and the number of members they (would) regulate, it seems illogical from a consumer point of view to institute a less clear structural separation of regulatory and other functions as well as less rigorous oversight for category 2 regulators with a smaller membership and fewer consumer contact than category 1 regulators with more members and more direct consumer engagement.

For instance, it is unclear to us why the Faculty of Advocates (FoA) with around 450 members should be subject to a less robust regulatory regime than the Law Society of Scotland (LSS). As advocates will, generally, deal with more significant cases in terms of financial value or point of law, the quality of their legal services might have a profound impact on the client – and potentially other consumers, for example, where a case sets a new precedent. The fact that advocates often have less immediate engagement with consumers means there might be less opportunity for direct learning from and improvement based on feedback from consumers of advocates' legal services, and we would call for at least the same, not less regulatory requirements to achieve greater accessibility and accountability of their services.

As a matter of principle, all currently existing and any future bodies which deliver statutory regulatory duties should be independent, accountable, and transparent. To realise the Consumer Principles, regulatory bodies and regulatory committees should be able to discharge their duties independently of the professional representative bodies. They should be well resourced to fulfil their role and be able to use their resources independently and according to their own priorities. This is even more important as the Consumer Principles and PANEL Principles are incorporated in section 2 as regulatory objectives, but their successful realisation for individual consumers and the public will entirely depend on how regulators implement and exercise their regulatory functions.

All regulatory bodies, regulatory committees, complaints bodies and disciplinary tribunals with statutory regulatory duties should be obliged to lay budgets and annual reports in Parliament and to meaningfully consult appropriate stakeholders on their regulatory plans – including organisations representing the consumer interest, in particular the interests of

vulnerable consumers. All bodies discharging statutory duties should, furthermore, be subject to Freedom of Information legislation – not just category 1 regulators.

4. Section 19 of the Bill gives Ministers the power to review the performance of regulators’ regulatory functions. Section 20 sets out measures open to the Scottish Ministers. What are your views on these sections?

We understand that the co-regulatory model proposed in the Bill requires a system of checks and balances which includes oversight over regulators’ performance regarding their respective regulatory functions. Section 19(1) allows Scottish Parliament, the Competition and Markets Authority (CMA) and Consumer Scotland to request that the Scottish Ministers review a regulator’s performance with regard to specific concerns as set out in section 19(2). This oversight power of the Scottish Ministers seems appropriately balanced by ensuring that Scottish Ministers cannot take measures (apart from financial penalties) against regulators without the Lord President’s agreement, thus limiting their ability to directly intervene in the regulation of legal services.

We believe organisations with immediate input from consumers and those with lived experience would potentially have a role to play in alerting the bodies named in subsection (1) about systemic problems or patterns in consumer experience that could indicate a failure of regulators to discharge their regulatory functions in the public interest or in a way that is compatible with the regulatory objectives. Questions remain, however, how such monitoring functions would be sufficiently resourced to render this system of checks and balances effective and what evidential threshold would have to be met to successfully trigger a request and/or review.

5. What is your understanding of the experiences of other jurisdictions, for example England and Wales, where independent regulators have been introduced to regulate legal services?

As CAS data and evidence relate solely to consumers in Scotland, we make no comment on this question.

6. What are the main deficiencies in the current complaints system and do you believe the proposals in the Bill are sufficient to address these issues?

Complaints processes constitute a form of human rights remedy and are crucial for people to access and receive justice. CAS believes that the public requires access to an efficient, effective, fair, and transparent legal services complaints system.

Throughout our engagement with the legal services regulation reform agenda we have highlighted our concerns that the current complaints system is not fit for purpose: it does not offer a simple and clear consumer journey, is too complex and difficult to navigate, and complaints take too long to be resolved. Moreover, legalistic processes and jargon act as further barriers for users who may wish to complain about the conduct of a legal services provider or the advice and services they offered. The dual role of the professional bodies representing the interests of their membership while responsible for handling complaints can also instil mistrust and suspicion of the profession and the complaints system in consumers.

Such issues are also evidenced in our data from across the Citizens Advice network. For instance, under the current complaints system, CAB clients sought the help of their citizens advice bureaux when faced with issues such as long wait times related to their complaint, to find out how to appeal decisions related to complaints, and how to navigate the overly complex landscape of complaints and appeals; often these experiences or issues left clients with a degree of mistrust of the process or the profession more generally. Insights like these reinforce the case for a simpler, more transparent and accountable system built with consumers at its heart.

As previously outlined in our response to question 2, research conducted by YouGov on our behalf in 2022⁷ found that 11% of consumers who had instructed a solicitor to resolve a problem were unhappy with the quality of service they had received. However, consumers were unlikely to lodge a complaint even when they felt they had received a poor service/advice, as 7 in 10 dissatisfied respondents did not complain. Our poll did not test the public's knowledge of the various complaints processes currently available to users nor did it ask unsatisfied consumers why they did not complain, but the findings raise serious questions about the accountability of solicitors and consumers' ability to get redress through the current complaints system.

We believe that the Robertson model of a single, independent body dealing with all complaints against legal practitioners and service providers offers the simplest and clearest structural reform to firmly embed the consumer at the heart of the complaints and redress system.

The Bill retains the different regulatory and complaints bodies/layers, resulting in various routes a complaint can take – we believe a vital opportunity has been missed to address key concerns about the existing complaints system, especially regarding the independence of complaints bodies/committees and instituting a simplified, accessible, and transparent consumer journey.

While substantially different from our preferred model, we welcome some measures proposed in the Bill which are aimed at streamlining the complaints process, shortening the complaint resolution time, and preventing or mitigating consumer detriment, such as:

⁷ See FN 1.

- allowing the reconstituted SLSC more flexibility to develop rules about how a complaint will be categorised and handled, introducing regulatory complaints, and explicitly permitting hybrid complaints;
- enabling the SLSC to receive and decide service complaints against non-practitioners where these services are provided to the public for profit, as this extends consumer redress into the unregulated legal services market; great care should be taken, however, in the wording of the relevant provisions in the Bill to ensure third sector organisations providing advice to the public free of charge would not become subject to this new complaints mechanisms (see our response to Question 9);
- allowing the SLSC to publish information about firms in relation to which they receive several complaints when public interest justifies this, and enabling the relevant disciplinary tribunals to publish judgments about professional misconduct findings, to prevent detriment to other members of the public and improve consumer choice;
- lifting the current cap on financial penalties that can be awarded by disciplinary tribunals in conduct complaint cases, as higher penalties might act as a stronger deterrent for legal practitioners.

However, we are highly concerned about several provisions in the Bill in relation to complaints and redress, which we outline below.

Consumer voice/influence

- As the Bill only sets up a framework and enables regulatory and complaints bodies to develop their own rules, scrutiny and regular monitoring of the rules and processes that the various bodies would adopt and practice would be required to understand their significance and impact on consumers. We have serious concerns that the expanded remit of the SLSC's Consumer Panel (ability to make recommendations to the SLSC about the discharge of its functions, section 75) seems to be one of few provisions embedding consumer voice and influence within this framework. Furthermore, it is unclear whether resources, funding and capacity of the Consumer Panel (of individual members as well as Panel structures such as the secretariat etc.) are available and could realistically be extended to discharge such a greatly expanded statutory role. Resourcing of this proposal would be key to its success.
- We are also disappointed that chances have been missed at other points in the framework to place the consumer at the heart of legal services regulation. For example, the SLSC is tasked with setting minimum standards and must consult regulators before doing so (section 69(4)) – however, there is no explicit mention of consumer voice in shaping and monitoring these standards as they are being developed and introduced.
- Moreover, while the various regulatory committees, disciplinary bodies, and SLSC's review committee would (continue to) include lay members, consumer influence could be strengthened through the mandatory inclusion of consumer bodies or

representatives in these bodies/layers of regulation and complaints. This would be of particular significance in the suggested 'review committee' of the SLSC whose decision would become final in a new internal review system (see below). We are also unclear on the reasoning for reducing the number of lay members of the SLSC.

Consumer Journey

- The consumer should be at the heart of the complaints system, its rules and procedures. The Bill falls short of significantly improving the consumer journey, as the SLSC would act as a single gateway but not as a single complaints body, resulting in consumers potentially having to manage separate complaints processes.
- Furthermore, explicit provision should be made in the Bill to strengthen the complaints system's support for complaints from vulnerable consumers, including those who may need or wish to have further support from third sector bodies during the complaint process.
- We also have significant concerns about the Bill removing the consumer's (and legal practitioner's) **right to appeal the SLSC's service complaint decision to an external body** through a shift from an appeal process that ultimately leads to the Court of Session to an entirely internal review process in which the 'review committee's' decision would be final (section 58(8)). While we agree that the current review system leading to the Court of Session is too complex, onerous, and difficult for most consumers, if the SLSC were to become the final arbiter on service complaints, we believe consumer representation should be mandatory in the SLSC's review committee – not just lay representation.
- Furthermore, the Bill stipulates that the next and ultimate step for a consumer (or practitioner) wanting to appeal the review committee's decision would be an onerous judicial review – with serious accessibility implications for consumers. We believe access to justice would be better served by the LSS's suggestion of allowing appeals regarding SLSC decisions to the Sheriff Court.
- We are also concerned about **the removal of compensation in conduct complaint cases** (section 72(3)) which could leave a gap in consumer redress if the gross misconduct of a legal practitioner were not or could not be categorised as a hybrid complaint and thus would not trigger the SLSC's higher compensation ceiling, leaving the complainant potentially with nothing.
- We are also uncertain whether the renaming of the Scottish Legal Complaints Commission to the 'Scottish Legal Services Commission' is helpful or necessary. We believe it is likely to confuse consumers as, contrary to what the name might indicate, the SLSC would not be the single regulator for all legal services in Scotland.

7. What do you consider the impact of the Bill's proposed rules on alternative business structures might be:

- a. generally?**
- b. in relation to consumers of legal services?**

It is difficult to anticipate the impact of the proposed rules for licensed legal services providers on consumers or third sector organisations, as the rules that would govern Alternative Business Structures (ABS) are not yet set out in detail.

We have significant concerns that the separate regulatory and complaints schemes for authorised legal businesses (section 39) and ABS (sections 78-80) will add to consumers' confusion about what the differences between such businesses are, what they are allowed to do and how they are regulated. A single regulatory system for all regulated legal entities as well as individual practitioners would offer a far more transparent and accessible system for consumers with all relevant information provided and available in one place, enabling consumer confidence and choice in the legal services market.

The Citizens Advice network in Scotland provides free, impartial, and quality-assured advice to the general public and is part of a third sector which is working incredibly hard trying to meet the public's advice needs on legal issues across the country, during a period of prolonged public sector austerity and in the midst of various crises affecting the great majority of the population. It is, however, currently unclear to us what advantages and consequences becoming a licensed legal services provider would have for organisations who don't act for "fee, gain or reward" (section 78).

Changes proposed in **section 81 which remove a number of practicing restrictions** seem to be of greater immediate relevance to advice-providing third sector organisations but are obscure and difficult to understand. The provisions in section 81 urgently require further clarification to have any positive impact on the landscape of not-for-profit advice services and to avoid unintended consequences.

- We welcome section 81(2) of the Bill which would extend to charities the exemption which currently allows law centres and citizens advice bodies to employ solicitors, registered foreign lawyers or registered European lawyers to carry out some reserved legal activities and proceedings in court on their behalf even though the Citizens Advice network in Scotland would be unlikely to make use of this as it could restrict our clients' choice of solicitor. Nevertheless, we believe the wording in the amended section 26 of the Solicitors (Scotland) Act 1980 should be clarified, to avoid potential confusion about the prescription of a full-time working pattern for solicitors employed in third sector organisations.
- We have a number of queries in relation to section 81(3). It amends section 32 so that unqualified persons acting for a 'law centre, a citizens advice body or a charity' in the term of section 81 of the Bill, will not be subject to an offence if preparing "any writ relating to any action or proceedings in any court". CAS were advised by Scottish Government that section 81(3) would "relate to an unqualified person working to support and under the supervision of a solicitor employed by that body under section 81 (much like a paralegal or admin staff)". CAS seeks further clarity as to whether this

refers to an unqualified person supporting a client on behalf of a third sector organisation or a person working to represent the interests of the third sector organisation or both. In addition, we are unclear as to whether or if the proposed amendment to section 32(2B) aims to restrict this exemption only to those unqualified persons working under supervision/instruction of a solicitor when the 1980 Act appears to already allow unqualified persons to prepare writs if doing so on a not-for-profit basis – with no reference to solicitor supervision [section 32(2)(a)]. Clarification on these sections would be appreciated.

- Section 81(4) would enable unqualified persons working within law centres, citizens advice bureaux and charities and who are allowed, by virtue of the amended section 32(2B), to draw up certain documents, to charge fees. While third sector organisations will generally provide their advice and support on legal issues without charge, we are concerned that section 81(4) could lead to unintended consequences, as the third sector exemption from legal services regulation as stipulated in section 39 (entity regulation) and section 52(3)(a) and (b) (services complaints about non-practitioners) crucially rely on them not providing services for “fee, gain or reward”.

The policy memorandum to the Bill clearly states the Government’s intention to exempt not-for-profit third sector organisations which provide advice and support on legal issues to the public from being subject to legal services regulation, a position we have requested throughout our engagement with the Government’s reform efforts.

Given the crucial work that third sector advice organisations such as the Citizens Advice network deliver in the public interest, we have significant concerns that, beyond access to justice being one of the regulatory objectives, there are no clear measures in the Bill to incentivise specific kinds of provision that could help plug gaps in unmet advice need in relation to legal issues and access to justice. Furthermore, it is currently very difficult and will continue be so for third sector bodies to help fill gaps when they experience so much uncertainty around funding on an ongoing basis, and ultimately this is detrimental for those people that these organisations are supporting.

If the rules amended by sections 78-80 regarding ABS and especially those removing practicing restrictions in section 81 were intended to encourage a more dynamic and innovative legal services market and third sector, we would urge the Committee to ask for these provisions to be rewritten to provide clarity and transparency for interested parties and the public.

We would also underline that it is difficult to evaluate how effective these measures might be in stimulating the market and addressing unmet legal needs, without also considering the longstanding issue of Legal Aid Reform. If one of the regulatory objectives is to promote access to justice, it would seem to be a missed opportunity to embed in the Regulation of Legal Services Bill provisions that would explicitly support and incentivise greater provision of accessible, affordable legal services for those who need them most. If the policy intention is to enable more diverse forms of legal service provision, including via the third sector, then this cannot be looked at in isolation from ongoing legal aid reform discussions to which CAS has long been a contributor.

CAS has previously underlined concerns, to the Committee and the Scottish Government, about significant gaps in legal services provision, particularly for those seeking legal aid. In light of the upcoming Human Rights (Incorporation) Bill, CAS would hope this would lead to joined up discussions across Scottish Government regarding how the Regulation of Legal Services (Scotland) Bill can best support the vision of a Scotland where everyone can expect equal enjoyment of their rights, and equal access to justice where things go wrong.

8. What are your views on the provision of:
a. "Entity regulation" (as set out in Part 2 of the Bill)?
b. title regulation for the term "lawyer" (section 82)?

Entity regulation

CAS supports the introduction of entity regulation for legal businesses in the interest of improving consumer protection, as many consumers believe they are entering a contract with a law firm, not an individual legal practitioner. In businesses with several practitioners a case might also be handled by more than one professional, which a consumer could find difficult to untangle if something goes wrong and they wanted to seek redress under the current system of individually regulated practitioners. The hybrid approach of regulating both legal businesses as well as individual solicitors would address this barrier to accountability.

We have, however, significant concerns about the wording of section 39, where mandatory authorisation of legal businesses relies on the requirement of providing legal services to the public "for fee, gain or reward". The Scottish Government's stated policy intention is to exempt not for profit organisations from entity regulation. However, we are unconvinced that the current wording is sufficiently clear to rule out that the following could be construed as fee, gain or reward – for example:

- any funding that third sector organisations receive to provide their advice and support services;
- salaries/fees paid to employees/contractors of third sector organisations who might provide advice, support and representation;
- work experience and thus any advantage that volunteers might gain in third sector organisations.

We would urgently seek an amendment to the wording of section 39 to clarify that fee, gain or reward has to be transactional, that is, paid by the client receiving the legal service to the entity providing it, and/or that the requirement refers to financial or monetary fee, gain or reward only, so as to avoid the risk of unintentionally subjecting third sector/not for profit organisations to entity regulation. As we believe that the current drafting in the Bill fails to make this clear for not for profit organisations.

Title regulation

We have asked for the introduction of title regulation for the term 'lawyer' throughout our engagement with the regulation reform agenda in the interest of consumer protection, as most consumers do not know which titles are protected and which are not and how this affects what they can expect from a legal professional.

This is clearly evidenced in research we commissioned from YouGov in 2022.⁸ To gauge the general public's understanding of the difference between solicitors and lawyers, we asked all respondents whether they considered the following statement to be true or not: "As the law currently stands, someone using the description 'lawyer' and providing legal services must be qualified and regulated by a professional body."

- Our research found that more than three quarters (76%) of respondents wrongly assumed this statement to be true (with 19% answering don't know), which is virtually unchanged from a similar poll YouGov conducted on our behalf in 2020⁹ (77% true, don't knows 18%). This supports our long-held view that the general public perceives the term 'lawyer' almost interchangeably with 'solicitor' and often makes similar assumptions about their qualifications and what protections they enjoy as clients. Given the scale of misinformation on this point, we believe there is a significant risk to consumers of potentially employing the services of someone unqualified and/or unregulated by a professional body, leaving the public exposed to substandard legal advice and potentially without routes to complaints/redress if needed.
- Public support for title regulation of the term 'lawyer' was further highlighted in our follow-up question where participants were subsequently provided with an explanation regarding the regulation and title protection of 'solicitor' as opposed to the unprotected term 'lawyer' and asked to indicate their level of agreement or disagreement with the following statement: "Someone using the description 'lawyer' and providing legal services should be qualified and regulated by a professional body." We found that an overwhelming 8 in 10 respondents agreed (83%), while only 4% of respondents disagreed (neither agree nor disagree 5%, don't knows 7%).

We are, however, concerned that section 82 of the Bill does not provide like-for-like protection as the title 'solicitor'. From the consumer point of view, this is confusing – as our research above has shown, most consumers expect solicitors and lawyers who offer legal services to the public to be admitted, regulated, and monitored in the same way.

We are concerned that enforcement of section 82 in its current form would require evidence that the title 'lawyer' has been misused with "intent to deceive" – alongside the relatively low fines associated with the offence – this may limit the effectiveness of this measure as a deterrent, and limit the protection afforded to consumers. What will matter to consumers who suffer detriment from engaging with someone who is not a solicitor is whether they have access to redress and compensation – which might become possible for service complaints under the extended remit of the SLSC – and that a 'rogue'

⁸ See FN 2.

⁹ See FN 5.

practitioner cannot continue use of such title when offering legal services – which seems difficult to enforce.

Section 82 should, therefore, be amended in a way that makes it an offence for anyone who is not regulated by a legal services regulator and provides or offers to provide legal services to the public for fee, gain or reward¹⁰, to take or use the title of lawyer.

9. Do you have any further comments on the Bill and any positive or negative impacts of it?

CAS welcomes the introduction of the Bill in response to longstanding calls for wholesale reform of legal services regulation in Scotland. Voices from across the spectrum of stakeholders deemed the current system too rigid and stuck in the past, unsuitable for supporting and engendering a thriving and dynamic legal services landscape now and in the future. Many also criticised it as too complex and difficult to understand and navigate for the public, with regulations and rules scattered across various pieces of legislation, and the operation of different regulatory and complaints bodies and processes severely limiting consumer choice and access to redress.

The Bill presents a crucial opportunity to deliver the core outcomes of enabling access to justice, upholding the rule of law and protecting human rights and freedoms, strengthening the public and consumer interest, as well as securing the confidence and trust of the general public by embedding enhanced transparency, accountability, and a person-centred approach in the regulatory system.

We believe the Robertson model of a single regulator, independent from both government and those it regulates, and responsible for the entire regulatory system from admission and monitoring, to complaints and redress with regard to all legal services providers in Scotland would be the best way forward to place those who need legal services to protect and realise their rights at the heart of legal services regulation. It would help the public make informed choices about legal services on offer, enable consumers to evaluate their quality and value for money, and ensure effective consumer protection and redress through a fairer, simplified, and consistent consumer journey.

We are disappointed that, rather than the ambitious reform we sought throughout our engagement with the Government's reform efforts, the Bill in its current form provides only partial improvements as we highlighted in the sections above. Within the constraints of the model proposed by the Bill, we will use this section here to comment on a number of vital issues that we have not previously covered or expand on some of them.

¹⁰ Our concerns about the wording "for fee, gain or reward" are set out above with regard to title regulation and in our response to Question 9 but would apply here too.

Definition of 'Legal Services' and 'Legal Services Provider' in section 6

We have serious concerns about the current wording of the definitions in section 6 and any unintended implications for third sector organisations. We understand that this very broad definition of 'legal services' and 'legal services provider' aims at extending the scope of legal regulation and of the service complaint mechanism beyond the traditional practitioners. The Government has clearly stated that it included the qualifier "for fee, gain or reward" in the section 6(1) definition – as well as in sections 39 (entity regulation) and section 52 (service complaint about non-practitioner) – to exempt third sector organisations who provide their advice and support to the public for free from any new legal services regulation set out in the Bill.

However, we believe the wording needs to be improved to ensure that the following examples of fees, gains and rewards would not unintentionally subject not-for-profit third sector organisations to further legal services regulation:

- Any funding that organisations receive to provide their advice and support services;
- Any salaries or fees paid to employees or contractors of third sector organisations who might provide advice, support and representation;
- Advantages such as qualifications, references or work experience that volunteers providing advice and support on legal issues in third sector organisations might gain;
- Any reputational gain or recognition, for example, for good service which might result in donations or funding for a third sector organisation.

To avoid the risk of negatively impacting on the capacity of third sector organisations to provide their vital advice to the public on legal issues, we would urgently seek an amendment to the wording of section 6 (and other relevant sections such as sections 39 and 52) to clarify that fee, gain or reward has to be transactional, that is, paid by the client receiving the legal service to the individual or entity providing it, and/or that the requirement refers to financial or monetary fee, gain or reward only.

We are also concerned about the proposed broad definitions of 'legal services' and 'legal services provider' in connection with section 86 of the Bill and the suggested inclusion of a new section 32A in the 1980 Act. Consumers are often unaware of or confused about the existing distinction between legal activities and areas of advice that anyone can offer as opposed to legal activities that are restricted and can only be carried out by solicitors and other registered lawyers as well as areas such as immigration advice or insolvency practices where further restrictions exist. We believe a vital chance has been missed to clearly define what are restricted/not restricted legal services, so that consumers know what services and qualifications they can rightfully expect from various legal services providers and are less likely to receive substandard services from a rogue provider.

Furthermore, the power conferred to the Scottish Ministers in section 86 of the Bill to **adjust what constitutes restricted legal services** would potentially have significant implications for a highly diverse third sector in which organisations offer advice and support on all kinds of legal issues, including on employment, family, money and debt, social welfare, wills, consumer and civil rights, accident and injury, immigration and nationality. We therefore believe any regulations that would alter what falls under

restricted legal services should require wider public consultation before they are brought in, rather than only consultation with the Lord President, regulators, and the CMA.

Consumer voice and influence - Consumer Principles and PANEL Principles

It is the stated policy objective of the Bill to provide a “modern, forward-looking regulatory framework for Scotland that will best promote competition, innovation, and the public and consumer interest in an efficient, effective, and efficient legal sector.” The policy memorandum also makes clear that the Bill aims to place “consumer interests at the heart of legal services regulation.”

We welcome the inclusion of the Consumer Principles and the PANEL Principles in the regulatory objectives (section 2) which will apply to all regulatory and complaints bodies, as well as the explicit incorporation of professional principles in section 4. However, as the Bill only sets out a framework, the realisation of these principles in the public and consumer interest will largely depend on rules, processes and practices the various regulatory and complaints bodies will adopt and implement in the future and cannot be scrutinized yet.

We, therefore, believe the Bill should go further in structurally embedding and strengthening consumer voice and influence in the framework as well as in ensuring that implementation will have tangible benefits for consumers and the public.

As stated in our responses to questions 1 and 6, we welcome the expansion of the remit of the SLSC’s Consumer Panel and would urge that adequate resources must be allocated to support the panel to fulfil the expanded duties being proposed. This should include resources to insure targeted consumer outreach, research, and engagement, in line with the PANEL principle of participation.

It is also our view that provisions for consumer voice and influence are lacking elsewhere in the Bill. For instance, in the requirements to appoint lay members to category 1 and 2 regulatory committees, there is a missed opportunity to set a requirement for a minimum number of these to be consumer representatives.

For any inquiries, please contact:

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