

Regulation of Legal Services (Scotland) Bill

Briefing for Stage 1 debate, 22 February 2024

Citizens Advice Scotland (CAS), our 59 member Citizens Advice Bureaux (CAB) and the Extra Help Unit form Scotland's largest independent advice network. The Citizens Advice network in Scotland is an essential community service that empowers people through our local bureaux 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.

- › In 2022/23, Citizens Advice Bureaux provided more than 40,000 pieces of advice on legal proceedings to more than 15,000 individual clients. In an average month, CABs provide more than 3,200 pieces of advice on legal proceedings across the country.
- › In 2022/23, the network supported 1,829 clients at courts and tribunals, with 1,600 of these cases (87%) won or upheld.
- › Our public-facing online information and advice site '[Advice for Scotland](#)' registered more than 4,360,000 unique page views (UPVs) across all advice areas in 2022/23, the 'Law and Courts' pages remained the most viewed.

The Scottish Parliament will consider the general principles of the Regulation of Legal Services (Scotland) Bill on 22 February 2024. This is an important Bill which seeks to reform the regulation of legal services in Scotland to promote "competition, innovation and the public and consumer interest"¹ in the Scottish legal sector. This briefing outlines the views of Citizens Advice Scotland (CAS) on the implications of the Bill for consumers of legal services and reflects on recommendations in the stage 1 report.

Summary

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, unsuitable for supporting and engendering a thriving and dynamic legal services landscape, and too complex and difficult to understand and navigate for the public. Throughout our engagement with efforts to reform the regulatory framework CAS has therefore supported changes aimed at placing the interests of consumers and rights-holders at the heart of legal services regulation.

The draft Bill does not provide for the independent regulatory model which we continue to strongly support. In its current form, we have concerns that some of the proposed changes may not be of benefit for consumers and their interactions with providers of legal services as outlined below.

Nevertheless, CAS takes the view that MSPs should support the general principles of the Bill to allow for reform of the current system. Legal services play a vital role in supporting people to protect and realise their rights and freedoms, in upholding the rule of law and providing access to justice. We urge MSPs to strongly consider the implications of the Bill on these essential functions and help to realise a Bill that centres on the public and consumer interest in the regulation of legal services.

¹ Regulation of Legal Services (Scotland) Bill. Policy Memorandum, SP Bill 25-PM (April 2023), p. 2.

Our views on key issues related to the Bill or the stage 1 report are outlined below.

Lack of consideration for consumer voice and journey and lack of simplification of the landscape

CAS remains 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. Likewise, CAS is disappointed that throughout consideration of the Bill so far, there seems to have been overemphasis on concerns from the profession and the judiciary while reform to promote consumer and public interests has taken a backseat.

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 renamed SLSC (Scottish Legal Services Commission) would act as a single gateway but not as a single complaints body, resulting in consumers potentially having to manage separate complaints processes across multiple complaints bodies.

CAS reiterates that the Robertson model of a single independent regulator would deliver the greatest improvements for consumers in terms of transparency, accountability, clarity of process and public trust. This is supported by YouGov public polling we commissioned in late 2022².

- We 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.³
- Asked to what extent an independent regulator would increase or decrease public confidence in legal professionals' work, **74% of respondents felt having an independent regulator would increase public confidence.**⁴

We remain disappointed that the Bill has disregarded this model in favour of adding more layers of complexity to the existing landscape.

The existing regulatory landscape for legal services is highly complex and can be 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, who is regulated and who isn't and what that means in terms of their rights and consumer protection, and what to do when they are unhappy with the conduct of their provider(s) or the services they received.

- In Q1-3 2023/24, advice on Solicitors/Advocates provided at CAB saw a 26% increase compared to the same time period in 2022/23 and exceeding pre-pandemic levels.
- Many CAB clients experience difficulties when faced with the complex regulatory landscape, often at times of significant distress as this Citizens Alert⁵ demonstrates: *"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*

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+).

³ 21% don't know.

⁴ 23% 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.

⁵ Citizens Alerts, a real-time case reporting system operated by the Citizens Advice network in Scotland 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.

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."

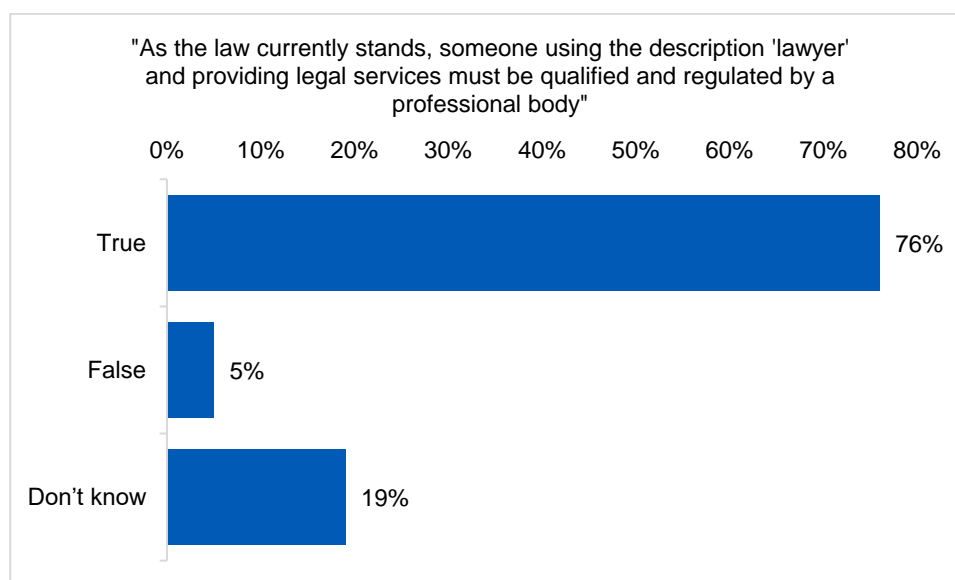
We note the Committee’s acknowledgment of concerns that the proposed model, including two categories of regulators, will add further complexity to this landscape and agree that the Scottish Government should explain how it intends to address these issues. It is crucial that if the model of a single, independent regulator is not to be adopted then the consumer experience and journey as well as consumer education and awareness require significant attention going forward to ensure real improvement through these reforms.

Regulation of title 'lawyer'

CAS agrees with the Committee that the title lawyer needs regulated.

We have asked for the introduction of title regulation for the term 'lawyer' throughout our engagement with the regulation reform agenda. Most consumers do not know which titles are protected and which are not and how this affects what they can expect from a legal service provider.

This is clearly evidenced in research we commissioned from YouGov in 2022.⁶ 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."

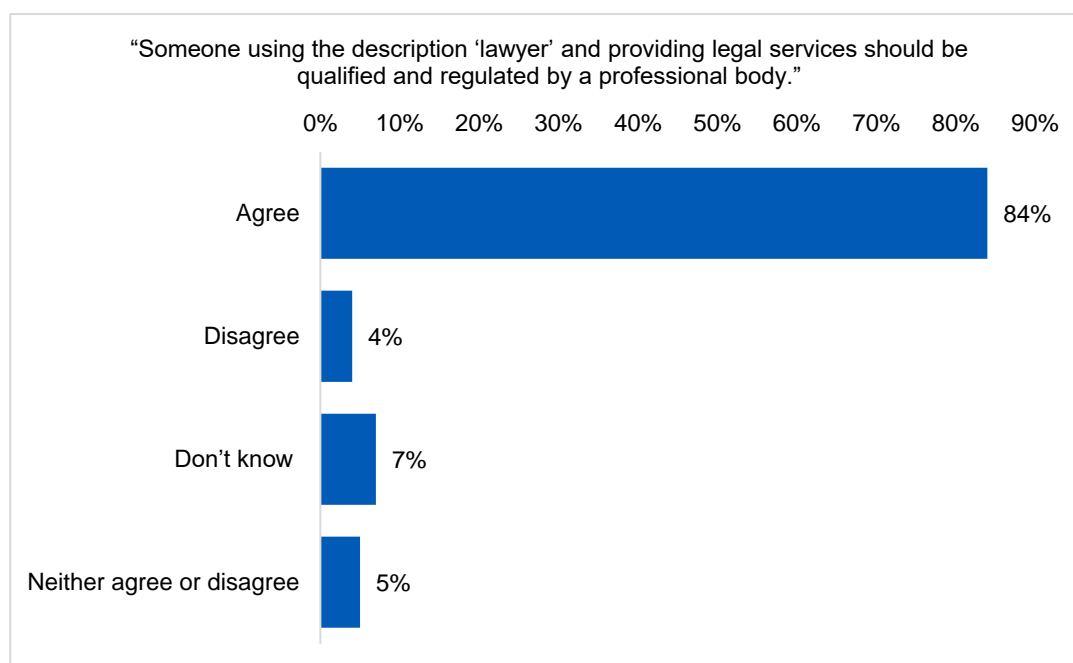


⁶ Total sample size was 1,005 adults. Fieldwork was undertaken between 8th – 12th December 2022. The survey was carried out online. The figures have been weighted and are representative of all adults in Scotland (aged 18+).

⁶ 21% don't know.

This finding 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 are therefore concerned that section 82 of the Bill does not provide like-for-like protection as the title 'solicitor'. 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 also 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, its enforcement, and limit the protection afforded to consumers.

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. Regulating both legal businesses as well as individual solicitors would address this barrier to accountability.

However, CAS continues to have questions in relation to how this is phrased in the draft Bill in terms of determining how and to what organisations entity regulation would apply to. Phrasing around fee, gain or reward may need to be reconsidered to emphasise the transactional element, so as to avoid the risk of unintentionally subjecting third sector/not for profit organisations to entity regulation.

Reform of the complaints process

CAS agrees with the Committee that the complaints process needs urgent reform.

We have consistently highlighted 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 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.

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 – with complaint elements all potentially having different complaint destinations and procedures - fails to deliver a simpler pathway for consumers. We are also concerned about the potential removal of compensation in conduct complaint cases. Furthermore, 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.

Explicit provision should be made in the Bill to strengthen the complaints system's support for vulnerable consumers, including those who may need or wish to have further support from third sector organisations during the complaint process. More generally, consumer information and education on complaints routes and redress mechanisms will need increased attention going forward.

Lack of consideration of the role and resourcing of the SLCC consumer panel

CAS welcomes the expanded remit of the SLCC's Consumer Panel in the Bill but cautions against the panel being seen as the catch all consumer scrutiny forum without increased resources to enable the panel to discharge these functions. We are disappointed that the stage 1 report makes no reference to the panel, or its proposed expanded remit or resourcing implications associated with this. We would draw attention to the SLCC Consumer Panel's stage 1 evidence and briefing which further highlight these issues in more detail.

For any inquiries, please contact:

Hyo Eun Shin (Policy Officer – Access to Justice, Strong Communities Team), Hyo-Eun.Shin@cas.org.uk