



Law Society
of Scotland

Written Evidence

Independent Review of the Regulation of Legal
Services – call for evidence



March 2018

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of the public and our members. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law.

Since April 2017 we have actively engaged with the legal services review and the appointed independent panel. In January 2018 we submitted our paper, the Case for Change Revisited,¹ to the review of legal services. The paper updated our proposals for wide-ranging reforms first highlighted in December 2015 that will allow us to keep pace with global developments within the Scottish legal sector and improve consumer protection. In our paper, we set out a series of recommendations which include expanding consumer protections to currently unregulated areas of legal services, protection of the term 'lawyer' to mean those who are legally trained and are regulated and overhauling the legal complaints system, which we believe is overly complex, expensive and lacks proper oversight.

Our recommendations also include:²

- expanding consumer protections to currently unregulated areas of legal services
- better regulation of legal firms as entities in addition to the regulation of individual solicitors to better protect consumers
- new powers to suspend solicitors suspected of serious wrongdoing
- widening the Law Society's membership to improve standards amongst other legal professionals
- for the Society to seek approval from the Legal Services Board to be an authorised regulator for those multi-national practices operating in Scotland.

We welcome the opportunity to further engage by considering and responding to the review group's call for written evidence on the review of legal services. In responding to the questions, we refer to our previous submissions where appropriate.

¹ <https://www.lawscot.org.uk/media/359509/case-for-change-revisited-law-society-of-scotland.pdf> accessed 6 February 2018

² A full list of the recommendations can be found in the 'Case for Change – Revisited' ibid p77

General comments

Established by statute³ and governed by a constitution⁴, the Law Society's Council, which sits as the principal decision-making body of the Law Society of Scotland, is made up of volunteer solicitor members and non-solicitor members. Non-solicitor (lay persons) are appointed through a transparent and open recruitment process, and solicitor members are appointed through constituency elections for a serving term of three years.⁵ Since the passing of the 2010 Act, the Law Society has also had an independent Regulatory Committee, made up of 50% experienced solicitors and 50% non-solicitors. The convener must be a lay member and is chosen by the committee. All regulatory sub-committees have this 50/50 split and report to, and are overseen by, the Regulatory Committee.

As part of our decision making structure, we have in excess of five hundred volunteer members of committees and sub-committees, both solicitor and non-solicitor. A small number of committee conveners receive an annual payment in return for their time commitment. However some committee conveners, and all committee members, provide their time, significant experience and vast knowledge without remuneration.⁶ Our non-solicitor members help to ensure we meet our important responsibilities, and statutory duty, towards the public interest.⁷ This structure is crucial in providing cost effective and proportionate regulation of the solicitor profession and to help ensure that we meet our statutory duty to promote the interests of the solicitors' profession in Scotland and the interests of the public in relation to that profession.⁸

Scotland has a system of co-regulation of legal services involving the Law Society, the Faculty of Advocates, the Scottish Solicitors' Discipline Tribunal, the Association of Commercial Attorneys and the Lord President. In 2008 this was further extended by the creation of the Scottish Legal Complaints Commission (SLCC). Although we advocate a modern and flexible regulatory framework, we believe there are essential aspects of the 1980 Act which do work and must be maintained. This includes the fundamental principle of a professional body regulating and providing support for Scottish solicitors independently from government. It is a model which has been consistently acknowledged as the preferred and most suitable model for Scotland by both the Scottish Government and Scottish Parliament.⁹ It is also a model seen in other professions, including accountancy and teaching, and in other legal jurisdictions around the world.

³ Legal Aid and Solicitor (Scotland) Act 1949

⁴ Constitution of the Law Society of Scotland November 1988

⁵ Ibid Section 3 – 5 Constitution of the Law Society of Scotland

⁶ Reasonable expenses are reimbursed, i.e. travel etc

⁷ Section 1(2)(b) Solicitors (Scotland) Act 1980

⁸ Section 1 Solicitors (Scotland) Act 1980

⁹ 11th Report 2002 <http://archive.scottish.parliament.uk/business/committees/historic/justice1/reports-02/j1r02-11-vol01-01.htm>

We believe that any change to the current regulation and professional support structure of the Law Society, or a separation of that conjoined approach, would be harmful to the consumer interest and to the Scottish legal sector. The creation of a separate regulatory entity, when there is no evidence of a regulatory problem in the current structure, may have a detrimental effect on access to justice. Without the input of volunteers, costs of regulation may increase significantly. These costs may ultimately be passed on to consumers which may deter them from seeking legal services from the regulated sector.

We are a professional membership body. A members' body which regulates and provides professional support to its members ensures high, practical and ethical standards, as well as the provision of high quality legal services. By supporting our members, we promote greater commitment, pride and loyalty within the Scottish solicitor profession. Members have a strong personal and professional interest in ensuring that the profession is appropriately regulated through us so that consumers can be assured that by instructing a Scottish solicitor they are instructing an experienced, qualified and regulated professional.

In relation to the definition of legal services, we note that reference is made within the call for evidence document to the definition as set out within the Legal Services (Scotland) Act 2010.¹⁰ We wish to clarify that this definition only applies to Licensed Legal Services Providers (LPs) - it does not apply to the wider legal sector. Currently there are no LPs as there is no authorised regulator in Scotland and the infrastructure required, e.g. complaints processes etc, has not yet been put in place. The Solicitors (Scotland) Act 1980 sets out the legal work that can be undertaken only by a Scottish solicitor. This is extremely narrow. Section 32 of the 1980 Act restricts this to only the preparation of writs relating to court proceedings and the submission of writs relating to heritable or movable estate. Beyond that, all other work can be carried out by an unregulated person, which raises consumer protection concerns and which we discuss in detail in our previously submitted paper.

The practices of claim management companies (CMCs) have also been the centre of media focus over recent years and there has been close scrutiny by both the Scottish and UK governments. CMCs are not currently regulated in Scotland, unlike in England and Wales where they are regulated by the Claims Management Regulation Unit, part of the Ministry of Justice. As we understand, in 2019, regulation responsibility will switch to the Financial Conduct Authority, in particular the Financial Ombudsman Service under the provisions of the Financial Guidance and Claims Bill [HL].¹¹ Recent amendments to the Bill, as we understand proposed by the Scottish Government, have the effect of extending regulation to include

¹⁰ Section 3 Legal Services (Scotland) Act 2010

¹¹ Clause 26 Financial Guidance and Claims Bill [HL]

Scotland. We have said on a number of occasions that we believe all those providing legal services to the consumer should be regulated, which would include CMCs, a view which we expressly stated in our response to the *Wider choice and better protection* consultation in 2009¹² and more recently before the Justice Committee in the oral evidence session¹³ relating to the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

We note the suggestion made by Sheriff Principal Taylor in his report (relating to expenses in civil litigation)¹⁴ that ‘...*having one regulator to police the whole litigation process or system is likely to give rise to a superior understanding and overview*’. Although the regulation of CMCs in Scotland will become the responsibility of the FCA in 2019, should circumstances necessitate a change in policy then we would welcome discussions with the Scottish Government on the regulatory role we may play.

The SLCC recently responded to the review’s call for evidence.¹⁵ We welcome many of the SLCC’s suggestions, which follow on from recommendations of our own. For example, we agree with a move towards a single legislative framework and the embedding of the ‘better regulation’ and consumer principles within the regulatory framework. We also agree with the recommendation for regulation to focus on the risk to the public and to provide ongoing assurance and quality improvement, although this approach would need to be developed around set standards.

The SLCC also recommends that the system of taxation of fees should be reformed and resourced. We agree. Currently there is no primary legislation allowing for the right to have excessive fees subject to determination by taxation. Where an application is submitted for taxation, this must be conducted by the Auditor of the Court of Session or the Sheriff Court. As well as being very time consuming, this can prove prohibitively expensive. If the submitted fee account is determined to be fair and not excessive, then the applicant is liable for all costs incurred. This may act as a deterrent for consumers in applying for taxation. We have previously suggested that a simpler, quicker and more accessible system would provide a more efficient process for consumers to have disputed costs considered and determined.

However, there are a number of areas where we would suggest a different approach. The SLCC has suggested that there should be one single complaints body to handle both conduct and service complaints.

¹² <http://www.gov.scot/Resource/Doc/1097/0076097.pdf>

¹³ Oral evidence session: 28th Meeting, 2017 (Session 5) Tuesday 26 September 2017

¹⁴ Review of Expenses and Funding of Civil Litigation in Scotland – Taylor Review 2014

¹⁵ <https://www.scottishlegalcomplaints.org.uk/reimagine-regulation.aspx>

Yet there appears to be no compelling evidence of a problem, of significant consumer detriment or of poor regulatory decisions which would be required in order to justify support such a significant change.

The current responsibility structure for dealing with complaints with the SLCC having responsibility for handling service complaints and the appropriate regulator (Law Society, Faculty of Advocates etc) handling conduct complaints is a structure we support and one which works well. It ensures that those with a proper understanding of and expertise in professional conduct and disciplinary matters investigate complaints and act accordingly. That system is supported by robust oversight by the SLCC and ensures consumers always have a right to pursue the matter through a fair and independent process if they believe a professional body has not handled the complaint appropriately.

What does not work well are the cumbersome, complex and confusing processes which all complaints are forced to go through. In particular the gateway eligibility process is one of the primary bottlenecks in the investigation of complaints, and occurs at a stage which can colour service users' perception of the entire process – at the first point of contact. This is why our earlier evidence focused on how we can make those processes simpler and quicker, initially through short term changes delivered by way of regulations, ahead of more significant reforms delivered through primary legislation. By focusing on and improving those processes, we can reach effective regulatory decisions more quickly, to the benefit of consumers and the profession. In this paper we have set out our suggested process, this can be found on page 16.

It is appropriate that complaints relating to conduct are investigated and handled by the professional body responsible for regulating conduct matters. We believe that our proposed model, which we suggested in our Case for Change – Revisited paper, would provide a structure to develop a much improved process which is focused on consumer expectations and interests with a single investigation.¹⁶ Our suggested model is based on the model successfully adopted in England and Wales.

In relation to the independence of the complaints process, all conduct complaints are considered by our Professional Conduct Sub-Committees. The sub-committees will determine the complaint based on the evidence. They can decide that the complaint warrants no further action, amounts to unsatisfactory professional conduct or is potentially professional misconduct, which should be referred to the Scottish Solicitors' Discipline Tribunal (SSDT). The sub-committees are made up of 50% lay persons (non-solicitor) and 50% solicitor members. All members are volunteers who willingly commit their own time, experience

¹⁶ See para 125-150 Case for Change-Revisited January 2018

and knowledge to ensure that complaints receive due and focused consideration and determination. It should also be noted that in accordance with our duty to act in the public interest we raise a complaint where we feel that the service or conduct of a solicitor falls below that required. In 2017 59% of prosecutions before the Scottish Solicitors Discipline Tribunal (SSDT) arose as a result of complaints we made. This, we suggest, clearly demonstrates our commitment to the public interest and the appropriate separation of our dual role.

We also welcome the support of the SLCC to the concept of entity regulation. However, it is not clear if the suggestion is for a separate body to regulate at entity level and another to regulate solicitors at individual level. Our view is that one single professional body should be responsible for regulating at individual and entity level. We believe that this single conjoined approach will promote consistency, minimise costs, prevent confusion and reflect the consumers perception of legal services regulation. From the perspective of the client, their contract is with the law firm/legal service provider and the client places expectations on that business.

Regulating entities as well as individual solicitors through a hybrid approach aims to provide more efficient and effective regulation – both from the consumer and the solicitor perspective. It is meant to simplify and improve the regulatory process from the perspective of the individual solicitor and to strengthen consumer protections. Entity regulation does not dilute the regulation of the individual solicitor; the two run alongside and complement each other, therefore it is appropriate that regulation rests with a single body. If there were to be separate regulators for entities and individual solicitors this would create additional levels of complexity in the regulation framework and confusion amongst consumers.

There are a number of other suggestions made by the SLCC, for example relating to review clauses, fee structures, data sharing etc. However we believe that these relate to the detail of a regulatory framework and it would be more appropriate to consider this level of detail at the point of any legislative proposals that may emanate from the review group's recommendations.

Specific comments

1. What should a regulatory system for 21st century legal services in Scotland look like?

As with any regulatory system, the framework for the regulation of legal services should be robust but proportionate. It should have the interests of the consumer at its heart but also be fair and reasonable to the profession being regulated. When looking to reform the regulatory system, we should seek to enhance the economic and social benefits of the legal services market, to maintain high standards and provide the appropriate protections for consumers when things go wrong. A regulatory framework for the 21st century

must be flexible and adaptive to reflect and support continuous innovation in the delivery of legal services and the evolution of business structures which are materialising through technological advances. We have been consistently clear that a flexible and proportionate regulatory framework is crucial to underpin consumer interests.

We note that the call for evidence suggests a number of categories respondents may wish to comment on. Of those suggested, we either provide comment in other parts of this paper or we have commented in detail in our previously submitted paper. However, we do wish to comment on the suggestion about **entry and qualification** into the legal profession.

We have robust requirements for those wishing to enter the Scottish solicitor profession. These are focused to ensure that all those wishing to use the title of Scottish solicitor and provide services within the legal market have the relevant knowledge, skills and, understanding to practise and are a fit and proper person to do so. It takes many years of study and formal training before a person can use the title of solicitor. Although there are other routes to qualification, a person will normally commence their career by completing the LLB (hons) at undergraduate level, which takes four years. Following this, if a person wishes to become a solicitor, they must complete the Professional Education and Training (PEAT) programme. PEAT is the vocational element of the route to qualification often known as the Diploma in Professional Legal Practice. PEAT 2, the work-based learning element of the route to qualification, is a two-year process which builds upon the learning of PEAT 1. This two-year training contract is completed under the supervision of a qualified solicitor and trainees work to complete a series of outcomes based on knowledge, skills, attitudes and values.

The education and training requirements are set out within the Admission as Solicitor (Scotland) Regulations 2011 by pursuance of the 1980 Act.¹⁷ We accredit universities to ensure that the legal education delivered to undergraduate students remains consistent and meets required standards and objectives. As it currently stands if we wish to change the regulations for training, for example to recognise changes in the Scottish legal services landscape, a shift in social attitudes or to make it easier for those who may be from disadvantaged backgrounds to enter the profession, then the 1980 Act requires that changes may only be made with the concurrence of the Lord President. The process, which we are required to follow for the Lord President's concurrence, can be protracted, even for the most minor changes. We believe that removing the need for approval for some of the minor changes to the regulations

¹⁷ Section 5 Solicitor (Scotland) Act sets out the requirement for regulations

would allow us the flexibility to make changes reflective of the evolving legal services market, to ensure that training remains relevant whilst maintaining high standards.

We believe that every young person should have the same opportunity to become a solicitor. In 2016 we established the Law Society of Scotland Education Foundation (Lawscot Foundation),¹⁸ a registered Scottish Charitable Incorporated Organisation. The Lawscot Foundation offers financial assistance, by way of an annual bursary, to academically talented students from less advantaged backgrounds in Scotland throughout their legal education journey. The Foundation also provides mentoring and other support to students during the law degree (LLB) stage and the vocational Diploma in Professional Legal Practice. Mentoring is provided throughout their legal education from an experienced Scottish solicitor to help enhance the student's confidence, skills and knowledge.

The response from the legal community has been very supportive, which demonstrates just how committed we are as a profession to ensuring fair access. Donations to the Foundation have come from across the legal and business sectors. Sixty of our members volunteered to become mentors for the students.

In the Foundation's first year, forty three eligible applications were received, and eight were selected by the trustees on the basis of published criteria to receive the bursary. The Foundation's target is to provide financial and mentoring support to a minimum of eight new students each year, meaning that by the fifth year and in subsequent years, a maximum of forty students are being sponsored throughout their five years of legal study.

2. Do you have any comments about the consumer, provider or public interest in the current regulatory framework?

We believe that the consumer interest is paramount. Legal services are often provided to vulnerable people or to individuals at times of difficulty, distress or anxiety in their lives. This is why it is so important to ensure we have proper protections in place for the consumer for the relatively few instances where things go wrong.

Clients of Scottish solicitors are arguably amongst the most protected when it comes to legal services.

- Only those who undertake extensive education, training and continued professional development are allowed to practise as a solicitor.

¹⁸ For further information on the Lawscot Foundation see: <https://www.lawscotfoundation.org.uk/>

- Solicitor firms can only operate if they have adequate professional indemnity insurance to cover negligence for when mistakes are made.
- Firms are proactively inspected to ensure all client money held is properly accounted for and to ensure firms play their part in supporting the UK's effort to tackle money laundering.
- Clients have recourse to the Client Protection Fund (financed by the profession, not the taxpayer) if they are the victim of a solicitor's dishonesty.
- There is a clearly defined route to lodge complaints against a solicitor through the SLCC. This is funded exclusively by the legal profession without any financial burden on the taxpayer. If eligible, these complaints are always investigated fully, fairly and independently of the solicitor or firm and with appropriate compensation available.

It is because of this already robust system of regulation that consumer confidence is so high and, issues of poor service or misconduct so low. Independent polling¹⁹ shows overwhelming levels of satisfaction by clients, of high customer service and of trust in the solicitor profession as a whole.

This is why we believe it is so vitally important to ensure this kind of assurance and these kinds of protections remain in any future framework. It is the focus on consumer interests which necessitates the need for a flexible regulatory framework and addresses the current inadequacies in regulation where they exist, so that consumer interests can be robustly protected as the legal services market evolves and new consumer risks are identified.

3. Do you have any comments about transparency and accountability in the current regulatory framework?

As a statutory regulator, we believe that transparency and accountability must sit at the very heart of the regulatory system.

In November 2017 we published our annual plan²⁰ in which we set out our intended project to respond to the issues identified by the Competition & Markets Authority²¹ around price transparency and consumer choice in its recent review of the legal services market. Although the focus of the review was the legal services market in England and Wales, we believe that it was important to investigate and consider some of those issues identified as affecting consumer choice in Scotland. We will progress the project through

¹⁹ Scottish Public Attitudes & Opinion Monitor, Ipsos MORI, October 2014

²⁰ <https://www.lawscot.org.uk/about-us/strategy-reports-plans/annual-plan/>

²¹ CMA Legal Services Market Study <https://www.gov.uk/cma-cases/legal-services-market-study> (accessed 15 March 2018)

research into international practice in this area, a consultation with our members and stakeholders and developing specific proposals for consideration by our Regulatory Committee.

Through our website and other communication channels, we are open and transparent about the standards which solicitors are expected to abide by, the robust route to qualification which exists for those aspiring to become a solicitor and the protections which are in place for consumers.

As an organisation, we are accountable to a number of different individuals and groups. We are accountable to:

- our independent regulatory committee, which sits separately to our Council, is made up 50/50 of solicitors and non-solicitors and which oversees performance against rigorous performance standards.
- the Lord President as the most senior member of Scotland's legal profession, the person who must approve changes to practice rules and who oversees the independent discipline tribunal.
- the 11,000 Scottish solicitors who are required to fund the system of regulation and who have an indelible interest in maintaining standards across the profession and rooting out our issues of misconduct.
- the Scottish Legal Complaints Commission, which has a statutory duty to oversee our performance as a complaints handler and who provides an independent appeal process.
- the Scottish and UK parliaments as we are body created by statute.

We believe proper independent oversight is particularly important in relation to the complaints process, to enhance transparency and strengthen public confidence. As mentioned, the SLCC has an oversight role in relation to us and the Faculty of Advocates specifically in relation to conduct complaints in accordance with the provisions of the 2007 Act. However, the SLCC itself is not subject to any independent oversight except that of Scottish ministers, and even then it is obliged only to present its budget and activity to them periodically²² – the ministers have no powers to interfere with its budget or operation.

We have suggested the creation of an independent ombud who would oversee the SLCC, the Faculty of Advocates and us. As well as increasing transparency and accountability, having an independent ombud would also simplify the complaints and appeals processes and make it much less costly than the current process of taking appeals to the Court of Session.

²² 2007 Act section 29. The budget must be laid no later than 30 April each year

4. Do you have any comments about flexibility and proportionality in the current regulatory framework?

As we have previously and consistently stated,²³ we believe that the current regulatory framework, which is underpinned by the Solicitors (Scotland) Act 1980, is outdated and has failed to keep pace with developments within the Scottish legal services market, consumer expectations and the way in which legal services are now delivered. The legislation covering the operation and regulation of the legal market is approaching 40 years old and did not anticipate the changes we are seeing today. The existing framework restricts the pace at which we can change and develop rules, regulations and processes which could enhance delivery of our services to members and the consumer and which could support innovation within the market to the benefit of the wider Scottish economy.

We have recommended the repeal of the Solicitors (Scotland) Act 1980 and those parts of the Legal Profession and Legal Aid (Scotland) Act 2007 which relate to the regulation of legal services and for the introduction of new enabling and permissible legislation for the regulation of legal services in Scotland and the Scottish solicitor profession, with the flexibility to move with the times, allow for innovation in the delivery of legal services and which allows for proactive regulation to ensure consumer protections remain robust.

5. What have been your experiences of coming into contact with legal services in Scotland? How could the experience be improved?

An independent poll of the Scottish public in 2014 indicated that 90% of those surveyed are satisfied with the services provided by their solicitor and 82% would recommend their solicitor to others.²⁴ These results demonstrate high levels of trust in the legal profession as a whole.

Figures from the SLCC show the numbers of eligible complaints for investigation is only around 400 a year across a profession of over 11,000 who, in turn, deal with millions of client matters. Almost half of the all the matters taken to the independent discipline tribunal over the last five years have come, not from consumer complaints, but because of the proactive work undertaken by us.

That said, we do have serious concerns over the lack of defined standards and lack of consumer protection for legal services in the unregulated market. As we have stated on a number of occasions,²⁵ we are concerned that the majority of consumers may not realise that only a small proportion of legal services

²³ See 'The Case for Change- Revisited' p14-19

²⁴ Ipsos Mori telephone poll of 1001 adults living in Scotland

²⁵ See para 88-103 Case for Change – Revisited January 2018

must be undertaken by a qualified and regulated solicitor. Many other 'legal' matters, such as will writing, employment law, divorce, consumer matters, personal injury, family law and immigration, are provided by Scottish solicitors but can also be handled by unregulated firms and by persons who may be unqualified and inexperienced to provide that advice.

We believe that the unregulated provision of legal services poses a significant risk to consumer protection and confidence. For example, there is no statutory requirement in the unregulated sector for professional indemnity insurance should something go wrong. By contrast, a legal service provider regulated by the Law Society offers the benefit of both the statutory Client Protection Fund and professional indemnity insurance requirements, including the Master Policy. Those consumers receiving services from other regulated professionals, such as accountants, will have the protections afforded and required by the relevant regulator.

Should the consumer have any issue with the service they have received from an unregulated provider or if something manifests itself which, in the view of the consumer, raises concerns about the conduct of the provider, then there is unlikely to be any route of complaint. An unregulated provider may have a complaints process, but they are not obliged or required to do so. A regulated provider will provide the consumer with a course of redress, either through the regulating professional body or, in the case of a solicitor or regulated law firm, through the SLCC under the provisions of the Legal Profession and Legal Aid (Scotland) Act 2007.

We also take this opportunity to restate our concern in relation to the generic use of the term 'lawyer'. This is a generic term defined as '*someone whose job is to give advice to people about the law...*'²⁶ but it is not a 'protected' title as with the term and title of 'solicitor'.²⁷ As a result, any person, regardless of qualification, experience or regulation, can legitimately refer to themselves as a lawyer. The consumer often does not appreciate that there is a significant difference between a solicitor and a lawyer – all solicitors are lawyers, but not all lawyers are solicitors. Those instructing an unregulated 'lawyer' do not receive the benefit and level of protection as afforded to those instructing a solicitor. They are not covered by our Master Policy (indemnity insurance) or the Client Protection Fund²⁸ and they are not covered by the statutory complaints scheme.

²⁶ Cambridge dictionary online : <https://dictionary.cambridge.org/us/dictionary/english/lawyer>

²⁷ The term 'solicitor' is a protected title in Scotland (and the rest of the UK). Section 31 Solicitor(Scotland) Act 1980

²⁸ See paras 26 – 33 Case for Change- Revisited January 2018 for further information

In 2016, we conducted further research which demonstrated that 63% of consumers do not recognise the difference between a solicitor and a lawyer.²⁹ The consumer's perception is that a lawyer is a solicitor, or other legal professional, who is appropriately qualified and regulated, and therefore reputable. We have previously recommended that the term 'lawyer' be a protected term, in the same way as the term solicitor is, and only those able to demonstrate recognised legal qualifications, and those who are regulated, be permitted to use the term.

6. Are there any regulation issues you wish to comment about in relation to specific types of justiciable problem e.g. employment, consumer or family disputes?

In our view, this question suggests that legal practice areas should perhaps be regulated differently. We believe that to regulate practice areas in isolation and in different ways would be very problematic. It would raise issues of consistency and lead to confusion amongst the legal profession and the public.

Currently we publish guidance which is practice area specific due to the unique nature of that type of work, for example for criminal work³⁰ and for those solicitors dealing with vulnerable clients.³¹ Although this guidance does not have the same status as practice rules, it may be referred to for guidance in assessing whether a solicitor's conduct meets the standard required of a member of the profession or whether the service provided has been adequate. Producing guidance like this allows for the flexibility to update the guidance accordingly as necessity dictates, something which would be much more problematic if it were contained within rules or legislation.

7. What innovations or barriers to innovation within legal services or their regulation would you wish to highlight?

Please refer to our response to question 8 below.

8. Given the significant pace of change in our economy, how would you envisage the regulation of legal services facilitating innovation and imaginative service delivery supporting the growth of the economy?

We are suggesting that new enabling and permissible legislation be introduced which provides the flexibility to recognise and respond to developing innovation within the legal landscape. A

²⁹ Ipsos Mori Poll of 1000 adults living in Scotland

³⁰ <https://www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/section-f/division-a/guidance/the-code-of-conduct-for-criminal-work/>

³¹ <https://www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/section-b/rule-b1/guidance/b1-5-vulnerable-clients-guidance/>

framework which does not constrain the aspirations of the legal sector to develop and does not act as a barrier or deterrent to innovation, but one which supports and reflects developments and is able to move forward, supporting firms to grow and to take advantage of technological advancements in service delivery and to recognise the changing needs of the consumer. The legal sector makes a significant contribution to the economy of Scotland. The Scottish Annual Business Statistics show that the legal sector contributes £1.48 billion to the Scottish economy with the trend rising, from £1.2 billion in 2008.³² Permissible legislation which recognises innovation within the legal services sector would, we believe, be reflected by increased contribution to the Scottish economy.

9. Are there any immediate steps that should be taken in the short term to enable legal service providers in Scotland to compete better with providers in other competing jurisdictions?

The restraints, which prevent greater and extended competition in jurisdictions outside of Scotland, are to a large extent, dictated by legislation.

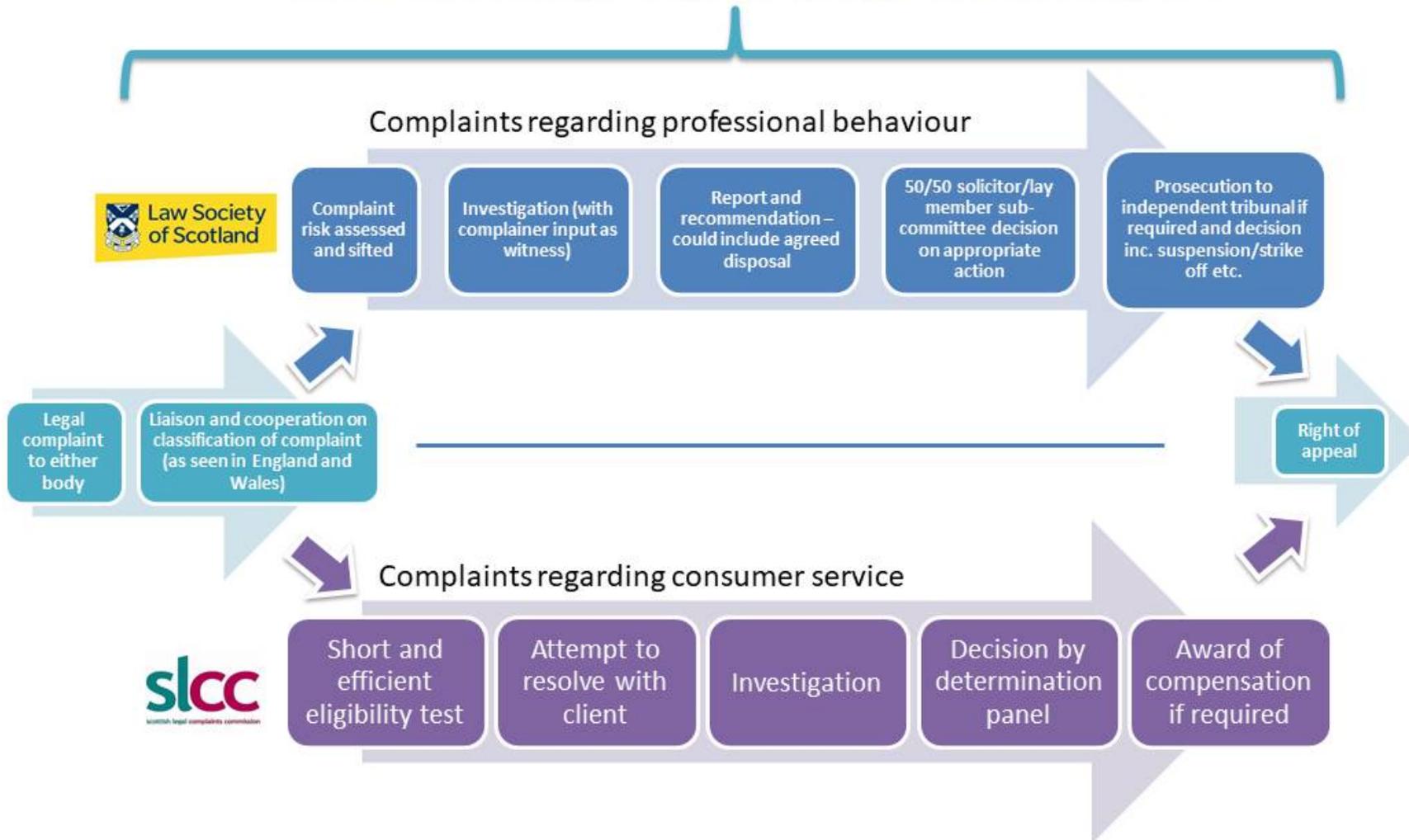
More and more legal services are being provided by firms operating in Scotland, as well as in England and Wales and other jurisdictions. However, the current legislation does not adequately empower us to regulate legal businesses in respect of their operations beyond Scotland. This means Scottish businesses have to submit to dual regulation, even if only operating within the UK. This increases compliance costs for the business and reduces competitiveness (and transparency) for consumers. We believe there is a strong economic case for Scotland and ourselves being given the permissible power to seek to become a regulator of legal services beyond Scotland. Providing a single regulatory model for cross-border firms could, over time, position Scotland as a more attractive jurisdiction in which to locate and base a firm's operations.

We would like to support the Scottish legal profession in competing with legal service providers from other jurisdictions which is why we have recommended that any new regulatory framework allows for the flexibility for us to seek approval from the Legal Services Board to be an authorised regulator for those multi-national practices operating in Scotland.

³² <http://www.gov.scot/Resource/0048/00484162.pdf> accessed 29 March 2018

Our proposed complaint process

Robust oversight by an independent ombud



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