



Law Society
of Scotland

Independent Review of Legal Services Regulation

Response

from the Law Society of Scotland

1 The starting point

Scotland's legal profession is one of this country's great success stories. There are currently 11,400 practising Scottish solicitors, more than ever before.

The legal sector is one of Scotland's most competitive, with almost 1,200 law firms operating and offering quality legal advice. That sector is a diverse one, from global, multi million pound businesses to a network of smaller practices operating on the high streets of our villages and towns the length and breadth of the country.

The in-house sector within the solicitor profession is larger and more important than ever. In-house public sector solicitors help to deliver on national and local government priorities. Private sector solicitors are advising and helping some of Scotland's largest and most important employers to grow and succeed.

More and more Scottish solicitors are choosing to live and work, not just in other parts of the UK but across the world, retaining their Scottish qualification as a proud badge of professional excellence.

As a whole, the legal sector sits at the very heart of the Scottish economy. It accounts for tens of thousands of high quality jobs. It makes a contribution to the Scottish economy of over £1.5 billion each year. It also supports the sectors on which Scotland's economic success depends - oil and gas, financial services, bioscience, food and drink and more.

However, the contribution of the legal sector is much more than economic. As with legal jurisdictions around the world, Scottish solicitors help ensure our country adheres to the values of equality, fairness and the rule of law. In doing so, solicitors provide quality legal advice, often in times of difficulty, distress and suffering.

In announcing the independent review of legal services regulation, the Minister Annabel Ewing was clear on the objectives. She said *"the review is intended to ensure a proportionate approach to regulation that supports growth in the legal services sector. It should also place consumer interests firmly at the heart of any system of regulation, including the competitive provision of legal services."*

As we look to strengthen the system that regulates this sector, our starting point should be one which recognises that sector's importance, its successes and look to ensure the economic and social benefits are enhanced.



11,400

Scottish Solicitors -
more than ever before



1,175

Solicitor firms
employing 24,000 people in cities, towns
and villages across Scotland



The solicitor profession contributes
£1.5 billion
to the Scottish economy each year



2 The 'mischief'

In leading this independent review of regulation, the chair Esther Robertson has asked an important question – 'why regulate and what mischief are we trying to prevent?'

Regulation should be robust but proportionate. It should seek to maximise the benefits of the sector whilst ensuring proper protection for consumers when 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.
- 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 dedicated and defined route to lodge complaints against a solicitor. 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 polling shows overwhelming levels of satisfaction by clients, of high customer service and of trust in the solicitor profession as a whole.

Figures from the Scottish Legal Complaints Commission 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. Issues of misconduct are dealt with by an independent discipline tribunal. Almost half of the cases taken before the tribunal over the last five years have arisen, not through consumer complaints but because of proactive work and conduct complaints raised by the Law Society.

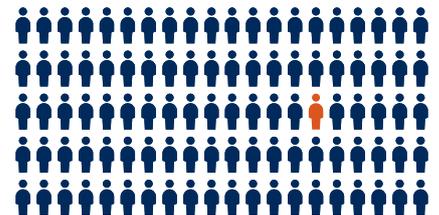
Indeed, this review of legal services regulation was established, not because of an outcry or clamour from consumers. Equally, it did not arise because of a major or serious market failure. It arose because those involved in regulation, including the Law Society, called for change. We recognised the flaws and unnecessary complexities of the system, the gaps in regulation and how it has failed to keep pace with modern legal practice.



Breakdown of members by employee type -
 34% in large firms 10+ partners
 26% small to medium firms (2-9 partners)
 10% sole practitioners
 30% in house



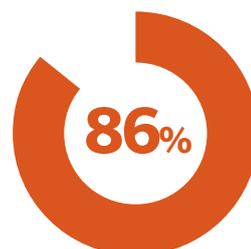
A profession at the centre of a free, fair and just society



400 eligible complaints - last year out of millions of client matters



95% of clients say they have trust in their own solicitor



86% of the public say they trust the solicitor profession as a whole



80% would recommend their solicitor to family and friends



In reforming the system of regulation, we must also avoid creating mischief. The Law Society presents a robust and cost effective model, particularly for a jurisdiction the size of Scotland. We benefit from a network of experienced solicitors and lay members, most of who give their time and expertise voluntarily without remuneration. We set the standards for the profession we regulate, have a deep understanding of the legal services market and where the legislation allows, respond quickly to emerging issues. As an organisation, we have controlled the costs we charge to solicitors. Meanwhile, the fees charged by the independent complaints body have risen dramatically, with no commensurate increase in trust and confidence.

This current model works, not only for solicitors but for accountants, surveyors and teachers. The benefits of such a system are so great that countries around the world have chosen to follow a similar model in regulating their legal services, including Canada, Australia and many states in the USA.

So the 'mischief' today is not one of an inherent structural weakness. The mischief is the slow, complex and bureaucratic processes within the regulatory framework. The mischief is not the highly regulated, high performing and highly respected solicitor profession, it is the growing unregulated sector. The mischief is less about the outcome of regulatory decisions but the rigidity of the system that prevents us and others from reaching those decisions more quickly. That is what this independent review should seek to address.

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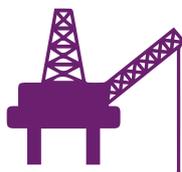
3 The solution

Our priority has been to address the real issues facing the legal services market. There is no evidence to support an overhaul of a system which is fundamentally sound. Instead, we seek to evolve that system to meet the modern and changing needs of consumers and the profession;

- Enabling legislation that not only addresses the issues of today but is flexible enough to deal with the challenges of the future. It must also encourage innovation and respond to the increasing role of technology within the legal services market.
- A recognition of the competitive legal landscape across the UK and internationally with changes that allow Scotland to retain legal talent and to attract and grow legal businesses.
- Retaining the fundamental model of partnership between regulatory bodies, which retains expertise and market knowledge, which prevents unnecessary costs and has served the Scottish market well for so long and so widely used in other sectors.
- Tackling the unregulated sector which can expose clients and leave them unprotected if and when things go wrong.
- Recognising the changing nature of legal practice through effective entity regulation, delivered by the body with the experience, understanding of the profession to make it work.
- A complaints system fit for the future, reforming the current cumbersome processes to deliver a speedy, efficient and effective service both for the client and the practitioner.
- An open and inclusive Law Society, which can attract voluntary members from the wider groups of individuals delivering legal services, such as paralegals and legal executives.

Scottish Solicitors

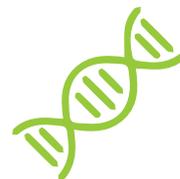
are critical to key economic sectors



Oil and gas



Financial services



Bioscience



Food and drink



The role of Law Societies in the regulation of legal services is used around the world, including Australia, Canada and many states in America.

The single professional body model

doesn't just work for solicitors,
it works for:



Teachers



Accountants



Surveyors