



Ash Denham MSP
Minister for Community Safety
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

10 June 2019

Dear Minister,

Fit for the Future – Report of the Independent Review of Legal Services in Scotland

Since the publication of the Robertson Report in October 2018, the Regulatory Committee of the Law Society of Scotland has dedicated significant time and resource to consider, evaluate and discuss the recommendations put forward. We have considered what these would mean from the context of both the consumer and legal practitioner with a focus always on proportionate regulation which protects and promotes consumer, professional and public interests.

This response letter sets out in detail our views and position in relation to many of those recommendations, in particular in relation to the primary recommendation. Although we do not agree with the primary recommendation, we do agree with a number of the other 39, and welcome the opportunity many of these will provide to enhance and modernise the regulatory framework. Where appropriate, we have evidenced our views with research findings and other supplementary evidence.

In relation to the primary recommendation for the creation of a new regulator for all legal services in Scotland, we note at the outset that no evidence is provided or referenced in the report which supports such a radical and fundamental change to the current regulatory model. As noted by the review Chair, there is little evidence of any wrongdoing in the current model. The model which is proposed is untested and we believe that insufficient consideration has been given to determining the cost of implementation. Assumptions are made within the report, but these are not supported by clear evidence. The report fails to recognise the inherent risk that the current goodwill and expertise which exists within the Law Society of Scotland committee structure will be lost, and the potential cost of attempting to replace that.

We also have concerns that the proposed model both undermines the independence of the legal profession and is contrary to the rule of law. The independence of the legal profession is a principle universally recognised as underpinning public interest, promoting and protecting human rights and is central to ensuring the rule of law is transparently upheld.

We have actively begun to discuss how we can take some of the report's recommendations forward under the current framework and structure. For example, we have begun discussions on committee recruitment, and consideration of adopting measures similar to the public appointment process. We



are also considering the benefits of creating a consumer reference group which would provide a source of consumer insight for the purposes of our regulatory work. We are supportive of the recommendation relating to entity regulation, subject to this reflecting principles of good and proportionate regulation.

In relation to complaints we agree, as do many, that the current model is unwieldy, unworkable and in need of overhaul. In our response letter, we have identified several key questions which we suggest need to be considered in designing and determining a new complaints model. These are accompanied by examples of what is in place in other jurisdictions. We suggest that these are looked at more closely by the Scottish Government along with other research, before formulating a new complaints model.

The committee would welcome the opportunity to discuss this response further with you in due course and in the meantime, if you have any questions, please contact Brian Simpson (briansimpson@lawscot.org.uk).

Yours sincerely,

Craig Cathcart
Convener to the Regulatory Committee of
the Law Society of Scotland