



**Law Society
of Scotland**

Regulatory Committee of the Law Society of Scotland Strategic objectives 2021 – 2022



Introduction

A robust and fair regulatory system that sets high standards for solicitors and ensures the confidence of the public in the profession is essential. I am therefore very pleased to publish the Law Society of Scotland's Regulatory Committee's new strategy for 2021-22

The legal profession has a key role in our society. Solicitors help people at pivotal points in their lives whether they are buying a new home, planning for the future of their family, building a successful business or upholding their rights in court. Anyone who seeks the advice of a solicitor must feel confident that they are in good hands. Having a regulatory system which sets the standards for entry to Scotland's solicitor profession and throughout a solicitor's years in practice, along with clear consumer protections, provides that assurance.

There has of course been enormous change for all of us as a result of the global pandemic. Our new regulatory strategy, like that of the [Society's overarching strategy for 2020-2022](#), reflects that wider change in its objectives to maintain high professional standards for Scotland's solicitor profession, protect consumers and the public interest, as well as support the rule of law and the interests of justice.

The strategy sets out five objectives: Protect, Scrutinise, Enhance, Align, and Develop. In publishing these strategic objectives along with action points, we aim to define and focus the regulatory work carried out at the Society through the Regulatory Committee, which acts independently of the Law Society's Council, and each of its sub-committees.

We will work to improve awareness of the Society's regulatory structure and the work carried out by its committees, as well as provide quality assurance and ensure operational effectiveness.

While a regulatory system needs to be robust, transparent and fair, it also needs to be proportionate and able to adapt to change to ensure that Scotland's legal sector can succeed in today's highly competitive environment. That means moving towards a principles and risk-based system of regulation, as is already happening in relation to the Society's anti-money laundering work, and introducing proportionate measures that will enhance competition in the interests of consumers, while providing robust protections. We will also form a representative consumer reference panel to be consulted at the direction of the Regulatory Committee and look forward to engaging with Consumer Scotland to gain its perspective on regulatory matters.

I'd like to thank everyone who contributed to our discussions on regulating a modern and diverse legal profession throughout the development of the strategy. I look forward to reporting on our progress.

Craig Cathcart, Convener, Law Society of Scotland Regulatory Committee



Regulatory Committee of the Law Society of Scotland Strategic objectives 2021 – 2022

Summary

The constitution of the Law Society of Scotland confers responsibility on the Regulatory Committee to determine the Society's strategy in regulatory matters.¹

Further to this, the Committee has identified the necessity and value of setting strategic objectives within its remit to help define and focus its work. This paper sets out draft strategic objectives for the Committee from 2021 to 2022. The five objectives are accompanied by a brief descriptor and a further explanation of the rationale and context from which each objective was developed. A final column summarises the operational significance of the objective in the reporting period. The five objectives are Protect, Scrutinise, Enhance, Align, and Develop.

The Committee is independent in the exercise of its functions, including the development of this strategy. It is however a statutory committee of the Council of the Law Society of Scotland, and its strategic objectives are best understood in the wider context of the Society's overall strategy, with which this sub-strategy is aligned.

Background and purpose of the Regulatory Committee

The Regulatory Committee was created as part of the Legal Services (Scotland) Act 2010 ('the 2010 Act'). It is a committee of the Council of the Law Society, but exercises Council's regulatory functions independently, as set out in Section 3F of the Solicitors (Scotland) Act 1980 ('the 1980 Act'). Its core purpose is to ensure these functions are exercised independently, properly, and with a view to achieving public confidence. For relevant extracts, please see Appendix 1.

The Committee may sub-delegate any of its functions to a regulatory sub-committee. As of 2020, there are 12 discrete sub-committees², each with a designated remit and membership. Like the Regulatory Committee itself, all the sub-committees are made up of 50% solicitors and 50% non-solicitors. The chair of the Regulatory Committee is a non-solicitor and is elected by the members.

The key elements of its remit are:

- To ensure that standards for the profession are set by way of making relevant and appropriate rules and guidance, to be applied in a uniform and consistent way and regularly reviewed;

¹ See <https://www.lawscot.org.uk/media/9418/constitution-of-the-law-society-of-scotland-2017.pdf> [Accessed 10 August 2020]

² Appendix 2



- To ensure on an ongoing basis that the internal processes, policies and procedures adopted by regulatory sub-committees are effective, appropriate and proportionate in order to ensure the making of consistent regulatory decisions for the protection of the public and the profession and to ensure that the sub-committees comply with Section 3B(2)((a) and(b)) of the 1980 Act;
- Where any rules policy, process or procedural changes are not in the authority of the Regulatory Committee to change, to make recommendations for any changes to the appropriate governance group in the Society (e.g the Council; the Law Society Board; Finance Committee; Chief Executive) or in the case of rules, to a general meeting of members and the Lord President.

Underpinning sources

- This strategy may be viewed as a sub-strategy of the Society's overarching strategy. The five strategic objectives represent the direction and scope of the Committee over the medium and long term. The two key sources are the statutory purposes of the Committee as set out in the Solicitors (Scotland) Act 1980, and the regulatory objectives and schema set out in the Legal Services (Scotland) Act 2010³. The strategy is additionally informed by:
 - The constitution of the Law Society of Scotland⁴;
 - The draft strategy of the Law Society of Scotland 2020-2022⁵;
 - The Society's agreed annual plan objectives 2020-21⁶;
 - The Better Regulation principles set out by the Scottish Government.⁷

We have also taken account of the legal services market in Scotland and beyond, international best practice in legal regulation, and the values and expectations of stakeholders. Finally, the five objectives are consistent with previous decisions and policy positions of the Committee. While it is not a source, the impact of the COVID pandemic has been significant on the Society, the legal profession, and society at large. This has heavily influenced the Society's current strategy and therefore this regulatory sub strategy.

³ See Appendix 1

⁴ *ibid*

⁵ The strategy is articulated around five key ideas of Evolve, Support, Influence, Excel and Assure, along with three cross-cutting themes of Equality, Technology, and Resilience.

⁶ See <https://www.lawscot.org.uk/about-us/strategy-reports-plans/annual-plan-202021/> [Accessed 11 December 2020]

⁷ See <https://www.gov.scot/policies/supporting-business/business-regulation/> [Accessed 20 May 2020]



Five strategic objectives

The five objectives are set out in the table below, along with a brief descriptor of their meaning and purpose. A third column puts each objective in context, and a fourth specifies related operational activity or objectives within the life of the plan.

Objective	Descriptor	Context	Operational activity/objective
Protect	<p>We will protect the public and consumer interest by ensuring high standards of entry, continuing professional development and conduct of members of the profession.</p> <p>We will protect the rule of law and the integrity of an independent legal profession by achieving public confidence in our regulatory model. We will exercise our functions independently of any person or interest.</p>	<p>The 1980 Act s3B establishes the Committee and mandates it to act independently of any other person or interest in carrying out regulatory functions.</p> <p>Regulatory objectives are set out in s1 of the 2010 Act, and include protecting the consumer interest and the public interest generally, and supporting the rule of law and the interests of justice, as well as promoting adherence to the professional principles.</p> <p>This objective also links to the Society's strategic aims to 'Assure' and 'Influence', not least through public protection and maintaining the reputation of the profession.</p>	<p>We will oversee the ongoing review of the 'fitness to practise' test for solicitors.</p> <p>We will oversee the proportionate and risk-based approach to anti-money laundering and financial compliance inspections.</p> <p>We will consult with stakeholders in a post-implementation review of the price transparency guidance.</p>
Scrutinise	<p>We will oversee the governance, management and casework of our sub-committees and delegated officials, and develop a culture of efficient quality assurance and operational effectiveness.</p>	<p>Section 3A(2) of the 1980 Act allows for our regulatory functions to be further delegated. Ultimately the Regulatory Committee is accountable for the work, it may delegate certain functions to discrete, expert sub-</p>	<p>We will require proposals for new rules and guidance to include an impact assessment .</p>



<p>Scrutinise (cont.)</p>		<p>committees to ensure effective scrutiny and decision making. The committees perform a wide range of functions, from high level governance (for example, of the Client Protection Fund) to deciding individual cases. The Regulatory Committee supports sub-committees and their officials to operate efficiently and proportionately.</p> <p>This objective links to the Society's strategic aims to 'Evolve' and 'Excel'. Effective and proportionate regulatory costs reduce the burden on the profession and ultimately may mean better value to the client.</p> <p>This objective also supports the regulatory objective from the 2010 Act of protecting the public interest, the interests of consumers, and supporting the interests of justice.</p>	<p>We will enhance the committee paper template by developing a standard reporting line for regulatory impact assessment.</p> <p>We will review reports on the Key Strategic Measures relevant to the Regulation Directorate and input into the development of new regulatory Key Strategic Measures for future operating years.</p>
<p>Objective</p>	<p>Descriptor</p>	<p>Context</p>	<p>Operational activity/objective</p>
<p>Enhance</p>	<p>We will enhance public and wider stakeholder awareness of the Society's regulatory structure.</p>	<p>Enhancing knowledge of what we do and how we do it when it comes to regulation will assure the public and promote the profession.</p>	<p>We will participate fully in the next stages of the Legal Services Review and contribute to the Society's work to ensure reform is a priority in this or the next Parliamentary session. In this context and others we will put the case for</p>



<p>Enhance (cont.)</p>	<p>We will enhance the competitiveness of Scottish solicitors by proportionate regulation.</p> <p>Through our policies and actions, we will preserve and enhance the confidence of the profession in our regulatory model.</p> <p>We will move the Society’s regulatory culture further towards principles based, resource efficient, risk assessed and proportionate regulation.</p> <p>We will enhance public and wider stakeholder awareness of the Society’s regulatory structure.</p> <p>We will enhance the competitiveness of Scottish solicitors by proportionate regulation.</p> <p>Through our policies and actions, we will preserve and enhance the confidence of the profession in our regulatory model. We will move the Society’s regulatory culture further towards principles based, resource efficient, risk assessed and proportionate regulation.</p> <p>We will move the Society’s regulatory culture further towards principles based, resource efficient, risk assessed and proportionate regulation.</p>	<p>Section 1 of the 2010 Act sets out a regulatory objective to promote competition in the provision of legal services. This is best done by proportionate measures that enhance competition in the interests of consumers without overburdening business.</p> <p>This objective also supports the regulatory objectives of supporting the rule of law and promoting an independent legal profession that adheres to the professional principles.</p> <p>Principles based regulation recognises that those being regulated often will have the best idea of how to make sense for their business of any requirements, guided and supported by the Society as per its strategic aims to ‘Support’ the profession and ‘Assure’ the public.</p> <p>The Society has successfully developed areas of risk based regulatory work (for instance in anti-money laundering), recognising that, in the language of the Better Regulation principles, this is more targeted, proportionate and efficient.</p>	<p>strong independent oversight and co-regulation of legal services.</p> <p>We will support the Society’s input to the ongoing governmental review of the complaints process. We will oversee the parallel internal review.</p> <p>We will review recruitment and selection processes for our Committee and for the regulatory sub-committees.</p> <p>We will oversee the review of induction and training insofar as our Committee and subcommittees.</p> <p>We will consult with Council to explore greater independence in the appointments process for the Committee, in particular considering the feasibility and scope for adopting a means analogous to the public appointments process.</p> <p>We will learn from anti-money laundering and financial compliance inspections to oversee the extension of risk-based approaches to other areas of regulatory compliance.</p> <p>Building on the practice of the Civil Legal Aid Quality Assurance Subcommittee, we will encourage where appropriate the use of sampling by subcommittees for quality assurance purposes.</p>
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Objective	Descriptor	Context	Operational activity/objective
Align	<p>We will lead and support our regulatory sub-committees to ensure strategic alignment.</p> <p>We will develop shared understanding of the regulatory function across all parts of the Society.</p>	<p>This objective recognises the alignment between this strategy and the Society’s overarching strategy.</p> <p>The Society’s strategic aim to ‘Excel’ resonates with this objective, recognising the need for nimble, efficient and broad-based governance and delivery structures.</p> <p>By developing shared understanding of the regulatory functions and the expectations of the Committee and other stakeholders, we will also be ‘Consistent’, as per the Better Regulation principles.</p>	<p>Led by the Convener, we will engage proactively with regulatory sub-committees: attending meetings to understand better how the subcommittees work, communicating this sub strategy to subcommittees and hosting events to promote this sub strategy.</p> <p>With subcommittee colleagues and staff we will develop a protocol of the process for allocating issues to all committees. This will ensure that the Regulatory Committee is fully engaged with and aware of the range of work undertaken by the Law Society and can consider whether there is a regulatory aspect to that work.</p>
Objective	Descriptor	Context	Operational activity/objective
Develop	<p>We will be reflective, responsive and flexible in meeting the needs of society, the consumer and the profession.</p> <p>We will encourage equal opportunities.</p> <p>We will challenge ourselves to continuously improve.</p>	<p>We recognise the changing world in which we live, and thus the need to be adaptive in all we do. We will reflect on our activities, informed by the views of stakeholders, and be prepared to challenge ourselves to do differently and better for the good of society. In doing so, we resonate with the Society’s aims to ‘Excel’, ‘Support’, and ‘Evolve’. We aspire to our statutory purpose of achieving public confidence in how we regulate.</p> <p>This objective furthers the regulatory objective of the 2010 Act to encourage equal opportunities within the legal profession.</p>	<p>We will initiate an annual reflective self-assessment of Committee effectiveness.</p> <p>We will form a representative consumer reference panel to be consulted at the direction of the Committee.</p> <p>We will engage with Consumer Scotland to gain its perspective on regulatory matters.</p> <p>We will participate fully in Society initiatives monitoring and achieving diversity on our Committee and subcommittees.</p> <p>We will produce a publicly available annual report of the Committee’s activities.</p>



Appendix 1: Relevant legislation and related sources

Legal Services Scotland Act 2010 Section 1: Regulatory objectives

'For the purposes of this Act, the regulatory objectives are the objectives of—

- a. supporting—
 - i. (i) the constitutional principle of the rule of law,
 - ii. (ii) the interests of justice,
- b. protecting and promoting—
 - i. (i) the interests of consumers,
 - ii. (ii) the public interest generally,
- c. promoting—
 - i. (i) access to justice,
 - ii. (ii) competition in the provision of legal services,
- d. promoting an independent, strong, varied and effective legal profession,
- e. encouraging equal opportunities (as defined in Section L2 of Part II of Schedule 5 to the Scotland Act 1998) within the legal profession,
- f. promoting and maintaining adherence to the professional principles.'

Legal Services Scotland Act 2010 Section 2: Professional principles

'For the purposes of this Act, the professional principles are the principles that persons providing legal services should—

- a) support the proper administration of justice,
- b) act with independence (in the interests of justice),
- c) act with integrity,
- d) act in the best interests of their clients (and keep clients' affairs confidential),
- e) maintain good standards of work,
- f) where—



- i) exercising before any court a right of audience, or
- ii) conducting litigation in relation to proceedings in any court,
- g) comply with such duties as are normally owed to the court by such persons,
- h) meet their obligations under any relevant professional rules,
- i) act in conformity with professional ethics.'

Solicitors (Scotland) Act 1980 section 3B

'Regulatory Committee

(1) The Council must, for the purpose mentioned in subsection (2)—

- a) arrange under section 3A(1)(a) for their regulatory functions to be exercised on their behalf by a regulatory committee, and
- b) ensure that the committee continues so to exercise those functions (in particular, for the discharge of the Council's responsibility as mentioned in section 3A(9)(a)).

(2) The purpose is of ensuring that the Council's regulatory functions are exercised—

- a) independently of any other person or interest,
- b) properly in other respects (in particular, with a view to achieving public confidence).

(3) Accordingly, the Council must not—

- a) exercise their regulatory functions through any other means, or
- b) interfere unduly in the regulatory committee's business.

(4) Subsection (3)(a) is subject to—

- a) any determination made by the regulatory committee in a particular case that it is necessary, for ensuring that something falling within the Council's regulatory functions is achieved appropriately, that specific action be taken otherwise than through the regulatory committee, and
- b) such directions as the regulatory committee gives the Council (acting in any other capacity) in connection with the determination.'



Constitution of the Law Society of Scotland
The Regulatory Committee

- '23. (1) The regulatory committee is to have the responsibility to exercise the Council's regulatory functions (as defined in Section 3F of the Act) independently and on behalf of Council, and
- (a) to determine the Society's strategy in regulatory matters
 - (b) to set performance targets for the regulatory system, and
 - (c) to make regular reports to Council on regulatory matters.
- (2) The regulatory committee is to have 10 members appointed by the Council. Five members are to be members of the Society. Five members are to be lay members, as defined in Article 2. The members of the regulatory committee may, but need not, be members of the Council.
- (3) The committee's Convener shall be a lay member chosen by the committee members.
- (4) Any sub-committee of the regulatory committee
- (a) need not be chaired by a lay member of that Committee and
 - (b) may co-opt members from outside the membership of that committee.'



Appendix 2 Regulatory Sub-Committees

Admissions	Client Protection	Professional Conduct (1 and 2)
Anti-Money Laundering	Complaints and Oversight	Rights of Audience
Appeals and Reviews	Education and Training (Standard Setting)	Rules, Waivers and Guidance
Civil Legal Aid Quality Assurance	Practising Certificate	