

Stage 3 Briefing on the Regulation of Legal Services (Scotland) Bill

Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament. Stage 3 proceedings on the Bill are likely to take place before the summer recess. Consumer Scotland presented both oral and [written evidence](#) at Committee stages of the Bill.

Introduction

The Bill seeks to create a more proportionate, accountable and flexible regime which places consumers at the heart of the system. To achieve this, regulators and oversight bodies need to understand current consumer experiences and assess whether the regulatory system is meeting consumer needs. We consider that the Bill would have been stronger, and delivered a simpler regime for consumers, if it had provided for a single independent regulator. While this was a missed opportunity, the Bill can still deliver improvements for consumers. In view of the compromises reached in relation to the overall regulatory framework, it is important that the Bill ensures that the regulatory system works in an effective and transparent way.

The Regulatory System

We support the inclusion of the consumer principles within the overall regulatory objectives. Consumers using legal services must be confident that their interests are protected, and that things can be put right if providers go out of business, or poor service is received. There must be sufficient checks and balances to reduce risks of harm to consumers and to allow any issues to be resolved quickly and fairly.

The Scottish Government's decision to maintain the system of co-regulation, rather than putting in place a single independent regulator, inevitably results in a more complex system for consumers to navigate. The Committee raised concerns about this and around the creation of two categories of regulator with different regimes - the Law Society of Scotland is designated as a category 1 regulator and the Faculty of Advocates and Association of Construction Attorneys as category 2. **This categorisation adds complexity, and Consumer Scotland recommends that this distinction is removed.**

We support the Bill's extension of the SLCC's standard setting and monitoring powers. The widening of the Independent Consumer Panel's remit, through Stage 2 amendments, was also welcome. Its new role allows the Panel to look at legal services generally, and commission research into consumer issues, rather than simply focusing on complaints. **As the Bill is implemented, it will be important that the Panel is resourced adequately to deliver this new role effectively and to represent the consumer interest.**

The Accountability Framework

The Bill puts in place measures to protect consumers and promote accountability and transparency. We support requirements for regulators to publish annual reports and other governance information and comply with Freedom of Information requirements. These measures should make it easier for consumers, and consumer advocacy bodies, to assess how the regulatory system is working.

The Bill was amended at stage 2 to provide that the Lord President may carry out reviews of regulator performance. We welcome this mechanism which allows for independent oversight of the regulatory functions exercised by the professional regulatory bodies. Undertaking these reviews is a public function and a regulatory duty, and should be carried out in an accountable and transparent way. As the ultimate regulator of the legal profession in Scotland, with considerable new powers being provided under the Bill, **it would be appropriate for the Lord President to report on how his office undertakes these specific regulatory review functions, and for him to be subject to the requirements of the Consumer Duty under the Consumer Scotland Act 2020 and to the Freedom of Information Act in relation to these specific public functions.** Consumer views must also be taken into account when reviews are undertaken.

The Bill could be improved by providing a requirement for the Scottish Government to conduct a post-legislative review that focusses on the whether the regulatory objectives of the Bill, and consumer needs, are being met. We support amendments lodged at stage 2 which would enable scrutiny of how well the system is working and whether there are ways to improve consumer outcomes. The Independent Consumer Panel, and Consumer Scotland should be statutory consultees in relation to any such review, as they are in relation to the regulatory review powers in section 19 of the Bill.

Complaints

The current complaints system is too complex, and [our research](#) indicates that many consumers struggle to understand the correct route for complaints. We support further measures which may allow for simplification of the complaints process. It is also important that any stage 3 amendments to the Bill retain the gains which have been made in establishing a simpler and more flexible complaints process. If amendments reinstating complexity are made, this will result in the system being more costly to administer and less responsive to consumer needs.

Conclusion

Consumer Scotland supports the passage of the Bill, but believes that the changes we have recommended above would make the Bill stronger and more effective in safeguarding the interests of consumers. We would be happy to provide any further information or assistance, please get in touch by emailing comms@consumer.scot