

Consumer Scotland's Response to the Scottish Parliament Equalities, Human Rights and Civil Justice Committee's call for evidence on the Regulation of Legal Services (Scotland) Bill

About Us

Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament. The Act provides a definition of consumers which includes individual consumers and small businesses that purchase, use, or receive products or services.

Our purpose is to improve outcomes for current and future consumers and our strategic objectives are:

- to enhance understanding and awareness of consumer issues by strengthening the evidence base
- to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors
- to enable the active participation of consumers in a fairer economy by improving access to information and support.

In advocating for the needs of consumers, Consumer Scotland uses seven consumer principles, developed over time by [consumer organisations in the UK](#) and internationally. The regulatory framework set out in this Bill aims to incorporate these consumer principles which are also used by the SLCC's consumer panel to guide their work. A principles-based approach to regulation enables us to consider how markets function from a consumer perspective and to examine important questions about consumer impact and engagement. The principles referred to are:

- Access: can people get the goods and services they need or want?
- Choice: do consumers have any meaningful choice?
- Safety: are consumers adequately protected from risks of harm?
- Information: is it accessible, accurate, and useful, and does it enable participation?
- Fairness: are all consumers treated fairly?
- Representation: do consumers have a meaningful role in shaping how goods and services are designed and provided?
- Redress: if things go wrong, is there a simple way to put them right?

1 a. What are your views on the principal recommendation of the Robertson Review that an independent regulator should be created to regulate legal professionals?

The regulation of legal services is an important issue for consumers. The legal system plays a fundamental role in upholding other consumer rights, providing a route for consumers to

exercise these rights across multiple markets. Many consumers will require access to legal services at some point in their lives, to help with transactions such as house buying or making wills, or to deal with high-stress situations, such as divorce, disputes or bereavement. The [Scottish Crime and Justice Survey](#) 2019-20 reported that around three-in-ten adults experienced civil law problems in just the three years prior to their interview for the survey. Legal professionals play a significant role in helping consumers to find their way through legal processes, exercise their legal rights and obtain redress.

The Legal Services Board Consumer Panel has [noted](#) that no matter how experienced an individual consumer may be, their unique characteristics and the particular features of the legal services market may combine to make them vulnerable. Factors such as disability, issues affecting cognitive ability, language skills, or financial constraints can contribute to a consumer being at risk of disadvantage. The particular features of the legal services market can equally put people at risk. In many cases the impacts of poor quality service may only become apparent some considerable time after the transaction itself has completed. The SLCC's Consumer Panel has also [noted](#) that the nature and circumstances of legal action, where consumers are not generally familiar with the law and legal processes, can make consumers more vulnerable and that legal practitioners may not always be aware of these risks of vulnerability. Consequently, an accessible, timely and fair process for resolving complaints about legal services is necessary, as is a regulatory environment that can ensure that the market is able to meet the needs of all consumers.

The principal recommendation of the Robertson review was in line with a general trend across other jurisdictions, away from self-regulation and towards independent regulation. For example, the [Clementi](#) Review in England and Wales led to the creation of various sectoral regulators together with an over-arching super-regulator. In New Zealand, an independent regulatory review recently commissioned by the NZ Law Society concluded that a model with dual functions had resulted in a situation where the responsibility to promote the interests of the profession conflicted squarely with the NZ Law Society's duty to regulate in the interests of the public, eroding trust by the public, consumer bodies and lawyers. The [independent review](#) found that competing objectives and conflicting duties undermined the efficiency and effectiveness of the Law Society as a regulator and it therefore recommended the establishment of an independent statutory body.

Consumer Scotland is of the view that the independent regulator model has a number of advantages, principally in relation to transparency and accountability, which can help to maintain public confidence in regulatory systems. The Competition and Markets Authority (CMA) has previously stated that a fully independent model remains the option that most clearly and simply addresses the issues and is the best starting point around which to design an effective regulatory framework. Consumer Scotland is also of the view that a system of independent regulation has significant consumer and public interest benefits and would, in principle, be the optimum model.

1 b. What are your views on the Scottish Government's decision to "build on the existing framework" rather than follow that principal recommendation?

Consumer Scotland acknowledges the Scottish Government's view that a consensus does not exist in favour of the independent regulatory model. We note that the Scottish Government also considered creating an oversight regulator of legal services to monitor the performance of the regulators but determined that this would create additional cost to the legal profession (and ultimately to consumers) and would not be proportionate for Scotland.

The Bill proposes that existing regulatory bodies retain their regulatory functions but that these functions must be performed independently from their representative functions. This is in effect a system of coregulation. Coregulation systems can deliver many benefits to consumers, if they are well designed, sufficiently resourced and robustly structured. In the absence of independent regulation, or an oversight regulator, it is vital that any system of coregulation has in place adequate safeguards and checks to ensure that consumers can trust that the regulatory regime will safeguard their interests. The Bill contains a number of measures which attempt to reduce risks around transparency and address concerns regarding the need for regulatory oversight. In essence, having decided to adopt a coregulatory model, the Bill seeks to strike a delicately poised balance by including measures intended to introduce transparency and to monitor the effectiveness of the regulatory regime.

Consumer Scotland welcomes the regulatory objectives set out in the Bill along with the professional principles which persons providing legal services must adhere to. We strongly support the inclusion of objectives around protecting and promoting the interests of consumers and the wider public interest, and of promoting access to justice. We welcome the requirement that regulatory authorities must, in protecting and promoting the interests of consumers and the wider public interest, take into account the consumer principles referred to earlier in this submission.

The regulatory objectives and principles set out a series of aspirations against which the consumer experience in the legal services market should be assessed. As the Robertson Review observed, there is very limited evidence available to allow an assessment of the extent to which the legal services market in Scotland currently meets these principles. In 2020, the Competition and Markets Authority published [research](#) into the Scottish legal services market which concluded that some aspects of the sector may not be delivering good outcomes for consumers. It found that the Scottish regulatory regime had failed to keep pace with regimes elsewhere which allow greater flexibility around business structures, reducing potential for competition and growth in the sector.

We therefore welcome these reforms which provide an opportunity to address the matters raised by the CMA and others. The Bill places a stronger emphasis on the needs and aspirations of consumers as part of the regulatory framework. However, it is important that these principles, and improvements to the regulatory framework, are applied by regulators in ways which deliver tangible and demonstrable improvements in consumer outcomes. For example, Consumer Scotland would welcome consumers being able to access services more easily, receiving sufficient and clearly communicated information to allow them to judge which services are likely to meet their needs and their budgets and being able to obtain redress more swiftly where services are not of an appropriate standard.

In order to assess whether the regulatory objectives are being met the ongoing impact of these reforms must be monitored. In the event that it becomes apparent that consumer needs are not being met by the legal services market following these reforms, it is important that the Scottish Government remains willing and able to take further action to address the situation.

Consumer Scotland is in the process of commissioning research on the experience of consumers accessing legal services in Scotland. It is our intention that this research will provide a baseline against which the impact of these reforms, and progress towards meeting the objectives, can be measured.

In relation to regulatory oversight and consumer safeguards more generally, Consumer Scotland notes that the functions of the current Scottish Legal Complaints Commission (SLCC) Consumer Panel are expanded by the Bill, allowing the Panel to make recommendations to either the Commission or regulatory bodies regarding the functions conferred under the Bill. Consumer Scotland supports this proposal, but notes that the Panel's remit must be clear. The Panel must also be resourced appropriately to carry out any such wider role, for example, having a budget to commission appropriate research or to pay members, to widen the pool of potential recruits to the Panel.

Consumer Scotland welcomes the intention to give Scottish Ministers the power to amend, by affirmative statutory instrument, the regulatory objectives and professional principles, following consultation with the Lord President, the Commission (formerly the SLCC), the Consumer Panel and the CMA, in recognition of the fact that regulatory best practice may change over time.

1 c. What are your views on whether there is a risk that the proposals could raise concerns about a potential conflict of interests?

The Law Society of Scotland has a dual role under the Solicitors (Scotland) Act 1980 which is to promote the interests of a) the solicitors' profession in Scotland; and b) the public in relation to that profession. The Robertson review found that the perception of conflict between the profession's regulatory and representative roles risks compromising public trust. Encouraging and supporting open competition within such a system was also found to be challenging where bodies perform both representative and regulatory functions.

The independent regulatory [review](#) carried out recently in New Zealand, which currently has a system of coregulation, considered this point and concluded that, in the New Zealand context:

- There is evidence the NZ Law Society's dual regulatory and representative functions have come into conflict, leading to poor outcomes for consumers and lawyers
- The perception of a conflict of interest is compromising public and professional trust in the regulator
- The current arrangements constrain the NZ Law Society's ability to effectively represent the interests of lawyers
- Regulation of the legal profession should no longer be done by an entity that has a duty to promote the interests of lawyers.

The report noted that major reviews of legal regulation in other jurisdictions had concluded that the legal profession should be independently regulated. It concluded that this can be done in a manner that does not compromise the important role of the legal profession in upholding the rule of law or prevent the profession challenging the government.

Any regulatory system which relies upon coregulation, rather than independent regulation will continue to be at risk of such criticisms around conflict of interests, transparency and accountability. In 2019, the SLCC commissioned YouGov to undertake [polling on issues around legal regulation](#). The results showed that only 19% of the public felt that it was acceptable for an organisation to both represent lawyers and regulate them. Only 21% were confident a body with both functions could deal with complaints about lawyers fairly. While this polling took place some years ago, it suggests that there may be low levels of consumer confidence in any coregulatory model which risks reducing consumer confidence in the system.

2. What are your views on the current regulatory landscape for legal services in terms of complexity or simplicity?

Consumer Scotland considers that both the current and the proposed models retain significant elements of complexity, presenting challenges for consumers in navigating the regulatory system with confidence.

The CMA has previously found that consumers in Scotland were likely to face the same challenges as consumers in England and Wales in identifying their legal needs, finding information on price and quality and judging the quality of service being offered. It observed low levels of transparency within the sector, preventing consumers from making informed choices. Following this report, new price transparency guidance was introduced by the Law Society of Scotland in 2021. However, there is no publicly available analysis of the effect of these reforms on competition or consumer choice.

User research conducted and published alongside the Robertson Review indicated that cost and location were crucial considerations for consumers when choosing providers. For some consumers, concern regarding costs led them to try and resolve problems themselves, requiring them to invest considerable time and effort. In other cases, concern regarding transparency of costs was associated with dissatisfaction with services. Users expressed concerns regarding the use and extent of legal jargon, which was off-putting and perceived as embedding power imbalances. In some cases, users reported that they were unable to know if their cases had positive outcomes or not, as they could not understand adequately what had been agreed.

We also note [recent work](#) undertaken by the SLCC to examine the information provided to consumers in the Terms of Business letters used by firms. The SLCC examined 80 letters from case files associated with complaints. Overall, the letters showed good compliance with the basic requirements of the practice rules, but there were variations in the extent to which these letters were clear, accessible, accurate, and a useful tool for effective communication with the client. The SLCC found that few of the letters were personalised to

the transaction at hand and that overall, only about a third of the letters in the sample were likely to be easily read and understood by clients. In many cases, information on fees and charging was likely to be confusing for clients and less than 15% of the sample contained accurate and up to date information regarding signposting on complaints.

This illustrates the difficulties that consumers have in navigating the legal services market. The regulatory landscape was described in the Robertson Review as complex, confused, cluttered and hard for both those within and those outside the system to understand. These criticisms apply not only to complaints, but also to issues around oversight and to questions of who is regulated, and how. Consumer Scotland is of the view that the Bill can only be partially successful in simplifying this complexity, as a system of coregulation will continue to have multiple actors and dual responsibilities in key processes such as complaints and redress.

3. What are your views on the proposed division of regulators into two categories and the requirements which these regulators will have to comply with, as set out in Part 1 of the Bill?

The Bill provides that a category 1 regulator (currently the Law Society of Scotland) must establish an independent regulatory committee to discharge its regulatory functions. These committees must be adequately funded and resourced and must determine their own structure, governance arrangements and priorities. Regulatory Committees must be comprised of at least 50% lay members and be convened by a lay member.

For category 2 regulators (currently the Faculty of Advocates and Association of Commercial Attorneys) the Scottish Government considers it would be disproportionate to their size and lack of direct consumer contact for such a regulator to establish such a committee. The Bill instead requires category 2 regulators to exercise regulatory functions independently of other functions, ensure that sufficient resources are allocated to the exercise of its regulatory functions and to regularly review how effectively they are exercising their regulatory functions.

Consumer Scotland acknowledges the points made regarding proportionality, and the lower levels of direct consumer contact with members of the proposed category 2 organisations. However, we note that this system of categorisation introduces an additional element of complexity within the system, and we would welcome further consideration by the Committee as to whether this distinction is required or is in the public interest.

Consumer Scotland welcomes the requirements placed on both category 1 and 2 regulators to publish an annual report setting out, amongst other things, how they are carrying out their regulatory functions and complying with the regulatory objectives (including the consumer protection objectives). Before laying an annual report before Parliament, a category 1 regulator must consult with the Lord President and the Consumer Panel. The Commission will be under a similar obligation to publish reports.

These requirements to publish information will improve the transparency of the regulatory system. Consumer Scotland welcomes these proposals, along with the requirement for

regulatory committees to be subject to the requirements of the Freedom of Information (Scotland) Act.

In relation to reporting requirements, we would draw the Committee's attention to one further consequence of the decision to pursue a coregulatory model. The Consumer Duty will shortly come into force, which represents a significant new opportunity to improve outcomes for consumers in Scotland, by requiring public bodies to consider consumer interests when they take strategic decisions. Consumer Scotland will be responsible for issuing guidance to public authorities covered by the Duty. While the Duty will be likely to apply to the SLCC and any successor body, it would not currently apply to any regulatory committees as they would operate outside of the public sector. We would welcome further consideration being given to this position.

We welcome the additional powers for category 1 regulators to review the operation of legal businesses. These measures will enable regulators to take a more pro-active approach where there are concerns about the ongoing viability or the business model of a firm, helping to prevent the distress and disruption which can be experienced by consumers where firms suddenly cease to trade.

4. Section 19 of the Bill gives Ministers the power to review the performance of regulators' regulatory functions. Section 20 sets out measures open to the Scottish Ministers. What are your views on these sections?

The Bill allows Scottish Ministers to review the performance of a regulator if the Scottish Parliament, the CMA or Consumer Scotland request it to do so, on the basis that they believe the regulator is failing to exercise its regulatory functions in a manner that is compatible with the regulatory objectives or in the public interest. Scottish Ministers may impose financial penalties following a review, or, with the Lord President's agreement, they may direct that certain action be taken, publish a statement of censure, or change the regulatory functions of the regulator. Notably, changing the functions of a regulator requires any statutory instrument to be laid under affirmative procedures, ensuring robust parliamentary scrutiny of such an action.

Consumer Scotland acknowledges the importance of the legal profession being independent from the state and able to provide comment on, or legal challenge to, the decisions of government.

However, given the decision of the Scottish Government to adopt a coregulatory model, it is important that there is the capacity for independent oversight of the regulatory functions exercised by the relevant professional bodies. Ensuring the power of intervention is exercised only at the request of bodies who are statutorily independent of Scottish Ministers provides safeguards in this respect. These powers are key to the delicate balance in the Bill and should be understood as a necessary check and balance, consequent upon the decision to continue with a system of coregulation. In the event that an alternative, fully independent model of regulation was to be implemented, it is unlikely that these powers would be required.

In practice, we anticipate that this power would be a last resort or backstop, only used in the event that other approaches have been unsuccessful. There will rightly be an expectation that any such intervention should be based on evidence and due process. Any such referral to Scottish Ministers would only be made by Consumer Scotland following a robust and transparent process, including consideration of relevant evidence and information, and informed by views received from stakeholders.

Consumer Scotland's primary concern in relation to these provisions relates to the establishment of the evidence base underlying any use of this power. It is not currently clear to us how any such evidence base would be generated, who would do so and how this would be resourced.

We are concerned that the proposed powers may place the Scottish Parliament, Consumer Scotland, or the CMA in a position of having the power to recommend Ministerial intervention, but with no evidence base being available on which to base a judgement as to whether it was appropriate to do so. This leads to two related risks:

- a referral based on limited evidence which would likely, and rightly, be challenged; or
- the impression being inadvertently created that the system was appropriately serving consumers, when the reality would be that the listed bodies had not exercised the right to refer regulatory performance to Ministers as they had not collected, had access to, or analysed the necessary evidence on which a view could be based.

The lack of provision in the Bill regarding the generation of a robust evidence base risks undermining the delicate balance the Bill seeks to strike. For these powers to be effective, there needs to be clarity regarding what evidence base is required to assess performance against the regulatory objectives, who is responsible for providing and analysing this evidence and how the overall process is to be funded.

A variety of bodies, including the Consumer Panel, Consumer Scotland, the Scottish Government, or others could be tasked with producing this evidence base. If it is envisaged that Consumer Scotland will be given a new referral power and be responsible for providing this evidence base, we wish to be confident that additional resource will be available for the ongoing work necessary to support this role. A potential model for this resource exists in the levy-funded support Consumer Scotland receives for work in relation to energy, post, and water. Such resources would require to be additional to the resources already committed to the regulatory regime and it would be appropriate to set this out in the Financial Memorandum accompanying the Bill.

We wish to note that any requirement to regularly conduct work in a single sector, outside of the energy, post, and water sectors for which we receive specific levy funding, would potentially result in a skewing of Consumer Scotland's work, and a reduction in resource available to work in other sectors. Therefore, if it is intended that this obligation rests upon Consumer Scotland and additional resources are not made available, we would not be able

to undertake the necessary preparatory work relating to the referral power proposed in the Bill, without this having significant implications for consumers in other sectors in Scotland.

We have been engaging with the Scottish Government regarding these concerns and we will continue this engagement as the Bill progresses.

5. What is your understanding of the experiences of other jurisdictions, for example England and Wales, where independent regulators have been introduced to regulate legal services?

The independent review of legal regulation in New Zealand provided a useful [summary](#) of international approaches to this issue. The Robertson Review also assessed the international landscape while Professor Steven Mayson has conducted a number of reviews of legal services in the English and Welsh market.

We note that there are substantial differences in the legal services markets in England and Wales and in Scotland. The CMA previously noted concerns that introducing a body along the lines of that in England and Wales within a relatively small sector in Scotland may introduce unnecessary complexity and cost. This was on the basis that a multiplicity of regulatory bodies might lead to unnecessary duplication of fixed costs, inconsistencies in approach across regulators, competition between regulators that results in a 'race to the bottom' and a reduced ability to prioritise resources according to risk. The CMA also noted potential inconsistencies, confusion, inefficiencies and costs involved with multiple front-line regulators and an oversight regulator as set out by Professor Stephen Mayson in his [report](#) on legal services regulation in England and Wales.

The Legal Services Consumer Panel recently issued a [report](#) considering how to embed a consumer focused culture amongst legal services regulators. The objective of this study was to develop a set of indicators demonstrating good practice in consumer-focused regulation, to encourage and support legal regulators to consistently prioritise the interests of consumers across all their regulatory activities. Many lessons can be learned from this report, and we particularly note the following findings:

- Decisions should take into account the overarching regulatory objectives and be based on high-quality evidence from consumer research and stakeholder engagement.
- Decisions should be made transparently, to increase accountability and ensure that regulators can be held to account on the consumer-focused elements of their strategy.
- Regulatory bodies should include members with knowledge and experience of the consumer dimension of the market to ensure consumer focus is embedded at the highest level.
- Regulators should demonstrate that strategic goals have been informed by high-quality consumer research. Regulators should ensure that their research accounts for how different groups experience the market, including the circumstances in which consumers are vulnerable.

- For strategy to be translated into meaningful action, it must be supported by a clear work plan and be linked to explicit consumer outcomes (including outcomes for vulnerable consumers).
- Regulators should make sufficient efforts to include hard-to-reach groups (e.g., those who are digitally excluded). Communications from regulators should be clear and inclusive for all groups of consumers.
- Good consumer focused regulation demonstrates a joined-up, integrated approach. Regulators should develop frameworks to allow learning from monitoring and evaluation to feed into consumer research and strategy development, translating the insights from consumer research into policy action.
- Consumers should have access to information that enables them to make informed choices on their provider. If consumers wish to make a complaint or seek compensation (either to a regulator or service provider), those procedures must be accessible and easily navigable.
- Regulators must ensure that practitioners understand their duties to consumers, being involved in both proactive and reactive supervision in the regulated market and being unafraid to intervene proportionately to protect consumers where harm is detected.
- Regulators should be proactive in responding to consumer issues, including ensuring price and quality transparency to empower consumers to make better, more informed choices. Regulators should also be proactive in response to emerging trends and developments, considering insights from other sectors to better anticipate potential changes to consumers' legal needs.

These findings are equally applicable to the question of how to place consumers at the heart of legal services regulation in Scotland. The Bill will deliver improvements in transparency and accountability and provide a clearer regulatory framework incorporating the consumer principles. However, much more can and should be done to improve the evidence base, to understand consumer experiences and needs and to demonstrably respond to these in the design and delivery of regulator's work plans.

6. What are the main deficiencies in the current complaints system and do you believe the proposals in the Bill are sufficient to address these issues?

Previous [consultations](#) demonstrate a consensus that the current complaints system is overly prescriptive, takes too long to resolve complaints and can result in lengthy and costly appeals processes.

The Bill proposes to rename the Scottish Legal Complaints Commission which will remain the single gateway for all complaints. Consumer Scotland supports the simplified complaints system provided for in the Bill. In particular, we welcome provisions:

- simplifying the eligibility and appeals processes
- clarifying that complaints may contain elements of both service and conduct (hybrid complaints)
- allowing relevant professional organisations to raise and investigate complaints under certain circumstances

- allowing the Commission to initiate a complaint itself
- allowing the Commission to set minimum standards in relation to how regulators deal with complaints, including issuing guidance in relation to timescales
- allowing the Commission to issue guidance regarding complaint handling or matters which contribute to the making of complaints to the professional bodies or practitioners
- continuing to ensure that the Commission may investigate a complaint about how a regulator dealt with a conduct complaint (handling complaints) and to allow the Commission to issue directions in relation to these
- allowing for the Commission to set more flexible and proportionate levies for individual legal practitioners and legal businesses.

It is important that the complaints process set out in the Bill does not become overly prescriptive or rigid in nature and that there is an ability to update underlying processes and practices as best practice in complaints handling evolves. It is also important that cases do not become subject to lengthy, expensive court-based appeals process, delaying outcomes, and making processes less accessible for consumers. Consumer Scotland notes that it is unusual for other ombudsmen or alternative dispute resolution schemes to have a statutory right of appeal and for this reason we do not favour the creation of a right of appeal to the Sheriff Court.

We consider the proposals in the Bill regarding complaints represent a welcome step forward from the current model. We are also sympathetic to the proposal from the Law Society of Scotland that there be a method for early consensual disposal for conduct complaints where all parties are in agreement. However, we continue to believe that the coregulatory model introduces an element of complexity in this landscape, with multiple bodies, differing processes and separate reports for consumers to navigate. Any measures to reduce this complexity for consumers would be welcome. For example, we consider that consumers would be likely to find a single report, where both conduct and service issues are investigated and determined, to be easier to understand and more straightforward.

We welcome the ability for the Commission to publish information on complaints in relation to individual firms, where this is in the public interest. We would welcome the same power being extended to the Law Society of Scotland in relation to conduct issues, as this transparency will benefit consumers.

However, there are still areas where improvements could be delivered in transparency. For example, legal providers in England and Wales must disclose to regulators the volume of first tier complaints received and the proportion of these that are resolved. This data is [published in aggregate form](#) by the regulator. According to the Solicitors Regulation Authority this data can be used to help providers improve their standards of service by encouraging an open culture of complaints within their businesses, which can lead to improvements in the way complaints are handled and how providers learn from complaints. It also allows providers to benchmark themselves against this aggregate data and take action to improve their service and complaints processes. It would be useful for the regulators in Scotland to have similar access to data of this nature, to publish this, monitor

trends and consider whether further action may be required to address common causes of complaints.

Consumer Scotland supports the wider oversight powers granted to the Commission which will provide for a more pro-active approach which will allow the Commission to monitor trends over time and to issue targeted guidance on common causes of complaint, with a view to reducing levels of these complaints occurring in future.

7 a. What do you consider the impact of the Bill's proposed rules on alternative business structures might be generally?

The Bill proposes a number of changes to the definitions of legal services and legal services providers. The Bill's provisions will apply to any person or body that provides legal services, including unreserved legal services such as personal injury, employment or consumer rights, or wills.

The Bill relaxes the constraints on who may operate as a licensed legal services provider, potentially allowing for wider models of ownership including non-profit models such as employee, community and third sector ownership and will also allow for outside investment. It will also allow charities to employ solicitors to provide legal services, such as appearing in court. However, only legal businesses operating for fee, gain or reward will require authorisation from a regulator. We support these proposals as they are likely to improve access to services for consumers, especially in areas which are less well served by private practices.

7 b. What do you consider the impact of the Bill's proposed rules on alternative business structures might be in relation to consumers of legal services?

These changes should increase the choice of providers available to consumers, enhance the range of services which not for profit advice services are able to provide and more generally improve levels of competition and innovation in the legal services market. We note that it is important that there is clarity regarding the application of these provisions to the not-for-profit sector that definitions must give sufficient certainty as to what precisely what activities are regulated and by whom.

There will be a need for not-for-profit providers to be adequately resourced to cater for any increase in demand. This is another area in which Consumer Scotland would wish to see a reliable evidence base generated, to allow consideration of whether there is unmet demand for legal services, whether planned legal aid reforms will assist consumers and to assess whether these reforms will, in practice, improve the ability of consumers to access the services they need to navigate complex legal issues that can have substantial impacts on consumers' family lives, employment or finances.

8 a. What are your views on the provision of “Entity regulation” (as set out in Part 2 of the Bill)

Consumer Scotland welcomes the Scottish Government’s ‘hybrid’ approach to entity regulation, which seeks to regulate legal businesses as well as individual solicitors. We support the increased emphasis upon regulating the entity providing the service and on ensuring that outcomes for consumers are improved.

8 b. What are your views on the provision of title regulation for the term "lawyer" (section 82)?

Consumer Scotland supports these measures as they will have the effect of protecting consumers by ensuring clarity about the status and qualifications of people offering legal services for payment.

9. Do you have any further comments on the Bill and any positive or negative impacts of it?

Consumer Scotland welcomes the provisions allowing the Commission to monitor the effectiveness of the compensation funds and professional indemnity arrangements maintained by regulators. We support the ability for the Commission to set minimum standards and to consult on any improvements it considers appropriate in relation to the fund.

We also welcome new provisions for dealing with refunds of fees or outlays to a client in the event of the death, insolvency or cessation of a practitioner or firm. These will allow unpaid amounts to be paid from the relevant professional insurance fund, remedying a previous source of injustice for complainants who were unable to access redress in these circumstances. These funds play an important consumer protection role in ensuring confidence in redress arrangements and these provisions should ensure the fund remains fit for purpose going forward.