

Regulation of Legal Services (Scotland) Bill

Citizens Advice Scotland Stage 2 Briefing, April 2024

Citizens Advice Scotland (CAS), our 59 member citizens advice bureaux (CAB) and the Extra Help Unit form Scotland's largest independent advice network. The Citizens Advice network in Scotland is an essential community service that empowers people through our local bureaux and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

Summary

Although the Regulation of Legal Services (Scotland) Bill will not deliver on the central recommendation of the Robertson Review to create an independent regulator, CAS believes the Bill will make improvements to the regulation of legal services in Scotland in response to longstanding calls for reform. Alongside legal practitioners and other providers of legal services, the Citizens Advice network in Scotland plays a vital role in supporting people to protect and realise their rights and freedoms, in upholding the rule of law, and providing access to justice. Throughout our engagement with efforts to reform the regulatory framework, we have therefore supported changes aimed at placing the interests of consumers and rights-holders at the heart of legal services regulation:¹

- > We remain disappointed that the Bill has disregarded the Robertson model of a single regulator, independent from both government and those it regulates and responsible for admission, standards and monitoring, complaints and redress with regard to all for-profit legal services providers in Scotland, which we believe would deliver the greatest improvements for those requiring legal services to protect and realise their rights ('consumers') and for the public in terms of transparency, accountability, clarity of process and public trust.
- > YouGov public polling we commissioned in late 2022² found that two thirds of respondents would prefer an independent regulator to oversee the legal profession. 74% of respondents also felt having an independent regulator would increase public confidence in legal professionals' work.
- > We are disappointed that much of the debate so far has not adequately acknowledged consumer voices but instead has been dominated by concerns of the legal professions and the judiciary. As such, we have concerns that some of the proposed changes in the current draft Bill may not be of benefit for consumers and the public's interactions with providers of legal services.
- > Significant amendments at stage 2 have been announced, likely affecting the overall system of checks and balances within the Bill. Third sector stakeholders will require sufficient time to consider and scrutinise their potential impacts.

¹ [Regulation of Legal Services \(Scotland\) Bill - CAS response to Committee Stage 1 call for views | Citizens Advice Scotland](#) (August 2023); CAS Briefing for Stage 1 debate [Regulation of Legal Services \(Scotland\) Bill | Citizens Advice Scotland \(cas.org.uk\)](#) (February 2024).

² Total sample size was 1,005 adults. Fieldwork was undertaken between 8th – 12th December 2022. The survey was carried out online. The figures have been weighted and are representative of all adults in Scotland (aged 18+).

- > Notwithstanding this uncertainty, and short of introducing a single independent regulator in Scotland, we would like to highlight areas that should be amended to realise a Bill that better reflects the public and consumer interest in the regulation of legal services. These are organised as:
 - Enhancing consumer voice and influence in the regulatory framework
 - Improving the consumer experience and journey
 - Enabling third sector advice and support provision

1) Enhancing consumer voice and influence in the regulatory framework

We welcome the revision of the regulatory objectives to include the Consumer and PANEL principles, but there is little substance within the draft Bill as to how these principles will be enacted or monitored.

The expanded remit and new powers of the SLCC Consumer Panel seem to be one of few mechanisms for consumer voice and influence within the regulatory framework, suggesting a role as a catch all consumer scrutiny forum. The Bill should include explicit provisions ensuring sufficient resourcing for the Consumer Panel, to enable it to discharge these extended functions fully and independently.

Other opportunities to strengthen the public and consumer interest were missed.

- > To enable consumer knowledge and confidence in the regulatory system and realise the Consumer Principles, all bodies delivering statutory regulatory duties (regulators, regulatory committees, complaints bodies and discipline tribunals) should be accountable and transparent – i.e., publishing budgets, laying annual reports in Parliament, consulting on regulatory plans with stakeholders, including consumer voices and interests. We query the rationale for affording a lesser degree of scrutiny and accountability to current category 2 regulators in the draft Bill.
- > We would like to see a clearer statutory role for consumer representation and influence by those with lived experience of legal advice need on regulatory committees of category 1 regulators and future regulators (as distinct from generic non-lawyer representation). Likewise, if the proposed two-tier system is used and category 2 regulators are subject to less scrutiny and accountability, they should at least have to include consumer representation when they exercise their regulatory functions.

2) Improving the consumer experience and journey

The existing regulatory landscape for legal services is highly complex and difficult for the public to understand and navigate. The model proposed in the Bill, including two categories of regulators, will not lessen but add further complexity to this landscape. If the model of a single, independent regulator is not to be adopted, then the consumer experience and journey as well as consumer education and awareness require significant attention going forward to ensure any real improvement through these reforms.

Consumer journey

Finding an appropriate legal services provider: For many consumers it is unclear what they can expect when they use the services of a legal professional or a legal services provider, how to choose

one, what legal activities and matters are reserved/restricted or not, who is regulated and who isn't, and what that means in terms of their rights and consumer protection.

- > The Bill makes it mandatory for category 1 and 2 regulators to establish and maintain a freely available, public register of legal services providers they regulate; and the SLCC may establish a voluntary register of unregulated services providers. These will improve clarity and transparency for consumers. However, it remains unclear where responsibility lies for raising consumer awareness of and educating the public on the very complex landscape of legal services and their multi-agency regulation, including authorised and unauthorised professionals, regulated professionals, licensed providers (ABS), authorised legal businesses, and unregulated providers.
- > A chance has been missed to simplify the complex language and structure of s32 of the 1980 Act to provide clarity to consumers which legal activities or matters cannot be carried out by unqualified persons.
- > Scottish Ministers are given powers to adjust what constitutes restricted legal services (see s86). To ensure detrimental impacts of any such adjustments on consumers and the not-for-profit advice sector are thoroughly considered and prevented, there should be a statutory duty to conduct a wider public consultation beyond just consulting the stakeholders listed in the new s32A (3) 1980 Act.
- > We welcome the introduction of regulation of the title 'lawyer'. Our research shows that 76% of the Scottish public mistakenly assume that under current law, "someone using the description 'lawyer' and providing legal services must be qualified and regulated by a professional body." 84% also agree that a legal services provider using the title 'lawyer' should be qualified and regulated by a professional body.³ However, s82 requires taking or using the title of lawyer "with intent to deceive", which seems to set the bar higher than "wilfully and falsely" - as in s31 1980 Act which protects the title 'solicitor'. Combined with a relatively low fine, this might not sufficiently deter 'rogue' actors. The same concern applies to s83 (pretending to be a regulated provider) and s84 (pretending to be a member of the Faculty of Advocates).

Routes to redress: We have consistently highlighted that the current complaints system is not fit for purpose; it does not offer a simple and clear consumer journey, is too complex and difficult to navigate, and complaints take too long to be resolved. Moreover, legalistic processes and jargon act as further barriers for consumers who may wish to complain about a legal services provider, adding to what complainants may experience as a significant power imbalance. The dual role of the professional bodies representing the interests of their membership while responsible for handling complaints can also instil mistrust and suspicion of the profession and the complaints system in consumers.

We welcome measures aimed at streamlining the complaints process including reducing complaints handling time, explicitly allowing hybrid complaints, and extending the SLCC's remit to complaints against unregulated for-profit providers. However, the retention of various layers and channels a complaint can take fails to deliver a simpler pathway for consumers. Consumer information and education on complaints routes and redress mechanisms will need increased attention going forward.

³ See Footnote 2.

Bar adopting the model of a single, independent regulator, some specific areas of concern are:

- > Explicit provision should be made in the Bill to strengthen the complaints system's support for vulnerable consumers, including those who may need or wish to have further support from third sector organisations during the complaints process. Additionally, sufficiently resourced consumer education and information will be crucial.
- > We understand that the suggested removal of compensation in cases where a provider's conduct has been found to have been unsatisfactory or where a provider has been found guilty of professional misconduct is counterbalanced by the SLCC's power to award higher compensation for hybrid/service failures. Further scrutiny is required to ensure consumers will not miss out on compensation in cases involving dishonesty or unsatisfactory conduct/misconduct of practitioners.
- > When practitioners are suspended or struck off, or providers lose their authorisation or license, based on a final decision in a complaint process, the public should be able to identify the provider and the findings of the regulatory body in the interest of transparency and consumer information. In practice, potential and former clients who are trying to find (out about) a legal practitioner or legal services provider may have difficulties finding this vital information if it is only published separately from the registers of legal services providers that regulators maintain.

3) Enabling third sector advice and support provision

We welcome the intention of the draft Bill to stimulate diversification in the legal services market as this can increase innovation and the offering for consumers. However, we remain unclear how or whether the current provisions would enable this in practice. Third sector advice providers play an important role in the legal services landscape, providing free and accessible, independent advice and support to the public, including vulnerable groups.

- > Phrasing around "fee, gain or reward" in the definition of legal services and legal services provider (s6) should be reviewed and include a transactional element, to ensure that third sector, not-for-profit providers who receive funding or whose advice-providing staff receive payment under an employment contract or whose volunteers gain work experience, do not unintentionally fall under new regulation, e.g., new SLCC powers to receive complaints against unregulated providers (s62).
- > It remains difficult to envisage how the provisions around 'Licensed legal services providers' and the removal of practicing restrictions for charities might address the significant gaps in provision which CAS has repeatedly highlighted, without corresponding consideration of the pressing issue of legal aid reform. Changes proposed in s81 which remove practicing restrictions will likely be of greater immediate relevance to advice-providing third sector organisations but are obscure and difficult to understand. These require further scrutiny and clarification to have any positive impact on the landscape of not-for-profit advice services and avoid unintended consequences.

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