

Regulation of Legal Services in Scotland – MSP Briefing for Stage 1 Debate

Introduction

1. [Consumer Scotland](#) is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament.
2. The Scottish Parliament will consider the general principles of the *Regulation of Legal Services (Scotland) Bill* on 22 February 2024. The Bill puts in place a new model for regulating the provision of legal services, implementing a system of co-regulation (where the professional bodies maintain a dual role in both regulating and representing their members).
3. Reform of the current system is necessary and overdue. Consumer Scotland recognises that the model set out in the Bill is an attempt by the Scottish Government to balance and deliver the key priorities of all stakeholders. Consumer Scotland considers that a system of fully independent regulation would have had greater potential to improve consumer outcomes. However, we acknowledge that the Bill seeks to address current weaknesses within the regulatory system and it is an improvement on the status quo. As a result, **Consumer Scotland supports the general principles of the Bill.**

How People in Scotland Use Legal Services

4. Consumers using legal services are often dealing with difficult or stressful circumstances. They can be vulnerable because of their [personal situation](#), such as experiencing bereavement or relationship breakdown or there may be issues with their capacity to make informed decisions due to illness or disability. Consumers also experience vulnerability in how they use legal services, due to the technical nature of legal information and the language and structures of the legal system.
5. Our new research report, [Using Legal Services in Scotland](#), published in January 2024, shows that **almost half (48%) of adults in Scotland have experienced events in the last two years that indicated they may have needed legal support**. Almost a third (31%) told us they have used legal services in this period, often in connection with conveyancing (11%), powers of attorney or wills (both 7%). Three quarters of those using legal services used a solicitor, with 5% using a Citizens Advice Bureau and smaller numbers using other sources of help. This widespread use of legal services underlines the importance of getting the regulatory system right, so that it works for both consumers and providers.
6. As part of our research, **we asked people who had recently used legal services whether they thought it was acceptable for the same organisation to both regulate and represent lawyers. A clear majority (73%) said this was unacceptable**, with only 20% saying it was acceptable. For consumers to have confidence in the proposed co-

regulatory model, **there need to be strong checks and balances in place and the system must be transparent, accountable and subject to appropriate oversight.**

Improvements for Consumers

7. Consumer Scotland welcomes the regulatory objectives set out in the Bill, including the requirements to protect and promote the interests of consumers and the wider public interest, and to promote access to justice. We support regulatory bodies having to take into account the [consumer principles](#); these must be applied in a way that delivers tangible improvements in consumer outcomes. To know whether this is happening, **we also need to put in place ways to monitor the effectiveness of the system.**
8. **We support the widening of the Consumer Panel's remit** to allow it to look at legal services generally, and to commission research into consumer issues, rather than simply focusing on complaints; but note that the Panel will require adequate support and resourcing to deliver this.
9. We are pleased to see measures to introduce entity regulation for legal firms and to allow for a wider range of bodies to provide legal support and advice. This has potential to improve access to justice and make support more widely available for consumers.

Complaints

10. The regulatory system must allow consumers to obtain swift and effective redress when things go wrong. We support the reintroduction of hybrid complaints, which have elements of both conduct and service. We also support the removal of the current right to appeal direct to the Court of Session and its replacement with an internal Review function, similar to that operated by other Ombudsmen.
11. We note that retaining the dual role of professional bodies inevitably results in a degree of complexity due to the involvement of multiple bodies and their distinct processes. **There is broad agreement that the current complaints system is too complex** and the Bill sets out a more flexible and proportionate process for considering complaints. **We support the recommendation of the Equalities, Human Rights and Civil Justice Committee that any additional potential for simplification should be explored.** It is important that any later amendments to the Bill do not reintroduce unnecessary complexity to the complaints process as this will result in the system being more costly to administer and less responsive to consumer needs.

Accountability and Oversight

12. **The Bill seeks to put in place a number of checks and balances to protect consumers and promote transparency.** These include requirements for the regulatory and representative functions of the professional bodies to be more clearly

separated. Regulatory bodies must publish annual reports and will be subject to Freedom of Information requirements. We support these requirements and **it is important that these protections, designed to improve how the system works for consumers and give assurance about how well the system is operating, are not diluted as the Bill progresses.**

13. The Bill allows for the performance of a legal services regulator to be reviewed following a request by the Scottish Parliament, the Competition and Markets Authority (CMA) or Consumer Scotland. A request can be made if these bodies believe the regulator is failing to exercise its regulatory functions compatibly with the regulatory objectives or in the public interest. The Scottish Government has said it will bring forward amendments to designate the Lord President as the recipient of any referral from the Scottish Parliament, the CMA or Consumer Scotland.
14. This provision, in which Consumer Scotland is named, is an important check and balance due to the co-regulatory system proposed. It provides a mechanism for independent oversight of the regulatory functions exercised by the professional bodies. **Consumer Scotland is willing to undertake this role, but in order for this power to be effective, there must be clarity around how it will operate** and how the various bodies in the landscape can work together most effectively. We understand that the CMA share our concerns in this regard. Until the detail of the proposed amendments are able to be shared, it is difficult to assess how effective these review provisions will be in protecting the consumer interest.
15. **There must be a robust evidence base that allows bodies to determine whether or not there are problems with a regulator that should to be referred for a performance review.** In particular, good quality, timely evidence will be needed about whether the regulatory bodies are operating in a way that delivers the objectives set out in the Bill and whether the system is meeting the needs of all consumers, including those in vulnerable circumstances. Generating a robust evidence base will require resourcing to so that any review process conducted by the Lord President is informed by the consumer interest. Any review process must be designed in a way that allows it to assess whether the regulatory bodies are carrying out their duties in a way that meets the public interest and the regulatory objectives, including the consumer principles.

Conclusion

16. Consumer Scotland supports the general principles of the Bill. The Bill puts in place a clear set of regulatory objectives, designed to protect the interests of consumers. It is important that consumers can have confidence in the regulatory system and know that their interests are protected in the event that providers go out of business, or poor service is received. There must be sufficient checks and balances to reduce the risk of harm to consumers and to allow them to resolve issues quickly and fairly when problems do arise.

17. The improvements that the Bill seeks to achieve will create a more proportionate, accountable and flexible regime which aims to place consumers at the heart of the system. However, to implement the consumer principles in practice, we need an effective system of monitoring in place, with an evidence base that allows us to both understand consumer experiences and assess regulatory performance. We know that consumers have concerns about whether co-regulatory systems can protect their interests. The oversight and transparency measures created by these reforms are necessary to ensure consumer confidence and to secure the effective operation of the safeguards set out in the Bill.