

Consultation response to the Scottish Parliament's Finance and Public Administration Committee call for evidence on the Regulation of Legal Services (Scotland) Bill – 15th August 2023

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 Scottish Legal Complaints Commission's (SLCC) 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. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?**
- 2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?**
- 3. Did you have sufficient time to contribute to the consultation exercise?**

Consumer Scotland was formally established in April 2022 and did not exist at the time of the previous consultation.

4. If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

The Bill proposes additional oversight functions for the Scottish Parliament, the Competition and Markets Authority (CMA) and Consumer Scotland. 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.

In essence, 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. This monitoring role is important in determining whether the reforms are delivering the intended improvements in consumer outcomes.

The FM states that any such review would be a rare occurrence. However, should a review be raised, it sets out a range of estimated associated staff costs, based on costs associated with Scottish Government staff carrying out any review. It further notes that there may be a significant cost to respond to and address any investigation or intervention by Scottish Ministers.

Consumer Scotland welcomes these new powers. We believe that we would be well placed to conduct such work, given our role and experience in undertaking research on consumer needs and experiences, analysing evidence and carrying out advocacy activities in other sectors where we have statutory responsibilities.

Consumer Scotland's primary concern in relation to these provisions relates to the establishment of the evidence base that would be necessary for a request to be made to Scottish Ministers to review the performance of a regulator. There will rightly be an expectation that any such intervention should be based on evidence and follow due process. However, 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 or Financial Memorandum regarding the generation of an 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 and how this is to be funded.

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.

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. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

The Financial Memorandum (FM) notes that the ongoing cost of the regulation of legal services is met by the profession, and this will continue to be the case. The Scottish Government funded the creation of the SLCC in 2007 and its reconstitution into the Scottish Legal Services Commission, and adjustment to its expanded role, will also be funded by the Scottish Government.

The FM notes that there is an expanded oversight role for the SLCC and that the SLCC Consumer Panel's role will also expand to cover matters relating to legal services regulation in Scotland more broadly, with the policy intention of placing consumer interests at the heart of legal services regulation. The Panel is currently administered and funded within the costs of the SLCC. Consumer Scotland supports the proposal to expand the remit of the SLCC's Consumer Panel, 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.

The FM does not provide detail on what the additional ongoing costs of these expanded oversight and consumer roles for the SLCC and the Panel will be or how these will be funded. The presumption appears to be that these will fall under the funding currently levied on the profession. The FM states that as the proposals seek to build on the existing framework it is not anticipated that there will be substantial costs associated with this part of the Bill, although it does note that there will be financial implications in respect of the new duties placed on the legal services regulators. We would welcome further clarity regarding the funding of these functions.

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

One of the primary aims of the Bill is to place consumers at the heart of legal services regulation. The Legal Services Board Consumer Panel (which operates across England and Wales) 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.

The type of approach outlined in the report is consistent with the role Consumer Scotland has in other sectors. However, this approach must be resourced appropriately to be implemented successfully. This includes allowing for:

- horizon scanning and considering best practice
- running an active and regular programme of research on the consumer experience of accessing legal services
- conducting regular monitoring and evaluation
- determining appropriate policy responses based on this research and monitoring
- communicating clearly with consumers regarding regulatory issues.

Based on the information in the FM, Consumer Scotland is not clear regarding what additional regulatory oversight activities are created under the Bill, where these functions will sit, who will carry them out and how these will be resourced. Without these additional functions being carried out effectively, with clearly allocated responsibility and resources, it will be difficult for any regulator or oversight body to be assured that regulation is in fact consumer focussed or that improved outcomes are in fact being delivered.

It would be possible for these functions to be carried out by more than one, or a combination of the bodies within the regulatory landscape. As noted above, if the responsibility for ensuring that there is an evidence base on which to determine whether the regulatory regime is meeting its objectives is to reside with Consumer Scotland, then it is essential that we are resourced appropriately to provide this. Based upon our levy funding requirement in other sectors we do not anticipate the ongoing cost would be overly burdensome on the profession. We would be happy to engage with relevant parties to identify the resource required, as well as any likely set up costs.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Consumer Scotland does not comment on this issue.