

Mr David Gordon
Convener
Regulatory Committee
Law Society of Scotland
By email: rachelwood@lawscot.org.uk

10th September 2024

Dear Mr Gordon,

Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, our purpose is to improve outcomes for current and future consumers. We are independent of the Scottish Government and accountable to the Scottish Parliament.

I am writing regarding the issues faced by clients of the former firm of solicitors WW & J McClure, which entered administration and ceased to trade in 2021. This is an issue on which we have had constructive engagement with the Law Society of Scotland (LSS) at official level, and which we also wish to raise with the Regulatory Committee in its own right.

Consumer Scotland has been approached by consumers affected by these issues. While it is not our role to provide advice or redress to individual consumers, we do have a role in advocating for the needs of consumers more broadly. Following discussions with consumers, other regulatory bodies and the Scottish Government, we have continued concerns that consumers affected by the former firm's failure are not obtaining positive outcomes. We are writing to you now as these issues are relevant to the role of the Regulatory Committee in standard setting and enforcement and in ensuring continued consumer confidence in the work of the profession and the LSS's regulatory regime.

We are particularly concerned that many consumers are still unaware that the firm is no longer trading. As you know, the former firm created more than 18,000 Family Protection Trusts (FPT), with around 100,000 files being in existence. These files will also include a range of other family law related matters such as wills and powers of attorney. Jones Whyte, who acquired these files, are prioritising cases for contact, with those with ongoing matters and family trusts being contacted first. To date, we understand that action has been taken on around 10,000 FPT files, just over half of those in existence.

We acknowledge that it is the responsibility of Jones Whyte to contact the former firm's clients and we understand the capacity issues that will inevitably arise from such a large

number of files being acquired. However, the delay in clients being contacted poses a potential risk of harm to consumers. Given the likely demographic profile of many former clients, there is a risk that delays in notification affect their ability to take action to ensure that their legal arrangements remain fit for purpose. As time elapses, the risk of former clients experiencing capacity issues or passing away will grow. Where incapacity or death has intervened, this will cause more stress at an already difficult time, and introduce further complexity into the process of resolving these issues.

In addition, where clients are unhappy, they must either lodge complaints, seek redress under the Master Policy or initiate court action within certain timeframes. In some circumstances, consumers may be able to establish that they were excusably unaware of the firm ceasing to trade. However, this still introduces an additional procedural barrier into an already complex process, which is daunting for many consumers. And in some cases, the ability to lodge an action will simply prescribe after certain time periods. Clearly, it would be unacceptable for consumers who might otherwise have a valid case or complaint to be prevented from bringing it by reason of delay in being notified.

For these reasons, we would be grateful for assurance that the Regulatory Committee is

- using its oversight powers to monitor this situation;
- actively considering how to better protect consumers currently affected by this issue by ensuring that they are notified promptly; and
- taking action to implement any changes necessary to prevent such delays occurring in future cases where business is transferred between firms.

Similarly, while the LSS maintains regularly updated web based FAQ for former clients, this is not prominently displayed. There are no links from either the landing page, or the “For the Public” pages on the LSS website, meaning at least 3 clicks are required to navigate to the FAQ. It would be helpful for this information to be displayed more prominently, and for this to be supplemented by local outreach in the areas that the firm had offices, for example, by working with local press, MSP offices or third sector groups. We would welcome your views on what role the Regulatory Committee might play in helping to facilitate such improvements.

In addition we have concerns about consumers on low incomes who may struggle to pay for any further action they are required to take to resolve issues, and those who may experience difficulties in navigating a complex landscape. We continue to raise these issues with the Scottish Government and enclose copy correspondence in this regard.

We accept that a number of measures in the current Regulation of Legal Services Bill may potentially improve outcomes for future consumers and we welcome this. However, the measures will not apply retrospectively and we consider that consumers affected by the closure of McClure’s need help now. We are concerned that consumers affected by the firm’s closure are continuing to fall between gaps in the regulatory landscape.

We acknowledge that the current statutory framework presents some challenges in structuring direct meetings between affected consumers, government and regulatory bodies. As far as we are aware no meetings have taken place on this issue between consumers, LSS or the Scottish Government. However, there is a case for involving consumers. Clearly it is not possible to discuss individual cases, or current or potential disciplinary action or complaints. But there is a risk that those consumers affected will feel excluded by the regulatory system. This may lead to a perceived lack of regulatory accountability and transparency and consumers may lose confidence in the system of regulation that is designed to protect them. We therefore recommend that the Scottish Government should bring together key interested parties, including consumers, to consider how outcomes could be improved and to facilitate resolution of these issues.

We would be grateful for your reflections on these issues.

Yours sincerely,



Sam Ghibaldan

CC: Siobhian Brown MSP, Minister for Victims and Community Safety