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Siobhian Brown MSP
Minister for Victims and Community Safety
By email: MinisterVCS@gov.scot
CC: scottish.ministers@gov.scot

Dear Minister

Regulation of Legal Services (Scotland) Bill

Consumer Scotland has been engaging with your officials in relation to the Regulation of Legal Services (Scotland) Bill. We have today made our submission to the lead parliamentary Committee scrutinising the Bill and I am writing to you to highlight the key points in this submission.

The regulation of legal services is an important issue for consumers in Scotland, as the legal system plays a fundamental role in upholding consumer rights. However, the legal services market can be difficult for consumers to navigate and the features of this market, with its specific processes, legal terminology and requirement for specialist knowledge can create risks for consumers, especially those in vulnerable circumstances. Previous research has shown that consumers find it difficult to identify their legal needs, to find information on the price and quality of legal services and to judge the quality of service being offered. Effective regulation and oversight of the legal services market is therefore essential if it is to meet the needs of all consumers.

Consumer Scotland is of the view that an independent regulatory model has significant consumer and public interest benefits and would, in principle, be the optimum model. However, we acknowledge and respect the Scottish Government's decision to implement a coregulatory model. Coregulatory systems can deliver many benefits to consumers, provided that they are well designed, sufficiently resourced and robustly structured. It is vital that any system of coregulation has in place adequate safeguards to ensure that consumers can trust that the regulatory regime will protect their interests.

We welcome much of the Bill, including the emphasis placed on protecting and promoting consumer interests as part of the regulatory objectives, the adoption of the consumer principles, the proposed improvements to the complaints process and other changes designed to create a more transparent and accountable regulatory system and improve outcomes for consumers.

We note that 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. In the event that it becomes apparent that consumer needs are not being met following these reforms, it is important that Scottish Government can take action. This reinforces the importance of Section 19 of the Bill which allows Scottish Ministers to review the performance of a regulator if the Scottish Parliament, the Competition and Markets Authority or Consumer Scotland request it to do so.

There will rightly be an expectation that any such intervention should be based on evidence and due process. We anticipate that such a recommendation 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.

We are concerned that, as currently drafted, the proposed approach set out in Bill may place us 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 creates 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.

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. You will appreciate that any requirement to regularly conduct work in a single sector, outside of the 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 would of course be happy to meet with you or your officials on this issue.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Wilson', written in a cursive style.

David Wilson
Chair
Consumer Scotland