

Siobhian Brown
Minister for Victims and Community Safety
Email: ministervcs@gov.scot

10th September 2024

Dear Ms Brown,

I am writing to follow up on our correspondence from earlier this year, regarding the experience of clients of the former law firm of WW & J McClure Ltd. This firm ceased to trade in 2021.

You previously indicated that you would ask your officials to engage with us to discuss these issues in more detail. We have since held two meetings with your officials. We are grateful for their time and willingness to engage constructively. However, we have been unable to achieve meaningful progress in improving the outcomes faced by this group of consumers.

Consumers affected by McClure's closure continue to experience poor outcomes in three main areas:

- the provision of timely information;
- the ability to access advice that enables them to take action to ensure that their legal position meets their needs; and
- the requirement to pay for further legal services.

We consider that there are also weaknesses in the transparency and accountability of the current regulatory regime.

Consumers need to receive timely information about the firm's closure. This is essential to allow them to consider the impact of the firm's closure on their own circumstances. However, some 3 years after the firm ceased to trade, only around 10,000 of 18,000 family protection trust holders have been contacted. We acknowledge that it is the responsibility of Jones Whyte to contact 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 potential risks of harm to consumers.

Your letter of 30th May 2024 notes that any wider information campaign is the responsibility of the Law Society of Scotland (LSS), as the regulatory body, and we enclose correspondence

with them in relation to this matter, which outlines the potential risks arising from delays in notification.

In your previous correspondence you noted that the Regulatory Committee of the LSS was considering potential regulatory changes where business is transferred between firms. These changes may reduce the risk of such delays occurring in future. However, while welcome, these changes cannot apply retrospectively and they will therefore not help those who are currently affected by the closure of McClure's.

In relation to providing more timely notification to consumers, we continue to recommend further outreach work to highlight the firm's closure. While we are aware of restrictions on Scottish Government marketing spend, this information could be promoted on a cost-free basis by engaging local newspapers, MSP offices and third sector interfaces who already support consumers and who are located in the areas where the former firm had offices. We ask you to consider how the Scottish Government might support such outreach, to ensure consumers do not remain in the dark, unable to take further action or to protect their interests. We are also asking the LSS to consider how their current FAQ might be more prominently displayed, to make it easier to find.

Once consumers have been made aware of the closure, they will need to consider what action they need to take to ensure their legal arrangements remain fit for purpose. Consumers are likely to need further advice to understand what they need to do to resolve their individual issues.

We note your comments regarding the role of the Scottish Legal Complaints Commission (SLCC) and LSS in helping consumers seek redress. Clearly such a route is appropriate where consumers are unhappy with the service provided, and regulatory bodies can assist consumers when it comes to lodging complaints. However, they cannot advise individual consumers on any action they need to take to resolve their underlying legal issues. These may be issues in relation to family protection trusts, wills or powers of attorney.

These consumers may be in vulnerable circumstances, including those facing illness, capacity issues or bereavement. We are concerned that they may be faced with additional costs to review their position before they can take any necessary action to safeguard their interests. For those on low incomes, this may simply not be possible. While it may in theory be possible for Legal Aid to be made available, your officials have confirmed that no such applications have so far been lodged by consumers.

Clearly there is a gap in the information, advice and funding landscape when it comes to supporting consumers on this issue. This is a complex area, that is difficult for consumers to navigate. We ask you to consider:

- whether more detailed guidance on the most common actions needed to be taken can be publicly provided (for example, updating trustees or executors, or registering trusts or powers of attorney);

- whether enhanced support could be provided to existing advice agencies to provide more specialist advice; and
- whether a hardship fund could be made available to assist those who cannot otherwise afford to seek additional legal advice.

As noted above, 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.

I would be happy to meet to discuss these issues further if that would be helpful.

Yours sincerely



Sam Ghibaldan

CC: David Gordon, Convener, Regulatory Committee of the Law Society of Scotland