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20 September 2024

Dear Mr Ghibaldan,

Thank you for your letter of 10 September.

From the outset, I want to assure you that the Law Society of Scotland recognises the significant issues which have arisen from WW & J McClure Limited ("McClures") going into administration in 2021. While the administrator made arrangements for Jones Whyte LLP to take over the goodwill, work in progress and certain assets of McClures, the collapse of any firm can present substantial challenges and we realise many concerns have been raised by former McClures clients.

I am also reassured that there has been a constructive dialogue between the Society and Consumer Scotland at an official level on the issue. Nevertheless, I understand why you also wished to raise specific issues with me as the Convener of the Society's Regulatory Committee. I can assure you that the committee, as a body charged with protecting the interests of consumers, has taken a strong and continued interest in this case. This includes ongoing consideration of what additional protections we could put in place under our existing statutory regime.

### **New practice rules**

As a specific example of that action, I can confirm that the Regulatory Committee has decided to bring in new Practice Rules and additional guidance, principally in relation to the obligations and expectations, including communications, when a solicitor or practice makes arrangements to pass client assets to another. We want to make sure we have the strongest public protections in place, while also ensuring nothing acts as a barrier to client cases being handled and transferred properly in any future case where a firm does go into administration.

Further consideration is required on the detail of these changes and, as you are aware, the required legal process for creating new rules involves consultation with the Lord President, consultation with Law Society members through a general meeting, followed



by final approval from the Lord President. This will be a project undertaken over our next operational year and it will appear as an item in our published annual plan in due course.

### **Legal restrictions**

In seeking to respond to the points you have raised, I hope you will understand the legal limitations I am under when it comes to providing information on any live regulatory matters. In some cases, doing so can constitute a criminal offence by the Law Society. We are already engaged with the Scottish Government on possible amendments to the current Regulation of Legal Services (Scotland) Bill which could address some of the significant legal restrictions currently placed upon us and allow the Society to be more open and transparent in such situations in future. Nevertheless, for now, such restrictions remain.

### **Contacting former McClures clients**

You raised concerns about the time being taken for Jones Whyte to contact all the affected former McClures clients. Together with the Solicitors Regulation Authority (SRA) (which is the regulator of the relevant legal work and cases in England and Wales), we recognised the importance of Jones Whyte prioritising cases and ensuring certain individuals were contacted in advance of others. For example, cases where Jones Whyte held client money were seen as a particular priority.

Nevertheless, we share your concern that Jones Whyte are not progressing with contacting all clients as quickly as we would like. We have made this known to Jones Whyte. Because the Society does not have the kind of regulatory powers over law firms at an entity level as exists in England and Wales with the SRA, we remain limited in what action can be taken on this. However, we continue to press Jones Whyte to make sure clients are informed.

### **Time limits**

You also raised concern that delays in clients being notified could impact on their options and ability to seek redress through current permitted regulatory processes. While it is true that certain time limits apply, in some cases there is discretion to waive time limits where there are good reasons to do so. Claims in relation to the Master Policy are limited in time by the relevant prescription time bar: this is a matter of law and is not something the Society can influence. On the other hand, for example, the Scottish Legal Complaints Commission (SLCC) does not include any time when a person was excusably unaware of the alleged conduct or inadequate professional services when assessing whether a complaint is within time. This is of course entirely a matter for the SLCC as the independent gateway for complaints and you may wish to contact them directly on this point. As always, we will investigate any and all complaints passed to us by the SLCC.

### **Website and local outreach**

You also raised some concerns about the accessibility of the dedicated information and answers to common questions which we host on our own website. We appreciate this helpful feedback and have now made adjustments so the information can be more easily obtained from the 'For the public' section of our website.

You rightly recognised the importance of raising awareness of the McClures case and the options available. As you will appreciate, the case of McClures has attracted significant



local and national media attention over the last two years, including television news. Several Members of Parliament and Members of the Scottish Parliament have also undertaken extensive work to raise awareness in their own areas, particularly where there are known concentrations of former clients. We will continue to work with them to ensure all relevant and up to date information is available.

### **Consumers on low incomes**

Your letter also highlights concerns about consumers on low incomes who may struggle to pay for any further action they are required to take to resolve issues. You will be aware that Scotland has a longstanding system of providing legal aid to assist those on low incomes with the costs of legal advice. The scope and availability of legal aid for these kinds of cases would be entirely a matter for the Scottish Government so I am pleased you have raised this directly with the Minister.

### **Potential stakeholder meeting**

Finally, you suggested there was a need to convene a meeting between Scottish Government, consumers and stakeholders. Given my earlier comments, great care would be needed to ensure any discussions on the 'resolution of issues' did not involve conversations on individual cases. To that end, it would be important to define exactly what issues would be discussed at a meeting and the specific intended objectives. I would also emphasise that, when it comes to dealing with services complaints and award of compensation for service complaints, that this entirely a matter for the SLCC and not something in which the Society becomes involved.

Yours sincerely,

David A Gordon  
Convener, Regulatory Committee