



The Rt Hon Lord Carloway  
Lord President

Parliament House  
Edinburgh, EH1 1RQ

16 January 2024

Sam Ghibaldan, Chief Executive  
Consumer Scotland,  
Thistle House, 91 Haymarket Terrace  
Edinburgh,  
EH12 5HD

*Dear Mr Ghibaldan,*

#### **MCCLURE SOLICITORS**

I thank you for your letter of 18 December 2024. As your letter arrived just before the Christmas break, I wanted to consider carefully the important issues, which you have raised, in the new year.

I was troubled to hear about the collapse of WW & J McClure Ltd back in 2021, given the scale of their client base. I recognise that the collapse is having a significant and distressing impact on many of their former clients; in particular, on those who have suffered bereavement, illness and who are disabled. I do ask the Law Society for updates on progress because I want to be kept apprised of any developments.

It was reported in the media last year that Police Scotland were investigating the circumstances which led to the collapse of McClures. Each of us has a responsibility to be cautious about what we say in public about the collapse. There must be no prejudice to any ongoing police investigation. I am also aware that some former clients may be contemplating legal action about the professional services which they received. Due to the contemplation of possible criminal and civil proceedings, I am constrained in what I can say about this matter.

If there are any legislative gaps in the regulatory framework protecting former clients, when a law firm goes into administration or when a business goes into administration more generally, that is a policy matter for the Government to consider and address. As the Law Society has already said, it has very limited powers to address the difficulties, which you have advised the former clients

of Mcclures unfortunately face. Although the Minister correctly states that the Lord President is the ultimate regulator of the legal profession, I have no power to bring forward new legislation to protect consumers when a law firm collapses. I cannot amend the existing statutory powers, which the Law Society (or any other regulatory body) has, so that it can take specific action in response to a collapse. Those matters which are entirely for the Government and Parliament.

In terms of what action could be taken now, it is for Jones Whyte LLP to contact the former clients of Mcclures. The Law Society has asked Jones Whyte to accelerate this process. It has publicised the collapse in order to increase awareness. It has no powers to compel Jones Whyte to accelerate this process. I welcome the Law Society's plan to bring forward new practice rules and guidance relating to obligations and expectations, when a solicitor or practice makes arrangements to pass client assets to another firm. My office has asked the Law Society for an update on when these rules will be sent to me, or my successor, for approval.

It would be constitutionally inappropriate for the Lord President to comment on the policy merits of the legal aid scheme. That is for the Government. If there are concerns about how the eligibility criteria of the current legal aid system are impacting on former clients, you should continue to raise this with the Minister. If, after seeking independent advice of their own, any former clients decide to make a complaint about a former Mcclure solicitor's conduct or service, those should be directed to the Scottish Legal Complaints Commission. Organisations, such as the Citizens Advice Bureau, may be able to provide advice on what alternative funding arrangements may be available.

In relation to how the regulation of legal services could be improved to safeguard consumers, the Regulation of Legal Services (Scotland) Bill is currently before the Parliament. One of the aims of the Bill is to simplify and improve the legal complaints process. I support that aim. Not only will it benefit consumers, it will also have the effect of ensuring that high standards across the legal profession are met, and maintained, by law firms and practitioners.

The Bill currently places a requirement on the Law Society, and other regulators, to prepare and operate rules to authorise and regulate legal businesses. These rules will need to be approved by the Lord President. The Law Society will be required to review the performance of a law firm at such time, or in such circumstances, as the Society considers appropriate or when requested to do so by the Lord President. Although I cannot pre-empt whether Parliament will pass the Bill, or agree to any amendments, the policy intention

of these particular measures is to provide additional safeguards for consumers. I welcome that.

The senior judiciary were strongly opposed to the Government's proposals in the Bill to give Ministers powers to regulate the legal profession. Our principal concern was that, if Ministers were to regulate the profession, consumers would no longer be able to obtain independent legal advice from lawyers; free from fear or favour. That would have been detrimental to the interests of consumers. The only way to secure an independent legal profession, and to safeguard consumer interests, is for the Lord President to remain as the ultimate regulator. I am pleased that the Minister has listened to our views and has recently tabled amendments to secure that this is achieved.

Amendments, which give the Lord President the power to review the performance of a regulator (e.g. the Law Society) and, if needed, to take action to ensure that the regulator makes improvements, have been lodged. In circumstances where a regulator does have the power to act, but is failing to carry out any of its regulatory functions, that failure can be escalated to the Lord President, who will have the power to require that improvements are made.

If these measures do pass, they should have the effect of improving regulatory standards and performance. This will not just benefit consumers, but all who are involved in the legal profession.

*Yours sincerely*

