

INDEPENDENT REVIEW OF THE REGULATION OF LEGAL SERVICES

Purpose

1. To provide the Access to Justice Committee ('the Committee') with an overview of the ongoing independent review of the regulation of legal services in Scotland ('the review').
2. Following the Committee's expression of interest in the review and in particular the research being undertaken to investigate the structure of the legal services market in Scotland, the review Chair, Esther Robertson, has kindly agreed to attend this Committee meeting to discuss the review.

Background

3. Scottish Ministers announced the Independent Review of the Regulation of Legal Services on 25 April 2017, chaired by Esther Robertson and supported by an independent panel, with the Chair's report and recommendations due in summer 2018.
4. Esther is the current Chair of NHS 24 and is a member of the board of the Scottish Ambulance Service (since July 2014). She was previously a Scottish Government Non-Executive Director and has considerable experience as a non-executive director and chair in the public and third sectors. In particular, Esther served as Chair of NHS Fife from 2000 - 2004 and the Scottish Further Education Funding Council from 1999 - 2005. She also chaired the University of Dundee Court's HR Committee. Esther has extensive experience in service user involvement and stakeholder engagement as well as financial management.
5. The panel has been meeting regularly since May 2017 and considering a number of issues in relation to regulation with a strong focus on:
 - The consumer and the public interest
 - Providers of legal services
 - The contribution of legal services to the economy

Remit of the review

6. The remit of the review is to consider "*what changes may be needed to the statutory framework for the regulation of legal services to protect consumer interests and promote a flourishing legal sector*". This includes investigating and making recommendations for:

- the best framework to promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector;
- a framework to protect public and consumer interest and promote the principles of accountability, consistency, flexibility, transparency, cost effectiveness and proportionality
- a regulatory framework that retains the confidence of the profession and the general public

The theory and the evidence

7. The panel is reviewing material on regulation including regulatory regimes for legal services around the world and regulatory approaches and tools from other UK sectors.
8. The panel is considering-a number of strategic issues of relevance to the regulation of legal services in Scotland including:
 - Better regulation (proportionate, consistent, flexible). Future proofed. Fewer unintended consequences.
 - New affordable framework, sustainable over time.
 - Consumer choice and protection (better awareness of options available and redress routes)
 - Legal services of high quality (competition, innovation).
 - The regulatory framework creates conditions to enhance economic growth.

The definition of “legal services”

9. The panel members are interested in the full spectrum of legal services in Scotland. Legal services are currently defined in the Legal Services (Scotland) Act 2010 as those being provided by a Licensed Legal Service Provider.
10. The panel has undertaken to ensure extensive stakeholder engagement on its work and agreed to launch a **call for evidence** to ensure that all those who wish to contribute views on the regulation of legal services are able to do so. A copy of this call for evidence, which closed in March, is shown at **Annex A**.
11. The Scottish Legal Complaints Commission’s response to this call for evidence is produced at **Paper 4.1A** and the Law Society of Scotland’s paper in this regard dated January 2018 is produced at **Paper 4.1B**.

Recommendation

- 12. The Committee is invited to note the contents of this paper ahead of Esther Robertson's attendance at the Committee meeting dated 23 April 2018 to discuss the review.**

**SCJC Secretariat
April 2018**

Annex A – Call for evidence

Independent Review of the Regulation of Legal Services

Call for Evidence

29 January 2018 – 30 March 2018

Independent Review of the Regulation of Legal Services – Call for Evidence

Summary of questions

1. What should a **regulatory system for 21st century legal services in Scotland** look like?
 - What features or activities do you think we should **keep doing/retain as they are** - and why?
 - What features do you think we need to **change/improve** and why
 - What should that **change/improvement look like**?
 - What features do you think **merit further investigation** and why?

You may or may not wish to refer to the categories below.

- Entry and qualifications
 - Activities undertaken
 - Setting standards
 - Monitoring compliance
 - Making complaints
 - Obtaining redress
 - Rules on organisational structure of providers
2. Do you have any comments about **the consumer, provider or public interest** in the current regulatory framework?
 3. Do you have any comments about **transparency and accountability** in the current regulatory framework?
 4. Do you have any comments about **flexibility and proportionality** in the current regulatory framework?
 5. What have been your **experiences of coming into contact with legal services in Scotland**? How could the experience be improved? (It would be useful to understand what the nature of the contact was, what type of legal service you benefitted from, and broadly what the subject area of the problem was.)
 6. Are there any regulation issues you wish to comment about in relation to **specific types of justiciable problem e.g. employment, consumer or family disputes**?
 7. What **innovations or barriers to innovation within legal services or their regulation** would you wish to highlight?
 8. Given the **significant pace of change in our economy**, how would you envisage the regulation of legal services **facilitating innovation and imaginative service delivery supporting the growth of the economy**?
 9. Are there any **immediate steps that should be taken in the short term** to enable legal service providers in Scotland to **compete better** with providers in other competing jurisdictions?

Please ensure that you fill in the information in Annex B about how you wish your reply to be treated.

Independent Review of the Regulation of Legal Services – Call for Evidence

Introduction

Scottish Ministers announced the Independent Review of the Regulation of Legal Services on 25 April 2017, chaired by Esther Roberton and supported by an independent panel, with the Chair's report and recommendations due in summer 2018. The panel has been meeting regularly since May 2017 and considering a number of issues in relation to regulation with a strong focus on:

- The consumer and the public interest
- Providers of legal services
- The contribution of legal services to the economy

The panel has undertaken to ensure extensive stakeholder engagement on its work and agreed to launch a **call for evidence** to ensure that all those who wish to contribute views on the regulation of legal services are able to do so.

Remit of the review

The **remit** of the review is to consider *“what changes may be needed to the statutory framework for the regulation of legal services to protect consumer interests and promote a flourishing legal sector”*. This includes investigating and making recommendations for:

- the best framework to promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector;
- a framework to protect public and consumer interest and promote the principles of accountability, consistency, flexibility, transparency, cost effectiveness and proportionality
- a regulatory framework that retains the confidence of the profession and the general public

The **full remit** of the review is available [here](#). The list of **panel members** is available [here](#).

The theory and the evidence

The panel is reviewing material on regulation including regulatory regimes for legal services around the world and regulatory approaches and tools from other UK sectors.

The panel is considering a number of strategic issues of relevance to the regulation of legal services in Scotland including:

- Better regulation (proportionate, consistent, flexible). Future proofed. Fewer unintended consequences.
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- Legal services of high quality (competition, innovation).
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The definition of “legal services”

The panel members are interested in the full spectrum of legal services in Scotland. Legal services are currently [defined](#) in the Legal Services (Scotland) Act 2010 as those being provided by a Licensed Legal Service Provider.

Consumer/public interest in the review

The panel has identified the lack of an evidence base on consumers of legal services in Scotland currently. In the time available to it, the review is unable to do a comprehensive baseline study but is commissioning a qualitative study on consumers attitudes and experiences. A number of key challenges are emerging from the available information including:

- Ability of consumers to access legal services and therefore access justice
- Lack of information on services they are purchasing including cost and quality.
- Potential for a lack of understanding by consumers of the services they are purchasing i.e. not enough objective information to choose between different providers of services, or to identify which providers are right for their issues.
- A lack of objective or comparative information about legal services in Scotland (online) e.g. a portal, or (telephone) a gateway.
- Lack of awareness of consumer protection should things go wrong.
- Lack of engagement in debates about the provision of legal services, or the regulation of providers, or feedback mechanisms for consumers for change.
- Public perception of solicitors and other providers of legal services is not as well monitored as in other sectors, nor directly fed into policy debate.
- Consumers could be getting a better deal from the complaints and redress system e.g. anomalies around compensation mechanisms, referral fatigue (being referred backwards and forwards between the various regulatory/disciplinary bodies), and the length of time it takes to resolve complaints compared to other sectors.
- Improvements to the system could improve public trust.

Providers interest in the review

Providers may be interested in the following key issues and other issues:

- Supporting the rule of law
- Maintaining and developing competence and providing excellent legal services
- Upholding standards and ensuring that appropriate measures are in place to deal with those who do not adhere to them
- Ensuring competitive provision of legal services and future sustainability of the business including the role of new business models
- Promoting innovative legal services to reach new markets or customers
- Seeking to provide access to justice for their clients
- Ensuring that regulatory frameworks are proportionate, flexible, and take account of the cost/burden of compliance.
- Exchanging best practice and committing to a philosophy of continuous improvement

Contribution of legal services to the economy

Although a small legal jurisdiction compared with our boundary neighbours in England and Wales our regulatory framework should be an enabler for growth in legal services as part of the Scottish economy and beyond. Views are being sought to assist in considering the question – "How can a regulatory framework facilitate growth and innovation ensuring legal services are a vibrant and growing part of the Scottish economy"? The panel has also commissioned research to investigate the structure of the legal services market in Scotland including unregulated providers.

Call for evidence questions

Key questions

The review is seeking responses to a number of questions. You may wish to respond to some or all of these questions. You are of course free to provide any other comments you may have.

1. What should a **regulatory system for 21st century legal services in Scotland** look like?
 - What features or activities do you think we should **keep doing/retain as they are** - and why?
 - What features do you think we need to **change/improve** and why
 - What should that **change/improvement look like**?
 - What features do you think **merit further investigation** and why?

You may or may not wish to refer to the categories below.

- Entry and qualifications
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- Rules on organisational structure of providers

2. Do you have any comments about **the consumer, provider or public interest** in the current regulatory framework?
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5. What have been your **experiences of coming into contact with legal services in Scotland**? How could the experience be improved? (It would be useful to understand what the nature of the contact was, what type of legal service you benefitted from, and broadly what the subject area of the problem was.)
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7. What **innovations or barriers to innovation within legal services or their regulation** would you wish to highlight?
8. Given the **significant pace of change in our economy**, how would you envisage the regulation of legal services **facilitating innovation and imaginative service delivery supporting the growth of the economy**?

9. Are there any **immediate steps that should be taken in the short term** to enable legal service providers in Scotland to **compete better** with providers in other competing jurisdictions?

ANNEX A – BACKGROUND INFORMATION – LEGAL SERVICES REGULATION IN SCOTLAND

The following summary is compiled by the Secretariat for information only.

The panel members are interested in the regulatory arrangements for solicitors, including private sector solicitors dealing with clients, solicitors working in-house in the private or public sectors (e.g. those working in public bodies such as local authorities or those working in the Crown Office and Procurator Fiscal Service), and solicitors working in the third sector/not for profit sector (for example in law centres or specialised advice providers).

In Scotland, around 11,500 solicitors constitute the main group of individuals providing legal services to the general public. Solicitors may perform activities “reserved” solely to them or “unreserved” activities – those that non-solicitors may also perform. Solicitors involved in litigation through the courts are likely to be more closely aligned with performing reserved activities. Those involved with private clients e.g. working on contracts are often working in non-reserved areas. The panel is interested in the regulation of legal service providers broadly, whether those people are working in reserved or unreserved areas and whether they are solicitors or other providers of legal services.

Some organisations employ a mix of solicitors who are subject to the current regulatory regime as well as other lay advisers or other professionals providing advice or services who are not regulated under the current regime for solicitor regulation. This broader range of advice services in Scotland encompasses a mix of providers including local authority employed teams of lay advisers (for example welfare rights teams), third sector lay advice providers (for example CABx or other independent advice agencies) as well as mixed lay and solicitor providers. A range of different quality assurance or other requirements may operate for such organisations alongside or instead of the regulatory arrangements for solicitors. For example, many third sector and public sector advice providers will be working to the Scottish National Standards for Information and Advice Providers, which includes an accreditation process. Also, all solicitors (whether third sector or private) who undertake legal aid funded work are required to go through a peer review process and their firms have to comply with various quality assurance requirements which are managed by SLAB.

Solicitors are regulated by the Law Society of Scotland who can issue practicing certificates, maintain the register of solicitors for Scotland, set codes of conduct, are involved in conduct complaints (sometimes passed further to the Scottish Solicitors’ Disciplinary Tribunal which investigates “misconduct” or “unsatisfactory professional conduct”) and maintain professional indemnity insurance and the Client Protection Fund (a last resort compensation fund for consumers run by the Law Society of Scotland on behalf of regulated solicitors, once other routes have been exhausted).

The Law Society of Scotland is also responsible for the regulation of Solicitor Advocates created since 1993 (solicitors who are also qualified to represent clients in the highest courts in Scotland and the UK), who have their own representative body, the Society of Solicitor Advocates. The Law Society of Scotland also carries out representation and lobbying on behalf of the legal profession (solicitors). The Regulatory Committee of the Law Society and its sub committees undertake its regulatory functions. The Law Society rules including for admission, professional practice, professional indemnity, conduct and discipline are

approved by the Lord President of the Court of Session, Scotland's most senior judge. The Law Society produces guidance for its members on interpretation of the rules.

All solicitors in Scotland, whether private or third sector, who provide legally aided services are quality assured under the Scottish Legal Aid Board's Quality Assurance programmes.

Advocates are mostly instructed directly by solicitors and mostly represent litigants in Scotland's highest courts but may also be sanctioned in the sheriff court. The Faculty regulates around 450 advocates nationally including entry to the profession and "misconduct" or "unsatisfactory professional conduct" (through the Dean, then potentially the Faculty of Advocates Complaints Committee and then potentially the Faculty of Advocates Disciplinary Tribunal in serious cases). The Faculty's rules including those relating to disciplinary procedures are approved by the Lord President.

The Association of Commercial Attorneys regulates commercial attorneys in Scotland who have a statutory right to represent litigants in courts (except rights of audience in the Court of Session) in relation to construction and building law. The number of Commercial Attorneys is usually around ten or more.

The Scottish Legal Complaints Commission acts as the single gateway for all complaints about legal professionals, initially handling and ensuring that all complaints are tracked into the correct processes including to the relevant professional bodies for conduct complaints. The SLCC deals with all service complaints.

ANNEX B - Independent Review of the Regulation of Legal Services

CALL FOR EVIDENCE - RESPONSE SHEET

Please use this response sheet when submitting evidence to the review. It will help us both to organise the many responses received, and to reflect your wishes for how the material is used. It can be completed and returned either electronically or posted back in hard copy.

Please send this coversheet and your submission to the following address:
legalservicesreview@gov.scot

Or in hard copy to:

Susan Bulloch
Secretariat – Independent Review of the Regulation of Legal Services
GW.10
St Andrew’s House
Regent Rd
Edinburgh
EH1 3DG

Information required:

Name of organisation or person responding:

Contact name (if responding on behalf of an organisation):

Address and telephone number. Email address:

Disclosure

Have you submitted any confidential evidence?
(Y/N) _____

If any of the evidence or views submitted are deemed confidential, please clearly mark these sections of the evidence.

Are you content for this submission to be published on our website?
(Y/N) _____

Are you content for your name to be supplied with the response on our website or do you wish the response to be anonymous on the website?
(Y/N) _____

Would you be content to be approached by the review for further discussion on your submission?

(Y/N) _____

N.B. The Scottish Government is a data controller under the Data Protection Act 1998. Information collected by the Review will be subject to the Act which balances the legitimate needs of organisations to collect and use personal data against the right of individuals to respect for the privacy of their personal details.

Thank you for your submission.