UCL CENTRE FOR ETHICS AND LAW
UCL FACULTY OF LAWS

EQUALITIES, HUMAN RIGHTS & CIVIL JUSTICE COMMITTEE

REGULATION OF LEGAL SERVICES (SCOTLAND) BILL

RESPONSE TO CALL FOR VIEWS

August 2023

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1. Introduction

1.1 This is a response to the call for views issued by the Equalities, Human Rights & Civil Justice Committee of the Scottish Parliament in relation to the Regulation of Legal Services (Scotland) Bill.

1.2 I make this response having carried out the Independent Review of Legal Services Regulation in England & Wales, which reported to the Lord Chancellor in June 2020[1] (IRLSR). The IRLSR was established in response to the market study of the Competition & Markets Authority (CMA), which reported in 2016.[2] In anticipation of a more fundamental official review at some point, the IRLSR sought to clarify the challenges identified by the CMA and others, and to offer some short- and long-term recommendations for reform.

1.3 In 2014-15, I also chaired the review by regulators of the legislative options for reform of the Legal Services Act 2007.[3]

1.4 In 2021, I responded to the Scottish Government's consultation on legal services regulatory reform in Scotland. To avoid the need for further cross-references, parts of this submission include elements of that earlier response.

1.5 The views expressed here draw on the experience and conclusions of the IRLSR and the legislative options review, but are expressed personally and should not be attributed to any organisation with which I have a current or past connection.

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1. The Final Report is available at https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation and https://stephenmayson.com/2020/06/11/legal-services-regulation-the-final-report/.
2. See Competition & Markets Authority (2016) *Legal services market study*; available at: https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf.
3. See https://legalservicesboard.org.uk/our-work/work-related-to-previous-years/work-arising-following-the-july-2014-ministerial-summit-of-legal-services-regulators.

2. General observations

2.1 There is much to be commended in the draft Bill. However, there are also instances where the Bill does not reflect or support best regulatory practice or, arguably, could benefit from further reflection on the experiences of other jurisdictions (including England & Wales).

2.2 While there are territorial and structural differences between the approaches to legal services regulation in Scotland as compared to England & Wales, based on the IRLSR there are a number of similarities in respect of which some general observations might be made:

(a) *Regulatory objectives*: These can compete with each other, providing no clear guidance to regulators or practitioners, and some are arguably inappropriate as objectives for regulation (see IRLSR paragraph 4.2, and paragraph 3.51 below).

(b) *Reserved legal activities*: The current reserved activities are largely historical and political anachronisms. They are also poorly aligned to the actual risks faced by consumers in their need for and use of legal services in the twenty-first century (see IRLSR paragraph 3.4, and paragraph 3.40 below).

(c) *Multiple regulators*: A regulatory framework that has its origins in professional self-regulation will usually be characterised by a multiplicity of regulators. This can result in consumer confusion, a lack of consistency in the application of regulation, failure to identify and assess risks across the sector, and duplication and cost-inefficiencies (see IRLSR paragraph 6.2, and paragraphs 3.2, 3.27 and 3.34 below).

(d) *Independence of regulation*: There is an inherent conflict of interest where the same body is responsible for both representing and regulating its members. Any lack of full separation between these functions will inevitably give rise at a minimum to a perception of 'capture' in favour of members' interests rather than consumers' interests (see IRLSR paragraphs 3.7.2, 3.7.3 and 6.3, and paragraphs 3.5-3.11 and 3.27-3.32 below).

2.3 The driving foundation of my approach to the regulation of legal services (and Recommendation 1 of the IRLSR) is that the primary objective should be promoting and protecting the public interest. I was honoured that in the Scottish Government's Policy Memorandum accompanying the draft Bill it adopted at paragraph 69 my definition of 'the public interest' in this context, namely:

> objectives and actions for the collective benefit and good of current and future citizens in achieving and maintaining those fundamentals of society that are regarded by them as essential to their common security and well-being, and to their legitimate participation in society.

2.4 Consequently, the fundamentals of society and legitimate participation in it by citizens are critical starting points for any consideration of regulatory reform. This is necessary to ensure that regulation is not directed away from these collective and fundamental matters towards the special interests either of providers or consumers – or, indeed, of the government.

3. Responses to the questions posed

Question 1: What are your views on:

a. the principal recommendation of the Roberton Review that an independent regulator should be created to regulate legal professionals;

b. the Scottish Government's decision to "build on the existing framework" rather than follow that principal recommendation?

3.1 Given that one of my recommendations in the IRLSR (Recommendation 33) was that, in future, there should be a single regulator for the legal services sector in England & Wales, I support the equivalent recommendation for Scotland in the Roberton Review. Indeed, I believe that the case for a single regulator is stronger in Scotland.

3.2 One of the many challenges of the regulatory settlement for England & Wales under the Legal Services Act 2007 is the multiplicity of front-line regulators (derived from pre-existing professional bodies) and the consequent need for the Legal Services Board as an oversight regulator. The relative size of the Scottish legal services sector – at around 14,000 providers, fewer than the Bar of England & Wales – would strongly suggest that a single regulator should be the most cost-effective solution.

3.3 I am very aware of the need for specialist regulatory insight, particularly in relation to the critical public interest activities of advocacy and the conduct of litigation. This is why the IRLSR (Recommendation 41) suggested a dedicated arm of the single regulator for these 'public good' activities and the involvement of senior judges.

3.4 Finally, the absence of single regulator misses the best opportunity for consistent oversight of the entire legal services sector, and the avoidance of complexity, multiplicity, duplication and confusion. It also does not allow for an approach to regulation that can differentiate between providers on the basis of different risks (cf. Competition & Markets Authority (2020) *Legal Services in Scotland*, paragraph 5.55). Without a risk-based approach, regulatory responses cannot hope to be consistent with the better regulation principles that require consistency, transparency and accountability for targeted, proportionate, cost-effective regulation.

Question 1: What are your views on:

c. whether there is a risk that the proposals could raise concerns about a potential conflict of interests?

3.5 Concerns about conflicts of interest tend to emphasise the importance of independence, and for this also to focus mainly on the independence of a legal profession from governmental or political interference. Such concerns are valid but too often, in my view, over-stated.

3.6 First, the independence of the legal profession remains a regulatory objective, and the valuable involvement of the Lord President is maintained in the proposed structure. However, the most important thing is not so much the independence of the profession from the state, but – as the professional principles in clause 4 of the Bill have it – for any *individual practitioner* to "act with independence (in the interests of justice)" or, in other words, to give fearless, robust advice and representation.

Independence, in this sense, is a state of mind and conduct, not an aspect of regulatory structure. This may be supported by membership of a profession, but is not dependent on it.

3.7 Second, the question of independence is particularly acute in relation to the public interest activities of litigation and advocacy, rather than the entirety of legal services. In other words, it is a facet of certain significant legal activities rather than of the sector as a whole.

3.8 Third, many lawyers, through their own chosen preferences, practices and incentives, act in ways that can be perceived to favour self-interest and compromise their professional independence and obligations to the interests of justice. Examples would be their involvement in strategic litigation against public participation (SLAPPs) and other forms of litigation that are abusive or otherwise exploit the imbalance in power or resource between parties; in the inappropriate use of non-disclosure agreements; in their close association or identification with the name, causes or moral stances of clients – or alternatively of overt dissociation from them; in the internal abuse of power in relationships with junior staff; or in their adoption of workplace or profit-sharing incentives that assign value and rewards to maximising chargeable hours, billing or client origination.

3.9 It is doubtful that these practices ultimately serve the regulatory objectives in clause 2 of the Bill of the public interest or the interests of justice; or the professional principles in clause 4 of the proper administration of justice, duties to the court, and truly acting in the best interests of clients; or the regulatory principle in clause 3 that a consumer should be treated fairly at all times.

3.10 I have no doubt that these actions and practices are much more real and present in the everyday practice of law in 2023 than the possibility of government or ministerial overreach in the regulation of legal services – especially when the latter is directly under the gaze of the Lord President and susceptible to judicial review.

3.11 The self-regulation of professional activities is common around the world. However, it is not a divine right, but rather a privilege granted by the state in return for self-restraint and actions that are manifestly in the broader public interest. What is given by the state can therefore be taken back. Nevertheless, if the privilege of self-regulation is removed, the alternative must still be a regulator that is independent of the vested interests of practitioners, consumers and the state.

3.12 On that basis, even if the provisions in the draft Bill relating to many of the powers granted to Scottish Ministers are intended to be used only as a last resort, I do share many of the detailed reservations expressed by the Law Society of Scotland in its response to the Committee. I return to these in my response to Question 4.

3.13 There is a further aspect of independence that is less frequently raised by professional bodies that also have regulatory responsibilities. It relates to the conflict between their representative and regulatory obligations. It is further complicated by the realisation that the *perception* of this conflict is as important as the reality of it. Indeed, in reality the conflict might not arise, but if it is still perceived to exist by those for whose benefit and protection regulation is intended to operate, the conflict remains.

3.14 The conflict is often expressed as the need to secure the independence of regulation from representative interests. However, the objective is probably better expressed as the need to avoid 'regulatory capture' (or the perception of it). In this sense, regulation and the regulator must not be "consistently or repeatedly directed away from the public interest and toward the interests of the regulated industry, by the intent and action of the industry itself" (Carpenter & Moss (2014) *Preventing Regulatory Capture*, New York, Cambridge University Press, page 13).

3.15 I expressed the view in the IRLSR that it is impossible for the perception of regulatory capture to be avoided if there is incomplete structural separation between regulatory and representative functions. The Competition & Markets Authority also referred to the 'intrinsic conflict' between these functions (*Legal Services in Scotland* (2020), paragraphs 5.19 and 5.43). Based on this conflict alone (irrespective of the proposed role of Scottish Ministers), such a conclusion would therefore argue against the Scottish Government's incremental approach and two categories of regulator.

3.16 In its response to the Committee, the Law Society of Scotland claims that such a conflict does not currently exist (presumably as a statement of its assessment of the reality, rather than perception). But it goes on to say that their self-regulation "ensures the profession works according to high ethical standards and delivers excellent legal services". In my view, the true purpose of regulation is to set and enforce the minimum standards below which any provider of legal services may not fall. This means that regulation should be risk-based, targeted and apply only the *minimum necessary* regulation to address the assessed risk to the public or consumer interests (cf. IRLSR Recommendation 28).

3.17 In this context, securing high ethical standards and excellent services should not be the role of a regulator – though it can remain as the aspiration of a professional body – and therefore the representative and regulatory positions are in conflict. This is because such an aspirational approach to regulation cannot be risk-based or proportionate: consumers do not, in every situation and at all times, need excellence (or need to bear the costs associated with it).

3.18 Unnecessary or burdensome regulation – whether driven by statutory requirements or professional aspiration – has a cost, initially borne by practitioners but eventually passed on to consumers. By seeking the highest possible standards of professional performance, the current approach to regulation does contain elements of misdirected obligations and restrictions that add cost to regulation and, ultimately, to legal services. That is why regulation should in my view instead focus on the *minimum necessary* standards to assure competence and service relative to the risks to the public interest.

3.19 It is, to my mind, telling that the Law Society of Scotland – contrary to the view of the CMA and current regulatory theory and best practice – denies the intrinsic conflict in embodying both regulatory and representative roles. Indeed, in its response to the Committee, it goes much further and asserts that there is "a coincidence of interest". At the same time, it professes the 'clear separation' and 'independence' of its Regulatory Committee, while still welcoming the Bill's proposals for even greater independence, transparency and accountability. And yet, throughout its submission to the Committee, it refers to 'we' and 'us' in relation to its position on the proposals

in the Bill without ever separating the focus of its response into its respectively separate and independent positions as regulator and representative body.

3.20 This clear conflation of positions does indeed reinforce the 'coincidence of interest', but in a way that strongly suggests that, in submitting the Law Society's response as a representative body and drawing no clear distinction between its regulatory and representative positions, the regulation of solicitors in Scotland is very much captured by and directed towards membership interests.

Question 2: What are your views on the current regulatory landscape for legal services in terms of complexity or simplicity?

3.21 Compared to the position in England & Wales, the regulatory structure in Scotland is much simpler in its architecture. From a statutory point of view, the position could be made even simpler through consolidating legislation rather than 'building on the existing framework'. In addition, as in England & Wales, there are too many aspects of regulation that are fixed or prescribed in statute. This removes or inhibits the possibility for, or scope of, swift action by regulators or the SLCC in response to unforeseen developments. These could relate to, say, shifts in public perception, legal practice, technology, or society generally (such as changing political priorities or policies, international conflict, pandemic).

3.22 I am also of the view that the Bill's proposals for different categories of regulator (see response to Question 3) and for additional Ministerial powers (see response to Question 4) will add unwelcome – and unnecessary – complexity to the current landscape.

Question 3: What are your views on the proposed division of regulators into two categories and the requirements which these regulators will have to comply with, as set out in Part 1 of the Bill?

3.23 The proposal in the draft Bill for two categories of regulator effectively creates – from a consumer perspective – a schism in the regulatory framework that is difficult to understand. To all intents and purposes, the Faculty of Advocates is the 'dedicated' advocacy regulator referred to in paragraph 3.3 above, but under the proposals it will not bear the additional regulatory obligations imposed on the Category 1 regulator of solicitor-advocates.

3.24 Such a distinction in the regulation of substantially the same activity carried on in substantially the same setting is, to my mind, difficult to justify from both a public interest and a consumer interest standpoint. Structural differences in regulation should be based on the underlying risks in the legal activity being carried on, and not by reference to the number of practitioners being regulated or their professional qualification.

3.25 I therefore agree with the Law Society of Scotland that the Scottish Government has not made a persuasive or compelling case for creating the two categories of regulator. As the Society rightly says, if there are to be new requirements in legal services

regulation for transparency, accountability and independence, then they should apply for the benefit of all consumers of legal services, irrespective of which body regulates the providers of those services.

3.26 Without an articulation of the 'persuasive or compelling' case, one is left with two possible, but deeply uncomfortable, conclusions. The first would be that the Scottish Government, based on the relative number of practitioners, has decided in effect to create a single (but not independent) regulator for legal services through the medium of an enhanced Regulatory Committee of the Law Society of Scotland, albeit with a specialist (but not adequately explained) 'carve-out' for advocates and commercial attorneys. The second would be that advocates are in some way to be treated as a special case, with the unfortunate implication that the Government has been unduly influenced in reaching this conclusion. Neither conclusion would seem to be founded on public legitimacy and consumer protection.

Question 4: Section 19 of the Bill gives Ministers the power to review the performance of regulators' regulatory functions. Section 20 sets out measures open to the Scottish Ministers. What are your views on these sections?

3.27 It seems to me that the existence of these provisions arises from the absence of a single regulator or an oversight regulator. I agree with the conclusion that considerations of proportionality and cost weigh against an oversight regulator (along the lines of the Legal Services Board in England & Wales). But an oversight regulator is not the same thing as a single regulator: the former is only needed where there is a multiplicity of front-line regulators.

3.28 As I suggested in paragraph 3.11 above, any vestige of self-regulation remains a privilege conferred by the state and, in that sense, some accountability for it should be expected. In the context of legal services regulation, that accountability is typically to an independent oversight regulator, to government or Parliament, or to the courts or judges. The structure of the Legal Services Act 2007 has, for England & Wales, elements of all three.

3.29 The proposals in the draft Bill strike me as unclear in their intent or purpose – other than that they are an inevitable consequence of not formally establishing a single or independent oversight regulator for legal services. The provisions in clauses 19 and 20 (as well as in clauses 41 and 49) of the Bill go much further than reasonable oversight or accountability in relation to modified self-regulation.

3.30 The powers in clauses 19 and 20 are those of an oversight regulator. However, for the reasons explored in paragraph 3.11, such powers should be exercised by an *independent* oversight regulator, not directly by the state itself. Although views might differ, the establishment of such an oversight regulator by Parliament, and the appointment of the chair (and possibly other members) by the government following an appropriate public appointments process, does not in my view make the oversight regulator an organ of the state. In these circumstances, independence of regulation from the state is assured, and accountability to an independent regulator is achieved. On this basis, I do not believe that the powers in clauses 19 and 20 are appropriate for Scottish Ministers to exercise.

3.31 Clause 41(4)(a) requires the prior approval by Scottish Ministers of amendments to a regulator's ALB rules. Given that those rules must be consistent with the requirements of clause 41(2)(a) – including matters which Ministers have previously required to be included – clause 41(4)(a) is unnecessary. It seems to me that the Lord President's approval of such amendments would represent a sufficient safeguard.

3.32 Clause 49(1)(b) amounts to the direct exercise of a regulator's powers (to authorise and regulate legal businesses). While it might be acceptable for the state (through Government ministers) to set out the parameters or requirements for the exercise of regulatory powers – as, say, in clauses 8(5), 41(2)(c) and (6), 45(2), 46(3), and 49(1)(a) – it is not appropriate for it to take a direct role in the regulation of providers. Other powers, and the role of the Lord President, should ensure that state intervention is not necessary (even as a last resort) to secure effective regulation of legal businesses.

Question 5: What is your understanding of the experiences of other jurisdictions, for example England and Wales, where independent regulators have been introduced to regulate legal services?

3.33 My final report of the Independent Review of Legal Services Regulation in England & Wales offers a comprehensive assessment (particularly in Chapter 3: hyperlink in footnote 1) of the experience in England & Wales following the implementation of the Legal Services Act 2007. I will not attempt to summarise the entirety of the findings and issues recorded there.

3.34 In this submission, I make references in response to other questions to elements of the experience south of the border: see paragraphs 3.1 (the need for a single regulator), 3.2 (the challenges of a multiplicity of regulators), 3.20 (the problems of too much statutory prescription), 3.27 and 3.28 (the accountability of regulators), 3.40 (the regulatory gap), 3.44 (ownership stakes in ABSs), and 3.53 (the gateway for complaints).

3.35 There is no evidence that the international standing of law firms and lawyers in England & Wales has diminished as a result of an oversight regulator whose members are appointed by the government. Nor is there any suggestion that the constitutional principle of the rule of law, or the administration of justice, have been compromised under the structure and requirements of the 2007 Act.

3.36 Where the 2007 Act has fallen short, though, is in the statutory and practical relationships between the professional bodies (such as the Law Society of England & Wales, the Bar Council, and the Chartered Institute of Legal Executives) as 'approved regulators' under the Act, and their delegated regulatory bodies (respectively, the Solicitors Regulation Authority, the Bar Standards Board, and CILEX Regulation).

3.37 It is therefore disappointing to see the draft Scottish Bill, in its requirement on a Category 1 regulator (the Law Society of Scotland) to maintain an independent regulatory committee. The Bill contains many of the problematic aspects of the similar English approach that have resulted in the incomplete and unsatisfactory separation of regulatory and representative functions.

3.38 In particular, the Bill keeps the representative body as the statutory regulator and requires only a 'committee' of it to act as the regulatory body (rather than a separate legal entity). This runs all the risks of misperception and conflict that have bedevilled the Law Society of England & Wales in its often uncomfortable relationship with the Solicitors Regulation Authority and, more recently, the Chartered Institute of Legal Executives in its quest for alternative independent regulation.

Question 6: What are the main deficiencies in the current complaints system, and do you believe the proposals in the Bill are sufficient to address these issues?

3.39 The main deficiencies of the complaints system have been well articulated by both the Scottish Legal Complaints Commission and the Law Society of Scotland – including the latter's identification of omissions from the Bill. I have little to add.

3.40 There is, however, one important part of the draft Bill that I welcome enthusiastically. One of my principal criticisms of the English Legal Services Act 2007 is the continuing central role played in regulation and its consequences by the 'reserved legal activities' (see IRLSR paragraphs 3.4, 3.5, 3.9, 5.2 and Recommendation 22). This has created a 'regulatory gap' through which a provider who is not otherwise regulated for the provision of legal services and who provides only non-reserved legal services can escape regulatory authorisation and enforcement, to the potential detriment of consumers.

3.41 I therefore recommended that this gap should be closed as soon as possible by allowing the Legal Services Board to create a public register of such currently unregulated providers, and to extend the jurisdiction of the Legal Ombudsman to unresolved service complaints made by consumers against registrants: IRLSR Recommendations 14, S1 and S2.

3.42 I therefore commend the Scottish Government for incorporating provisions into the draft Bill in clauses 62 and 65 which would place the Scottish Legal Services Commission in a position to achieve the outcomes that effectively close the equivalent regulatory gap in Scotland.

3.43 However, for reasons that I set out in IRLSR paragraphs 4.7.4, 4.8.2, and 4.8.3, I would strongly encourage the Scottish Government to reconsider its position on voluntary registration. Mandatory registration would allow regulation to deal with providers who pose a risk to consumers and who choose not to register voluntarily. It would also apply to those previously regulated practitioners (also referred to in the response of the Law Society of Scotland) who have retired, been struck off or otherwise restructured their provision of services deliberately to move from the regulated to the unregulated sphere.

Question 7: What do you consider the impact of the Bill's proposed rules on alternative business structures might be:

a. generally;

b. in relation to consumers of legal services?

3.44 It is right that the 51% majority stake rule for licensed legal services providers should be removed. It is not clear, however, why the required stake should be reduced to 10% rather than removed entirely. There is no evidence that the public interest or consumer protection requires a limit on 'non-lawyer' involvement, and the practical experience of alternative business structures in England & Wales bears this out.

3.45 Any assertion that those who are not lawyers will inevitably and somehow interfere with or influence the independence of those who are is simply not proven. There is no inherent lack of ethicality in those who are not lawyers (who, after all, represent about 99.75% of the population), just as there is plenty of evidence to show that lawyers are not themselves universally ethical. Any examination of the private practice of lawyers will also reveal a strong profit motive as well as many questionable personal and organisational incentives designed to realise it (see also paragraph 3.8).

3.46 Continuing with any minimum required stake is therefore likely to deter some potential alternative business structures from entering the market (thus reducing the effectiveness of the policy intention to increase the number and variety of providers of legal services in the market) as well as consequently depriving consumers of the additional choice (when there is no evidence that allowing that choice is likely to lead to consumer harm).

Question 8: What are your views on the provision of:

a. "entity regulation" (as set out in Part 2 of the Bill)?

3.47 I strongly support entity regulation being a feature of legal services regulation. With the possible exception of advocacy, most consumers and others will commission legal services through a business model or organisation that is, to them, an 'entity'.

3.48 As suggested in paragraph 3.8 above, there are also elements of organisational culture or incentives that operate to shape the behaviour of staff (whether lawyers or not). In the modern world of legal services, it is important therefore for regulators to be able to address their attention to entity-level requirements and concerns, and to be able to hold certain key individuals to account for entity-level failures or contraventions as well as for purely personal ones (see also IRLSR paragraph 4.7.3).

Question 8: What are your views on the provision of:

b. title regulation for the term "lawyer" (section 82)?

3.49 I do not support the title 'lawyer' being protected and given the same current protections as 'solicitor'. The expression 'lawyer' can be used legitimately in many different circumstances, including by those who are not professionally qualified as well as those who are but who use the title with a modifying adjective (such as academic,

retired, or non-practising). Although not regulated to practise, their use of the title is not inappropriate – and, indeed, in a more risk-based regulatory environment, their ability to offer some legal advice to consumers might be something to restrict and manage rather than prohibit outright (as, in particular, under the Bill's proposals, they could be subject to registration and the oversight of the Scottish Legal Services Commission).

3.50 It is questionable whether any legal titles should be protected by statute (including 'solicitor' and 'advocate'). The more important factors for consumers are:

(a) Whether any given provider is competent to provide the legal services in question: I accept that the holder of a professional title might well be considered competent, but I do not consider that regulatory authorisation from the mere fact of professional qualification in today's circumstances of widespread and complex law should be regarded as definitive of initial or continuing competence or as a reason not to allow other routes to authorisation.

(b) That they can establish whether or not a given provider is regulated as such: a process of public registration is sufficient for this purpose, and should not be limited only to those who hold a professional title (see also paragraph 3.42 above).

Neither of these factors requires the title 'lawyer' to be protected. Instead, it would be sufficient that it would be an offence for any provider to pretend to be regulated or registered when they are not (clause 83), or to claim to be qualified or to hold any particular status or title when they do not (section 31 of the Solicitors (Scotland) Act 1980, and clause 84 of the draft Bill).

Question 9: Do you have any further comments on the Bill and any positive or negative impacts of it?

3.51 The draft Bill maintains the public interest as a regulatory objective; but it is one of many. It is interesting to see the Scottish regulatory objectives being developed beyond those in the English Legal Services Act, in particular with the pleasing addition of supporting 'the interests of justice'.

3.52 However, there is no primary regulatory objective or even a hierarchy of the objectives; this leaves a set of regulatory objectives that are more varied than before and not necessarily always aligned. They are also capable of both supporting and opposing almost any interpretation of the priorities or emphasis used to justify a regulatory intervention of some kind or another. I would therefore encourage the identification of protecting and promoting the public interest as the primary regulatory objective, to which the others are subordinate (cf. IRLSR Recommendation 1).

3.53 The renaming of the SLCC and the extension of its jurisdiction is one of the most welcome aspects of the Bill – especially given that Scotland already has a much better single gateway for both conduct and service complaints than its equivalent in England & Wales.

3.54 Although the scope of regulation is expanded in the Bill – in relation to both redress and registration applying to unregulated providers – the reference in clause 2 of the Bill to the regulatory objective of independence, strength and diversity is confined to the 'legal profession' and not applied to all providers of legal services who will come within regulatory reach. This strikes me as a significant and detrimental limitation that could be easily remedied.

3.55 The distinction between professional misconduct and inadequate service creates confusion for consumers. The existence of different processes for the investigation of each, and of different sanctions and redress for them, compounds the confusion (see IRLSR paragraph 6.2.7). It is therefore pleasing to see that the Bill maintains and strengthens the role and responsibilities of the SLCC in relation to being the single point of access.

3.56 Consumers will have substantial benefits arising under the Bill. This is in itself a recognition that a regulatory structure that has its origins in self-regulation has failed to deliver sufficient benefits and protection for the consumers of legal services. The changes introduced by the Bill are therefore overdue, but nonetheless welcome. With the addition of some further reflections on the matters raised in this response, Scotland would be on the verge of establishing a world-leading structure for the regulation of legal services within its jurisdiction, in the manifest pursuit of the public interest and for the ultimate benefit of consumers, providers and the government.

3.57 This Bill will shift 'the legal sector' further beyond 'the legal profession'. The sector and the profession are already not coterminous, and with each year that goes by the difference grows. In truth, this is necessary if currently unmet legal needs are to be addressed effectively and economically. But these developments will then inevitably increase the pressure and momentum towards a single regulator of that broader sector – if not now (as Esther Roberton and I have advocated), then certainly in the not-too-distant future.

Stephen Mayson

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