Scottish Women's Aid

Submission on call for evidence on Regulation of Legal Services (Scotland) Bill August 2023

Scottish Women's Aid

Scottish Women's Aid ("SWA") is the is the lead organisation in Scotland working to end domestic abuse and plays a vital role in campaigning and lobbying for effective responses to domestic abuse. SWA is the umbrella organisation for 34 local Women's Aid organisations across Scotland; they provide practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach and follow-on support and temporary refuge accommodation.

We welcome the opportunity to submit our views and set out below our response to the questions posed by the Committee, in addition to additional observations on specific sections of the Bill.

Our Main Concerns

Our main concerns relating to the Bill are: -

- There is a lack of provision for meaningful consultation, involvement of and accountability to, users of legal services/consumers on the face of the Bill, which should be accordingly amended to include this requirement in the relevant sections.

- The Bill does not provide for the creation of an independent regulator to regulate legal professionals, which was supported by the Roberton Review and SWA would support amendment of the Bill accordingly.

- The proposal to introduce an inconsistent and uneven two-tier system of regulation is not acceptable. We wish to see the Faculty of Advocates Included as a Category 1 regulator alongside the Law Society of Scotland and subject to the same level of scrutiny, conditions and duties.

- The Bill may inadvertently cause third sector advice providers to be categorised as providing services for "*fee, gain or reward*" because the definition of what does and does not constitute "*fee, gain or reward*" could be open to interpretation. We are seeking that this be clarified through amendments to Bill and primary legislation.

Introduction

We commented in our 2018 response[1] to the Roberton Review, and then to the subsequent 2021 Scottish Government consultation on legal services regulation reform[2], that women and children's lack of access to justice is a long-standing human rights violation. Ensuring access to civil law proceedings is a significant part of how the UK should make sure it meets the obligations agreed to

[1] https://womensaid.scot/wp-content/uploads/2018/04/Legal-Services-Regulation-Response-SWA.pdf
[2] https://consult.gov.scot/justice/legal-services-regulation-reform-in-scotland/consultation/view_respondent?sort=excerpt&order=ascending&_b_index=60&uuId=562509599

through ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Istanbul Convention[3] .

Domestic abuse has serious and long-lasting consequences for women and children's health and well-being; not only is it an assault on their human rights but also on their ability to access and exercise those rights and entitlement, particularly their rights under Articles 6 and 8 of the ECHR. The costs of this failure to protect, which go far beyond simply financial and budgetary considerations, are borne by women and children, their families, their communities, and public and private institutions in Scotland.

Women, children and young people experiencing domestic abuse must have adequate access to local, dependable, appropriate, informed, robustly regulated, domestic-abuse-competent legal advice and support, supported by similarly robust avenues for complaint and recourse. The absence of these criteria results in service-generated harm and re-victimisation from the legal system, primarily through inaccurate advice about their rights or the wrongful suppression of references to domestic abuse when this information is pivotal to both the court's understanding of the issues before them and their subsequent decision-making.

As consumers victim-survivors must have adequate and understandable information around cost, quality, experience, and expertise, to allow meaningful comparison and identification of a legal professional capable of understanding the issues facing them and who will provide appropriate services and representation. This can be a difficult process where there are a low number of firms, specifically in rural areas, coupled with the fact that the available firms may not offer Civil Legal Aid funded services.

Stronger professional links should be in place between legal practitioners and specialist support services so that women, children and young people are better
supported to be aware of their rights to appropriate representation and how to exercise those rights.

Consumer principles, consumer protection and consumer voice

The Bill is disappointingly light on explicit provision on consultation with, involvement of and accountability to, users of legal services/consumers.

Section 3 contains duties that fall upon **"***regulatory authorities*" listed as the Court of Session, the Lord President, the Scottish Legal Complaints Commission, each category 1 and category 2 regulator, and each approved regulator of licensed providers, who must, under section 3(2) (a)-(e) "… *take into account the principles that:*

- *a consumer should have access to a range of legal services that are affordable and suited to the consumer's needs,*
- *a consumer should receive sufficient information about the consumer's rights and the services that are available,*
- *a consumer should be treated fairly at all times,*
- *a consumer should be able to access a means of redress when services are not of a suitable standard, and the views of consumers should be understood and taken into account."*

Missing is an explicit duty placed on all or any of the regulatory authorities to consult with consumers on the application of the objectives or to undertake monitoring and evaluation with consumers/legal

[3] Council of Europe Convention on preventing and combating violence against women and domestic violence

service users in this regard, so section 3(2)(e) should be reworded to provide these explicit requirements.

In relation to consumer engagement, we stated in both of our previous consultation responses that any regulatory and complaints body and mechanism must be child-friendly, understandable, accessible and supportive toward children and young people and indeed, to ensure this, children and young people must be involved in the design and implementation of these processes. Further, we advised that the complaints process must allow children and young people themselves, parents, specialist support workers and advocates to assist them through any processes and, indeed, lodge complaints on behalf of children and young people.

To this end, we suggested engaging with the children's rights sector to identify appropriate models of involvement, regulation and complaint, since adult-based systems cannot be replicated for children.

It is not clear whether any of this work has been undertaken in crafting the provisions of this Bill or how this will be taken forward in the development of the framework, regulatory processes and rules (the current work of the Scottish Public Services Ombudsman), in developing child friendly complaints handling principles and a procedure will be relevant and instructive in this matter.[4]

Section1- Overview of regulatory framework

Section 1(2)(b) & (c**)** should be revised to include wording reflecting the provision in 15(b) relating to "*public confidence*.**"**

Section 2- Regulatory objectives

The object should be the creation of a simplified but robust complaints procedure and as this does not appear in the wording of this section, language to this effect should be stated either on the face of the Bill or in Explanatory Notes.

Section 3-- Application of regulation objectives

- Section 3(1) states that regulators are able to exercise functions simply "... *in a manner it considers most appropriate to meet those objectives".* This is neither adequately transparent nor accountable*, e*ven though section 3(1)(a) states that this should be compatible with the regulatory objectives. Therefore, for the avoidance of doubt and to ensure clarity for users and public, the section should be strengthened by the addition of text stating *"…**following the requirements and principles of section 3(2) and section 3(4)."***
- Section 3(2) needs strengthened and should be supplemented by the addition of text to the effect that *"For the purposes of **meeting the objectives in 2(1)(b) and (c) and complying with the requirements of section 3(1)(a) and (b) and 3(4)**, a regulatory authority must …"*
- **Section 3(4)(a)(ii**) states regulatory functions should be "...*targeted only at cases in which action is needed".* This is vague as action will be taken to different degrees and at different levels as needed and must be clarified in the Explanatory Notes.

[4] https://www.spso.org.uk/news-and-media/child-friendly-complaints

- **Section 3(4)(b)-** states *"…that regulatory functions should be exercised in a way that contributes to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of such functions to do so."* It is not clear why this condition has been included. If it is intended to prevent an economic objective from being placed ahead of the regulator's other requirements, including promoting the interests of consumers and the public generally, it would be helpful to amend the Explanatory Notes to make this clear.

Section 4- Professional principles

The section 4(d) duty on legal service providers is wider than simply requiring action in the best interests of the person's clients, as stated in the section, since there is a duty of care towards other parties. This reflects concerns raised by women in relation to the conduct of the perpetrator's solicitors toward them and the need for all legal professionals to act with integrity and in line with trauma- based practice and principles, noting that the current Law Society Standards[5] on conduct and service state the following:

- **"Conduct -1. Trust and personal integrity-** *"Solicitors must act with honesty and integrity at all times. This duty applies not just towards clients but to all people that solicitors deal with, including the courts, witnesses and other solicitors."*
- **Standards of Service- 4- Respect**- *"…The solicitor also has a responsibility to treat colleagues, other members of the legal profession and the public with similar politeness and respect."*

The interaction between this section, in terms as to whether it is intended to inform, replace or complement existing or revised Standards and Codes of Conduct and Service for solicitors and advocates, etc, should be clarified.

Responses to the questions posed by the Committee

Our responses to these questions and the particular sections they refer to, are as follows: -

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

SWA continues to support the Roberton Review's primary recommendation[6] on the creation of a single independent regulator to regulate all legal professionals, as the simplest, clearest, and most appropriate regulatory model to help deliver regulation that acts in the public interest. It puts

[5] https://www.lawscot.org.uk/for-the-public/client-protection/standards-for-solicitors/
[6] https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2018/11/review-of-legal-services-independent-report/documents/legal-services-regulation-report-of-independent-review/legal-services-regulation-report-of-independent-review/govscot%3Adocument/Review%2Bof%2Blegal%2Bservices%2Bregulation-independent%2Breport.pdf

consumers at its heart as set out in our response to Roberton Review itself and the subsequent 2021 Scottish Government consultation on Legal services regulation reform.[7]

The Consumer Principles[8] are a set of tests used by consumer organisations across the world to assess whether goods or services are being provided in the consumer interest, namely access, choice, information, quality and safety acceptable standards, redress, representation, fairness and equity. These Principles require regulation to be clear, accessible, transparent, accountable and consumer focused. To achieve consumer confidence and for simplicity of operation, a single regulator covering for-profit legal service providers and responsible for the whole system of regulation, complaints and redress, independent of those it regulates, in that the professional bodies would no longer have a role in regulating themselves, is the best way to achieve this.

The Bill, however, proposes that the existing legal professional bodies continue in their dual role of regulator and representative of their legal members. The dual role of the Relevant Professional Bodies in playing the part of both regulator and representative of their legal professionals is difficult to reconcile as an independent and impartial approach in terms of regulation; it does not instil trust and confidence by consumers of legal services and complainers or foster accountability and transparency.

Also, there may be issues between regulatory committees and their professional bodies where opinions differ and it's not clear how the consumer voice would be appropriately and sufficiently engaged and represented, particularly in relation to consistency of engagement across committees.

To make processes consistent, accessible, and understandable for consumers and professionals alike, a single regulator (covering for-profit legal service providers, responsible for the whole system of regulation, complaints, and redress), independent of those it regulates, is the best way to achieve this.

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

The current complaints process is complicated, slow, difficult for consumers to understand and navigate, due to the working of the governing regulation and the fact that complaints handling happens across multiple bodies causes duplication in process. Further, the professional bodies' role in complaint handling, carried out in tandem with their role as representative bodies for their respective professions, has not instilled confidence in consumers around the independence of the process.

Often women are simply unable to pursue a complaint because of relentless and ongoing engagement with the court process or difficulties with court-ordered contact arrangements, in which their children's safety and security are the priority. They may have had difficulties in securing a lawyer in the first instance and do not want to "rock the boat" by making a complaint against them for fear of the solicitor withdrawing from acting, which might disrupt the proceedings, often to women and children's prejudice and detriment.

Similarly, women may fear that by making a complaint, they will be labelled "difficult" and therefore other practitioners will be unwilling to take on their case, a particular issue in small and/or rural communities. Women using our local Women's Aid services have raised the issue about having to complain to the Client Relations Manager and the difficulties this brings in dealing with small practices and sole practitioners.

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[7] https://consult.gov.scot/justice/legal-services-regulation-reform-in-scotland/consultation/view_respondent?_b_index=60&uuId=562509599

[8] **Consumer principles; Applying the consumer principles to legal services: a tool for legal professionals and regulators** https://www.scottishlegalcomplaints.org.uk/media/hk4fz3me/consumer-principles-stakeholder-brochure-21-march-2018.pdf

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?

We reiterate that we do not support the continuation of the professional representative bodies' dual role as a regulatory body.

However, in relation the proposed division of regulators, we would emphatically state that both the Law Society of Scotland and Faculty of Advocates must be Category 1 regulators, subject to the same requirements, rules and scrutiny, so there can be no division of their regulators into two, separate categories set out in section 8 of the Bill, with the Law Society being defined as a Category 1 Regulator and the Faculty otherwise as a Category 2 regulator. We do not support this separation and it is not acceptable, noting that this was not a recommendation from the Roberton report nor was it included in the Scottish Government consultation proceeding this Bill.

Such a two-tier, inconsistent approach for such high-profile, public-serving bodies not only unnecessarily complicates the process but the much less stringent and lax accountability, regulatory oversight, public scrutiny of, and duties placed on, Category 2 regulators in the Bill do not encourage confidence in the operation of two very different regimes, as is clear from the following sections:

Section 9 - Exercise of regulatory functions

This section requires only Category 1 regulators to establish and maintain a regulatory committee. This committee will be subject to Freedom of Information ("FOI") regulation *(see page 24, paragraph 114 of the Policy Memorandum)* but there is no similar obligation placed on Category 2 regulators whatsoever in relation to their work, particularly since they are not required to set up a regulatory committee, so the regulatory work of the Faculty would not, unlike Category 1 regulators, be subject to FOI. We also refer to paragraph 281, page 48 of the Explanatory Notes on this matter.

Section 13 - Annual Reports of Category 1 Regulator

The reporting requirements on Category 1 regulators are much stronger than the requirements placed on Category 2 regulators.

Section 14- Compensation Funds

The requirement to establish a compensation fund only applies to a Category 1 regulator.

Section 15 - Exercise of regulatory functions *(applies only to Category 2 regulators)*

The regulatory requirements imposed on Category 2 regulators are minimal; indeed, the Explanatory Notes at paragraph 59 on page 11 specifically state that the requirements placed on Category 2 regulators under that section "... *is less prescriptive than the requirements imposed on a category 1 regulator which must set-up a regulatory committee to discharge its regulatory functions.*" This is not acceptable for the regulation of the Faculty of Advocates.

Section 16 – Annual reports of Category 2 regulators

Again, the requirements for Category 2 regulators under this section are much less onerous that those placed on Category 1 regulators in that Category 2 regulators do not appear to be required to publicly promote the publication of their report.

We note that justification for this two-tier approach is given that unlike Advocates, solicitors all clearly have a "public facing function. This is an artificial and contrived separation. The Faculty might not be as "public facing" as the Law Society, but Faculty members certainly offer services to the public, including women experiencing gender-based violence, domestic abuse and rape and sexual assault in particular, appearing in high profile, controversial, sensitive civil cases at the Court of Session and in questioning of witnesses in serious criminal cases before juries under Solemn Procedure, in which their conduct and service delivery will have far reaching consequences for the individual parties involved and in the outcome of such cases. The level and importance of these cases calls for them to be subject to an equivalent, if not an even more rigorous, system of regulation and scrutiny, assessment of specialities and understanding of such issues as domestic abuse and trauma-based approaches to supporting parties in both civil and criminal business.

In terms of addressing the proposals under the Bill, a competent and accountable system with independent regulatory committees responsible for any regulatory activity undertaken by these two professional bodies is crucial. This will demonstrate and ensure greater independence and accountability, drive the "public interest focus" and embed the need for consumer focussed- practice in dealing with members of the public into regulatory practice, with a view to building consumer confidence, choice and accountability.

Further, it is important that the regulators, their committees, and complaints bodies are accountable, transparent and accessible. Public scrutiny of their practices and reporting, is important and transparent, which means publication of reports on their activities and actively consulting on regulatory plans, guidance, etc with the public and organisations representing users of legal services, noting that "consumer interests" has a wide interpretation. Professional regulators and/or regulatory committees must be aware of and undertake their "outward facing" public and consumer focus, which means consulting with the public and consumers of legal services, those making complaints, etc and providing information relevant to not only their members but consumers, too.

To achieve this, the sections dealing with regulators must therefore be amended to contain these duties where not already provided for in the Bill.

In relation to Chapter 2, we also wish to comment on issues arising in sections 8 to 24 covering regulators and the actions needed to address these, as follows:

Section 8- Regulatory categories

Section 8 (8) lists those with whom Scottish Ministers must consult before making regulations under this section. There is no provision for Scottish Ministers to consult other persons Ministers think appropriate, as set out in other areas of the Bill but specifically, no obligation to consult with the public and organisations representing users of legal services so this section must be amended to contain such duties accordingly.

Section 10- Regulatory Committee- composition & membership

This process needs to be transparent, independent and consistent, so the independent public service appointments process may be more appropriate

- **Section 10(4)** sets out exclusionary criteria preventing a person from becoming a member of a regulatory committee. The matters set out in paragraph 3.4 of the Law Society of Scotland's "***Guidance Notes on the fit and proper person requirements for admission as a solicitor guidance***[9] are instructive and while corporate insolvency is included, the issue of personal insolvency is not included and the matter of improper of fraudulent behaviour by a person sequestrated or signing a Trust Deed either as an individual, partnership or sole trader, similar to the restrictions around directors' disqualification, requires to be added to this section.

[9] https://www.lawscot.org.uk/media/367851/fitness-and-properness-guidance.pdf

Section 11- Regulatory Committee lay and legal members.

Section 11 (2**)** states that "*The person must appear to the regulatory committee (or, in a case where the committee is unable to do so, the category 1 regulator) to be— (a) qualified to represent the interests of the public in relation to the provision of legal services in Scotland, or (b) having regard to the regulator's regulatory functions, suitable in other respects."*

- The Explanatory Notes, paragraph 50 on page 10, state that lay members "... *must also be qualified to represent the interests of the public in relation to the provision of legal services in Scotland or be otherwise suitable with regard to the operation of regulatory functions, for example, an expert in consumer issues."*
- It is not clear how" qualified" and *"suitable in other respects"* will be defined and the relevant standards, benchmarks, or guidelines that will be followed. The reference to "consumer issues" is very specific while the definition of "consumer" in relation to users of legal services and the issues involved, is very wide and quite diverse constituency. Without any such guidelines, the appointment will be undertaken solely on the judgement of the other members of the Committee and will be open to discriminatory and exclusionary practices so we would welcome clarification of this point.

Section 12- Regulatory Committee: convenor, subcommittees and minutes

In terms of the requirements placed on the committee under section 12(4) and 12(5**),** while the committee can supply a copy of minutes of a committee meeting to a person, when they consider that request is reasonable, albeit with the ability to withhold information from those minutes, there is no requirement for the regulatory committee to publicly publish minutes of proceedings and its papers. This is not acceptable, and public access should be added as a requirement in the Bill.

Section 13- Annual Reports of Category 1 Regulator

As mentioned above, the reporting requirements on Category 1 regulators are much stronger that the requirements placed on Category 2 regulators, an inconsistency which is not acceptable**.**

- **Section 13(4)-** it is not clear why the Category 1 Regulator or Regulatory Committee is required to consult with the Lord President and the Scottish Legal Complaints Commission, renamed the "Scottish Legal Services Commission" ("the Commission") when preparing the Annual Report and this requires clarification.
- **Section 13(6**)- in terms of consumer confidence and engagement, this section is deficient as while it gives Scottish Ministers powers to publish the report, it does not explicitly say that Scottish Ministers are required to publicly publish each annual report and, in particular to publish this on the Scottish Government website so the section must be amended with appropriate wording accordingly.

Section 15- Exercise of regulatory functions *(for Cat 2 regulators)*

There are no requirements whatsoever around publishing details/minutes of regulatory proceedings, much less any duty to make these publicly accessible. This is not acceptable, as public access should be a requirement in the Bill, which requires amendment accordingly.

Section 16 – Annual reports of Category 2 regulators

Again, there are no powers requiring Scottish Ministers to publish the report and make it available on the Scottish Government website or for Category 2 regulators to publicly promote the publication of this report.

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?

Section 19(1) provides that Scottish Ministers may review the performance of a Category 1 or 2 exercise of its regulatory functions if requested to do so by the Scottish Parliament, CMA and Consumer Scotland. No other bodies are prescribed, nor public request for this prescribed so in the interests of consumers and consumer protection, the Commission and bodies supporting consumers of legal services and complaints should be specifically added to this section of the Bill.

We also wish to comment on issues arising in other relevant sections of the Bill covering regulators and the actions needed to address these, as follows: -

Section 21- Power to direct special rule change

Section 21(2)(b) raises a possible issue as the section provides that on the application of a <u>legal services provider</u>, the Regulator would be allowed, by a direction, to disapply or modify any rule in relation to the applicant, *"removal of unnecessary rules or making them less onerous." (*See Explanatory Notes, para 71, page 13 and 14).

- There appears to be no requirement on regulators that <u>before making any such decision</u> on disapplication or modification of the rules granted to any specific providers, they must first publicise these changes and their reasons for making these directions. This means consumers of legal services would not be aware of any changes <u>until after</u> any such direction had been made, which is neither transparent nor accountable, particularly given that this direction can last for up to five years. The requirements under section 23 and section 24 below does not address this omission so the section needs amended and worded accordingly.
- While the CMA is to be consulted in relation to specific matters relating to competition, under section 21(4), there is no corresponding duty to consult with the Commission, in their new capacity, bodies representing users of legal services or the public, so the section should be amended to include this duty.

Section 24- Register of directions

This refers to the establishment and maintenance of a publicly accessible register of directions made under section 21 above and corresponding reports by regulators under section 23 on whether directions should still apply.

The redaction criteria and powers under Section 24(3) in relation to information held publicly about such directions, are not wholly acceptable. Given that the public will have access to this register, these provisions are potentially restricting the information available to the public, which is not appropriate, transparent or accountable, particularly since there appears to be no requirement on the regulator to provide reasons in the register for making these directions, for the redaction of information or to identify the legal service provider. Clarification on use of this power, and guidance, subject to consultation with public and Commission, will be required on its use.

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?
No comment

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?

Our comments in response to Question 2 above are also relevant here in that the current process of complaints is confusing, lengthy and bureaucratic, inaccessible to the public and not user friendly in recognising the barriers vulnerable people face when engaging in processes where a power balance exists.

Women experiencing domestic abuse are reluctant to complain in the first instance for a variety of reasons: they do not want to complain during the progress of their action because this could impact on how the case is then handled by the legal professional and/or result in the legal professional refusing to continue to engage; concerns that the fact they have made a complaint will work against them in seeking a replacement solicitor for the ongoing case and in engaging other professionals in the future.

Women report difficulties in accessing an appropriate response from legal practitioners at the very beginning of the process, even before the matter progresses to involvement of the Commission and/or the professional bodies. Having been told by perpetrators that professionals will not believe them, simply negotiating the complexities of the legal action they are involved in is traumatic enough without having to become involved in a parallel or subsequent process.

The potential for service generated trauma is a real risk for them and highlights the problems inherent in promoting mediatory solutions for the resolution of legal complaints between those who complain and legal professionals, given, as we have mentioned, the imbalance of power between vulnerable consumers and practitioners.

We would comment further here on issues arising in sections 51- 77 of the Bill relating to complaints and the Commission and the actions needed to address these, as follows: -

Section 51- Change of name to the Scottish Legal Services Commission This is a meaningless title, which says nothing about the role and purpose of the Scottish Legal Services Commission in relation to complaints and is, in fact, likely to cause confusion as to the organisation's purpose. Even with the Commission's expanded role, there's no need to change the name from the Scottish Legal Complaints Commission, a name that retains clarity of purpose and provisions.

Section 52- Receipt of complaints
We support that the Commission will continue to remit any conduct element of a complaint to the regulator but will now be able to investigate services contained within the same complaint.

Section 58- Commission review committee
This section removes the right of appeal to the Court of Session, providing that an Internal Review Committee of the Commission has the final decision, with the additional further step of judicial review available:

- While the removal of these costly legal proceedings is extremely positive, in fact removal of any requirement to raise court proceedings which act as a costly barrier for consumer appeals is welcome, we are unsure as to whether the final right of appeal should lie with an internal Commission committee.
- In terms of transparency and accountability, we wondered, and would welcome further discussion around, whether recourse to an independent external body, such as the SPSO should be the process for making the final appeal decision, even though judicial review is ultimately available, since complainers may be unable to financially, or otherwise, access the judicial review option.

Section 67 - Conduct or regulatory complaint raised by relevant professional organisation

We note section 67(3) amends section 33 of the 2007 Act by creating new section 33A. Section 33A (3) provides that the relevant professional organisations must have regard to the interests of clients to whom the conduct complaint relates when they identify and investigate such a complaint against a practitioner. It does not, however, impose a duty on them to advise the client at that early stage that they are, in fact, undertaking such an investigation into the practitioner. They are only required to advise the client under 33A (4) much later in the process, and then only if, and when, they uphold the complaint. This is unacceptable and not transparent in relation to dealing with complaints, as clients will be unaware that any investigation is underway, particularly important given that the client may hold additional information about the matter or information that the practitioner has not retained.

The section must be amended to include a duty on the relevant professional organisation to also contact any client or former client of the practitioner, etc.at the time it begins this investigation, not only if and when the complaint is upheld.

Section 73 - Faculty of Advocates: complaint of professional misconduct and publication of decision

This inserts a new subsection into section 122 of the 2010 Act (particular rules) regulating the discipline of advocates so that these must include rules requiring the publication of decisions about complaints of professional misconduct against an advocate; while certain matters must be included in the decisions, the Faculty can omit certain information. While this section is positive, it will require tight guidance on the exclusions allowed.

Section 74 - Commission membership

This section reduces the number of lay members from 5 down to 4 but there is no rationale given for this reduction so we would welcome clarity on this point.

Section 75 - Role of the independent advisory panel

SWA supports the expanded role of this Panel to make recommendations to the Commission about how it discharges its functions as this section provides one of the few opportunities in the Bill for legal consumers to have a say in the regulatory framework.

If the Panel is to have this enhanced role, adequate funding must be made available to allow both the Panel and the Commission to carry out these duties, including secretariat and administrative functions. It is also important that Panel members are supported to participate in this important work, given current representation, including that of SWA, from the charitable and not-for-profit sector. Members bring important experience of the legal service users with whom they engage, which often includes sections of the community whose diverse and particular experiences make them, for many different reasons, more vulnerable in their engagement with legal providers and complaints processes and for whom service generated harm is more likely. It is important that voices of those less readily heard are represented, such as legal service users from the black and minority ethnic and disabled communities, and children and young people.

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?

Consumers are unlikely to be clear on what an "alternative business structure" is, what services they provide and how they are regulated so separate regulatory schemes, with yet another complaints scheme for authorised legal businesses and licensed legal services providers. We see no reason to add the proposed alternative.

Question 8-What are your views on the provision of: a) "Entity regulation" (as set out in Part 2 of the Bill)? b) title regulation for the term "lawyer" (s 82)?

Entity regulation is to be supported but must not replace or water down regulation of practitioners at an at individual level. We note that entity regulation applies primarily to "for-profit legal businesses" but that non-profit organisations are also now eligible to become licensed regulated providers if they choose.

We are unsure how this will work in practice as the work of non-profit organisations is quite different from that of the "for-profit" sector, and we are concerned about how a "one-size fits all" process of regulation could have serious unintended consequences for organisations such as local Women's Aid services. Clarity on this point would therefore be welcomed.

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

There may be unintended consequences for third sector charities arising from the use of the requirement "fee*, gain or reward*" in relation to defining and regulating legal services.

When third sector and charitable organisations do not offer services for fee, gain or reward obtainable from, or paid directly from their service users/the public, etc, we are concerned as to how "fee, gain or reward" may be potentially technically interpreted. Paid/salaried staff employees of the third sector provide advice services they are theoretically doing so for the "*Fee, gain, or reward"* in terms of wages and salary paid to staff, even reimbursement of expenses for volunteers. Similarly, these organisations will be funded via income, grants, etc to provide such services.

It therefore poses the worry that wages/salary and grant payments could be interpreted as individuals and organisations obtaining a "*fee, gain or reward*" for providing a service giving information and advice to the public on legal rights, procedures, etc and so could, by default, bring organisations and individual staff in services and helplines this information and services under the regulation of a Category 1 Regulator, as "legal businesses", "licensed legal services provider", or otherwise.

We have been advised by the Scottish Government that it does not consider the phrase "*fee, gain or reward*" as applying to the remuneration of staff within a charitable/third sector, non-for-profit organisation. While this provides some comfort, more reassurance and clarity are needed in statute to prevent third sector services, their paid employees and volunteers potentially coming under regulation because of the "*fee, gain and award*" loophole.

This query also applies in relation to sections 6, 52, 62, 65 and 81:

Section 6 - Meaning of legal services and providers
The definition of legal services is being expanded to include 'unreserved' activities and currently, those who provide only unreserved services do not need to be licenced and regulated. However, as discussed below, it is unclear whether organisations such as Women's Aid groups providing advice will, under the Bill, be considered as providing legal services and could be caught under the "fee, gain or award" issue.

Section 52- Receipt of complaints: preliminary steps
Again, continuing the discussion we are seeking clarification as to whether complaints against services provided by third sector organisations could, under an interpretation of "professional services" provided for "fee, gain or reward" be regarded as service complaint, dealt with by the Commission.

Section 62- Service Complaints: special provision for complaints against unregulated persons
Clarity is needed whether the issue around "fee, gain, or reward" raised above in relation to the third sector and charities would apply here, therefore bringing them under Commission regulation.

Section 65- Unregulated providers of legal services: voluntary register, annual contributions and complaints contributions -
SWA welcomes the availability of protection and redress for consumers using any legal services, particularly unregulated legal services, and the setting up of a voluntary register. In saying this, we would welcome assurances that these proposals will not limit access to important free advice and support services through the placing of additional regulatory burdens on not-for-profit services.

Section 81 – Removal of practising restrictions: law centres, citizens advice bodies and charities
SWA welcomes this section which will assist our work in securing dedicated and innovative provision of domestic-abuse competent legal services for women, children and young people experiencing domestic abuse. However, we note that removal of the restriction in section 26(1) of the 1980 Act (offence for solicitors to act as agents for unqualified persons), only allows the employment of solicitors "employed *full-time on a fixed salary…"* This appears to effectively exclude charities from employing solicitors on a part-time basis. It is also unclear whether the removal of the restriction therefore only apply to FT posts, something we wish to see addressed. We would also welcome clarity as to whether charities doing so would require to be regulated by a Category 1 Regulator due to the "fee, gain or reward" requirements since the solicitor would be obtaining gain or reward via a salary?

Section 86- Reserved and unreserved legal services
We had previously observed that any change to the definitions of "reserved" and "unreserved" may negatively impact on third sector and not-for –profit organisations providing advice on housing, debt, and money; for example, local Women's Aid groups provide women experiencing domestic abuse with specialist, targeted information and advice around their rights to housing.

While the Bill does not propose to change what constitutes reserved/unreserved legal services, it does give Scottish Ministers a power to change what are restricted legal services by making regulations in consultation with Lord President, Category 1 and 2 regulators and approved regulators under Part 2 of 2010 Act and the CMA. There is no provision made for consultation and involvement of third sector organisations providing legal advice support or who may be affected by any such changes in the advice sector to be consulted, and this requires amendment.

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