**Independent Review of the Regulation of Legal Services: Call for evidence**

**Written briefing from Citizens Advice Scotland**

*Citizens Advice Scotland (CAS), our 61 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer helpline, and the Extra Help Unit, form Scotland’s largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Advice for Scotland provides information on rights and helps people solve their problems.*

*In 2016/17 the Citizens Advice network in Scotland helped over 310,000 clients in Scotland alone and dealt with nearly one million advice issues. With support from the network clients had financial gains of over £140 million and our Scottish self-help website Advice for Scotland received over 4 million unique page views.*

**Introduction**

CAS welcomes the opportunity to provide evidence to the Independent Review of Legal Regulation in Scotland. An important aspect of access to justice for consumers is to be able to access redress when something goes wrong, and that this redress should be easy to access, free and independent. While the system of legal complaints has a number of benefits for consumers, there are issues – such as the complexity of the system, a lack of transparency in the legal services market, the relative slowness of complaints resolution, and the disparity between compensation levels in different types of complaints – that mean that the system can be improved for consumers. This response outlines some issues and solutions from a consumer principles perspective, using evidence from the citizens advice network and views expressed at the SLCC Consumer Panel and the CAS Legal Services Group.

The Scottish Citizens Advice Service is in an ideal position to respond to the Review. Citizens advice bureaux provide advice on legal rights across all areas that affect people’s lives – benefits, housing, debt, work, relationships, consumer issues, immigration and more. They play an important and complementary role to legal services, helping to ensure that clients receive the advice they need and to provide services where they may be gaps in provision. In 2016/17, CAB provided 3,204 referrals to solicitors, including legal clinics or rota schemes held in a CAB locations. In total, citizens advice bureaux provided advice on over 25,700 new issues related to the legal system in 2016/17, including Sheriff Court, Simple Procedure and Legal Aid issues. In addition, bureaux advise on many other access to justice issues such as benefit appeals and employment tribunals.

Our members also provide lay representation, in the likes of the social security tribunal to help challenge benefit decisions, and in the Courts through projects like the In-Court Advice Services that are funded by SLAB to fill a gap in legal aid provision. Of the 2,942 CAB appearances at tribunal and court in 2016/17, 67% (1,970) were upheld or partially upheld.

CAS is also a leading voice of users in the justice system. We sit on key groups in civil and administrative justice, and we represent the needs of users of complaints processes, tribunals, and the justice system. We were key in setting up the Scottish Legal Complaints Commission (SLCC) Consumer Panel, and we successfully helped campaign for the extension of time-limits for complaints to be raised with the SLCC for two years, rather than one year.

To help inform our work in these areas, CAS holds a Legal Services Group (LSG), which is a long standing committee made up of half bureau members and half external stakeholders including the Scottish Legal Aid Board, the Law Society of Scotland, and the Faculty of Advocates. The LSG is charged with drawing on the expertise of those around the table to comment and advise on access to justice policy issues facing bureau clients and consumers in the wider context of civil and administrative justice.

**Key points in this submission**

**What should be retained?**

* The original intentions of the 2007 Act – that access to redress should be straightforward, free and independent – should be retained and built upon
* The SLCC Consumer Panel plays an important role in providing the consumer perspective in the legal complaints process and should be placed on a secure footing
* The role of citizens advice bureaux in complementing legal services should be supported and not be unintentionally affected by changes in regulation

**What should be changed/improved?**

* The current debate over whether cases are hybrid, conduct or service needs to be resolved, as the current situation is creating uncertainty and means that some consumers may be missing out on higher levels of compensation
* A number of issues affect consumer access to the complaints system – including the perceived complexity of the system, language used, and the length of time for complaints – which could all be addressed to improve the consumer experience.

**What features merit further investigation?**

* The consumer experience of making legal complaints would benefit from further research – particularly around access to the system, any barriers they face, their experience of any delays, and satisfaction with outcomes.
* Following the CMA report on the Legal Services Market in England and Wales, work could be undertaken in Scotland to address the issues raised, such as transparency of fees, which could improve the consumer experience.

**Citizens advice bureau evidence**

In 2016/17, citizens advice bureaux in Scotland advised on 3,923 new issues that related to advice on solicitors or advocates. These are issues where access to or the conduct of members of the legal profession was the advice issue, rather than when the client had used a solicitor for another issue. This was an 8% decrease on the previous year’s total, but higher than the total in 2013/14. In addition, the Citizens Advice Consumer Helpline advised on 69 cases related to solicitors. Figure 1 outlines the types of advice that clients were seeking in relation to solicitors (note: the total will add up to more than 3,923 as clients can report more than one issue with a solicitor).

As Figure 1 outlines, the majority of solicitor issues related to access to a practitioner, although this number has decreased in the last three years. Costs and complaints were the most common other issues related to solicitors, followed by quality of service. Although it’s not possible to link these two areas in our data, it is likely that a number of clients sought advice on both costs and quality of service, which would have implications for the complaints process. In all categories, issues peaked in 2014/15 and have slightly decreased in the two subsequent years. However, the reasons for this trend are unclear from the data.

Figure 2 outlines the number of clients that sought advice on complaints related to solicitors or advocates, showing that there were 447 new issues relating to the complaints process regarding solicitors. This has decreased after a peak two years ago. However, the data do not explain whether clients are less likely to have a complaint about a solicitor, whether clients have a complaint which they are not pursuing, or whether other factors are at play.

Citizens advice bureaux provide social policy feedback to CAS to evidence the experiences of clients who are affected by policy issues. These form the basis of around 7,000 case studies that are collated each year. We have searched this evidence to provide examples of clients who have a complaint regarding a solicitor, and found that our cases show that unexpected fees and conduct issues dominate as the most common reported issues. Examples of cases are below:

**Examples of fees complaints**

A number of consumers approached citizens advice bureaux or the consumer helpline for advice after they felt that they had received an unexpected bill. In the majority of cases, consumers had not yet made a formal complaint and were looking for advice on how to do so.

A consumer contacted the Consumer Helpline for advice after he was overcharged by a solicitor for a business handover. The client runs a small business and was quoted between £500 and £1,000 for legal fees by the solicitor. However, the client has now been presented with a bill for £4,000.

A consumer contacted the Consumer Helpline for advice after they felt that they had been overcharged for a conveyancing fee. The consumer was initially quoted less than £1,000 in writing, but has since been sent an invoice of £8,000 with a 30% discount, leaving a bill of over £5,000.

A consumer contacted the Consumer Helpline for advice after receiving an unexpected bill from her solicitors over four years after the original agreement had been completed. The client had separated from her partner in 2010 and had instructed a solicitor to help with separation costs. The last contact with the solicitor was in January 2013 with the client paying £3,000 in fees up to that point. The client has now received a bill for almost £3,500 with no breakdown of costs.

A consumer contacted a bureau in the East of Scotland for advice after being presented with unexpected fees. The client engaged a firm of solicitors to represent him at an Employment Tribunal. The solicitor agreed to cap the fees at £5,000, but has now sent a bill of over £10,000. The client is now worried about sequestration.

**Examples of conduct complaints**

Citizens advice bureaux also reported a variety of cases regarding the conduct of a solicitor or firm. The following cases show this variety. As with the cases regarding solicitor fees, the majority of clients with conduct complaints were seeking advice on how to make an official complaint.

A consumer contacted the Consumer Helpline for advice regarding the conduct of his solicitor. The client engaged a solicitor to represent him in an assault charge. The solicitor failed to carry out the actions that were agreed and didn’t turn up when the case presented in court. The client wants to know how he can take action against the solicitor and how the case can be reheard.

A consumer contacted the Consumer Helpline for advice after their solicitor stated that he did not want to represent her anymore. The consumer is a shop owner who is being taken to court by their landlord. The consumer’s solicitor stated that he did not want provide representation any more, but did not provide a reason. She had instructed another solicitor who says that he cannot continue as the first solicitor is holding her files as she stills owes him £180.

A consumer contacted the Consumer Helpline for advice as he was unhappy with a solicitor who was working on an immigration case for him. The consumer made a complaint to the solicitor firm and asked for his documents to be returned. However, the firm has refused to return the documents, including his passport, on the basis that he had made a complaint. The firm is now ignoring all communication from the consumer. The consumer states that he cannot find work without his passport.

A consumer contacted a bureau in the East of Scotland for advice after being provided with inaccurate legal advice. The client had been found guilty of breach of peace and was told in a letter from his solicitor that it was not possible to appeal the decision that had been made by the sheriff court. The client would like information on how to appeal the decision and how to make a complaint against his solicitor.

**Legal Regulation in Scotland**

In this submission, we have used the widely-recognised consumer principles to examine the current system of legal regulation in Scotland and to suggest areas where change may be required. The consumer principles we have applied are:

**Consumer Principles**

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| --- | --- |
| Consumer Principle | Description |
| Access | Can people get the goods and services they need or want? |
| Choice | Is there any? |
| Safety | Are the goods and services dangerous to health or welfare? |
| Information | Is it available, accurate and useful? |
| Fairness | Are some or all consumers unfairly discriminated against? |
| Representation | Do consumers have a say in how goods or services are provided? |
| Redress | If things go wrong, is there a system for putting them right? |

**Access -** can people get the goods and services they need or want?

While consumers have free access to making a complaint about legal services, issues around complexity, information asymmetry, language, and speed of the process can all act as barriers to access.

The SLCC Consumer Panel, of which CAS is a member, has voiced concerns about the **complexity** of the legal complaints process, partly as a result of the current legislation but also due to the subsequent Court of Session interpretation, which has further complicated the process. As a result, the process is perceived to be difficult to understand. While information and advice is available to help support consumers in the process, the perceived complexity of the process may be deterring consumers from making or pursuing complaints.

There is also an **information asymmetry** between consumers and the legal profession in this process, with consumers much less likely to know what acceptable conduct and fees should look like, and less likely to know what they are able to pursue a complaint on. Any changes to the complaints process should therefore reduce the complexity of the process and reduce the information asymmetry.

We also have concerns about some of the **language** that is used in relation to the complaints process, including the terms ‘frivolous’, ‘vexatious’ and ‘totally without merit’. These terms are not consumer-friendly, and can act as barriers if consumers do not understand their meaning.

Another result of the current complexity of the system is that the **process can be slow** for consumers. Information from the SLCC shows that the average time to conclude a complaint is over 10 months, which compares unfavourably to other sectors. For example, the Financial Ombudsman resolves two thirds of complaints within three months. This long process is caused in part by the eligibility process which can take longer than an investigation of a case. This can leave a consumer in limbo and potentially cause them to stop pursuing a complaint if they do not feel progress is being made. 83 complainants withdrew their case before decision in 2016/17 with a further 45 closed due to non-cooperation, although the statistics do not provide a reason for these withdrawals. Simplification to the eligibility process could speed up complaints and improve the consumer experience, and potentially reduce the number of complainants withdrawing before decision.

Figures from the SLCC may also suggest that a high number of complaints are found to be **ineligible**. The bar for throwing out cases without consideration should be a high one, however 2016/17 statistics showed almost 10% of complaints (69) are found to be ‘frivolous, vexatious and totally without merit’. This would seem a high figure, although more analysis would be needed to know if this test was acting as too high a barrier. It is also of note that 75 complaints were deemed outside of time limits, which may suggest that this could also be a barrier.

**Choice -** is there any?

The most important aspect of choice in legal complaints is how consumers access the complaints system. Currently, the SLCC are contactable through a range of methods, including online, by post and by telephone. While consumers and services are increasingly moving online, it is important that a range of contact methods are maintained to keep access as open as possible. In a recent survey of 1,100 citizens advice bureaux clients, we found that almost a fifth of those surveyed had no access to the internet, while a fifth of those who did have access only did so through their phone. It is important that the legal complaints process remains open to these groups of consumers.

**Safety -** are the goods and services dangerous to health or welfare?

While health and safety issues are much less likely than financial issues in complaints, serious unresolved conduct complaints can have implications for consumers. For example, if a consumer is unable to pursue a serious conduct complaint against a solicitor or firm, this may leave other consumers vulnerable to the same practices.

The Anderson Strathearn ruling in 2016 has implications in this area, as the single cases must now be mainly service or conduct. For the particular consumer, it would be in their interests to have it classified as service, so they can potentially receive more compensation. But for public interest, it is desirable that professions who have conduct issues are investigated by their member bodies to ensure they are not allowed to continue to act poorly against future clients. The current system therefore creates a tension between consumer interest and public interest.

**Information -** is it available, accurate and useful?

As already outlined under the ‘access’ principle, the SLCC Consumer Panel has voiced concerns about the complexity of the legal complaints process. As a result, the process is perceived to be difficult to understand. While information and advice is available to help support consumers in the process, the perceived complexity of the process may be deterring consumers from making or pursuing complaints.

There is also an information asymmetry between consumers and the legal profession in this process. For example, a non-legally trained consumer is generally not in a position to tell if their lawyer has provided incomplete or inaccurate legal advice, or whether they have taken (and charged) for more hours of work than a competent lawyer would have needed to complete the work.

A perceived lack of transparency in the legal market contributes towards this information asymmetry. The CMA report on the England and Wales legal market found a lack of transparency for legal consumers, with many of the same issues likely to apply to Scotland. The CMA report found that anticipating fees was difficult, with subsequent problems comparing between firms, which has meant that one of the most common areas of complaint is the level of fees (as evidenced earlier in this response). The way in which costs and estimates are laid out to consumers could therefore be something that the Review considers, which could improve the information provided to consumers and reduce the levels of complaints regarding solicitors. Another option could be a mechanism for consumers to identify what a fair market market price is, and then a simple way of achieving redress if this shows that they have been unfairly charged.

**Fairness -** Are some or all consumers unfairly discriminated against?

The Anderson Strathearn ruling in 2016 has created an artificial divide in the compensation that consumers can claim under different types of complaints. The maximum compensation for consumers under a service complaint is £20,000 or £30,000, while the maximum compensation for consumers under a professional misconduct complaint is £5,000. If a consumer now raises a complaint that previously would have been categorised as hybrid, but now can only be deemed to be conduct, then they have lost out on up to £15,000 potential compensation.

It was not a mistake that the level of compensation awardable to consumers was set at the values they were. If the judiciary interpretation above is correct, the implication is that it was the legislator’s intention to award consumers who have suffered the most serious issues at the hands of their lawyers less compensation than those who have suffered less serious issues. CAS believes this was not their intention, and is an illogical position which needs to be addressed without delay.

From a consumer protection perspective it is unsatisfactory for the current position to remain as is. Consumers have lost out on up to £15,000 in compensatory entitlement. While they could potentially seek further compensation through the Courts, for example under a negligence action, this would undermine the important principles of having readily affordable and accessible consumer redress for poor service, and is against the intentions of the Clementi review and the 2007 Act which established the SLCC.

As already noted, there is now a tension in the SLCC determining if something is mainly service or conduct. For the particular consumer, it would be in their interests to have it classified as service, so they can potentially receive more compensation. But for public interest, it is desirable that professions who have conduct issues are investigated by their member bodies to ensure they are not allowed to continue to act poorly against future clients.

**Representation -** do consumers have a say in how goods or services are provided?

The SLCC Consumer Panel was established by statute to represent the consumer voice in the legal complaints process. CAS was a founder member of the group and believe that it plays an important role in making the consumer central to the process. It is worth noting that no provision was originally made for funding the panel, and that any work or projects identified by the Panel are met from existing SLCC resources. We would argue that the Panel should be placed on a more secure footing funding-wide and its place recognised in the consumer complaints system. This could include widening the scope of the Panel further than consumer complaints, as is the case with the Consumer Panel of England and Wales, and providing access to funding for the Panel to consider research to fill the gaps in evidence on the process.

**Redress -** if things go wrong, is there a system for putting them right?

CAS is aware that some have argued that external appeals of complaints should be moved from the Inner House to the Sheriff Court (e.g. LSS in 2013 working group, and SLCC’s #ReimagineRegulation paper suggested this be considered). We believe that this would undermine the complaints process for consumers.

The purpose of setting up the SLCC was to have a (relatively) quick, independent, easy to access, and free complaints body for consumers to resolve their lower level (service) complaints through. If appeals are made easier, it will be the lawyers who utilise this, meaning consumers will find themselves in Court which is undesirable. An option may be to strengthen the ability to internally appeal within the SLCC, but from a consumer perspective external appeals should not be made easier.

**Other issues: Unregulated legal service providers**

Some of the debate around regulation of legal services has mentioned the existence and role of unregulated legal service providers. While it is understandable this issue is being considered by the review, they must be careful not to over-regulate to an extent where they could unintentionally include services like CABs and Shelter who are already subject to regulation (e.g. Scottish National Standards for Information and Advice Providers) and who provide important services such as lay representation in lower value civil courts including housing courts.

These services largely fill gaps where there is a consumer need that is either unable to or not being met by traditional legal service providers. A heavy handed regulation approach could deter organisations to step in and support consumers in identified problem areas where there is a gap in service provision. This could reduce access to justice.

Our members are currently regulated under the Advice Standards, by CAS as the umbrella body who quality assures, as well as under specialist areas such as debt/immigration advice regulation. There is not the need in CAS’s view, to increase regulation of such services as no consumer detriment is currently shown from these services not being included in the SLCC’s scope and further regulation could hinder the positive impact, development or uptake of these types of services.

**Summary**

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* Following the CMA report on the Legal Services Market in England and Wales, work could be undertaken in Scotland to address the issues raised, such as transparency of fees, which could improve the consumer experience.

**CALL FOR EVIDENCE - RESPONSE SHEET**

**Information required:**

Name of organisation or person responding:

\_\_\_\_Citizens Advice Scotland\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_Keith Dryburgh\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address and telephone number. Email address: [keith.dryburgh@cas.org.uk](mailto:keith.dryburgh@cas.org.uk)

\_\_\_\_Citizens Advice Scotland\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_Spectrum House\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_2 Powderhall Road\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_Edinburgh, EH7 4GB\_\_\_\_\_\_\_\_\_\_\_\_\_\_0131 550 1015\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Disclosure**

Have you submitted any confidential evidence?  
(Y/N) \_\_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) \_\_\_Y\_\_\_

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) \_\_\_Y\_\_\_

Would you be content to be approached by the review for further discussion on your submission?  
(Y/N) \_\_\_Y\_\_\_

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.