



Clare Adamson MSP
Convener
Education and Skills Committee
Scottish Parliament
Edinburgh EH99 1SP

BY EMAIL

14 November 2019

Dear Convener,

Disclosure (Scotland) Bill

Thank you for your letter of 31 October, attaching correspondence from the Minister for Children and Young People, regarding the statutory tests for disclosure. We had highlighted the need for greater clarity around the ways in which the test would apply, particularly in the context of our role as the regulator of solicitors in Scotland, where the disclosure process forms part of our admissions and other processes.

We welcome the confirmation by the Minister that guidance will be developed in collaboration with stakeholders and that this guidance, whether statutory or non-statutory, may allow for appeal on a point of law. This guidance will assist organisations reliant on the disclosure process and provide clarity to applicants through this process.

We hope that this guidance will provide greater detail, in particular, around relevance. In the recent Supreme Court case, *In Re an application by Lorraine Gallagher for Judicial Review* [2019] UKSC 3, Lord Sumption stated:

“[I]t is entirely appropriate that the final decision about the relevance of a conviction to an individual’s suitability for some occupations should be that of the employer. Only the employer can judge whether the particular characteristics of the particular job make it inappropriate to employ the particular ex-offender. Very often, this will be a judgment that the employer makes in the course of discussion with the candidate in the light of what is disclosed. The employer will bear the responsibility for the consequences of its choice, and in sensitive appointments the responsibility may be a heavy one. In order to discharge that responsibility with the thoroughness that the public interest requires, the employer must have access to potentially relevant information about a candidate’s past. He may end up by disregarding some or all of it as irrelevant or insufficiently weighty. But unless the decision is to be taken out of his hands, he must be told about any criminal record which might reasonably influence him, even if further consideration or discussion of the circumstances with the candidate may ultimately cause him to disregard or attach limited weight to it.”

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Our view of the scope of relevance may be broader than for some stakeholders, as our role as a regulator differs from that of an employer, and the role of solicitor is wider than that of an employee in a position of trust. Solicitors are officers of the court and key participants in the justice system. The public are protected from any wrongdoing by an individual through an indemnification across the profession as a whole. Confidence in the profession and in the justice system is reliant on ensuring that only those fit and proper to do so are admitted as solicitors.

We hope that guidance can reflect these types of considerations around the statutory tests and are keen to assist Scottish Government, Disclosure Scotland or others in the development of guidance that supports the implementation of this Bill.

We hope that this information is helpful and if we can assist further in the committee's scrutiny of the Bill, please do contact me.

Yours faithfully,

Andrew Alexander,
Head of Policy.

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