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

25 February 2019

Dear Convener,

DISCLOSURE (SCOTLAND) BILL: PROFESSIONAL STANDARDS AUTHORITY

I write with regard to the letter sent to the Committee from Alan Clamp, Chief Executive of the Professional Standards Authority (“the Authority”), dated 23 December 2019.

I acknowledge the Authority is concerned that existing legislation is a barrier to the Accredited Registers programme providing full public protection. They highlight what they perceive to be an ongoing gap in the legislative framework and hope this could be addressed by making changes to the Bill before it comes into law.

The Committee will be aware that the Bill provides for umbrella bodies to register as accredited bodies, specifically for the purpose of assisting people who are considering the suitability of self-employed individuals. The Authority appears to acknowledge the proposed change to expand the use of the accredited umbrella bodies will be a solution to the problem they identified in relation to self-employed individuals.

The Authority’s other concern is a separate matter, and is about their own access to Level 2 disclosures for registration in the Accredited Registers programme. While the Authority could set themselves up as an accredited body acting as umbrella body under section 48 of the Bill to get access to Level 2 disclosures, section 57(4) restricts what they can do with that information.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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Section 57(4) provides that where a Level 2 disclosure is made available to an accredited body (in relation to an individual who does not employ other persons in the course of business), the body must not disclose the information contained in the disclosure to the individual and may only provide advice based on the information to the individual relating to the purpose of the disclosure. Furthermore, under section 56, accredited bodies are required to comply with the code of practice published by Scottish Ministers in relation to the use of disclosure information. The Authority could therefore not use this information to assess applicants for registration, which is what they would like to do. The Bill will address their first concern in relation to self-employed individuals, but would not allow the Authority to use the information in their own right.

I would like to explain that what the Authority is requesting is more than what the statutory regulators are entitled to. Under the existing legislation, only some regulators are entitled to obtain enhanced disclosures by virtue of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013. Schedules 3 and 4 of the 2013 Order outline certain professions, office, employment or work where regulators such as the Financial Conduct Authority, Gambling Commission and General Teaching Council for Scotland can obtain enhanced disclosures. Such bodies can only ask questions relating to the suitability of the said individual to act or train in a given role once that person has been informed. What the Authority is proposing seems to go beyond what statutory regulators are entitled to.

I am open to further discussion with the Authority and all the statutory regulators to see if there is a demand for access to more information. However, if there is such a demand the way to do that would be through amendments to the 2013 Order, rather than in the Bill.

I trust this clarifies the Scottish Government's position.

Yours sincerely,

MAREE TODD

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