

## **PE1851/A**

Scottish Government submission of 1 March 2021

I refer to your correspondence dated 21 January 2021, which seeks the Scottish Government's views on petition PE01851 by Melanie Collins and William Tait:

*“Calling on the Scottish Parliament to urge the Scottish Government to urgently review and reform the Scottish legal system, including an update of the systems and practices to ensure bodies, authorities and institutions are fit for purpose.”*

Whilst this petition is widely framed, the background focuses on the Scottish Legal Complaints Commission and the Independent Review of the Regulation of Legal Services. In addition it calls for a register of interest with reference to solicitors and the Judiciary. This response focuses largely on those areas, but also covers just some of the other areas where the Scottish Government has reviewed, responded to, or is considering reform of the Scottish legal system. The Scottish Government would be happy to consider providing additional information to the Committee in relation to further areas if helpful.

### **Legal services regulation**

The Scottish Government commissioned an Independent Review of Legal Services Regulation<sup>1</sup>, Chaired by Esther Roberton, to make recommendations to reform and modernise the current regulatory framework to ensure a proportionate approach, support growth and competitive provision in the sector, whilst placing consumer interests at its heart.

The review process was fair, inclusive and independent. The key stakeholder engagement took place between October 2017 and June 2018. The Chair met with numerous stakeholders, numbering over 100 people. Groups representing consumer interests in the legal sector were engaged, as were key organisations within the justice system and members of the legal profession. A broad and formal gathering of views were received through the Call for Evidence which took place between 29 January 2018 and 30 March 2018.

The Scottish Government response<sup>2</sup> to the report, published in 2019 set out that we would seek to build consensus, where possible, on the way forward prior to deciding on a course of action. This was in recognition of the polarised views expressed at the primary recommendation of the review, and therefore we advised that we would issue a public consultation to inform the design and the extent of reform.

Collaborative engagement with those from within the regulatory framework and organisations representing the consumer perspective has been instrumental in building consensus around issues for consultation on the matters arising out of the review.

Included in those discussions were; the Law Society of Scotland, the Faculty of Advocates, the Scottish Solicitors Discipline Tribunal, the Association of Commercial

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<sup>1</sup> [Review of the Regulation of Legal Services \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk)

<sup>2</sup> [Independent review of legal services regulation in Scotland: our response - gov.scot \(www.gov.scot\)](https://www.gov.scot)

Attorneys, the Scottish Legal Complaints Commission (SLCC), the SLCC Consumer Panel, the Competition and Markets Authority, Citizens Advice Scotland, and the consumer group Which?.

The Scottish Government had intended to bring forward a consultation in 2020 to seek views on those matters. However Ministers took a view that due to the combined pressures of EU exit and responding to Covid-19 the circumstances were not right to publish the consultation.

Therefore due to the juncture of this parliamentary session, we anticipate that a consultation will be published in the next session of Parliament. The timing of any consultation is unlikely to have an impact on the timing of any potential legislation, again due to pressure on the legislative timetable presented by EU exit and responding to Covid-19, currently anticipated for the next session of parliament. The Minister for Community Safety wrote to advise the Justice Committee on 4 December 2020<sup>3</sup>, officials also wrote to advise the Public Petitions Committee.

There is other work ongoing to progress some of the issues raised in the independent review, such as work to consider interim improvements to the complaints system ahead of wider reform. A consultation seeking views on potential improvements to the legal complaints system, within the current legislative framework of the Legal Profession and Legal Aid (Scotland) Act, ran from 23 December 2020 to 20 February 2021. The Minister for Community Safety wrote to advise the Justice Committee of its publication on 23 December 2020, officials also wrote to the Public Petitions Committee. We are currently analysing the responses to that consultation and a report setting out next steps will be published in due course, we will update the Public Petitions Committee of key developments.

### **Judicial Register of Interests**

There is currently a petition (Petition PE1458) before the Justice Committee which calls for the introduction of a judicial register of interest. The Cabinet Secretary for Justice most recently responded to this on 7 February 2020 and that response discussed the Scottish Government's view on a register of interests and existing measures in place regarding the judiciary. It can be accessed [here](#).

### **Law Reform**

The Scottish Law Commission (SLC), established under the Law Commissions Act 1965, has the statutory function of keeping the law under review with the ultimate task of recommending reforms to improve, simplify and update the law of Scotland. The SLC's Programmes of Law Reform, which are agreed by Scottish Ministers, ensure that reforms are recommended across a broad spectrum of Scots law.

In November 2011 a Law Reform Working Group, consisting of officials from the Scottish Parliament, Scottish Government and Scottish Law Commission, was set up to consider the rate of implementation of reports of the SLC. The Group

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<sup>3</sup> [Letter from The Minister for Community Safety to the Convener \(4 December 2020\)](#)

recommended that, in order to increase the implementation rate of Scottish Law Commission reports, a mechanism should be introduced whereby the Delegated Powers and Law Reform Committee (“the Committee”) could be designated as lead committee in consideration of Bills implementing Commission reports where the conditions set out in this report were met.

More recently in the spring of 2019 the Committee established a working group to review the Presiding Officer’s determination for designating a Bill as an SLC Bill which may be referred to it for scrutiny. The working group was again made up of Scottish Parliament, Scottish Government and Scottish Law Commission officials. After taking evidence from relevant stakeholders, the working group reported its findings to the Committee in February 2020. In turn the Committee has recommended changes to the Presiding Officer’s determination in the light of experience to date to further help enable an increase in the implementation rate of Scottish Law Commission reports

## **Legal Aid Reform**

Despite significant financial pressures, the legal aid system in Scotland is one of the leading jurisdictions in Europe in terms of scope, eligibility and cost, with 75% of people financially eligible to some form of civil legal aid assistance. This is in contrast to just 25% in England and Wales where cuts to scope has left many areas of civil law such as family, housing and immigration largely out of scope

The Legal Aid (Scotland) Act 1986 is now more than 30 years old and the Scottish Government recognised that changes to primary legislation are required and, following an [independent review](#), undertook a full public [consultation](#) to help inform a Legal Aid Reform Bill between June – Sept 2019.

The findings and analysis of this consultation were [published](#) in June 2020.

Overall there is clear support for the guiding principles of reform that legal aid has the user at its centre and is flexible to adapt to emerging needs. Working closely with stakeholders we will develop proposals, and give particular consideration to how more targeted and planned interventions can support user need, align with identified government priorities, and assist legal aid in being rightly recognised as an invaluable public service.

We will be taking this forward as part of a programme of wider reform around legal aid in Scotland.

## **Mediation**

The Scottish Government is currently undertaking a review of Mediation and wider Dispute Resolution in collaboration with key stakeholders aimed at empowering our citizens, organisations and businesses to have access to a range of dispute resolution mechanisms to resolve disputes efficiently and effectively.

The Scottish Government is clear that that to normalise and increase mediation and other forms of Dispute Resolution in the civil justice system in Scotland, this matter needs to be dealt with on a whole system approach.

There needs to be systematic reform in a number of areas to overcome the structural and cultural challenges identified by the Scottish Mediation Expert Group report entitled “Bringing Mediation into the Mainstream in Scotland” which was published in June 2019.

We consider it necessary to fully understand the implications of the proposals before making decisions about reform.

To that end, we are developing our policy on a collaborative basis with key delivery partners before exposing our proposals for Mediation and wider dispute resolution to Scottish Ministers and public consultation after the Scottish Parliament Elections in May 2021.