



Bob Doris MSP  
Marie McNair MSP

By email to: [Bob.Doris.msp@parliament.scot](mailto:Bob.Doris.msp@parliament.scot)  
[Marie.McNair.msp@parliament.scot](mailto:Marie.McNair.msp@parliament.scot)

19 January 2024

Dear Mr Doris and Ms McNair

### Re Victims of McClures Solicitors

Thank you for your joint letter of 21 December 2023 in which you asked a number of questions. I will answer your queries in the order asked.

Before doing so, I want to again recognise the distress which many former clients of WW & J McClure Limited faced when the firm went into administration. As the professional body for Scottish solicitors, we have taken our regulatory and public interest responsibilities on this matter extremely seriously. We have and will continue to do what we can, within the powers which are available to us.

We have worked to keep our own website fully up to date with information and answers to the questions most frequently asked of us. This can be accessed here.

<https://www.lawscot.org.uk/news-and-events/law-society-news/mcclures-jones-whyte-faqs/>

- (1) **It would be helpful if you could provide some information on the conduct complaints that you have received to date on McClures Solicitors. How many complaints have you received thus far? Of the conduct complaints you have received, how many of these have been upheld? On average, how long has it taken to assess a McClures conduct complaint, and does this differ markedly from a non-McClures complaint?**

Section 52 of the Legal Profession and Legal Aid (Scotland) Act 2007 makes it a criminal offence for the Law Society to disclose information relating to specific conduct complaints unless specific exemptions apply. Having carefully considered the information requested and the limitations placed on us by law, I am afraid it is not possible for us to answer these specific questions.

As you will be aware, the Scottish Government has lodged a new Bill on reforming the regulation of legal services. We have asked the Scottish Government to consider how the current legislation could be amended to help address Section 52 given the existing requirements often provide a conflict with our wish to be more open and transparent.



In cases where we choose to prosecute a conduct complaint before the independent Scottish Solicitors' Discipline Tribunal, the tribunal has the power to publish decisions. It provides a searchable database of findings on its website: <https://www.ssd.org.uk/findings/>.

- (2) **I am aware that some clients have been successful in securing compensation, following their complaint. I would be interested to know on what basis an upheld complaint would lead to compensation being awarded, and would this be paid from the Master Policy?**

There are different processes depending on whether a complaint is a service complaint or a conduct complaint. Service complaints are dealt with by the SLCC and, if upheld, may result in an award of compensation and /or a refund of fees. Such compensation would be paid by the individual solicitor or firm and any refund of fees or outlays would be paid by the firm. On rare occasions, including when a firm no longer exists, the Master Policy may meet the cost of those service complaint awards. Ultimately, that is a matter of discretion for the lead insurer of the Master Policy and such arrangements are dealt with directly between the Master Policy brokers, Lockton, and the SLCC.

Compensation may also be awarded in relation to a conduct complaint. There are two categories of conduct complaints which may result in compensation – unsatisfactory professional conduct and professional misconduct. The Law Society alone determines complaints that amount to unsatisfactory professional conduct and may award compensation to the complainer of up to £5,000.

In more serious cases, where a complaint constitutes professional misconduct, we must take our case to the independent Scottish Solicitor Discipline Tribunal (SSDT). Where the SSDT finds a solicitor guilty of professional misconduct, it can direct the solicitor to pay compensation of up to £5,000 if it believes the complainer has suffered loss, inconvenience or distress resulting from that misconduct. Decisions around whether to issue compensation in cases of professional misconduct are ultimately for the judgment of the SSDT.

In either case, compensation awarded falls to be paid by the individual solicitor.

- (3) **A further issue raised was the cost to clients to remedy the issues, with many clients facing further thousands of pounds in legal fees. One particular frustration was apparent excessive fees to have the ex-McClures Solicitors removed from Trusts and other products. It has also been alleged that as part of the removal, clients have been asked to indemnify the retiring Trustees by essentially signing a waiver. I would welcome your thoughts on these practices, whether you would consider such actions inappropriate and what remedy clients may have.**

The Law Society does not set the fees that solicitors can charge. However, we have a practice rule which applies to all solicitors and states fees “must be fair and reasonable in all the circumstances.” If a client believes a solicitor is in breach of



this rule through an excessive fee, then they can take a complaint to the Scottish Legal Complaints Commission.

Any client who is unhappy with the amount being charged can also have the solicitor's account independently scrutinised. This is called the 'taxation' of the account or of the fees and is carried out by an auditor of court.

The auditor will examine all the relevant paperwork and decide what the correct costs should be. If a client wishes to use the services of an auditor, then they should ask the relevant solicitor to make the necessary arrangements. A client is allowed to attend a hearing before the auditor to put forward their views. They should tell the solicitor when they request a taxation that they would like to have a hearing and the solicitor will include this information with the papers sent to the auditor. As with any court process, a taxation may result in court costs due by either or both parties.

As you may be aware, the Law Society worked with Scottish Government at Stage Three of the Trusts and Succession (Scotland) Bill to ensure that amendments were added to that Bill to make it easier to remove trustees in the future.

- (4) **It has also been suggested that a significant number of former McClures employees are now working for Jones Whyte, including- I'm informed- the Manager of Trusts at McClures now being in a similar role at Jones Whyte. This understandably leads to strong beliefs that this constitutes a conflict of interests. Does the Law Society of Scotland believe such a perception is understandable and have concerns this can undermine client confidence, and do you consider employing senior former McClures employees in such a way appropriate?**

The Law Society has no regulatory powers over who a firm can and cannot employ. It is a matter for Jones Whyte to decide who it employs so it would be best for these questions to be addressed to them.

- (5) **Are you able to advise how many ex-McClures Solicitors and staff members are now working for Jones Whyte? Of this group, how many have had complaints against them, and how many have been upheld?**

There are 55 solicitors at Jones Whyte who were formerly employees of McClures.

On complaints made, I would refer you the answer earlier on the restrictions we are under with respect to the 2007 Act.



- (6) I would ask how The Law Society of Scotland are reassuring yourselves that Jones Whyte are meeting their obligations with regards to contacting the clients, and I would be keen to know what enforcement action you are able to take if Jones Whyte are not meeting their obligations in this regard. What timescale does the Law Society of Scotland consider appropriate for Jones Whyte to inform all clients, how many have been notified to date, and how will the Law Society of Scotland seek to monitor this going forward.**

Together with the Solicitors Regulation Authority, we have been engaging with Jones Whyte regularly to make sure all former Scottish clients are being contacted and their options regarding transferring their files and any other client assets are being explained to them.

Given the quantity of files involved, this has not happened as quickly as we would have liked. However, we are satisfied that steps are continuing to be taken, and that the transfer arrangement from McClures to another regulated firm offered security to client files and assets in a challenging situation. We will continue to monitor the situation.

Where former clients are concerned about the length of time Jones Whyte are taking to contact them, they may wish to contact the firm in the first instance to express their concerns. If these are not resolved, then they may wish to consider raising a complaint with the SLCC.

Unlike the Solicitors Regulation Authority in England & Wales, we do not have entity enforcement powers but will receive such powers in due course through the Regulation of Legal Services (Scotland) Bill.

- (7) Another area of concern appears to be that it is not being made as clear as it could be that clients of McClures are able to obtain their files and documentation from Jones Whyte for no charge, bar any relevant postage. Has this been raised with Jones Whyte?**

We have made it clear to Jones Whyte that, as stated in our Guidance and on our website, if former clients of McClures exercise their right to request the return of a file before agreeing to become a client of Jones Whyte LLP, no charge should be made for delivering papers other than a fee for posting or delivery by courier.

Where former clients of McClures have agreed to become a client of Jones Whyte and later decide to terminate the relationship with Jones Whyte and/or to instruct another solicitor instead, then a fair and reasonable fee may be charged by Jones Whyte for delivery of the files in accordance with our Guidance.

If Jones Whyte are charging for the return of files in contravention of our Guidance, then the owner of the files may wish to consider raising a complaint against the relevant individual solicitor via the SLCC.



- (8) When assessing a number of complaints, where the Law Society of Scotland see a pattern of behaviour emerging- be that institutional malpractice or potential criminality- can I ask if the Law Society of Scotland would pass details on to Police Scotland for further investigation?**

Yes, in cases where we have concerns about criminal behaviour then we would pass information we hold to the police.

- (9) It is my understanding that when clients approach Police Scotland that they are referred back to the Law Society of Scotland. Is it possible alleged criminality may therefore go un-investigated? I would urge the Law Society of Scotland to meet with Police Scotland to determine how any alleged allegations of criminality are best investigated.**

It is a matter for the police to investigate allegations of criminality in terms of law enforcement. If Police Scotland has suggested the Law Society should investigate criminal matters, it would be useful to have sight of any specific examples. If, on the other hand, Police Scotland have reached a view that there is a lack of information at that time to support the allegation in a criminal context and are signposting dissatisfied clients to the regulatory process as an alternative, then it may be helpful for clients to be aware that the Law Society is unable to accept conduct complaints directly.

For our part, we have agreements in place to exchange relevant information with the police where it is appropriate to do so. As I hope you will appreciate, it is not possible for me to detail those discussions. However, I can assure you that the Law Society takes seriously any and all allegations of criminal behaviour. We will always bring to the attention of the police any evidence which suggests laws have been broken.

While I have not been able to answer all your questions for the reasons given, I hope the information I have provided is helpful.

Yours sincerely

**Diane McGiffen**  
Chief Executive

cc: Siobhan Brown MSP - Minister for Victims and Community Safety  
by email to [MinisterforCS@gov.scot](mailto:MinisterforCS@gov.scot)