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Sent by email

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16 January 2024

Dear Bob

Thank you for your letter of 14 December 2023 in relation to matters regarding McClures solicitors. I have carefully considered the points raised within your letter, as well as the correspondence you included to both the Scottish Legal Complaints Commission (SLCC) and the Law Society of Scotland.

I am aware of the issues a number of families are facing as a result of WW & J McClure Limited going into administration and whilst I cannot comment on individual cases, the Scottish Government has taken proactive steps to strengthen the legislation in respect of legal regulation, which will help to mitigate against such a situation in the future.

Such cases show the need for legal regulation that centres on the public interest and protection of the consumer. The Regulation of Legal Services (Scotland) Bill, which is currently going through Parliament, will introduce a requirement for all legal businesses to be authorised to provide legal services. The current legal framework places the emphasis on regulating the individual solicitor rather than the law firm they are employed by. This new system of 'entity regulation' will bring greater oversight and monitoring of legal businesses.

Entity regulation will allow the Law Society to review a business's performance to ensure it is complying with its duties to clients and that it is financially sustainable. Entity regulation will also introduce greater consistency in how legal firms are regulated, with all entities having to meet the same high standards, and a greater collation of data, which will help the Law Society to identify and address deficiencies early, taking the necessary preventative action.

I have heard of the significant practical difficulties that co-trustees may have in administering trusts when a trustee appointed in their professional capacity is no longer a member of their profession. That is why I recently lodged amendments to the Trusts and Succession (Scotland) Bill.

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The Bill introduces an important distinction between lay and professional trustees and I believe that it is important that trustees are held to a different and higher standard when they provide professional services to administer trusts.

At Stage 2 an amendment was agreed upon to make clear that a trustee who is a member of a regulated profession and has been appointed (or assumed) for that trust as a professional trustee may be removed from office by their co-trustees where they are no longer a member of the regulated profession or are no longer able to practice. Since different regulatory regimes may approach that differently, this amendment covers situations where a person may remain a member but does not have a practising certificate or is suspended from practice.

While this cannot address all legal issues which can arise, in certain relevant circumstances this amendment provides a way to remove such trustees without having to go to court. This Bill has now been agreed by the Scottish Parliament.

I understand the concerns which you have raised around the potential strain on the SLCC due to the substantial number of clients affected in Scotland. The SLCC is funded by a levy paid by legal professionals operating in Scotland.

The SLCC are required to forecast trends in complaints when considering their budget and in order to set the levy. Any proposed levy takes into consideration any increases in complaints, such as complaints relating to McClures and the workload that would generate.

On the question of affected clients being notified as to the situation, I understand that due to the significant number of clients, Jones Whyte LLP continues to contact those affected and has arranged for all McClure lines of communication to be re-directed to their offices.

You have raised concerns of a lack of appropriate powers for the SLCC or Law Society to proactively investigate certain patterns of behaviour within law firms. On the Law Society, I refer you to the information above about the introduction of entity regulation which will greatly increase the Law Society's powers to monitor law firms. The SLCC can investigate matters of inadequate services provided to clients.

I note your comments around the knowledge and expertise of advice bodies such as Citizens Advice Scotland and Advice Direct Scotland. Anyone wishing to make a complaint about a Scottish solicitor from the former firm of McClures, must contact the SLCC in the first instance. This is the required statutory process. If the SLCC determine the complaint is eligible and that it relates to the conduct of a solicitor, then they will pass it to the Law Society of Scotland for investigation and determination. The Law Society of Scotland investigate all conduct complaints passed by the SLCC. Each complaint is investigated on its own merits and it is therefore important that complaints are detailed and submitted to the SLCC by the individuals affected. That is not to say that Citizens Advice Scotland and Advice Direct Scotland cannot offer advice and support to those affected. Citizens Advice Scotland is a member of the SLCC consumer panel, providing advice to the SLCC in respect of consumer interests. The Regulation of Legal Services (Scotland) Bill will extend the role of the Consumer Panel to matters relating to legal services regulation in Scotland more broadly, placing consumer interests at the heart of legal services regulation.

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The Law Society continue to liaise with people affected by this situation and provide information and clarity on how to seek redress through raising a complaint, making a claim under the Master Policy (the Professional Indemnity Insurance scheme), or making a claim through the Client protection fund, and if appropriate contacting the police if there is evidence of criminal activity. The Law Society maintain an updated page of advice with respect to people affected by McClures which can be accessed here:

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

The Regulation of Legal Services (Scotland) Bill is currently being considered by the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament. The Scottish Government regularly engages with stakeholders including the Law Society and the SLCC and will carefully consider any further amendments in respect of this matter.

I welcome your offer to meet and discuss these matters further. My Private Secretary will be in touch in due course to arrange a suitable time.

Yours sincerely



SIOBHIAN BROWN

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