SELF REGULATION OF THE LEGAL PROFESSION

"Let men of all ranks
Whether they are successful or unsuccessful
Whether they triumph or not
Let them do their duty,
And rest satisfied"

Plato

1. **Background**

   The Scottish Law Agents’ Society, established in 1884, is a voluntary association of Scottish solicitors from all branches of the profession and from all parts of Scotland. We also have members practising abroad. The Society does not have any responsibility for regulation, but its objects include the promotion of legal services in Scotland. SLAS is active in scrutinising those organisations, including the Law Society of Scotland which do exercise regulatory powers and makes representations to them when it is felt that the interests of the solicitor branch of the legal profession are not being provided for properly. SLAS also responds to consultative documents issued by the Scottish Executive and the Scottish Law Commission and generally interests itself in the good government of Scotland. The Society has a number of specialist committees and publishes a legal journal called the “The Scottish Law Gazette” six times a year which *inter alia* contains articles on professional practice, and The Memorandum Book, published once a year containing valuable practical information for practitioners. SLAS organises training events and amongst the subjects covered recently was the treatment of complaints.

2. **Scope of Response**

   Because of the short period allowed for views, we are confining our comments to regulation of Scottish Solicitors.

3. **Present Regulation required for solicitors**

   It is a widely held view among practising solicitors that the solicitor branch of the legal profession is over-regulated at present, but it is generally accepted that some level of regulation is appropriate and necessary in the interests of maintaining the high standards of the profession and protecting the interests of the users of legal services. In the main, regulation is by the Law Society of Scotland, which has a two-fold statutory duty to promote the interests of the profession and also the interests of the public in relation to the profession. The Society controls admission to the profession, grants practising certificates which are renewable annually and which can be suspended when misconduct by a solicitor is established, and makes practice rules which are binding on
all Scottish solicitors. It gives certain solicitors accreditation as specialist in certain areas of law. The Law Society also operates the Guarantee Fund which guarantees solicitors’ clients against loss due to misappropriation of clients’ funds and carries out inspections of solicitors’ book-keeping and accounts to ensure that all the credit balances are reflected by sums at the credit of the solicitor’s client account, and represented by a bank account with a credit balance equal to or greater than the total of all credit balances held for clients, ignoring debit balances in other clients’ accounts. In addition, the Law Society of Scotland arranges collective professional indemnity insurance cover which is compulsory for solicitors in private practice and deals with complaints against solicitors by clients and others.

4. **The Regulatory Framework**

- The Statutory Framework—now contained in The Solicitors’ (Scotland) Act 1980 which gives the Law Society powers to make rules
- Specific Rules for specific problem areas, e.g. potential Conflict of interests and the stringent Accounts Rules. There are now over 20 such Rules
- Codes of Conduct—national, European (CCBE Code) and International (IBA) Code—Note also Recommendation No. R (2000) 21 by The Council of Europe on the ethics and regulation of the legal profession
- “Common law” rules of good practice— to a large extent “professional misconduct is what the Law Society or the Scottish Solicitors’ Discipline Tribunal says it is.
- From time to time the Law Society issues Practice Notes or Guidance on good practice.

To this we can now add regulation from outside the profession such as The Money Laundering Regulations, Financial Services Regulation, VAT rules, Competition law provisions, national and European and Legal Aid provisions (Government and SLAB).

The Law Society is a recognised Professional Body under the Insolvency Act 1986 and holds a group licence under the Consumer Credit Act 1974.

5. **The Purpose of Regulation and Rules of Professional Conduct**

The purpose of regulation is:
1. to protect the interests of the client
2. to maintain high standards within the profession
3. to “oil” the wheels of practice by ensuring all solicitors are operating under the same conditions and are subject to the same rules. This applies nationally, and internationally as rules are harmonised and Bars and Law Societies agree to abide by the same standards.

The purpose of rules is well set out in the Preamble part II to the Code of Conduct which applies to Scottish solicitors:
"The learned professions have not suddenly come into existence, but have developed over the centuries as a result of needs generated in advancing societies. Before any profession can emerge, circumstances must exist in which the general public requires protection. The priest emerged in order to save the souls, the lawyer to protect the liberties and rights and the doctor to preserve the lives and health of the people. At first the practitioners in each sphere operated independently. Gradually they came to group together with the object of extending their knowledge by the sharing of their skills and they undertook the training of their successors. In order to maintain their own repute and standing and to retain public confidence in their abilities, these groups imposed upon themselves a discipline and adopted ethical rules and restrictions, sometimes to their own personal disadvantage, but always designed to establish their probity and competence in the eyes of the public."

6. **How well are the clients of Scotland protected?**

Scottish clients are particularly well protected. There are few countries in the world which can match Scotland for the degree to which the legal profession is regulated. Clients are protected against loss arising from a) dishonesty or b) professional negligence.

a) **Dishonesty.** Beyond the UK there are few countries in which the equivalent of our Guarantee Fund operates. In Scotland clients can recover financial loss arising from an act of dishonesty by a solicitor. All practising solicitors handling clients’ funds must contribute to the Guarantee fund out of which claims are met. There is no cap on the amount of cover. This unlimited aspect means that the amount of the contributions is not static. In a bad year, solicitors have to contribute more. The good solicitors subsidise the bad for the benefit of the public. The existence of the fund must not be undervalued.

b) **Indemnity Insurance.** Again, indemnity insurance cover is mandatory for all practising solicitors in Scotland. This is not the case in many other countries. Anyone can make a mistake but if a solicitor makes a mistake, his client can rest assured that his negligence will be covered by insurance and the client can recover his loss. Most cases are settled without recourse to the courts, but sometimes this is necessary, if negligence is not agreed to have arisen. It is sometimes the perception of the public that “dog will not bite dog”, that it will not be possible to find a solicitor prepared to take action against another. Many years ago the Law Society of Scotland recognised this perception and introduced what was called the “troubleshooters” scheme. A panel of solicitors was made available to the public for such claims and actions and this was much appreciated by the clients.

c) **Professional Misconduct.** clients can complain to The Law Society of Scotland which will investigate the complaint most rigorously. The Society has powers to impose sanctions on the solicitor, but serious cases
will end up before the Scottish Solicitors Discipline Tribunal, an independent Tribunal. A client who is dissatisfied with the way in which the Law Society has handled a complaint can complain to the Scottish Legal Services Ombudsman, who is not a lawyer and is totally independent.

d) Inadequate Professional Services

In many cases when someone complains he is not alleging professional misconduct, but simply feels that the service provided or the “desk side manner” has fallen short of what he expected. In other words, the legal work may have been done and the transaction concluded with satisfactory results, but the service was “shoddy”. One definition of inadequate professional services is "professional services which are in any respect not of the quality which could reasonably be expected of a competent solicitor". A good definition of "shoddy" work is contained in the Annual Report of the English Complaints Bureau for 1987: 'The essence of shoddy work is that it has caused the client frustration, inconvenience, annoyance and dissatisfaction". The man in the street is not interested in the nuances of what is misconduct, negligence or bad service, he is simply dissatisfied and wants something to be done about it. This was recognised by The Law Society which introduced powers under Section 53A of The Solicitors (Scotland) Act 1980 to order a solicitor to reduce his fees for a transaction in which the service has been poor or not to charge any fee at all, it can also instruct a solicitor to correct an error at his own expense, may suspend special rights of audience before the courts which the solicitor may have or may direct him to “compensate” the client to a sum not exceeding £1000. The level of this fine indicates that this process is not intended as a substitute for an action of negligence. The proper forum for deciding whether or not negligence has arisen is the court. The award of up to £1000 is not compensation in the legal sense of the word, but a way of recognising that a client has been inconvenienced and was justified in feeling unhappy with the way things were done.

7. How Well are Scottish Solicitors Regulated?

From what has been said above it will be clear that Scottish solicitors are very well regulated and possibly over-regulated. From a situation which existed some thirty years ago when the rules were handed down from generation to generation and there was no Code and no specific rules, the profession is now faced with a plethora of rules and regulations which are constantly evolving and an avalanche of practice notes and guidelines which may change by the month. All firms have to have someone identified as dealing with complaints and keeping up to date with professional practice changes. There is also someone responsible for compliance with the Accounts Rules and someone responsible for looking
out for Money Laundering scams. Much of the modern solicitor’s time is taken up with administration and valuable thinking and legal time is lost. Entry to the profession is tough. Very high standards are demanded before anyone can embark on a law degree, the diploma and training period is demanding and the on-going requirement of attendance at training throughout one’s career is time-consuming and expensive. Much is expected of the Scottish solicitor and the majority provide an excellent quality of legal advice and service.

8. **Why Self regulation?**

A strong, independent, legal profession is one of the bedrocks of a democratic society. The solicitor/client relationship is based on trust and the client must have confidence that the solicitor will act with integrity and will not be influenced by external influences, of a financial nature or from the State. In the course of his work a solicitor may be called upon to challenge the actions of government agencies and departments. He must be able to do so without fear of repercussions. The solicitor is regarded by the public as the “minder of justice”. Clients look to him to defend not only their legal rights but also their human rights and to do so fearlessly. The Council of Europe Recommendation referred to above states at Principle 1:

*All necessary measures should be taken to respect and promote the freedom of exercise of the profession of lawyer........without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights.*

It is for all of these reasons that SLAS vigorously opposes any idea of regulation of the legal profession by a government agency or department. While the present system of self-regulation is not without faults and should be constantly reviewed with the objective of improvement, the practice of law is complex. Duties are owed not only to the clients but also to the courts, other professional colleagues and society at large. When these duties conflict, the situation can be very complex.

9. **Entry to the profession and continuing training**

Regulation as regards entry to the profession must remain in the hands of the profession. The Law Society has good working arrangements with the Scottish Universities in relation to the preservation of high entrance requirements for the five law faculties, currently recognised as offering appropriate courses for those wishing to enter the profession and keeps under review whether or not to extend the list of accredited universities.
As new areas of law open up and links are made between technical know-how and legal know-how, there may well be scope for some changes, but these must be profession and client led and not government led. Reciprocal arrangements for mutual recognition of qualifications and conditions for establishment of foreign lawyers is also a developing function of the Law Society. In all democratic societies, Bars and Law Societies play a major role in controlling and regulating free movement of lawyers and Scotland as part of the UK must ensure that it complies with all the prevailing legislation Scottish, British and European. Continuing education is undertaken by a wide variety of service providers including our Society and this promotes healthy competition and enables a wide variety of topics and large geographical area to be covered. The Law Society however, remains in control of monitoring whether solicitors have undertaken the requisite number of hours of study in the year and checks up on attendance lists for seminars.

10. Complaints

As mentioned above, the complaints procedure is rigorous and any client making a complaint can rest assured that all complaints are thoroughly investigated. Every effort is made to resolve complaints by way of conciliation, but if that does not work then a lengthy process begins. Because of the committee structure of the Law Society and the need to refer correspondence back and forwards as charges are made and defences advanced, the whole process takes far too long. The Society’s procedures have become very convoluted as degrees of misconduct or inadequate professional service are defined and treated accordingly. If a complaint seems to have some merit in it then it will be considered by one of several complaints committees. Someone will be designated to act as Reporter and it will be his or her task to read through the files thoroughly, prepare a written report and make recommendations. It will be borne in mind that those carrying out this work are busy solicitors with practices of their own to run. They are not paid for the work, so it may have to be done in the evenings or at weekends. While thorough investigation of a complaint is necessary, the Scottish Law Agents’ Society feels that the present procedures take too long to reach a final conclusion. It must be remembered that not all complaints are well founded and the solicitor unfairly complained against is just as concerned about the matter as the person complaining. What is the alternative? One might be to pay the Reporters or to recruit more complaints staff at the Law Society, but who would pay? It is worth remembering that already a very large proportion of the sum paid annually by solicitors for a practising certificate goes on discipline. Extending the idea of the conciliation process, perhaps more could be ironed out at the start by interviewing both complainer and solicitor complained against, separately and then together to ensure that all the facts are on the table and that there are no misunderstandings. Again,
however, more staff would be required to do this. The Ombudsman's recent Report comments favourably on the help line recently introduced by the Law Society. This may resolve some complaints and speed up the others.

**Delegated powers and use of local Faculties**

Before the 1980 Act the Office-bearers of the Law Society made use of general delegated powers to take executive decisions about a wide variety of matters including complaints. This meant that where rapid action was required it could happen, rather than going through the labyrinthine committee and Council procedures. Some rapid response procedure remains necessary and we respectfully suggest that if and when the 1980 Act is amended specific delegated powers should be included.

In continental countries the Presidents or Bâtonniers of Bars and Law Societies are all powerful and will take upon themselves the investigation of complaints, can hear parties and issue sanctions. They will intervene in matters of professional practice guidance and in some countries a Bâtonnier will be present when outside agencies are involved in search and seizure procedures to ensure that confidential documents and information are safeguarded. Self-regulation is therefore even more firmly entrenched in such countries than here. If the Law Society of Scotland's President and Vice President were to have such functions the burden would be overwhelming, but there is a germ of an idea which could be developed. Throughout Scotland there are local associations of lawyers called Faculties. Each Faculty has a Dean who has been elected from the body of local solicitors and is someone of standing, competence and integrity. Perhaps in the case of minor local complaints or inter-office disputes he or she could have powers to intervene, hear parties and suggest a solution. If the case turned out to be more serious than anticipated then it could be sent on to the Law Society. This is superficially attractive, but the problem is finding Deans with time to do this, paying for this service and the lack of anonymity. Local lawyers might not like another local lawyer sitting in judgment. **Another possibility might be to have neighbouring Faculties deal with complaints from each other's areas.**

**Could someone other than solicitors investigate complaints?**

It is worth remembering that there is already a strong lay element in the investigation of complaints, at committee level and at Discipline Tribunal Level. It is not in the interests of the profession for misconduct to go unchecked. The nature of legal work is complex. The law is ever-changing to keep up with science and technology as well as changing social mores. It would be extremely hard for anyone not a lawyer to know what ought to be done in a particular transaction and it is difficult to identify any class of person other than a lawyer who would
have the necessary experience of legal practice and the often conflicting
issues affecting the lawyer, who could properly exercise authority over the
legal profession.

In addition, there are dangers in splitting off "Complaints" from the other
Law Society regulations. Some complaints involve breaches of the
Accounts Rules, rules re Conflict of Interest, etc. Law Society discipline
would still be essential. We take it that no one proposes that withdrawal
or restriction of a Solicitor's practising certificate would be transferred to
an outside body.

Many solicitors believe that if self-regulation is to go, there is no longer a
justification for the Guarantee Fund where individual solicitors pay from
their own pockets for a dishonest solicitor in any part of Scotland.

Similarly, if an outside body is created to deal with complaints, why
should solicitors meet the expenses of this outside body (presumably
salaried) even in cases where solicitors are exonerated from blame. If the
State sets up such a body (which we do not want) it should meet the
substantial expense of operating it.

11. Issues of regulation referred to the European Courts

It is interesting to observe, that when issues of such matters as
confidentiality and professional privilege or advertising by lawyers have
been referred to the Court of Justice of the European Communities in
Luxembourg and the European Court of Human Rights, these courts have
been reluctant to interfere, believing that the Bars and Law Societies of
Europe are in the best position to know what the social mores are at any
given time and what is good practice. Provided the rules are objectively
justifiable and the action of Bars and Law Societies proportionate, they are
left in place. (See for example cases of Casado Coca v Spain [1994] 18
EHRR 1, Hempfing Application No. 14622/89, Scottish case Thomas
Campbell v UK [1993 15 EHRR 137 and Van Binsbergen [1974] ECR
1299).
The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 opened
the door for MDPs even although the Law Society of Scotland made it
manifestly clear to government that MDPs were not wanted and were not
to the benefit of the public. Earlier the government put pressure on the
profession to allow individual advertising and to abolish scale fees. There
is little evidence that either of these changes has helped the public. Many
now long for the certainty of scale fees and much money is spent on
expensive advertisements which assist only the coffers of the advertising
agents. Competition has changed the profession from a caring profession
in which firms respected and trusted one another into a fee-conscious,
suspicious profession. Clients can "shop around" but loss of client and
solicitor loyalty has been the price. Contingency fees (meaning where a lawyer takes a percentage of damages awarded by a court) are illegal world-wide, apart from in the USA, but we understand that governments are keen on them in a bid to reduce the Legal Aid burden. Speculative fees have long been possible in Scotland, but little used. The scope of these was extended by the 1990 Act already mentioned, with a percentage uplift agreed by the Law Society of Scotland and the Faculty of Advocates being allowed. Whether all of this will work for the benefit of the public remains to be seen. The risk is that lawyers will take on board only cases which are guaranteed to be successful (very few) and will leave an unmet need in other cases.

The questions of MDPs and scale fees have just been addressed in two landmark Opinions of Advocate-general Léger given in the European Court of Justice on 10th July. Both cases are well worth reading for the analysis of the nature of professional practice rules, the independence of the profession and the need to balance the requirements of competition law against rules deemed to be "objectively justifiable" and proportionate. The cases are case C 309/99 on MDPs and case C 35/99 on scale fees.

In the MDP case, the Advocate-general considered that there was an incompatibility between the advisory activities of lawyers and the supervisory activities of accountants. He thought that the very essence of the legal profession and, in particular, its independence "may preclude the establishment of community or financial interests with members of the accountancy profession". In his Opinion he drew on a long line of jurisprudence and referred to the views of Advocate-general Jacobs in the case of Pavlov and Others [2000] ECR 1-6451, who observed that,

"the specific features of the markets for professional services require some form of professional self-regulation. Opponents of self-regulation insist that the State, or at least State controlled regulatory bodies should regulate the professions since there are dangers of abuses of regulatory powers. However, in economic terms again an information problem arises. The complex nature of those services and their permanent evolution through rapidly changing knowledge and technical developments, make it difficult for parliaments and governments to adopt the necessary detailed and up-to date rules. Self-regulation by knowledgeable members of the professions is more appropriate since it can react with the necessary flexibility. The main challenge for every competition law system is therefore to prevent abuses of regulatory powers without abolishing the regulatory autonomy of the professions."

This approach is also followed by Advocate-general Léger in the other case involving scale fees, case C-35/99 in which he took the view that a Ministerial decree approving the proposals of the Italian Lawyers' Association relating to scale fees, must fulfil the conditions of pursuing an
aim in the public interest and being proportionate. These were matters for the national court to decide. The Advocate-general's Opinions of course still have to be considered by the full court, but it is not anticipated that a different line will be taken. The dangers of external control are certainly highlighted and the very special nature of the legal profession with its various duties and obligations, particularly in relation to independence and confidentiality, as well as the nature of the solicitor/client relationship.

12. **What of Public Perception?**

One can understand the feeling of the public that someone other than solicitors should deal with complaints and there are some solicitors who feel the burden and expense of the investigation of complaints is too great for the profession to bear. Some feel that the dual role of the Law Society with its duties to the profession and to the public is unrealistic, but all of this is old ground covered by the Report of the 1980 Royal Commission under the Chairmanship of Lord Hughes. Lord Hughes expressed the view that, "Much value would be lost if the Law Society were to become simply the professional association or trade Union of solicitors"

13. **Is there a Half-way House?**

Some members of our Council wonder whether there might be a case for referring complaints which are clearly "service" rather than "misconduct" complaints to an Ombudsman of the type of the Insurance or the Banking Ombudsman. The Ombudsman would have to be a distinguished and respected solicitor with wide experience of practice, preferably in several areas of law.

Both the Law Society of Scotland and The Scottish Solicitors (Discipline) Tribunal have reviewed their practices and procedures to ensure that they are ECHR compliant and so some of the aspects which may have caused concern in the past will have been removed. By and large the system works reasonably well and it should be remembered that in any legal dispute there will always be one happy client and one who will be disappointed and possibly aggrieved at the result. Since the whole atmosphere is adversarial it is not surprising that complaints arise. The public does not always know or understand what is being done on their behalf and solicitors must strive harder to explain the situation in language which their clients can understand. Poor communication is at the heart of many complaints. This is underlined in Discipline Tribunal Annual Reports and in the Reports of the Scottish Legal Ombudsman. Such Reports are, however, dealing only with the cases which have come before the Tribunal and the Ombudsman, which is an infinitesimal number in the stream of transactions and cases. In the majority of cases, clients are well
satisfied with what is done for them, but few put pen to paper to say they are happy with the service provided.

Although the Scottish Consumer Council favours complaints being handled by an independent outside agency, a succession of Legal Ombudsmen have favoured self-regulation. In the latest Report, Mrs. Costeloe Baker makes the point that lawyers must be free to discharge their professional duties and must be protected from governments. She refers to the Council of Europe Recommendation to which we have referred in this paper. She does say that the professional bodies need to keep procedures and regulation under constant review and we do not dissent from that. Her predecessor, Mr. Garry S. Watson said in his 1997 Annual Report: "Nothing during 1997 has caused me to change my view that self-regulation continues to be the best way forward for members of the public using the services of legal practitioners. He goes on to say that independent regulation does not necessarily equate with a tougher disciplinary regime. Indeed, he says, "I detect a more robust approach towards the disciplining of solicitors from the Law Society than from the independent Tribunal"

14. Preventing Complaints

Time and money could be saved if there were fewer complaints, so it is obvious that greater effort must be put into training and guiding the profession in ethics and good practice. Of course this is happening at present with training at Diploma stage, in the training period in the office and in post qualifying cpd seminars. This Society has run a number of seminars on avoiding complaints and risk management. The legal Journals frequently contain guidance and one should not forget the work of the Law Society's Professional Practice Committee which deals with specific enquiries about what is good practice and anticipates changes in Rules which may be necessary to minimise anomalies or problem areas. Any solicitor not sure of what he should do in any given situation can always telephone the Law Society for advice.

One of the emerging difficulties for the new generation of solicitors is the power of clients, now turned into "consumers" who know, or think they know their rights. They often try to pressurise lawyers into doing things which are not good practice. If the solicitor does not comply then he or she is simply dropped and the client will go on to try out other solicitors. This is particularly prevalent in house purchase situations where clients do not understand the rules of good practice and respect for fellow practitioners. Fifty years ago a solicitors' word was his bond, but today, regrettably, some solicitors succumb to the pressures of their clients and do not behave as they should.
Other Providers of Legal Services

Traditionally the Scottish solicitor was a “man of business” who could be consulted on a myriad of subjects. He would offer advice on many topics such as investments, the prudent conduct of business and human relationships not directly affected by the law. This role has diminished with the upsurge of other agencies such as Citizens Advice Bureaux, Social Workers, marriage guidance bureaux and the like. There have also been intrusions recently into the areas of practice which solicitors might have regarded as clearly within the area of legal practice such as Claiming Companies, Banks offering execute services, and social workers or trade union officers representing members of the public at Tribunals relating to employment matters or entitlement to state funded benefits. These other providers are not regulated in the same way as solicitors. Scottish solicitors, until about 30 years ago, also almost exclusively dealt with the marketing of residential properties for sale. In many areas this function is now shared with estate agents who are not required to be subject to a regulatory regime. Solicitors generally feel that in certain areas they are subject to unfair competition by bodies who are not governed by the same rules of professional conduct.

Scotland has many rural areas where few solicitors offices are located. Such areas are served, in the main, by small, one or two practitioner offices. The burden of regulation falls disproportionately heavily on small practices. Unlike large multi partner firms who can appoint full time senior staff members or partners to deal with and evolve procedures for compliance with the many rules which are imposed affecting legal practice, the one or two man office has to cope with this using only the resources available - in most case the solitary solicitor in the office who has to perform this task as well as dealing with the business of his or her clients.

It is important, therefore, to make the point that increased regulation may increase the problems of providing legal services to the less populated areas of the country, because the smaller firm may not be able to finance or staff the increased burden of administration.

CONCLUSION

We feel that although the existing system of regulation is not perfect, by and large it works well, and we would rather see it reviewed and improved from within the profession, rather than have self-regulation removed. The Law Society must, as a matter of priority, concentrate on the streamlining of procedures and better use of delegated powers and resources to minimise delays in handling complaints.
Having regard to the huge numbers of items of business handled by Scottish solicitors in a year, many involving business, matrimonial and other disputes, the number of complaints is very small indeed. The average solicitor is affected, day in and day out by regulations re handling cash, conflict of interest rules etc., but faces a complaint to the Law Society (which may or may not be justified) about once every 8 or 9 years. Of complaints dealt with by the Law Society, only about 10% are appealed to the Ombudsman, who agrees with the Society in about half of these Appeals. This compares favourably with the Appeals record of Judges and Tribunals. In an ideal world there should be no complaints, but lawyers are human and will make mistakes from time to time. The profession is well able to deal with those who fall short of what is required and does not hesitate to take action when necessary.

Needless to say, the Society is willing to give oral evidence should this be required.

July 2001

APPENDIX 1

SOURCES OF INFORMATION ON REGULATION

**Statutory Basis**
- The Solicitors (Scotland) Act 1980
- Parts of The Law Reform Miscellaneous Provisions (Scotland) Act 1990

**Subordinate legislation**
- Specific Rules set out at section F Parliament House Book

**Codes**
- *The Code of Conduct for Scottish Solicitors*
- The CCBE Code for Cross-border transactions in EU and “observer” countries
- The IBA Code for international transactions
- #The voluntary Criminal Code
- The Code for Legal Aid Work

- *Note: the Law Society has made some changes to the Code-use text as printed in booklet issued in January 2000*
- # See also Guidance note re precognitions in Journal of February 1999

**Annual Report of Law Society of Scotland**

**Annual Report of The Discipline Tribunal**

**Annual Report of the Ombudsman for Legal Services**
Green’s Compendium and Parliament House Book

JLSS and Council Report

SLT reports

Guidelines issued by Law Society -usually in Compendium

CONFLICT OF INTERESTS
Solicitors (Scotland) Practice Rules 1986 (PH Book p. F703) watch Rule 5
Code of Conduct - Para.3
CCBE Code - Art. 3
Worth v Worth (1993) GWD 40-266
Acting for separated spouses in the sale of the matrimonial home
guidelines of February 1994 (Appendix XVIII- Webster)
up-dated in JLSS vol. 43 July 1998 p. 43
conflict in commercial security Transactions - guidelines of March 1994 (Appendix XVIII-
Webster); where other party unrepresented-Rule 7
JLSS vol. 43 May 1998 p. 9
Advice to partnerships-see JLSS vol. 42 June 1997 “Caveat” section p. 247

CONFIDENTIALITY

Code of Conduct Para. 4 and CCBE Code of Conduct
CCBE Code of Conduct - Arts. 2 and 5
Waugh v British Railways Board (1979) 2 All ER 1169 (HL)
Henderson Begg pp 321 and 340
Micosta v Shetlands Islands Council 1983 SLT 483
AM & S Europe Ltd v Commission [1982] ECR 1575
Note provision for confidentiality in Competition Act 1998

MANDATES

Up-dated guidelines-JLSS vol. 43 No. 5 May 1998 at pages 46-48
Form of legal aid mandate given -ref. to article 7 of the Code of Conduct for legal aid work
Mandates in executries: JLSS vol. 43 July 1998 p. 42

OWNERSHIP OF FILES

Appendices XV and XVI of Webster and copies of the Opinion of CK Davidson Q.C. can be
obtained from the Professional Practice Committee of the Law Society- but New Opinion of
Counsel now available
Destruction of files - (1990) JLSS (May) p. 206 article
Medical Records- how long to retain? – JLSS vol. 43 July 1998 p. 42

MNP s and MDPs

1991 Rules - Solicitors (Scotland) (Multi-Disciplinary Practices) Rules
Way open for MNPs in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 for MDPs but no SI or Rules so far-in principle Society is for MNPs -under discussion with Scottish Office. Note: Section 27 of Solicitor’s (Scotland) Act 1980 which prevented fee-sharing with unqualified persons has been repealed as from March 1993 and replaced by provisions in Solicitors (Scotland) Practice Rules 1991 which exclude other lawyers from the definition of “unqualified persons”.


SIGNATURE OF MISSIVES BY PARTNERS

1991 JLSS, February p.73 -article “Who Signs For the Firm?”

SETTLEMENT CHEQUES TO BE HELD AS UNDELIVERED PENDING CONFIRMATION OF CLEARED FUNDS


LETTERS OF OBLIGATION
Johnston v Little 1960 SLT 129 (1973) 18 JLSS 121
Digby Brown & Co. v Lyall 1995 SCLR 572 (Notes); 1995 SLT 932 (OH)
Littlejohn v Mackay 1974 SLT (Sh.Ct.) 82; (1991) 36 JLSS 450
Style issued by Law Society- letter from Secretary 30/1/95

CLOSING DATES AND NOTES OF INTEREST


LEGACIES TO SOLICITORS

DT Annual Report 1996
Code of Conduct Article 2.
(1989) 34 JLSS 389
1975 SLT (News) 57,61
(1994) 39 JLSS 149

HIVED OFF ACTIVITIES

Guidelines of December 1993 -(Appendix XVIII -Webster)

POWERS OF ATTORNEY
Lawyer not judge of mental state of client- JLSS vol.43 July 1998 p.43
FINANCIAL MATTERS
Solicitors (Scotland) Accounts Rules 1997
Solicitors (Scotland) Account Certificate Rules 1997
Financial Services Act 1986
Insolvency Act 1986- the Society is a recognised professional body under the Act
Solicitors (Scotland) Conduct of Investment Business Practice Rules 1994
The Solicitors (Scotland) Conduct of Business) Practice Rules 1997
Reasons Why Letters- see guidelines- JLSS June 1998 p.42
Consumer Credit Act 1974- the Society holds a group licence granted by the OFT
COURT
Code of Conduct - Art. 8
Supplementary Code for Solicitor-advocates 1992
Voluntary Criminal code
The Code of Practice in relation to criminal legal assistance (April 1998) issued by SLAB- see also “The Recorder” issues 21 and 22
Duty to lodge Joint Minute- JLSS vol.43 June 1998 p.43
CONTINGENCY FEES/SPECULATIVE ACTIONS
CCBE Code of Conduct - Art. 3.3
Supplementary Code of Conduct for solicitor -advocates -Art.11
Solicitors (Scotland) ( Written Fee Charging Agreements) Practice Rules 1993
Section 61 A of Solicitors (Scotland) Act introduced by 1990 Act.
Act of Sederunt (Fees for Solicitors in Speculative Actions) 1992 (SI 1992 No.1879); 1992 SLT (News) 266
Solicitors (Scotland) (Rights of Audience in the High Court of Justiciary) Rules 1999
Solicitors (Scotland) (Rights of Audience in the Court of Session, House of Lords and the Judicial Committee of the Privy Council) Rules 1999
Solicitors (Scotland) Rules of Conduct 1999
SOLICITORS (SCOTLAND) (INCORPORATED PRACTICES) PRACTICE RULES 1997
Allows a single solicitor to form an incorporated practice. See new rules below.
PRACTICE MANAGEMENT
Solicitors (Scotland) (Practice Management Course) Practice Rules 1997
must attend practice management course outwith initial 12 months after he or she becomes a principal.
NEW RULES APPROVED AT AGM 2001 AND NOW APPROVED BY LORD PRESIDENT
European Lawyers(Registration) (Scotland) Regulations 2001
Registered European Lawyers (Rules of Professional Conduct) (Scotland) Rules 2001
Solicitors (Scotland) (Incorporated Practices) Practice Rules 2001 - the Limited Liability Partnership Act 2000 came into force last year so rules are amended to allow solicitors to take advantage of this. The substance of the Incorporated Practice Rules of 1997 however remains unchanged.
HUMAN RIGHTS AND DISCIPLINE- see article by J.H. Webster in "Human Rights and UK Law", Vol. 2 issue 2 of 2001
COMPLAINTS PROCEDURES
February 2001- Vol 69, No.1 " Complaints and How to Avoid them", by David Coull

BOOKS
Webster contains full list -some are :
The Laws of Scotland, Stair Memorial Encyclopaedia, Vol. 13 (Law Society of Scotland and Butterworths)
Procedures and Decisions of the Scottish Solicitors’ Discipline Tribunal, Smith & Barton ( T. & T Clark, 1995)
Professional Ethics for Scottish Solicitors, A. Phillips (Butterworths 1990)
Professional Conduct for Scottish Solicitors, Jane Ryder (Law Society of Scotland/Butterworths)
Cordery on Solicitors (8th Edition and supplement), Butterworths 1988 and 1991
The Law and Practice of Legal Aid in Scotland, C.N. Stoddart and H. Neilson (T&T Clark)
Professional Ethics and Practice for Scottish Solicitors -Webster, 1996 (T&T Clark)
The Legal Professions in The New Europe, Tyrell QC and Yaqub, 2nd edition, Cavendish Publishing Ltd.1996.
“Ensuring Excellence”- a handbook on practical Risk Management, produced for The Law Society of Scotland by Sedgwick Limited
The Law and Practice of Disciplinary & Regulatory Proceedings, Brian Harris OBE QC, published by Barry Rose Law Publishers Ltd.

WHO CAN HELP A SOLICITOR WHO IS NOT SURE OF WHAT HE SHOULD DO ?

1. The Secretariat of the Law Society of Scotland
If in doubt, telephone or write for help. If the Secretariat thinks there is a matter of principle to be decided, the problem may go to the Professional Practice Development Committee for an opinion.

2. Counsel’s Opinion
Sometimes the problem is one of law rather than practice, so an Opinion may be helpful.

3. Solicitors’ Advice and Assistance Scheme
The Society operates a confidential services for lawyers who have got themselves into a mess or are experiencing administrative or practice difficulties and need to discuss them with someone who is disinterested and who can advise the solicitor. The Society can provide a list but once the referral has been made takes no further part in the matter.

4. Register of Locums
For short-term crisis of too much work, remember the Society operates a locum scheme.

5. The Solicitors’ Defence Union
If a solicitor faces disciplinary action he needs independent advice, he may wish to consult the Legal Defence Union. For membership, contact : Bowring Professional Indemnity (Scotland) Ltd. (LDU) at 17, Ainslie Place, Edinburgh EH3 6AU. Tel. 0131.226.2053