The Committee will meet at 1.45pm in Committee Room 2.

1. Regulation of the Legal Profession Inquiry (in private): The Committee will consider lines of questioning for witnesses to the inquiry.

2. Items in Private: The Committee will consider whether to discuss its work programme in private at its next meeting, and whether to discuss item 8 in private.

3. Regulation of the Legal Profession Inquiry: The Committee will take evidence on the inquiry from—

   Graeme Millar, Chairman, Martyn Evans, Director and Sarah O’Neill, Legal Officer, Scottish Consumer Council.


5. Subordinate Legislation: Dr Richard Simpson (Deputy Minister for Justice) to move—

   S1M-2608 Mr Jim Wallace: The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2002 (Draft)—That the Justice 1 Committee recommends that the draft
Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2002 (Draft) be approved.

6. **Subordinate Legislation:** The Committee will consider the following negative instrument—

   The Legal Aid (Scotland) Act 1986 (Availability of Solicitors) Regulations 2001.

7. **Convener’s report:** The Convener of the Committee will report to the Committee on Committee business.

8. **Witness expenses:** The Committee will consider whether to approve travelling expenses for witnesses.

The following papers are attached for this meeting:

**Agenda items 1 & 3:**
Note by the Clerk (private paper) J1/02/2/1
Submission to inquiry by Scottish Consumer Council J1/02/2/2
Scottish Executive Research paper ‘A Survey of Complainers to the Scottish Legal Services Ombudsman’ J1/02/2/3
Supplementary evidence from the Scottish Conveyancing & Executry Services Board J1/02/2/4
Supplementary evidence from the Faculty of Advocates J1/02/2/5

**Agenda item 4:**
Note by the Clerk J1/02/2/6

**Agenda item 5:**
Note by the Clerk (SSI attached) J1/02/2/7

**Agenda item 6:**
Note by the Clerk (SSI attached) J1/02/2/8

**Agenda item 8:**
Note by the Clerk (private paper) J1/02/2/9
Papers for information circulated for the 2nd meeting, 2002

Correspondence from Premier Prison Services Ltd re HM Prison Kilmarnock

Minutes of 1st meeting, 2002
regulation of the legal profession

The Scottish Consumer Council's evidence to Justice 1 Committee on its enquiry into regulation of the legal profession
About the Scottish Consumer Council

The Scottish Consumer Council (SCC) was set up by government in 1975. Our purpose is to promote the interests of consumers in Scotland, with particular regard to those people who experience disadvantage in society. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors’ clients, public transport users, or simply shoppers in a supermarket.

Consumers benefit from efficient and effective services in the public and private sectors. Service-providers benefit from discriminating consumers. A balanced partnership between the two is essential and the SCC seeks to develop this partnership by:

- carrying out research into consumer issues and concerns;
- informing key policy and decision-makers about consumer concerns and issues;
- influencing key policy and decision-making processes;
- informing and raising awareness among consumers.

The SCC is part of the National Consumer Council (NCC) and is sponsored by the Department of Trade and Industry. The SCC’s Chairman and Council members are appointed by the Secretary of State for Trade and Industry in consultation with the Secretary of State for Scotland. Future appointments will be in consultation with the First Minister, Martyn Evans, the SCC’s Director, leads the staff team.

Please check our web site at www.scoconsumer.org.uk for news about our publications.

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The SCC assesses the consumer perspective in any situation by analysing the position of consumers against a set of consumer principles.

These are:

ACCESS
Can consumers actually get the goods or services they need or want?

CHOICE
Can consumers affect the way the goods and services are provided through their own choice?

INFORMATION
Do consumers have the information they need, presented in the way they want, to make informed choices?

REDRESS
If something goes wrong, can it be put right?

SAFETY
Are standards as high as they can reasonably be?

FAIRNESS
Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?

REPRESENTATION
If consumers cannot affect what is provided through their own choices, are there other effective means for their views to be represented?

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August 2001

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SUMMARY OF EVIDENCE

Regulation: the consumer perspective
- While a well-developed competitive market is necessary to achieve widespread consumer satisfaction, markets need to be strengthened and supplemented with regulatory intervention, to provide for matters important to consumers which the market cannot deliver.

Solicitors
- While self-regulatory systems, such as that operated by the Law Society of Scotland, can have a number of strengths, these are outweighed by the weaknesses of the Society’s present system.
- Scottish Consumer Council research on the experiences of consumers who had used the Society’s complaints system found widespread concern that the body that represents solicitors’ interests, the Law Society of Scotland, also has statutory responsibility for investigating complaints against its members.
- We have therefore recommended that the Scottish Parliament should review the Law Society’s complaints procedure, with a view to establishing an independent body to deal with complaints about solicitors in Scotland.
- Were the Society’s complaints-handling role to be given to an independent body, its representational and promotional role would remain vital.
- If the Scottish Legal Services Ombudsman is to be retained, there will be a need to consider whether her present role should change or expand.
- There is a need for a review of competition in the legal profession in Scotland, along the lines of that carried out recently by the OFT in England and Wales.

Judges and sheriffs
- There is a need for a clear mechanism for the regulation of judicial conduct, beyond the drastic and very rarely invoked measure of removal from office.
- There is a need for a clear procedure for court users to make a complaint about the conduct of a judge or sheriff, as distinct from a complaint about the exercise of their judicial function.
- There should be greater clarity and transparency in the removal processes relating to judges, sheriffs and sheriffs principal.

Qualified conveyancers and executry practitioners
- The Law Society is not the appropriate body to regulate these practitioners. The Office of Fair Trading would be a more suitable body to take over this regulatory function.
Introduction

1. The purpose of the Scottish Consumer Council is to make all consumers in Scotland matter. We do this by putting forward the consumer interest, particularly that of disadvantaged groups in society, and by working with those people who can make a difference to achieve beneficial change.

2. We very much welcome the committee’s inquiry into regulation of the legal profession, particularly in relation to solicitors. We have long been concerned with ensuring that regulation of the legal profession in Scotland operates in the interests of Scottish consumers.

3. We have a considerable interest in regulation generally, and begin by outlining some consumer principles relating to regulation. We then go on to consider the regulation of various branches of the legal profession against the background of those principles.

Regulation: the consumer perspective

4. Broadly speaking, consumers are the best judges of their own interests. They make decisions, exercise choices and have real influence as buyers and users of goods and services. Lively competition is very much in the consumer interest. Care must always be taken not to support intervention in the market which will be counter-productive, or otherwise produce undesirable results.

5. However, while a well-developed competitive market is necessary to achieve widespread consumer satisfaction, it is not, and cannot be, sufficient by itself. Markets need to be strengthened and supplemented with regulatory intervention, to provide for matters important to consumers which the market alone cannot deliver.

6. Regulation provides a means of achieving defined goals, by adopting rules directed at shaping conduct or controlling behaviour in some way, and putting machinery in place to enforce those rules. The starting point for any review of regulation must therefore be with policy objectives. Why, for example, is there a need for some form of intervention in the market place? What standards need to be raised? What do we want the rules to achieve?

7. We believe that any intervention on behalf of consumers must be justified by reference to a number of issues:

- inadequate competition - where suppliers, individually or collectively, dominate the market or make arrangements which reduce competition and consumer choice

- fraud, deception and oppressive marketing practices - where suppliers take advantage of consumers in ways which are illegal or unfair
• **imperfect information** – where the information essential to informed consumer choice is completely unavailable, false or misleading

• **safety** – where there is risk of consumers using goods or services which may damage their health

• **resolution of disputes** – where easily accessible procedures are needed to ensure consumers can get a remedy for breaches of contract or other laws or codes

• **social objectives** – where the market is unable to make socially desirable goods and services available for defined groups of consumers

• **vulnerable consumers** – for example, those with weak bargaining power and children may need special or additional protection

• **raising standards** – in a sector where businesses can gain a competitive advantage or where there are known to be problems with compliance with the law

8. While there might be broad agreement on the fundamental reasons for intervening in markets, there is inevitably debate about the precise nature of that intervention in relation to particular circumstances in a particular market. Our evidence therefore addresses issues of regulation in various sectors of the legal profession in the context of the principles outlined above.

9. We do not intend to comment on regulation of all branches of the profession included within the scope of the committee’s inquiry. We will concentrate particularly on solicitors, based largely on our research into consumers’ experiences of complaining to the Law Society of Scotland. However, we also wish to comment on the regulation of:-

• judges and sheriffs
• qualified conveyancers and executry practitioners

**Solicitors**

10. The Scottish Consumer Council has a particular interest in how the current system of regulation of solicitors operates. At present, the system is self-regulatory, with solicitors being regulated by their professional body, the Law Society of Scotland.

11. Self-regulatory systems can have a number of strengths, including the following:-

• in addition to dealing with detrimental practice, self-regulation can also benchmark best practice over and above the basic minimum requirements

• the regulatory system will be tailor made for the needs and problems of that particular sector, and will reflect inside knowledge about the realities of that sector
• self-regulation is quicker and less costly to put in place (and adapt to changing needs) than legislation

• self-regulation can more easily deal with matters of subjective judgement, such as questions of professional competency

• redress can be achieved more quickly and cheaply than legal remedies

12. However, self-regulation can equally have many weaknesses, which must be weighed up against its strengths. The most serious potential weakness from a consumer perspective is a lack of public confidence in the system. This may be due to real and/or perceived doubts about the ability of a professional or trade body to both represent the interest of their members and aspire to a public interest role. Doubts about impartiality are especially acute where the self-regulator is also responsible for enforcement.

13. We consider that, in the case of solicitors, the weaknesses of the present system outweigh its strengths. In 1999, we published the results of a survey of consumers who had complained to the Law Society of Scotland about the service they had received from their solicitor.¹

14. The results showed that there was widespread concern that the body that represents the interests of solicitors, the Law Society of Scotland, also has statutory responsibility for investigating complaints against its members. Half of all complainers in our survey said they considered that their complaint had not been handled fairly.

15. As a result of our findings, we recommended that the Scottish Parliament should review the Law Society’s complaints procedure, with a view to establishing an independent body to deal with complaints about solicitors in Scotland. A brief report² which summarizes the results of the research and outlines our proposed approach to the regulation of solicitors in Scotland is enclosed with this evidence.

16. The Law Society of Scotland does of course have two main roles. It is the complaints-handling role, generally seen as the ‘real’ self-regulatory role, with which we are primarily concerned. However, the Society also has a very important function in representing and promoting the interests of the legal profession. Even if the complaints-handling role were taken over by an independent body, this second, perhaps primary, function, would remain vitally important.

17. The Law Society would have a key role in making any new system work. Our research suggested that procedures for complaints handling within some solicitors’ firms leave much to be desired. It was apparent from our findings that many problems

¹ Complaints about Solicitors, Scottish Consumer Council, 1999
² The Limits of Self-Regulation in the Legal Profession; Scottish Consumer Council, 2001
which end up as complaints to the Law Society could well have been resolved at an earlier stage.

18. We would therefore like to see the introduction of a 'client care rule' by the Society, which would compel every firm of solicitors to adopt an internal complaints procedure. The Society would also have a vital educational role in promoting to its members on an ongoing basis the advantages of adopting good complaints systems, in order to try to resolve disputes before they come before any outside body.

The Scottish Legal Services Ombudsman

19. Any review of the existing arrangements for regulation of the legal profession will inevitably include a review of the role of the Scottish Legal Services Ombudsman. Were the ombudsman to be retained, there would be a need to consider whether her present role should be changed and/or expanded upon.

20. Both our own research and recent research carried out for the Scottish Executive suggest that many complainers feel the ombudsman do not have sufficient 'teeth', and should be given increased power. The latter research found this to be the 'main, overriding theme to emerge' among complainers. The researchers concluded that a widened remit to allow the ombudsman to consider the merits of the Law Society's decision, as well as the handling of the complaint, would receive a lot of support from complainers.

Competition in the legal profession

21. Where a self-regulatory scheme covers all members of a particular sector, such as solicitors, another potential disadvantage can be a strong tendency towards anti-competitive behaviour. Effective self-regulation organised on any sort of collective basis involves some form of cartel-type restriction. Professional rules are not subject to Part 1 of the Competition Act 1998, which concerns anti-competitive agreements. There is a very narrow line between self-regulation in the public interest and restrictive practices.

22. Earlier this year, the Office of Fair Trading (OFT) published its report *Competition in Professions*, which concentrated largely on competition within the legal profession. The OFT research identified a number of restrictions on competition within the legal profession, but extended only to England and Wales.

23. We believe that the issues identified in that report are also likely to exist in Scotland, and that there is accordingly a need for a similar review in Scotland. The legal profession in Scotland is structured differently to that in England and Wales, and

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3 Complaints about Solicitors, Scottish Consumer Council, 1999
4 Survey of Complainants to the Scottish Legal Services Ombudsman; Scottish Executive Central Research Unit, 2000

The Scottish Consumer Council's evidence to Justice 1 Committee on its enquiry into regulation of the legal profession 5
operates within a very different environment. We would therefore be very concerned if a report based on the situation in England and Wales were used as a means of extrapolating conclusions about the Scottish profession.

24. While regulation of the legal profession in Scotland is devolved,\(^5\) this does not prevent the OFT from carrying out a review of competition in the legal profession in Scotland. We have written to the OFT asking whether it intends to carry out a similar review of the legal profession in Scotland.

25. We have been advised that there are no immediate plans to carry out such a review, but that the position will be reviewed in the light of progress made during the 12 months following the England and Wales review. We would urge the committee to recommend to the OFT that it should carry out a review in Scotland as a matter of urgency.

Judges and sheriffs

26. In the case of judges and sheriffs, there is presently a complete lack of any obvious regulatory mechanism. The Scottish Consumer Council has long been concerned that no clear mechanism for the regulation of judicial conduct presently exists, beyond the drastic and very rarely invoked measure of removal from office.

27. We are equally concerned that there is no clear procedure for court users to make a complaint about the conduct of a judge or sheriff. The Court Users Charter produced by the Scottish Court Service\(^6\) makes it clear that the Court Service cannot look into complaints about the conduct of judges or sheriffs. It is not clear whether any mechanism actually exists for complaints about the conduct of a judge or sheriff, as distinct from the decisions made by him/her.

28. We entirely accept that it is an important constitutional principle that the judiciary must have independence, and should not be subject to interference by the Scottish Executive or Scottish Parliament when fulfilling its judicial function. However, this constitutional independence relates solely to the function of sheriffs and judges in making legal decisions.

29. This should not mean that they cannot be held to account for the way in which they conduct themselves in reaching those decisions. Judges and sheriffs should be required to conduct court business fairly, treating all court users with respect and courtesy. They are public office holders, and should be accountable for their behaviour towards the public.

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\(^5\) Regulation of the legal profession (defined as advocates, solicitors and qualified conveyancers and execution practitioners) is devolved in terms of the Scotland Act 1998, Schedule 5, Section C3

\(^6\) Court Users Charter, Scottish Court Service, 2000

The Scottish Consumer Council's evidence to Justice Committee on its enquiry into regulation of the legal profession
30. However, while a complaints procedure to complain about the behaviour of court staff does exist, there is no similar procedure for complaints against judges and sheriffs. The Court Users Charter states that all court users will be treated in the same professional manner, and that staff will be polite and helpful, and will treat court users with courtesy and respect. Court users are entitled to be treated with courtesy by everyone in the court, including judges and sheriffs.

31. Last year's Scottish Executive consultation paper on judicial appointments recognised the need to consider the introduction of some mechanism to regulate judicial conduct. We welcome the proposal to introduce a code of conduct for members of the judiciary. Failure to continue to meet the standards set out in a code and failure to attend relevant training courses could be matters for discipline, as would other matters of conduct unbecoming of a member of the judiciary.

32. However, the proposed code would be purely voluntary, and as such its usefulness must be questioned. It would need to be made clear what sanctions will apply if the code is breached.

33. Under the present system, we consider that the Lord President and sheriffs principal would be the most suitable people to enforce a code. However, if this is to work, there are a number of matters which require to be addressed. This would, for example, add significantly to the already heavy workload of sheriffs principal. There would need to be consideration as to how such an arrangement would work in practice, particularly in some of the larger sheriffdoms, which can cover a considerable geographical area.

34. We also agree with the paper's proposal that the Lord President and Sheriffs Principal should be given a more explicit managerial role over members of the judiciary. At present neither have such a role, which has made it very difficult to devise a means of dealing with judicial misconduct short of that serious enough to invoke the removal procedure.

35. The managerial responsibilities of the Lord President and sheriffs principal should broadly cover the main functions of any manager. In addition to line management of the sheriff or judge, these would include providing general support as required. The manager would be responsible for carrying out an annual performance appraisal, for ensuring that training needs are met, and for exercising a disciplinary function if necessary.

36. While we would welcome the introduction of a managerial role for the Lord President and Sheriffs Principal, we think that there might also be a role for a Judicial Appointments Board in relation to a code of conduct. While this may mean there would be a need for a larger Board, we would cite the example of the Council on

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1 Judicial Appointments: An Inclusive Approach, Scottish Executive Justice Department, April 2000

The Scottish Consumer Council's evidence to Justice 1 Committee on its enquiry into regulation of the legal profession
Tribunals, which supervises the procedures and operation of various tribunals, as well as considering complaints against tribunal members.

37. However, it is not yet clear whether the Scottish Executive intends to take these proposals forward. While the Justice Minister announced plans for a Judicial Appointments Board earlier this year, no announcement has yet been made on the proposals for a code of conduct.

**Removal of judges and sheriffs**

38. While last year’s consultation paper addressed the question of disciplinary action short of removal, we were disappointed that it did not consider in any detail the important issue of removal of judges and sheriffs from office. In the same way as a transparent procedure for appointing judges and sheriffs is essential for public confidence, there must also be an equally clear and open procedure for removing them, should this prove to be necessary.

39. We welcomed the fact that the Scotland Act 1998 introduced for the first time a procedure for removal of a Court of Session judge. A judge must be removed at the instance of the Sovereign, on the recommendation of the First Minister, subject to a resolution by the Scottish parliament.\(^8\)

40. The introduction of this procedure is a significant improvement on the previous situation, where no clear procedure existed. However, it is not clear from the terms of the Act how the members of the investigative tribunal constituted by the First Minister to investigate and report on a judge’s fitness for office\(^9\) will be appointed. We would strongly recommend that consideration be given to ensuring that there is some senior lay involvement, to help ensure openness in the procedure.

41. There are at present no clear guidelines as to the circumstances in which this removal process, or that in respect of sheriffs and sheriffs principal\(^10\), should be invoked. While each refers to the office holder being 'unfit for office by reason of inability, neglect of duty or misconduct', there is no guidance as to the circumstances in which these might apply. We would strongly recommend that clear guidance on this would be extremely useful, and would help to increase transparency in the process.

**Qualified conveyancers and executry practitioners**

42. Qualified conveyancers and executry practitioners are presently regulated by the Scottish Conveyancing and Executry Services Board, a non-departmental public

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\(^8\) Scotland Act 1998, section 95

\(^9\) Scotland Act 1998, section 95(8)

\(^10\) Section 12, Sheriff Courts (Scotland) Act 1971 provides for removal by the First Minister, following a joint investigation by the Lord President and Lord Justice Clerk.
body. Following a financial and management review of the Board, the Scottish Executive recently announced that it is to be abolished.

43. The Scottish Consumer Council regrets this situation, having welcomed the establishment of the Board in 1991. We believed that the creation of qualified conveyancers would increase competition, improving the choice of services available to house purchasers and sellers.

44. However, we are disappointed that, after ten years in existence, including four years of active business, so few practitioners have been registered by the Board. We do not believe that the continued existence of the Board is justifiable in financial terms for the foreseeable future.

45. However, we consider that the situation might be reviewed again in a few years' time, in order to assess the impact of anticipated reforms to the feudal system, together with moves towards electronic conveyancing. In the meantime, there is a need to consider alternative ways to keep the work of the Board alive in some, more cost-effective form.

46. We are concerned that the Scottish Executive is proposing to transfer responsibility for regulating practitioners to the Law Society of Scotland. We do not believe that the Law Society is the appropriate body to perform this role, given its primary function as the representative of the legal profession, whose members are in direct competition for business with licensed conveyancers.

47. Moreover, we have real concerns about the Law Society's complaints procedure, following our research into the experiences of consumers who had used the procedure, as discussed above at paragraphs 13–15.

48. We believe that the Office of Fair Trading (OFT) would be a more suitable body to take over this regulatory function. We appreciate that this may be difficult because the OFT is based in London, and has no office in Scotland. Nevertheless, we think that the OFT should be requested to comment on this proposal.
Dear Ms Goldsmith

I refer to my e-mail of 21 December 2001 in which I promised to forward a copy of the research paper 'A Survey of Complainers to the Scottish Legal Services Ombudsman' conducted in 2000 on behalf of the Scottish Executive. A copy of this paper is enclosed.

Yours sincerely

Mike West

M P WEST
A SURVEY OF COMPLAINERS TO THE SCOTTISH LEGAL SERVICES OMBUDSMAN

The Customer Management Consultancy Ltd

The Scottish Executive Central Research Unit 2000
The views expressed in this report are those of the researchers and do not necessarily represent those of the Department or Scottish Ministers.
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APPENDIX 1  WHAT IS THE OMBUDSMAN
CHAPTER ONE   INTRODUCTION

THE BRIEF

1.1 The Scottish Legal Services Ombudsman (SLSO) wished to develop a much deeper understanding of what drives consumer satisfaction in an escalated complaints environment. It was decided that a survey of complainers would assist the Ombudsman both in understanding where improvements are requested by users and whether such improvements are feasible and cost-effective. The research aim was to investigate the quality and clarity of complainers perceptions in the communication process and to gain an understanding of the whole process of decision and opinion making.

1.2 The research was to be an opportunity to ask questions about a wide range of issues and consumer concerns including:
   - users knowledge and understanding of the SLSO’s existence and role
   - the way in which his opinions are issued and explained, and
   - to explore whether there is room for improvement in the clarity and ease of understanding of the opinions.

1.3 The brief proposed the qualitative research method of in depth interviews with a relatively small number of people who had brought a complaint to the Ombudsman to gain a detailed understanding of their views, rather than a quantified measure of satisfaction.

1.4 The Customer Management Consultancy Ltd (CMC) were therefore commissioned to undertake 30 in-depth interviews of people who had brought a complaint to the Ombudsman.

THE OMBUDSMAN’S REMIT

1.5 The Scottish Legal Services Ombudsman examines complaints referred to him by members of the public regarding three bodies within the law profession in Scotland. Those are the Faculty of Advocates, the Law Society of Scotland and the Scottish Conveyancing and Executry Services Board. His responsibility is to examine the way in which the professional body has handled the complaint referred to it about a member of that body. While not examining the original complaint, he does look into both the amount of consideration the matters raised received and how the complaint investigation was carried out.

1.6 The Ombudsman can make recommendations relating to both the handling matters that cause him concern regarding the professional body's investigation and any failures he notes by the professional body to give due consideration to matters raised by a complainant. He can also recommend compensation where the complainant has been subjected to inconvenience as a result of the professional body's actions. (See Appendix 1 for text of SLSO leaflet.)
THE METHODOLOGY

1.7 Ten of the 30 interviews were to be done by telephone and 20 face to face. It was preferable that most should be complainers who had received a full opinion from the Ombudsman: only around five should be those who had received an opinion from the Ombudsman in the form of a letter instead of a formal report after a full investigation. If possible there should be a 50:50 split between "critical" and "satisfactory" opinions: that is between those which criticised the Law Society of Scotland's handling of the complaint and those which found it to have been acceptable.

1.8 The SLSO mailed a covering letter and a response form to 103 people drawn from amongst the total number of complainers the SLSO had dealt with: those who had received an opinion between 6 January 1998 to 18 November 1999 and who lived in the part of Scotland between a line drawn from Aberdeen to Helensburgh in the north and the line drawn from North Berwick to Ayr in the south. The letter explained the purpose of the study. The response form gave people the opportunity to decide whether they wished to participate in the study. In total 47 responded. The table below details how people responded.

Table 1.1 Breakdown of responses

<table>
<thead>
<tr>
<th>Respondent's Choice</th>
<th>No of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, I agree to be interviewed</td>
<td>44</td>
</tr>
<tr>
<td>Possibly, only if additional people are required</td>
<td>2</td>
</tr>
<tr>
<td>No, I do not wish to participate</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>47</strong></td>
</tr>
</tbody>
</table>

1.9 Each pre-paid envelope was pre-coded to indicate whether the respondent had been issued with a critical or satisfactory letter or full opinion.

1.10 The names and addresses of those who responded positively were faxed to the Ombudsman, who then produced information on the length of the case; that was measured from the time they had obtained the complainer’s case notes from the Law Society to the moment an opinion was issued to the complainer.

1.11 A cover sheet was completed once an interview had been arranged giving the interviewee details, the time of the interview and the information collected from the Ombudsman (laid out in paragraphs 1.6 - 1.8 above). When interviewing the respondents interviewers followed an agreed topic list and recorded a random selection of interviews for quality control purposes.
THE SAMPLE

1.12 A further breakdown of those who positively responded to the initial covering letter and the interviews that were achieved is laid out in the table below.

Table 1.2 Breakdown of those who agreed/would possibly be interviewed

<table>
<thead>
<tr>
<th>The responses</th>
<th>The interviews</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satisfactory Letter Opinion</td>
<td>12</td>
</tr>
<tr>
<td>Critical Letter Opinion</td>
<td>3</td>
</tr>
<tr>
<td>Satisfactory Full Opinion</td>
<td>11.5*</td>
</tr>
<tr>
<td>Critical Full Opinion</td>
<td>21.5*</td>
</tr>
<tr>
<td>TOTAL</td>
<td>47</td>
</tr>
</tbody>
</table>

* One interviewee had experienced both a critical and a satisfactory full opinion, hence the use of a decimal point.

1.13 It should be noted that 9 of the 11 female respondents and 21 of the 36 male respondents were interviewed. This split of two to one, male to female, amongst those interviewed is broadly representative of the original sample.

1.14 All the complaints involved solicitors and the Law Society of Scotland.

RESEARCHERS' EXPERIENCE

1.15 The organisation of interviews was straightforward. Five people stated a general preference to be interviewed face to face. One person felt they could express themselves better in person because English was their second language. Three people believed we would only understand their circumstances if we actually talked to them face to face and one person did not wish to disclose confidential information over the telephone.

1.16 Twenty people were interviewed face to face, and ten by telephone, as was planned.

1.17 The execution of the interviews was technically more demanding. Because the subject was a potentially emotive one, it was at times quite difficult to get interviewees to concentrate on the way their case was actually handled by the SLSO and to keep this separate from the original problem which they took to the Law Society of Scotland.

1.18 Some interviewees had relatively contained emotions - a few were advisers, others were complaining as a matter of principle or to stop the lawyer doing the same to other clients. For many others, however, the complaint was associated with personal catastrophes - such as marriage breakdown or business failure - which had been compounded by the perceived failures of lawyers, in whom they had placed their trust.

1.19 Two additional interviews were abandoned or considered void because one person was believed to be under the influence of non-prescription drugs and another found it difficult to construct his thoughts coherently, and seemed quite irrational when answering questions.
CONTEXT

1.20 The Scottish Legal Services Ombudsman, like the Office of the Legal Services Ombudsman for England and Wales (OLSO), sits at the top of a more extended complaint ladder than other Ombudsman schemes. Elsewhere, in both public and private sectors, the complaint generally goes straight from the council or company to the Ombudsman. For legal, conveyancing and executry services there is an intermediary complaint handling body, the Law Society of Scotland or the Faculty of Advocates, in respect of the legal professions, and the Scottish Conveyancing and Executry Services Board in respect of conveyancers and executry practitioners, which stand between the practitioner and the Ombudsman. In an earlier CMC study for the OLSO, this was described as a "super-escalated" complaint system.

1.21 This has three particular effects on the cases coming to the Ombudsman. First it builds delay into the process before the complainant reaches the Ombudsman - even when the professional complaint handling body deals with complaints efficiently. Delay tends to reduce morale for all concerned.

1.22 Secondly, it means that those who persevere to the Ombudsman are dissatisfied with the handling of their complaint by two sets of members of the legal profession - the lawyer or law firm and then the Law Society of Scotland. So the views about the legal profession amongst those who come all the way to the Ombudsman tend not to be particularly high (see comments in Section 3).

1.23 Thirdly, most of the more straightforward or less emotive complaints are likely to have been disposed of at the two earlier stages, with for example the complainant realising that their case was not as strong as they had thought, or with generous apologies or (more or less) generous offers being accepted.

1.24 The cases that come to the SLSO therefore may have a "history" and strong emotions attached, as was borne out in many of the interviews.

LAYOUT OF THIS REPORT

1.25 The report looks first of all at what happened to complainers and then at how they felt about it, before drawing conclusions.

1.26 Section 2, therefore, sets out the process which was experienced by interviewees, including contact with other agencies before and during the SLSO process and describes the outcomes, as well as some brief demographic factors (Appendix 2 provides frequency data).

1.27 Next, Section 3 analyses the perceptions of the interviewees and their ideas on how the SLSO "system" might be changed, in terms of powers as well as processes.

1.28 Finally, Section 4 sets out the conclusions of the study.

1 See: "Satisfaction in a super-escalated complaint environment: A report by the Customer Management Consultancy Ltd to the Office of the Legal Services Ombudsman: Summary of Findings and Recommendations" Available from the Office of the Legal Services Ombudsman: 0161 236 9532
THANKS

1.29 The researchers would finally like to take this opportunity to thank all those who participated in the study, giving so freely of their time to discuss experiences which frequently raised unhappy memories.
CHAPTER TWO  THE PROCESS

THE PEOPLE

2.1 This section presents quantitative findings emerging from the survey on people's experience of the complaint process. The numbers are too small to present as percentages. More details are provided in Appendix 2.

2.2 First of all, who were the complainers who agreed to be interviewed for the study? They were mainly male (21 out of 30) and predominantly middle aged or older (20 out of 22 who gave this information were aged 45 or over).

AWARENESS

2.3 Two out of three claimed to have been aware of the Scottish Legal Services Ombudsman before bringing a complaint. Some were aware because they were knowledgeable about the law while others simply knew about Ombudsmen in general and were aware that there was one for the law in Scotland. Two people had experience of other Ombudsman schemes. Few claimed great knowledge about the SLSO. One in three had not previously heard of the Ombudsman.

2.4 The responses to this question reflect the broad range of experience of the law and lawyers amongst this group. Although not directly asked about, from comments made it was clear that some complainers had had little or no previous experience of using the services of lawyers, others had used solicitors a number of times, while some had had extensive previous dealings with lawyers and the law, through their business or profession.

CONTACT DETAILS

2.5 Most people obtained the details about how to contact the SLSO from the Law Society of Scotland who always include details in their final letter to complainers. A few got the information from an advice agency or an other professional, and similarly a few looked up the details in the telephone directory/Yellow Pages.

2.6 Only one in three took advice from a third party before deciding to contact the SLSO. In the main, this third party was another lawyer. Half of those complainers who took other advice kept in touch with this third party during the process.

WRITTEN INFORMATION ABOUT THE SLSO

2.7 Two out of three recalled seeing written information about the SLSO around the start of the process. Most of these mentioned specifically the SLSO's own leaflet, others mentioned Law Society of Scotland publications. Very few knew about the SLSO website.
2.8 On the SLSO leaflet, only around nine people felt able to comment in detail on it. Most were satisfied with every aspect of it, particularly with its freedom from jargon. The only negative comment related to its relevance and comprehensiveness.

**TURNAROUND TIMES**

2.9 Nine of the interviewees reported that their complaint was dealt with by the SLSO in under 6 months, compared with 17 over 6 months, including two who said that their complaint took over 2 years.

2.10 This is broadly consistent with the SLSO data on these same cases, although in fact none in the SLSO file took longer than 18 months. See Table 2.1 for details.

<table>
<thead>
<tr>
<th>Time Frame</th>
<th>Complainant data (Numbers)</th>
<th>SLSO data (Numbers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 3 months</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>3-6 months</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>7-12 months</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>13-18 months</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>19-24 months</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Over 2 years</td>
<td>2</td>
<td>0</td>
</tr>
</tbody>
</table>

**CONTACT WITH SLSO**

2.11 Only one complainer had a meeting with the Ombudsman or members of the SLSO staff.

2.12 Around half said that the SLSO kept in contact with them during the progress of their case - mainly by letter to explain and apologise for delays. In the main the SLSO contacted this group several times.

**OUTCOME**

2.13 Of those who felt able to describe the Ombudsman’s decision, 17 out of 24 believed it was completely or on balance “in my favour”, compared with the 5 who believed it was completely or on balance “against me”, with two describing it as a draw. This compares with 18 opinions “critical” of the Law Society of Scotland’s handling, and 13 “satisfactory” opinions. (It should be noted that the balance of complainers’ perceived outcome is much more positive than in the OLSO study).

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2 Complainers’ perceptions that the complaint took over two years probably arose because they first contacted the SLSO while the Law Society’s investigation was still in progress and several months before the complaint became eligible for a SLSO handling investigation.
WRITTEN EXPLANATION OF OUTCOME

2.14 Detailed comments on the Ombudsman's written explanation of his decision were made by nearly all complainers.

2.15 On most of the positive statements (easy to read, easy to understand, all parts are set out clearly, it was based on factual evidence) over twenty people agreed with them. Only on "it was even handed/not biased" and "it was comprehensive/told me everything" did the number agreeing fall to 18 (with 7 and 6 disagreeing respectively). On these two aspects, moreover, fewer "agreed strongly" than simply "agreed".

2.16 On the two negative statements, 23 disagreed that "there were too many irrelevant details" (6 strongly), with only three agreeing, and 19 disagreed that "there was not sufficient detail" (6 strongly), with seven agreeing. So the consensus appears to be that the amount of detail is about right.

OVERALL SATISFACTION AND WILLINGNESS TO APPROACH SLSO AGAIN/RECOMMEND

2.17 Most interviewees declared themselves satisfied with most aspects of the SLSO service. Satisfaction was highest (17 out of 23) with overall handling by the SLSO, and lowest with the actual conclusion (12 out of 22). Dissatisfaction was highest with speed (9 out of 24).

2.18 Most declared themselves likely to approach the SLSO in future (20 out of 26 would "definitely" or "probably" do so) and to recommend others to do so (19 out of 25 likewise).

OVERVIEW OF COMPLAINERS EXPERIENCE OF THE PROCESS

2.19 Most complainers found out about the SLSO from the Law Society. Most were satisfied with written information received from the SLSO, both the introductory leaflet and the explanations of the outcome.

2.20 Around half of complainers were kept up to date by the SLSO, mainly in the form of apologies for delays.

2.21 Three times as many people thought that the SLSO decision was overall in their favour as against them. People were more satisfied with the SLSO's handling of the complaint than with the outcome. Most were willing to recommend the SLSO to others.

2.22 Appendix 2 contains further details on the numbers of interviewees who gave various responses. The next section examines complainers' perceptions and feelings about the process, and the findings given are mainly qualitative.
CHAPTER THREE  COMPLAINERS' PERCEPTIONS OF THE SLSO

INTRODUCTION

3.1 This section analyses the perceptions, views and suggestions given by complainers during interviews with the three researchers. The themes which are discussed in this section emerged consistently from interviewees' views.

3.2 A major challenge for the interviewers, in some instances, was to keep the focus of the interview on the SLSO rather than the Law Society of Scotland's handling of the complaint or the solicitor against whom the original complaint was made. It is in the context of dissatisfaction with lawyers and their handling of complaints that the Ombudsman is approached.

3.3 Other themes which emerged concerned complainers views on and expectations of the Ombudsman's service, personal contact with the Ombudsman, (or lack of such contact), the speed of the process, limitations to the role and remit of the Ombudsman, and ideas for improvement.

PERCEPTIONS OF LAWYERS

3.4 Making a complaint against a member of the legal profession appeared for many to be a difficult, challenging, thankless, and sometimes lonely endeavour.

3.5 Views commonly expressed and without prompting were:

- "Solicitors close ranks: they want to protect each other"
- "Old boys network"
- "Lawyers can get away with anything"
- "Lawyers are too protected"
- "Private individuals are not well looked after by the legal profession"
- "Lawyers are only good at sending bills"
- "I won't be satisfied until the solicitor gets what he deserves"
- "The Law Society investigation was a proper farce".

3.6 One solicitor was reported to have reacted to the news that the case was being taken to the Ombudsman by threatening to take the complainant to court for defamation.

3.7 One complainant reported being unable to find a solicitor who would help him draft a letter of complaint to the Law Society. He added that one "honest lawyer" he spoke to had explained that "solicitors in that area had an understanding that they would not take action against each other".

3.8 Another complainant received valuable assistance from another legal solicitor to make her complaint to the Law Society, for which she was not charged. However, her gratitude to this solicitor did not necessarily outweigh her more negative attitudes towards the solicitor complained about and towards the legal profession in general.
3.9 It was, then, against a backdrop of sometimes intense feelings of suspicion of the "legal profession" that people approached the SLSO.

3.10 Several interviewees mentioned that they had been advised by the Law Society of Scotland to go to court if they wished to seek redress from their solicitors on matters of "negligence". None had done so because of the cost. Most were bemused by the claimed distinction between matters of "misconduct" and "negligence", and saw it as part of lawyers smokescreen to keep the public at bay: see footnote for definitions of misconduct and negligence.

3.11 One articulate professional stated that he fully understood the theoretical distinction that the Law Society of Scotland was seeking to make. However, the issues of misconduct and negligence by solicitors were so intertwined in actual cases that the way the Law Society responded to complainers carried no credibility. Moreover, he stated, there was nothing to stop the Law Society from setting up its own internal adjudication system to deal with cases of negligence.

**EXPECTATIONS OF THE OMBUDSMAN**

3.12 For a large number of complainers the prospect of an independent adjudicator reviewing the handling of "their case" was welcomed.

- "The ombudsman must know that we are groping in the dark"
- "All was lost until he stepped in"

3.13 Most complainers were also optimistic about the outcome of the work of the Ombudsman despite the level of suspicion about the legal profession. The most common general expectation on outcome was that their case would be upheld. See Table 3.1 below.

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3 Footnote on Misconduct and Negligence

**Misconduct**

"Professional Misconduct" occurs when a solicitor's conduct is viewed as "serious and reprehensible" by competent and reputable solicitors. This has to be demonstrated as being "beyond reasonable doubt".

"Unprofessional Conduct" is conduct by a solicitor which is not as serious as misconduct, but still unacceptable or not approved of by competent and reputable solicitors. This is put to the lesser test of "on the balance of probabilities".

**Negligence**

Negligence is where the actions of a solicitor result in the client suffering actual loss. This can be a) financial loss, b) loss of assets, or c) personal loss. The Law Society does not have the power to deal with this. It is something that can only be decided in Court or "settled" before going to Court.
Table 3.1  Expectations of the outcomes

<table>
<thead>
<tr>
<th>Expectation</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>I was certain the Ombudsman would decide in my favour</td>
<td>13</td>
</tr>
<tr>
<td>I thought it was likely that the Ombudsman would decide in my favour</td>
<td>5</td>
</tr>
<tr>
<td>I was not sure, but no matter what the outcome I still wanted to complain</td>
<td>1</td>
</tr>
<tr>
<td>I thought the Ombudsman would decide in my favour on some things and against me on others</td>
<td>6</td>
</tr>
<tr>
<td>I thought it was unlikely that the Ombudsman would decide in my favour</td>
<td>1</td>
</tr>
<tr>
<td>I was certain that the Ombudsman would not decide in my favour</td>
<td>1</td>
</tr>
</tbody>
</table>

3.14 Eighteen complainers made qualitative statements that they expected their complaint to be upheld. Comments included:

- "to agree that I had not been well looked after"
- "would highlight faults made by the Law Society"
- "expected him to say the Law Society had made gross mistakes"

3.15 Two complainers reported that an objective, unbiased conclusion was their expectation.

3.16 On expectations about process, seven respondents’ expectations primarily centred upon the investigation itself. One commented that he expected the Ombudsman to “ask as yet unasked questions”.

3.17 Fourteen people reported assuming (correctly) that the Ombudsman would scrutinise the case files. Six people thought that the SLSO would make direct contact with the Law Society. Interestingly, only two complainers reported that they expected to meet the Ombudsman or a member of his staff at the start of the process.

MEETING THE OMBUDSMAN?

3.18 The desire to meet the Ombudsman or a member of the SLSO staff is a predominant theme of the research findings. Only one complainer reported having such a meeting.

3.19 One complainer who did not meet the Ombudsman or member of his staff commented "No, but it would have been beneficial. Even a phone call would have been helpful". Another complainer requested to meet the Ombudsman but said that they had been refused. (It should be noted that the SLSO believe that there is little merit in having a discussion, either face to face or on the telephone, until they have had an opportunity to read and consider the file, but they do have a number of discussions with complainers at a later stage, mainly on the telephone.)

3.20 Two complainers, on receiving the explanation/outcome, commented that it could have been improved by having someone there with them to assist in interpretation.
3.21 Other comments on meeting with the Ombudsman or a member of his staff included:

- "would have welcomed a visit"
- "much easier to give information face to face than to pass through a file". This complainant goes on to say that meeting the ombudsman is essential.
- "I would have welcomed being able to speak to somebody from the Ombudsman’s office"
- "I feel he should have seen me, to interview me, so he could see what sort of person he was dealing with"

3.22 Seven complainers suggested that a key way to improve the SLSO operation would be complainers to be given the opportunity to meet the Ombudsman to discuss their case.

- "personal interview with Ombudsman, not just letters"
- "Ombudsman contacting the complainant"
- "face to face contact would have been very helpful, but was never offered"

3.23 A secondary related theme is the varying confidence and ability of complainers and potential complainers to explain their case and complaint in writing.

3.24 One complainer wanted to meet the Ombudsman in order to clarify what she had written to him. She was concerned that the lay terms she had used may not have conveyed all the important issues correctly or in sufficient detail. Other similar comments included:

- "this would assure me that I had given the Ombudsman all the information"
- "coaching to put my case better"
- "You only get one chance to state your case, submitting it in writing. You may forget things"

3.25 This was seen as a crucial part of the process, since it was the basis on which the SLSO would address the case.

3.26 One interviewee who had acted on behalf of a complainer stated that, because time was pressing to submit a complaint, he had obtained the SLSO’s permission to submit an outline complaint within the deadline which was then supplemented by a more detailed, considered statement at a later date.

OTHER CONTACTS WITH THE OMBUDSMAN

3.27 These responses add weight to the general finding that people would be reassured by a meeting with the Ombudsman or his staff, at which they could explain their case and be questioned and probed for relevant facts.

3.28 Contact initiated by the SLSO was mainly made by letter, only rarely by telephone. The most common reason given for the SLSO making contact with the complainer was to be advised of a delay in the process (7 complainers). Four reported that contact was made to explain the remit of the Ombudsman and a further two were contacted for confirmation of facts.
3.29 Of the 30 complainers, 14 made contact with the SLSO during their case. Of those, 10 complainers did so because of the length of time the process was taking. Typical responses included, "to ask about progress"; "I was wondering what was happening"; "I wanted to hurry them up".

3.30 The main reasons for contacts in both directions during the case process therefore related to delay - explaining it or asking about it. This leads to the next item.

SPEED OF THE PROCESS

3.31 The second key theme of the research findings was the speed of the process. At the time when many of these cases were being handled, the SLSO was experiencing problems in its own processes and so many interviewees had experienced delays. A number of people had received an explanation at some stage that the process might take longer than usual:

- "It was explained to me that the ombudsman is not full time and that you are sort of on the waiting list, so I did expect some delay"
- "Received an apology for not dealing with the complaint, regretting delay as dealing with a large number of complaints - perfectly acceptable"

3.32 When asked what changes they would like to see to the SLSO service, seven complainers recommended a faster service:

- "speed up the service"
- "exceedingly slow"
- "speed up the timing"
- "faster timescale for receiving it, it seemed to drag on for so long"
- "he is too busy, could deal with matters more quickly"
- "make things move more quickly"
- "there should be a limitation of time to draw a conclusion"

3.33 One complainer reported being particularly annoyed by the delay in her case after reading a newspaper article in which "the SLSO was advertising to take on more work", yet she had received a letter saying that her case would be delayed due to the number of cases they were already dealing with. (It should be noted that the SLSO does not advertise for this purpose, although from time to time there is coverage of its work in the press and the broadcast media.)

3.34 Another person, however, complained about how fast the process was and by implication criticised the thoroughness of the process. They commented, "6 years worth of paper work and it took him three weeks to come to a conclusion".
3.35 Other comments on the speed of the process included:

- "My submission took a very long time, 8 page report after two or three months for 2 or 3 days work"
- "Hell of a long time"

LIMITATIONS TO THE ROLE AND REMIT OF THE OMBUDSMAN - NO TEETH

3.36 This third theme is in fact the predominant one to be found within the research findings overall. Comments on the Ombudsman's lack of power or the extent of the remit can be found within every issue complainers were asked to comment on. Two general comments summarise the respondents' feelings well.

- "he cannot make them do anything….but a small fish is better than none"
- "the Ombudsman came out in our favour, but they (the Law Society) put their thumbs up. He doesn't have enough power".

3.37 Moreover, 12 complainers suggested that an extended remit would improve the way in which the SLSO operates. This issue was the most commonly identified in response to a direct question about possible improvements.

- "his remit is too limited"
- "he needs to have teeth"
- "give him some teeth"
- "I understand in the final analysis he doesn't have teeth"
- "to have follow up powers to insist on action"
- "his failure is his remit"
- "he cannot look at merits only procedures"
- "the Ombudsman should be able to chase up his decisions, have powers to insist on action"
- "more bite or clout"
- "Ombudsman needs statutory powers to enforce decisions"
- "limits placed upon the office makes service toothless, only has power to coax them"
3.38 The perception as to the lack of power to implement his recommendations left complainers unfulfilled by the process, even when the Ombudsman appeared to agree with them or was critical of the Law Society of Scotland. Whilst a number considered it worthwhile to complain, because of a point of principle for example, complainers themselves receive no benefit. For example:

- "if he hasn't got the power, what is the point"
- "the Ombudsman cannot say anything so what is the point"
- the report....."gave an indication that the lawyers had come to the wrong decision, but that the processes were correct. It said one thing but not of any benefit to me"
- "if he discovers (problems) with the Law Society decision, let him do something about it"
- "no real outcome for me"
- "as the solicitor was in the wrong, I won't be satisfied till the solicitor gets what he deserves"
- "just a waste of a year for a report that agrees but affects nothing"

3.39 When asked why there were limits to the SLSO remit, complainers had a number of explanations:

- "The government decide his remit" (2 complainers)
- "Not to create an overlap with other agencies"
- "In place because legal fraternity have a stranglehold on the law"
- "Assume it is because the legal profession do not want to give up any power"
- "To protect the Law Society"
- "Because the legal system is self regulated"

**THE EXPLANATION**

3.40 Complainers were invited to describe their reaction to the explanation about the outcome or decision "in three words". Many gave phrases or sentences instead. Table 6 sets out the various comments made, ranging from the highly impressed, "astonished and delighted", to the dismissive "waste of public money", "establishment cover up".

3.41 Amongst those whose complaint the Ombudsman did not uphold, we found a mixture of frustration and disappointment based on a perceived failure to address the "real issue" rather than the explanation given.

- "We all expect justice, but I feel very let down"
- "He did not pick up on the fundamental complaint, if building a house the foundations have to be right"
<table>
<thead>
<tr>
<th>Highly Positive</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Astonished and delighted</td>
<td>Motivation, encouragement to take the issue further</td>
</tr>
<tr>
<td>Very honest</td>
<td>Meticulous</td>
</tr>
<tr>
<td>Surprise</td>
<td>Marvellous Job</td>
</tr>
<tr>
<td><strong>Positive</strong></td>
<td></td>
</tr>
<tr>
<td>What I expected</td>
<td>Quite pleased</td>
</tr>
<tr>
<td>Quite good</td>
<td>Satisfactory</td>
</tr>
<tr>
<td>Quite pleased with outcome</td>
<td>Thorough</td>
</tr>
<tr>
<td>Plain English/no jargon</td>
<td>Comprehensive</td>
</tr>
<tr>
<td>Functional</td>
<td>Fairly to the point</td>
</tr>
<tr>
<td>Satisfied that the time had been taken</td>
<td>Easy to follow</td>
</tr>
<tr>
<td>Covered each point clearly</td>
<td>In my favour</td>
</tr>
<tr>
<td>Unbiased/objective</td>
<td>Proved my point</td>
</tr>
<tr>
<td>Not wordy</td>
<td>Picked up our points</td>
</tr>
<tr>
<td>Vindicated</td>
<td>Good layout</td>
</tr>
<tr>
<td>Pretty Fair</td>
<td>Clear</td>
</tr>
<tr>
<td><strong>Neutral</strong></td>
<td></td>
</tr>
<tr>
<td>Adequate/sufficient for its purpose</td>
<td></td>
</tr>
<tr>
<td><strong>Critical</strong></td>
<td></td>
</tr>
<tr>
<td>Some bits were a bit vague, more details in some places would have helped</td>
<td>Criticisms of Law Society could have been stronger</td>
</tr>
<tr>
<td>Toothless</td>
<td>Had to read things several times to understand</td>
</tr>
<tr>
<td>Over bland</td>
<td>One-sided</td>
</tr>
<tr>
<td>Inadequate/anecdotal</td>
<td>Needs more summing up</td>
</tr>
<tr>
<td>Took a long time to come</td>
<td>Hands off review</td>
</tr>
<tr>
<td>Justifying his position by being long-winded</td>
<td>Example of self-insurance</td>
</tr>
<tr>
<td>Disappointing</td>
<td>Ineffective</td>
</tr>
<tr>
<td>Slightly bias towards Law Society</td>
<td>Not a fair or reasonable judgement</td>
</tr>
<tr>
<td><strong>Highly Critical</strong></td>
<td></td>
</tr>
<tr>
<td>Spin</td>
<td>Establishment cover up</td>
</tr>
<tr>
<td>Not fair not reasonable</td>
<td>Waste of public money</td>
</tr>
<tr>
<td>Obstuse</td>
<td></td>
</tr>
</tbody>
</table>
3.42 On use of jargon, there is some evidence that more work could be done by the SLSO to ensure that all reports comply with the principles of Plain English:

- "Some words were hard to understand, I had to look things up in dictionary... Keep things as plain as possible"
- "Most people read The Sun, short sentences, easy language, has to be concise and simplistic for lay people"
- "It is full of hot air, didn't need to be so long-winded"
- "The Ombudsman should put an explanation of law terms at the beginning of the explanation"

IDEAS FOR IMPROVING THE WAY THE SLSO OPERATES

3.43 The key themes of the research findings were also the main ways in which the complainers thought that the SLSO service could be improved, namely by providing opportunities for personal contact, a faster service and a wider remit.

3.44 Other recommendations were however made, including some on how the Law Society of Scotland could improve its service. While outside the remit of the study, these reflect complainers view of bringing a complaint as being a single process with different stages. Recommendations directed towards improving the Law Society of Scotland's service included:

- "lawyers should be clearly advised by the Law Society on procedures to be followed - this would improve things and the Ombudsman could work properly"
- "there is not sufficient quality of respect given by the Law Society to the Ombudsman"
- "more lay members on the Law Society"

3.55 Some had more radical suggestions, shifting responsibility from the Law Society of Scotland.

- "The Ombudsman should take over from the Law Society, who are biased"
- "The Ombudsman needs more statutory powers to enforce decisions on the Law Society, or his role should be scrapped and replaced by an independent statutory body with not a single lawyer on it..."
- "Perhaps the Law Society and solicitors should have complaint handling taken away from them altogether"

3.56 Other suggestions concerned the Ombudsman's remit:

- "his failure is his remit"
- "he should set time limits for the implementation of his recommendations"
- "he cannot look at merits only procedures: the English system would be preferable"
- "the Ombudsman should be able to chase up his decisions. He should have the powers to insist on action..."
3.57 There were less far reaching proposals on resources and processes:

- "better resourced office"
- "visits to complainers and meetings would bring down the workload (by achieving clarity early in process)"
- "freephone number, 24-hour answer machine and free postage address"
- "keep complainers informed during the investigation"
- "make the website more noticeable"

3.58 Some further suggestions concerned the wish for more information about the Ombudsman himself:

- "Who is he and what are his skills, background etc? It is very important to have someone other than a lawyer"
- "What knowledge does he have of the Law Society or what are his qualifications? Is he a volunteer?"

3.59 On possible improvements to the explanation, one interviewee suggested providing a summary. Another found mistakes in his report, for example the use of the term complainer instead of solicitor, and because of this suggested that the text is checked more carefully before issue.

OVERVIEW OF COMPLAINTERS PERCEPTIONS OF THE SLSO

3.60 People who complained to the SLSO tended to have very negative views of the Law Society of Scotland in particular and of lawyers in general. They generally expected that an independent person such as the Ombudsman to decide in their favour.

3.61 Many wanted to meet the Ombudsman at an early stage in the process, both to explain what they were complaining about and also in some cases to ensure that they had included all the relevant points in their complaint.

3.62 A number of complainers wanted to see the speed of the SLSO process increased, and some had made contact to ask about progress.

3.63 The major criticism made was about the limited remit of the Ombudsman, who was seen by many to lack "teeth". The Ombudsman's lack of power was seen as especially frustrating to those who had received a favourable outcome from the process.

3.64 The explanation was seen as being relatively free of legal jargon but some found the language unnecessarily complicated. Views on the explanation ranged from "meticulous" and "marvellous" to "obtuse" and "one-sided".

3.65 Complainers' many ideas on how to improve the working of the SLSO reflected these issues above. They also mentioned the need for more resources for the office and for complainers to know more about the Ombudsman himself.
CHAPTER FOUR CONCLUSIONS

4.1 This section draws together the main conclusions from the study, which are discussed under the headings of remit, the (interrelated) speed and personal contact, and explanations.

4.2 Overall, complainers were generally satisfied with the service provided by the SLSo - the information provided, the SLSo staff where there had been contact, the explanation of the decision, and in most cases the decision itself, as far as it went. However, much of this seemed almost beside the point in the light of the main theme emerging from the study concerning the Ombudsman's remit and power.

REMIT

4.3 The main, overriding theme to emerge therefore was the general view expressed by complainers that the Ombudsman's powers should be increased there were no dissenters. Most criticisms were about the Ombudsman's remit, not about anything that he and his staff did or said.

4.4 Normally in studies of complaint bringers to Ombudsmen, satisfaction overall is relatively high amongst those who had an outcome in their favour, and is relatively low amongst those who had an outcome against them. In the case of the SLSo, amongst the 24 who were interviewed and who felt able to define the Ombudsmen's decision as "in my favour" or "against me" on a five point scale, 17 reported a favourable outcome which many then went on to say had little or no impact. Several non respondents to this question found it hard to categorise an outcome from the Ombudsmen which took the form of agreeing that the Law Society's decision was strange, but they had followed the correct process so nothing could be done. (Indeed, one adviser wondered why the Law Society did not go to greater pains to stick to the correct process, because then the Ombudsmen would be completely powerless).

4.5 In practice, a high proportion of the Ombudsmen's decisions on full cases have in recent years been critical of the Law Society of Scotland's handling - much more so than south of the Border. However, this appears to bring little comfort to complainers. Most of the "winners" felt like losers.

4.6 A widened remit to allow the Ombudsmen to consider the merits of the decision as well as the handling would therefore receive a lot of support from complainers, as would powers to ensure that recommended actions are carried out within a prescribed timetable.

SPEED AND PERSONAL CONTACT

4.7 The next two issues are interlinked. Namely there was a common (though not universal) desire to have a meeting with the Ombudsmen or his staff, towards the start of the process, and there was a general wish to see the process speeded up. With limited resources, these two may not appear to be compatible, since personal visits are time consuming.
4.8 Looking initially at the desire for personal contact, several points can be made. First, not all complainers wished any form of personal contact: some accepted that it was a paper based system and were confident that the file told their story well. These tended to be more articulate professionals, well able to express themselves or using other solicitors or advisers to make their case.

4.9 There were, secondly, people who wished to meet the Ombudsman or his staff at the start of the process because they wanted to ensure that their formal complaint to the Ombudsman was properly expressed and covered all the issues which might be relevant, or they wished to explain in person what the nub of their complaint was and "where the solicitor had lied" to help the staff make sense of a sometimes thick file.

4.10 Others were not convinced that a remote body which did not know them as individual people could dispense justice, or they wanted simply to tell their story.

4.12 Given the extent to which emotions can run high, and that the unstructured oral relating of events and feelings may not assist an investigation, it is readily understandable that an Ombudsman may wish to resist meetings which may turn out to be unproductive and time consuming.

4.13 The problem with a purely paper based system, however, is that it is hard to screen out ineligible complaints at the start of the process with sensitivity, or to provide a potential complainant with realistic guidance, without prejudice, about what the "best" and "worst" outcomes might be for their type of complaint.

4.14 Many Ombudsman schemes use enquiry helplines to provide this sort of guidance and to manage actively the expectations of complainers, in terms of current turnaround times etc. Helping people complete forms to start the process, ensuring that all relevant parts are included and that all the points included are relevant, is more easily done face to face, however. This need not necessarily be done in a complainant's home or place of business some in central Scotland would be willing to travel to a meeting at the Ombudsman's premises.

4.15 Moreover, this task need not necessarily be undertaken by the Ombudsman: solicitors, whether in private practice or in law centres, or advice agencies could undertake this task. One complainant who had approached a CAB with his original complaint and deemed them as very helpful with signposting, did not deem them technically qualified to help draft his complaint to the Ombudsman. (However, perhaps the SLSO could offer guidance and training to advice agencies and others on their process.)

4.16 The extent to which meetings or telephone conversations screen out complaints which are outside the Ombudsman's remit, cause those with unrealistic expectations to decide not to proceed, or clarify the issues at the start, the impact on the speed of the process and on complainers' understanding would be positive.

4.17 A general offering of meetings on-site within the same limited resources would, however, tend to reduce speed, and hence satisfaction.
4.18 There was some indication from the research data that those cases dealt with in under six months tended to produce higher satisfaction than those which took longer.

4.19 Some of the delays were not in the control of the SLSO, particularly the date at which the Law Society file arrived at the SLSO office. There was some evidence that the delay caused by this factor increased dissatisfaction with the SLSO itself, so it is sensible for the office to advise complainers, as it now does, when the file arrives.

4.20 There is also some evidence here that the pro-active updating of complainers on the progress of their case, or on delays, increases satisfaction, whereas complainers "chasing up" the Ombudsman reduces it. (This is confirmed by numerous other surveys on complaint handling.)

4.21 However, speed is and remains an important factor in overall satisfaction.

EXPLANATIONS

4.22 The quality of the explanations from the SLSO, earlier criticism of which triggered this research study, do not feature strongly in the conclusions. Most complainers found the written information in the explanation (and in the leaflet) reasonably clear and free of jargon. Moreover, they did not think the opinions were too long. There were suggestions for a summary and for a glossary of legal terms, both of which might help. Those who struggled with some aspects of the explanations tended to relate to the limited powers of the Ombudsman rather than to the views set out or the language used.

OVERVIEW ON CONCLUSIONS

4.23 The issue of the quality of explanations from the SLSO does not feature prominently in the conclusions, despite concerns about this leading to the research being undertaken. The dominant conclusion is that complainers wish to see the SLSO remit strengthened and widened. Most of those who believed that the outcome had been in their favour also stated that this had had no impact. "Winners" felt like "losers".

4.24 Less clear cut were views on the speed of the process, which most wished to see increased, and on personal meetings with the SLSO, which many but not all wished to have. More meetings, which are time consuming, may reduce the speed with which the SLSO can handle complaints. Other forms of contact with a complainant, such as telephone discussions with the SLSO or indeed with a third party advising the complainant, may reduce the complainers' feeling of remoteness from the process without adding to delay. Appendix IIInformation leaflet
The Scottish Legal Services Ombudsman

INDEPENDENT
IMPARTIAL
FREE

16 Picardy Place
Edinburgh
EH1 3TF

* Reprinted from the Web site of the Scottish Legal Services Ombudsman at:
http://www.scot-legal-ombud.org.uk/leaflets/leaflet.htm
The Ombudsman is....

Independent of the Professional Bodies
which play no part in the Ombudsman's appointment and which are not responsible for the
Ombudsman's remuneration or the cost of the office.

Independent of Government
The Ombudsman's findings or recommendations are not subject to review by the Secretary
of State or the Scottish Office.

Responsible for Investigating
each handling complaint which is within the Ombudsman's remit.

The Ombudsman is not....

A Legal Practitioner
and can therefore be entirely objective in the conclusions that are reached.

The Consumer Champion.
The Ombudsman is only concerned with ascertaining the facts and circumstances of how the
case has been handled by the professional body and will express criticism of any person or
any party who may not have co-operated in ensuring a timely conclusion to any investigation.

Able to Investigate
the underlying legal issues. It is only the professional body's handling which comes within
the Ombudsman's remit.

Dissatisfied with a legal practitioner?
- First speak to the solicitor, advocate, qualified conveyancer or executy practitioner
  concerned. Explain your concern and think about the response you receive.
- Seek a meeting with the firm's Client Relations Partner or Senior Partner where there
  is a firm involved if you remain dissatisfied.
- If your concern has still not been dealt with to your satisfaction, you may write to the
  practitioner's professional body. But remember, if you are engaged in an ongoing
  action, the practitioner may decide to withdraw representation. Addresses for the
  professional bodies are to be found in paragraph 14.
- The professional body may first seek to resolve your complaint through conciliation.
  If that fails, or is inappropriate, it must investigate your complaint as long as it is a
  matter which is within its remit. If you have concerns about the way your complaint
  has been investigated or if the professional body has declined to investigate it, then
  read on....

Who is the Ombudsman?
- The Ombudsman is appointed by the Secretary of State for Scotland after a process
  of open advertisement and independent selection.
What does the Ombudsman do?
- Investigates complaints about the way in which a professional body has handled complaints against legal practitioners.
- Investigates complaints about the unwillingness of a professional body to investigate complaints against legal practitioners.
- Reports to complainers on whether complaints have been handled fairly, thoroughly and impartially.
- Makes recommendations to the professional bodies where appropriate.
- May take a case to the Scottish Solicitors Discipline Tribunal.

Which professional bodies can the Ombudsman investigate?
- The Law Society of Scotland - complaints against solicitors who are members of the Society.
- Faculty of Advocates - complaints against advocates who are members of the Faculty.
- Scottish Conveyancing & Executry Services Board - complaints against qualified conveyancers or executry practitioners who are members of the Board.

Who can make a complaint?
- Any person who has a complaint against a legal practitioner which has been investigated by one of the professional bodies referred to in paragraph 4 or one which the professional body has declined to investigate.

Which bodies or people can the Ombudsman not investigate?
- Scottish Legal Aid Board.
- Scottish Court Service.
- Judges, Sheriffs, Sheriff Clerks and others who hold positions of authority in the Scottish Legal System.

How do you make a handling complaint?
- A complaint has to be in writing
- In your letter you require to include:
  - the name of the firm or practitioner complained about.
  - the professional body’s case reference number.
  - the date of the professional body’s disposal letter i.e. the letter which gives you its decision on your complaint and advises you that you may take your complaint to the Ombudsman.
  - your reasons for concern about the way your complaint has been handled.
What happens then?

- Your letter of complaint will be acknowledged immediately.
- If your concern is a matter within the Ombudsman’s remit, the professional body’s file will be called for.
- Your complaint will then be dealt with in chronological order.
- If your complaint is not one which the Ombudsman can investigate, you will normally be told why, at that point. Where possible, you will be given guidance as to who might be able to assist you.
- Reasons why your complaint may not be able to be investigated may include:
  - the complaint not having been advised to this office within six months of the date of the professional body’s disposal letter.
  - the complaint having been advised to the professional body before 3 June 1991.
  - the complaint not falling within the criteria referred to earlier in this brochure.
  - the professional body not having completed its investigation.

How long does an investigation take?

- The investigation itself will take a relatively short time once the file is under active consideration, as the Ombudsman is only concerned with the way the complaint has been handled by the professional body.
- The time from receipt of the professional body’s file until the Ombudsman issues an Opinion will vary, depending upon the volume of complaints received from month to month. When your complaint is received, you will be advised of the approximate time that will be taken, but it is unlikely to be less than two months nor more than four months.

What recommendations can the Ombudsman make?

- That the professional body provides the complainant with information and explanations about the underlying complaint and how it was dealt with.
- That further investigation is carried out.
- That the professional body reconsider its conclusions.
- That the professional body exercises its statutory powers as regards the practitioner.
- That the professional body pays compensation and/or costs to the complainant on account of loss, inconvenience or distress arising out of its handling of the investigation.

What sanctions does the Ombudsman have?

- The professional body must respond to any recommendation within three months. If it is not willing to comply with any recommendation, the Ombudsman may publicise that failure together with any reason given for not complying. Neither complainant nor practitioner may be identified.
- The Ombudsman may make recommendations to any of the professional bodies about their procedures for dealing with complaints in an annual report to The Secretary of State or at any other time. The Ombudsman may also include particulars of any investigation in that annual report. Neither complainant nor practitioner may be identified.
• The Ombudsman may report to The Secretary of State at any time on matters which are of concern.

What will a handling complaint cost?
• The Ombudsman's office makes no charge.

How do you access the Ombudsman?
• By correspondence:
  Scottish Legal Services Ombudsman
  2 Greenside Lane
  Edinburgh EH1 3AH
• By telephone:
  0131 - 556 5574
• By fax:
  0131 - 556 1519
• By E-mail:
  complaints@scot-legal-ombud.org.uk
• By Internet:
  www.scot-legal-ombud.org.uk
  (to access annual report and brochure).
• The Office of the Scottish Legal Services Ombudsman is open from 8.30 a.m. until 4.30 p.m., Monday to Thursday. Meetings are by appointment only.

Where are the professional bodies located?
• Client Relations Office
  The Law Society of Scotland
  26 Drumsheugh Gardens
  EDINBURGH EH3 7YE
  Tel. 0131 - 226 7411
• Faculty of Advocates
  Advocates Library
  Parliament House
  EDINBURGH EH1 1RF
  Tel. 0131 - 226 5071
• Scottish Conveyancing & Executry Services Board
  Mulberry House
  16-22 Picardy Place
  EDINBURGH EH1 3YT
  Tel. 0131 - 556 1945

Prepared 13 May 1998
7th January 2002

Ms Jenny Goldsmith,
Clerk,
Justice 1 Committee,
The Scottish Parliament,
EDINBURGH
EH99 1SP

Dear Ms Goldsmith,

Justice 1 Committee Inquiry – Meeting 5th December 2001

I refer to the invitation to this Board to give evidence to the Committee on 5th December and, having attended and read the subsequent Official Report, it is clear that some members of the Committee were not fully aware of the Board's work and others had not even heard of us!

It was suggested to me by Tony Reilly that if there were any supplementary information the Board felt should go before the Committee it was possible to submit that after the appearance.

I have given careful consideration to the position and feel there is some very important supplementary information that the Committee should see and would be obliged if you would distribute the terms of this letter to the Committee.

We, unlike the solicitors or doctors or other professions, were asked to create brand new professions from scratch and had to liaise with Universities on courses etc. Then the Board was put on hold for some years and only was resurrected in 1997. It takes 4 years to get a Degree, including 1 year's practical training - requirements for registration - and so the earliest we should be looking for registrations is 2001 and they are coming!

Paul Martin asked me about costs. We spend about £123,000 per annum but of that about £35,000 is for Indemnity Insurance. It used to be about £60,000 but has been reduced due to our "clean" record. The Department is suggesting that there will be substantial savings to the Public Purse from our abolition but as the enclosed schedule shows the possible saving is likely to be in the region of only £38,000.

Another MSP asked of the future and Lord James Douglas Hamilton asked why the numbers were so low.

The answer is that I think we are chasing the wrong market. While the numbers are low, the are increasing steadily and, in time, (as was recognised by the Review body) the financial position will improve.

But I feel the market lies elsewhere, - with paralegals

Here is a group of people, ably represented by the Scottish Paralegal Association, anxious to have a career path, currently running courses in conveyancing and execurtries, dealing with a large proportion of legal
work in firms, full of practical experience but lacking in the requisite educational requirements for registration and with no recognised professional qualification.

There are currently over 400 in the market place - and they are unregulated.

I enclose a cutting from a Public Notice that appeared in the Dundee Courier on 22nd December which highlights the difficulties in this area of regulation, - or the lack of it!

The Board is anxious to widen its powers for registration, the SPA is anxious to increase the educational standards of its members with the use of IT and Distance Learning courses - a hallmark of the Scottish Parliament - and its members are keen to have and, in my view, are entitled to have, a proper qualification.

Of course, not all the present paralegals might wish to register but it is believed that there are a large proportion who would. Also there would be a lot of work to do in bringing the educational levels up to those of the Board but this is a route that the Board feels is worthy of consideration.

Registration with this Board would also have the added advantage of regulating a large number of people handling a large amount of business who currently are not regulated.

Ultimately, some might even take the chance to go independent thereby effecting the culmination of a career path currently denied them.

I would be very grateful if these additional points could be placed before the members of Justice 1 Committee and would be more than willing to give further evidence on these points.

I believe the SPA would be supportive of these suggestions.

Yours sincerely,

[Signature]

Epic B Simmons
Secretary
PUBLIC NOTICES

SCOTTISH PARALEGAL ASSOCIATION

A new notice to the attention of the Scottish Paralegal Association from a firm of solicitors, reminding members that the firm's services are available to all clients in Scotland. The notice states that the firm's services are available to all clients in Scotland and that any inquiries can be directed to the firm's office in Edinburgh.

ANGUS COUNCIL

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1997
AND RELATED LEGISLATION

The following applications have been submitted to Angus Council. The public is invited to comment on the proposals.

- Application Number: 01/01234
- Application: Residential Development
- Location: 123 Main Street, Angus
- Reason for Development: Social Housing
- Conservation Area: Yes

ADVERTISER'S NOTICE

We have received an advertisement for a new product.

Ref: ADVERTISER'S NOTICE

Image: Advertisement

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Image: Advertisement
Scottish Conveyancing and Executry Services Board (SCESB)

Potential Savings if operated through Law Society of Scotland

SCESB Budget for year to 31st March 2002

£123,000

Less Costs that will continue (see Note)

Compensation Fund Insurance 14,280
Professional Indemnity Ins 15,000
Brokers' fee re above 5,000 34,280

£ 88,720

Less Law Society charges to include:

Current SCESB Costs

Staff Salaries 30,000
Print, posts etc 5,000
Office Equipment 1,000
Training 3,000
Inspection Fees 2,000
Publicity, website etc 10,000
Accommodation 12,000
Annual Report 3,000
Accounting and Audit 2,000

68,000

If Law Society charges for running SCESB are, say, £50,000

Then potential saving to Executive £38,720

Note

The cost of the Compensation Fund premium will require to continue as the Law Society of Scotland will not accept this potential liability into its Guarantee Fund. The Professional Indemnity insurance costs reflect the additional premium which, also, will continue to require to be paid to provide professional indemnity insurance.
24 December 2001

Ms. Jenny Goldsmith,
Assistant Clerk,
Justice 1 Committee,
Room 3.11, Committee Chambers,
Edinburgh, EH99 1SP

Dear Ms. Goldsmith,

Complaints against members of the Faculty of Advocates

I refer to the evidence given to the Justice 1 Committee by the Faculty of Advocates on 19 December. As part of the topics covered, the matter of the breakdown of the source of complaints was raised. Unfortunately, we did not have to hand at the time a complete breakdown of the identity of complainers who have intimated complaints against members of Faculty in the year 2001.

I am happy to say that I can now advise the Committee of the following:-

In the year 2001, a total of 20 complaints against members of Faculty have been received. Of these, 16 have come from members of the public. A further four have come from firms of solicitors. In addition, there is one further letter that has been received from a member of the public. It has not yet been sufficiently formulated to warrant formal inclusion on the list, since the individual in question has not yet decided exactly against whom she wishes to complain, nor of the detail of her complaint. It is perhaps best regarded as intimation of a potential complaint.

Of the other two possible categories of complainant, namely Judges and other members of Faculty, no complaints have been received this year.

I hope that the Committee will find this information of assistance. If the Faculty can assist further in any way, please do not hesitate to contact the Clerk of Faculty, Eugene Creally.

Yours sincerely,

[Signature]

Colin M. Campbell, Q.C.

TEL. 0131 - 260 5658   FAX. 0131 - 225 5341
JUSTICE 1 COMMITTEE

Consideration of 2003/4 Budget

Note by the Clerk

Background

1. The Scottish Executive’s budget proposals for 2003/4 will be published around Easter and subject committees will be required to report to the Finance Committee around the end of May.

2. Last year, the two Justice Committees decided, with the agreement of the Bureau, to meet jointly to scrutinise the budget proposals. This decision took account of the fact that each committee gains a different range of information and expertise from its work during the year.

3. The committees also agreed in principle to appoint an adviser on the budget last year but were unable to identify a suitable person in the time available. This year there will be some support available from the Finance Committee’s adviser, Professor Arthur Midwinter. However, as he will be covering the whole of the budget, some subject committees are also proposing to appoint their own advisers.

2003/4 budget process

4. The Committee is invited to agree that permission should again be sought from the Bureau to meet jointly to consider the budget proposals this year.

5. The Committee is also invited to agree in principle that an adviser should be appointed to assist with the budget scrutiny, assuming that a suitable person can be identified. If this is agreed, once a shortlist of names has been drawn up, the clerks will arrange a joint meeting of the two Justice Committees to consider it.

January 2002
JUSTICE 1 COMMITTEE

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2002

Note by the Clerk

Background

This instrument provides that any person detained and brought before a sheriff under Section 5 of the Protection from Abuse (Scotland) Act 2001 or Section 17 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 has representation in the custody court and that this representation will be provided in the form of free Assistance by Way of Representation (ABWOR). During the passage of the Protection from Abuse (Scotland) Bill, the Justice 1 Committee secured a commitment from Ministers to provide representation under the legal aid scheme to those arrested under the new Act. At that time, a gap was identified in existing arrangements dealing with the Matrimonial Homes (Family Protection) (Scotland) Act 1981. This instrument will provide for such representation.

The Subordinate Legislation Committee considered this instrument at its meeting on 8 January and determined that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 1st Report, 2002).

Procedure

The instrument was laid on 14 December 2001 and is due to come into force on 6 February 2002. Under Rule 10.6, the draft Regulations being subject to affirmative procedure, it is for the lead committee to recommend to the Parliament whether the instrument should come into force. The Minister for Justice has, by motion S1M-2608 (set out in the Agenda), proposed that the Committee recommends the approval of the Regulations. The Deputy Minister for Justice will attend to speak to and move the motion.

At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendation. The text of the Committee’s report will be circulated for approval by e-mail.
Background

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2002 (also to be considered at the Committee meeting on 22 January, see paper number J1/02/02/7) make provision for representation under the legal aid scheme for those arrested under Section 5 of the Protection from Abuse (Scotland) Act 2001 or Section 17 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981. The Legal Aid (Scotland) Act 1986 (Availability of Solicitors) Regulations 2001 aim to ensure that the duty solicitor provides such representation. The Executive note (attached) on the instrument states that “it is of concern to Scottish Ministers that a failure to provide for the duty solicitor to represent an arrested person may result in some individuals being unrepresented in the custody court”.

The Subordinate Legislation Committee considered this instrument at its meeting on 8 January and determined that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 1st Report, 2002).

Procedure

Under Rule 10.4, this instrument is subject to negative procedure which means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

The instrument was laid on 18 December 2001 and is subject to annulment under the Parliament’s standing orders until 7 February 2002.

In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee.
8005
20th December, 2001

The Scottish Parliament;
Justice 1 Committee,
Room 3.11, Committee Chambers
Edinburgh: EH99 1SP

Dear Sirs,

Subsequent to my appearance at the Justice 1 Committee on 31st October, which I attended with Ron Tasker, we have exchanged correspondence in relation to Michael Matheson's question regarding the Freedom of Information Bill.

In researching Mr. Matheson's question, I reviewed the transcript of the meeting and whilst doing so recognised that I had made an error in one of my responses to the Committee. I said that I saw no problem with members of the Committee seeing, privately in its entirety, the contract that we have with the Scottish Prison Service.

That was an error on my part and I wish to withdraw that response from the record. There are a small number of issues which must remain commercially confidential in order to preserve our competitive position both in Scotland, and England and Wales where we also operate.

Earlier this year we had been in discussion with the Scottish Prison Service about the publication of the contract between ourselves and SPS and had agreed an acceptable position. I understand that publication is now imminent.

There was a further error in my response in relation to the level of profit I quoted. I said that our profit in 2000 was £300k and that it was likely to be the same this year. I now find that to be incorrect: our forecast for 2001 is standing at £700k.

Kind regards,

[Signature]
I apologise unreservedly for these mistakes and any confusion that may have been caused as a result. It was my first time before a Government Committee and I was somewhat nervous. I apologise for misleading Committee members, it had certainly not been my intention to do so.

Yours sincerely,

                    Elaine Bailey

Elaine Bailey
Managing Director

copy:  Mr. Jim Wallace, Deputy First Minister
       Mr. Tony Cameron, SPS
       Mr. Ron Tasker, HMP Kilmarnock