



The Roberton Report

What is it and why does it matter?

What is the Roberton Report?

The report from Esther Roberton was published in October 2018 and proposes radical changes to the regulation of legal services in Scotland. She recommends creating a new single regulator for all legal services, appointed by the Scottish Parliament.

The new body would cover every aspect of regulation including:

- setting education standards.
- issuing practising certificates.
- handling all conducts complaints and prosecuting for discipline.
- financial inspections and anti-money laundering supervision.
- operating the Client Protection Fund.

The new body would end the Law Society’s and the Faculty of Advocates’ role in regulation. However, it would continue to be funded entirely by the legal profession.

How did the report come about?

The report arose, not because of a scandal or market failure, but because the Law Society proactively asked the Scottish Government to review the regulatory framework.

The legal services market is changing dramatically. Yet much of the legislation covering regulation is almost 40 years old and increasingly out of date. We have a range of ideas to improve the system but they require changes to legislation in the Scottish Parliament.

What was the reason for recommending such a major change?

It is unclear to us why Esther Roberton has proposed creating a new body. In her report, she said “Scotland is home to a well-educated, well respected legal profession with a high degree of public trust.” She went on to say “there is little evidence of significant wrong doing in the current model.”

Ms Roberton rightly described the complaints system as being complicated and slow. However, we think those issues can be addressed without creating the structural upheaval, cost and uncertainty from creating a new body.

What is the Scottish Government’s view?

In June 2019, the Scottish Government issued a response to the Roberton Report. It recognised how the main recommendation had “polarised” opinion. The Minister promised to consult further to try and build a consensus on reform. Meantime, she promised to focus on improving the complaints system.



93% of the Scottish solicitor profession believe the Law Society should be responsible for regulation.



81% of people in Scotland have trust in the solicitor profession. Higher than similar research showing only



48% trust in England and Wales.





What is the Law Society's view on the Roberton Report?

We agree with many of the report's recommendations. A lot of the suggestions in the report come from ideas we put forward during the review. These include a system of entity regulation, restrictions around the use of the title 'lawyer' and more flexibility to allow for better cross-border regulation.

However, we disagree fundamentally with the main recommendation which proposes removing all regulatory powers from the Law Society and giving them to a new regulatory body. It could reduce professional standards and increase costs significantly. Given the prime importance of protecting the public, we think such a change presents an unnecessary risk to the interests of consumers. It also raises rule of law questions around the independence of the legal profession from the state.

What are the problems with creating a new regulator?

• **Increased costs** – creating a new regulator will inevitably involve significant start up and running costs. The experience of the Scottish Legal Complaints Commission (SLCC), where costs have increased by almost 25% in just three years, shows how costs can escalate. Consumers are at risk of having to pay more for their legal services. Additional costs also risk leaving the Scottish profession at a competitive disadvantage.

- **Lower standards** – in England and Wales, where the regulator is separate from the Law Society, reforms are being taken which dilute regulatory requirements and risk reducing standards. A new inexperienced regulator in Scotland could take a similar approach.
- **Independence** – a key principle of the rule of law is the independence of the legal profession from the state. The proposal is for a new regulator to be appointed by politicians. A similar model in Ireland was rejected after concerns around the rule of law and independence of the profession.

What's the Law Society's alternative?

We are passionate about protecting consumers and ensuring the Scottish legal profession can thrive. In December 2018, we submitted a detailed response to the Roberton Report. This set out our support for many of the recommendations. It also put forward alternative reforms focusing on improving the complaints system. Our proposals would transform the SLCC into a Scottish Legal Ombudsman Service which could concentrate properly on dealing with consumer complaints thoroughly but swiftly. That ombudsman could give much needed focus to consumer redress and issues of compensation. This would allow the Law Society to continue its strong track record of addressing issues of professional misconduct. This kind of system was recently adopted in Northern Ireland.

The Roberton risks



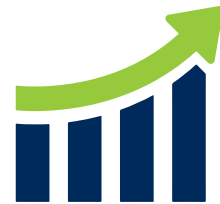
increased costs



lower standards



rule of law



SLCC levy has increased by 25% in just three years.



400 eligible complaints - last year out of millions of client matters

The single professional body model doesn't just work for solicitors, it works for:



Teachers



Accountants



Surveyors