

# Ownership and control of firms providing legal services under the Legal Services (Scotland) Act 2010



## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

Scottish Legal Complaints Commission (SLCC)

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Agnew

Forename

Rosemary

### 2. Postal Address

The Stamp Office

10-14 Waterloo Place

Edinburgh

Postcode  
EH1 3EG

Phone  
0131 528 5111

Email  
enquiries@scottishlegalcomplaints.org.uk

### 3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate  Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

## CONSULTATION QUESTIONS

**Question 1:** Should the following groups be included in the definition of “regulated profession” in the Legal Services (Scotland) Act 2010, and so be permitted to own a majority or controlling share in a firm providing legal services (a licensed provider) under that Act?

a) Chartered accountants regulated by the Institute of Chartered Accountants of Scotland.

**Yes**

**No**

The SLCC’s main remit relates to:

- receiving, processing, referring, investigating and determining complaints about legal practitioners and complaints about how the Relevant Professional Organisations handle complaints about the conduct of legal practitioners; and
- the provision of advice on legal complaints to the legal profession and complainers; and
- the driving-up of standards in the legal profession through its oversight functions by issuing guidance and recommendations to legal professionals about how they deal with complaints..

The 2010 Act extends the SLCC’s responsibility to also deal with legal complaints about licensed providers and to apply the provisions of the 2007 Act insofar as these relate to complaints about all legal professionals working within the licensed provider.

Whilst the SLCC has no political or commercial view about the make-up and extent of external ownership of licensed providers, the SLCC does have an interest in ensuring that any legal entity set up to provide legal services is appropriately equipped to ensure consumer protection, whatever the constitution. In addition, the SLCC does not wish to suggest that the conduct of legal practitioners could be in any way undermined by pressures which might be put on them by non-legal majority shareholders, who may be governed by different regulatory rules and who may be driven by profit, rather than providing a professional legal service which has come to be expected and demanded from the traditional legal practitioner, or not governed at all.

The SLCC notes that certain legislative steps must be taken to minimise the potential for risk to the integrity of the legal profession, this is in light of previously expressed fears about corruption within a licensed provider. The implementation of a strict regulatory scheme and the application of the “fitness to own” test, together with the requirement for the appointment of a Head of Legal Services should go some way to allay these fears.

The SLCC also notes the provisions regarding the implementation of the new regulatory complaint, which will be referred to the SLCC in the first instance and duly dealt with by the SLCC and the Approved Regulator in the same way as

would be the case for existing conduct complaints.

The SLCC's view is that the two key criteria which the Scottish Government is proposing to apply in its consideration of which professional groups should be included in the Section 49 definition seems sensible. It appears that members of ICAS fulfil both aspects of the criteria in terms of the responsibilities imposed upon members to adhere to the strict set of rules and requirements for both entry and continuing involvement in that profession. It is accepted that such members are also reasonably likely to enter into business arrangements with solicitors.

Provided that the licensed provider can ring-fence its legal services to ensure that practitioners providing legal services can remain subject to their own regulatory rules without compromising their position, or that of their clients, then non-legal majority ownership is not of major concern to the SLCC, insofar as legal complaints are concerned. It is inevitable that complaints will be made to the SLCC about the quality of the legal services provided by a licensed provider and also about the individual practitioner's conduct. Provided that the practitioner has adhered to the restrictions and regulations placed upon both the licensed provider and the practitioner as an individual, then the SLCC's interest insofar as complaint handling and maintaining standards is concerned should be met.

**b)** Accountants regulated by the bodies set out in paragraph 2.13.

**Yes**

**No**

The SLCC has no particular view in this regard, save as to reiterate comments made in respect of (a) above.

**c)** Members of the Association of Commercial Attorneys.

**Yes**

**No**

The SLCC has no comment to make in this regard, save as to reiterate comments made in respect of (a) above.

**Question 2:** Should any other regulated professions be included in the definition?

**Yes**

**No**

If so, please indicate which professions you think should be included and why (it would be helpful if you could indicate the bodies which regulate the professions in question, rather than simply naming the professional group).

The SLCC agrees it would be sensible to obtain further information about the level of potential overall ownership of licensed providers from those professionals who have at some point during the consultation process expressed an interest in participating in such entities, before deciding whether to include such professionals within the Section 49 definition. The SLCC would suggest that casting the net too wide in the early stages is risky, particularly where this could allow majority investment from foreign non-legal professionals which may or may not have a sufficiently robust regulatory administrative process in place and which might impact on the functioning and make-up of a licensed provider, which could in turn impact on the quality of services provided and the integrity of its employees.

It is not absolutely clear to the SLCC which professions, other than those referred to in the consultation document, would wish to submit to a strict regulatory scheme imposed by the appointed Approved Regulator and to the “fitness for involvement” test, in addition to the already existing requirements imposed upon them by their own professional association. Careful consideration would need to be given to whether both of the identified key criteria would be fulfilled if such professionals were included in the Section 49 definition. As mentioned above, the SLCC has no particular interest in the type of external investor; the SLCC’s focus is more on maintaining the quality of the services provided by legal practitioners working within such an entity.

The Scottish Government may wish to consider leaving the door open for such professionals to be included in the future, once their intentions have been ascertained and after a trial period involving those identified professionals which are most likely to fall within the definition of a “regulated profession” has taken place.

**Question 3:** Do you agree that the Scottish Government should consider confirmation agents and non-solicitor will writers for inclusion in the definition of “regulated profession” once the regulatory schemes for such individuals are fully operational?

**Yes**

**No**

The SLCC agrees that confirmation agents and will writers by the nature of the work which they are qualified to carry out, are more likely to fulfil both key criteria identified by Scottish Government, provided that the regulatory regime as proposed is as robust as it promises to be. The SLCC would reiterate its comments made in response to Question 1 above insofar as ensuring the quality of legal services provided is concerned.