



Response to Scottish Executive Consultation: Reforming Complaints Handling, Building Consumer Confidence Regulation of the Legal Profession in Scotland

Respondent: Core Mediation Limited

We do not propose to submit answers to the many questions about the workings of an enhanced complaints structure. We wish to suggest, however, that the whole approach to handling complaints might be viewed differently.

In our experience, and in the experience of others, many complaints, whether against the legal profession or others, arise because of frustration or lack of acknowledgement of difficulties which have arisen. Many of these complaints could be addressed by a process which encourages communication and discussion about the issues. This is hinted at, but not developed, in Chapter 4 entitled "Conciliation: Resolving Complaints at Source".

It is our submission that the concept of conciliation could be significantly expanded to deal with many complaints, at source and as they are handled by the Scottish Legal Services Ombudsman and the professional bodies. We submit that a significant number of complainants would be assisted by, and possibly content with, one or more of the following:

- Explanation of what happened
- Acknowledgement of difficulties which have arisen
- An expression of regret or apology for errors made
- Reassurance that it will not happen again to themselves or others
- Discussion about possible remedies
- Compensation if appropriate

Very often, in these situations, the involvement of a third party as conciliator or mediator can provide the necessary assistance to parties where a difference or dispute has arisen. We submit, therefore, that building into the complaints process the availability of mediation, both at an early stage when matters are first referred to law firms and at a later stage when matters are referred to the Ombudsman, can provide many complainants with the opportunity they seek and enhance the possibility of greatly reducing the adversarial nature of the complaints handling process, its cost and the time involved.

Mediation in cases such as these has a very good record of success, helping the parties to find common ground, engage in constructive discussion and achieve forward looking outcomes. We would encourage the Scottish Executive to give serious consideration to including recommendations that mediation be used at each stage in the complaints process. This will be consistent with the emerging culture of consensus and co-operation as an alternative to, and certainly as a first option instead of, antagonism and adversarial approaches.

21 July 2005

John Sturrock QC