

**PE1724/E**

Scottish Government submission of 7 October 2019

I refer to your request for a response to the above petition. Mr Alexander has raised a number of issues in his petition seeking a review to ensure there are equal rights for all legal professionals in the legal system.

These issues have been raised with the Scottish Government on a number of occasions. Some background on the establishment of the ACA and its development might be useful.

The Association of Commercial Attorneys (the ACA) was set up in 2009 to allow construction professionals to obtain rights of audience and rights to conduct litigation in construction-related litigation in the sheriff courts. Sections 25 to 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (the 1990 Act) provides the statutory basis for this. Members of the ACA are not solicitors and are not subject to regulation by the Law Society of Scotland.

The 1990 Act requires that a Scheme is developed and agreed with Scottish Ministers and the Lord President to specify the courts, categories of proceedings; etc. covered by the rights of audience. The ACA scheme was approved in May 2009 and is set out in a schedule to an Act of Sederunt. A transitional period was built into the establishment of the Scheme, to last for 3 years and would terminate *provided the number of registered Members with Practising Certificates reaches 50 in number*. The practising certificates are issued by the ACA with the consent of Lord President.

At the point where the transitional period was due to terminate Lord President's Private Office (LPPO) wrote to Mr Alexander to review the Scheme and consider whether the ACA was acting in compliance with the Scheme and to consider how that Scheme was operating in practice. Following that review a decision was taken to extend the transitional period until 1 November 2014 and the letter to Mr Alexander states:

*'It is acknowledged by all parties that the membership numbers of the ACA are not at the levels that were anticipated when the scheme was implemented. The consequence of this is that the functionality of the present approved scheme has yet to be fully tested by the association and a full assessment of the operation of the association under the scheme is difficult to ascertain.'*

Further, the review paper notes that *'The Scottish Ministers and Lord President have undertaken the review against the background of a significantly smaller number of ACA practising members than was anticipated in 2009.'*

By December 2015, the ACA had four practising commercial attorneys, comprising three members holding a full practising certificate and one with interim practising certificates. The review identified that membership was too limited in number for a Disciplinary Board, Complaints Board and Appeal Panel to be quorate, an issue which was incompatible with the ACA Scheme.

By December 2015 it was clear that the required membership numbers were unlikely to be reached and decision was taken to terminate the transitional period and work with the ACA to adapt the Scheme. This would have the effect of making the ACA Scheme "fully fledged" .

Some adjustments would be required to address changes brought about by court reforms during the transitional period, most significantly the new simple procedure rules.

Following an extensive exchange of emails, it was agreed that another member of the ACA would work with the LPPO on progressing a revised Scheme. That work has concluded and the ACA submitted a revised scheme for consideration by the LPPO and the Scottish Ministers on 3 April 2019. The revised Scheme has now been approved, published on the Scottish Government website and a copy provided to SPICE.

In response to specific points made by Mr Alexander, the Committee may find the following helpful:

**Commencement of the 1990 Act** – this is not an issue on which we can comment.

**Revised scheme / Handling of revisions** – Issues around the revised scheme, including the scope of revisions and handling, were the subject of very extensive correspondence from Mr Alexander to the LPPO and Scottish Government Justice Directorate. As noted above, another member of the ACA worked with the LPPO on progressing a revised Scheme. The ACA submitted a revised scheme for consideration by the LPPO and the Scottish Ministers on 3 April 2019 and that Scheme has now been approved and published on the Scottish Government website.

Underpinning much of Mr Alexander's correspondence was a belief that there is bias against the ACA and for solicitors within the LPPO and Scottish Government.

Mr Alexander raised the lack of content on the ACA on the Scottish Government website and was offered the opportunity to provide suitable content that would be published. This offer was not taken up.

During this period Mr Alexander submitted a request to the Lord President to allow for the wearing of gowns in court by members of the ACA. Mr Alexander brought this to the attention of the Scottish Government and was informed that this was a matter for Lord President.

Mr Alexander also sent numerous emails querying progress on the approval of the new ACA scheme, many of which challenged the planned approach that officials intended to take. The Director of Justice met with Mr Alexander to try and address his issues..

Mr Alexander met with the Chair of the Independent Review of the Regulation of Legal Services and made a submission to its call for evidence. He was critical of the fact that the ACA was not a member of the review, despite the low numbers of ACA members. He resists the recommendation made in the report to protect the title of "lawyer" and only allow it be used by regulated solicitors.

In July 2018, Mr Alexander submitted a formal complaint to the Scottish Government on the behaviour of officials involved with his correspondence and in handling of the ACA revised Scheme. That complaint was the subject of an independent investigation and was not upheld..

Mr Alexander does not accept the outcome of that complaint which he can appeal to the SPSO.

We have found no evidence to support a claim that there is bias or prejudice against the Association of Commercial Attorneys and all efforts have been made to support the work of the organisation and respond to Mr Alexander's correspondence on our handling of this work. We cannot comment on issues that are the responsibility of the Scottish Courts.

I hope the Committee finds this helpful.