Submission from the Society of Writers to Her Majesty’s Signet for the Legal Profession and Legal Aid (Scotland) Bill

We consider that some of the provisions in the Legal Profession and Legal Aid (Scotland) Bill stem from a misunderstanding on the operation of the guarantee fund and master policy. Secondly we feel that the proposed fee to be charged to a solicitor on receipt of a complaint will be unduly damaging to the profession. Thirdly we are concerned that where a complaint is unjustified the complaint handling fee is not currently returnable.

Would the Committee be prepared to hear evidence from the Society in open session?

Supplementary

1. The WS Society stated in its response to the Consultation paper that service complaints should be dealt with independently of the profession. This is what the Bill proposes and we continue to support that.

2. The Society feels that it will be important for the Executive and the Commission to explain clearly the benefits that will accrue to the wider public, rather than simply that tiny proportion of it that comes into contact with the Commission, of the benefits that will flow from the regime set out in the Bill given that the very substantial costs that it will incur will ultimately have to be paid for by the public.

3. The Society notes that the effect of clause 16 of the Bill, which permits the Commission to direct a professional organisation as to action it must take in relation to the exercise of powers conferred upon it if the organisation has not complied with a recommendation made by the Commission, is incompatible with the overall intention to allow professional organisations to regulate their own members in relation to conduct.

4. Similarly, the power set out in clause 29 to monitor the Scottish Solicitors Guarantee Fund and the professional indemnity arrangements (the Master Policy) are incompatible with this intention. The Society also notes the absence from the Bill of any specification of this power and therefore of the intention behind, and potential effect of, the clause. The Society also notes that the public are currently well protected by these arrangements.
5. The Society considers that the power of the Commission to reject a compliant as frivolous or vexatious set out in clause 2 of the Bill is most important. Properly used, it will deal with complaints which obviously have no merit. The quality of initial decision making will be critical; therefore, the quality of the Commission staff and their training is a most important issue. We consider that a complaints culture will arise under which, for example, a client seeks to reduce a fee by making a complaint (at present many complaints are fee-driven) and the Commission will require to be alert to this.

6. The Commission has a duty to investigate and determine service complaints (clause 7). The rights in support of the duty to investigate require to be more substantially founded. The Society feels that the power to demand papers should be a wider one encompassing other parties, including the complainer. In addition, it is our view that the Commission should have the right to call for oral evidence. In general, there is a need to have more fully developed methodology of investigation and determination.

7. The Society is concerned that the combined effect of the powers open to the Commission – to award up to £20,000 in relation to a service complaint – and the method of funding the Commission – in particular, the complaints levy – will be to create “advice deserts”. This problem will arise as a result of the withdrawal of practitioners from certain types of low-profit, high-complaint work. In our view, the difficulty that has arisen in providing adequate dental care is a useful illustration of the potential consequence. We understand that, for example, matrimonial cases lead to a higher-than-average number of complaints. It would not be in the public interest for there to be a reduction in the number of solicitors providing advice, particularly if it led to the dearth of such advice in specific geographical areas.

8. It is wrong to allow an appeal of a Commission decision only to an internal appeals committee (Schedule 1). The rules should provide for an appeal to the Court. It is also wrong that the board of the Commission be appointed by Ministers. Finally, it is iniquitous that the case levy be payable in cases where the complaint is not justified. We consider that, for these reasons the Bill does not comply with E.C.H.R.