Submission from David Hughes for the Legal Profession and Legal Aid (Scotland) Bill

I wish to note my objections to certain sections of the Legal Profession and Legal Aid (Scotland) Bill currently being considered by Parliament. The key provisions of the Bill are summarised below and I have noted my comments under each section:

The key provisions in the Bill are:

• A new Scottish Legal Complaints Commission, led by a Board with a non-lawyer majority and a non-lawyer chair, acting as a gateway to receive complaints about lawyers which cannot be resolved at source (but with an emphasis on complaints being resolved at source where possible).

• The new Commission taking over responsibility for handling complaints about inadequate professional service from the legal professional bodies, the Scottish Legal Services Ombudsman and the Scottish Solicitors Discipline Tribunal.

I do not consider it reasonable for the profession to be effectively governed by a board comprising a majority of lay members. I have struggled to find a comparison in other professions or walks of life and am disappointed that solicitors are being singled out in this manner. The Law Society Complaint section and Disciplinary Panel have, I believe, a long tradition of dealing with complaints concerning solicitors fairly and there is no reliable evidence to suggest that a body comprising mainly non-legally qualified members will be any better able to deal with the complex matters raised in many complaints any more effectively. The current system is open, accountable and scrutinised by a non-lawyer, the Legal Services Ombudsman. The proposed new body will simply add further bureaucracy and cost for no appreciable benefit.

I wonder also what the justification is for the legal profession being dealt with this in this heavy handed manner? While I can accept in years gone by that solicitors were in a privileged position, with many exclusive areas of practice, that no longer applies. Lawyers now compete in most areas of their practice with unqualified or semi-qualified lay members. While lawyers are required by law to have a minimum level of professional indemnity insurance, contribute to a guarantee fund, are restricted in the methods of advertising and marketing, subscribe to a guarantee fund to protect the public from the fraudulent actions of their members and are subject already to a statutory complaints scheme that can impose fines or deprive them of their livelihood, where is the regulation for our competitors? What regulatory protection is available to protect the public from unscrupulous estate agents, employment law practitioners undertaking cases in the Employment Tribunal, etc.

I find this proposal to be unnecessary, ill-conceived, a waste of public resources and to be wholly unjustified.

• Maximum amount of compensation for inadequate professional service complaints being raised to £20,000

The level of compensation payable for inadequate professional service may require to increase from time to time and that is unobjectionable in principle. The proposed increased powers of the new commission are quite unacceptable, however, and could quite simply result in smaller firms or sole practitioner practices being put out of business if the worst were to happen. The level of compensation or fine that might currently be imposed is quite adequate to deal with this type of complaint. If a client has actually suffered any loss as a consequence of an act or default of their solicitor they can be appropriately compensated in the law of negligence. It is unnecessary and contrary to the established common law of Scotland to impose penal sanctions of this magnitude for wrongs of this type.

• Responsibility for professional discipline remaining with the legal professional bodies and discipline tribunals but the way in which such complaints are handled being overseen by the Commission.
This proposal adds another level of bureaucracy to an otherwise perfectly appropriate system and is unnecessary and a waste of public resources.

- First steps towards giving rights of audience and rights to conduct litigation to members of other professional or other bodies.

I, along with the majority of my colleagues, have no objection to the few remaining exclusive areas of our practice being opened up to competition. Please ensure, however, that we are allowed to compete on a level playing field with our competitors by requiring them to meet the same high standards of professionalism, training, qualifications, conduct and be required to have in place comparable professional negligence insurance, contribute to a guarantee fund and be subjected to the same restrictions on advertising and the same degree of scrutiny and penalties for misconduct or inadequate professional service, as the legal profession. Unless and until this can be guaranteed, this proposal should be shelved.

- Transfer of responsibility from the courts to the Scottish Legal Aid Board for granting and terminating legal aid in serious criminal cases.

As I do not practice in this area I have no comment to make on this proposal other than that I would have thought that the courts would be best placed to ensure that the rights of the accused are not undermined by lack of resources for their defence team; or indeed that these resources are not being squandered or used inappropriately.

- Enabling the Scottish Legal Aid Board to fund certain advisors other than solicitors to provide advice and assistance.

I have the same comments to make in this regard as detailed above in relation to rights of audience in the courts.

Please be advised that these comments are made by me in a personal capacity and do not necessarily reflect the views of my colleagues or my firm.