Submission from Lorne Graham for the Legal Profession and Legal Aid (Scotland) Bill

The principle that a profession establishes and funds its own complaints machinery is clearly exposed to the criticism that it is going to be inherently biased in favour of its own members. However, this principle has existed in practice because often only an appropriately qualified professional has the necessary expertise to assess whether or not a complaint is justified against a fellow professional. The Law Society of Scotland has however accepted that for justice to be seen to be done, this machinery must be as far removed from the profession as possible.

Legal complaints are rarely so obscure as to only be fully understood by legal professionals. Nonetheless, a finding of professional negligence in any particular field used to require that a body of experts in that field agree that an action or behaviour was negligent. The Bill does not adhere to this fundamental principal of assignment of blame and instead gives the decision-making power to unqualified persons and demands that the ‘defender’ in the complaint settles costs regardless of outcome.

It would appear that we are asked to accept what is clearly a breach natural justice if not of Human Rights and that we are to personally fund the salaries of what was mainly a voluntary body whilst other forms of paid ombudsmen or justice bodies are funded from taxes. Furthermore, we are to pass control of key conduct and policy decisions of our profession to this body, even where a specific claim has not been made.

My first criticism of the Bill is therefore that it goes so far in its efforts to make the complaints machinery independent of the profession that it is actually inherently biased against the profession.

With such an inherently biased system in place, it may well be that the much publicised disappearance of the small High Street law practice will come to pass. The risks may be too high when these firms are constantly forced to reduce fees in a consumer-driven economy. Perhaps this is an inevitable backlash of the profession having behaved like a cartel in the past and consumers are now reacting to their new freedom of choice.

However, in doing so they may be damaging their own marketplace and the true value of the service on offer in their local law practice. A new form of legal service: remote, clinical, restrictive in choice and free of personality and personal service emerges to fill the void. We have seen this happen to banking, grocery supply and many other High Street shops. We have seen how the High Streets become clones of each other, with the same shops present in every town offering the same goods. We have seen how these companies operate so successfully that they actually transcend the free-market by undercutting to remove competitors and ultimately delivering far less choice than was previously available.

The transition has been shown in other industries to be barely perceptible to the consumer until it is too late to reverse. If it was to happen to the provision of legal services, small print and not an independent body would govern complaints. The purpose of the Bill would have been usurped and the consumers it aimed to protect would have been disenfranchised.

My second criticism of the Bill therefore that it does little to address improving quality of service and instead focuses on compensation for poor service. In doing so, the Bill risks the severe contraction and possibly the destruction of the local profession.

Lorne C Graham