Submission from Elizabeth Dunlop for the Legal Profession and Legal Aid (Scotland) Bill

I write as a lay reporter to the Law Society for the last five years. I am extremely concerned about the possible effects that some of the proposed legislation will have on small legal businesses and those in the rural areas of Scotland. I am concerned especially about the proposal to charge Solicitors up to £20,000 for work that is judged to be of an Inadequate Professional Standard and that the proposal is that accused solicitors will pay the costs of any investigation. My concerns are listed below.

1. It seems to me to be unfair and unjust for anyone to be expected to pay for proving themselves innocent and for their accuser to walk away without contributing anything to the enquiry that they have started. It is not unknown for a complaint to be made by a client who is reluctant to pay the bill for work that has been completed and completed well. It seems to me that it is wrong to expect the solicitor in a case like this to have to pay for the enquiry when they are, and are proved to be, innocent of the charge against them.

2. It is not unknown for clients to expect that work will be done more quickly than it is and, frequently, the reason that things take longer is that another company or firm has not responded to requests from the Solicitor. Even when the Solicitor has explained the situation to the client, the client makes a complaint. I consider that it is manifestly unfair that, in these circumstances, when the client has had an explanation and the situation is clearly because of a situation that is outwith the control of the Solicitor, the Solicitor should have to fund an enquiry. It is also a waste of the investigator’s time.

3. I am concerned that rural Scotland will become devoid of Solicitors especially where Solicitors have decided that it is not financially worth taking on Legal Aid Clients or taking on new clients who they think might create a complaint against them. This will render those who might most need the services of a Solicitor – such a single parent, women in an abusive relationship and anyone without their own transport (public transport being notoriously unhelpful in some areas) – unable to access legal help. The majority of legal firms left operating in Scotland will be those with a large caseload, and in areas where that load can be generated. Rural areas will not have the ability to generate this volume of business. There is a danger that there will be some reasonably sized towns that will not have any lawyers. This does not seem to me to be a sensible way forward to benefit the community. It seems to me that the losers will be the more vulnerable members of the community, the ones who need legal advice the most and to whom it could now be denied.

4. At the moment there is a significant number of lay reporters and of lay people on committees at the Law Society. We are independent and our views are not influenced by consideration for or loyalty to lawyers. Do you have a guarantee that the people assessing future complaints will be similarly unbiased? It seems to me that they could be influenced by whoever is paying their salary cheques. Will they know enough of the intricacies of the legal profession to be able to make a sound judgement?

During my years with the Law Society three things have impressed me –

a) That the overwhelming majority of lawyers work for the benefit of their clients and treat their clients with courtesy and respect.
b) That if anything goes wrong, the Law Society steps in and makes sure that the client is inconvenienced as little as possible.
c) That lawyers guard jealously the reputation of the legal profession.

I hope that this situation will continue after the Executive have re-organised the Legal Complaints system to their satisfaction.

Elizabeth Dunlop