Submission from Jamie Watt for the Legal Profession and Legal Aid (Scotland) Bill

I wish to make some representations with regard to the proposed Legal Profession and Legal Aid (Scotland) Bill. The matters which concern me in particular are as follows.

With regard to the proposed Legal Services Complaints Commission, the lack of a direct right of appeal is unfair to the legal profession, and breach of the European Convention on Human Rights, which is part of the law in Scotland.

Furthermore, because of the lack of a right to appeal directly to the courts, to challenge a decision of the proposed body would mean seeking judicial review. This is a very costly option, especially so as it would mean instructing separate counsel as most solicitors are not experienced in such actions. Also, the process of judicial review has its own specific limitations, which may mean it is not particularly useful or unduly complex to rely upon. Because of these two factors and the risk they bring to the process of appeal, it is likely many cases will not be challenged, even though their facts may warrant re-examination. This will mean solicitors relying on professional indemnity insurances, consequently raising premiums across the board for all Scottish solicitors, feeding into higher fees for the consumer.

I have further concerns regarding the necessity and cost of instituting this new body. No major fault has been found in the current approach to claims handling, which begs me to question why change is necessary.

Also the current approach deals with claims in a cost effective manner. Instituting a new body which will duplicate some functions already dealt with elsewhere, is not cost-effective, especially so when it means bringing in paid staff to perform roles currently provided on a voluntary basis.

The fact that solicitors are also required to cover the costs of this body is also unfair. If a claim is unsuccessful then the complainer should pay. Innocent victims of unwarranted complaints should not be penalised because of such complaints. Surprisingly, this is what is proposed, even though it is patently unfair.

Ideally there should be one body to deal with all complaints. The creation of this new body will therefore only serve to muddy waters for the consumer, who may end up requiring the services of a solicitor to properly manage their complaint, due to the proliferation of available avenues of complaint.

The proposed increase in the level of compensation is also flawed. In instituting an increase on the basis of a white paper which examined a separate jurisdiction is nonsensical. Levels should be appropriate to our own particular situation here in Scotland. To my knowledge, there is/are no significant complaints with regard to the current levels of compensation, and therefore they should remain unchanged. This point may also have significant impact on the ability of the public to access the services of a solicitor. Due to the elevated levels of risk involved, due to the higher potential compensation level, work which attracts low fees may become unattractive due to the exposure to risk it brings. Therefore the consumer may find it hard to find a solicitor to perform this work, and if they do, the cost may be prohibitive.

Jamie Watt