Submission from Mary McGowan for the Legal Profession and Legal Aid (Scotland) Bill

I respond to the general call for evidence and comments on the above Bill. I do so wholly in my personal capacity whilst naturally aligning myself with the response submitted by the Law Society of Scotland.

I have no objection to this response being posted publicly but would ask that, for obvious reasons, my address is deleted.

Background

I was admitted as a solicitor in 1987. Like many of my contemporaries, my primary interest in law stemmed from a desire to assist people who found themselves in difficult or distressing situations. As part of my honours degree I studied social and welfare law and produced a dissertation about the problems of dampness in Council housing in Scotland. When in practice I did a wide range of work for all sectors of the Scottish public. In 1992 I joined the Law Society of Scotland and, for the last fourteen years, I have had the privilege to work with a continuously evolving Client Relations Office. Whilst clearly I have a vested interest, I am nevertheless well placed to comment and feel duty bound to place on record my personal concerns about the ramifications of this Bill in its present form, and also to present a challenge to the Commission.

The Purpose of the Bill

It might surprise you to learn that the staff of the Client Relations Office appreciates and understands the instinctive reaction that “it cannot be right for the Legal Profession to police itself”. After all, we hear this on a daily basis. Accordingly, I have no difficulty with the premise that an independent body should handle service complaints, provided this is done properly and the body is truly independent. However, what is proposed goes far beyond service complaints handling. The ramifications of this proposed piece of legislation will be damaging for the public, in particular, and the Profession which, by and large, serves Scotland and the Scottish people to the highest standards.
Challenge to the Commission

This Bill has been published at a time when the Client Relations Office is producing the best ever complaints handling results. Every target has been exceeded. The quality of decision making is first class and, contrary to perception, the decisions are not made by solicitors alone but by committees composed of equal numbers of lay and solicitor members.

The challenge for the Commission is to emulate the success of the Client Relations Office whilst achieving its primary purpose. Handling of complaints about legal services is a complex process in which various factors require to be balanced. Very often, the complaints are about the way one human being feels that he or she has been treated by another. Most clients need a solicitor when they are in trouble, distressed or experiencing a significant life change. Add into the mix the multi-dimensional nature of the work carried out by solicitors, and you will understand that this requires sensitive, careful, and empathetic treatment. It is not a commodity which can be bought and sold nor is it something which can be achieved by ticking the right boxes in a checklist. The Client Relations Office has developed into a highly effective unit which recognises the causes of complaint, promotes their early resolution and investigates them rigorously with fair results. This is appreciated by more than nine out of every ten complainers. I have seen no proposals that give me any confidence that the Commission, with all the cost and disruption of setting it up, is going to produce anything half as good, let alone better.

Wider Ramifications

Moreover, this Bill signals the advent of a two tier system of legal advice depending on a person’s means. Let there be no mistake, people with funds and big business will always have access to quality legal advice. Until now, every Scottish citizen, regardless of means, has had the opportunity to obtain similar quality legal advice. The Society’s formal response will explain why there will be advice deserts and it appears to me that the intention of the Executive is to populate these deserts with lower quality, unqualified legal advisers directly controlled by the Scottish Legal Aid Board, which is an agency of the Executive, and who will not be regulated by the commission. This will create gross inequalities. This is particularly worrying from the perspective that many of these clients will be experiencing problems with agents of the state in areas such as benefits, housing and health.

I have tried to appreciate the thinking upon which this Bill is predicated. In my view there is little demonstrated. It is a knee jerk reaction to a perceived but non-existent problem trumpeted by a tiny minority with axes to grind, in an attempt to curry favour with a public who largely are not bothered in the slightest by how solicitors are regulated and I do not think that I will alone in regretting the day I supported the concept of a Scottish Parliament, believing that it would be a focus for change for the good in Scotland. Instead, like dental services, good quality legal advice will be the province of the rich. It is astonishing that an Executive comprised largely of a Labour membership should promote such gross unfairness.

The Future?

It was the job of Mrs Linda Costelloe Baker, the outgoing Scottish Legal Services Ombudsman, to criticise the Society’s complaints handling processes. I think it is worthy of note that she had no recommendations to make to the Society on its complaints handing in her last Annual Report and I predict confidently that there will be no recommendations in her final annual Report which is due out shortly. This is hardly indicative of a failed organisation. On the contrary, the irony is that the Client Relations Office is exceeding its targets whereas the Scottish Legal Services Ombudsman, which is effectively a division of the Scottish Executive, is failing now totally to do so.

If the management of the Ombudsman’s departure and replacement let alone the standards applied in the consultation and in exchanges of information with the Society are an indication of how the new Commission will be run then I have real concerns for the legal profession and their clients in the future.