Submission from Ivor Klayman, Caesar and Howie for the Legal Profession and Legal Aid (Scotland) Bill

Having studied the provisions of this Bill, I make the following submission in my personal and professional capacities.

I was admitted as a solicitor in Scotland in 1968. I am currently a senior partner of a country firm offering a wide range of services, in the fields of conveyancing and court representation among others, but particularly in the fields of legal aid work, elderly client advice and adults with incapacity. We have offices in Bathgate, Whitburn, Falkirk, Livingston and Alloa. We represent at any one time a large number of clients. Caesar & Howie has been established for over two hundred years and is an integral part of the communities which my firm serves.

In addition, I am a Convener of a Client Relations Committee at the Law Society of Scotland. I have witnessed at first hand the evolution of the complaints handling process and am deeply saddened that the perception – and let us be clear it is not the reality – that solicitors policing themselves is disadvantageous to the public will have ramifications which far outweigh the benefit in having a so called independent commission.

I appreciate that the Law Society of Scotland will make its own response but I would ask you to take time to read my principal concerns.
What Price Justice?

My firm provides advice to some of the poorest members of society. We represent people who have mental health issues; require guardians; have difficulty in understanding legal concepts and who have unrealistic expectations of outcomes. As a firm, we will require to revise radically our policy of accepting clients whose circumstances or the type of work involved suggest that there is likely to be a complaint.

If I might provide an analogy. If I were a greengrocer selling an apple at 10p knowing that if the person complained to the greengrocer’s commission then, regardless of the quality of that apple, I would automatically have to pay a penalty of £10 then I would think seriously about stopping selling apples. If that applied to all of my products then I would seriously require to consider shutting up my shop.

This issue will require to be considered by every practice in Scotland. Firms will close and those clients who can least afford to go without representation will be most disadvantaged. This is clearly not in the public interest. I would ask you to ponder carefully on these ramifications.

Economic Impacts

If solicitors’ firms close this will have serious economic impacts in areas such as those in which we practise- Alloa for instance has Disadvantaged Area status. We employ around 70-80 people whose jobs would be lost.

The Gershon Report urges the public sector to make efficiencies and to downsize in favour of the private sector. The Bill’s proposals will have the opposite effect. Not only will 36 private sector jobs be lost in the Law Society and transferred into 60 public sector jobs with the Commission; solicitors will be forced out of private practice and in to public sector jobs. This is in direct contravention of Government policy.

Human Rights

I find it absolutely astounding that the office of the Presiding Officer declared this Bill ECHR complaint and continues to do so in the face of the expert opinion of Lord Lester of Herne Hill, QC, that it is not. Not only does it lack the basic provision of an external appeal; it is clearly not independent of the State as the Board will be appointed by Ministers and the majority will be “lay people”. What
will that mean in practice? What guarantees can be given that there will even be an attempt to appoint fair minded and impartial persons with appropriate qualifications? If I wish to make a complaint about a plumber I would not expect an electrician to be giving his opinion on whether or not plumbing work had been adequately carried out. I see also that there is no guarantee of solicitor representation so I am unable to see how reasonable decisions can be expected to be arrived at nor how accountable this body will be.

Usurping the functions of the Court

Might I remind the Committee that the last time the Government set up a body which usurped the functions of the Court it was called the CSA which has proved to be costly, bureaucratic and wholly ineffective in achieving its primary purpose. Might I suggest that the Committee thinks carefully before sanctioning CSA mark 2.

Conduct Issues

I feel very strongly that in a democratic society there should be a clear division between the Executive, the legislature and the Judiciary. As part of the structure, I consider that a strong independent legal profession which is able, where necessary, to “take on” the power of the State is of paramount importance. What is proposed in this Bill – namely that the Commission will be able to enforce its views on the Society in respect of its members – means that, ultimately, the State will control the solicitor profession. What was the Executive thinking of in coming up with this proposal?

Costs of Commission

Apart from the unfairness of the “solicitor pays” levy and “case fee” payable by solicitors regardless of the outcome, I am deeply concerned that there has been no proper cost/benefit analysis carried out. It is unclear to me at this stage exactly what structure the new body will adopt; how decisions are to be made; how quality is to be assured and how accountable this body will be in terms of finance. I find it especially galling that the cost of oversight of the Society’s complaints mechanism, which is currently borne out of the public purse, will be transferred to the solicitor profession and, naturally, onwards to the wider client base. Why should clients who are perfectly happy with the service received from their solicitors bear the cost of handling the gripes of the few?
Compensation

On 31 March 2005 the maximum compensation which could be ordered by the Law Society was £1,000. In a mere three years this will increase twentyfold. Where is the mandate for this? Where is the need for this? I see that the White Paper produced in England has the same figure. Are we to have English ideas adopted in Scotland? If so I suggest the Committee look long and hard at the English shambles which passes for a complaints body where it can take up to TWO YEARS simply to be assigned a case manager and reference. The Law Society of Scotland do this within ONE WORKING DAY.

Conclusion

Even if the perceived problems thought to arise where solicitors police themselves needed to be dealt with otherwise than by the massive strengthening and improvements in throughput and consistency of decision making which the Law Society of Scotland have put in place over the past two or three years, this Bill is not the answer. It is a measure dictated by what the Executive perceive as pleasing the public and therefor good for votes. Such measures rarely succeed. Indeed, the Executive will have taken upon itself responsibility for a quango which will face exactly the same problems which are faced by the Law Society of Scotland namely that there will always be people who are unhappy when it is found that there is no validity to their complaints. When that happens instead of lambasting the Law Society for a lack of independence it will instead lambast MSPs for producing a body which does not give them the results they want with the inevitable political backlash. I challenge the Executive to produce a body which is as fair, properly composed, properly structured and has sufficient powers to meet the expectations of the Scottish Public whilst at the same time allowing the Profession to work independently and profitably in the interests of all sectors of the Scottish Public as the Law Society of Scotland’s present system. This Bill comes nowhere near to meeting that challenge.