Submission from Angus Buchanan for the Legal Profession and Legal Aid (Scotland) Bill

It appears from examination of the Bill that contrary to the expectations of the Law Society of Scotland and the Profession, the terms of the Bill go much further than was envisaged in discussions between the Law Society and the Executive. Whilst the Law Society agreed that the question of complaints might be dealt with by an independent handling body, the Bill seems to be promoting an organisation which would go far beyond that envisaged, with potential adverse implications for the legal profession, those they employ, and, ultimately, the public. Specific comments are as follows:

1. The cost implications are horrendous for the Profession. In terms of the Bill the Profession is to fund the running of the Complaints Handling Body; if large commercial firms de-register as Solicitors and if those Solicitors in the public sector resign their Law Society membership as may happen then the burden of the proposed annual levy on the remainder of the profession could have the effect of leading to either a substantial rise in fees or Solicitors deciding that it is not worthwhile continuing in practice because it would not be economical to do so. It is hard to envisage that faced with such a system and at the present rates of remuneration, Solicitors would consider there to be merit in undertaking legally aided work, to the disadvantage of the least well off in our society. In addition it is proposed that the Profession pay the administration costs of any complaints and it would appear that there will be no cost implication for a complaining member of the public whether or not the complaint is justified or vexatious. This could lead to a huge number of complaints by members of the public on the basis that they are in a no risk situation and indeed, may well lead to members of the public making complaints in the hope that the Solicitor will make a token payment to settle the matter before the Complaints Handling Body becomes involved.

2. The Bill as drafted does not contain a proper Appeals procedure to an independent body such as the Sheriff Court or the Court of Session and in our view this is contrary to the European Convention on Human Rights. Additionally, there would appear to be a Human Rights argument against such proposals affecting the legal profession only, and not other professions or industries.

3. We, like other members of the Profession, are concerned that the Complaints Handling Body will not be politically independent and open to abuse by those who have an anti-legal profession agenda.

4. The Bill as drafted could lead to the end of the legal profession in Scotland as we know it. There is a possibility that the large city Firms dealing entirely with commercial work will de-register as Solicitors and carry out their work purely as commercial consultants and the Banks and other Financial Institutions could take on conveyancing and executory work. This will lead to an erosion of the traditional High Street Firm, particularly in the towns outwith the major cities and in rural areas. It will also lead to the likelihood that legal firms will not take on contentious work or dispute work such as family law, civil court work, neighbour disputes etc. as these are very often the types of cases where client disappointed in an outcome will complain without merit as to service. This, in our view, could lead to members of the public being unable to access legal remedies and MSP’s and MP’s having queues at their Surgeries with members of the public complaining that (a) they cannot get a Solicitor to take on their case and (b) requesting that the MSP take on their case (no doubt at no cost to the member of the public).

5. The levels of compensation promoted in the Bill appear to be excessive and there must be some form of mechanism to ensure that the level of compensation is related to the value of the work carried out and the fee element.

6. It would also appear that the Bill causes confusion between complaints matters such as inadequate professional service and the question of negligence. Professional
negligence is not a matter for this Forum as it is dealt with by independent insurers and it appears to us to be entirely inequitable that the Complaints Handling Body or the Scottish Executive should have any powers in relation to the Profession’s Master Policy for Professional Indemnity and also the Guarantee Fund which is a unique protection for the public.