Submission from G Moran for the Legal Profession and Legal Aid (Scotland) Bill

I have noted with deep concern the terms of the above Bill which seem to me to be contrary to logic and equity and also contrary to the best interests of the legal profession in Scotland and the Scottish public in general. I have noted with regret the readiness of the Scottish Executive to impose burdens on others while at the same time declining to accept relevant burdens for themselves. A prime example is the behaviour of the Justice Minister and the Lord Advocate over the Shirley McKee affair. There would seem to be no good reason for the Scottish Tax Payer to meet the amount of compensation paid to Shirley McKee and the expenses of the litigation which she was forced to initiate. Given the logic of the above Bill the Justice Minister as well as the Lord Advocate should be individually surcharged with the sums of money involved having regard to the grossly inadequate professional services which appear to have been provided in relation to that particular matter.

The thrust of the Bill is both unnecessary and unjustified given that there are already adequate systems in place within the Law Society and the Law Courts to deal with inadequate professional services, professional misconduct and negligence. The Bill appears to proceed on the basis “consumers good, lawyers bad” and consumers are regularly encouraged by TV adverts and otherwise to pursue claims against lawyers, a system which can only increase in light of the provisions of the above Bill.

My partner and I as partners until eleven years ago in another firm were in the recent past referred to the Law Society, in two cases, the first on the basis of inadequate professional services of that firm and the second on the basis of mis-selling of an endowment policy by that firm. The matters were fully investigated by the Law Society (the first mentioned complaint being also referred to a Reporter) and it was established that there was absolutely no basis in fact or in law for the complaints which had been made against my partner and me and that the endowment policy had been sold to the client by the client’s Building Society, a fact which must have been known to the client. Under the proposed system we would have been at risk of an inappropriate finding by the new Complaints Commission and without a right of appeal, but would also have been charged a flat fee towards the expense of financing the new Commission.

The Bill will seriously damage the independence of the legal profession, which independence is vital for the security and protection of the individual and the stability of society. The effect of such legislation will be to increase significantly the cost of legal services to the general public. It appears to my partner and me that the aim of the Scottish Executive and the UK government is to destroy democracy in this country and clearly see destroying the legal profession as the best means of achieving that end. “Come the revolution, first kill the lawyers” is alive and kicking in Scotland today. It is also extremely alarming how much legislation is coming from the current Executive which criminalises the general public e.g. the single survey and Landlord registration requirements.

I would doubt that MSPs would accept the justice of a Quango set up to investigate the adequacy of the work done by and expenses claimed by MSPs with no right of appeal from the decision of such Quango and with MSPs having to meet out of their own pockets the cost of such Quango, the compensation awarded and the cost of each complaint made against them no matter how frivolous or vexatious.

I and my partner have a number of specific concerns regarding the provisions of the Bill:-

1. The Bill does not comply with the requirements of the European Convention on Human Rights in inter-alia the following respects:-

(a) the Members of the Commission are appointed by the Scottish Ministers;
(b) There is no automatic right of appeal from a decision of the Commission.

2. A blanket charge on the Legal Profession is clearly inequitable since not only is the profession being required to meet a flat fee as a contribution towards the cost of running the new Commission but also a handling fee is imposed on each individual firm in respect of
whom a complaint has been made regardless of whether the complaint is justified and upheld or not.

3. There is no corresponding provision for an award of expenses against the maker of a frivolous or vexatious complaint and this is clearly inequitable and one sided. Without such an ability to award expenses against such a complainer the Legal Profession is being unfairly targeted and this can only lead to an increase in complaints against the Legal Profession which in turn will have the effect of reducing the types of work which the Profession will be prepared to undertake and perhaps in the long run will lead to the inability of the Legal Profession to support the rights of the citizen against the Executive. It is of course possible that this is the long term aim of the Scottish Executive and the Scottish Ministers.

4. The Bill is clearly a political exercise with no clear thought as to the consequences of the proposed enactment.

5. The figures for compensation (recently increased from £1,000 to £5,000 and now proposed to be increased to £20,000) appear to be an import from England in much the same way as the Single Survey Scheme has been imported from England, both Schemes irrelevant to the Scottish Legal Scene. There appears to be no evidence adduced by the Executive to justify the figure of £20,000 in respect of compensation nor is there any consideration of whether or not a firm against whom an award of compensation may be made is financially in a position to make payment of the compensation.

6. The Law Society of Scotland have lodged with you their comments on and objections to the terms of the above Bill. I can do no better than incorporate the terms of those comments and objections into this e-mail and these are repeated brevitas causa. I also understand that the Law Society have lodged with you the Opinion of eminent Senior Counsel advising that the terms of the above Bill are not compliant with the requirements of the European Convention on Human Rights.