Submission from Haddington CAB for the Legal Profession and Legal Aid (Scotland) Bill

This response is from the perspective of Non Solicitor Reporter; Client Relations Committee Member; Client Care Committee Member for the Law Society of Scotland and Manager of Haddington Citizens Advice Bureau

I have grave concerns about the Bill as it stands as follows:

LEGAL PROFESSION

The Bill

- has the potential to reduce access to justice for the consumer through the likely reduction in solicitors, particularly for vulnerable consumers, through the proposed costs and penalties
- creates an imbalance in equity between practitioner and consumer
- will create additional bureaucratic hurdles, delay and confusion for the consumer
- removes one layer of dispute resolution to the detriment of the consumer
- inappropriately seeks to harmonise with the system in England & Wales
- takes no account of the outcomes of the Justice One recommendations
- will cost more than the current systems and not add value

The Bill has the potential to reduce access to justice for the consumer through the likely reduction in solicitors, particularly for vulnerable consumers, through the proposed costs and penalties

In East Lothian, we have already seen the negative effects caused by the previous changes in Legal Aid leading to a continuing reduction in numbers of solicitors firms offering this service to the detriment of the most vulnerable members of our community. I believe that the proposed costs and penalties will encourage more solicitors, particularly in rural areas, to withdraw from this type of work further disadvantaging the communities they service and society as a whole. The public perception that £5,000 is “loose change” to a solicitor may be relevant for the big multi partnered firms but I doubt this would be the case for the rural practitioner, small firm in a deprived area or Law Centre, particularly those firms whose main source of income is legal aid.

The Bill creates an imbalance in equity between practitioner and consumer

The Scales of Justice certainly seem to be weighted against the practitioner with the expectation that the solicitor will pay for everything.

If the “polluter pays” argument is to be used, it should be used equally ie if the solicitor is found to be without fault, should the complainer then be liable? There will always be someone who doesn’t like the advice they have been given and who receives different advice by another practitioner but it doesn’t necessarily mean either advice is wrong otherwise there would be no point to the Courts!
The Bill will create additional bureaucratic hurdles, delay and confusion for the consumer

36% of those responding to the consultation saw no benefits resulting from a split in functions of the regulatory body\(^1\) with service complaints being dealt with by the “independent” commission and conduct complaints being dealt with by the Law Society. The Scottish Legal Services Ombudsman was reported as saying that 30% of complaints to her office included both service and conduct issues therefore the consumer is more likely to be confused having their complaint dealt with by two bodies.

The logical alternative to the current system would be for the “independent” commission to deal with all complaints as “public opinion/perception” is that the Law Society does not give “fair” consideration “because they are all lawyers”. However the view of “conduct” may be seen differently by peers. For the commission to deal with all complaints would remove the expertise of the volunteer solicitors who, in my experience, can be more critical of their peers than non solicitors. Recent evidence of this was seen when a solicitor member of a Client Relations Committee identifying that the complainer was [1] entitled to compensation for not 1 but 2 transactions thereby awarding enhanced compensation and [2] also identified misconduct and negligence, recommending a claim against the solicitor firm/other partners. This would be unlikely to happen under the proposed system.

The Bill removes one layer of dispute resolution to the detriment of the consumer

The introduction of a new “independent” commission to replace both the Law Society of Scotland Client Relations function and the Scottish Legal Services Ombudsman will not be as effective or as cost effective as the current system.

The option to complain to the Regulator [Law Society] followed by an option to complain to an Ombudsman is fair to both consumer and practitioner. The option of one body dealing with complaints with no appeal option to an independent body is totally unfair and against the principles of justice.

The Bill inappropriately seeks to harmonise with the system in England & Wales

It was disappointing that nowhere in the media coverage or anywhere else was the fact that the complaints procedure in England and Wales was totally different from Scotland highlighted or properly considered. All complaints were handled by the Law Society of England and Wales without any non solicitor involvement in the complaints handling process therefore the decision to apply a “like for like” solution is seriously flawed. The recent increase in the amount of compensation from £1,000 to £5,000 was welcomed by all committees and as, in serious cases of IPS, the maximum amount can be awarded per transaction, a complainer could, under April 2005 changes, receive more than £5,000.

The Bill takes no account of the outcomes of the Justice One recommendations

The former Justice One Committee recommended greater involvement of lay people in the complaint handling process. The Society has, I believe, successfully implemented the recommendations of the Justice One Committee and is now seeing the benefits of this through better and more transparent decision making, enhanced by lay involvement throughout.

The recommendations in the Bill will cost more than the current systems and not add value

The inclusion of non solicitors provides added value to both the investigation and decision making process and, together with the involvement of solicitor volunteers, is extremely cost effective ensuring that the interests of the public are met.

\(^1\) Analysis of written consultation responses
http://scotland.gov.uk/Publications/2005/10/24101803/18085
There are, I believe, just under 100 non solicitor Reporters [volunteers] involved with the complaints process within the Law Society, complemented by volunteer Solicitor Reporters. For a token payment of £50, volunteer committee members put in a considerable amount of time, on average 12 hours per committee member per committee. Taking a minimum number of members, say 2 solicitors/2 non solicitors, this would equate to more than 1 FTE paid member of staff [16.5 FTE over 12 committees per month and 132 FTE per annum]. This does not include the cost of time per Reporter for preparation of a report!

The proposed system will inevitably incur costs and Parliament must

determine that these individual decisions that parliament has taken has added to the congestion within government in Scotland …. The finance committee has to look at whether all of this activity is generating value for money for the taxpayer.

CONCLUSION

The Consultation provided 490 responses equating to 0.01 of the population of Scotland over the age of 16.

The majority of the responses from members of the public were from those who had made complaints however there is no indication in the analysis of written consultation responses whether these complaints were endowment related.

It is unfortunate that more attention is not drawn to the fact that the problem with resolving endowment complaints is due to an omission in the legislation and not the fault of the Law Society of Scotland.

The Minister in her introduction to the Consultation Paper said

“Lawyers - like politicians - often get a bad press. The reality is that most people receive an excellent professional service from their lawyer. But when things go wrong, the road to a satisfactory resolution of a complaint can sometimes be a long and difficult one. Consumers have become much more aware of their rights in recent years, and clients with a justified complaint expect it to be well handled and speedily resolved.”

The Law Society of Scotland has made every effort to address the issues identified by the Justice One Committee to ensure that complaints are well handled and speedily resolved with a significant involvement of lay people. Reality is that not all complaints can be resolved to both parties satisfaction however at least the process is now transparent, fair to all and cost effective.

The Legal profession must retain its independence from political involvement and interference.

Part 4 LEGAL AID

The intention to fund non lawyers in the provision of advice and assistance is welcomed with reservations. It is disappointing that the voluntary sector, specifically Citizens Advice Bureaux, has not been mentioned, particularly in relation to “evidence to assess the net cost of such advice provision” as these figures are available from Citizens Advice Scotland in respect of Bureaux income.

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2 John Swinney MSP, SNP Deputy Convenor of Finance Committee on work of Regulatory Bodies accountable to Parliament
3 2001 Census
4 Explanatory Notes p30 Sec 145 Current funding of civil legal advice
The experience of Citizens Advice Bureaux in England & Wales as part of the Community Legal Service has reportedly been mixed with many concerns raised about two tier services, members of the public being disadvantaged as they could not “qualify” for assistance from the registered adviser and pressures on the Bureaux due to over bureaucratic procedures and measures.

It is disappointing that the basis for funding the registered advisers is planned to be on a case by case basis and not on a grant funding/contract on a match or joint funding basis with the local authority. A case by case basis would not be financially viable to employ staff to become registered advisers. Where will the registered advisers be found? Will it be the same “advice desert” as seen with the lack of Approved Advisers for the purposes of the Debt Arrangement Scheme? If there is no grant or contract funding to cover the costs of paid staff it is more than likely that there will be few registered advisers in Scotland in the voluntary sector.

The assertion that there will be no cost implications for the local authority is not convincing. If a specific fund is established on the principles of match or joint funding which is conditional on continued investment by the local authority, it is assumed that the Executive will insist on adequate base funding and full cost recovery. There will therefore be a significant cost implication for local authorities.

CONCLUSION

Extending legal aid to non solicitors is a forward step but it must be clearly understood that while the voluntary sector does have the capability to provide the advice, in many cases it does not have the capacity due to lack of funding. There is however an expectation from all sides that the service will be free and available to all at the point of need, unfortunately there is little or no recognition that there is a cost to the delivery of the service which may not be resourced to meet these expectations. The implications of the potential lack of advice available from solicitors due to the proposed changes to the regulation for complaints handling and from the changes to legal aid together with the lack of registered advisers are against the principles of access to justice, particularly for those the legislation is intended to assist. Should the proposals as they stand be implemented, the main outcome will be the “advice desert” with an undoubted impact on MSPs with a significant increase in the number of people seeking help at their surgeries across Scotland.