Submission from Farah Adams for the Legal Profession and Legal Aid (Scotland) Bill

I have the following concerns regarding the proposed bill:

1. The level of compensation proposed at £20,000 will be crippling for small rural firms. Only one instance of such a levy could have the potential of forcing the firm to close putting the local people who work for the firm out of work. That would not bode well in small rural areas where there are not as many other opportunities for employment for these same people. There will only be two options for small firms – 1. stop the type of work which is more likely to attract complaints, eg. Conveyancing, matrimonial law, executry, litigation and eventually lose income. 2. carry on this type of work and face the risk of being forced to close through crippling compensation levels. Either way, the public in rural areas will lose out as they will not have ready access to justice in large areas of their lives.

2. The proposal that each and every complaint no matter how unjustified, vexatious or pure vindictiveness by the complainer, will attract a sort of case fee payable by the solicitor is against natural justice, obvious even to the lay person. It will simply attract more daft, unjustifiable complaints which will clog up the complaints system and serve no good use to anyone, the profession or the public. The real justified complaints will get lost in the quagmire whilst the new commission tries to grapple with the volume of frivolous complainers. It will be an agency in meltdown before it even has an opportunity to get warmed up. Anyone with a serious complaint which they believe is truly justified would be prepared surely to pay a small proportion/share of the cost of the investigation which would be refunded to them if their claim is upheld – this will ensure that only those with a credible grievance will go to this stage. It is against basic human rights to expect one party to pay all the costs just because another party has decided to have a moan about them. The new system was to be an improvement on the existing one. The whole reason for this overhaul was to improve public perception and confidence in the complaints handling system but the way the Bill is constructed indicates that it may well backfire due to being a victim of its own “success” with hundreds and thousands of frivolous, vexatious, unjustified complaints. This will be because the public will see the new Commission as being on their “side” which will probably find against all solicitors no matter what the complaint. The cost of this is going to be enormous – will you be able to attract people of the right calibre and with the right level of knowledge and expertise to go through all complaints and to sift out those which do not merit investigation? If so, it is highly unlikely they will do this for little or no remuneration which is how the current system under the Law Society of Scotland works. How can the public and the profession have confidence that their case has been looked at by someone who knows what they are doing?

3. Another point which is just simply against basic human rights is the lack of external appeal for either party in the proposed complaints process. This just cannot be so – we are a civilised society?, surely we should be constantly striving to enhance our legal system, to fine tune it, to ensure that equal justice is available to all, not taking backward, retrograde steps into a draconian world where fairness and commonsense just cease to exist. A judicial review is not sufficient, there has to be a proper appeal process to the courts or a proper tribunal to build the desperately needed confidence for all parties.

4. Staying with the topic of basic human rights, the mediation process should again be funded by all parties involved in a complaint and not just by the solicitor/solicitor’s firm. The usual court rules regarding expenses should apply when the final decision is made with the loser paying own and other party’s expenses and outlays.

5. On the topic of mediation – and on a positive note, that system could be expanded upon in the Bill. At the moment there is a very small mention of it – it should take centre stage in the Bill to attempt to resolve disputes rather than set parties against each other in a litigious way with only one aim – to make the profession pay any which way possible.
6. The annual levy for a practicing certificate is another concern. There are large areas of the profession which currently pay for annual practicing certificates for each solicitor but which if faced with the proposed £1500 annual fee will probably re-consider whether a practicing certificate is absolutely necessary for each solicitor, ie is the individual carrying out any type of work which needs the certificate and the answer in many cases, particularly for in-house lawyers, large firms or even some smaller firms will be “no”. Therefore you could find a reduction in the number of practicing certificates from say 10,000 to only about 2,000. That would not bode well for the Commission’s budgeting if they are to rely on income from that source.

7. Looking ahead to the future – there will be many more women in the profession who will be more likely to work in the core risk areas of legal practice such as conveyancing, matrimonial etc. This is because they will be more than likely working flexible hours, job sharing, taking long term maternity/family breaks and working part time. That means they will not be earning nearly as much as full time professionals. If they are hit with the proposed compensation levy of £20,000 per complaint plus case fees plus increased practicing certificate fee, then they are an extremely vulnerable group who will be prejudiced and who could be driven out of the profession - just when we thought life was improving for women in the profession.

8. Staying with the future – law students will be put off entering the profession with such a draconian governing system for complaints, bearing in mind they will come out of university laden with student debts which will take them years to pay off. There is a risk of a future brain drain in the profession to other professions.

9. Another concern is that the Bill appears to give the new proposed commission a blank chequebook regarding increasing levies in future. Surely the commission should be required to revert to and seek authorisation through full and proper consultation with the relevant stakeholders before increasing any costs to the profession and which will ultimately have to be passed onto the public? Another erosion of individual’s rights?

10. One can’t help thinking when reading through the Bill that it is designed to sweep away the smaller and vulnerable groups of individuals and firms in the profession who are crucial to the legal needs of the smaller and vulnerable groups of the public and to pave the way for “Tesco” law – encouraging mass production for the masses without any concern for the fundamental principles of the rule of law, fundamental human rights and the fundamental right to access to justice for all.

This Bill need not necessarily be a threat, it can be a great opportunity to make sure that the new complaints system is an improvement on that which is currently managed by the Law Society of Scotland, not just in terms of speed and efficiency but in terms of real cost to the taxpayer and to the profession. Please let the lessons from agencies such as the CSA be learnt before their same mistakes are made. At an extreme, we certainly do not want to be hearing news bulletins about suicides as a result of this Bill!

One further concern regarding the Bill:

The proposed Commission will not be independent if it is proposed that the members be appointed by the Scottish Ministers. This will remove the independence of the legal system and profession and will erode one of the fundamental principles of the rule of law.