RESPONSE
BY
MATHESON RITCHIE, SOLICITORS, GLASGOW
TO
LEGAL PROFESSION AND LEGAL AID (SCOTLAND) BILL

Matheson Ritchie is a small firm of solicitors, dealing with family and child law, criminal defence work and conveyancing. We offer civil and criminal legal aid. We have three partners. We are based in two sites; in the Glasgow suburbs of Ibrox and Sighthill. Both are deprived areas. We read the Bill with horror. We comment as follows:

Part One

1. This Bill, will result in a number of difficulties and is fundamentally flawed due to the absence of an external right of appeal. The flaw lies in the lack of the right to appeal against the decision of the SLCC to a Court. Challenges must be expected under human rights legislation.

2. The risk of having an IPS finding against the firm of £20,000 added to the complaints levy, is a substantial one. Difficult cases are generally created by persons who are themselves difficult. We see many cases becoming protracted because of the personality of the client; that same client generally has no insight into their own shortfalls and often begins to feel that it is their solicitor who is causing things to take so long. The firm would have to reject any instructions from such an individual, on the basis that this is the type of individual who may complain.

3. By the very nature of our work there will always be a “winner” and “loser.” The winner is unlikely to complain but the loser is more likely to, particularly if he is aware that there could be up to £20,000 to ease the pain of losing. We foresee a huge rise in the number of complaints being made. The knock on effect of this is that there will be more delays in dealing with cases. The knock on effect of this is that the SLCC will need more and more staff to deal with more and more complaints. There is no proper costing of the new SLCC and we can see the costs of this spiralling as the number of complaints rocket.

4. The size of the possible amount of compensation payable to a client is grossly excessive. Due to the lack of reasonable rates of remuneration for conducting legal aid cases, which is already seen as refusing to do legal aid work despite our location, such work will simply not be worth the risk. There is no logic in the potential award for unsatisfactory conduct and professional misconduct being £5,000 and the award for inadequate professional service being £20,000. If we were to have to pay such an award we would simply be put out of business. Such an award may be a “drop in the ocean” for the big firms but is highly significant in the kind of margins we are operating.

5. There appear to be no factors referred to that would allow for a reduction in the award, where, for example, there clearly is fault that can be placed at the
door of the “complainant,” (call it contributory negligence) e.g. a lack of proper instructions provided. Similarly there is no mechanism for taking account of the means of the Solicitor or relevant circumstances pertaining to their inadequate services e.g. that they were dealing with a bereavement or under extraordinary pressure at the time.

6. It is disgraceful that the proposal is that the Solicitor pays the complaints levy, whether the complaint is upheld or not. If the SLCC makes a finding that the complaint was frivolous, vexatious or without foundation there should be a levy against the “complainant.” The Executive is encouraging a huge increase in unjustifiable claims by making the Solicitor pay. This simply allows complaints to be made in the hope that a complainant will receive an award. If they do not have to pay they do not have to worry about making a false or speculative claim. This is unacceptable. Partners in our own firm have had approximately five complaints made against them in the cumulative forty-eight years they have been in practice. None of these complaints has been upheld on any basis. It is therefore plain to us that future unsubstantiated complaints are likely to be made against us, mainly by the type of individuals referred to in point two. We see no basis for suggesting that we should pay for such complaints. This is akin to someone bringing an action to court seeking payment of £2,500 they say we owe but we say we don’t. When we prove that the money is not owed the court makes a finding of expenses against the other party. This has long been recognised as the law of Scotland. It gives anyone potentially bringing an action “pause for thought”, as to whether their action has genuine substance and is one that they are prepared to finance because they no they have good prospects of success. The procedures proposed for the SLCC take the complainers need to assess their prospects of success out of the equation. Indeed they give the complainers a way of hitting the solicitor in the pocket whether they have any reason to complain or not.

7. We are concerned about the impartiality of the SLCC. We believe that the independence of the Commission may be challenged. Scottish Ministers will appoint members of the SLCC for a period of five years. Scottish Ministers will therefore have an unfettered discretion as to who is appointed to the SLCC and more importantly, who retains that appointment. There is concern that those appointed will wish to be re-appointed and as a result will carry out the perceived wishes of the Executive. Previous similar challenges to temporary Sheriffs were successful.

Part Three

1. This Bill seeks to allow a two-tier system of advisors. Solicitors are trained for six years before being allowed to practice, are subject to continued training every year (Continuing Professional Development), have insurance in place in case something goes wrong and potentially have the SLCC watching over them. It is unsettling that the Executive, on the one hand, put so many regulations in place to ensure that the public are represented by a well qualified, properly trained and regulated legal professional and then, with this Bill, propose to allow Advisors who need have no qualifications, insurance,
training and who will not be subject to the same discipline, to represent the same public.

Matheson Ritchie, 19th April 2006