Dear Sirs,

Legal Profession and Legal Aid (Scotland) Bill

I have your letter of 10th March inviting me to make comment, and submissions, about the above Bill, and this I now do.

My submissions can be considered under the following headings viz:-

1. **Terminology**: The use of the words "Complaints Commission" in the title of the proposed new body is unnecessarily evocative and provocative. I would have hoped that in the Scotland of the 21st Century the culture and tradition of care and service, which has always been the hallmark of the Scottish Legal Profession, and remains its hallmark in by far the vast majority of legal firms and institutions offering legal services and advice, would have been acknowledged. In that context far more emphasis should be placed upon "resolution", and that term, or terminology in a similar vein, should be used. Perhaps "Complaints" was a convenient shorthand employed by embattled civil servants and "lifted" from discussion in another jurisdiction?

2. **Costs of "Scottish Legal Complaints Commission"**: I am led to believe that the start up costs are estimated at £450,000, while the annual running costs are estimated at £2.4 million per annum. That latter figure beggars belief, given that the costs of the present system are a minuscule proportion of that. The running costs are to be met by an annual general levy upon each Solicitor in Scotland of approximately £120, and by a specific levy for each complaint, payable by the Solicitor involved, of approximately £300. The specific levy would be paid by each Solicitor complained about, whether or not that complaint was upheld.

This/-
This surely cannot be fair or reasonable. You are providing a vindictive or frivolous or vexatious client with an uncontrolled method of extorting £300 from a Solicitor for each and every frivolous or vexatious complaint made by such a person.

Inadequate professional services by MPS’s are, of course, quite another matter and are worthy of a completely separate debate, but I do wonder whether if anyone complained about your services, and was entitled to extract from you £300 whether or not the complaint was justified, you would be happy and content with such a system?

It is also of concern that should a Solicitor, or firm of Solicitors, take it upon themselves to represent clients who wish to pursue, or call to account, or challenge in any way the Scottish Executive or the Scottish Ministers then it is entirely within the power, theoretically, of the Scottish Executive, or the Scottish Ministers, to make use of these procedures to ensure that the Solicitor, or firm, involved is effectively closed down by continual financial penalties.

3. **Appeals** : I note that Appeals can be taken from a decision of the Commission only in very limited circumstances. This is, of course, contrary to natural justice and cannot possibly comply with ECHR! Your own professional Legal Advisors will doubtless be able to inform and to advise you about the dangers and perils of such legislation.

4. **Constitution** : Firstly, on a practical note, it seems to me to be gratuitously offensive to set up a Commission which will attempt to resolve complaints about Solicitors, but upon which need sit no Solicitor with practical practising experience. Separately, and perhaps more importantly, the Commission will function far more effectively, fairly, and constructively, if it does have assistance and advice available to it from somebody who knows what it is like to practise as a Solicitor.

I note, too, that Scottish Ministers have the power to change the constitution of the Commission, and can therefore, presumably, remove any and all Solicitor representation at any time! I rather think that if you were to know what I felt about MSP’s, their work, and their work load, then you would certainly wish me to be instructed and guided by an MSP if I were ever to be asked to consider complaints against you.

In/-
In my view, therefore, and for the foregoing reasons, it is essential that there sits on the Commission at least one qualified Solicitor, holding a Practising Certificate, and with at least ten years of practical, practising experience in Law in Scotland.

Further, and perhaps more fundamentally, I would caution you to take further advice as to whether the "Commission" will be "human rights compliant", given that all of its members are to be appointed by you, and are subject to dismissal by you. You also determine the remuneration of the members of the Commission and you require to approve the Chief Executive of the Commission. All of the foregoing will ensure that a commission, if set up, will do exactly as it is advised by the Scottish Executive. Theoretically, but logically, there is no reason why a situation could not develop in Scotland in which the Executive clears the legal profession of all Solicitors opposed in any way to the Executive. Acknowledgement of the Doctrine of the "Separation of Powers" would assist in resolving this fundamental problem.

It also appears to be the case that the Commission, which can be controlled as above noted, is responsible for establishing its own Appeals Committee, and will be responsible for determining the membership of that Appeals Committee, and its other Committees. These "risks" of control are not removed, but further underlined and increased by the fact that Scottish Ministers have an "overriding power" to give directions as to the exercise of functions by the Commission.

Many of us in the legal profession in Scotland, myself included, had hoped that if you were intent on change you would at least be intent on change in a positive direction, where the few rogue, bad, or incompetent, Solicitors among us, whom none of us wish to preserve or to protect, could be identified and dealt with in an efficient, fair, reasonable and open manner, by an independent body, which would be independent not only of the profession but also of the government, and of those who would seek to attack and undermine the law, and Solicitors, as a means of attacking society. It is therefore a very great disappointment to me, at any rate, that what seems to be proposed is an organ of government which, with its powers of control has the potential for attacking law and those who seek to interpret it for the benefit of society, and for removing those who will seek to call to account the government in Scotland through due processes of law and the legal system.

I am, of course, perfectly happy for this letter to be available in the public domain.

Yours faithfully,

J.G.G. Lees

Senior Partner