Dear Sir

RESPONSE TO THE LEGAL PROFESSION AND LEGAL AID SCOTLAND BILL

This Bill proceeds on the conception that there is a requirement for drastic amendments to the present system of complaints handling.

The Profession recognised that whether justified or not, the public perception of the way in which complaints for IPS were handled was unsatisfactory and agreed to assist in the provision of an alternative system.

The Scottish Executive must ensure that any alternative system imposed must be an improvement on the existing system and it must be fair to all concerned. It must not have an adverse impact on the profession which would lead to a reduction in the quality or quantity of legal services being available to the public, whether those legal services are provided by Solicitors or not.

The current proposals appear to be similar to the arrangements in place for determining certain financial investment complaints. They do not take into account the fact that there are significant differences between the financial services industry in the UK, and the provision of legal services by Solicitors in Scotland. In short the proposals do not appear to provide a Scottish solution to a Scottish issue. Importing a foreign solution in the hope that it will resolve a perceived difficulty is not an acceptable way of legislating. It provides no safeguard against adverse impact on the profession and on the legal services which are provided to the public.

It is understood that the Executive have been advised that the current proposals are not ECHR Compliant. To proceed with the proposals against this background is clearly running a significant risk of involving the public purse in the expense of significant challenge. No prudent executive would proceed under these circumstances.

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There are also serious flaws in the way in which the proposed system will work. It is recognised that such a system will require funding, it is clear that the system will involve levels of funding significantly higher than the current system. Any system which encourages complaints by penalising the person complained against immediately the complaint is lodged and before it is adjudicated is patently unfair and open to abuse.

The system proposed which will involve an immediate charge as soon as a complaint is lodged is likely to increase the volume of complaints, for example, any client receiving an account from his Solicitor would feel able to negotiate an immediate reduction simply by means of the threat to lodge a complaint.

There is no system for refunding Solicitors costs if a complaint fails.

The only consequence of this will be a reduction in service, a reduction in choice and certainly an increase in costs to the majority of the population, who are well served by their Solicitors.

These are issues which currently only affect the legal profession in Scotland which carries a relatively small proportion of votes. Members of other professions however will require to take heed as it is only a question of time before the consumer lobby encourages similar measures against other professions, associations, trades etc.

Yours faithfully

Peter Matthews, Partner
on behalf of ABA & A Matthews LLP