Submission from Norman Bansi for the Legal Profession and Legal Aid (Scotland) Bill

Introduction

It is accepted by local members that in the current climate of Professional Regulation that it is appropriate to review the Complaints handling procedures for the legal profession. This should also be viewed in the wake of the Clementi report and the submissions made.

There are however several aspects of the suggested procedures which would or indeed should give concern to Solicitors and which the Faculty would seek to submit for consideration by the Executive and Scottish Parliament.

Observations and Comments

1. The figure of £20,000 is proposed as a maximum award for the provision of inadequate Professional Services. We have already seen an increase in the Maximum from £1,000 to £5,000 within the recent past. We are concerned that this is seen as substantial increase and will be used by dissatisfied clients as an easy means to obtaining compensation and will lead to an ever increasing culture of claim and blame. This may place an intolerable burden upon firms and in particular the smaller rural firms which might have to put in place substantial reserves to cope with potential IPS complaints. It is possible that clients may see this as an easier route to recovering sums from solicitors than to claim through the indemnity policy which is of compulsory to the profession. Under the Policy there are maximum excesses which apply and which in the worst case scenario are considerably less than the proposed IPS sum. In this age where litigiosity is now commonplace such a sum would create a dangerous precedence and could cause smaller firms to go out of business and reduce the competitive market and choices available to clients. We would therefore submit that this figure is excessive and should be reviewed and pegged at the current figures. Clients would be able to avail themselves of the legal remedies through the Courts and their rights would not be diminished. This would also prevent spurious complaints which might possibly place a burden of time and cost upon firms.

2. There is some considerable concern as to the costs of policing a new regime as proposed in the consultation. Currently complaint handling is primarily funded through Law Society resources and the cost of this to the Profession is not inconsiderable. However, the use of the Reporter system by the Society is a relatively cost effective method which gives an experienced view of complaints and professional insight into the problems. The use of lay persons to police a system of complaint handling is likely to incur considerable additional cost both to the individual solicitors and firms and to the public purse. There would also be lack of professional knowledge which may need the introduction of expertise at a cost to the regulators. At present the system is run with an equal amount of lay and professional members and appears to work well. It is worthy of note that the other professions tend to be self regulatory with the exception of the Financial sector which by definition is wide and varied and requires a different approach. It is essential that the Legal Sector is represented within the regulatory system and the balance as at present is preferable.

3. The current system is reliant on a peer review basis and as such tends to therefore provide a fairly strict approach by Solicitor to Solicitor. This also gives an excellent opportunity for education within the system whether by reprimand or by examination of a case history. The withdrawal of Solicitor reporters may in fact soften the approach of report handling or may lead to challenges to decisions by the profession if it is considered that the reasoning is in any way flawed and may result in a proliferation of actions against the regulatory body.

4. The financial burden placed upon smaller firms and those within a rural environment by the proposals may result in a reduction of such practices. This in turn would
reduce the competition within the legal sector and allow the progression of bigger units and “Tesco Law” would become all the more prevalent. The loss of choice would be detrimental to the public and the market would become dominated by extremely large organisations which might only pay lip service to the regulatory system as currently applied.

5. An intermediate stage of Complaint handling should be considered whereby an outside Firm or Solicitor acts as an independent Arbiter in an attempt to mediate and resolve the issue. This party would also be able to identify any particularly serious matters which may verge upon misconduct and which would require sterner action. This does not exist at present and the contrasting positions are that a client may see an internal complaint handling system as a “whitewash” or they may simply go straight to a complaint to the Society without the opportunity being given to resolve disputes. Whilst this is an entitlement it perhaps does not always bring a mutually satisfactory conclusion and recriminations may remain. It is not uncommon in commercial transactions to resort to arbitration and an extension such as this would allow an open an unbiased means of dealing with complaints. It would also reduce the cost to the public budget as this could be cost effectively funded by firms as an Alternative Dispute Resolution system.

Conclusion

The current proposals are viewed as draconian and may be prejudicial to the profession in particular and the public in general as solicitors may be selective as to the work which they take on and quasi legal organisations may fill the gap resulting a commercially driven system rather than customer led. We are already seeing this in the area of damages claims where the substantial percentage charge are being made by Claim Companies particularly in the light of the reducing number of firms taking on Legal Aid cases. The public is entitled to have a choice and this is being diminished as agents are becoming increasingly wary of taking on cases particularly where they may be contentious.

The system currently in place is transparent and allows representation on committees of lay persons. The tribunal is independent with a mix of lay and professional skills and there is of course the Ombudsman who can review cases.

I would therefore respectfully submit that the system currently in place provides a suitable and effective model upon which to expand the complaint handling procedures and to radically alter this would prove to be counterproductive and may well prejudice rather than help the public. I would further recommend for the consideration of the Justice Committee the use of other firms to act as intermediaries in the initial stages of investigation and this would further enhance transparency and give the public a degree of comfort that an internal investigation might appear as a cover up.