Submission from Murray Beith Murray for the Legal Profession and Legal Aid (Scotland) Bill

Murray Beith Murray is a medium sized firm of solicitors based in Edinburgh employing in excess of 70 people.

We have considered the above Bill and comment as follows.

1. Appointment of the Commission

There appears to be a lack of independence in the appointment process for the Commission.

2. Appeals Process

There appears to be a lack of an independent appeals process against decisions of the Commission which we believe is contrary to the European Convention of Human Rights as enacted.

3. Funding

The funding arrangements for the Commission are unjust to the extent that they seek to make a practitioner pay a case fee for a complaint when it may turn out that the solicitor has provided an adequate service.

4. Compensation Limit

The increase in compensation to £20,000 having recently just raised it to £5,000 appears disproportionate.

5. Guarantee Fund and Master Plan

The intrusion into the independence of the legal profession including the proposed oversight of the Guarantee Fund and the Master Policy (which is, in any event, a matter for insurance companies) to run and who are regulated by the Financial Services Authority.

6. Conduct, as opposed to, Service Issues

In a democracy an independent legal profession is required in order to ensure that without fear or favour a lawyer can defend an individual against the power of the State. Any mechanism whereby the State is appointing those who can exercise powers to remove an individual from acting in such a capacity and thus defending such an individual is flawed and constitutionally undemocratic. Consequently, the Commission should not be involved in the process of dealing with conduct matters.

7. Costs

The Executive have failed to give any proper information on how the body will work and, accordingly, it is impossible to assess its actual cost despite the financial information provided. On the experience of almost every other quango that has been set up (and it was thought the Scottish Executive were keen to reduce the number of quangos) the costs are likely to be considerably higher than the current costs of running this scheme. The likelihood is that these costs will be ultimately passed on to consumers.

8. Lack of Consumer Choice/Provision

Where that is not possible, there is likely to be a restriction in the services provided by solicitors especially those involved in legally aided work where there is often a high incidence of complaints (because of the nature of the work rather than they way it is provided) and where the costs cannot be passed on.
9. Lack of Confidence

There is likely as at present, to be a lack of confidence by solicitors in their complaints being dealt with by adjudicators or mediators who will have little or no actual knowledge of how a transaction should be carried out.

Opting Out

The Bill could result in regulator shopping, i.e. why should a solicitor acting in his capacity as an estate agent (and in the Edinburgh area 80% of houses are sold by solicitors acting as estate agents) with a complaints and monetary penalty system such as proposed continue to operate as a solicitor as opposed to simply placing him or herself on a level playing field with non-solicitor estate agents who are not subject to such a stringent or penal system.