Submission from William Burns for the Legal Profession and Legal Aid (Scotland) Bill

It seems more than a little sinister that many legal bodies have been invited to make oral presentations before the Justice 2 Committee and no individuals have been invited. It would have been more fruitful if more people who have fallen victim to many of these self-regulatory bodies had been invited. Personally, I do not see any point in inviting the legal bodies to appear before the Committee because we all know that their interests lie almost entirely in making a “buck”, at the expense of customer care. They are quite happy that the complaints procedures are useless in that regard. Nevertheless, unlikely though it may be, I would hope that the J2C take all the written submissions from individuals seriously and not let them be undermined by those legal bodies with a vested interest in continuing to control the complaints processes.

Response to the proposed Bill’s main points:

1. “A new Scottish Legal Complaints Commission, led by a Board with a non-lawyer majority and a non-lawyer chair, acting as a gateway to receive complaints about lawyers which cannot be resolved at source (but with an emphasis on complaints being resolved at source where possible.”

   It is unsettling to think that any number of lawyers, even one, will sit on the Board of the Scottish Legal Complaints Commission because people, especially those who seldom employ the services of lawyers, hold an unmerited deference for them and are liable to be swayed by the pompous predispositions of even one lawyer in their midst. One could be employed in a counselling role but with no input as far as concerns decision-making.

2. “The new Commission taking over responsibility for handling complaints about inadequate professional service from the legal professional bodies, the Scottish Legal Services Ombudsman and the Scottish Solicitors Discipline Tribunal.”

   I am in full agreement that the new Commission takes over responsibility for handling complaints about inadequate professional service from the legal professional bodies, but, of course, “inadequate professional service” covers everything from minor irritation to extreme exasperation to the gravest fraud.

3. “Maximum amount of compensation for inadequate professional service complaints being raised to £20,000.”

   Given that there is no limit of which a client can be defrauded, there should be no limit on the amount of compensation with which a client can be compensated.

4. “Responsibility for professional discipline remaining with the legal professional bodies and discipline tribunals but the way in which such complaints are handled being overseen by the Commission.”

   Responsibility for professional discipline should be overseen by the Commission otherwise the Commission will be a toothless tiger with self-regulation and unaccountability maintained in safety by the professional bodies. The Commission ought to be considered a professional body the minute it is set in motion.

5. “First Steps towards giving rights of audience and rights to conduct litigation to members of other professional or other bodies.”

   It is over ten years since the rights of audience and rights to conduct litigation in the Scottish Courts to other professional bodies and persons were enacted, so there should be no need to take any “steps”. It ought to be introduced in toto, immediately.

6. “Transfer of responsibility from the courts to the Scottish Legal Aid Board for granting and terminating legal aid in serious criminal cases.”

   Whichever is the most cost effective!

7. “Enabling the Scottish Legal Aid Board to fund certain advisors other than solicitors to provide advice and assistance.”
The Scottish Executive should finance the Legal Aid Board directly, instead of it being financed by way of their colleagues in the Law Society. Although it is still the public purse that pays, I am sure vast sums of money would be saved as I am sure the Scottish Executive would not be so keen to part with taxpayers’ money to lawyers who abuse the present routinely unsupervised gravy-train set-up. However, irrespective of whether or not the financing is taken out of the hands of the Law Society, I think it is imperative that professional bodies, persons and certain advisors other than solicitors should be funded to provide advice and assistance.

**In Summation**

If this Commission is to be taken seriously by the public, it must be composed entirely of lay people with no connection to the legal profession. Similarly, no one who is associated with the legal profession should be involved in any role with the J2C in its consideration of the Legal Profession and Legal Aid (Scotland) Bill, advisory or otherwise. If they are, it would go beyond a “conflict of interest” situation, because there would be no conflict; people associated with the legal profession could not be impartial on this Bill and would be 100 per cent in favour of retaining the antiquated almightiness of the tried and failed status quo. Their plan of action would be simply to create a window-dressing forum in pretence that the Bill has been considered fairly. The influence these thespian lawyers have on political committees brings to mind the old cliché about the undesirability of lunatics running the asylum.

As far as concerns the Commission, a lawyer could be employed on a consultative basis, but to be either regarded or disregarded by the Commission according to the efficacy of the advice, but he/she should have no additional powers to become involved in decision-making.