Submission from David Newton for the Legal Profession and Legal Aid (Scotland) Bill

I would wish to make the following comments for consideration by your Committee in relation to the above Bill. As a solicitor who has practiced for over 30 years in an area which has suffered very high levels of unemployment I have as a result conducted much work under the Legal Aid Scheme. I consider that some of the provisions of the proposed Bill require to be altered.

Finance & Complaints Levy

In areas of deprivation and given the low rate for legal aid work compared with the private rate charged by city firms the provisions of the Bill as put forward would have far reaching consequences in continuing to run a business profitably. To suggest that solicitors would be required to pay a levy for mediation and for a cost of investigation of a complaint which is not proved against the solicitor is totally unjust. Unfortunately there are a considerable number of the public who make complaints for no good reason and in the knowledge that there is no charge for a member of the public making a complaint they will continue to do so. At present solicitors are not levied for the investigation of a complaint or indeed for mediation. Most solicitors try and mediate their own complaints direct with the complainer before the matter reaches the Law Society. However, there are matters that do proceed and the system as proposed will be open to abuse if solicitors are asked to pay for complaints that are not found against them. This is against all rules of natural justice.

At the present time all solicitors do technically pay an annual levy towards the complaint system, through their subscriptions to the Society. If there is to be a general annual levy then it would seem that that would be sufficient to run a system without levying each complaint.

There are mischief makers in society and I am quite sure that quite a number will take the opportunity of making invalid complaints if they know a solicitor has to pay for the process. Solicitors must be on a level playing field with complainers and if no charge is to be made to the complainer then similarly no charge should be made to the solicitor.

Compensation

The suggestion that compensation levels should increase to £20,000 is a matter which I hold in amazement. In Scotland apart from a very few large city centre firms the major number of practices are small parochial high street practices who have a direct contact with their community and provide them with a service. To suggest that awards of up to £20,000 be allowed shows a distinct lack of understanding from those who drafted the Bill of the reality in solicitors practices.

At the present time solicitors have insurance indemnity for any errors that they make and through that Scheme if there is an error a client is fully compensated. Further, solicitors also pay into a Guarantee Fund so that if one of their number is dishonest and takes clients money then the clients are fully compensated.

So far as compensation is concerned there is no good case to have a figure of up to £20,000 being paid for compensation. The level for compensation has only recently risen for inadequate professional services to £5,000 and to even consider quadrupling that figure is beyond comprehension.

The present government have quite rightly had a policy of access to justice for all. If the compensation level is retained at £20,000 then that will have the effect of denying access to justice for many since firms will not take on what they perceive to be problem cases or for problem people who might be those who would complain. If the level is increased and awards are made taking account of the figure of compensation of £20,000 then many small firms will close.
I would urge your Committee to consider very carefully the effect this proposal would have on the small firms which operate throughout the country particularly in rural, housing schemes, and suburban areas.

**Guarantee Fund & Indemnity Policy**

In relation to Section 29 of the Bill it is difficult to comprehend how a Commission dealing with complaints can monitor the effectiveness of the Guarantee Fund and the arrangements under the Indemnity Master Policy. The Guarantee Fund has operated effectively for many many years and it is certainly not clear why a body such as the Commission could have the necessary skill and understanding to monitor the Guarantee Fund when they are dealing with complaints. The same comments apply in relation to the Master Indemnity Policy where all claims are dealt with by independent insurance companies including the fixing of the annual premiums. It is a requirement to practice law that a solicitor contributes to the Master Policy and through this the public are well protected.