Submission from Kilmarnock Faculty of Solicitors for the Legal Profession and Legal Aid (Scotland) Bill

The Kilmarnock Faculty of Solicitors wishes to make the following representations in relation to the draft Bill. These representations are directed principally at the proposals for the commission which is to deal with complaints.

- There is insufficient representation by lawyers on the proposed commission. The number of lawyers making up the membership of the commission should be proportionate. At least one member of the commission should be a practising solicitor.
- The proposed level of compensation (£20,000) is unreasonably high and unrealistic when many pieces of legal work, particularly those which are funded by legal aid, attract fees which are measured in low three figure sums. Solicitors, it is felt, will be driven away from many types of work if this proposal is given effect to.
- Compensation and the basis upon which compensation is to be awarded are not discussed in the draft Bill. There requires to be clear statutory guidance as to how compensation is to be calculated. It is thought that this should be in accordance with the principles by which courts award damages for negligence or breach of contract.
- The specific levy it is felt should only be paid where a complaint has been upheld. It is grossly unfair to expect a solicitor to pay a fee in respect of a complaint which is not upheld. It is recognised that this would mean that the specific levy would inevitably be higher than the sum which is currently under discussion. That would however be consistent with the principle that only the guilty should make payment of the specific levy.
- The cost analysis upon which the proposed levy figure is based is far from clear. This gives rise to the concern that the cost could escalate dramatically which would impact on whether solicitors would be prepared to take on certain types of work.
- If the complaint comes from a third party (ie. not the client with whom the solicitor has a contractual relationship), that third party complainant should be required to pay a deposit in the form of the specific levy.
- There requires to be a rigorous sifting procedure to weed out spurious complaints.
- Before a complaint is entertained by the commission, there should be a requirement that the complaining client (or third party) has exhausted the solicitors’ firm's internal complaints system, and conciliation procedures if that is appropriate.
- There should be an appeal system to the courts, in the interests both of the solicitor and the consumer.
- ACCESS TO JUSTICE - There is a very real concern that already High Street Solicitors are moving out of contentious work in general and legal aid work in particular. Civil legal aid work is already unprofitable and unattractive because of the bureaucracy involved in the application process. Contentious work attracts the highest proportion of complaints, largely because it is impossible for competing expectations always to be met in the process. If the proposals for compensation and for the levy are adopted as they stand, it is very likely that many more solicitors will withdraw from those areas of work, which they perceive are most likely to attracts complaints, and put the solicitors to significant expense, all in the course of a process which they perceive to be unfairly weighted in favour of the consumer in as much as it costs the consumer nothing to complain, whereas the solicitor is being asked to pay the specific levy. Not only will that make it more difficult if not impossible for potential clients in certain parts of the country to find access to legal advice, but it will also mean that solicitors, who it may be observed are going to have some time to prepare for the implementation of these changes, will also require to look at the number of staff they require to employ, and it would seem that redundancies would be inevitable. Private legal practices are significant players in the provision of employment in many parts of the country; as small businesses go, they are generally well managed and they provide stable employment for their support staff. The provisions contained in the draft Bill placed this position is jeopardy.