Submission from Jamie Millar for the Legal Profession and Legal Aid (Scotland) Bill

In the interests of openness, please note that I am a solicitor in private practice, I was admitted as a solicitor in 1973, I have been a member of the Council of the Law Society of Scotland (“LSS”) since 2004, I was appointed as a Reporter by the Client Relations Department of LSS in 1997, I became a member of a Client Relations Committee of LSS in 1998 and I have been the Convener of Client Relations Committee G of LSS since 2004. During that period I have been part of the sea change which has swept through LSS in relation to complaints particularly the constitution of Client Relations Committees and the influence which non-solicitor reporters and committee members have on the deliberations of Client Relations Committees of the LSS and the complaints/client relations process of the LSS.

Having been part of the process ("the existing Complaints System") which is now to be dismantled by the Bill, I have to express the view that existing Complaints System, while not perfect, at least had the safety valve for the public of reference to the Scottish Legal Services Ombudsman ("the Ombudsman") and the safety valve for the profession of an appeal to the courts. The Bill does not provide the basic right of appeal for either party for what is a quasi-judicial process.

The existing Complaints System satisfied a majority of the complainers and those against whom the complaints were made. The existing Complaints System incorporated a substantial level of independent input from the non-solicitor reporters and committee members who had been appointed by LSS over the last ten years.

LSS has achieved substantial results in terms of the complaints handling targets set by the Ombudsman.

The cost of the existing Complaints System was at an acceptable level and absorbed by those against whom the complaints were made. With the proposed regime for a levy plus a “polluter pays” charge irrespective of whether the complaint is upheld the cost of the system will increase. Who is going to pay for this? It is naïve to assume that that the parties who are subject to this complaints system will absorb this as an additional overhead. The stark reality is that these costs will be built in to business models of legal practices and passed on to consumers.

With all due respect, the Scottish Executive is looking at the wrong end of the spectrum and instead of seeking to punish inadequate service, it should be looking at how to raise quality standards. Whether considering solicitors, advocates, plumbers, doctors, electricians, vets, chiropodists or any other profession, trade, business or service there should be quality standards which are achieved in delivery of service – if the benchmarks are there you know what you have to achieve. If you fail to achieve it you are subject to the complaints system.

However, it should be a system which deals with complaints about service not negligence. If the provider of a service is negligent then the legal system provides remedies. Anecdotal evidence of complainers who cannot find a solicitor to sue a solicitor are legion but in reality, where these complainers are eligible for legal aid would or does SLAB grant legal aid? Does the complainer have a stateable case? If the complainer has no case against a plumber, a doctor or a dentist is the incidence of solicitors declining to pursue a lost cause any higher? What about quality of advice? What is the point of encouraging a complainer to pursue a case which has no chance of success? Is that not just the next complaint of inadequate professional service?

There is a pursuers' panel appointed by LSS who regularly take on cases against other solicitors. If one of the panel does not take on the case, might it not be the position that the complainer does not have a stateable case.

LSS has submitted evidence that the Bill does not conform to the European Convention on Human Rights and I would support that position as stated by Lord Lester of Herne Hill QC.
I believe that the introduction of the Bill as drafted will reduce the access to justice for the public as a result of existing firms of solicitors withdrawing from those areas of practice which produce the majority of complaints such as matrimonial disputes, divorce, domestic conveyancing, executry, civil legal aid (particularly where clawback is involved) and administrative law all of which are carried out mainly by readily accessible firms in the high streets and suburbs of Scotland’s towns and cities.

The views expressed in this e mail are personal and may not reflect the views of either Bishops Solicitors LLP or the LSS.

I have no objection to this submission being published or circulated to interested parties.