20th April 2006

Dear Sir,

Legal Profession and Legal Aid (Scotland) Bill

We write in response to the invitation to comment and provide evidence to the Committee in connection with the above Bill.

We are concerned at the impact which this Bill, if passed in its present form, will have on individual solicitors and their firms, and the provision of legal services to the public.

Firstly we are concerned about the proposed Complaints Commission. It appears that its members will have considerable powers over solicitors, but will be appointed by Scottish Ministers and no route for appeal against the decisions of the Commission is provided. We doubt whether the structure of the Commission is compliant with the European Convention on Human Rights in these respects. Furthermore, the Commission is to take on negligence claims where the claim is worth less than £20,000. We are sure that this proposal was not included in the consultation which preceded the Bill, and we have therefore not been given the opportunity to consider and provide views on this. This question raises further issues in relation to Human Rights compliance. We are firmly of the view that professional negligence should remain a matter for the courts, whatever the value of the claim.

We are concerned at the cost of the Commission. As we understand it, the Law Society currently uses the services of unpaid reporters to deal with complaints. The Commission will employ 50 – 60 people. The Law Society will continue to deal with conduct complaints, so there will be little saving there, whilst the Commission is certain to cost more. This is to be paid for by the profession, both as a general levy and as a specific levy. Even if we have no complaints against us, our costs will rise – and inevitably this affects our fees. Furthermore, it is not clear that the Commission will provide a better service to those clients who are dissatisfied with legal service, nor what the overall cost-benefit analysis is.
The specific levy is a source of considerable unfairness to solicitors. The proposals mean that the solicitor pays for any complaint made, however unjustified that complaint might be, and whatever the outcome. Meanwhile the complainer pays nothing. The Bill uses the expression “polluter pays”. This is an insulting expression to use, and it does not represent the reality. In fact “solicitor pays” would be more accurate. Once it becomes known generally that it will cost a solicitor several hundred pounds for a complaint to be dealt with, irrespective of outcome, this will become, either expressly or implicitly, a tool in “negotiations” whereby clients indicate that a payment might be made, just to get rid of the complaint. Then our fees will rise further to cover the cost of such complaints. It does not seem to us to be fair either to us or to our satisfied clients, that our general fees are inflated by the costs of dealing with complaints which are unfounded. We are, of course, happy to meet the cost of any complaints which are found to be justified. We believe that there should be some cost to a client who makes a complaint which is found to be unjustified.

In litigation, there is always a successful and an unsuccessful party. Especially in family cases, emotions can run high and an unsuccessful outcome may result in a complaint simply because the client is dissatisfied with the outcome, though the solicitor may have not been at fault in any way. It is a fact that many unjustified complaints are made every year in this and similar situations. The upper limit for compensation is to be set at £20,000. This does not appear to be limited in any way to the amount of the fees paid by the client. This high figure will seldom be justified but will still be a beacon to those who feel aggrieved with their solicitor. Many other professionals and tradespeople provide services to clients, but there can be few who stand liable to pay such a high level of compensation, not for causing financial loss, but for poor service. Most people will spend considerably more on a new central heating system than on the conveyancing costs for their home, but they have no such redress against poor plumbing work.

Turning now to the effect on provision of legal services, this is a major concern to us. The recent changes to the Civil Legal Aid scheme have not brought the increases in fee income which seemed to be promised. The promised increases in Legal Advice and Assistance have not materialised at all, and are now even further delayed. Fees have barely increased for years. As a result, although we have not de-registered from Legal Aid, we have fundamentally reviewed the types of work which we are prepared to carry out under the Legal Aid Scheme. We no longer cover the whole range of work under Legal Aid.

The introduction of the Commission and its financial penalties on solicitors will have a further impact. Of course there is no scope for us to increase fees to legally aided clients generally to cover additional costs. The costs of complaints from legally aided clients will require to be met by our privately paying clients. In addition, fees from legally aided clients tend to be low on average, and the prospect of a specific levy of several hundred pounds
in the event of an unjustified complaint acts as a disincentive to taking on such work. The fee would be wiped out by the specific levy, even where the complaint had no merit.

Consequently we will require to further review our legal aid work, and restrict it further. Sadly, the types of work which we are likely to drop are the very areas where there is already a considerable level of unmet need for legal services – debt, housing, mental health, children’s hearings, immigration etc. We know from speaking to other solicitors that they are going through the same process. This restriction of legal aid work may not yet be obvious to the Scottish Legal Aid Board, who know how many firms of solicitors are registered, but not what restrictions they are placing on taking on legally aided work. Quite apart from the introduction of the Complaints Commission, there is likely over the next few years to be a crisis in the provision of legal aid, especially in rural areas.

We wish to emphasise that we are proud of the quality of service we provide to our clients. In over a hundred years of existence, we have had very few complaints ever made against us, with even fewer upheld. We do not believe that our loyal and well-served clients should be made to pay for the cost to us of unjustified complaints by others, either financially or by way of restricted legal aid services. However, we are a business. We exist to make a profit, for which we do not apologise, and we provide employment locally. Access to justice for the public depends on firms like ours being financially viable throughout Scotland, and not just in the big cities.

We would ask the Committee to think carefully before approving the establishment of the Complaints Commission in its proposed form.

Yours faithfully

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