20 April 2006

The Clerk
Justice 2 Committee
Scottish Parliament
Holyrood
Edinburgh
EH99 1SP

Dear Sir/Madam

The Legal Profession and Legal Aid (Scotland) Bill

I am responding to the general call for evidence and comments on the above Bill. I do so wholly in my personal capacity whilst aligning myself with the response submitted by the Law Society of Scotland.

I have no objection to my response being publicized but would ask that my address is deleted.

I was admitted as a solicitor in 1988. I was attracted to Law due to a desire to help people. I worked in private practice until 1999 when I then joined the Client Relations Office of the Law Society of Scotland.

During my time in private practice I worked in a number, of what may be considered to be, “deprived areas”. In many cases “the lawyer” was the only person who many of the people living in these areas had to turn to for help. Many of my clients did not have a lot of money and were therefore in receipt of legal aid. I am concerned that the Bill will cause difficulties for members of the public who live in these areas. Many solicitors in these areas have marginal profit levels as it is and many may take the view that to continue to undertake this type of work presents too much risk for too little return given the proposed increase in compensation levels should a complaint be upheld. The type of work undertaken by firms in these areas often involves demanding clients and therefore, is more likely to lead to complaints. There is a definite issue that the public’s access to justice will suffer as many solicitors may cease to trade or stop undertaking particular types of work that tend to attract complaints.
Your reply to this concern may be that the Executive intends to set up Legal Advice Clinics through the Scottish Legal Aid Board so members of the public may seek advice there. I understand that not all staff will be legally qualified therefore you will have a two-tier system – one for the rich and one for the poor. Is this what the Scottish Parliament really intends for the people of Scotland? Shouldn’t everyone have the same opportunities?

I am concerned that these Advice Clinics will not have the independence that solicitors in practice have, as the Scottish Legal Aid Board that is in turn funded by the government will fund them. Are we heading towards a state run legal system?

As a member of the Client relations Office I understand why some members of the public do not agree that the Society should police itself. Therefore, I have no difficulty with the premise that an independent body should handle service complaints. This must however, be done properly and the body truly independent. The Bill goes beyond service complaint handling. I have a fear that the terms of the Bill demonstrate a knee jerk reaction to a perceived problem with the Society’s complaints handling by a very small minority of people in Scotland. I find it deeply depressing that the Scottish Parliament may think that this is the way to run our country and that rather than taking a considered view of the reality of situations it jumps to the tune of those who shout the loudest. This includes the Westminster government, as it would appear that the Bill is taking on board the English compensation figures, despite the promise of Scottish solutions for Scottish problems.

I have always thought that the Scottish people had an inherent fairness however this Bill is not fair. The full cost of a complaint is to be borne by the solicitor whether or not a complaint is upheld. The compensation level is to be raised from £5,000 to £20,000 without explanation or justification for the increase. The Commission intends to take on negligence matters where the claim is for less than £20,000 with no consultation. The Scottish Parliament appears to be usurping the authority of the Courts.

There appears to have been little or no thought to whether the Bill is ECHR compliant, as Scottish Ministers will appoint the Board, this indicates a lack of independence. It does not guarantee solicitor representation – would you ask a solicitor if a plumber had installed a central heating system properly? Then how will non-legally qualified people know if a solicitor has acted properly or improperly in a transaction? The solicitor pays whether or not the complaint is upheld. There is no external right of appeal for the public or the solicitors.

I am concerned that the public and the Legal Profession will not end up with a system that is better than we currently have. The Client Relations Office is producing the best ever complaints handling results. Committees that have an equal number of lay and solicitor members make all decisions. The Scottish Legal Services Ombudsman, Mrs Linda Costelloe Baker had no recommendations to make to the Society in her last Annual Report and it is expected that there will be none in her final Annual Report.
Yours faithfully

Margot Walker