Submission from Masters Legal Services for the Legal Profession and Legal Aid (Scotland) Bill

I write to express my grave concern about this bill. You may or may not be aware that already there are areas of law and areas of the country where individual citizens cannot obtain proper legal representation. Here in Aberdeen it is obvious to all that those offering legal aid facilities to citizens are decreasing all the time due to the very poor remuneration offered to solicitors already under pressure from all avenues in terms of cost. The inevitable result of the bill becoming law in its present form is that the supply of legal advice will sharply diminish and that is very much against the public interest.

I am a sole practitioner with one trainee solicitor and one secretary. We act primarily for individuals only. The demands upon us and expectations from clients are very high and our roles as solicitors are becoming increasingly difficult to manage. I fully accept that if I have made an error which results in loss to my client then my client should receive suitable compensation for that loss. However I do not accept that the proposed new commission should have the power to impose a penalty of up to £20,000 without proof of fault or loss upon me. Has anyone stopped to consider that firms such as mine who offer legal aid to those disadvantaged financially in the community do not have high earnings or a high turnover and such a penalty could pose serious financial hardship on my firm? Gone are the days when so called “fat cat lawyers” with very high salaries are the dominant feature of our profession. With swinging taxes and rates plus low remuneration the situation of a sole practitioner such as me is not good. I am very worried about the fact that there would be no appeal available against any such decision to impose a penalty. How can that possibility right, just and fair when viewed against the position of all other professions and citizens of this country who in tribunals or via the courts do have a right of appeal? Why should I, as a solicitor, be treated any differently to them?

I am very concerned that it is proposed that the funding of the commission should be dependent on payments based on the number of complaints made against my firm, even if those complaints were wholly unjustified and were rejected. Has anyone considered the impact of such a proposition on the citizens who use the services of solicitors? Whilst a large number of citizens are no doubt decent there is no doubt that there will be others who see the proposal as a means of making money. Already client’s routinely complain to the Law Society about matters that, when investigated, do not in any way constitute Professional Misconduct or Inadequate Professional Services. Under the new regime presumably I would have to pay the commission to deal with such complaints regardless of whether or not I am at fault. Once citizens realise this is the case I have no doubt there will be those who complain for complaining sake in the hopes that solicitors will try to settle at a lower figure than pay the commission rate. Not a very happy prospect for solicitors at all.

Like many other firms, my firm will have to consider carefully whether we can continue to do work, especially at Legal Aid rates, for clients who already feel aggrieved about something and may well complain about our services if the outcome is not to their liking. That would lead to a further reduction in the availability of legal advice in certain important areas of the law.

There is also a lack of detail about just how the proposed new commission would operate and be funded and much of what has been said in this regard by me is based on information received from other is this profession and their analysis of the bill. It is vital that the detail be provided now, so that the commission can command support and confidence from both lawyers and the public. It is also vital that the workings of the commission both in terms of investigation and fees charged for their services are fair to not just to members of the public but to solicitors as well. If such complaints were sent to the court or to a tribunal I would at least have the chance of recovering the costs of the investigation if the complaint made was not upheld and why should I not have that right? Why should I be placed under a financial burden for such a matter if I am found not to be at fault after investigation, where is the justice in that?

The apparent reason for the new commission is to give a perception of independence from the legal profession. I am of the view if the right level of information was given to the public
now about the independence of the Law Society Complaints committee which comprise lawyers and non lawyers then the public might think differently about the policing of solicitors. As it is that information is sadly lacking and the public perception is of the Law Society looking after its own. That of course is completely wrong as if there is fault the Law Society does not shirk from saying so and imposing penalties on the solicitor.

I trust that the Committee will have regard to my comments