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

19 April 2006

Dear Sir/Madam

The Legal Profession and Legal Aid (Scotland) Bill

I am writing in response to the call for evidence and comment on the above Bill. I am doing so wholly in my own personal capacity and, although I am an employee of the Client Relations Office of the Law Society of Scotland, any comments are entirely my own and should not be imputed to or treated as comments of the Society save insofar as I have adopted the Society’s own submissions.
I have no objection to this response being made available to the public but for obvious reasons would request that my address be deleted.

Background
I qualified as a solicitor in 1977 and spent nearly 27 years in private practice before joining the Law Society’s Client Relations Office, where I have been for the last 3 years, dealing with complaints by the public. During my period in private practice I consider that I was working very much at the coal face, so to speak, dealing with criminal defence work, unfair dismissal, matrimonial problems, domestic conveyancing and executries. These are the bread and butter work of the profession; the areas of work which are most likely to bring the public into contact with the Legal Profession and the areas of work most likely to produce complaints.
Whilst I would accept that I have a vested interest in opposing the Bill I also consider that my background gives me a level of insight which, if certainly not unique, is much more substantial than most. Both myself and members of my family have in the recent past been “consumers” of legal services and I have therefore become familiar with the provision of legal services from both sides. I do consider that the Bill in its present form is flawed and must be challenged.
The Purpose of the Bill
In the Ministerial foreword to the consultation exercise, “Reforming complaints handling, Building consumer confidence”, the Justice Minister stated:-
“Most people receive an excellent professional service from their lawyer. However, when things go wrong, the complaints procedure can seem slow and unresponsive. Clients with a justified complaint expect it to be handled well and resolved to their satisfaction.
It is also in the interest of lawyers themselves to deal with complaints effectively, to learn from mistakes and to improve their service. Lapses from high standards, however rare, can have severe consequences for their clients. That is why an efficient, transparent and accountable system is essential.
Good progress has already been made in improving the regulation of the legal profession. ........
But more needs to be done. I am committed to reforms which will put the users of legal services at the heart of the regulatory arrangements, which will make the system more representative of the public interest and which will build public confidence in complaints handling.”

I am grateful that the Justice Minister accepted that “good progress has been made”. The fact of the matter is that in the time that I have been with the CRO I have seen a massive change in the way complaints are progressed. 90% are completed in 9 months. I understand that we are completing 75% in 6 months. The suggestion that “the complaints process can seem slow and unresponsive” is unsupported by any up to date objective research. The present system is efficient and accountable and any suggestion that what is being proposed in the Bill will be more transparent than the present system is manifestly absurd.

The Flaws
In my submission the Bill as drafted and its purposes are seriously flawed. I do not propose to go into these in detail but would list what I see as the most obvious and fundamental shortcomings as follows:-
Human Rights Act Compatibility: I understand that the Executive
have already seen the opinion prepared for the Society by Lord
Lester of Herne Hill and would respectfully adopt the terms
thereof for the sake of brevity. Tax: I have not seen the
memorandum produced by the Executive which claims that the
Bill is HRC compliant. I have noted however from his opinion at
para 58 that Lord Lester states that the Executive is characterising
the levy on the profession as a tax. I had always understood that
the only tax raising power available to the Scottish Parliament in
terms of the Scotland Act was the power to vary the standard rate
of income tax by plus or minus 3 pence. If the levy is indeed a tax
then I would respectfully submit that it beyond the legislative
competence of the Parliament to raise such a levy (tax).

Level Playing Field: A great many of the legal services provided
nowadays are not provided by lawyers. Such services can be
provided by such as Will Writers; Claims Handlers; Banks;
Accountants; Estate Agents. The proposed new regime will apply
only to lawyers and not to the other suppliers of legal services.
This means that an accountant who gives advice on tax law will
not be regulated under the new regime but a lawyer who gives
advice on exactly the same matter will be.

Equally, if a lawyer is instructed to market someone’s house then
he will be subject to the new regime but if that house is instead
marketed by an estate agent then the estate agent will not be so
regulated. Such a state of affairs is clearly unfair to the legal
profession but is if anything even more unfair to the public. If
the Justice Minister’s aspirations of putting users of legal services
at the heart of regulatory arrangements are to be fulfilled then the
new regime must apply to all providers of legal services. Why
should someone who uses a claims handler have no redress for an
inadequate professional service. Why should a claims handler
doing the same sort of work as a lawyer not be subject to the
same regulatory regime for complaints handling.

Cost: The present system costs as I understand it about £2.1 million
per annum. A considerable amount of the required work is carried
out by volunteers at either no charge or at minimal cost. I refer in
particular to the work carried out by reporters and by the members of client relations committees and the professional practice committee, both solicitor and non-solicitor.

As I understand it, in future the role of the complaints manager will be not only to investigate a complaint, i.e. the role presently undertaken by myself but will also determine the complaint, i.e. the role presently taken by a combination of the reporter and the client relations committee. There is no way that the present level of service complaints could be investigated by the present number of case managers. The Commission will require to employ a much larger number of case managers if it is to have any remote prospect of coming anywhere near the CRO’s present target times. The work will have to be carried out by staff of graduate level and probably legally qualified if they are to have a proper understanding of the issues involved in handling a legal services complaint. It’s not like dealing with a customer complaint about a defective hair-dryer or a tin of mouldy baked beans.

I would respectfully suggest that the likely costs of the Commission will be at least double those of the CRO. In addition the Society will still be investigating conduct complaints and the cost of these will also have to be met by the profession.

Could I point out that the vast majority of legal firms in Scotland would be classified as “small businesses”. Chambers of Commerce throughout Scotland and the CBI in Scotland have repeatedly drawn attention to the cost and regulatory burdens already being suffered by small businesses and yet the Executive appears to be prepared to inflict yet more regulation and cost on one particular part of the small business community without any commensurate benefit.

The Levy:- As I understand the bill, the intention is that there will be an annual general levy on all the profession with a further levy imposed for each complaint against a particular firm and that the complaint levy will be exigible even if the complaint is unsuccessful. Put simply this is a system for
imposing a fine on a firm that has carried out a good service. The injustice of such a system is patently obvious and offends against even the most rudimentary principals of natural justice. I also believe that the proposed new system will result in members of the profession being deterred from providing the types of services which are likely to result in complaints, particularly domestic conveyancing, executries, criminal defence work and matrimonial work. There has been a problem in the past 10 or so years of new lawyers preferring to go into commercial and corporate work rather than private client work resulting in recruitment problems particularly in rural areas. The proposals in the bill will only exacerbate these problems. The legal deserts referred to by the President of the Law Society are only too likely. This cannot be in the public interest. A system of regulating the profession which is not in the public interest is not fulfilling the aspirations of the Justice Minister as set out in her foreword to the consultation document published last July.

Yours faithfully

Ian D. Ritchie