20 April 2006

LPLA Bill
The Clerk to the Justice 2 Committee
Room T3.60
Scottish Parliament
Edinburgh
EH99 1SP

Dear Sir

JUSTICE 2 COMMITTEE CALLS FOR EVIDENCE AT SAGE 1 OF THE LEGAL PROFESSION AND LEGAL AID (SCOTLAND) BILL

I have been involved with the Law Society from December 2001 and the Scottish Legal Services Ombudsman from August 2002. Since those dates I received 19 letters, the last dated 31 August 2005 from the Law Society and from the Scottish Legal Services Ombudsman 9 letters, the last dated 16 December 2005.

My reason for writing to you is to put forward my views on why the Bill mentioned above is desperately needed. In my view the Law Society is the best defence council a solicitor has. It works on the system that you must proof 99.9% that there has been an error, that alone is a ridiculous view. Another point is that in all correspondence I have received from the Law Society I have never seen any of the replies from the points I have raised from the solicitors involved so we have a situation were a person complains to the Law Society, is requested to submit written statements, and in practice the Law Society contacts the solicitor but you, as the complainer, never sees any of the replies. So you cannot challenge any of their statements because you never see them, which means that the solicitor is the pivotal point, sole judge and what he has answered is taken without question.

Any situation were solicitors are the sole abitary decision making body is wrong. There is a situation in place were you can ask for an independent enquiry, I have been asking for that for five years and being constantly refused. I have letters from the Law Society which state that your only course is to go to court, which is expensive. In my opinion this is not the way to deal with legitimate complaints.
I heartily agree with all the key provisions in the Bill especially that the Board be led by a non-lawyer majority and a non-lawyer chair.

In my own situation I have written to the Justice Minister, to her Assistant and I have been informed that they have no authority to interfere in any cases. This seems strange as the Scottish Executive are part of the funding for the Ombudsman.

I have documentary proof that a solicitor did not abide by the wishes of his client and there were several statements made by him that are questionable. As I stated to the Justice Minister this is a situation that started as a beebie on the beach and developed into Ailsa Craig.

This affair has been dragging on the five years and all I want is explanations as to why several inaccurate documents were accepted by the Law Society.

Therefore the new Bill being proposed would in my view be more helpful to the general public and give them a better voice and a chance to be heard.

I am not saying that all the Law Societies decisions are wrong, that would be a disservice to the many good people who work there. But what I am saying is that there must be a more open examination of all correspondence and explanations given for decision that in my own way put a 90 year plus client in an impossible position and gave her great anxiety due to, in my opinion, mismanagement by her solicitor. The Law Society does not, despite documentary evidence, seem to think he did wrong.

I thank you for the opportunity for me to express my views.

If you require any further information or documentation please do not hesitate to contact me at the above address.

Yours faithfully

Alex McHattie
9 May 2006

Ms Mary McGowan
Depute Director
The Law Society of Scotland
26 Drumhough Gardens
Edinburgh
EH3

Dear Ms McGowan

Over the last weeks I have given great thought to the time spent and the documentation passed to myself over the past five years. Whilst I accept that I have been vigorous in my correspondence over that period this week five of my close friends whilst over the dinner decided to look at the paperwork and it is amazing what fresh eyes can see.

I append below information, which I think you will find most interesting.

1. Your communication dated 26 August 2002 stated that your Society refuses to investigate and gave five reasons. I now write to advise that I think two of your conclusions are questionable and that the fifth conclusion is flawed.

2. The delay in sending me Dr Lyon’s letter about the release of confidential information – you state in your conclusion that clearly no complaint arose and that you would consider the facts that Anderson Fyfe passed to you stating that it was only on 20 September 2002 that permission was given to discuss the contents of Dr Lyon’s letter. Unfortunately for Anderson Fyfe I was in touch with Dr Lyon in 2003 and I have a signed statement from him which states that he wrote to Mr Wilkins on 28 September 2000 giving permission to release such information to be shared with other parties with an interest in Miss Galt’s estate. He also states he never refused Mr Wilkins’ permission to release such information. I understand that you acted on information received from Anderson Fyfe, which may have been flawed, so therefore your fifth conclusion could also be seriously flawed. Remembering that this was one of the main reasons that made up the refusal to undertake an independent inquiry to this case. I now think that some answers are required.

3. I advised you that I considered the Will that was received from Mr Wilkins using my own words was a fake. I can now shed some doubt on this Will. In Mr Wilkin’s statement to Charles Jackson, my solicitor, he claims that the draft Will was sent to Miss Galt for approval for the flat and contents to go to Alex McHattie and that the terms of original Will and Codicil were imported into the draft Will. As I stated to you before the draft Will does not include the
Codicil. In fact it only includes selected beneficiaries. In the original will there were 7 beneficiaries and in the new will there were only 3. 4 of the beneficiaries were not included.

I also maintained to you that this will was gobbled up. It is obvious that it is nothing like the original will and remembering that in the full interview that Mr Wilkins had with Miss Galt on 30 July, Miss Galt's hearing aid was broken and the home help interpreted for Mr Wilkins who had categorically stated that no other such matter was raised other than the house. Therefore according to Mr Wilkins the will he supposedly sent to Miss Galt on 30 July regarding the flat and contents should be no different in content to the original Will except for the house. This is not the fact.

4. Your other conclusion to No 2 in the letter are inconsistent with the facts.

5. No 4 – the monies from the estate were distributed without reference to me, imagine my surprise. This is a cracker.

According to the Ombudsman Messrs Anderson Fyle had written to my solicitor on 2 October to confirm that the house had been sold. No such letter ever existed – I have enquired at my solicitor, looked at correspondence and we have received no such letter. I would ask how did the Ombudsman get this information, considering that both my solicitors had been pushing for months to get an answer and were unsuccessful.

Stating all of the above I would consider that your conclusion, given the information you received from Anderson Fyle was flawed. I can document all of the above. I hope to speak to you this afternoon on the case but I must say to you one of the comments in the Law Society Booklet on Page 16 states that a copy of responses will be sent to you. To date any questions I have raised I had not received the replies from Anderson Fyle to my questions, only the responses from the Law Society.

I must also advised that I was asked to submit a statement regarding this case to the Justice Committee in their call for evidence in Stage 1 of the Legal Profession and Legal Aid.

Once again Ms McGowan I must say that I case no doubt whatsoever on the decisions that you made, but it is obvious from written correspondence that you were given misinformation and I accept that you based your decision on this.

I would sincerely hope that you would look at this case again and I would have no objections if you yourself took it in hand as I always felt that you played by the book.

Thank you once again for taking the time to read this correspondence.

Yours sincerely

Alex McHattie