Dear Sir

The Legal Profession and Legal Aid (Scotland) Bill

I attach a copy of the correspondence sent by William Young to the Justice 2 Committee in relation to the above. I agree with his comments and objections to the Bill as currently drafted.

Yours sincerely,

Pauline McBride

Enc.: Copy Letter
Dear Sir

The Legal Profession and Legal Aid (Scotland) Bill

Given the weight of public opinion over recent years, the establishment of an independent Scottish Legal Complaints Commission ("the Commission") to handle service complaints against solicitors probably was inevitable. I can understand the Scottish Parliament's desire to create a more demonstrably independent system for handling such complaints. The public should be entitled to expect that any complaint they make in relation to inadequate professional service by their solicitor will be handled professionally, efficiently and independently of that solicitor's governing body, the Law Society of Scotland.

In my own firm's experience, the willingness of clients to complain has increased in recent years and it is an area that my firm takes very seriously indeed. There is a small percentage of such complaints that we are unable to resolve to the client's satisfaction and, in times past, these complaints would find their way to the Law Society of Scotland. On the odd occasion, a client would resort directly to the Law Society without intimating a formal complaint to us at all. All complaints by clients are dealt with expeditiously by our dedicated Client Relations' Partner and those that are the subject of a report to the Law Society are reported on by him at every Partners' meeting. Nevertheless, I am pleased to be able to say that we have what we consider to be a very good complaints record, both in relation to numbers and in relation to the proportion satisfactorily resolved. I would be surprised to find that the experience of the majority of good quality Scottish legal firms is any different.

On the face of it, the Bill promises a regulatory system that is transparent and open to scrutiny and which should ensure a speedier resolution of complaints with greater involvement on the part of the complainer. All entirely laudable.

However, the Bill as it stands gives cause for concern in a number of respects.

Firstly, there must be doubts about the independence of the Commission, given that the Scottish Ministers have the power to appoint and remove members and decide their remuneration. The Commission is also under a duty to comply with directions given by the Scottish Ministers. The Commission would be an administrative body carrying out judicial functions, which must call into question whether it complies with Article 6 of the European Convention of Human Rights (ECHR) which requires judicial functions to be carried out by an "independent and impartial tribunal." The Bill as it
currently stands does not allow an appeal to an external body by the solicitor complained against and, again, I consider that it makes it incompatible with Article 6.

As to how the Commission will function, unless its members and its staff are legally qualified, how are they able to judge whether a solicitor has provided an inadequate professional service? Apart from administrative aspects like response times, surely the standard of service provided by the solicitor can be judged only against that of a competent solicitor handling the case properly. This point is also relevant in respect of the Commission’s powers relative to issues of misconduct, as opposed to service.

Some of the financial implications of the Bill also trouble me – not least the fact that the profession will be funding the entire exercise. Smaller legal practices that have to offer a full range of legal services, often on low margins, might be unable to absorb the increased costs arising from the new system and this could adversely affect the availability of legal services in certain parts of the country. Most solicitors already have considerable costs to bear before they can start operating - Practising Certificate dues, Guarantee Fund contribution and professional indemnity insurance premium.

The proposed compensation level of £20,000 is far too high for a regulatory body. Presumably a number of complaints will be based on a solicitor’s negligence and unless the negligence has caused the complainer more than just a negligible loss, the matter should be left to a court, rather than the Commission, to determine, otherwise solicitors are being treated less fairly than other negligent individuals. In particular, the complainer should not be insulated from an award of costs where he has in prospect a financial outcome of up to £20,000.

The complaints system envisaged by the Bill lacks adequate provisions to discourage unjustified claims – claims that would be both detrimental to the effectiveness of the Commission and financially burdensome to the legal profession. There is nothing in the Bill to prevent a certain category of complainers abusing the system by using their complaint as a negotiating tactic, secure in the knowledge that their solicitor will incur costs and possible reputational damage, regardless of ultimate guilt. It is unfair that the proposals expect a solicitor to pay for any complaint made against him whether or not that complaint is upheld ultimately. Although the Commission proposes to eliminate frivolous claims at a preliminary stage, such claims will not always be immediately apparent and the Commission should have the ability to make an award of costs against a complainer.

At one time my firm was happy to handle Criminal Legal Aid work and Civil Legal Aid work until Government policy dictated that the rates of remuneration for such work were such that it was not viable for us to continue to provide those services, standing the quality of advice we offered in those areas. That, in my view, has been the public’s loss. I am aware from discussions with others within the profession that such work attracts more than its fair proportion of complaints and I have a concern that public access to these sort of legal services will be further restricted as those firms still prepared to provide advice in that sector come to realise the burden imposed on them by the new complaints system. Residential Conveyancing is in a similar position and the imposition of further costs associated with that type of work will serve to limit further the number of providers. Consumers will be driven into the hands of the bucket-shop provider and my experience is that the quality of the service offered to the consumer in such circumstances deteriorates markedly.

I hope that some of the points raised in this letter, which are my own personal views and not necessarily those of all of my partners, will assist in your deliberations.

Yours sincerely,

W. S. G. Young