Submission from Mark O’Dowd for the Legal Profession and Legal Aid (Scotland) Bill

Dear Sirs, it is with great reluctance that I find myself opposing the government on the issue of the proposed ‘Consultation Paper, Reforming Complaints Handling, Building Consumer Confidence: Regulation of the Legal profession in Scotland, which closed in August 2005.

Nevertheless, I feel I must document my general disapproval of the proposals outlined in the above named paper and my agreement with the Law Society of Scotland’s view that these proposals are thought to be necessary based on a misunderstanding not only of the legal profession as a whole, but also of the circumstance and context in which we operate.

As someone who became a solicitor through my passion for communication, having already had a career in other client facing fields such as the entertainment industry, and being exposed to the legal system through volunteering for the Children’s Hearing System, I feel as qualified as the next person to present an opinion the publics perception of the issues within and out with the legal profession. However, for the sake of brevity, I only wish to focus your committee’s attention on the primary issue which I feel underpins this discussion; and that is that the publics view on the issue of regulating the legal profession is predicated on misconception.

With this in mind, you can imagine the degree of relief felt by me when I read recently, on the Law Society’s web site, that they believe the proposed changes are in response to a perceived need, which in turn is predicated on a perceived problem rather than a real one. Within this context, I have no difficulty regarding the government’s intention, as I believe the government’s intention is based on an honest belief. Nevertheless there are many grave and unfortunate deeds committed by people who hold honest beliefs. This very thing happens in the case of ‘essential error’ where parties believe they are committing to an agreement and for all the right reasons but are, in fact, acting on an essential error which means they are not in agreement at all.

The Legal Profession

It is a well known fact that the legal profession has never been at the forefront of good public relations. You only have to look at our clumsy, and dated policy on how individuals and firms should promote and advertise themselves or do a search on the web for lawyer gags for evidence of how poorly our profession rates in the ‘brand age’. A very recent example how irresponsible tabloid TV can help to compound the poor perception was evident to all those who witnessed Sir Alan Sugar’s indignation at a young lawyer’s attempts to convince him that she had performed well. When ejecting her from his show, for not being cheap and ruthless, he commented ‘we don’t need another blooming lawyer’.

Ask yourself this, when have you ever witnessed our profession launching an effective charm offensive after ‘bad egg’ story or, brought to the public’s attention the good pro bono work or the altruism pursued by many of our profession? It has got so bad that when asked what they do for a living, many of the young solicitors I know find it easier to avoid ‘admitting’ they are solicitors or if they must, they say it really fast.

We are often seen as greedy, selfish and all earning fortunes for doing nothing. If this is true, not only did I miss a memo, but it leaves me wondering why as a group there appear to be a disproportionate amount of solicitors committing suicide? If this is true, why is the average wage of a solicitor now less than a plumber? Most of the lawyers I know, rightly feel a sense of pride putting in the hard work to become a solicitor. In fact, many of the my peers became solicitors because they believed that it was a noble profession which extols the virtues and values of respect, upholding the rule of law and imposing good faith in everything they do.

I would be the first to criticise many of my colleagues for failing to challenge the public perception of solicitors. However, the proposals described in the consultation paper are not the way to teach us a lesson. It is at least arguable that the legal profession is paying the
price for poor public relations. If this is remotely possible, or to put it another way, if there is reasonable doubt, we must stop and think whether the response is necessary and appropriate.

The Context

Increased expectation.

Most people come to their solicitors in desperation. Many have got themselves into a worrying situation be that a matrimonial situation, a breach of contract situation, debt situation or in some cases criminal situations. It is rare that you will find anyone who comes to a solicitor to prevent a situation or set of events occurring. I myself recall what in my view is a typical situation regarding how people approach their solicitors.

I was once dealing with a situation to recover approximately £6,000 for a client. I explained that it would be very difficult to get the money back due to the nature of the agreement that my client had entered into. I explained the worst and best case scenarios and the likely cost to my client. I also established what success would look like from my client’s point of view. After months of negotiation, we secured the return of the full £6,000.

In line with our agreement, I feed the case at £1500. When my client received their fee note, I received a telephone call asking me if I could recover my fee from the other party (I had previously explained there where a whole host of reasons why this could not be done.) I politely reminded my client of everything we had agreed at the start and based on what they thought success looked like I had surpassed their expectations yet here I was having to justify the fee which they previously had no problem with. My client apologised and explained that they would recommend me to anyone. Draw your own conclusions here.

This is more common that you might imagine. Therefore, in my mind it provides a very good example of the context and the contradictions that the legal profession have to deal with as part of our daily working life’s. It does not surprise me that these contradictions find their way into conversations and jokes about lawyers being very expensive or greedy or rich and so on.

In conclusion, I don’t believe the legal profession should be punished for poor public relations by imposing on them the type of regulation which can only exacerbate any perceived or otherwise, need for more transparency. If we are to avoid throwing out the baby with the bath water, you must test whether the public’s opinions are based on a perception or on reality, in fiction or fact. You must challenge our profession and the government to do more to positively promote the contribution our 12000 professionals and £1bn profession makes to the economy and to the lives of our many satisfied clients.