Submission from Alastair Duthie for the Legal Profession and Legal Aid (Scotland) Bill

If this bill is not amended it will have a detrimental effect on the quality of life of Scottish people. The quality of legal services to clients will be worse and an excellent legal system will have been irretrievably damaged.

The Scottish legal system is recognised as one of the best in the world. Changes should be based on reality. The vast majority of clients are extremely happy with the service they have from their own solicitor although they may have a different perception about other solicitors.

If a solicitor is negligent he should be liable without limit for the losses resulting from his negligence in the same way as a doctor, accountant, plumber etc would be, and the same procedures should operate for awarding compensation, i.e. through the courts.

If the Board can award up to £20,000 against a solicitor for inadequate professional service the solicitor will inevitably have to “guard his own back” This will result in solicitors:

- declining complex cases
- declining clients perceived as potentially difficult
- having to impose more cumbersome and expensive procedures in case things go wrong.

That will increase client dissatisfaction, increase the number of complaints and increase the cost of dealing with complaints – everyone will lose.

**Compensation limit**

The present limit of £5,000 should not be increased. The Scottish system is different from the English one and the English white paper solution should not be imported to Scotland.

**Representation on the Board**

At least one practicing solicitor should be included on the board.

**General levy** (estimated at £120)

Governments are not good at estimating running costs of new bodies, organisations, projects. If there is to be a general levy imposed on solicitors it should be at a fixed amount subject to inflation increases.

**Specific levy**

This is a very unreasonable proposal. If the argument is “polluter pays” the way to achieve this is by applying a higher levy to those solicitors against whom inadequate professional service complaints are upheld. Most solicitors and most members of the public would see that as fair. It is very unreasonable to impose an obligation to pay a specific levy - £300? £400? £500? to be paid by the solicitor even if the complaint is unjustified – especially in our line of business where dissatisfaction (particularly in contentious matters) is sometimes inevitable even if the solicitor may have done a perfect job.

When some people learn that solicitors have to pay e.g. £300 for processing of a complaint (even if the complaint is found unjustified) they will rightly assume that the solicitor may pay them £300 to get rid of the complaint rather than pay £300 to fund the complaint and then
have to deal with it. Most members of the public would not dream of doing that, but a significant number would. It will happen. It would be naive to think otherwise.

How would a joiner feel if he had to pay £300 for each unjustified complaint?

Would that be acceptable to a teacher – a doctor – a politician?

How would you feel if someone complained about you personally without good reason and you (not they) had to pay £300 to pay for their complaint based not on negligence but purely on inadequacy of service.

Young people will be scared to become solicitors

The majority of young people thinking of becoming solicitors want to be “high powered” corporate lawyers – probably because of their perception based on films and TV shows. There has been a dramatic reduction in the number of young people interested in a career handling “ordinary” legal business. Tell these people that they can be “fined” £20,000 if the service they provide to any of the many clients they will have to act for simultaneously is deemed “inadequate” and that they will have to pay £300 for an unjustified complaint

and there will be a shortage of lawyers, and reduced competition between legal firms, resulting in increased costs to clients.

There will be “advice deserts”. An increasing number of people would be unable to find a solicitor to act for them – especially potentially difficult clients, clients outwith the main population centres and clients with jobs which are potentially problematic.

If these changes are brought about as proposed, the Scottish Parliament will be responsible for having created an antagonistic relationship between solicitors and clients and will at a stroke have destroyed the spirit of mutual co-operation and respect which exists in the vast majority of cases now and results in a very high level of client satisfaction.

Summary

1. Retain £5,000 as the level of compensation.
2. Provide for solicitor representation on the board.
3. Enable right of appeal to the court.
4. Cap the general levy.
5. Drop the proposal to charge the specific levy in all cases of complaints.
6. Instead apply a higher levy in cases of upheld complaints.