Submission from Peter Macari for the Legal Profession and Legal Aid (Scotland) Bill

I understand that you are currently taking submissions in regards to the above. I have the following comment to make in regards to the Legal Profession and Legal Aid [Scotland] Bill.

1. COST

There is no proper cost or cost benefit analysis of the proposed new Scottish Legal Complaints Commission. It appears that this will be met by a general levy on the legal profession as well as fees charged to solicitors for every case considered, whether upheld or not. I find it unacceptable that I, as a solicitor, will have to meet a fee if the complaint is not upheld.

2. COMPENSATION

I understand that there will be an increase in compensation for inadequate professional service from the current £5,000 to £20,000. This is excessive and no explanation is given for such a large rise. It appears that you are simply adopting the figure from the English White Paper on Complaints Handling. It would appear that an English solution is being imported to resolve a perceived Scottish problem despite the Scottish Parliament promising to produce Scottish solutions for Scottish issues.

3. NO FAULT LIABILITY

It would appear that the system is based on the principle of the lawyer paying as the practitioner will be expected to pay case fees whether or not a complaint is upheld. In addition the lawyer will pay the full costs of mediation through the Commission. Would it not be more appropriate to simply charge a higher case handling fee when the complaint is upheld rather than a flat handling fee applying to all cases.

4. CONDUCT ISSUES

It appears that the Commission will have the power to force the Law Society of Scotland to action certain conduct issues. What is the point of the Law Society if an outside body may dictate that action is to be taken?

5. ACCESS TO JUSTICE

It is likely that many lawyers will cease doing types of work where the client is more likely to complain, ie matrimonial work. Law Centres could be hit hardest as most of their workload is based on this type of work and often involves the most difficult clients. The Scottish Executive may create advise “deserts” as already suggested by the Law Society of Scotland of which I am a member.

6. HUMAN RIGHTS

The Law Society of Scotland have obtained an opinion from a leading English QC which states that the new system will be unlikely to comply with the European Convention on Human Rights because the Board will be appointed by Ministers and will not guarantee solicitor representation; case fees will be paid even if a solicitor is exonerated and there will only be an internal right of appeal for the public or the profession of a decision by the Commission on a service complaint.

The Commission will take on the functions of the Courts in negligence matters where the claim is less than £20,000 even though there is no consultation mandate to do so. Again this is likely to raise issues in regards to ECHR compliance. Like the Law Society of Scotland I believe that negligence should remain a matter for the Courts. After all you do not see Commissions dealing with the negligence of doctors, architects, accountants, civil servants or even the actions of MSP’s!