Submission from Kenneth Paterson Solicitors for the Legal Profession and Legal Aid (Scotland) Bill

Kenneth Paterson solicitors is a small firm consisting of a sole practitioner, part time staff, and provides court, family, debt, welfare & housing advice via our office, and series of legal clinics. We assist a great number of clients who have significant physical and mental health disabilities, due to the location of our clinics and our willingness to undertake welfare rights and court work. At present the bulk of our cases are legally aided. We also provide free / pro-bono advice service for clients.

We would comment as follows in relation to the bill:

Raising of The IPS Level

A significant percentage of our clients have severe mental health problems, drug or alcohol difficulties, communication problems, or come to us in various states of distress. It is not uncommon for us to find that we are giving advice to clients who have deep rooted problems with trust due to difficulties with previous advisers, or have previously complained about previous solicitors, doctors, or other advisers.

Whilst certain of these clients can be difficult to deal with, we currently take all cases on the basis that our clients include the most vulnerable people in society, and are entitled to legal representation.

If the IPS level was raised we would be unable to act on behalf of these vulnerable groups, due to the risk that a single claim would seriously affect the firm or indeed put it out of business. This is to say nothing for the free / pro-bono legal advice which would almost certainly be stopped on the grounds that we could not risk a potential claim, even one that was ultimately unsuccessful.

In the last 10 years the legal advice and assistance rate (the fee paid to the firm) has gone up by around 21%. The potential IPS award if a case is dealt with badly has been increased from £1,000 to £5,000, an increase of 500%. This is even without considering the limit being raised again to £20,000. There is no additional money available to a firm to meet these claims, particularly due to the low increase in legal advice & assistance, which is a fraction of the increase in potential IPS awards. The only way that a small firm could protect itself against the risk of such claims would be to abandon legal aid, vulnerable clients, and instead concentrate on private work, which pays at over two to three times the legal aid rates.

An average firm may only achieve around 1000 chargeable hours per solicitor per year. At a legal aid rate of £51 per hour this relates to £51,000 from which to pay rent, rates, salaries and all normal business expenses. No firm is going to take on a difficult case or a client who is perceived to be difficult, if this could result in almost half the annual turnover being taken in a single IPS claim.

Whilst a £20,000 limit, or even a £10,000 limit may be bearable to a large commercial firm, these awards could easily put out of business a small firm or sole practitioner doing private / legal aid work, the point of contact that most members of the Scottish Public have with the legal profession.

We note that the English system has a similar IPS limit to that proposed in Scotland. We have some experience of English solicitors, particularly when Scottish clients face court action raised in England. These solicitors inevitably charge privately at over £160 per hour for dealing with clients. Whilst these charge out rates may make a potential £20,000 claim bearable, the Scottish advice and assistance rates of £51 per hour certainly do not.

We are concerned that as a the result of these proposals, small local firms such as ourselves, which provide advice to individual members of the public, would find it impossible to continue. The result of this would be that ordinary members of the public would find it very difficult to
obtain independent legal advice, and people with mental health disabilities or communication difficulties will find it almost impossible.

**Register of Non Legally Qualified Advisers**

We have some concerns about the fact that legal aid is currently paid at well below private rates, and is increasingly seen by solicitors as an unprofitable area of business. Whilst we do not object to registered advisors in principal, we are concerned that they may be considered competition to solicitors but without requiring to pay the compulsory levies, charges, guarantee fund premiums etc. that solicitors are required to pay. Advice & Assistance is one of the principal funding methods for many solicitors firms, and if they are either unable to provide it, or requiring to compete to provide it, many will simply withdraw from the legal aid system.

Without advice and assistance most civil legal aid cases would not be economic to pursue.

We are concerned that any restriction in the availability of solicitors to provide advice & assistance, for example through provision by non-qualified advisors, will lead inevitably to withdrawal from the legal aid system.

With legal aid rates now at between 1/3 and 1/2 of the private rates, we would have thought that the priority would be to persuade these solicitors still willing to carry out legal aid that it offers a sustainable long-term future. This is not going to be achieved by the notion that future advice and assistance work may either not be available, or offered by other organisations that do not require either the investment or costs of a solicitors firm.

**Conclusion**

We are proud of our tradition of providing legal advice regardless of a person’s financial circumstances, and are concerned that the proposed bill would limit this.

We would submit that the priority for legal reform is to increase access to justice to ordinary members of the public and to the most vulnerable members of society, not to deprive them of access to justice by making their cases almost impossible for solicitors to take on. This is particularly true when the low level of legal aid fees make non-private work very difficult to do profitably even at the best of times, and many small firms are reconsidering whether to carry out this work at all.