Submission from Taylor & Henderson for the Legal Profession and Legal Aid (Scotland) Bill

Taylor & Henderson is a firm of solicitors operating in North Ayrshire. It is what is typically known as a High Street firm serving the legal needs of the community. It deals with Conveyancing, Executry, Civil & Criminal Court work, Employment Law and Commercial Work. We provide Civil & Criminal Legal Aid and also Legal Advice & Assistance. The firm has concerns about the Bill as currently presented.

1. There seems no justification for a level of compensation of £20,000. It is only recently that the Scottish Executive considered that it was proper that the level of compensation be raised from £1,000 to £5,000. It considered that that was appropriate and it is not considered that the Executive have given any justification for the level to be set at £20,000.

2. It is noted that the Executive are to deal with the set up costs of the Scottish Legal Complaints Commission but thereafter funding is to be provided by levies of the profession. There is to be a General Levy which it is assumed will be paid by every solicitor holding a practising certificate and there is a Specific Levy which is to be paid by any solicitor against whom a complaint is made. This firm considers that it is wrong for the Specific Levy being taken from any solicitor against whom a complaint has been made. This could effectively allow clients to hold solicitors to ransom – “if you do not give me compensation I am going to make a complaint against you”. There will be many complaints that are spurious, ill founded or unsuccessful. It seems unfair that solicitors will be penalised merely because someone chooses to make a complaint. It is certainly the case that our firm would consider whether or not it was appropriate to take on “higher risk clients” or work where it would perhaps be more likely that someone would make a complaint because of the stressful nature of the particular problem that the client had. This would lead to a denial of access to justice. Our proposal would be that the Specific Levy should be taken from the solicitor against whom a complaint has been upheld. We appreciate that this will mean that the Specific Levy would have to be greater than that proposed but it would be fairer. It would also encourage solicitors to resolve complaints by conciliation.

3. At present it is possible for third party complaints to be entertained by the Law Society of Scotland. If it is not accepted that our proposal regarding the Specific Levy be adopted then it is considered that, at least in third party complaints, the Specific Levy should be paid by the person making the complaint who after all has no contractual relationship with the solicitor against who the complaint is being made. This is especially appropriate in circumstances where solicitors are engaged in adversarial work.

4. If the Bill as currently proposed is accepted by Parliament without substantial amendment, this firm will consider whether or not it is appropriate to provide Legal Aid services. Any costs of the new system are to be borne by members of the profession but of course ultimately it will be the clients who pay. Typically in conveyancing transactions the fees can be increased and that is reasonable because costs have been increased. In Legal Aid work there is no possibility of increasing the fee and the only way in which this firm could continue to do Legal Aid work would be to subsidise it from others areas of practice which would mean that we would not be competitive in those areas. We practice in a deprived area where clients need to have the availability of experienced solicitors prepared to do Legal Aid work. We are concerned that the proposed regulatory framework will mean that this firm will be unable to provide those solicitors.

5. We consider it fundamentally wrong that negligence issues will be dealt with by a body which is not a properly constituted judicial forum. We consider that this would breach the Human Rights of the solicitor complained against.
6. There would appear to be no independent appeal system. This is unfair and breaches what we consider to be a fundamental right not only of solicitors but also of consumers of legal services.

7. We support the thrust of the Bill which is to have a body independent of the Law Society of Scotland to adjudicate on service complaints.

8. We offer estate agency services to clients which will be covered by the provisions of the new Act. Non-solicitor estate agents will not have the same regulatory framework and solicitors will therefore be operating at a commercial disadvantage. The Executive should consider either exempting estate agency services from the proposed regulatory framework or alternatively applying a similar framework to all estate agents.