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

Outline of my difficulties with the legal profession in Scotland:

My difficulties with the legal profession began with the death of my father, Gino Andrew Cherbi, in 1990, and the subsequent handling of his will.

In early 1990, a firm of solicitors took on the Executry work of the will of my late father, but as years passed by, and it became clear that work concerned with the administration and confirmation of the estate had not been done, and it was discovered, from direct enquiries from the Inland Revenue to myself, that money had been totally drained away from the Estate in a myriad of secret deals and fiddles by the lawyer in partnership with the executor (an Accountant and business provider to the lawyer’s firm) and two additional legal firms, which memos obtained had showed a pattern of deceit towards myself, major financial institutions, HM Government, and the remaining beneficiaries of my late father’s will.

In 1994, the situation had grown so bad that a £300,000 (three hundred thousand pound) estate of my late father had been turned into a negative equity, and the lawyer acting as the legal agent asked myself to put in money to cover his fees and estate accounts. Coupled with an intimation from HM Customs & Excise that this lawyer had deliberately ignored correspondence and Taxation demands, for 18 months, I made a complaint to the Law Society of Scotland over the conduct of the solicitor and his legal firm, and went public with the story in “The Scotsman” newspaper.

It took the Law Society of Scotland, from October 1994 to the middle of 1996 to finally produce a report on the conduct of the solicitor in the case of my late father’s will. The report recommended a prosecution before the Scottish Solicitors Discipline Tribunal and the Law Society Reporter had found that the solicitor had intentionally deceived Banks, myself, the Inland Revenue, had also faked up file notes to try and cover up his actions, and had not done the work he claimed he was doing, while obviously charging exorbitant fees and frittering the money away on unexplainable activities and huge overdraft accounts with Banks his firm had favourable financial deals with.

I was presented with the Law Society report on the solicitor in question, and asked to give my submissions, which I did. The solicitor also had the chance to submit his opinion on the report, which he did, denying everything, even against the weight of all the material evidence against him.

The Complaints Committee initially decided to recommend prosecution of the solicitor before the Scottish Solicitors Discipline Tribunal on the recommendation of the Law Society Reporter in the case, with a view to taking on board any other issues which appeared along the way in the prosecution – so serious was the conduct of the solicitor. However, the solicitor who had already been found guilty of the charges against him, secretly secured his own representation at the Complaints Committee – this representation coming from one of the most senior members of the Law Society of Scotland who was a member of various Committees including the Competence Committee, and the solicitors representative went on to criticise my filing of the complaint, my character, and everything he could possibly make up, to save his client – reminding the Committee that his client did not deserve to lose his career over a client complaint … and, the Complaints Committee commuted their decision to recommend prosecution of the guilty solicitor solely on the basis of the secret representation by this senior Law Society figure .. and decided to keep the whole matter secret from me.

By this time of course, I had obtained lawyers to sue the solicitor for negligence, but could do nothing until the outcome of the complaint was finally known (by way of going through the whole process – complaint to the Law Society of Scotland, review by the Scottish Legal Services Ombudsman, etc …) but the lawyers I obtained were most reluctant to sue one of their own – a pattern repeated throughout my cases.

After the Law Society of Scotland refused to do anything further against the guilty solicitor, I filed a complaint with the Scottish Legal Services Ombudsman, who investigated the matter, and revealed the secret goings on at the Complaints Committee, along with many criticisms of the handling of my complaint, and the Legal Services Ombudsman asked, in his report, for my complaint to be re-opened. The Law Society of Scotland refused, and even though further complaints were brought against this solicitor by myself on discovery of even more evidence, nothing was done by the Law Society, whose senior staff even directly intervened in my legal aid application to get the matter into court – forcing my legal aid funding to be denied, and not content
with that, senior Law Society officials also intervened with my own lawyers, issuing written orders to my own lawyer (which were leaked to me) to ignore my instructions to take a case against the solicitor concerned and to call Law Society staff as witnesses.

The difficulties with solicitors on my late father’s estate didn’t stop with the Law Society of Scotland fiddling the complaint against the first solicitor who acted as Legal Agent. The subsequent solicitor who took over the work from the one who had just been found guilty, was equally as bad, coming from the same partnership and had created as many fiddles again to drain away what was left of my father’s estate (the property) in a determined effort to see that no one got anything from the estate. Complaints were filed against this solicitor and his legal firm, all to no avail, as the Law Society of Scotland were determined that I should not succeed in any case against a solicitor.

By this time, my own solicitors had finally got together a case against the solicitor who had been found guilty of serious professional misconduct, etc … but we had severe difficulties in dealing with the representatives and legal agents of the Master Insurance Policy which acts as the Law Society of Scotland’s Professional Indemnity Insurance scheme for Scottish solicitors.

The whole process was subject to deceit, fraud, delay, lawyers going back on agreements, cheques being signed then ripped up, demands that I sign agreements to close down other complaints I had filed with the Law Society or any further I might file, investigations done into my private life, health, wealth, family, by the opposition in the hope of finding something to hit me with (there was nothing), and eventually, despite the best efforts of the officers of the Master Insurance Policy and the most senior staff of the Law Society of Scotland and their constant interference in my life and this case, I was presented with settlement which only covered the costs of the legal action so far in the case – which I was forced to accept, akin to someone being made to sign a confession at gunpoint.

In further dealings with the legal profession on matters involving the death of my mother, and other very serious matters involving, again, the estate of my late father and issues arising from it, I experienced the same lies, deceit, failures, misconduct and negligence, which I had experienced within my earlier dealings with Scottish solicitors, and had come to realise that this kind of treatment and poor level of work, was typical of the Scottish legal profession, whose members, will continually lie and deceive clients as to the real level of work they are doing, will arbitrarily overcharge huge sums for poor work, will arrange between partners and firms to keep legal actions going, even though they know they will ultimately fail, just to get more fees, will fiddle legal aid forms at-will, will report back to the Law Society of Scotland if a case may turn out to be a negligence action against another lawyer, will indulge in secret deals with financial institutions to leave clients money with those same institutions, while arranging beneficial financial deals for the their own firms and personal use, will sell on or recommend financial policies, including mortgages & other deals from those same financial institutions without disclosing potential conflicts of interest to the clients, and much more besides – and when or if a client ever discovers such improprieties, the Law Society of Scotland will cause so much difficulty to that complaint and client, that nothing will ever be done in their complaint or their case and that most importantly, that client, such as myself, will be in-effect, placed on a “client blacklist” which makes it very difficult for a client who has made a complaint against a lawyer to ever get adequate legal representation again. This is the case with hundreds of people in Scotland, who have been let down by a string of lawyers and legal firms, myself included – where 8 major legal firms and over 12 solicitors have let me down, and the Law Society of Scotland have done nothing about it at all – to save their own.

My opinion on the Legal Profession & Legal Aid (Scotland) Bill’s key points:

1. A new Scottish Legal Complaints Commission, led by a Board with a non-lawyer majority and a non-lawyer chair, acting as a gateway to receive complaints about lawyers which cannot be resolved at source (but with an emphasis on complaints being resolved at source where possible)

2. The new Commission taking over responsibility for handling complaints about inadequate professional service from the legal professional bodies, the Scottish Legal Services Ombudsman and the Scottish Solicitors Discipline Tribunal

The rights of members of the public in dealings with their solicitors and the legal profession as a whole, as they currently stand, in what has come to be a very corrupt sphere of self-regulation, are almost non existent. It is therefore vital to the continued use of solicitors by members of the public that a fully independent regulator body led by a Board with a non-lawyer majority and non-lawer chairperson (with absolutely no
conflict of interest at all) be appointed as soon as possible to deal with complaints against solicitors, as the current framework of self-regulation provided by the legal profession itself, with lawyers investigating lawyers, coupled with a very poor framework of oversight provided by the office of the Scottish Legal Services Ombudsman, who more often than not has actually supported the legal profession’s right to self-regulate, has proved consistently corrupt, inflexible, open to widespread abuse, and allows the legal profession to treat clients any way they like and ruin a client seemingly at-will, which has been done on a regular basis.

There is a trail of overwhelming evidence against the current system of self-regulation of the legal profession in Scotland, where solicitors have caused financial ruin to clients, had complaints made against them, been let off the hook by the Law Society of Scotland, and went on to do the same again, and even much worse, to many more clients, who are unaware of the solicitors poor regulatory history – because the Law Society of Scotland and the Insurers see to it, using all their powers to keep complaints under wraps, and prevent complainants communicating with the media and other complainants & possible future clients, that no one can find out this kind of information – for fear of course, that business would suffer, which it should.

Further, the SSDT (Scottish Solicitors Discipline Tribunal), which is so often held up as some grand independent body which handles the prosecution of solicitors upon such a recommendation from the Law Society of Scotland, is, through my own experience, and that of other cases I have investigated, a complete fake.

Cases which are brought to the Scottish Solicitors Discipline Tribunal, are more often than not, done by prior arrangement with the SSDT when it comes to solicitors who have either acted for clients who have tried to sue other lawyers, or those who are deemed by the Law Society of Scotland to be a danger to the legal profession in various ways, either on a policy basis, financial basis, or honesty basis.

For instance, I found that in cases before the Scottish Solicitors Discipline Tribunal, evidence may be used against a solicitor which came out of a client complaint, but usually that same client will not be called to give testimony – for fear that they will speak as to the difficulties they encountered with the Client Relations Office of the Law Society of Scotland at the complaints investigation and consideration stage, and or any further inconsistencies with the handling of their own complaint which had arose. Commonly, I have found, evidence from complaints, when the actual original complainant isn’t there, is twisted according to the motives of the Law Society themselves, and not only does this prove corrupt complaints handling & prosecution procedures – it also denies the rights of the accused solicitor before the Scottish Solicitors Discipline Tribunal to cross examine the witness.

It is therefore vital that the new body also take on the current duties of the Scottish Solicitors Discipline Tribunal in terms of prosecuting complaints and making sure that those who sit on the SSDT aren’t legal profession stooges or suffer from the conflicts of interest which seem to impinge on ever other aspect of Committee make up within the Law Society of Scotland, where member after member is either a lawyer acquainted through business dealings with the accused,, or has some other relationship with them – the same conflicts of interest permeating down to the lay members too.

A new Scottish Legal Complaints Commission should require that a solicitor and legal firm keep a complete record of their regulatory history and that this be disclosed to a client in full before the client takes on the solicitor to handle their legal affairs. This is essential to ensure that the public get all the information they should be entitled to before employing a solicitor to handle their legal affairs. Such a regulatory disclosure should be backdated to include complaints, settlements, and all regulatory matters which had been handled under the present system of self-regulation as administered by the Law Society of Scotland.

3. Maximum amount of compensation for inadequate professional service complaints being raised to £20,000

I am not in particular agreement that there should be a maximum amount of compensation set for inadequate professional service (ips), as the ways in which inadequate professional service can affect a client, can depend on the extent of the work or financial worth which the solicitor is working on.
I do agree that the amount should be high, and if nothing else, I would agree to the setting of a £20,000 limit, but just say a solicitor gave inadequate professional service on a construction deal which was worth £50 million, and ruined that deal completely, with no prospect of recovery, and if ips was only a factor, not negligence, it would be grossly unfair to the client for there to be a £20,000 cap on any compensation they could receive.

Any such awarding of ips compensation would have to be done by a mostly lay member Committee of the new Commission, which would also be able to stand up to the inevitable bullying by the solicitor committee compliment, as currently happens at the Law Society of Scotland, with ips awards and decisions against solicitors regularly argued away by the solicitor committee members, with the lay members succumbing to the bullying to agree.

4. Responsibility for professional discipline remaining with the legal professional bodies and discipline tribunals but the way in which such complaints are handled being overseen by the Commission

This cannot be so. The legal profession in the form of the Law Society of Scotland and the Faculty of Advocates have proved, time and again, that they cannot be trusted by any stretch of the imagination to properly handle disciplinary matters.

I have already talked about cases before the Scottish Solicitors Discipline Tribunal, in effect, being arranged beforehand, and evidence pulled, stretched, omitted, and much more, to suit the whims of the Law Society in that particular case.

It is not fair at all to the client & complainant that the legal profession be entrusted with matters of discipline, as it is likely, as has happened in the past, that punishments and in-effect ‘plea-bargains’ will be made with lawyers who have already been found guilty of client complaints, which have no bearing or ‘deterrence factor’ against what the lawyer actually did.

The discipline system which is currently used by the legal profession lets solicitors off the hook for the most serious of offences against clients and takes no account at all of their actions against ordinary people. If it were the case that such actions were criminal matters, rather than being talked away as ‘inadequate professional service’ or ‘professional misconduct’ or ‘professional negligence’, most of the lawyers who are complained against, should be in jail for some of the things they have done to clients – and more importantly, some of the tactics and ways they have used against their client to obstruct, thwart or deter their complaint from succeeding, therefore discipline MUST be managed and handled by the new Scottish Legal Complaints Commission, and be as open and transparent as possible.

5. First steps towards giving rights of audience and rights to conduct litigation to members of other professional or other bodies

I agree that rights of audience and rights to conduct litigation should be made available to members of other professional or other bodies, but that of course, such representation is subject to independent regulation.

6. Transfer of responsibility from the courts to the Scottish Legal Aid Board for granting and terminating legal aid in serious criminal cases

In the scenario that such a prospect leaves someone without access to legal representation, when the whim of the Scottish Legal Aid Board comes into effect and legal aid is denied in a serious criminal case, I am not in agreement, and this does not serve the interests of justice as is the current model we use where everyone has the right to be represented in a Court.

I have personally and with great experience, found that the Scottish Legal Aid Board can not be trusted at all when it comes to funding a case, whether that be a criminal or civil law case.

When trying to sue a solicitor, I have been denied legal aid funding by the intervention of senior Law Society of Scotland figures, and the lawyer membership of the Scottish Legal Aid Board.

When I have been in a Courtroom as either a witness or an onlooker, I have been present where the incompetence of the Scottish Legal Aid Board, or simply their wilful ignorance of demands from a client’s lawyer for funding, has led to the ceasing of representation for clients in criminal cases and such cases to be
dismissed due to lack of action from the Scottish Legal Aid Board, and while it may be great sound bites for some to jump up and down saying – oh, that man who was charged with murder was given £200,000 legal aid (but of course he was jailed) … well, would we rather have that killer out on the streets killing again perhaps, just to save the £200,000 ? or should we be rather looking at why his lawyers and advocates were actually charging the £200,000 in the first place ? Is a lawyer in Scotland worth £200,000 + ? I think not from what I have seen.

I am of the opinion that this power should remain with the Courts to award Legal Aid – in particular where clients in whatever action they find themselves, have extreme difficulty in communicating with the Scottish Legal Aid Board, for whatever reason that may be.

6. Enabling the Scottish Legal Aid Board to fund certain advisors other than solicitors to provide advice and assistance

I am in agreement with this, but of course that if such a system be put in place, it be subject to rigorous policing, and that funding requests go through a significantly altered system to the model which the Scottish Legal Aid Board currently use – which goes something like – ‘if it’s a controversial case, or something which could be politically sensitive, or something which goes against the legal profession, or another allied profession, or ourselves, let’s deny funding’.

Summary.

I am well aware there are many aspects to the Legal Profession & Legal Aid (Scotland) Bill to which I could give my opinions on, but as the members of the Committee and the Scottish Parliamentary staff well know, I have campaigned on this issue for a great number of years, making many submissions and communications to the Scottish Executive, the Justice & Home Affairs Committee in 1999, when I first tried to get the issue raised in the Scottish Parliament, the Justice 1 Committee in 2001, when my MSP, Mr Phil Gallie, was successful in getting the “Regulation of the Legal Profession Inquiry”, the subsequent review and consultation by the Scottish Executive, and now, the Justice 2 Committee consideration of the Legal Profession & Legal Aid (Scotland) Bill.

There are a great many people like myself, who have had their lives ruined by their lawyers actions in handling their legal affairs, and the system of self regulation of complaints as operated by the Law Society of Scotland and the Faculty of Advocates has been nothing but a set-up to ensure that nothing was ever done against thousands of solicitors who have faced the most serious client complaints over the years – something akin to a protection racket.

The various constituent parts of the present system of self regulation – that of the Law Society of Scotland or the Faculty of Advocates considering and investigating a complaint, then the Scottish Solicitors Discipline Tribunal prosecuting a solicitor on recommendation from the Law Society of Scotland, and the whole process being overseen by the Scottish Legal Services Ombudsman, is ineffective, and to most who have actually experienced the entire process – nothing but a sham. What’s worse is that this model keeps in place, many solicitors who have long and horrible regulatory histories, allowing other clients to fall victim to them over and over again.

It is therefore imperative that the present framework of self regulation of the legal profession in Scotland be replaced with a fully independent body as is proposed in the new legislation, and that all matters of complaints investigation and consideration, together with prosecution of those found guilty, and disciplinary punishments, be handled by the new Scottish Legal Complaints Commission, and that this new Commission be made as fully transparent as possible. There will certainly be many such as myself on hand to keep tabs on such a new body and ensure that if transparency or impartiality is lacking, attention is drawn to those weaknesses.

I also ask of the Justice 2 Committee, as I am likewise doing of the Justice Minister, that the exemption of the Law Society of Scotland from the Freedom of Information Act, be revoked, now that we are to have an independent complaints regulatory body.

I ask this, because for years, clients have been denied files from their own solicitors, who can withhold what they want – and inevitably, they withhold the most incriminating material when it comes to client complaints, likewise, the Law Society of Scotland also use various excuses and dodging tactics from legislation such as the Data Protection Act, to avoid the disclosure of complete
files and file inventories to clients when it is requested. This must be stopped, and clients of solicitors
must have full access to all material held on them by their legal agents and the legal profession when
it is required to be disclosed, without prevarication or undue delay on the part of those requested to
disclose. The new Scottish Legal Complaints Commission must see to this.

I attach for the Committees consideration, some of the Press coverage I have had on my case over the years,
which can be found together with much more details about my case and my opinions on regulation of the
legal profession, on my personal web blog at http://petercherbi.blogspot.com . Since the Press items are of
course, public knowledge, and were screen for defamation, I trust there is no difficulty in their submission, as
they are in wide circulation via the Scotsman's own records and archives.

I look forward to the Committee hearings, and hope that the Committee decides to hear from people such as
myself, who have suffered first hand under the system of self-regulation as operated by the Law Society of
Scotland.

Yours sincerely

Peter Cherbi.
21 April 2006

Press Coverage (more to view at http://petercherbi.blogspot.com )
Inquiry call over bungling lawyer

Executry dispute: Son queries why Law Society reversed decision to prosecute solicitor

WILLIAM CHISHOLM

THE son of a Borders businessman wants a report which investigated allegations of misconduct by a solicitor handling his father’s estate to be re-opened.

Peter Cheetham has sent the report to the Scottish Secretary, Michael Forsyth, with a demand for further action. He wants Mr Forsyth to force the Law Society to reopen the report to allow a prosecution of the lawyer, Andrew Peaman, by the Scottish Solicitors Disciplinary Tribunal.

The Law Society investigation concluded that Mr Peaman, of the Edinburgh firm of F & J Hayworth Darling, should be prosecuted by the tribunal for the “appalling” way he handled the executry of Gino Cheetham, a Retford businessman whose estate was valued at around £300,000 at his death in 1995, aged 73.

But the decision to prosecute Mr Peaman has been shelved in favour of a reprimand.

Now Mr Cheetham’s son, Peter, claims the society’s about-face cannot be justified given the findings of the investigation, including “an apparent attempt to mislead” the Royal Bank of Scotland, and fails to reflect on estate assets.

When The Scotsman spoke to Mr Peaman, he said the complaint against him had been thoroughly investigated by the Law Society and that was an end to the matter, in general, he could not make comments because of confidentiality.

The Law Society report outlined lengthy and unexplained delays and a repeated failure by Mr Peaman to respond to correspondence. He also alleged a complicity of proper management in the handling and progression of the executry. There had been “a bungled and unsuccessful attempt to put the file into order”.

Peter Cheetham was told that there had been a “complainant’s decision to adduce evidence”.

A document showed the estate to be worth £572,111 and owed £25,000 to the Royal Bank, which had not been settled.

The committee of the Law Society which first considered the report in June this year was “expressed grave concern at the way the executry had been handled”. Members agreed that Mr Peaman’s actions were “serious, and reprehensible as to amount to professional misconduct and recommended prosecution by the Scottish Solicitors Disciplinary Tribunal. The final decision was changed after Mr Peaman submitted written representations to the society. He claimed the executry had been complex although he accepted matters could and should have been dealt with more expeditiously.

Mr Peaman also apologised to the complainant Mr Peter Clark and to the Law Society.

Mr Cheetham said Mr Peaman’s pleading “contradicted the society’s own findings”, adding the Cheetham estate had suffered substantial financial losses.

When the Law Society committee reconsidered the matter it was decided a reprimand and a compensation award of £1,300 to the estate would be more appropriate.

F & J Hayworth Darling were instructed to front their fees from fees of death until October 1994 when Mr Peaman ceased dealing with the estate of £2,000 plus VAT.

Peter Cheetham told The Scotsman, “I am absolute at the findings of the Law Society investigation which has uncovered many disturbing facts about the way my late father’s estate was handled. I will not be allowed to rest until the matter is resolved.

The Law Society advised Mr Cheetham not to institute civil action while their investigation was in progress. He made an application to the inquiry and was not in a position to sue for full recovery of the estate although the society report had been promised 13 months ago.

Mr Cheetham has also asked Mr Forsyth to instruct the Law Society to reopen the file so that a prosecution can be brought against Mr Peaman.

Following the finding of professional misconduct he has also referred a complaint against Norman Howie, an accountant with John J Welsh & Co, Galaibon, who acted as executor of his father’s estate.

In his submission to the Inquiry of Chartered Accountants of Scotland, Mr Cheetham alleged a lack of control by Mr Howie over the activities of Mr Peaman, which resulted in financial loss to the estate.

A Law Society spokesman said the complaint had been dealt with and Mr Cheetham had exercised his right to refer the matter to Scotland’s legal services ombudsman to whom the file had now been sent.

Mr Peaman said the Law Society papers with the committee’s deliberations showed that a gross statement from Mr Cheetham contained many untrue and half truths. “It would be considered that the report released if published as it stands would be defamatory of me,” he said.
Law Society may face Euro court over ‘whitewash’

Son hits out at decision on father’s estate

WILLIAM CHISHOLM

THE Law Society of Scotland has been accused of overseeing a “whitewash” after rejecting an ombudsman’s recent request for it to reopen a case against a Borders solicitor.

The original investigation by the society into the way Andrew Penman, of the Keio law firm, PJ Stormenta, derning, dealt with the £200,000 estate of businessman Gino Cherbi, of Jedburgh, concluded that the solicitor’s “appalling” handling of the matter warranted prosecution before a tribunal.

The investigation found “an apparent attempt to mislead” the Royal Bank of Scotland, and failure to collect estate assets.

The society initially recommended that Mr Penman be prosecuted for professional misconduct. However, the punishment was reduced to a reprimand after representations from Mr Penman’s behalf.

The society gave no explanation for departing from the original intention to prosecute. Specific difficulties relating to Mr Penman’s private life and working life were outlined to the Law Society committee, according to a senior official.

However, Mr Cherbi’s son, Peter, who has been involved in seven years of legal wrangling over the estate since his father’s death in 1990, refused to accept the society’s decision and took the case to the legal services ombudsman, Gary Watson.

In a report which criticises the society’s handling of Mr Cherbi’s complaint, Mr Watson writes: “The ombudsman does not accept that the solicitor’s livelihood was a factor which should have influenced the Law Society’s procedures. In his view, that is a factor for the Law Society as a professional body representing its members, but not a factor in relation to its statutory duty to investigate complaints.”

Mr Watson concludes: “It is most important that there is transparency of decision making within committees and that reports and conclusions provide their reasons for arriving at decisions.”

It is unclear why the committee changed its view with regard to prosecution after having heard personal representations from the solicitor’s council member. It is recommended that the complainant and the ombudsman are advised of these reasons.”

The ombudsman also asks the Law Society to reopen the case against Mr Penman so that the question of loss to Mr Cherbi could be fully addressed. Mr Watson goes on to express concern about the serious delays by the society in finalising its report into the complaint.

Philip Vealid, the Law Society’s deputy secretary, has now told Mr Watson that the details of the representations made to the committee will have to remain confidential.

His statement to the ombudsman adds: “But I can assure you that the committee made up of both solicitors and lay members, that the more appropriate disposal was by way of a reprimand.”

He says reopening the case to take account of the question of loss is not competent in terms of current legislation and so the ombudsman’s recommendation cannot be acted upon.

However, the Law Society has accepted the criticisms levelled at it by Mr Watson in relation to the delays and has sent Mr Cherbi a cheque for £250.

Mr Cherbi yesterday attacked the “shabby treatment” he has received from the Law Society, and claimed that the ombudsman appeared to be powerless when the society closed ranks to protect its own. He described the £250 “pay-off” as an insult.

“I feel I owe it to my father’s memory not to let this matter drop and have instructed my solicitor to apply for judicial review so that Mr Penman can be prosecuted,” Mr Cherbi said.

“If necessary this issue will be taken to the European Court.”

He added: “I was extremely concerned to learn the Law Society receives more than 1,000 complaints each year about the conduct of solicitors. I sincerely hope other dissatisfied clients get better treatment if they find it necessary to approach the society because I find myself the victim of a whitewash.”

Mr Cherbi claimed the inadequacies in the arrangements for investigating complaints against solicitors had led to additional expense. There was a legacy of debts and outstanding insurance bills thanks to the delays in winning up Gino Cherbi’s affairs, he said.

Mr Vealid said yesterday: “We accept as it now stands we have a duty to respond to his recommendations. We have fulfilled that duty.” Mr Cherbi wished to pursue masters by way of judicial review, he said, but was entitled to appeal up to the High Court of Justice. A separate complaint by Mr Cherbi against Norman Hewitt, a financial consultant at Wcher & Co, Galashields, who acted as executor of his father’s estate, is the subject of an inquiry by the Institute of Chartered Accountants of Scotland.

£2m to repair flood-damaged Lauder, 19/8/85
Plea to Dewar for inquiry on Law Society role in wrangle

WILLIAM CISHOLM

A MAN who loses much of his independence because of a solicitor's incompetence is to challenge a decision not to allow him access to key documents drawn up by the Law Society of Scotland in the course of an eight-year wrangle.

Peter Cheriti, from Jedburgh, has asked the Scottish Secretary Donald Dewar for an independent investigation into the circumstances surrounding the Society's £200,000 award of costs to the late father, Colin Cheriti, a Borders businessman.

The demand for an inquiry into the role of the law society and the solicitor's legal services ombudsman, Garry Watson, was made yesterday after Mr Cheriti heard that Mr Watson had been made to go on the case.

Mr Cheriti argues that the society conspired to prevent protection of the solicitor who dealt with his father's affairs. Mr Cheriti also plans to raise a court action against the society to force its officials to release minutes of the committee.

Mr Cheriti's communications committee has called his "appalling" handling of the case a "serious error in judgment in the Scottish Solicitors' Disciplinary Tribunal.

Indeed, the committee decided that a reprimand and a compensation award of £1,000 to the estate would be a more appropriate penalty, despite grave concerns about Mr Penman's professional conduct.

After the decision, Mr Cheriti took his complaint to Mr Watson, who carried out a separate inquiry into the society's handling of the case.

The society's response said: "It is most important that there is transparency of decision-making within committees and that reporters and committees provide their reasons for arriving at decisions.

Mr Penman and the complainant should be advised why the complaints committee had changed its mind on protecting Mr Penman. His report also disclosed that a society member had expressed concerns that a solicitor represented Mr Penman before the committee.

But now Mr Watson has told Mr Cheriti he has reversed the society's recommendations made on Mr Penman's behalf on the basis that they will remain confidential to the committee's members.

Mr Watson added: "I am not in a position to make any public comment on a matter which, in accordance with my role, is private between myself and complainant.

Philip Allen, the law society's deputy secretary, said: "I would not be in a position to make any public comment at all."

The Society said yesterday that the committee's position in the case was made on a legal basis.

When Mr Cheriti, son, died aged 73 in 1990, he left stocks and shares, property and other assets valued at more than £250,000.

There were also overseas assets including an account with the Banco di Roma containing an estimated £200,000, which was not collected by the society.

The estate was later to be settled.

A separate complaint by Mr Cheriti against an accountant who acted as executor of the estate is the subject of a separate inquiry by the Institute of Chartered Accountants of Scotland.
Jury still out on law in the dock

The system isn't working, it has inbuilt bias towards its own members

Peter Paton Law campaigner

The disciplinary procedure is flawed. Because of this, we feel that this function should be replaced by an independent law commissioner.

Among the members of the group one of the newest and angriest is Peter Cheret, a man who lost his inheritance because of the winding up of the estate of his late father. Chris Cheret, was brought up by his sister, Andrew Feenam, of P&L Shropshire Dental in Kedle.

When Cheret died in 1990 he left stocks and shares, property, a car and other assets including an account in the Barclays Bank, worth ghastly £200,000. The Border commission included a few legacies to friends and relatives, and, after salaries were met, the residue of the estate was to go to his son, Peter. But by the time Feenam had finished handling the estate Cheret was told there was nothing left to inherit.

The preliminary report by the Law Society complaints committee accused Feenam of "appalling" misconduct, and recommended Feenam be reported to the Solicitors Disciplinary Tribunal, which has the power to strike solicitors off.

But the complaints committee was limited to that the Law Society can award the anxiety and distress caused by an incompetent solicitor to a complainant who won compensation for his loss, he must sue for negligence through the courts.

Cheret complained to the Independent Solicitors' Complaints Tribunal, but Feenam, who investigated the handling of the case, said "We have an indication that it was unfair. But the fee we charged was the minimum acceptable in the case".

This practice has now been referred to the Law Society of the complaints' request, and neither side is in dispute can now make final representations in person.

Watson said: "It is important that there is transparency of decision making within committees and that reports and committees provide their reasons for arriving at decisions." His report recommended that the Law Society reconsider the case, but the Law Society declined.

Cheret wrote to the Solicitors' Secretary asking for an independent investigation but was advised to take legal steps to have his case reconsidered.

He is preparing to apply for the Law Society's decision to be judicially reviewed. "I'm not going to let this go," says Cheret. "I feel the Law Society has screwed up over this whole affair. I have struggled to seek answers on my case, but have got nowhere.

"While I have mostly been treated with courtesy, which I have reflected in my dealings with the Society, I have been aware of an undertone of ingratitude remarks at senior level against me, as well as a tendency to keep information secret that would otherwise combine previous Society rulings.

The Law Society cannot act in the public's best interest.
interests over legal malpractice, asks Jenny Booth

"I have been approached by many others who have suffered similar injuries with the Law Society."

But while there is undoubtedly still a phalanx of people like Clarke, who seems to have very good reason to feel aggrieved, there is some evidence that the problems of the early and mid-nineties may be becoming a thing of the past.

In general policy as well as individual cases, the legal services ombudsman has been very critical of the Law Society's procedures for some years. When Wilson took over as ombudsman, his first report for 1994, refers to "unjustifiable delay at each stage of the Law Society investigation". In his 1995 report he said there were a number of "areas of investigation" which were "a discredit to the Society".

But some of the most glaring problems had been cleared up by 1996. "I am pleased to report that gross delay and regret investigations with confusion and lack of control have been largely eliminated. Delays and errors continue to arise...but the are of a different and manageable order of magnitude."
Law Society accused of

WILLIAM CHISHOLM

An unprecedented attempt to
form the Law Society of Scot-
land to prosecute a solicitor for
professional misconduct wilt
continue, even though an ap-
plication for legal aid has been
rejected.

Peter Cherbis, from Islington
claims his son Stuart's £300,000 estate has been
ruined and rendered worthless
because of the way a Borders
lawyer, Andrew Peatman, han-
dled the affairs of Gino Cherbis
who died in 1990.

A Law Society investigation
found that the solicitor, a part-
nner in the firm P&J
Stor-
mouth, had acted before a disciplinary tri-
nal because of the serious
course of action. But the de-
nition of the case, which meant the
rehabilitation's recom-

recommendation could not be
acted upon. Instead, Mr Cherbis
received a cheque for £150 to
compensate him for delays in
processing the inquiry.

Mr Cherbis revealed yesterday
that Henry McLeish, the Scot-
tish home affairs minister, had
twice advised him to seek in-
dependent legal advice about
any further action he might
wish to take.

The advice received was to
apply for a judicial review, chal-

nenging the Law Society's re-

scent to prosecute Mr Peatman.

"It's been im-

possible to get justice via the
society which simply closed
ranks to defend its own," said
Mr Cherbis.

Mr McLeish said the society
"cannot decide as a body, as to the
rules that govern the practice.

I have been advised that we
should go to the court and
challenge the rules that the
society enforces.

The court will judge whether
the society's actions were
fair and reasonable. It is a

procedural question that can
be decided in the court.

The society cannot decide the
merit of the case. It must be

decided by the court.

The society has the power

to decide if there has been a
disciplinary breach, but it

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The court will decide if the
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Independent watch dog for lawyers proposed

Law Society of Scotland's internal system flawed, says Scottish Consumer Council.

The report is also highly critical of solicitors who complained to their clients, who in turn said they were completely ignored and only 2 per cent told they could refer the matter to the Law Society.

The report also found that 23 per cent of complaints about solicitors were not handled on a timely basis, and that 20 per cent of complaints were not handled at all.

Mr. Cherk, the director of the Scottish Consumer Council, said: "This is a very disappointing report. The Law Society has failed in its duty to provide a service that is fair and efficient."

The Scottish Consumer Council said: "We have been critical of the Law Society in the past, but this report shows that they have failed to provide a satisfactory service. The complaints procedure is not working and it is time for clear and robust action to be taken."
Legal profession in the dock over complaints about self-regulation

By Peter Luing
Chief Reporter

The power of lawyers to discipline corrupt or incompetent colleagues is to be investigated by the Scottish parliament amid growing concern at the perceived failure of self-regulation in the legal profession.

The parliament's justice committee is to launch an inquiry after numerous complaints about the failure of solicitors to keep their own house in order.

Members of the public, some of whom have lost thousands of pounds as a result of legal blunders, claim the regulatory system simply allows solicitors to watch each other's backs. The result, they say, is long delays in hearing complaints and palpable disregard when cases are upheld.

The Law Society of Scotland, the body which represents solicitors and investigates complaints against them, rejects the claims and will argue that it should keep its powers of self-regulation.

Alex Salmond, MSP chairman of the justice committee, said an investigation was "high up on our agenda" and there was a strong possibility it would start within months.

Peter Chereki is typical of the determined band of legal victims who feel solicitors should be stripped of their powers of self-regulation. He claims his lawyer's error robbed him of a £300,000 inheritance. Ten years on, he has been offered £15,000 compensation but faces legal costs of at least £22,000.

Chereki, from Inverness, expected to inherit his father's estate when he died, aged 79, in 1990. Four years later, he realised the estate, which had been handled by local lawyer Andrew Pennman, was worthless. Chereki believes the money was lost through avoidable interest payments, fees and mishandled selling of shares and investments.

He complained to the Law Society, which originally planned to prosecute Pennman. After written submissions it decided on a reprimand and ordered him to pay compensation worth £1,000.

Chereki then complained about the Law Society to the watchdog, the Scottish Legal Services Ombudsman, but that has added to the years and a possible legal action against the ombudsman.

A separate action for compensation against Pennman resulted in an offer of £15,000 from his solicitors. Chereki said: "That is no use because I have legal costs for fighting my case of £22,000 and the estate is £43,000 in debt.

"I am detailed that self-regulation is finally to be looked at. It's a lawyers' charter written by lawyers for lawyers. They sit on each other's committees and they are obsessed with protecting each other.

"There has to be independent regulation with public participation. The victim must be able to get a fair hearing."

Phil Gallie, Tory justice spokesman and a member of the committee, said: "I have had a number of people coming to me with cases, four or five in the last six months. Some of these cases have been outstanding for several years."

A spokesman for the Law Society said there had been an 18% drop in complaints between 1999 and 2002 down from 1,239 to 1,044.