Submission from Stewart Rennie for the Legal Profession and Legal Aid (Scotland) Bill

I wish to raise some observations on the LPLA Bill.

By way of Background I am a Solicitor who was admitted in 1989. I am a partner in a 7 Partner firm with 37 employees. We are a medium sized commercial firm with offices in Glasgow and Edinburgh.

My observations are as follows :-

Perceived Problem

It seems to me that the perception of the general public is that complaints rise substantially every year and that lawyers do nothing about this. This is fuelled by the press who always focus on the percentage increase in complaints. However the actual number of complaints when measured against the total number of legal transactions carried out annually is very low. Any percentage increase from a low basis can make for a good headline whilst not reflecting the full picture. Further any increase in the number of complaints must be measured against the vast increase in both the number of solicitors in practice and the number of legal transactions now carried out. e.g. while I started practising people normally only had one mortgage and would only change this if they bought a new house. Nowadays it is common for people to change mortgage suppliers every two to three years in search of a better deal.

Legal Services Complaints Commission

My biggest concern is in relation to the constitution of this body. The Law Society has already agreed to the constitution of an independent complaints body, which is something that few other professional bodies have done. However its constitution on a majority of lay members, with no right of appeal against its decisions does not make me feel that I will obtain a fair hearing of my case or that my human right to a fair hearing and due process is being respected. A finding of IPS could lead to an award of up to £20,000 against the individual solicitor. There is no obligation on that Solicitor's firm to meet this payment and there could therefor be disproportionate hardship caused to an assistant or junior solicitor. We can all make mistakes and get things wrong, would anyone do their job with confidence if they knew that a complaint could force them to pay up to £20000 from their taxed income. There are very few criminal offences where such a swinging penalty can be imposed on the offender and the nature of the penalty is disproportionate. If a client has lost money through the solicitor's negligence then it is right that they be compensated for this and all Solicitors firms carry professional indemnity insurance to cover this but to allow this penalty on top of this existing right to compensation imposes a double penalty.

Access to Legal services

One of the recent complaints levied against the Profession is that solicitor's are reluctant to take on actions or complaints against fellow solicitors. My previous view of this for my firm is that as a matter of business, we will normally take on the case of a client who is suing his original solicitors. Our profession deals with negligence claims in all walks of life and it would be stupid to assume that solicitors are exempt from such negligence. However currently I am far more wary of taking on a client who has already used 2 or more firms as my experience is that such clients are normally more unhappy with the result than the level of service received. They often seek to blame the solicitor for the result and are far more likely to complain. In short, no matter the merits of their case they are likely to be problem clients and simply from a business point of view it is more hassle than it is worth to take them on. With the potential downside of a £20,000 penalty and having to meet the cost of any complaint I will be forced to looks at risk management far more stringently. I will be reluctant to take on cases of complaints against other solicitors in case I end up as the next complaint nor will I take on contentious issues where I suspect that a client's unhappiness with the result will lead to a complaint about my conduct.
In summary I think the proposals in the bill will lead to an increase in “defensive” lawyering and in costs. There will be a great reluctance to take on difficult clients and cases. The increase in time that will have to be given to handling complaints (whether justified or not) is a handicap to a vital section of Scotland’s service economy. Lawyers are mainly highly trained skilled people with a substantial degree of commitment to a difficult and important job. They are human and make mistakes and complaints arise and must be settled. In this respect they are no different from the civil servants, politicians and journalists who will scrutinise this bill. If any of these groups can say that they would be prepared to accept such a complaints review body and penalties for inadequate (not bad or negligent) service then the Bill should proceed unamended. If they would not then this suggests to me that it needs further consideration.