Submission from Anthony Mason for the Legal Profession and Legal Aid (Scotland) Bill

I am writing to you following the request for submission of evidence after publication of the above Bill. I am a solicitor in private practice and while I have used my firm’s headed paper the views expressed here are my own.

While I am not in principle opposed to a new independent body to handle service complaints against solicitors in Scotland it must be clear that any new system must be an improvement on the present system to the benefit of the public and the profession. As the proposals stand I do not think that this has been achieved.

1. I do not believe the proposed Scottish Legal Complaints Commission to be truly independent. There is insufficient right of appeal for the public and the proposals compromise the independence of the legal profession in Scotland.

2. I agree with Lord Lester’s comments on the Bill and consider that the proposed commission is not ECHR compliant. Issues of negligence should remain a matter for the courts.

3. The new body will cost more than the current system operated by the Law Society of Scotland. How is this to be paid? I can see no evidence that the proposed new system has been costed. To impose the burden of payment on the profession would be a major concern. This is likely to lead, at worst, to closure of smaller firms of solicitors with consequential lack of access to a solicitor in rural areas and, at best, to a lack of willingness in the High Street firms to carry out certain types of work. The public will have a poorer and more expensive service as a result.

4. The “polluter pays” concept is flawed. Why should a blameless solicitor be required to pay for a system when complaints may be groundless? Moreover, solicitors in particular types of work e.g. matrimonial, executries, house purchase, etc. generally receive more complaints than other areas of work (e.g. corporate/commercial).

   It is my view that in all cases where a complaint is raised a reasonable application fee should be paid by a complainant. This would allay my concerns that vexatious/malicious clients would otherwise ‘operate the system’ in full knowledge that the solicitor was paying the cost of the mediation/hearing (at no cost to the complainant). The fee could be refunded if the solicitor was wholly to blame. A solicitor should not have to pay where the solicitor is found to be substantially blameless.

5. The increase in compensation to be awarded in cases of inadequate professional service to £20,000 is unreasonable and unnecessary. The imposition of such a high level of compensation appears to be a direct import from England which has different issues and problems.

   The cost of the proposed system will fall disproportionately on firms acting for the public rather than bigger corporate firms. Many such smaller firms will not be able to carry such a burden or will turn away from certain types of business particularly where the fee is small or profits are low. Consequently, High Street businesses throughout Scotland will be under threat and may close. Solicitors employ a significant amount of people and this could result in significant unemployment.

6. The system being imposed appears to be an English solution for Scottish problems. The Law Society has improved its handling of complaints to a satisfactory level and yet seems to be being punished for its efforts. Many of the criticisms of the present system appear to be based on perception rather than reality.