Submission from Scottish Young Lawyers’ Association (SYLA) for the Legal Profession and Legal Aid (Scotland) Bill

Who are SYLA?

The Scottish Young Lawyers’ Association (SYLA) represents the interests of all law students, trainees, solicitors and advocates up to 10 years qualified. In so doing we represent not only the future of the legal profession, but we also represent a third of the profession as it currently stands.

We have a separate role from the Law Society of Scotland. All of our solicitor members from trainees upwards are also members of the Society.

Our place in responding

We are responding to the Bill due to fundamental concerns, not only in relation to the legality of the Bill, but for the impact on the legal profession now and in the future and the subsequent impact on the public.

Areas of agreement with the proposals

In the first instance, we feel it would be helpful to set out our areas of agreement with the Bill.

- An independent complaints procedure should be established
- That procedure should comprise equal numbers of lay and legal members
- It should have the power to determine issues of inadequate professional service
- It should have the ability to compensate successful complainers
- The procedure should be free at the point of use for the justified complainer

It is essential in any legal system that members of the public have access to justice and that justice for these people is seen to be done. As young lawyers we have an interest not only in acting in the best interests of our current clients, but also in continuing to develop our knowledge and skills to enable us to represent our clients more effectively in the future.

In developing as lawyers it is essential that we are aware that if we get things wrong then our clients can hold us accountable. Moreover, it means that our employers require to take greater care in training us to deal with our clients’ needs. Partners have a vested interest in avoiding complaints and a complaints procedure encourages their supervision.

Therefore we agree entirely with the need for a complaints system that members of the public have faith in.

Areas of disagreement with the proposals

There is currently a move by young lawyers away from the practice of law in rural areas and in smaller communities. The trend is to work for large city centre firms. The reasons are various and largely immaterial to this response.

What is significant is that the younger members of the profession who choose to work in these rural/small town practices; typically involved in family disputes, small accident claims/contract disputes, criminal matters, private conveyances, and executries, do so despite falling levels of Legal Aid funding; despite an increasing culture of complaints; and despite a less supportive framework in the firms where they work. They are often left with much more responsibility at an earlier stage than their colleagues in city centre firms. They are therefore more likely to face complaints at an earlier stage in their careers.
The nature of the work in towns or rural areas means that the clients are less familiar with the legal process than their business counterparts based in large towns and city centres. As such, they are more likely to complain if matters do not resolve to their satisfaction. The Bill does not define what a justifiable complaint is, only that a levy will be payable for each complaint.

Furthermore we have significant concerns over the lack of a right of independent appeal. The Bill seems to suggest appeal would be by way of Judicial Review. Judicial Review is costly and time prohibitive.

If the Bill is passed in its current form there would seem little point in the Law Society’s maintaining a guarantee fund to compensate clients who have been advised negligently.

Finally, and from a more fundamental point of view, it does not sit easily with us that appointments to the Commission would be in the control of the Scottish Ministers, not least because they are party to many disputes/transactions that are dealt with by the profession. The profession requires independence from the state in order that justice can be seen to be done.

In a situation where a young solicitor is faced with deciding whether to practice in the supportive environment of a city centre firm or in a town/rural firm, the choice will become even more clearly to work for a large firm where these matters are of less concern.

**Concerns for the future of the profession**

The attractions of working outwith the large cities will soon be removed. Young lawyers will no longer be willing to risk significant expense to their employers. They will be less willing to take up positions as partners at an early stage in their career and, as a consequence, the profession in smaller areas will significantly diminish.

With the added financial burden facing partners, both in increased fines and levies, and without any financial accountability of the commission to the profession, it is likely that they will be less willing to recruit trainees and young assistants. They are more likely to take on fewer clients and remain in a position to retain control of their clients’ cases.

It is submitted that, as a result, there will be a constant drop in both the number of partners willing to take on young solicitors and the number of young solicitors choosing to work in these areas.

Young lawyers will also be less willing to undertake voluntary work for Citizen’s Advice Bureaus, Legal Dispensaries and charities. At present many undertake this work as a way of further developing legal knowledge and skills.

As a result of all of the changes there will be a situation where young solicitors cannot develop their skills in acting for individual clients. They are more likely to accept employment working for commercial clients who are far less likely to complain and where the ability of partners to supervise is greater.

**Why this is of significance to the public**

More often than not, the clients who need the strongest and most robust advice are private clients rather than large corporations. They are less familiar with legal processes and with lawyers and, as a result, often suffer stress from both the legal process and the subject matter they are being advised on.

If the provisions of the Bill are adopted into law then practitioners are less likely to accept instructions in areas that are likely to produce complaints. As a result, young lawyers will not be involved in the provision of such services and the provision could completely cease.
The impact this will have on the public is that, while complaints may drop and resolve more quickly, there will be huge impacts on access to justice. Areas of particular concern will be summary cause actions, immigration and legal aid. These are often the cases where people require representation the most. It is already becoming unattractive to practice in these areas due to existing issues in the profession. It is submitted, however, that the proposed Bill will speed this process significantly.

Summary

1. An independent complaints procedure is necessary to provide public faith in the profession and, consequently, the legal process as a whole.
2. The complaints procedure requires careful thought so as to balance the need for a robust and independent legal profession with the needs of consumers.
3. The complaints procedure requires definition so as to provide firms with more certainty so they can continue to train young lawyers, and accept the fact that mistakes can happen while people learn.
4. The procedure requires to be accountable to the profession in order that firms can confirm budget levels to allow the training of trainees and young assistant solicitors.
5. The appointment to the commission needs to be removed from the hands of the Scottish Executive so as to maintain the independence of the profession now and in the future.
6. There needs to be an effective and reasonably inexpensive appeals process so that the procedure conforms to Human Rights provisions.