Dear Sirs

Legal Profession and Legal Aid (Scotland) Bill

Please accept these comments, although after the requested response time; a family illness prevented earlier submission.

I am writing in connection with the above Bill and these comments relate primarily to the establishment of a Service Complaints Handling Body. In particular this comment regards funding of any complaints handling.

I understand that the proposal is that the body will be funded by a charge levied on the Solicitors against whom the complaint is levied irrespective of the outcome of the complaint concerned.

Firstly the ability to make a complaint without any fear of an adverse effect upon the complainer is, in the writer’s view, guaranteed to stimulate frivolous and vexatious complaints.

I would stress that in the case of genuine and legitimate complaints, I have no difficulty with these being dealt with but firstly any complaints should have gone through the complaints procedure with the firm concerned before any complaint is raised with an outside body, and if there has been a genuine mistake then the opportunity should be there for the firm to remedy that matter without involving any outside Body.

What this system appears to overlook completely is the opportunity for unscrupulous clients (and there are those who fit that description) to use this device as a device to avoid paying the Solicitors’ legitimate fee. If I pose the following example: -

The Solicitors render a fee for £500 for the work which they have carried out.
If the client is unhappy at the level of the bill, but is aware that the Solicitors will have to pay £300 to handle any complaint, however frivolous, which is lodged with the independent Body, then what is to stop the client saying, in effect, reduce your bill by £300 or you will lose that much in any event, simply by the client complaining to the Complaint’s Commission, even if the complaint is completely unfounded.7

The firm has the choice of trying to maintain its position for payment of a fully justified fee for a perfectly satisfactory service, in the knowledge that the client can lodge a totally unfounded complaint for which the firm will then have to pay £300 (not to mention the time and anxiety caused by having to respond to and deal with the complaints process).

On the other hand it can avoid that if it reduces its fee (to which it would otherwise be perfectly entitled) simply by acceding to the pressure to cut its fee by an equivalent amount. For either choice, the firm loses, without any possibility of redress or fair reward. The client/complainant suffer no loss.

I am not suggesting for a moment that the majority of clients would contemplate such a course of action but it must be recognised that there are those who will feel aggrieved, irrespective of whether that grievance is well founded or not, and the proposal of the Justice Two Committee simply presents them with a ready made opportunity to pressurising the firm into accepting a reduced fee.

The logical outcome is that firms will either have to significantly increase their charges to guard against that possibility, or decline to take on work at low figures where the threat of a complaint of whatever nature renders the work uneconomic. Neither outcome is in the long-term interests of clients, for whom this protection was presumably intended.

It is simply inequitable in the extreme that the Solicitor will be obliged to pay for the investigation of a complaint however unfounded or frivolous that complaint may prove to be.

In addition the lack of any right of appeal against the Body’s decision on such matters is again thoroughly unreasonable, particularly where the Body may well be comprised by a majority of lay persons with no direct knowledge or understanding of what is or is not an adequate professional service.

Please ensure these comments are brought to the Committee’s attention.

Yours faithfully

LS.