Submission from Janette Wilson (Solicitor to the Church of Scotland) for the Legal Profession and Legal Aid (Scotland) Bill

In my capacity as Solicitor of the Church of Scotland, I head up the Church’s Law Department which provides legal services to the Church’s congregations, Presbyteries and central Councils and Statutory Corporations. As a co-opted member of the Council of the Law Society of Scotland and, in particular, from my membership of the Society’s Professional Conduct Committee, I have a good knowledge of the workings of the current complaints system.

I regret that it appears to be the general public perception that the current system is not working well. Whilst I do not agree, I share the Council’s pragmatic view that complaints relating to inadequate professional service (“IPS”) should be dealt with by a non Society body which will be viewed as independent both of the Society and the profession. Such a body should however also be free of influence/pressure from other outside bodies including the Scottish Executive. I would strongly oppose any attempt to hive off from the Society and the Scottish Solicitors’ Discipline Tribunal consideration of complaints of professional misconduct and I can see no justification for the proposed Commission to have oversight of the Guarantee Fund and the Master Policy. These three areas are hallmarks of the legal profession in Scotland. If removed or compromised, the profession’s traditional role in a society founded on respect for the rule of law will, in my view, cease to be and the provision of legal services is likely to become just another business activity with its practitioners pursuing only “the fast buck” and not the aims and ideals which brought me into the profession. I am also disappointed to note that the Bill makes no attempt to regulate those outwith the profession who offer legal services. The activities of a number involved in claims handling, will writing and executry business is quite disgraceful and until the worst happens, members of the public are generally completely unaware of the limited avenues of redress open to them.

I fear that the increase in the potential award for IPS to £20,000 may result in a severe lack of access to justice situation arising. The parallel with the current situation regarding dentists is obvious. Firms will switch from the risky areas and in particular concentrate on commercial work. The fact that there is no effective right of appeal from decisions made by the Commission is simply untenable and the Bill will presumably be amended to remove this obvious incompatibility with Human Rights legislation at Stage 2.

As an In House lawyer, I have practical concerns about the manner in which the Commission will be funded and in particular the annual levy which it would appear it is envisaged will be payable by all solicitors holding a practising certificate. The practising certificate subscription for most In House lawyers is met by their employers and such solicitors are not entitled to provide legal services for members of the public – only for their employer. I suspect that many employers will baulk at meeting this additional payment given that it would be unheard of for an employer to deal with any issue of inadequate performance by their employee other than through a disciplinary route. The In House sector of the profession is its fastest growing area with the number of those employed in public sector and commerce being some 27% of those holding practising certificates. From a analysis of what such practitioners do, it is clear that only a limited numbers of employers decide to employ solicitors purely for the carrying out of work for which a practising certificate is required. They are valued because of the other skills and qualities which their training develops and enhances. As an example, the Church currently employs 11 solicitors with practising certificates, most of whom are entirely engaged in work which does not require a practising certificate. Strictly speaking, we could function with only one Solicitor holding a practising certificate.

In addition, faced with the possibility – even a remote one – that a vindictive employer, as well as taking disciplinary procedures, might also endeavour to obtain an award of compensation for alleged IPS, many In House lawyers may in future positively decide not to take out a practising certificate.

The loss of this section of the profession would clearly increase substantially the levy to fund the Commission payable by those in private practice. More importantly, it will imperil the viability of the Law Society to carry out its remaining functions both of regulation and of representing the interests of
both the profession and the public – for example its much valued role of commenting on proposed law reform.

I would therefore urge that the Bill be amended firstly to exempt those solicitors who work in house from the annual levy. Secondly, I would also urge the Committee to re-consider the manner in which the running of the Commission is to be funded and the possibility that part of such costs be met from public funds.

Janette Wilson