Submission from Susie Thornton for the Legal Profession and Legal Aid (Scotland) Bill

I have the following concerns regarding the above Bill

There has been no cost or cost- benefit analysis of the proposed Scottish Legal Complaints Commission (“SLCC”).

The maximum award of compensation for inadequate professional service has been increased from £5000 to £20,000, without any justification.

From a risk management point of view, such an increased level of compensation may increase consumer cost and/or reduce availability of advice.

The SLCC is to be funded by Annual General Levy and a Complaints Levy. The Complaints Levy is payable, even if the complaint is dismissed as being unfounded. It is likely that the burden on solicitors will increase. At present the costs of the Client Relations Office of the Law Society of Scotland (the Society) are mitigated by voluntary work carried out by committee members.

A higher level of fee should be charged against practitioners against whom complaints are upheld, rather than a flat handling fee applying to all cases. This would be more akin to “polluter pays”.

Whilst conduct issues remain with the Society, “handling complaints” can be made to SLCC, and SLCC have power to force the Society to action certain conduct issues. Losing control of conduct goes to the heart of what it means to be a profession.

There is no clear justification given for the SLCC being given powers to oversee both the Master Policy and the Guarantee Fund. The administration of the Master Policy and claims under that policy are not decided by the Society. SLCC’s involvement may increase costs, in addition to regulatory and potential compensatory costs.

The SLCC has powers to issue best practice notes about how professional conduct or professional services complaints are dealt with. These may be unduly burdensome.

The Society has received advice that the Bill may not comply with the ECHR: the Board will be appointed by Ministers and will not guarantee solicitor representation; case fees are payable even if a solicitor is exonerated; there will only be an internal right of appeal on a service complaint.

The SLCC will take on the functions of the courts in negligence matters where the claim is less than £20k. Negligence should be a matter for the courts.

Susie Thornton