Submission by Ross and Connel for the Legal Profession and Legal Aid (Scotland) Bill

We wish this response to be considered by the Justice 2 Committee being evidence in respect of the Legal Profession and Legal Aid (Scotland) Bill.

By way of background we are a six partner firm in Dunfermline carrying out a typical range of commercial, domestic conveyancing, litigation and executry work. The majority of our work is instructed by individuals rather than companies or other corporate entities. We are one of the three or four firms in Dunfermline who carry out any volume of civil Legal Aid work.

The firm has been in existence for well over one hundred years and in that time has prided itself in dealing with a broad spectrum of case work. In particular we have always felt able to assist people with matters that may seem comparatively trivial but are important to those individuals. Regrettably, if the new Legal Complaints Commission is brought in as proposed in the Bill we will have to look again at the way in which we conduct business and possibly carry out a radical change to our current work structure. This would be to the detriment of those clients who would normally receive civil Legal Aid or whose legal issues may be comparatively low value.

We are aware that there is a public perception that service complaints should be handled by a body rather than the Law Society of Scotland. It appears from the current Bill, however, that much more than service complaints will be considered by the new Commission. In relation to service complaints, the new compensation limit of £20,000 appears to be entirely unjustified and is disproportionate. Did it, in fact, come from the figure proposed in England? The definitions of "service" and "interest to complain" appear to be too far reaching. If a house sale does not conclude and as a consequence the client’s daughter cannot go on holiday, would she have an "interest"?

We are staggered that the whole cost of the new Commission will fall on the profession. Should not the public purse meet some, if not all, of the cost given that it is public perception that is being pandered to? What control will there be over the Commission? The Commission appears to have an obligation to consult with various bodies about its annual budget but beyond that there appears to be no control whatsoever. As it presently stands the profession will be signing a blank cheque. The proposal that part of the Commission’s work should be funded by a case fee is unacceptable. A solicitor should only have to pay for using the Commission if they were in fact at fault and a complaint is upheld. Under the present proposals the Commission is a charter for complainers.

As mentioned above regretfully if the Commission is to be funded in the way presently proposed then firms such as ours will have to look at whether we can continue to offer civil Legal Aid at all. The ridiculously low rate of pay in civil Legal Aid will make this work uneconomic if the cost of regulation increases. Any pro bono work that we do just now would have to stop immediately. Why would any solicitor carry out work for a minimal fee, or indeed free of charge, if that work will open the solicitor up to paying a handling fee in the event that a complaint is made, even if that complaint is ultimately justified? Some clients complain about service received and with the best will in the world it is sometimes not possible to resolve all such complaints particularly where the solicitor has in fact carried out a good service for the client but the client perhaps does not perceive that to be the case. Should such firms pay for the privilege of having a complaint handled? We would submit not.

On a wider issue we are surprised that the new Commission would have the power to direct the Law Society to take certain steps in conduct complaints. Whilst we are aware that the Ombudsman would have wanted a power to require the Society to pay compensation etc, the independence of the legal profession will be eroded if a Commission has the power to “second guess” what constitutes unsatisfactory conduct or professional misconduct. We are further surprised that a Commission which will comprise a majority of non-solicitors should be able to determine negligence matters. These are matters for a Court. We do not think that the Commission should be given power to oversee the operation of the Master Policy when this is nothing more or less than an insurance policy in respect of which the Society has no control when it comes to the stage of making claims against solicitors. The oversight of the Guarantee Fund does not appear to be necessary. The Guarantee Fund is a fund of last resort for a client and indeed the solicitors’ profession has unlimited liability in respect of the Guarantee Fund.
May we say that the whole Bill appears to be ill thought out and leaves an almost infinite amount of scope for the law of unintended consequences? In its present form the Bill will lead to an erosion of access to justice for the public and will also compromise the independence of the legal profession.

We hope these comments are of assistance to the Justice 2 Committee in its deliberations.

Yours faithfully,