GENERAL
Currently, a dissatisfied complainer can make a referral to the Scottish Legal Services Ombudsman, who is independent. It therefore cannot be equitable that only an internal right of appeal will be available against a decision made by the Commission. How will this benefit complainers, when they currently have access to an independent review? This unsatisfactory arrangement is exacerbated by the fact that the only way to challenge an appeal decision is by means of a judicial review, which is beyond the means of most complainers.

Summary:
- Dissatisfied complainers will not be able to refer an adverse appeal decision to an independent body.
- The expense of a judicial review will exclude this option for most complainers.

LEVEL OF COMPENSATION
It is unreasonable that the maximum compensation in respect of a complaint of inadequate professional service has been set at £20,000, irrespective of the financial resources of individual solicitors. ‘Ability to pay’ is always taken into account by a Court when imposing a fine, to ensure that its effect on the finances of different defendants is reasonably consistent, and the Commission should follow a similar process. An award of £20,000 against a large practice with profits of several hundred thousand pounds or more will have a minimal effect. However, if such a penalty was imposed, say, on a sole trader with a much lower level of profit, it could force him/her to lay off staff. In the limit, such an award could result in the solicitor becoming insolvent, thus unjustly punishing the solicitor’s family. Both these consequences, which are unacceptable in a modern society, could be avoided if financial penalties took into account the means of the solicitor being penalised.

The maximum award that can be ordered should therefore be geared to the solicitor’s annual income: nothing is gained by forcing a solicitor out of business by imposing a penalty of £20,000 that is beyond his/her ability to pay. The Institute of Chartered Accountants of Scotland has the power to request sight of a member’s tax return. If the Commission had a similar power, then it would have sufficient information to operate an equitable system.

Summary:
- ‘Ability to pay’ should be taken into account when ordering a solicitor to pay compensation.
• Maximum compensation should be in line with the solicitor’s annual income.
• The Commission should have the power to see the solicitor’s last tax return.

**The Proposed Levies**
The financial memorandum published with the Bill estimates that the running costs of the Commission will be £2,400,000. Based on there being 10,000 solicitors (Law Society figure), the general levy of £120 will produce £1,200,000, leaving the balance of £1,200,000 to be met by a specific levy of £300 per complaint. This equates to 4,009 complaints.

According to the Law Society, the latest annual figure for the number of complaints received is about 4,850. However, this includes 1090 complaints that do not fall within the Law Society’s remit, and therefore do not involve a solicitor. Based on these figures, the number of complaints that will be initially referred to the Commission will be about 3,850, so that there will be an initial shortfall in the income from the specific levy of £45,000. How will the Commission deal with this situation? If it does not receive more funding from the Executive, it will have to increase one or both of the levies. Is this reasonable? Why should solicitors have to pay more, if the number of complaints that is made is less? Furthermore, the shortfall will become worse in the future as endowment-related complaints start to fall.

**Summary:**
• The assumption that the Commission will handle 4,000 complaints is flawed, as it is not based on current figures.
• Despite not being their fault, solicitors will have to pay increased levies if the number of complaints falls below 4000 and no additional funding is made available.

**The General Levy**
It is axiomatic that partners deal with more complex issues than associates, who in turn have more responsibilities than non-associates, and the general levy should take this into account, instead of charging all solicitors the same. For example, the general levy could be set at £120 for solicitors who are neither partners nor associates, with associates and partners paying, say, £250 and £350 respectively. Similar adjustments could be made for other practitioners coming within the remit of the Commission. Using this system, the income from the general levy would be higher, providing a financial cushion against variations in the income from the specific levy.

**Summary:**
• The figure of £120 for the general levy should be the starting point - solicitors with greater responsibilities should pay more.
• The resultant increase in the income from the general levy would reduce the financial impact of variations in the income from the specific levy.

The Specific Levy
The imposition of a specific levy on a solicitor against whom a complaint has been made, whether or not the complaint proves to be justified, will lead to the same abuse by solicitors that has occurred in the financial services. It is not unknown for clients and policyholders, when making complaints to insurance brokers and companies, to make it clear that, if they are refused compensation, they will refer matters to the Financial Ombudsman Service (FOS). Even if the complaint is completely without merit, brokers and companies often make a payment to such people, as it is cheaper to do this than pay the fee charged by the FOS if a complaint is referred to them. It is therefore submitted that the specific fee should be waived (or at least reduced) if the complaint proves to be unwarranted.

Furthermore, the Commission should have the power to charge a complainant if it is clear that the complaint has been made to obtain an unjustified payment. This sanction would typically be applied to someone who has had a complaint refused under the present system and who, in an effort to 'get even', lodges a bogus complaint against the same solicitor.

Summary:
- The specific levy should be waived or reduced when it is clear that the complaint is unjustified.
- The Commission should have the power to charge a complainant if it is clear that the complaint is malicious, or has been made in order to obtain unjustified compensation.

STARTING
Public disquiet about the present system has been centred on the way that a decision is reached: there have been no complaints about the involvement of Client Relations Office (CRO) staff in obtaining information, liaising with complainants and solicitors, etc. Consideration should therefore be given to seconding these staff to the Commission, as this would eliminate the need to train new employees. Even accepting that working methods may be different, the fact remains that CRO staff have wide experience of handling all aspects of the complaint process - experience that will not be acquired overnight by new staff.

Summary:
- The existing system for gathering information on a complaint has not been criticised, and should be retained.
REPORTERS
The Law Society uses 250 reporters – solicitors and non-solicitors – to prepare reports for consideration by a Client Relation Committee. There is no indication as to whether the cost of obtaining reports has been included in the figure of £2,460,000. It is clear that the Commission’s staff will be unable to carry out this work, so presumably it will be done on a similar external basis.

Summary:
• More details of the report stage are required, including the method that will be used, and its estimated cost.

SERVICE
The following queries re the service offered by the Commission need to be resolved before an informed discussion of the effect of the Bill can take place:
• Does the Commission intend to stay with the existing time scale of nine months for dealing with a complaint?
• How does the Commission propose to deal with complainers who need to be visited at home?
• What facilities will the Commission offer to complainers whose first language is not English?
• Will the Commission depart from the present practice of not allowing either the solicitor or the complainant to make submissions in person?
• How does the Commission propose to address Data Protection and privacy issues if the Executive considers that the appointment of committee members and reporters should be in the public domain?