Submission from J B McGeechan for the Legal Profession and Legal Aid (Scotland) Bill

I refer to the above and wish to express my concerns over the proposed legislation in the Legal Profession & Legal Aid (Scotland) Bill. I am a practising solicitor in Scotland, enrolled with the Law Society of Scotland and the bill will affect me. I therefore have a right to make submissions.

Please also note that where I am requesting information I am doing so in terms of Sections 1 & 10 of the Freedom of Information (Scotland) Act 2002 and that I require the information within 20 working days.

1. I note the proposal to establish a new statutory body, with running costs of £2.4 million per annum and start up costs approaching half a million pounds. Given the capacity for seriously underestimating running and start up costs, e.g. The Scottish Parliament building itself, I would like to ask how this was quantified exactly and who was paid to provide the information? Do they have any financial interest in the start up or running of the proposed statutory body? (Freedom of Information Request).

2. In recent years the Law Society of Scotland has made large changes in the operations and practices of the Society to deal with complaints. The issue and incidence of complaints in Scotland is nothing like the situation in England and Wales. Do we really need yet another quango based on ill considered and poorly researched ideas? Why do we need to fix something that is not broken? Please spend the money on something useful and necessary, perhaps a new hospital or prison, or a school.

3. The committee is asking that the proposed body be funded by levies placed on solicitors. If we are being asked to pay for it then you should be either consulting with every one of us individually or you should be taking the representations of the Law Society of Scotland as weighted and representative of each one of the thousands of Scottish Solicitors. I consider the refusal to do so as a disgraceful attempt to push the bill through and say that there was little opposition. Many of us do not have the time as we are working hard for a living. I have found the time only on a bank holiday weekend and have abandoned other matters to do so.

4. I note the proposed charge of £300 per complaint to be levied on an individual solicitor, whether the complaint be upheld or not. There cannot be any possibility that this is ECHR compliant. Imagine telling an accused appearing on a minor matter in court that he had to pay a £300 fine now, just for being there, and even if he did not go to trial or even if he was not found guilty he would not get his money back. A simplistic comparison but I hope it will help the clearly flawed understanding of the Committee on ECHR compliance.

5. I was recently subject to a malicious and unfounded complaint. It was dealt with by the Law Society in about four weeks from beginning to end. It was not upheld and was not deemed to require proceedings. I was annoyed by the actions of the complainer but placed my faith in the person who would review the complaint at the Law Society and I knew I had nothing to fear. You can be sure however that I would have been extremely annoyed to be landed with a £300 bill for an unwarranted complaint. I would have resisted payment and would have quite definitely raised a small claim to recover the money. I can foresee others would do the same. I wonder of anyone on the Justice 1 Committee has been subject to a malicious complaint? How would they feel if they had to pay £300 when there was no finding against them?
6. Further on point 5 above, I note that solicitors may lose their right to go to a civil court, other than for judicial review re complaints against them. Are solicitors to become an underclass of society not deemed worthy of access to the courts to defend their own rights and interests? How could that ever be deemed to be ECHR compliant?

7. The proposed raising of the maximum level of compensation for an Inadequate Professional Services complaint from £5,000 to £20,000, with the expenses burden being placed on the solicitor is extreme and dangerously naïve. A malicious complainer, not having to risk an award of expenses may raise an unfounded complaint and then agree to settle "out of tribunal" for a sum offered by the solicitors just to get him off their back. Is that in the interests of justice or the public of Scotland?

8. A likely outcome of this bill will be that many solicitors will not entertain lower paid or contentious work or legal aid work, as the risk of a large fine would not be worth the small sum to be earned. This will of course reduce the legal aid bill by denying access to justice for those who may be unable to get legal aid or a solicitor.

9. Has there been any comparison between the number of complaints made to the Law Society of Scotland and the number of issues or cases or clients dealt with by solicitors in Scotland? Has the Committee asked any firm of solicitors in Scotland for such details? My understanding is that the number of complaints is less than 1% of the number of matters dealt with. Why is there a perceived need for wide ranging legislation with a quango costing millions to deal with such minor matters? I honestly consider this to be a criminal waste of resources and money.

In summary, I must ask that the Committee exercise some common sense. The bill is clearly seriously flawed and falls far short of ECHR compliance. The bill and the work done on it is a hugely unnecessary waste of public resources. There is no need for a statutory body and I have little doubt that if passed in its present statute it will result in a judicial review that will mark it down as legally incompetent the first time it is challenged in court. It would be far better to bring an end to the matter and withdraw the bill completely.