Submission from Alison Kelly for the Legal Profession and Legal Aid (Scotland) Bill

I wish to express some of the concerns which I have regarding the Legal Profession and Legal Aid (Scotland) Bill.

I am a partner in a three partner firm in Kilmarnock which is considered generally to be a small practice in a rural area. We have to compete on a daily basis with the bigger firms in the cities who have greater resources than we do.

My concerns are as follows:-

1. While I have no issue whatsoever with an independent complaints handling body being constituted I am concerned about the costs, and the powers which it appears the body is to be given. I am also concerned regarding the composition of the board membership. Much of the work currently carried on at the Law Society when dealing with complaints is carried on by volunteers. The new complaints commission will be staffed by paid employees and the levy therefore is likely to be much higher on each individual Solicitor to fund the body than current Law Society subscriptions. There does not appear to be any ceiling on the levy which is to be charged and adding significant business costs to a small firm like ours could result in a necessary diminution in staff, contributing to unemployment in the local area. There is also the possibility that members of the Fiscal Service and solicitors employed by local Councils, who I understand do not require practising certificates, may not renew their certificates and therefore the levy to be imposed will be spread over a smaller number of people, again increasing operating costs.

2. I am also concerned about the level of compensation which the new body is to be able to award. The compensation which could be awarded for Inadequate Professional Services was raised several years ago from £1000 to £5000. The Executive at that stage considered the increase to be sufficient and no explanation seems to have been given for the sudden fourfold rise in the figure. I understand that the English white paper on complaints introduced a £20,000 figure in England and the quick change in attitude brought in by this Bill does not appear to comply with the promise of Scottish solutions for Scottish issues.

3. I am concerned also that a complaint can be made by “any person with an interest”. The nature of much of the work which we carry out is adversarial. We are expected by our clients to fight their corner without any concern about the opposing party i.e. “without fear or favour”. If non clients are to be allowed to make complaints about us and possibly be awarded compensation then it may hamper the way in which the system works. In other situations we may face complaints from non clients about perceived wrongs on our part, when we have only followed normal procedure and the disgruntled party does not fully understand.

4. The previous point regarding complaints by non clients is only amplified by the charging mechanism proposed for the Commission dealing with each complaint. Apparently this method is based on the principle of “polluter pays”. This completely prejudges the issue as the fee is to be paid by the Solicitor regardless of who is found to be at fault. Even if the solicitor is cleared of all blame the complaint will still have cost him or her the complaint handling fee together with the stress and anguish of dealing with the complaint and the loss of income from the time taken to deal with the complaint. It would be manifestly unjust to have to pay a fee to the Commission when the complainer was not even a client of the firm. This must be contrary to the principles of natural justice.

5. I am concerned that the passing of this Bill in its current form will lead to a reduction in access to justice for many ordinary people. Fees will require to be increased as it would be inequitable to carry out a piece of work for less than the fee to be charged by the Complaints Commission to deal with each individual case. Our own firm would certainly consider giving up Civil Legal Aid work which would lead to reduction in choice for members of the public who perhaps most require our services. It can already be quite difficult in our area to find a solicitor
willing to take on a legally aided case. Further, small firms in rural areas may decline to the
extent that staff would require to be made redundant.

6. We hear much from the Executive about the current “brain drain”, the falling
population and the lack of skilled people in Scotland. Many people are becoming
disillusioned with working in the profession and young people qualifying may well succumb to
careers outside Scotland rather than entering the legal profession in Scotland.

7. Finally, it seems totally inequitable that there is to be no right of appeal from the
Complaints Commission to an independent court or tribunal. This cannot be in compliance
with ECHR. This is unfair to both the complainer and the Solicitor and contrary to the
principles of natural justice. I am sure that MSPs would not countenance being subject to
such rules themselves.