Submission from Julie Greig for the Legal Profession and Legal Aid (Scotland) Bill

I refer to the above and write to express my concern about this bill. My concerns are as follows:-

1. Cost
There is no proper cost or cost-benefit analysis of the proposed new Scottish Legal Complaints Commission. However, it is likely to cost more than the Law Society’s existing Client Relations Office. This will be met by a general levy on the legal profession as well as fees charged to solicitors for every case considered, whether upheld or not.

2. Compensation
The increase in compensation for Inadequate Professional Service from £5,000 (a level which was raised from £1,000 just last year) to £20,000 is excessive and no explanation for such a large rise is given. The English white paper on complaints handling introduced the £20,000 figure – it appears that an English solution is being imported to resolve a perceived Scottish problem, despite the promise of Scottish solutions for Scottish issues.

3. No-fault liability
The charging mechanism for the Commission is based on the principle of “polluter pays”. Yet the system would be more accurately described as one based on the principle of “solicitor pays” as the practitioner will be expected to pay case fees whether or not a complaint is upheld. In addition, the solicitor will pay the full costs of mediation through the Commission.

4. “Access to Justice”
The Bill may cause particular problems for legal aid practitioners. Firstly, practices with marginal profit levels would not be able to absorb the increased costs. Secondly, risk management considerations may lead practitioners to conclude that certain types of work present too much of a risk for too little return. In other words, a routine piece of civil legal aid work bringing in £150 may not be worth taking on when it could attract a complaint fee of several hundred pounds and, potentially, a compensation claim of up to £20,000. Also, the bread and butter of High Street firms around Scotland – conveyancing, matrimonial and family matters – often involve demanding clients and are more likely to lead to complaints than other types of work. There is the prospect that a combination of the above factors – general costs, excessive compensation levels, the high-risk/low pay of Legal Aid Work and the general unfairness of the proposed new system – could lead to a number of firms either ceasing to trade or deciding not to do particular types of work which traditionally have brought complaints. This could mean, particularly in rural areas with small firms, that the number of solicitors decline and that in some areas it might be difficult for clients to get advice about particular types of business. Law Centres could be hit harder than most as their workload is based on this type of work and often involves the most difficult clients. In other words, “advice deserts” would be created. This would clearly not be in the public interest.

5. Economic Impacts
In addition to the damaging effect on access to justice, a downturn in the solicitors’ profession could have potentially serious economic impacts, particularly in rural areas. The turnover of the profession approaches £1 billion per annum and solicitors’ businesses employ around 20,000 people. Yet the profession is more than 99% complaint-free.

6. Independence
The Commission will not be considered independent if, as proposed, appointments to its board are made by Scottish Ministers.

7. Human Rights
It is unlikely the new system will comply with the European Convention on Human Rights because: the board will be appointed by Ministers and will not guarantee solicitor representation; case fees will be paid even if a solicitor is exonerated; there will only be an internal right of appeal for the public or the profession about a decision by the Commission on a service complaint.
8. Negligence
The Commission will take on the functions of the courts in negligence matters where the claim is less than £20,000, even though there is no consultation mandate to do so. Again, this is likely to raise issues in relation to ECHR compliance. Negligence should remain a matter for the courts.

I trust that the Committee will have regard to my comments.