Submission from Scott Gow for the Legal Profession and Legal Aid (Scotland) Bill

I refer to the Legal Profession and Legal Aid (Scotland) Bill and wish to register my concerns.

James Guthrie & Co is a three partner firm in Kilmarnock which is considered 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. We feel we provide an invaluable local service to our clients which may be threatened by a number of proposals within the Bill.

I have the following concerns:

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 last year 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. On receipt of a complaint the solicitor will require to pay an investigation fee of £300. This is on the basis of “polluter pays”. If the complaint is found to be unfounded the solicitor does not receive a refund of the investigation fee i.e. he is found not to be “the polluter” and still requires to pay. This prejudgement is contrary to the rules of natural justice.

4. 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 get compensation then it may be extremely difficult to properly represent our client. Any disgruntled party on the losing side of a litigation may then complain about the winning party’s solicitor who will be required to pay the investigation fee in connection with the complaint. As stated this fee is non refundable. The solicitor is therefore effectively fined £300 for doing his job. This is manifestly unjust.

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 members of the public who perhaps most require our services being unable to obtain legal representation. Further, small firms in rural areas may decline to the extent that staff would require to be made redundant. The closure of rural firms will lead to the centralisation of legal services within the cities leaving a significant proportion of the Scottish population without access to local legal representation.

6. We hear much from the Executive about the current “brain drain” and the lack of skilled people in Scotland. Many people are becoming disillusioned with working in the
profession and young people coming through may well follow 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. I am led to believe that this is not in compliance with ECHR. This is unfair to both the complainer and the Solicitor.

I would request that the foregoing concerns are considered fully and addressed prior to the enactment of the legislation.