Submission from Andrew Pollock for the Legal Profession and Legal Aid (Scotland) Bill

I write to express my deep concern at one aspect of the above Bill which in my view will have the effect of restricting access to justice.

I am a solicitor specialising in civil court work. My practice has always been aware of its professional and indeed social responsibilities and we are one of a diminishing number of practices in Glasgow where the most senior and expert solicitors continue to carry out civil legal aid work. The Committee will be aware that there is an increasing problem with access to justice with a reducing number of firms being prepared to carry out civil legal aid work and with a very small number of senior expert litigators now being able to carry civil legal aid work in due of the poor payment regime (in spite of recent reforms to the remuneration of solicitors carrying out legal aid work).

In addition, my firm is one of the few specialist civil litigation firms in Glasgow prepared to deal with what can only be described as “awkward” cases considered by most solicitors to be out with their normal area of practice. I am also the only solicitor in Scotland out with Edinburgh who is accredited by the Law Society of Scotland as a medical negligence specialist.

For these reasons, we are frequently approached by clients who have gone from legal firm to firm unable to find a solicitor able to take on that client’s case.

As a “coalface” practitioner I have experience, virtually on a daily basis, of prospective clients who are unable to obtain access to justice.

What deeply troubles me is the provision in Section 19 of the Bill for the complaints levy. As I understand it, where a complainer makes a services complaint, (even if the solicitor has made attempts to resolve matters), then regardless of whether or not the complaint is ill founded, then the practitioner has to pay a complaints levy. The only safeguard is that there is a preliminary sift so that a complaint will be weeded out, presumably, if it is found to be “frivolous or vexatious”. However, this is completely inadequate. It is completely wrong that a person against whom an unfounded complaint is made, still has to pay the commissions costs for making that complaint.

This is unfair to the solicitor concerned. The analogy would be that a constituent makes a formal and unfounded complaint to the Scottish Parliamentary Ombudsman, the Ombudsman finds that the complaint is unfounded, but nevertheless charges the MSP “a complaint levy” for the very fact that a complaint has been made against the MSP. How would the MSP members of the Committee feel about this?

Apart from fairness, this is directly linked to the question of access to justice. If the “complaint levy” becomes law, then this means that difficult clients with difficult cases will find it even harder to obtain access to justice as a solicitor will not wish to take on a case for such a client in the first place, if this solicitor knows that there is an increased risk that the solicitor is going to have to pay a complaints levy. Such clients will simply be turned away by firms of solicitors.

If the Committee recommends approval of the Bill in its current format then all the Committee will have succeeded in doing is to make it more difficult for those most in need of access to justice, to find a solicitor prepared to act. As it is, it is hard enough for a member of the public to find an experienced civil court lawyer to act in a highly complex matter and the Bill will simply make matters worse for those most in need of expert representation.

As a separate issue, I am also gravely concerned that Section 45 of the Bill could result in non-legally qualified advisors giving advice in the area of medical negligence. This is an extraordinarily complex area of law and it would be deeply concerning if member of the public were to be given advice in such a complex area where in contrast, members of the medical profession have available the most expert representation and advice. It is the difference between access to advice and access to justice.