Submission from Fiona Marshall for the Legal Profession and Legal Aid (Scotland) Bill

I would like to submit comments on the Scottish Executive's proposals to establish a Scottish Legal Complaints Commission and remove the role of the Law Society of Scotland in investigating complaints against its members. I am a solicitor with 22 years post qualifying experience in private practice. I have worked in both small and large city firms. I have also been a Reporter for the Client Relations Office of the Law Society of Scotland for the last 2 years.

Having considered the Bill, I am concerned that:-

1. The proposal to have 4 lawyer members does not stipulate that they should be practising solicitors. I feel that it is important that when considering any complaints, the Commission should consider the context of any complaint and the current legal environment in which the complaint is made. Only by having practising lawyer members will this be achieved.

2. The members of the Commission will not be truly "independent", given that the members are to be appointed by the Scottish Ministers.

3. The increase in the maximum level of compensation to £20,000 is excessive. In the real world, it is not always possible to manage a client's expectation. Things do sometimes go wrong, and although this is not always attributable to the professional services of the solicitor, clients do not always see this. A court case does not go the way a client expects. A client carries out their own research and finds a particular remedy (actually only applicable to England and Wales) has not been pursued in their case. Loan instructions from a lender are not received until the very last minute, delaying the settlement of a house purchase. If a client believes that he or she may get an award at this level, this may positively encourage the client to pursue a spurious or trivial complaint.

4. The proposed specific levy of £300 on practitioners who generate a complaint is unfair as it is payable irrespective of whether the complaint is upheld or rejected. If a solicitor in the course of the year receives 5 complaints, which are later determined to be unfounded, the solicitor has not only expended valuable time in responding to the complaints, but is charged £1,500 for the Commission to assess the complaints and reject them. Why should the solicitor have to pay this levy, if a complaint is not upheld? Should there not be a corresponding requirement for a complainer to make any payment when lodging a complaint or for the complainer to bear the £300 cost in the event that the complaint is rejected?

5. The only appeal against a finding of inadequate professional service is to a committee comprising other members of the Complaints Commission and not to an independent appeal body or court.

I do not feel the proposals strike a fair balance between the need to protect members of the public in circumstances where a solicitor has provided an inadequate professional service and the need to protect the interests of individual members of the profession.

I should be grateful if you will consider my views.