Submission from Melinda Wallace for the Legal Profession and Legal Aid (Scotland) Bill

I am a partner in a 2 partner legal firm, in practice in Edinburgh. We were formed 11 years ago and like most small businesses, we have at times struggled to make a living for ourselves and at the same time offer employment to our additional 2.5 members of staff. We pride ourselves in offering and providing a personal legal service to our clients. I have considered the Legal Profession and Legal Aid (Scotland) Bill, together with explanatory notes and memorandum, and have noted below my concerns with the creation of the new Scottish Legal Complaints Commission (“Complaints Commission”). I should be grateful if these would be taken into account as part of the professional consultation.

My principal concerns are as follows:-

1. Whilst it is to be expected that at least some of the members of the Complaints Commission will be solicitors, there is no legal requirement for any members of the Commission to be practising solicitors.

2. The members of the Complaints Commission are to be appointed by the Scottish Ministers and I therefore have concerns that they will not be truly "independent".

3. The Complaints Commission has power to award compensation of up to £20,000 in the event that a complaint is upheld against a solicitor. Prior to 2005 the maximum amount of compensation which could be awarded was £1,000 and this was increased to £5,000 in 2005. An increase to £20,000 is excessive.

4. 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.

5. Currently the investigation of complaints by the Law Society’s complaints office is dealt with by a staff of 38. Reports are provided by a mixture of solicitors and non solicitors. The solicitors provide their reports free of charge and a modest charge is made by the non solicitor reporters. The new body will comprise between 50 & 60 staff excluding Board members. It is anticipated that the costs will be funded partly by an annual general levy on all solicitors and Advocates (estimated to be £120) and partly a specific levy of £300 on practitioners who generate a complaint. The specific levy is a matter of considerable concern as it is excessive and payable irrespective of whether the complaint is upheld or rejected. There is no corresponding requirement for a complainer to make any payment when lodging a complaint or in the event that the complaint is rejected.

I do not consider that 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 who may be the victims of a series of trivial complaints from former clients who may have an agenda of their own to pursue against the solicitor.

Whilst a larger firms may not find the levels of compensation and specific levy a particular problem, these proposals are likely to have a major impact upon my fellow professionals practicing in smaller firms. Not all firms have vast resources and funding available to them and these proposals will expose members of the legal profession to the risk of vexatious complaints by disgruntled clients. Such a complaint would lead to a huge amount of time being spent answering what might be regarded as unfounded allegations, and even if the Complaints Commission decides in the end of the day that there is no case to answer, the solicitor would have spent a lot of time in dealing with the complaint and have been charged £300 by the Complaints Commission's simply for them dealing with the complaint. Worse still, if a finding of inadequate professional service is made against a solicitor and they decide to challenge that finding, the appeal is dealt with by other members of the Complaints Commission and not by an independent body. Our only recourse to an independent
body would be to seek a judicial review of the Appeal Committee's decision.

In light of the above, I do not consider the establishment of the Complaints Commission to be an appropriate or wise course of action to follow.