Submission from Alan Nicholson for the Legal Profession and Legal Aid (Scotland) Bill

I welcome the creation of a Legal Complaints Commission. However, I have issues with parts of the Bill.

- It appears to assume all complaints (which are not frivolous or vexatious) made against legal practitioners have merit and are just.

- I do not agree that the running costs of the commission should be funded wholly by the legal profession - the commission should also receive public funds. Although the proposal is that polluter pays, this is not achieved. As drafted the proposal is “solicitor pays” regardless of whether or not a complaint is upheld.

- The present “complaints levy” is discriminatory. It will give rise to conflicts of interest. It being in the commission’s interest to determine that complaints fall within its investigative/mediation powers because it is dependant upon the resultant levy to fund itself.

- Complaints made prematurely to the commission should be subject to the “frivolous or vexatious” test before being passed to the relevant practitioner.

- Under the existing statutes reference can made be to the Legal Services Ombudsman concerning the handling of service complaints by the professional body, but only by the complainant. There is no provision for an independent assessor of the commission’s handling of complaints. This role should remain with the Ombudsman. Appeal to the Ombudsman should be open to both complainant and practitioner.

- There should be the right for all parties to appeal the commission’s determinations and directions. This exists for conduct matters and will continue. An Appellate Tribunal should be established to conduct this function.

- In the interests of fairness, compensation not exceeding £20,000 should be payable also to the practitioner for inconvenience, time wasted, distress or stress of being subject to or dealing with unfounded complaints.

I would be grateful if you would put this email before the Justice 2 Committee.