Submission from C Leitch for the Legal Profession and Legal Aid (Scotland) Bill

I wish to make the following representations to the Justice 2 Committee in relation to the Legal Profession and Legal Aid (Scotland) Bill

This representation is made in my personal capacity and not as employee of any firm.

The Bill establishes the Scottish Legal Complaints Commission (“the SLCC”), whose main function is to handle consumer complaints about the service provided by legal practitioners, which cannot be resolved at source. The definition of “practitioner” is widely drawn.

My concerns are

- There has been no cost or cost-benefit analysis of the proposed SLCC.
- The maximum award of compensation for inadequate professional service has been increased from £5000 to £20,000, without any justification.

As a former practitioner of legal aid in a deprived geographical area dealing with domestic violence cases, divorce, children’s hearings, and adoptions I am aware that very often the commercial rationale for taking on legal aid cases involving clients who are very often emotional, vulnerable and angry is not clear and the risk of such substantial penalties in such demanding work may well make such work no longer worth the risk. Private clients already often effectively subsidise such cases and make it possible for legal aid work to be done in many geographical locations. Notwithstanding the negative impression that the tabloids often portray of lawyers many give up their time and effort for very little reward. The level of possible penalty proposed may well further discourage many hard working and public spirited individuals from taking on such cases. Such an increased level of compensation may increase consumer cost and/or reduce the availability of good quality advice.

- The SLCC is to be funded by Annual General Levy and a Complaints Levy. The Complaints Levy is payable, even if the complaint is dismissed as being unfounded. It is likely that the burden on solicitors will increase. At present the costs of the Law Society’s Client Relations Office are mitigated by voluntary work carried out by committee members.

- I believe that if the SLCC is introduced a higher level of fee should be charged against practitioners against whom complaints are upheld, rather than a flat handling fee applying to all cases. This would be fairer and more akin to “polluter pays”.

- Whilst conduct issues remain with the Law Society of Scotland, “handling complaints” can be made to SLCC, and SLCC have power to force the law Society to action certain conduct issues.

Losing control of conduct goes to the heart of what it means to be a profession and it is objectionable that our professional body should not be the sole judge of conduct in the profession. Teachers would not allow it nor would doctors. Why should lawyers be different.

- There is no clear justification given for the SLCC being given powers to oversee both the Master Policy and the Guarantee Fund. The administration of the Master Policy and claims under that policy are not decided by the Society. SLCC’s involvement may increase costs, in addition to regulatory and potential compensatory costs.

- The SLCC has powers to issue best practice notes about how professional conduct or professional services complaints are dealt with. These may be unduly burdensome.

- The Bill may not comply with the ECHR: the Board will be appointed by Ministers and will not guarantee solicitor representation; case fees are payable even if a solicitor is exonerated; there will only be an internal right of appeal on a service complaint.
There is a very real concern that complainers may use the cost and sanction issues to force concessions. This is a very real concern for all lawyers but particularly in relation to small firms in rural areas where advice available is already very restricted due to the limited numbers of legal aid practitioners.

The SLCC will take on the functions of the courts in negligence matters where the claim is less than £20k. I believe that negligence should be a matter for the courts. It seems unlikely to me that the SLCC could adequately deal with such matters with the competency and diligence of a court. It is a very serious allegation that a lawyer has been negligent and they should be able to defend themselves in the appropriate forum with all the safeguards for all parties that applies.