Submission from David Morrison for the Legal Profession and Legal Aid (Scotland) Bill

I understand that Friday, 21st April, is the deadline for written submissions to be made to you in connection with this Bill.

My submissions to you are as follows:-

1. I am a partner in a two-partner firm here in Aberdeen. In addition to my partner and myself there are three other solicitors. We are certainly not a large firm and almost all our work is carried out on behalf of ordinary people. Our clients are very often involved in difficult legal and personal circumstances. There are many other firms throughout the country similar to ourselves, who act for the same sort of clients. The new Bill allows a client to make a complaint to the new Complaints Commission and I understand that, except in very exceptional circumstances, as soon as a complaint is made the firm against whom the complaint is made is required to make a payment to the Commission for the complaint to be investigated and determined. I know of no field of law where a payment has to be made by someone against whom a complaint or charge is made before that complaint or charge has been proved against them. The procedure would seem to be contrary to natural justice.

I consider that if the Bill becomes law in its present form, it may be necessary for my firm and many other firms to withdraw from providing certain legal services. This would be very much against the public interest.

2. I accept that if an error is made and that causes loss to a client, compensation should be paid. At the moment clients have protection under The Law Society of Scotland Master Policy. The Bill, however, gives the new Complaints Commission the power to impose a penalty of up to £20,000 without proof of fault or loss.

3. The Bill provides no right of appeal from the decision of the Commission by either the solicitor or the complainer. I understand that the Law Society has obtained an Opinion on this matter from a recognised expert on the European Convention on Human Rights and the content of the Opinion is that if the Bill is enacted in its present form, it will include provisions contrary to the ECHR and therefore ultra vires of the Scottish Executive in terms of the Scotland Act.

4. The Bill contains no detail about how the new Complaints Commission will operate and how it will be funded. It is essential that such detail is provided in advance of the Bill becoming law. Without complete transparency the Commission will not have support from either members of the legal profession or members of the public. It appears that the Commission is being set up to be completely independent of the legal profession. However, if the Commission is not set up to act in a fair and impartial manner, it will not have the confidence either of the legal profession or those whom the Bill is intended to help, namely members of the public.

I hope that the Committee will take account of my comments.