Submission from Dunoon Faculty of Procurators for the Legal Profession and Legal Aid (Scotland) Bill

I write on behalf of the members of Dunoon Faculty of Solicitors.

Having considered the terms of the Legal Profession and Legal Aid (Scotland) Bill presently before Parliament, we are of the opinion that several of its proposed measures, particularly in the context of the proposed Scottish Legal Complaints Commission, deserve urgent reconsideration.

Our principal areas of concern are as follows:

1. The increase in permitted compensatory levels in respect of inadequate professional service from £5,000 to £20,000 is wholly excessive. It appears that no rationale has been provided to justify this increase. If clients perceive that a solicitor has acted negligently, then they can of course raise Court proceedings. An increase in the permitted compensatory payment to £20,000 would appear to us to substitute the decision of the proposed commission for a proper determination by the relevant Court.

2. Costs. The proposed system will proceed on the basis that a solicitor who is complained of will pay case fees whether or not the complaint against him is upheld. This aspect of the proposed scheme lacks, in our opinion, any aspect of an intellectual coherence: clearly, it would be much preferable that a higher fee be paid by a solicitor when a complaint is upheld. It seems utterly illogical for the system to progress on any other basis.

3. The number of legal firms operating in this town has decreased steadily over the last 20 years. There are now only a handful of legal practitioners operating full time in the town of Dunoon, serving Cowal with a population of perhaps 16,000. It is well nigh impossible to attract young solicitors to come to this area. The implications for access to justice in future are transparently obvious. In that context the aspects of the bill pertaining to legal aid will cause particular problems. Quite simply, routine pieces of legal work will not be worthwhile when it appears to be the case when complaint fees are to be upscaled in such a dramatic fashion. Small firms will not be able to absorb the costs of this new regime.

4. Rights of Appeal. It is bizarre, and in our opinion unlawful, that the proposed legislation contains no right of appeal to the determination of a quango. We understand the Law Society of Scotland has obtained the Opinion of a QC who has concluded that the Commission will be incompatible with the European Convention on Human Rights if no such right of appeal is contained. Accordingly, if the Bill is not to be found contrary to the Convention (which it most certainly will be if it proceeds in its present undiluted form) then the Bill must, in our opinion, contain a meaningful right of appeal to a judicial body. Failing this, the Commission will to all intents and purposes be usurping, to some extent at least, (see above) the function of the civil Courts without even allowing appeal. This is so clearly contrary to natural justice and indeed the aforementioned Convention that we are astonished that the Bill has been allowed to reach this stage.

The above represents the views of Dunoon Faculty of Solicitors.