Submission from Jennifer Inglis for the Legal Profession and Legal Aid (Scotland) Bill

I am a solicitor and have been practising in Scotland for five years. It was with some trepidation that I read the summary of the Legal Profession and Legal Aid (Scotland) Bill published by the Law Society of Scotland. I have the following points to make:-

1. I note that solicitors are to be billed for each complaint made against them, whether or not the complaint is upheld. This seems to me to be entirely inequitable. It would be interesting to know how many complaints that are made against solicitors are currently upheld.

2. I agree wholeheartedly with the Law Society when they state that certain "high street" areas of work are more likely than others to attract complaints. I am a civil court solicitor and the work I do involves both working for the general public and also for solicitors who are not based in Edinburgh. Out of these two areas of work I can say that working for the general public would be far more likely to generate complaints.

3. Court work has been described as a "distress purchase" i.e. people feel forced by circumstances into seeing a solicitor. They are often angry, stressed or depressed. I believe that people in such a frame of mind would be more likely to make a complaint, whether or not it was justified.

4. If solicitors feel that there is a possibility that an individual may make a complaint against them they will not take that person on as a client. Many firms are already reducing the number of legal aid clients they will take on. This is for a variety of reasons including the level of fees paid and the amount of work involved in dealing with the Scottish Legal Aid Board. I believe the proposed complaint fee would simply be another reason for many solicitors to cut down even further on the legal aid work they would be prepared to take on as in many cases the fees received from SLAB would not be higher than the fee that might have to be paid in relation to a complaint. I agree with the Law Society when they say that this will create advice deserts in parts of Scotland.

5. I view solicitors that provide legal aid to be providing a public service. I cannot think of any other public servants who would be required to pay for complaints that were made against them but were not upheld.

6. I am aware from discussions with colleagues in the profession generally that in many cases complaints are not made to the Law Society until a fee has been rendered for work carried out. I feel there is a real danger that clients will use the threat of a complaint to try and negotiate a reduced fee.

7. It is clear that the funding of the new Commission will be a contentious issue if solicitors are to pay for it. I note that the current Legal Services Ombudsman is funded by the public purse. I see no reason why the Commission should not also be funded by the public purse.

8. I note that once a solicitor has had a complaint made against them that thereafter they will pay a higher annual charge. If solicitors are to be made to pay an annual fee would it not be possible for complaints to be "spent" after a set period of time so that the annual charge would return to the standard level?

9. I am very concerned that there is to be no right of appeal from the Commission due to the nature of the matters that would be dealt with by the body. An adverse finding by the Commission in a serious case could result in a solicitor who was not a partner losing his or her job. In such a situation a solicitor would be unlikely to gain further employment in the legal profession. I believe this is contrary to Article 6 of the ECHR.

10. I note that the appointments to the Commission are not to be made by an independent body. Again, I believe this contravenes Article 6 of the ECHR. There also does not appear to be any requirement that a solicitor should be a member of the Commission. It would seem
reasonable that the Commission should have representation from both advocates and solicitors in order that solicitors may to some limited extent be judged by their peers.

I understand that all comments upon the Bill are to be submitted by tomorrow, Friday 21st April. I would be obliged if this could be considered along with the other comments you receive.

Thank you for your assistance.