The Clerk  
Justice 2 Committee  
The Scottish Parliament  
Edinburgh  

Dear Sir  

Legal Profession & Legal Aid (Scotland) Bill – Stage 1  

Having studied the provisions of this Bill, I make the following submission in my personal and professional capacities.  

I was admitted as a solicitor in Scotland in 1966. I am consultant of a country firm offering a wide range of services, in the fields of conveyancing and court representation among others, but particularly in the fields of legal aid work, elderly client advice and adults with incapacity. My firm (Caesar & Howie) has offices in Bathgate, Whitburn, Falkirk, Livingston and Alloa and represent at any one time many clients. We have been established for over two hundred years and the firm is an integral part of the communities which it serves.  

I am sorry that the perception – which is not the reality – that solicitors policing themselves is disadvantageous to the public will have ramifications which far outweigh the benefit in having a so called independent commission.  

I appreciate that the Law Society of Scotland will make its own response but I would ask you to note my concerns.  

What Price Justice?  

My firm provides advice to some of the poorest members of society. We represent people who have mental health issues; require guardians; have difficulty in understanding legal concepts and who have unrealistic expectations of outcomes. As a firm, we will require to revise radically our policy of accepting clients whose circumstances or the type of work involved suggest that there is a possibility of a complaint.
A comparison might be that if I was a greengrocer selling a banana for 10p knowing that if the purchaser complained to the greengrocer’s commission then, regardless of the quality of that banana, I would automatically have to pay a penalty of £10 then I would stop selling bananas. If that applied to all my products then I would seriously require to consider shutting up my shop.

This issue will require to be considered by every practice in Scotland. Firms will close and those clients who can least afford to go without representation will be most disadvantaged. This is clearly not in the public interest.

**Economic Impacts**

If solicitors’ firms close this will have serious economic impacts in areas such as those in which I practise-Alloa for instance has Disadvantaged Area status. We employ around 70-80 people whose jobs would be lost.

The Gershon Report urges the public sector to make efficiencies and to downsize in favour of the private sector. The Bill’s proposals will have the opposite effect. Not only will 36 private sector jobs be lost in the Law Society and transferred into 60 public sector jobs with the Commission; solicitors will be forced out of private practice and in to public sector jobs. This is in direct contravention of Government policy.

**Human Rights**

I find it absolutely astounding that the office of the Presiding Officer declared this Bill ECHR compliant and continues to do so in the face of the expert opinion of Lord Lester of Herne Hill, QC, that it is not. Not only does it lack the basic provision of an external appeal; it is clearly not independent of the State as the Board will be appointed by Ministers and the majority will be “lay people”. What will that mean in practice? What guarantees can be given that there will even be an attempt to appoint fair minded and impartial persons with appropriate qualifications? If I wish to make a complaint about a plumber I would not expect an electrician to be giving his opinion on whether or not plumbing work had been adequately carried out. I see also that there is no guarantee of solicitor representation so I am unable to see to how reasonable decisions can be expected to be arrived at nor how accountable this body will be.

**Usurping the functions of the Court**

The last time the Government set up a body which usurped the functions of the Court it was called the CSA which has proved to be costly, bureaucratic and wholly ineffective in achieving its primary purpose. I suggest that the Committee thinks carefully before sanctioning CSA mark 2.

**Conduct Issues**

I feel very strongly that in a democratic society there should be a clear division between the Executive, the legislature and the Judiciary. As part of the
structure, I consider that a strong independent legal profession which is able, where necessary, to "take on" the power of the State is of paramount importance. What is proposed in this Bill – namely that the Commission will be able to enforce its views on the Society in respect of its members – means that, ultimately, the State will control the solicitor profession. What was the Executive thinking of in coming up with this proposal?

**Costs of Commission**

Apart from the unfairness of the "solicitors pays" levy and "case fee" payable by solicitors regardless of the outcome, I am deeply concerned that there has been no proper cost/benefit analysis carried out. It is unclear to me at this stage exactly what structure the new body will adopt; how decisions are to be made; how quality is to be assured and how accountable this body will be in terms of finance. I find it especially galling that the cost of oversight of the Society's complaints mechanism, which is currently borne out of the public purse, will be transferred to the solicitor profession and, naturally, onwards to the wider client base. Why should clients who are perfectly happy with the service received from their solicitors bear the cost of handling the complaints of the few?

**Compensation**

On 31 March 2005 the maximum compensation which could be ordered by the Law Society was £1,000. In a mere three years this will increase twentyfold. Where is the mandate for this? Where is the need for this? I see that the White Paper produced in England has the same figure. Are we to have English ideas adopted in Scotland? If so I suggest the Committee look long and hard at the English shambles which passes for a complaints body where it can take up to TWO YEARS simply to be assigned a case manager and reference. The Law Society of Scotland does this within ONE WORKING DAY.

**Conclusion**

Even if the perceived problems thought to arise where solicitors police themselves needed to be dealt with otherwise than by massive strengthening and improvements in throughput and consistency of decision making which the Law Society of Scotland has put in place over the past two or three years, this Bill is not the answer. It is a measure dictated by what the Executive perceives as pleasing the public and therefore good for votes. Such measures rarely succeed. Indeed, the Executive will have taken upon itself responsibility for a quango which will face exactly the same problems which are faced by the Law Society of Scotland namely that there will always be people who are unhappy when it is found that there is no validity to their complaints. When that happens instead of lambasting the Law Society for a lack of independence it will instead lambaste MSPs for producing a body which does not give them the results they want with the inevitable political backlash. I challenge the Executive to produce a body which is as fair, properly composed, properly structured and has sufficient powers to meet the
expectations of the Scottish Public whilst at the same time allowing the Profession to work independently and profitably in the interests of all sectors of the Scottish Public as the Law Society of Scotland’s present system. This Bill comes nowhere near to meeting that challenge.

Yours faithfully

William B Jarvis