LPLA Bill,
The Clerk to the Justice 2 Committee,
Room T3.60,
Scottish Parliament
EDINBURGH
EH99 1SP

20th April 2006

We the undersigned, as Practising Solicitors and members of the Law Society of Scotland wish to make the following submissions in relation to the Legal Profession and Legal Aid (Scotland) Bill.

1.

Part 1 of the Bill proposes to establish a new Statutory Body in addition to the existing Professional Bodies to handle complaints about service provided by Solicitors and other legal practitioners. It is proposed that the Commission will handle complaints about inadequate professional services. Most significantly, Section 8 of the proposed Bill gives power for the Commission to direct a practitioner to pay compensation of up to £20,000 to a client. The present upper limit of the “fine” for inadequate professional services is £5,000 having been increased to that amount very recently. There is no appeal to the Court under the Bill in respect of any decision of the Commission. The Commission is to be funded by a general levy on general practitioners and a levy on complaints. The specific levy is to be imposed whether the complaint is successful or not. We have the following comments to make on Part 1.

1.1 There is no proper cost or cost benefit analysis in relation to the proposed new Scottish Legal Complaints Commission. It is clear however that the cost is likely to be very much higher than the existing Client Relations Office run by the Law Society of Scotland. The Client Relations Office is cost efficient in that a significant amount of the work is carried out largely on a voluntary basis by Law Society Committee members and reporters. This will have to be conducted by paid employees.

1.2 The increase in compensation for inadequate professional service from £5,000 to £20,000 is excessive. This appears to follow the English White Paper without any recognition of the promise that a Scottish solution would be applied for Scottish Issues.

1.3 The proposal that a flat fee be charged for all complaints is a recipe for disaster. As anyone practicing in Scotland knows there is a body of misguided individuals in Scotland whose sole object in life appears to be to cause trouble for the Legal
profession. We envisage a deluge of spurious complaints from these individuals when they know that a complaint automatically carries a levy.

1.4 The Commission will have power to force the Law Society to act on certain conduct issues. Issues of Conduct has to be a matter for the profession itself.

1.5 The Bill gives the Commission power to oversee the running of both the Master Policy and the Guarantee Fund. There appears to be no mandate for the introduction of this power. Furthermore administration of the Policy and Claims made under the Policy have nothing whatsoever to do with the Law Society.

1.6 It is clear to us that those who drafted the Bill have no concept whatsoever of the profession’s concern of the general situation with regard to Legal Aid. This has a significant bearing on questions related to access to justice. By introducing swingeing penalties in relation to inadequate professional services more and more solicitors will be reluctant to take on any difficult questions under cover of Legal Aid when the recompense for doing Legal Aid work is so poor. Furthermore, in rural areas where the public have less choice of solicitors they will certainly be faced with the distinct possibility that local solicitors will decline to assist, particularly in tricky Legal Aid cases, when faced with the possibility of swingeing penalty following upon a complaint by a disgruntled client. We also believe that Law Centres could be particularly prone in this situation.

In general terms our Society, The Law Society of Scotland, have informed the profession, with justification, that when it backed the possible introduction of an independent complaints handling body they made it clear that this must be demonstrably better than the current system, particularly so given the cost and disruption involved. There are also a number of areas in which the Society believes that the system introduced is not demonstrably better for the following reasons –

We believe that the new Commission has to be independent from Government. The suggestion is that the appointments made to the Board will be made by Scottish Ministers and we do not believe that this is appropriate as the independent body should be free from political influence. There is no guarantee that there would be any solicitor representation on a nine member Commission Board despite the fact that 95% of the legal profession in Scotland are solicitors.

The Bill at present does not allow for the Right of Appeal for the public or the profession about a decision by the Commission on a service complaint. The current system has safeguards – a reporter makes a recommendation and the Committee, made up of solicitors and non-solicitors, reaches a decision. If the solicitor believes that the Society has reached the wrong decision in a service complaint, they have a right of appeal to the Scottish Solicitors Discipline Tribunal. The complainer is entitled to take the Society’s handling of the matter to the Scottish Legal Ombudsman which is to be abandoned.
Further comments are as follows -

Cost – as mentioned, the cost of running the Society’s existing Client Relations Office is met from the profession from their Practising Certificate Subscriptions. It is clear that the new Commission will require considerably more funding particularly as the work currently carried out by volunteer committee members and reporters would be conducted by paid employees. The Bill proposes that this will be met by general levy from the Legal profession as well as fees charged to solicitors for every case considered. That raises questions of natural justice in that it is proposed to charge solicitors for the cost of an investigation whether or not the case is upheld. As previously indicated this, in our view, would involve a deluge of spurious complaints. In addition the solicitor would be expected to pay the full costs of mediation through the Commission but the complainer would not be charged any fee. That means that the system is cost free and risk free to the complainant which, as we have indicated, would be a recipe for disaster.

Compensation – this matter has already been raised in para. 1.3.

Negligence – it appears to us that the Commission would take on the functions of the Courts in relating to negligence even though there is no consultation mandate to do so. Again this could raise issues with regard to EHCR compliance. We in our society believe that negligence should remain a matter for the Courts, every solicitor pays an additional premium to his or her Practicing Certificate subscriptions for cover under the Master Policy for Professional Indemnity Insurance. That already covers claims up to 1.5 million pounds for clients if there has been negligence by a solicitor. There is a body of solicitors prepared to advise and take on cases from members of the public where there is a concern that a solicitor has been negligent.

Guarantee Fund and Master Policy – the Bill calls for the Commission to have the power to oversee the running of both the Master Policy and the Guarantee Fund. As previously indicated justification for such powers is not clear. The administration of the Master Policy and claims made under that policy are not decided by the Society. These are unique and robust protections.

It is unclear what is to happen with regard to complaints involving both service and conduct. It is accepted by the Executive that the society should continue to deal with conduct complaints. This would appear to involve an inbuilt delay at the early stages of a complaint while consultation takes place about who should deal with which part and in which order.

The Executive envisages the Commission taking over the function of the Scottish Legal Services Ombudsman. The society believes that the cost of the Ombudsman’s Office at the current rate around £400,000 could be diverted to the Commission to meet some of the running costs. At present the Ombudsman can award compensation of £1200 against the Law Society in respect of poor handling. The Commission, it is proposed, can recommend compensation of up to £5,000 and
there will be no procedure for any complaint against the Commission for poor handling by them of any complaint.

We believe that the legislative and start up process is expected to take at least two years. Such a lengthy transition period would mean that it would be unlikely that the high standard set by the Law Society's Client Relations Office would be maintained over the handover period with staff retention and morale likely to suffer. However, we are advised that the Law Society and the CRO in particular will continue to work to ensure the public and the legal profession are provided with the possible system for handling complaints against solicitors. Any new system must be an improvement on the one that exists at present and we are far from persuaded that the Bill proposes any such system for all the reasons which we have previously stated.

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