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

I write as a Scottish Solicitor in private practice. My firm has three offices in Edinburgh, Falkirk and Denny and I operate out of our Denny office. I also serve on the Council of the Law Society of Scotland and convene one of the Client Relations Committees and have done so for two years.

It was with great surprise, dismay and genuine concern that I read the draft Bill especially insofar as it relates to the regulation of the legal profession. I believe in general terms the proposals are ill-thought out to the extent that whatever their impact in the legal profession to which I will return shortly they will not bring increased benefit the public in Scotland. I have supported the Law Society position that the service elements of complaints should be passed to a new body and I would still support certain of new body in principal for this purpose. I do however have extreme difficulty accepting that the new Commission will not only act in relation to dealing with service complaints but will act as the review body in the way that the Scottish Legal Services Ombudsman has done up to now and indeed will also take on some of the functions of the Scottish Solicitors Discipline Tribunal. Both for solicitors and members of the public there is no independent body offering a review of any decisions of the commission. In this sense there has to be real concerns about the human rights dimension of this aspect of the Bill and compliance with E.C.H.R.

Turning now to the powers which the Commission would have in relation to service complaints. The increase in compensation which recently took place up to a new level of £5,000 had been after a previous review by the Justice Committee which accepted changes that had been made by the Society. To now increase the amount not more than one year after the introduction of the previous increase by fourfold is patently disproportionate and is likely to give rise to awards of compensation which will effectively touch on negligence issues. This enhances my previous point about the inadequacy of the review and the appeal provisions within the Bill as far as the Commission is concerned. The impact of this increase is undoubtedly going to cause a number of solicitors to give real thought to the type of work which they do. Work which is more likely to give rise to complaints is going to become more risky and will in my view mean that the general public will find it more difficult to get access to family lawyers, mental health lawyers and in general terms leave solicitors less prepared to do work at the present Legal Aid rates. It will see many firms in rural areas removing themselves from this work and leaving large areas of Scotland without access to independent legal services.

In relation to the Commission acting as gateway I do not believe that it has been thought out properly as to how the issue of complaints which involve both the service aspect and a conduct aspect will be handled. If it is intended that the Commission will consider the service aspects and that the Law Society continue to investigate the conduct aspects this will only mean an increase in administration and increased cost. The cost of the new body should not be left solely as the responsibility of the legal profession. There is a public interest element in an effective Commission. If this is the case certain functions of the Commission should be met from public funds. At the present time the Scottish Legal Services Ombudsman Office is met from public funds. It appears inequitable that solicitors will be required to pay for all aspects of the work of the Commission even if unfounded and groundless allegations are made against them they will require to pay a standard levy. There will be no consideration given to the cases which are not upheld. This is clearly unfair. In my view the Bill goes much further than is necessary for the benefit of the public and the profession in Scotland at this time.

Finally, I must make mention of the fact that it surprises me that the Scottish Parliament is so very keen to introduce independent bodies and effectively considers self regulation to be in anachronism when our MSP’s have failed to put their own house in order and have failed to introduce proper independent scrutiny of their actions on behalf of the public in Scotland.
May I also say for the avoidance of any doubt that these are my own personal comments and views and my own response to the consultation and should in no way be considered to be the views of either my firm or of the Law Society of Scotland.