Submission from Lindsay Kennedy for the Legal Profession and Legal Aid (Scotland) Bill

I am the Client Relations Partner for Wright Johnston & Mackenzie LLP a 17 Partner, full service firm operating in Glasgow and Edinburgh. I wish to submit a response to the Justice 2 Committee on the impact of the proposed Bill.

Part 1 – The Scottish Legal Complaints Commission

Whilst I support the principle of having an independent complaints body to deal with service issues, I have concerns about how the Commission would operate.

Section 8, enabling the Commission to direct a solicitor to pay compensation of up to £20,000 to the client is an increase from the current (only recently increased) level of £5,000. This rise is excessive, given that the level of £5,000 was only just raised from £1,000 last year. I am also concerned that the £20,000 limit seems to coincide with the maximum figure under the English system – I’m sure there are concerns within the Law Society that an English solution is being proposed to deal with a Scottish issue.

My experience in dealing with potential complaints via the Law Society Complaints System at present is that these complaints can be incredibly time consuming when, despite the public perception, 99% of the profession is complaint free. Whilst, as stated above, I support an independent body, the proposals need to be proportionate to the potential problem. My experience of dealing with complaints, particularly in areas of personal law – where there are proportionately a higher number of complaints than in commercial issues – leads me to believe that clients may be more likely to raise complaints issues where there is a perception of a large financial return. Particularly where the client is not expected to pay anything to have the case dealt with, there may be a risk of more vexatious complaints or claims made. Despite the perception of the public that self-regulation works in favour of the profession, I have always found the Law Society’s Client Relations Office gave members of the public the benefit of the doubt far more than members of the profession. I feel the Client Relations Office often has to go far to show that it does not have any bias in favour of the profession. I am not sure that the proposed changes balance justice to the profession with justice for the public.

The estimated running costs of the Commission are stated in the bill to be £2.4m met from funds generated by levies from the profession. Solicitors having to pay fees for every case considered, whether upheld or not, is I believe unfair and may lead to solicitors electing not to carry out certain types of work (primarily personal law) where doing a small piece of work may leave the solicitor open to a potential claim of up to £20,000.

While I would welcome being part of an open, transparent profession which is open to scrutiny by means of an independent route to raising complaints, this needs to be balanced and having the solicitor pay full costs of mediation as well as a flat handling fee in each case is not balanced.

Turning to the powers of the Commission, I note that this will allow the Commission to force the Law Society to take action on certain conduct issues. The Society must retain control of conduct of its members.

Furthermore, the Bill gives the power to the Commission to oversee the running of both the Law Society’s Master Policy and the Guarantee Fund. It is not clear why these powers need to be given to the Commission and, in the consultation with the Scottish Executive, there was no mandate for this.

Of principal concern, however, is the ability for the Commission to take on essentially the function of the courts in dealing with negligence matters where the
claim is likely to be less than £20,000. Clients currently have the right to raise issues of negligence with the courts- I believe that this is the correct way for something as potentially serious as negligence to be dealt with. The fact that there is no internal right of appeal for either the public or the profession about a decision on a service complaint also gives rise to issues of compliance with the European Commission on Human Rights- and you will have had opinion on that passed on by the Law Society of Scotland.

I hope that the Committee will take into account these concerns which I know are shared by a number of other members of the profession. I recognise that reform is needed to enhance public confidence in the complaints handling system but the new system also has to have the confidence of the profession. The next system has to improve on what is in place at present. I believe that if the proposals came into force that there would be a serious impact on the types of work offered by Scottish solicitors and indeed on the size of firms. This would have an adverse economic impact on Scotland as a whole and so the costs and benefits of the proposed changes need to be considered carefully.