Submission from Fife Council CJS for the Legal Profession and Legal Aid (Scotland) Bill

1. Fife Council Social Work Services welcomes the introduction of the Legal Profession and Legal Aid (Scotland) Bill and supports the general principles and aims, which it is understood are to reform the system for handling the complaints against lawyers by the creation of a new body, the Scottish Legal Complaints Commission and secondly to improve the delivery of all forms of publicly funded legal assistance. In noting the key provisions of the Bill, the following comments are offered for the Committee’s considerations:

2. The provision to establish a new Scottish Legal complaints Commission, led by a Board with a non-lawyer majority is a positive step that has the potential to increase public confidence in the regulatory system.

3. The provision establishing the new Commission as the sole body responsible for handling complaints about inadequate legal services, has the merit of creating a single pathway to deal with complaints, which will add clarity to the process for members of the public and a greater degree of independence and impartiality in the complaints system than is currently the case.

4. There are no additional comments regarding the maximum level of compensation being raised to £20,000.

5. The proposals allowing professional discipline to remain with the legal professional bodies and tribunals reflect practice that is common to other professional bodies, such as the British Medical Association. Giving the Commission the handling and oversight role in relation to complaints may, as suggested in the original consultation process, help increase public confidence in the complaints handling system. From a social work perspective, it is an important principle that such processes are seen to be open and independent. These proposals may help to reduce the opportunity for conflicts of interest between the regulatory and representative functions of the legal professional bodies.

6. There are no additional comments regarding the proposal to take first steps towards giving rights of audience and rights to conduct litigation to members of other professionals, or other bodies.

7. The provision to transfer responsibility from the court to the Scottish Criminal Aid Board, with criminal legal aid being made available on an application to the Board, where a person is being prosecuted under solemn procedure is noted. Also duly noted is the provision to establish a procedure, under which any person whose application for legal aid under these conditions has been refused, may apply to the Board for a review of the application.

8. The critical issue in relation to these provisions, however, is likely to be the eligibility criteria upon which the Board determines that a person’s financial circumstances are such that the expenses of the case cannot be met without causing undue hardship to the person or the person’s dependants. The proposed eligibility criteria could, either be decided by the Board, or alternatively be included as a provision in the Bill. A further critical factor would lie in making any eligibility criteria publicly available.

9. The inclusion of a provision in the Bill to this effect would be consistent with other elements of the Bill that are aimed at helping to increase public confidence in the criminal justice process.

10. There are no additional comments regarding the provisions to establish and maintain a register of advisers who are approved by the Board to provide advice and assistance.