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

The Procurators Fiscal Society is a section of the FDA, a union representing the interests of senior professionals in the public sector. The Society includes within its membership over 350 solicitors and Advocates Depute working within Crown Office and Procurator Fiscal Service. Solicitor members hold practising certificates issued by the Law Society of Scotland. As such we believe that the majority of our members fall within the definition of “practitioners” within the Bill.

The Society has concerns over Part 1 of the Bill which sets out the remit and powers of the new body to deal with complaints, the Scottish Legal Complaints Commission. We also have concerns over the new head of complaint covering unsatisfactory professional conduct.

Our members do not have “clients” in the traditional sense, rather operating at all times in the public interest, which may on occasion be perceived as contrary to the interests of one individual. We take the view that further clarification of how the Bill would affect our members in respect of any complaints is necessary.

While we accept that our members are subject currently to the regulatory functions of the Law Society of Scotland, in practice complaints regarding the service provided by our members or their professionalism, are not generally made to this body but are dealt with by our organisation’s robust complaints handling system which is well publicised and allows for complaints to be made to the Public Services Ombudsman.

Separately we are concerned to note that there is no right of appeal to any court in respect of the upholding of a services complaint by the Commission. In addition we are concerned to note that the maximum compensation, which can be awarded, is £ 20 000. Some of our members who are at legal entry grades earn little more than this and to expect such individuals to pay compensatory awards of this amount is ludicrous.

We take the view that since we are subject to the scrutiny of the Public Services Ombudsman and because in practice service complaints are not made against our members to the Law Society of Scotland, that we should be exempt from these provisions. To include us seems unfair and unnecessary.

As indicated we have concerns as to the new complaint of unsatisfactory professional conduct. In acting in the public interest and with the ability to exercise discretion in certain circumstances, it is almost inevitable that our members are making decisions, which can have a substantial effect on those concerned and may not be popular. In addition aspects of our work are confidential and must remain so. It is therefore clear that if a complaint were made our members might be unable to give full information to the Commission standing this confidentiality. We have grave concerns that this head of complaint could hamper our members’ ability to act in the public interest and carry out their functions effectively.

Our final concern relates to the two levies referred to in both the Bill and the Financial memorandum. As public sector employees our employer meets the dues for our practising certificates and we might expect that these dues would also be paid in this way. However we reiterate our view that it is unnecessary to seek to impose such levies on our members when they are not generally the subject of service complaints and are subject to complaints to the Public Services Ombudsman.

Standing the many concerns we have expressed we request that an exemption from the provisions of this Bill is made for solicitors and Advocates Depute working within the Crown Office and Procurator Fiscal Service.

Submitted by the Council of the Procurators Fiscal Society