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

We write to express concern with regard to this Bill.

The membership of the Aberdeen Bar Association deal principally with Court work and certain members with Criminal Court work only. The first area of concern relates to the proposal contained in Section 44 of the Bill with regard to the removal of the power of Sheriffs to grant Legal Aid in Solomn proceedings. We were involved in consultation with regard to this proposal and suggested at that time that a service which is currently carried out for “free” by Sheriffs with regard to the grant of Legal Aid will be transferred to the Legal Aid Board which will presumably have to create a further administrative department to deal with such applications. Our submissions at the time indicated that no proper detail as to the question of an applicants ability to meet the expenses of the case “without undue hardship” were detailed, that there would be a delay in the grant of Legal Aid in the most serious cases. As applicants generally appear from custody or at short notice on Undertaking or by invitation warrant the inevitable delay in the grant of Legal Aid will slow up the system. Our submission indicated that any question of fraudulent disclosure of an applicants financial position would of course be the subject of investigation by the Scottish Legal Aid Board but that in our view there was no need to take away the Sheriffs power of grant, nor was any indication given as to how appearances from custody, possibly involving Judicial Examination etc would be covered without an immediate grant of Legal Aid by SLAB.

Secondly there are extreme concerns about certain detail regarding the suggested complaints procedure. In particular our members deal with the representation of individuals, often in difficult circumstances.

-2-

We have concerns that certain areas of law where complaints are common but often proved to be unfounded will result in those areas of law being less attractive to the profession and inevitably justice being denied to individuals who would not be able to find representation or advice locally. In addition there is the suggestion that an individual or firm would be required to pay a levy for each individual complaint simply to have it investigated and without provision for the refund of that levy should the complaint turn out to be completely without foundation.

There is also a severe lack of detail about how the proposed new commission would operate and be funded. To enable the commission to give a perception of independence from the legal profession it is suggested that without the detail being available it would fail to command support and confidence from both lawyers and the public and would result in being fatally flawed from the outset.

In addition it appears that there is no right of appeal from decisions of the commission to any form of independent body and that that would be regarded as fatally flawed in denying natural justice and a review of the commissions procedure.

We should be grateful if you would ask the Committee to have regard to these comments.