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

I note that the Justice 2 Committee is seeking views on the general principles of the Legal Profession and Legal Aid (Scotland) Bill.

I make the following comments on some of the principles embodied in the Bill:-

Scottish Legal Complaints Commission

(a) Cost
I understand that there has been no proper cost or cost/benefit analysis of the proposed new Scottish Legal Complaints Commission. I understand that a general levy will be made on the profession in Scotland as well as a proposal to charge fees to Solicitors if complaints are raised against them, whether or not the complaint is upheld. Whilst I can appreciate the desire to secure adequate funding for the Commission, the principle of automatic charges levied for every complaint made is questionable. This raises the prospect of a client with even the most minor grumble, or indeed no substantive complaint at all, blackmailing a Solicitor into settling the "complaint" by payment of a sum less than, or equal to, the automatic charge applying at the time. The Committee ought to take account of spurious or mischievous complaints arising on this basis.

In simple terms it is unreasonable and unfair to automatically levy a charge on a solicitor complained against whether, or not, there is any merit in the complaint. If it transpires that the complaint is wholly unjustified will the charge, if levied, be refunded to the solicitor? Also, if it transpires that the complaint is wholly unjustified, will the person who made the complaint be required to re-imburse the Commission’s costs and perhaps also the costs incurred by the solicitor in dealing with the complaint?

(b) Compensation
I note the intention to increase compensation for Inadequate Professional Service from £5,000 to £20,000. This seems to me to be excessive and I am unaware of any explanation offered for an increase of this scale.

This appears to deliver into the hands of the Commission functions which ought properly to be undertaken by the Court system. The level of IPS compensation suggested will, in my view, not marry with existing principles of negligence. Such important principles should not be ruled upon by a non-legal tribunal when there is already an extensive body of case law on what qualifies as professional negligence.

The maximum level of compensation may represent a significant proportion of the income of small practices and should be revised to a lower figure. Failure to do so could have a significant effect on the provision of legal services in rural areas where legal practices tend to be smaller and have lower income. This could result in some people in rural communities – those without access to a car and without good public transport links – being excluded from access to legal services.

Regulation of Solicitors' Conduct
I note that the Commission is intended to have power to oblige the Law Society of Scotland to action certain conduct issues against its members. This seems to me to be directly contrary to the concept of a profession regulating its members. This proposal also calls into question whether the Law Society of Scotland might be deemed properly independent of the Executive.

Guarantee Fund/Master Policy
I note that the Bill proposes to award the Commission power to oversee the running of the Scottish legal profession’s Master Policy and the Guarantee Fund. These two protections are unique to the Scottish legal system and offer unparalleled protection to clients of Scottish solicitors. I can see no justification for the Commission overseeing the running of the Master Policy as this is already independently managed by the insurers who manage claims and set premiums.

In so far as the Guarantee Fund is concerned I see no justification for the Commission’s involvement and I do not believe that the Executive’s consultation implies any mandate for the introduction of the powers suggested.