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

I am writing with regard to the levy which it is proposed be paid by all practising solicitors to fund the establishment and functioning of the Scottish Legal Complaints Commission. In my view this levy should be payable (if at all) only by solicitors in private practice. It would be inequitable that public authorities (ultimately the taxpayer) should be required to pay it on behalf of their staff, or that solicitors in the public sector should require to pay it themselves.

The purpose of the Scottish Legal Complaints Commission primarily relates to the management of complaints about provision of inadequate professional services. It will determine which are "conduct" complaints, and which are "services" complaints. It will then determine procedure, investigate and adjudicate in relation to services complaints only. Conduct complaints will be remitted to be dealt with by the existing disciplinary bodies, as before. The establishment and running of the Commission is to be funded by an annual general levy, to be paid by all practising advocates and solicitors.

It is inequitable that all practising solicitors should be expected to fund the Commission. The issue of inadequate professional services only arises in relation to private practitioners. For public sector solicitors, such issues would be dealt with in the context of an employer/employee relationship. An in-house solicitor who was failing to provide an adequate professional service would be subject to his/her employers disciplinary rules, and might ultimately be dismissed. It is inconceivable that a dis-satisfied employer in this situation would make a complaint to the Law Society rather than take disciplinary action. In any case, the Commission's powers under section 8 to reduce fees, pay compensation etc., have no application in an employment situation. Additionally, the public sector usually has insurance in place to cover losses arising from the actions of employees, including solicitors.

Clearly it is the intention of Parliament that the cost of regulating the profession should be met by the profession, and not by the taxpayer.

If the levy is payable by public authorities in respect of every practising solicitor they employ, this aim will be defeated. The taxpayer will be funding a body whose function is entirely to police solicitors in private practice.

I would therefore submit that the levy should be paid (if at all) only by solicitors practising in the private, not the public, sector, and would ask that an appropriate amendment be made to the Bill.