Submission from Office of Fair Trading for the Legal Profession and Legal Aid (Scotland) Bill

Thank you for your letter of 10 March to Philip Collins inviting the Office Fair Trading (“OFT”) to comment on the general principles of the Legal Profession and Legal Aid (Scotland) Bill (“the Bill”). I am replying on behalf of the OFT.

The OFT has had previous involvement in two aspects of the Bill: that which relates to reform of the system for handling complaints against lawyers and that which prepares the way for the commencement of sections 25-29 of the Law Reform (Miscellaneous provisions) (Scotland) Act 1990. Comments here are confined to these issues.

Complaints Handling Reform

In its call for evidence, Justice 2 identifies four key provisions of the Bill as it relates to reform of complaints handling:

- the establishment of an independent Scottish Legal Complaints Commission (“SLCC”) to act as a gateway for complaints against lawyers;
- the SLCC’s responsibility for complaints about inadequate service;
- raising the compensation maximum for inadequate service to £20,000;
- SLCC oversight of professional bodies with respect to their handling of complaints relating to discipline.

We comment here on each of these in turn. A further aspect, that of the role of the SLCC in overseeing the effectiveness of guarantee fund and master policy arrangements, is also addressed.

The establishment of an independent SLCC to act as a gateway for complaints against lawyers

We very much welcome this. Manifest independence is the key to public confidence. Of the models set out in the SE Consultation in summer 2005, this is the model most likely to achieve this. In addition, this model is best suited to ensuring that there is simplicity from a consumer perspective and consistency across the profession. We welcome the provisions proposing that the Board have a lay chair and majority and that members be appointed by Ministers.

The SLCC’s responsibility for complaints about inadequate service

In our view, it will be important that in addition to acting as a gateway, handling service complaints and passing conduct and discipline issues to the professional bodies, the new body should have powers to order redress in respect of all kinds of inadequate complaints including those that raise conduct and discipline issues. The proposed arrangements look likely to achieve this. Consideration should also be given to whether the SLCC should publish the outcome of its investigations (name and shame) and whether a kite mark scheme that allowed firms/practitioners to advertise on the basis of a good service record would benefit practitioners. We welcome the provisions that will allow the SLCC to provide useful feedback to professional bodies in the form of best practice notes.

Raising the compensation maximum for inadequate service to £20,000

That the maximum has been significantly raised is very welcome. Consideration might be given to whether provision should be included to allow for higher payments in exceptional cases.

SLCC oversight of professional bodies with respect to their handling of complaints relating to discipline

We welcome the proposals that the SLCC should have powers to oversee the handling by the professional bodies of conduct and discipline complaints. In our view the SLCC might also
benefit from a capacity to prosecute such complaints before the professional bodies where important public interest issues are at stake.

**The role of the SLCC in overseeing the effectiveness of guarantee fund and master policy arrangements**

In our view, independent oversight of these arrangements is essential. We welcome the fact that a role has been awarded to the SLCC in this regard. In our view, this should include responsibility to ensure that:

i) such arrangements are sufficient to provide effective cover against negligence;

ii) that an independently-appointed panel of solicitors is available to represent claimants;

iii) that there is a clear functional separation within professional bodies between their continuing arrangements for handling conduct complaints and matters of discipline and any role that they maintain in relation to indemnity and compensation fund arrangements.

The current proposal, which proposes a power to monitor effectiveness, rather than a duty to do so, appears unlikely to afford consumers sufficient guarantee of the effectiveness of these arrangements.

**The statutory obstacle to rights of audience and rights to conduct litigation to members for newly authorised professional bodies**

OFT has been advocating the commencement of Sections 25-29 Law Reform (Miscellaneous provisions) (Scotland) Act 1990 for some time. We welcomed the Scottish Executive’s announcement in January that it intends to commence these provisions. We consider this an important step towards enhancing competition in legal services in Scotland to the benefit of Scottish consumers. We welcome, therefore, the proposed removal of the statutory obstacle to new types of potential suppliers and we hope that the Scottish Executive will be working towards early commencement of the provisions.