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

I write to express concern about the above noted Bill as presently drafted.

I am a solicitor in private practice working exclusively in the area of Family Law. The nature of the field of law is that I deal exclusively with clients who are going through a traumatic period in their lives. The circumstances which bring them into contact with solicitors are unhappy and in general, no matter how good the outcome achieved by a solicitor is on an objective basis, many will remain unhappy at the end of the process. Frequently, although the cause of the unhappiness is in no way connected with the solicitor’s performance, clients are more likely to feel aggrieved than in many other areas of law. Complaints in this particular area are more common than in others. The complaints, by the nature of the work are not necessarily always from the solicitor’s own client but frequently from the client’s former partner.

I am concerned about the effect that new Bill will have on the access to justice for those individuals seeking legal advice on a family law issue. As you may be aware, legal aid changes over recent years have in my experience resulted in a number of specialist family law firms either stopping providing services under legal aid or restricting the services that they provide in that regard. I receive regular calls from prospective clients looking for legal representation on a legally aided basis who are unable to find a solicitor who is prepared to do it in Edinburgh. In the event that the Bill, as presently drafted, passes into law, I consider that the firms who continue to do this type of work, often at legal aid rates, for clients who already feel aggrieved about something and may well complain about our service if the outcome is not to their liking, will have to consider carefully whether the services can continue to be offered. That would, in my view, lead to a further reduction in the availability of legal advice in the field of law in which I practice.

As a solicitor in private practice, I fully recognise that if an error made causes loss, that compensation should be paid. What cannot be acceptable however is for the proposed new Commission to have the power to impose a penalty of up to £20,000 without proof of fault or loss. It is particularly concerning that there would be no appeal available against any such decision. In addition, from a family law point of view, it is concerning that a charge would be levied each time a complaint was made, no matter whether that complaint had any good foundation.

Finally, I have concerns about the lack of detail in relation to how the proposed new Commission would operate and be funded. It is vital that such detail be provided now to enable the Commission to command support and confidence from both lawyers and the public. The apparent reason for the new Commission is to give a perception of independence from the legal profession. Without full transparency the public perception of the new Commission would be fatally flawed from the outset.