Submission from Disability Rights Commission for the Legal Profession and Legal Aid (Scotland) Bill

The Disability Rights Commission welcomes the opportunity to comment on the Legal Profession and Legal Aid (Scotland) Bill, but wishes to restrict comments to a general point of concern relating to the proposed Scottish Legal Complaints Commission and more detailed comments on the proposals contained in Part 4, clause 45 relating to the introduction of a Register of advisers.

The proposed system for dealing with complaints would, among other things, introduce compensation fines of up to £20,000 in circumstances where is no right of appeal against decisions of the Scottish Legal Complaints Commission. In addition the Bill proposes the imposition of a complaints levy, which would be due from any solicitor against whom a complaint is made, whether or not such complaint is subsequently upheld. We are concerned that the combined effect of these provisions is such that solicitors may decide not to carry out types of work which are traditionally perceived as having given rise to complaints. An example of this could be work for clients who are mentally ill, in areas of work such as divorce. The concern here is that it is the perception of a risk of complaint that might lead solicitors to resist work in certain areas, and there will be little recourse for a client unable to access representation.

If solicitors resist taking on such work, then access to justice would be denied to clients, some of whom might be among the most vulnerable. In this way the proposed complaints procedure could result in having a disproportionate adverse impact on disabled people, particularly those who are mentally ill, as they may be disproportionately represented in those denied representation.

We are pleased to see the proposal for registered advisers, who would be non-legally qualified. This is welcome for the reasons already set out in our response to the “Access for All” consultation (for many disabled people, properly targeted non legally qualified advice can bring about early resolution of problems without the need for recourse to legal remedies; joint working between solicitors and non-legally qualified advisers can ensure that help is given in one agency, rather than having to refer the client on elsewhere).

It is important, however to ensure that the introduction of registered advisers enables such advisers to refer cases, and ensures that advisers do refer cases appropriately to legally qualified providers where that is necessary. Using disability discrimination as an example, the effectiveness of non-legally qualified advisers to negotiate settlement of a claim is much enhanced by the opponent’s knowledge that legal advice and representation is available if required to pursue claims to court or tribunal.

We note the scheme proposed under clause 45 for the introduction of a Register of Advisers and raise the following matters as issues that need to be considered from the outset in the establishment of such scheme.

The Disability Equality Duty introduced by the Disability Discrimination Act 2005 comes into force in December 2006, and will require the Scottish Legal Aid Board to take this duty into account when setting up the scheme for registered advisers and organisations under clause 45. There is a duty on SLAB under that legislation to have due regard, amongst other things, to the need to promote equality of opportunity between disabled persons and other persons; eliminate discrimination that is unlawful under the Act; encourage participation by disabled persons in public life; and take steps to take account of disabled persons’ disabilities, even where that involves treating disabled persons more favourably than other persons.

It is suggested that the effect of the disability equality duty on SLAB, would require SLAB in compiling the Code of Practice for Registered Advisers and Organisations, to ensure that an impact assessment is done and that consideration is given from the earliest stages to how the scheme of Registered advisers and Organisations and the Code in particular will promote
disability equality. An example of this might be that full accessibility of the service to disabled people will be a criteria for registration. A further example might be the need to ensure that all systems in place for registration of advisers and organisations are fully accessible to disabled advisers.

Please note that the Commission would be pleased to be involved in any specific consultation on the development of the Regulations covering the Register of Advisers.