Submission from ELizabeth Craigmyle for the Legal Profession and Legal Aid (Scotland) Bill

I write to express my serious concern about this bill. I have specialised in representing people with disabilities including mental health problems and their families and carers for seven years. I am finding it more and more difficult to adequately resource the services in my chosen field of expertise. Already there are areas of law and areas of the country where individual citizens cannot obtain proper legal representation. Scotland can pride herself on the raft of social justice legislation which has been passed since devolution and is still underway but is there any point in having legislation people cannot access due primarily to inadequate resourcing?

I took an active part in the Unmet Legal Needs Project the report for which was published in 1998 which highlighted the difficulties faced by certain members of our population. The inevitable result of the bill becoming law in its present form is that the supply of legal advice will sharply diminish and that is very much against the public interest.

At a recent Law Society Conference at which I gave a presentation I was asked by a participant why I did the sort of work I did as some areas of my work were more likely than other sorts of work to generate complaint and that most firms would not opt to engage in representing people with mental health problems.

Like many other firms, my firm is having to consider carefully whether it can continue to do work, often at Legal Aid rates, for clients who already feel aggrieved about something and may well complain about my firm’s services if the outcome is not to their liking.

At a Legal Aid Conference a show of hands was asked for as to those practitioners who were under 30 years old and out of an audience of approximately one hundred and fifty only two hands went up! In my view this illustrates the lack of young solicitors carrying out legally aided work.

I work in a firm of solicitors where we act largely for individuals, often in difficult circumstances. We fully recognise that if an error made causes loss, compensation should be paid. What cannot be acceptable is for the proposed new commission to have 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. Right-minded individuals would be troubled at the idea that the funding of the commission should be dependent on payments based on the number of complaints made against a firm, even if those complaints were wholly unjustified and were rejected.

There is also a lack of detail about just how the proposed new commission would operate and be funded. It is vital that such detail be provided now, so that the commission can 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.

I trust that the Committee will have regard to my comments.