Submission from Olaf Sutherland for the Legal Profession and Legal Aid (Scotland) Bill

1. It appears that a Commission which is not desired by the profession is to be created with the profession being held solely liable for all the costs of its operation by general levy and, for services complaints, by specific levy. I anticipate that the present indication of levies will increase substantially. There is a long history of government estimated costs escalating substantially with certain horrific examples. The profession is likely to be asked to meet a blank cheque each year without the profession being able to exercise any control.

2. It is unreasonable, unjust and inequitable that solicitors alone should require to pay for complaints. There should be provision for the Commission to find complainers liable for unwarranted complaints and complaints which are not upheld. Although some complaints may be screened out before reaching the Commission, this procedure will not eliminate all such complaints. There are some who are by nature serial complainers.

3. There is at present a claims culture. A mini-industry of ‘claims farmers’ has grown up which trawls for business through mail shots and television advertising. For instance, many are being encouraged to claim for mis-selling of endowment assurance policies whether or not there was mis-selling: there is no cost to the claimant and many are claiming for the chance of receiving payments in settlement. There is a considerable risk that, if the same situation prevails for complaints against solicitors, that this mini industry will seek to form a market out of claiming, encouraged by the high level of compensation of £20,000 which can be awarded by the Commission. Why should a claimant not raise points about the service provided by the solicitor whether or not the overall service has been good with the original instructions being properly fulfilled? What is there to stop such a claimant? There is likely to be a very substantially greater number of claims made than under the present system and the awards of compensation are anticipated to be much greater. This is also likely to lead to a different approach to the basis of feeing by solicitors.

4. The proposed level of compensation to a present proposed maximum of £20,000 is excessively high. Such a payment would form a very substantial proportion of most solicitors’ incomes. Awards of compensation at that level are likely to have a serious effect upon the financial circumstances of a solicitor. Furthermore, if the level is initially set at such a high level, a series of annual or other increases in that amount will create even higher levels of compensation.

It is appreciated that much will depend upon the composition of the Commission and the attitude and approach of the Commission members to the legal profession and their understanding of the legal profession and its actings and the claims levels which they set. Some might be of the opinion that the attitude of some in government towards the legal profession has been antagonistic.

5. If the Bill is passed and depending upon how the Commission operates, I can envisage there being changes in the attitude and approach of some solicitors towards the legal work which they are prepared to carry out and also whether or not they act for certain clients. This is unlikely to be to the benefit of the public particularly in areas of low population density with few solicitors practising therein.

6. At present the draft legislation does not provide an independent appeals procedure from the decisions of the Commission. This is not providing justice. Human Rights legislation should also be taken fully into account and it does not presently appear that this is the case.

I trust that my opinions and those of The Law Society of Scotland and of other members of the profession will all be taken properly into account with suitable amendments being proposed or made to the Bill before it is considered in detail by the Scottish Parliament and that adequate time will be allowed for the proper consideration and debate on the provisions of the Bill.