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

As a firm we wish to record our concerns regarding a number of issues pertaining to the proposed legislation and potential consequences if the proposed legislation is passed without amendment.

We the undernoted solicitors wish the Justice 2 Committee to take account of this detailed submission and would make the following specific comments:-

1. It is unacceptable that a solicitor will have no right of appeal with the new Scottish Legal Complaints Commission and no right of representation. In the circumstances it is clear that the proposed body will not be compatible with the European Convention of Human Rights.

2. The proposal that a specific levy of £300 must be paid by each solicitor if a complaint is made and is not to be reimbursed to the solicitor concerned even if that solicitor is totally exonerated is totally unacceptable and contrary to natural justice. We suggest that a solicitor should be called upon to pay a specific levy only if the complaint is ultimately upheld.

3. There is no guidance in the draft Bill on how compensation is to be assessed and clear guidelines require to be given.

4. Third party complaints are to be allowed despite the fact that the third party might not have a contractual relationship with the solicitor about whom he or she is complaining. We would suggest that third party complainers must be called upon to pay a levy of £100 to proceed with a complaint.

5. We would suggest that provision be made in the draft Bill to ensure that a firm’s grievance procedures require to be exhausted before any complaint can be referred to the new Commission. The new Commission should exercise a strict sifting process and guidelines should be provided for in the legislation.

6. There is no doubt that as a firm given the proposed levels of compensation there are specific areas of work in which it seems likely we may no longer become involved given the risks involved and this would be primarily civil legal aid work. The continued existence of sole practitioners and smaller firms within the profession will be jeopardised by the proposed legislation.

7. The proposed legislation requires amendment to ensure that there are a specific number of qualified solicitors to be employed by the Commission, failing which the legislation in its present form is unacceptable.