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

I would like to submit comments on the Scottish Executive's proposals to establish a Scottish Legal Complaints Commission and stop the Law Society of Scotland from investigating complaints against its members. I am a solicitor aged 50 with almost 30 years in private practice. I have worked in both large and small legal firms.

Having considered the Bill, I am concerned that:-

1. The proposal to have 4 lawyer members does not stipulate that they should be practising solicitors. I feel that it is important that when considering any complaints, the Commission should consider the context of any complaint and the current legal environment in which the complaint is made.

2. The members of the Commission will not be truly "independent", given that the members are to be appointed by the Scottish Ministers. I do hope Scottish Ministers and MSPs will introduce similar provisions to police their own conduct. I shall be more than happy to serve on the panel that appoints members to serve on that Commission.

3. The increase in the maximum level of compensation to £20,000 is excessive. This will encourage spurious complaints and there are pieces of legal work that just won't be done. It would not be worth the risk. Why charge £50 for a Codicil to a Will when there is a risk that you could end up paying £300 for a rejected complaint? Much better to tell the client to go away and do it themselves. If they get it wrong, the Legal Profession is not at fault nor at risk and there is every chance that a Lawyer will be required to resolve the problem for which he or she can charge fully.

   In the real world, it is not always possible to manage a client's expectation. Things do sometimes go wrong, and although this is not always attributable to the professional services of the solicitor, clients do not always see this. A court case does not go the way a client expects. Loan instructions from a lender are not received until the very last minute, delaying the settlement of a house purchase. If a client believes that he or she may get an award at this level, this may positively encourage the client to pursue a trivial complaint. A Client will ask for £200 or he complains. What do we do? Pay him £200 or end up paying £300 for the complaint. We can't even complain about this to anyone because of client confidentiality.

4. The proposed specific levy of £300 on practitioners who generate a complaint is unfair as it is payable irrespective of whether the complaint is upheld or rejected. If a solicitor in the course of the year receives 5 complaints, which are later determined to be unfounded, the solicitor has not only expended valuable time in responding to the complaints, but is charged £1,500 for the Commission to assess the complaints and reject them. Why should the solicitor have to pay this levy, if a complaint is not upheld? Should there not be a corresponding requirement for a complainer to make any payment when lodging a complaint or for the complainer to bear the £300 cost in the event that the complaint is rejected? As soon as these rules come into force, Solicitors throughout the country will be asking their clients to pay a levy or they will increase their fees to cover this additional expense.

5. The only appeal against a finding of inadequate professional service is to a committee comprising other members of the Complaints Commission and not to an independent appeal body or court.

I do not feel the proposals strike a fair balance between the need to protect members of the public in circumstances where a solicitor has provided an inadequate professional service and the need to protect the interests of individual members of the profession.

This proposed body is unfair and unjust. Solicitors are easy targets but the changes will lead to people being denied access to solicitors. Small out of city firms will wither and die.