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

I would like submit comments on the Scottish Executive's proposals to establish a Scottish Legal Complaints Commission and remove the role of the Law Society of Scotland in investigating complaints against its members. I am a solicitor with 2 years post qualifying experience in private practice. I have worked in both large and medium sized firms based in Scotland and England.

My concerns are:

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. Only by having practising lawyer members will this be achieved. I believe that there should be a minimum number of 2 practising solicitors on the panel.

2. The members of the Commission will not be truly "independent", given that the members are to be appointed by the Scottish Ministers.

3. 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. This is effectively a sanction without foundation and I would be concerned that it is in breach of Article 6 ECHR. 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?

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. At the very least, there should be an appeal to the Court of Session on points of law, and it should be made clear that judicial review is available on normal principles.

There is much merit in the proposals and the profession needs to be better regulated, both in the eyes of its members and in the eyes of the public. However, in respect of the points noted above 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, the need to create a truly independent, transparent and accountable system of regulation and the interests of the profession.

I should be grateful if you will consider my views.