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

I am writing to express my concern at some aspects of the Legal Profession and Legal Aid (Scotland) Bill.

Firstly, it is of concern that there is no external right of appeal to either party should they be dissatisfied with the outcome of the decision made by the Complaints Commission. Surely in terms of natural justice, both parties should have a right of complaint. This should apply equally to the complainer and the solicitor.

It is also concerning that a third party who is not the client of the solicitor can complain about the solicitor yet the solicitor will have to fund such a complaint at a cost of £300. It is in the nature of solicitors' work to be adversarial and in that regard it can be distinguished from work carried out by other professionals such as accountants, financial advisers and anyone in the medical profession. Adversarial work often has an outcome which results in a win/lose situation. The losing party is often dissatisfied with the solicitor who prosecuted the case or contract against that party. In such circumstances, it is surely inequitable that an aggrieved party can put in a complaint against a solicitor with whom he had no contractual obligation and such a solicitor has to fund that complaint. Although the Bill envisages that mediation/negotiation should take place before a complaint can be dealt with by the Commission, it would not be ethical or appropriate to discuss matters with another person's client who is also effectively your own client's opponent. In such circumstances, I would propose that the third party have the right to complain but they should fund the complaint where it is not against the solicitor with whom they have a contract. Should the complaint be upheld, then the sum would be repaid to the complaining party as part of any compensation payable by the solicitor at fault. If this is not adopted, then an aggrieved party can simply put in a complaint with a view to incurring cost against the solicitor.

Furthermore, solicitors should be allowed to conduct themselves on behalf of their clients without fear or favour provided they do so in an ethical and professional manner. The proposals as they are presently framed will result in solicitors having to have undue regard to the interests of the party on the other side who is not their client. Provided solicitors act professionally and within the bounds of the law and professional ethics they should be allowed to have primary regard for their own clients interest at all times.

It is also concerning that the Complaints Commission be made up entirely of persons who have had no practical experience within the legal profession. It would seem to be necessary for natural justice to be met that there be at least three members of the profession who hold current practising certificates on the Complaints Commission and each of these three covering three main areas of practice, namely, a court practitioner, a conveyancing and executry practitioner and a commercial law practitioner. Without such expertise on the Complaints Commission, an in depth understanding of the nature of the legal work which is complained against would be absent from the Tribunal. For example, in Social Security Disability Appeals Tribunals, there is one lawyer, one doctor and one disabled person on the Tribunal to ensure the full range of expertise is covered. Surely this is on all fours with the current position and the appropriate range should include at least three practising solicitors.

Obviously the fact that there is a possible minimum liability of £300 for every piece of work carried out will result in solicitors refusing to carry out either unpaid or poorly paid work. This will drive solicitors to an ever more commercial view which will result in legal services being withdrawn from some members of the public who require them most. Whilst the public do not widely perceive solicitors as being altruistic in my experience many of us do help people without regard to our own income where we see people in difficulty. It is difficult to understand how solicitors could take on such work when there is risk of not only their client, but anyone else who is deemed to have some form of interest in the matter, incurring the solicitor in a £300 levy.

I would also propose that the £300 be capped for say five years (to be increased only in line with inflation). If this is not the case, there is a danger of a complaints industry being created
with an open cheque book attitude to it being funded. If the Complaints Commission were being funded by the Scottish Executive, we are quite sure it would have a budget allocated beyond which no funds would be available. The annual levy should be similarly limited too.