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

As a solicitor enrolled in Scotland I wish to make the following representations on the above proposed Bill.

- A “fine” of up to £20,000 without any right of appeal to an independent judicial tribunal would appear to be contrary to human rights and could have the effect of wiping out small local rural practices where their annual income could not support such a penalty.

- where there is in any event a right of recourse to the courts under Legal Aid after suitable review by SLAB that should not be supplanted by a complaints procedure which will encourage vexatious complaint at no cost to the complainer with prospects of increased “nuisance payment” in settlement. The nature of a lawyers work is adversarial to an extent and that in turn attracts adversarial clients who will see the Bill as a charter to pursue any perceived complaints at no cost to themselves.

- there is no need to impose yet another tax on practitioners to pay for the procedure where aid is already provided for professional negligence actions in court.

- it is unfair to penalise practitioners who have no complaints raised against them. There is already a Fund to cover claims through the Law Society. If financial guarantee is required then insurance cover could be required [as for example in the architectural profession] where lack of claims will be reflected in amounts payable or prospects of success could be independently assessed at a preliminary stage in complaints procedure.

- the new system appears to simply increase costs without analysis of any real benefits to the public. The massive amounts spent by the government on the Health Service without proper analysis of results is a case in point.

- compensation levels and breach of duties in negligence should be assessed in court

In summary the Bill should be reconsidered to provide for quicker and more transparent procedure for addressing complaints, as in statutory Employment Tribunals, without unfairly penalising the whole profession.

- all professions should be treated equally - eg Teachers, Accountants, Doctors, Architects and indeed MSPs. Otherwise that is illegal discrimination under the Human Rights legislation.