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

I am writing to express my personal concerns and the concerns of members of the Society of Solicitors in the Shires of Selkirk and Peebles to certain aspects of the above Bill.

Local Solicitors are very concerned that Practitioners may be required to pay compensation of up to £20,000 to clients as a loss suffered for inconvenience or distress as a result of inadequate professional services. As you will be aware the current upper limit for such compensation payments is £5,000. This level of payment was only recently fixed. It would appear that the level of £20,000 has been imposed quite arbitrarily simply to mirror the level of compensation payments in the equivalent English legislation.

We are also concerned about the funding of the running costs for the Scottish Legal Complaints Commission. It seems inequitable that Solicitors will require to pay a levy on the basis of any complaint lodged whether or not the complaint is upheld. Although it is appreciated that vexatious and frivolous complaints will be sifted out nevertheless it would appear inequitable that a Solicitor will be required to pay the same levy to the Commission whether or not a complaint against him or her is upheld.

The Bill as drafted proposes that the Commission should have the power to oversee the running of the Master Policy and the Guarantee Fund. The Master Policy or Indemnity Insurance for Solicitors is administered by the Insurance Companies concerned. It is not apparent why it is felt that there is a need for the Commission to have a supervisory role in relation to these matters.

From the Law Society of Scotland’s analysis it appears that many complaints derive from certain particular types of legal work and in particular from domestic conveyancing, matrimonial and family matters. Family and matrimonial matters are often covered by Legal Aid and many Solicitors already find that carrying out Legal Aid is generally unremunerative. If Solicitors are to be faced with paying a hefty levy to the Commission in respect of complaints issued for Legal Aid work many Solicitors may simply choose not to undertake Legal Aid work in future. Already many firms in the Borders do not undertake certain Legal Aid work. If the provisions of the Bill cause further Practitioners to act in the same way then in rural areas of Scotland Legal Aid may no longer be available. This would clearly have a detrimental effect on access of justice for the general public but Solicitors cannot be expected to undertake unremunerative Legal Aid work and then be faced with potential large levies to the Commission in respect of complaints made for inadequate professional services.

We are concerned that the proposed creation of the Board will not comply with the provisions of the European Convention on Human Rights. As you will be aware Lord Lester of Herne Hill has investigated the provisions of the Bill. He has concluded that the absence of a right of appeal against Commission decisions which uphold service complaints to the Court of Session or some other appropriate independent impartial Tribunal causes the provisions of the Bill to be incompatible with ECHR rights.

Finally we are also concerned with the makeup of the Board of the Commission. The majority of complaints received will no doubt be against Solicitors as Solicitors undertake the vast majority of legal work in Scotland. There is the possibility that only one or two Commission Board Members would be Solicitors. It is difficult to understand how non Solicitors will be able to judge whether or not professional services provided by Solicitors are inadequate and thereby constitute a service complaints.