Submission from Euan Sinclair for the Legal Profession and Legal Aid (Scotland) Bill

I have considered the draft Bill and I am seriously concerned that the current proposals will result in a restriction of access to legal representation and undermine the independence of the legal profession.

The legal services market is a paradox: one on hand it is the most tightly regulated market in terms of delivery of service, but it is now entirely unregulated in terms of fee charging. It is, therefore, one of the most competitive markets in our economy. As a result certain areas of work are now marginal at best and only profitable in high volume, increasing the burden of risk on firms. If the limit on compensation is raised, then many firms will have to consider withdrawing from providing these services. This will act to restrict the lively competition that the consumer presently enjoys and to restrict access to legal representation in many areas of practice and in more remote areas.

My other concern revolves around the lack of an independent appeals process. This is certainly likely to be an interference with Human Rights and I am aware that the Law Society of Scotland has the legal opinion of Lord Lester of Herne Hill to confirm this. Should the Bill proceed in its present form, members of the Committee will be aware that the Act can be challenged in the courts as incompatible with ECHR in terms of the Scotland Act. I would certainly encourage and support the Law Society of Scotland in any litigation of this sort.

The views expressed are personal and do not necessarily reflect the views of Cockburns.