Submission from Michael Tavendale for the Legal Profession and Legal Aid (Scotland) Bill

I wish to make submissions to the Parliament’s Justice 2 Committee in connection with the above matter and in particular to address a number of points of concern.

As a practising solicitor of some 26 years with wide experience in all aspects of the law, I am disgusted at what appears to be a complete lack of justification for increasing the level of compensation for inadequate professional service to £20,000. As far as I can see, there is no justification for such an excessive rise from the current level. I could perhaps understand an increase of that magnitude if a similar increase was being made to legal aid fees or in the fees which are charged by solicitors but, of course, fees in each of these fields have continued to be eroded over the years.

I am also very concerned regarding the potential costs involved and the levies which will be placed upon us. As a solicitor in a small country practice, we are continually faced with increasing overheads and diminishing returns and the increasing cost of “red tape” which is continually foisted upon us both by the UK Parliament and more recently by the Scottish Parliament. We must be the profession with the highest degree of regulation in this country.

I am particularly concerned that the passing of the Bill will lead to a mushrooming of the already high number of spurious complaints and it does appear to me that there is no provision for any special levy to be refunded to the solicitor in the event that the claim is rejected or for any costs to be levied on any unsuccessful claimant. To that extent, I am extremely concerned that this will become a “chancer’s charter”. Already, any complaint which is made has to be investigated by myself as the firm’s complaints partner and this already takes up an inordinate amount of time and particularly so, given the number of completely spurious complaints that have been made in the past and I believe that the Committee needs to carefully consider these matters.

As ever, we find that, despite the essential service that solicitors provide, we are, in the eyes of many, an “easy target”.

My other main area of concern is with regard to access to justice. The onset of fixed fees in civil legal aid cases has already led us to seriously consider whether or not we should continue to provide services in respect of civil legal aid work and this is particularly becoming the case with regard to matrimonial work. It is simply impossible to obtain a profitable return on such work and if we are to be subject to a potential “fine” of up to £20,000 for undertaking a piece of work which may be worth only £200, then we will seriously have to consider whether it is worthwhile to provide that type of work. So many areas of the law are becoming increasingly complicated requiring increasing amounts of time to be spent on them with little or no return.

I am also concerned regarding the Human Rights aspect. There appears to be no provision whatsoever for an appeal against the decision by the Commission on a service complaint and that must be fundamentally wrong. I also question whether there is any need whatsoever for the Commission in the first place. At present, if a solicitor has been negligent, then he can be sued through the Courts. This appears to be an attempt to subvert the role of the Courts in such matters without any right of appeal.

I trust that the Committee will take this submission into account.