Submission from James MacKenzie for the Legal Profession and Legal Aid (Scotland) Bill

As a practising solicitor I would like to express my concerns to the Scottish Parliament's Justice 2 Committee regarding the Legal Profession and Legal Aid (Scotland) Bill which, in my opinion, threatens the independence of the legal profession.

My principal concerns are as follows:-

1. Whilst it is to be expected that at least some of the members of the Complaints Commission to be appointed will be solicitors, there is no legal requirement for any members of the Commission to be practising solicitors.
2. The members of the Commission are to be appointed by the Scottish Ministers which leads to concerns that they will not be truly "independent".
3. The Complaints Commission has power to award compensation of up to £20,000 in the event that a complaint is upheld against a solicitor. Prior to 2005 the maximum amount of compensation which could be awarded was £1,000 and this was increased to £5,000 in 2005. An increase to £20,000 appears excessive.
4. The only appeal against a finding of inadequate professional service is to a committee comprising other members of the Complaints Commission and not to an independent appeal body or court.
5. Currently the investigation of complaints by the Society's complaints office is dealt with by a staff of 38. Reports are provided by a mixture of solicitors and non solicitors. The solicitors provide their reports free of charge and a modest charge is made by the non solicitor reporters. The new body will comprise between 50 & 60 staff excluding Board members. It is anticipated that the costs will be funded partly by an annual general levy on all solicitors and Advocates (estimated to be £120) and partly a specific levy of £300 on practitioners who generate a complaint.

The specific levy is a matter of considerable concern to me as it is payable irrespective of whether the complaint is upheld or rejected. There is no corresponding requirement for a complainer to make any payment when lodging a complaint or in the event that the complaint is rejected. This could have a detrimental effect on the number of practising solicitors who are willing to provide advice on matters which are statistically subject to more complaints and therefore the public's access to quality, independent legal advice on such matters.

I understand that the Council of the Law Society has already highlighted concerns it has in relation to the compliance of the bill with the European Convention of Human Rights with the Scottish Executive and Justice Ministers. I would echo these concerns and appreciate if they could be addressed at this stage by the Committee.

I should be grateful if the Committee would consider the above comments and concerns.