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

I am concerned about the extensive changes in the above Bill, which will affect Scottish Solicitors. I note that it is proposed that there will be a four-fold rise in compensation to £20,000 which appears to be an import from legislation being arranged separately to apply to England and Wales. As Scottish law is one of the devolved areas dealt by the Scottish Executive should it not be considering Scottish solutions to Scottish issues? The current upper limit of £5,000 is a level which had been raised from £1,000 last year.

The proposed maximum amount for fines would appear to be particularly onerous on small firms particularly those in rural areas which may have tight margins and be more affected by competition than the larger firms which can diversify the type of work they can carry out and have large marketing budgets. There could be access to justice issues as solicitors particularly in rural areas may have to consider on a risk management basis whether they should not carry out types of work which traditionally have given rise to complaints.

For certain types of legal aid work the public require a choice of solicitors to consult in a rural area. If work is restricted to very few firms there is more potential for conflicts of interest arising so a solicitor cannot act as they are already acting for another party. The member of the public could have to travel to another town causing them inconvenience and expense. The bus services are not very frequent in some rural areas for members of the public to travel easily to other towns.

It appears that the implementation of the provisions under the Bill if it becomes law would be dealt with independently from and not supervised by Scottish Ministers. Should the Scottish Ministers not have responsibility for supervising this? Are there not Human Rights issues arising if there is no right of appeal to a Tribunal or Court?

I understand that it is proposed that penalty expenses will be charged to the solicitor even although a complaint was held not to be justified. This does not appear to be equitable.