Submission from Alan MacKay for the Legal Profession and Legal Aid (Scotland) Bill

I have been a qualified solicitor for over 35 years. My views are my own and not those of my firm.

I do entirely support the views expressed by the Law Society of Scotland in its submissions to you and wish to be held associated with these and in addition I concur with the views expressed by Lord Lester of Herne Hill QC in his Opinion.

I do not think members of the legal profession are expressing concern in a self-centred way in this matter but instead there is great concern for the public interest.

As I share the above views expressed to you I do not see any need to express my own views at length but I think the particular areas of concern to solicitors are (and these ought to be of concern to members of the public as well)

1. The manner of charging for complaints which seems to me unfair in laying the cost of all complaints ultimately on members of the profession irrespective of the merits or outcome of the complaint so that those solicitors who attract no complaints will pay for those that do and in cases where a complaint is unjustified the solicitor will have a cost in respect of the complaint charged to him or her as well.

2. The prospect that compensation for Inadequate Professional Services could be up to £20,000 which is a very substantial amount and which could involve many firms in not taking on some kinds of low paid work (without anyone else being prepared to do so). Such awards are likely to be in cases involving perceived professional negligence which I believe should be a matter for the Courts (where there are rights of appeal).

This would be a particular concern for legal aid practitioners whose income from Civil Legal Aid is already paid at a very low level (less than has been pointed out too often than plumbers and garage mechanics).

3. There are a number of Human Rights issues including the manner of appointments proposed to the Complaints Board being by Scottish Ministers with consequent perceived lack of independence, the lack of rights of appeal against complaints by the Commission on service complaints and the method of payment of "case fees" even where a complaint is unjustified.

4. The proposed removal from the profession of Guarantee Fund and Master Policy both of which are regarded as perfectly well operated without any apparent mandate or proven need for this.

5. Many of the proposals although no doubt well meaning seem ill thought out with little apparent consideration to what adverse effect they will be likely to have on the provision of legal services in Scotland not least in relation to the costs involved (probably on basis of experience of matters of this kind much underestimated) and which are to be borne ultimately by members of the legal profession from their own pockets.

I trust these representations will be of assistance to your Committee.