Submission from Morris Anderson for the Legal Profession and Legal Aid (Scotland) Bill

I am writing to express my concerns regarding the above Bill both as an individual Solicitor and as Convener of the Law Society of Scotland's Client Care Committee.

While the Society supports an independent complaints handling body, the detail of what is proposed causes grave concerns for a variety of reasons:-

1. The independence of the new Board is open to question as Members can be appointed and removed by central Government.

2. The costs of running the new body would appear to be falling squarely upon the shoulders of the profession and could well be astronomical. The current system whilst not perfect is substantially subsidised by the use of many Reporters and Committee Members who receive no more than nominal compensation for their efforts.

3. The Society has a clear and unambiguous opinion from Lord Lester that the Bill may not be ECHR compliant. This is with particular reference to a lack of any appeal mechanism. Lord Lester's opinion is readily available. It is understood that the Executive has legal advice of their own and I would ask if that advice can please be exhibited.

4. The increase in maximum compensation to £20,000 would appear to be clear pandering to pressure from Westminster who undoubtedly wish uniform systems north and south of the border and indeed this is further substantiated by the very imposition of the Board itself following as it does hard on the heels of the Clementi Report which applied of course to England and Wales only. England and Wales had an admitted serious problem with self-regulation which was not reflected in Scotland. So much therefore for Scottish solutions to Scottish problems.

Furthermore the raising in the level of compensation will mean inevitably that complaints to the Board will take the place of negligence actions there being no risk whatsoever, financial or otherwise, for the complainant.

5. From discussions within the profession it is clear that Solicitors will stop taking on areas which historically have a tendency to produce complaints such as, for example, mental health work and contentious matrimonial and other areas of litigation where there are always "losers". Losers tend not to be satisfied and also tend to complain.

As many Solicitors are now refusing to take on Legal Aid work this is likely to mean areas of the country and areas of legal work where the general public will not be able to obtain representation which cannot be in the interests of the public. The parallel with dentists is all too obvious.

6. I am also concerned at whatever threshold may be placed for the allowance of claims into the system. At the moment there is a clear statutory test for the provision of an inadequate professional service and many complaints are rejected by the Case Managers on the grounds that what is alleged, even if proved, could never amount to i.p.s. My understanding is that under the new proposals only claims which are "frivolous and vexatious" will be rejected meaning that many more claims will be admitted into the process than as at present. Many of these may not eventually be upheld but the concern is that the Solicitor will be required to pay a "handling charge" of some £300 to £400 for any complaint admitted into the system. This could be an intolerable financial burden and is clearly unfair particularly in respect of cases which are not subsequently upheld.

For the foregoing reasons I object strongly to the content of the Bill and would welcome substantial debate, consultation and review of it.