Submission from Stuart Naismith for the Legal Profession and Legal Aid (Scotland) Bill

I am writing to you as a Solicitor in business with the firm of Stirling & Mair, Solicitors, Paisley, Johnstone & Lochwinnoch.

I have read the draft Bill and I am concerned that it has serious repercussions for the Legal Profession, and also for the provision of independent legal advice to clients in Scotland. I do not believe that those concerns are fully appreciated by the Executive or members of the Scottish Parliament and I hope that you will give serious consideration to the terms of this letter when you come to deliberate on the terms of this Bill within the Justice 2 Committee.

My main issues with the legislation as currently drafted are:

- The cost for my business of the Scottish Legal Complaints Commission,
- The lack of regard for natural justice in the consideration of any complaint particularly with regard to its investigation and any appeal,
- The apportionment of costs of the complaints mediation procedure wholly on the solicitor irrespective of the worth of the complaint, and
- The arbitrary selection of £20,000.00 as the compensation level which is twenty times what it was a year ago and four times what it was raised to in April 2005.

I understand that the entire legislation proceeds upon a consultation process that yielded only 400 responses. I also understand that although the Law Society of Scotland registered a response on behalf of 10,000 solicitors, that response only counts as one. I hardly believe that to be a consultation exercise worthy of the name.

I am informed that less than 0.4% of work carried out by Scottish solicitors ends up in a complaint to the Society under the current regime. Set against this factual basis, I am at a loss to understand why - uniquely for solicitors - a Complaints Commission should be set up to be funded wholly by them. The facts seem to suggest strongly that there are more pressing consumer issues for the public than the provision of legal services. It currently costs £2.1 million to run the Law Society’s Client Relations Office a figure that it is conservatively estimated will quadruple in relation to the new Commission. Given that the Legal Service’s ombudsman’s costs are to be transferred to this new body also, and that they currently cost £400,000.00 per annum to run, it can easily be seen that this new Commission is going to be an extremely expensive body. Set against that context, I consider it to be grossly unfair that this should be wholly funded by the mediation fees to be charged. Informed speculation would put these fees at £750.00 per case. That brings into question the provision of advice to high risk (and often needy) clients at all.

The solicitors’ firms that are going to be most at risk from complaints – which may be completely unjustified – are those serving my local area. There must be very few businesses which can afford costs of this nature whilst undertaking such high risk/low remuneration work. The inevitable consequence will be that this advice will simply not be available to these vulnerable people who need it. There is an obvious analogy with the current difficulties experienced in the Highland Region in obtaining dental care under the NHS. Surely this cannot be what our Scottish Parliament intend by this Reform.

I am also informed by the Law Society that the experience of the Master Policy with regard to claims is that with very, very few exceptions indeed, the average sum paid out in compensation on the very rare occasions when there has been negligence on the part of the solicitor is in or about £10,000.00. Set against this factual background, the £20,000.00 compensation limit seems to be absurdly high and likely to lead to unreasonably high expectations.
If it is intended to replace the normal law of reparation (in which the facts are established by some form of tested evidence, before being applied to established legal duties) by an arbitrary system of awarding sums of this nature, the figure of £20,000.00 seems absurdly high. As I understand the position this figure has been directly transposed from proposed reform to the Legal System in England & Wales. It is worth pointing out that we have an independent legal system in Scotland and a supposedly independent Parliament. I had always understood that the formation of the Scottish Parliament was designed to place a Scottish emphasis on problems to reflect the different Scottish view on many matters as compared with that of the South Eastern Counties of England. It seems to me that by imposing this legislation lock, stock and barrel from England (including the £20,000.00 figure) is an example of the converse. It also has to be borne in mind that the value of the English legal market is vastly in excess of that in Scotland.

Based on all of the above, past experience suggests that this legislation in its current format will lead to claims being made against small legal firms, that those claims will include a mediation cost that will very often be substantially higher than the fee charged for the work, with the additional threat of a sanction of up to £20,000.00.

This is an intolerable burden for even the most robust sector of the community to be expected to bear. The Scottish legal profession is not that robust and I sincerely hope that you and other members of your Committee will be prepared to truly listen to the representations made on behalf of interested parties with a view to obtaining the legislation that Scotland requires for an important matter such as this.