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

The Association of Personal Injury Lawyers (APIL) was formed by pursuers’ lawyers with a view to representing the interests of personal injury victims. APIL currently has around 130 members in Scotland, whose interest in personal injury work is predominantly on behalf of injured pursuers.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury
- To promote and develop expertise in the practice of personal injury law
- To promote wider redress for personal injury in the legal system
- To campaign for improvements in personal injury law
- To promote safety and alert the public to hazards wherever they arise
- To provide a communication network for members

The association responded to the Scottish Executive’s consultation - ‘Advice for All: Publicly funded legal assistance in Scotland – The Way Forward’ in September last year. The response was confined to comments relating to civil legal aid, to reflect the area of expertise of our members.

The association has serious concerns about the general principles outlined in section 45 of the bill ‘register of advisers: advice and assistance’, and we wish to reiterate the comments made in our response to the Advice for All consultation.

APIL believes that the funding of non-legally qualified advice providers should be undertaken where there is an unmet legal need, such as in relation to housing, debt and/or benefits issues, for example. There is, however, no such unmet need in the field of personal injury law, where there is considerable specialist legal advice available to injured people.

In addition, advisers who are not legally qualified do not have the level of specialist knowledge required to assist pursuers in personal injury cases, as the process of gathering and presenting evidence to prove the pursuer’s case can be extremely complex. It is fair to say that defenders in these circumstances are invariably better resourced than pursuers, with all the benefits of specialised advice. It would be highly unjust, therefore, to expect an injured person to pursue a case against the individual or organisation who had caused his injuries without the specialist support of an independent legal adviser.

We note, of course, that this is an enabling bill which allows regulations to be made to specify the categories of circumstances in which a registered adviser may provide advice and assistance. It may be that personal injury cases will not be one of those categories, and we would welcome clarification on this.

We also note that section 6 of the 1986 Act will be amended to say that assistance by way of representation ‘includes advice and assistance provided by a registered adviser but only to the extent to which it is competent for the registered adviser to perform such steps referred to in that definition’. As outlined above, we believe that non-specialist legal advisers are not qualified to deal with personal injury claims. We are extremely concerned about how ‘competent’ in this context is to be defined, and would welcome clarification on this point.