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

I am a young assistant solicitor and I am very concerned at the Human Rights issues raised by the Bill

1. The original consultation threw out the challenge of an independent body to give both the public and the profession increased confidence. The Commission is clearly not independent of The Scottish Executive. This threatens the rule of law. Appointment; tenure; removal are vital to separation of powers. This is a basic matter of ECHR. The power to give “directions” to the Commission is particularly concerning.

2. The lack of an independent appeal contravenes Article 6 of the European Convention of Human Rights (ECHR). Clients and solicitors should have the same rights of appeal to a proper judicial body. Why should this be to the incredibly expensive Court of Session? A straightforward appeal (as say in Licensing cases) to the Sheriff is sensible and proportionate to both sides.

3. The reference to “negligence” in section 34 should be deleted. A tribunal with a lay majority cannot be expected to apply the whole jurisprudence of the law of reparation. What then are the tests to be? The delict system works perfectly well as it is. In the event that negligence is not excluded then this emphasises the need for an independent appeal structure. The client can effectively “appeal” a refusal by the commission to award compensation for alleged negligence (or a decision that their award should be reduced by reason of contributory negligence) by simply raising an action for reparation in the local Sheriff Court. The solicitor can only raise an action of Judicial Review in the Court of Session.. This was not the purpose of Judicial Review.

4. I can see no justification for this limit at this time. The Scottish Small Claim limit is £750.00: the English counterpart is £5000.00. The Scottish Executive has failed for over a decade to secure consensus on raising the Small Claim limit. How can the State justify free negligence actions against solicitors (or any other regulated person) for any client no matter how wealthy up to the value of £20,000.00 when the general public cannot pursue an accountant, optician, a business, or a local authority for their neglect for more than £750.00 without means tested legal aid or other funding. The crafting of claims requires knowledge the ordinary client does not have. This is why specialist claims firms for personal injury (which is my field of work at present) have captured the public imagination at this time. These firms will have no interest in such cases.