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


The proposed Bill on the legal profession and Legal Aid violates Article 6 in particular and Article 7 to some extent. These Articles are self evidently concerned with the principles of fairness of justice, but the proposed Bill is an inappropriate provision. The majority of challenges in Scots law have been under Article 6 guaranteeing a fair hearing. The Bill proposes the establishment of a Scottish Legal Complaints Commission the purpose of which should be to provide for members of the profession to maintain high standards of conduct. The Bill as it stands seeks to provide professional discipline and also to deal with compensation claims. The domestic court system of Scotland already provides the means whereby aggrieved clients can seek remedies and compensation. The proposals under the Bill as they stand will place solicitors in double jeopardy in that they would award to compensation to a claimant who then could pursue a claim for negligence through the courts. Incidentally there is a further unfairness in that irrespective of whether a complaint succeeds or otherwise against the solicitor, the solicitor will responsible for the cost of the SLLC. Furthermore there is a clear incentive for the SLCC to ensure a maximum of case referrals to generate income for itself.

If implemented the Bill’s proposals make Article Six of the Convention illusory: there is no indication of how cases will be determined, no statement of principles and no reference to law being used for deciding complaints.

An additional breach of Article Six occurs regarding the appointment of members to the SLCC. The Commission cannot be construed as in any way independent if appointments are made by politicians.

It is unfair to solicitors that the Law Society should be dealing with disciplinary and claims, the functions should be separated entirely.