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

I have seen the briefing pack outlining the Law Society of Scotland's concerns about parts of the above Bill. I have also had the opportunity to read the opinion of Lord Lester, Q.C., of 30th March 2006 as to why he considers that the proposed complaints scheme is not compatible with Article 6(1) of the European Convention on Human Rights and the fact that it breaches Article 1 of Protocol 1 to the Convention and Article 6(1) of the Convention in that the provisions for an annual and a complaints levy should be subject to proportionality.

I support the criticisms made by the Law Society and in particular the proposal that such a high figure as £20,000 could be awarded as compensation against which there would be no appeal. Also, I consider it unjust that each chargeable complaint would require the solicitor concerned to pay a specific levy which would not be refundable if the complaint were to be dismissed. As a practising solicitor with thirty years' experience I have found that some complaints are made by disaffected clients who suffer from some of the lesser forms of mental illness and are not open to rational explanation or argument. Also, some complaints are made maliciously, not usually from a solicitor's own client but rather by an aggrieved third party who was on the receiving end of action taken by the solicitor on behalf of the client. I have had exactly this experience and although the complaints were dismissed by both the Law Society and the Ombudsman, a considerable amount of time had to be expended in refuting allegations. Under the proposed new system the solicitor could be badly out of pocket with no redress.

I would ask that you consider all of the foregoing points.