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

In relation to the above bill I would like to submit the following;

The Bill proceeds on 2 essential misunderstandings being firstly the degree of competition with in the Legal service market place and second the access to redress for incompetence.

In relation to the first area the Scottish Legal market place is contrary to Government belief not a cosy cartel but a vigorous market where market forces have certainly in the conveyancing area being driving down fees and improved efficiency since I have been working. It also follows that if one doesn't perform adequate services there are plenty of other providers to choose from to the extent that to retain clients one has to provide a good service.

The second area is that the Law of Scotland has a clear doctrine of delict for negligence of all types and where mistakes have been made or wrong advise given there is already a forum for dealing with this in every town in Scotland (the Sherriff Court)

It follows from the above that the Bill essentially misses the point in that the market combined with existing law of delict already address underperformance. The area which generates the most concern is professional misconduct by Lawyers either criminal or acts in breach of the Solicitors Act. These are the areas which people in the profession and the public are most concerned about. Where ones lawyer is not acting fast enough etc one has the ability to change lawyer. However where the lawyer has stolen money etc then matters are different. However the Bill doesn't address this area but instead concentrates on an area of inadequate service which the market already covers.

The danger in tampering with the market is that large commercial firms to a large extent are already dissenting private client work and should the bill come law I suspect this will be exacerbated. This is because on a risk analysis basis it will be individuals not organisations who use the new service. Therefore in a competitive market place it is quite likely the commercial firms will simply on policy stop acting for individuals or in areas where the legal matter may be contentious and there is risk of a claim. To that end rather enhancing access to justice and best advice this bill is likely to turn the legal market place into the same fiasco that dental services are in; i.e. the rich are well supplied but the poor are not.

I would suggest

1 An independent body to deal with Professional Misconduct is not a bad idea. However it should not have jurisdiction over the area of inadequate service as the market already covers that.

2 The parliament should concentrate on making litigation cheaper i.e. improving access rights speeding up the judicial process. Making the courts more friendly to the Public that would achieve most the results craved by the Bill.

3 Make judges fit around the witness/pursuer/defenders time frame rather than the absurd situation at present where 30+ people can have their day disrupted for the timetable of one individual (the Judge). There are plenty of other similar absurd practices which could be sorted out I will live in hope you will take account of the above.