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

I wish to register my deep concerns and opposition to the above. There a number of provisions which I feel must be reviewed and amended given their potential damaging scope.

I would highlight here that I am a partner in one of the largest firms in Scotland and whilst my firm might be thought of as having less to worry about under the Bill, I have in mind my fellow practitioners in much smaller firms who could potentially lose out considerably if this Bill becomes law.

I am concerned about the lack of independent appeal. Leaving aside the human rights aspects of this, it seems in the Bill that the complainer’s position has been strengthened to such an extent that solicitors could become victims of clients who hold personal grudges. How can that be fair?

I am a member of a professional body in the shape of the Law Society of Scotland, which prides itself in its rigour and openness in dealing with complaints by the general public. My professional body has adapted to change well and continues to evolve, as all such bodies must evolve to address a changing society. The danger we are faced with in the Bill is a shift away from the independence of a highly regarded professional body to regulate its own members, with a rigorous review and mix of qualified and lay persons inputting on cases capable of appeal, to a quasi-Governmental body which will be undemocratically representative of the profession it seeks to monitor, with no recourse to appeal. The financing will fall on the smallest and poorest in the profession harder than others and has the potential to empower unscrupulous complainers to pursue agendas of their own choosing, without any control. As with many pieces of legislation these days, we are being faced with a hammer to crack a nut and are left with a feeling that fairness to all is the last thing that this Bill will achieve.

I am deeply opposed to the Bill as it appears and exhort a fullscale review and amendment. The complaints system we have may be regarded by some as imperfect, and in part it may be, but the answers do not lie in this Bill. My profession has had to adjust to change over many years and I for one am confident that with a much broader embracing of the views of those in the profession who will be directly affected by any new piece of regulation, we will all benefit from a balanced and democratic review and appeals process.