Submission from Bruce Renfrew for the Legal Profession and Legal Aid (Scotland) Bill

I write as part of the consultation process on the above Bill. I have been a practising Solicitor in Scotland for the past fifteen years.

I have always supported the concept of an independent complaints procedure to regulate the service provided by Solicitors in Scotland but only on the basis that this would be a properly funded and fair system i.e. funded by Central Government and fair to both the Complainer and the Solicitor.

I have the following objections to the proposals set out in the Bill:-

1. The proposals introduce a maximum award to a Complainer of £20,000 for inadequate professional services. The present limit was recently increased to £5,000.

This brings in by the backdoor a substantial award against a Solicitor for negligence where such negligence has not been proved. The determination of negligence has always been the preserve of the Judiciary in a Court of Law who are the only parties qualified to determine the complex issues of fault and loss associated with that area of law. The Commission will not be capable of making such a determination in a fair and equitable way and should not be in a position to award substantial damages against Solicitors without the protection of a proper judicial process. This is contrary to the principles of natural justice.

2. There is no independent right of appeal for either Solicitors or members of the public. This is unfair, inequitable and is not compliant with the ECHR.

3. The Commission will be appointed by the Scottish Executive. As it will have a quasi judicial function, this is inappropriate and is not compliant with the ECHR. The membership of the Commission should be independently appointed.

4. I have significant reservations in connection with the costs of the Commission:-

   a. Solicitors appear to be responsible for paying for the Commission but there appears to be no cap or control on its costs. If Solicitors are contributing then they must have a say in determining the budget of the Commission.

   b. The concept that “the polluter pays” has been bandied around meaning, I think, that Solicitors who have complaints found against them should pay for the lions share of the cost of the Commission. This does not appear to be how the cost of the Commission has now been structured, with each Solicitor, guilty or innocent, paying a levy for the costs of the Commission and with each Solicitor who is complained against, again guilty or innocent having to contribute towards the costs. If the polluter is genuinely to pay then it should only be Solicitors who are found guilty by the Commission who are liable.

   c. Unfortunately the proposed structure will encourage vexatious complaints. The public will soon realise that simply by making a complaint to the Commission, spurious or otherwise, their Solicitor, who they may be disenchanted with, but against whom they do not have valid grounds for complaint, will be responsible for the complaint cost. The public will also realise quickly that it is in their interests to complain as Solicitors will be encouraged to pay to any Complainer a sum up to the cost contribution regardless of the merit of the complaint. This is neither fair nor equitable, nor in the interests of justice.

   d. There is no doubt that the system should provide that should a Complainer make a complaint then the Commission may, if they consider that the complaint is unreasonable or vexations have the power to make the Complainer pay the costs rather than the Solicitors. That is only fair.
e. The present system is funded by Solicitors. If it is recognised that this is no longer in the public interest and a new system is to be introduced to benefit the public then that new system should be funded by the public. It is inequitable for Solicitors to continue to be forced to fund a complaints system over which they have no control.

I would support a fair and reasonable scheme for dealing with complaints against Solicitors which is properly funded by the public who benefit from it. I do not believe that the system set out in the Bill delivers this.

I would ask that the above comments be taken into account in considering the Bill further.