Submission from Alister Fraser for the Legal Profession and Legal Aid (Scotland) Bill

I have the following points about the above bill.

I appreciate that there is the political will to establish an independent complaints body regulating some aspects of the conduct of the legal profession.

Whilst I believe a truly independent complaints body is a benefit to all involved I believe also that it is incumbent upon Scottish politicians in establishing that body to do so in a way which complies with the principles of natural justice and honours the human rights of all involved.

A failure to do so will disgrace those politicians and our still young democracy -- we currently associate human rights violations with countries with far less experience of democracy than ours -- it is important that we do not seek to join their number.

This system, if it does not operate effectively, will operate to destroy the service relationship which exists between solicitor and client, will increase matter handling costs and will lead to solicitors declining to act for those people and in those areas where complaints are likely. Complaints generally come from a small proportion of persons, generally those who do not have a huge grip on what they are trying to achieve and are hugely frustrated by what they don't understand.

These people need advice -- if the penalty for handling is too high they simply won't get that advice.

In relation to the specifics I believe that the following should be considered.

1. It is important that the appointments to the Scottish Legal Complaints Commission are made as if they were judges -- their role will be quasi-judicial and they need to be people of experience, unimpeachable integrity and fair mindedness. If they are not legally qualified they need access to advice.

2. In making their judgements the SLCC need to operate on the basis of evidence and in line with the principles of natural justice and law. In the developed world we have no traditions of arbitrary decision taking, indeed prior generations spent time and energy ensuring that we aren't.

3. The SLCC should have the power to make costs awards against either side of the complaints -- what you may find is that you get vexatious complainers and they need to be discouraged or you will find that the process is clogged with unworthy complaints. I do not say that the SLCC will wish to make awards against complainers in the normal course but it is important that, if so minded, they can.

4. The power to impose financial penalties should be variable and expressed either by reference to specific types of complaint or a set tariff expressed by the SLCC within the statutory limits.