I would first like to confirm that I do not believe the Law Society’s response to Public Petition PE1388 has remotely considered the information provided in both the petition and the supplement to the petition, therefore, the Society certainly does not sufficiently address our petition. In fact, it has failed to address any of the material points raised in it.

Nowhere in its response has the Society attempted to refute the fact that, as stated in the original petition: “Self-regulation, in any way shape or guise, is the pivotal enemy of any true democracy; therefore any civilised society. It is not only undemocratic it is antidemocratic, anti-society and hostile to a public unconversant with all the nuances of our ambiguously cryptic laws. “There have been no Bills passed or laws enacted since 1980 that does anything to remedy this stark conflict of interest and there have been no recent announcements made by the Scottish Government that might have a bearing on our petition.”

With the greatest respect, there can be no disputing the fact that the legal profession’s independence and self-regulatory powers is anti-democratic. In its response, the Law Society has come up with but a rhetorical history that does nothing to undermine the requirements of the petition and to bring the profession onside with democracy. Instead the legal profession has not denied it is harboured in splendid isolation from the rest of society.

This could be a result of, as what many people now believe, and what was suggested in our supplementary submissions to PE1388, that “politicians take orders from legal advisors, couched as suggestions”. A perfect example of this is the response by the Scottish Government to the Public Petitions Committee’s questions regarding PE1388, which was not a response from the Scottish Government at all, but one from Colin McKay, Justice Directorate of the Legal System Division. Where is democracy supposed to be at work here? Is this not the crux of this petition; an endeavour to attain true democracy and move away from the independence/stranglehold of a legal profession that restricts freedom of thought or action?

Mr Colin McKay Justice Directorate of the Legal System Division states in his response (as opposed to the Scottish Government’s response): “A strong and independent legal profession, with core values that protect the interests of justice and of the public, is a fundamental part of our democracy. A robust system of regulation for the legal profession is also vital … .”

No one would argue that core values which protect the interests of justice and the public is a fundamental part of our democracy, which is exactly what this petition is trying to achieve, but such admirable qualities do not exist under an anti-democratic system of self-regulation and an independent legal profession. It is a contradiction in terms. It cannot be disputed, however, that it is a robust system of regulation, but it is robust only in preserving the self-regulatory powers and independence of the legal profession.

Colin McKay goes on to say: “… and the Scottish Government believes that such a system is currently offered by the Law Society of Scotland (“the Society”), one of the objects of which, set out in section 1 of the 1980 Act, is to promote the public interest in relation to the solicitors’ profession.”

I do not believe that anyone with any experience of the Scottish legal profession could have faith in a Scottish Government that believes such a system, which purportedly protects the interests of justice and of the public, is currently offered by the Law Society. Colin McKay’s referral to the restrictive clause “anything” has been appropriately addressed elsewhere in this document and also in the original petition. The public perception of the fact that “The Society may do “anything” that is incidental or conducive to the exercise of these functions or the attainment of these objects [à la, Section 1(3) of the 1980 Act]”, is that it can only have an injurious effect on democracy and our human and/or civil rights.
We believe that Consumer Focus Scotland, which replaced the Scottish Consumer Council (SCC) on 1st October 2008, is a toothless tiger. Despite our sentiments, Consumer Focus Scotland, in its response to you in relation to the petition, stated: “In 1999, the SCC published research into the experiences of those who had complained to the Law Society of Scotland about a solicitor. Half of those who responded believed that their complaint had not been handled fairly. The detailed responses revealed a clear perception that the Society was not impartial in its handling of complaints, appearing to take the side of the solicitor.”

Even if we believe that the SCC was not acting subtly or with restraint, its publication in 1999 remains a distinct indictment on the Law Society, because, year by year, the number of complaints increases.

Consumer Focus Scotland goes on to say: “We have expressed concerns that unless all complaints are dealt with by the Commission, there will continue to be a lack of public confidence in the complaints system.”

Although this is a step in the right direction, it goes nowhere near disencumbering the Scottish public of an antidemocratic, self-regulatory, independent legal profession and the current complaints body.

The Law Society, for its part, in the last thirty years, through self-regulation, has used the Solicitors (Scotland) Act 1980 to protect crooked members of the legal profession. It has also used to the advantage of solicitors a very non-restrictive clause contained in Section 1(3) of the Act, i.e. “ANYTHING”. And if you were to add to that you will find they have, from the first day of the enactment of the 1980 Act, created a conflict of interest throughout. During the last thirty years they have operated against true democracy. The potential to do “anything” it chooses, gives it the capacity to protect its members to any degree or extent. Public perception of this non-restrictive clause is all-important in a true democracy.

Not one person or organization has a moral or legal right or supreme authority over true democracy. In the last thirty years the Law Society, along with the rest of the legal profession, has slowly destroyed the Scottish people’s confidence in the legal system to a point where the people who have had dealings with solicitors and the Law Society have lost all faith in the legal profession, as well as in the Scottish Parliament’s resolve to remedy the profession’s anti-democratic, self-regulatory, independent status.

If we go back to the late 90s, the then Scottish Consumer Council did a market survey in relation to Complaints against Solicitors. About the same time Deirdre Hutton, the then Chairperson of the SCC contacted the Law Society to inform them that no matter how many changes the Law Society makes regarding complaints procedures, it always comes down in favour of the legal profession. The same thing is prevalent today, 20 years later.

With reference to the above paragraph Angus Brown, author of “Legal Hell”, was in contact with Deirdre Hutton and informed her that the above survey was irregular because she did NOT send the forms out to the complainants. This was done by the Law Society. How could she know how many complainants actually received the forms from the Law Society?

On 7 January 1999, the Director of the Scottish Consumer Council wrote to Angus Brown (Page 424 of “Legal Hell):

“I am pleased to enclose the Scottish Consumers Council’s report Complaints Against Solicitors. This report is based on a postal survey carried out in the spring of 1998, into the views of people who had recently used the Law Society of Scotland’s complaints procedure to make a complaint about a solicitor.

“Those taking part were asked about how their solicitor dealt with the complaint in the first instance, about specific aspects of the Law Society’s procedure, and about the outcome and handling of the complaint. The results of our research show that half of those taking part believed the procedure to be unfair. We have made recommendations based on our research which we believe would considerably improve the present system. However, if consumers are to be confident that the procedures are entirely fair, we believe the research suggests that the way forward should be to establish an independent body to deal with complaints about Solicitors in Scotland.

“The report recognises the positive aspects of the way in which the Law Society carries out this function, but also criticises many aspects of the Law Society’s current procedures, and makes various recommendations as to how this might be improved. It is also critical of the manner in which many Solicitors deal with complaints, and recommends ways in which they might improve their client care and complaints handling procedures.

“I would very much welcome your views as to the issues raised in the report.”
In a fax of 14 January 1999, Angus Brown congratulated the director and staff of the SCC on the contents of the report and the way it was written.

On 4 August 1999, the First Minister and the Minister for Justice in the Scottish Parliament, himself a QC, wrote to Angus Brown’s MP:

“Thank you for your letter of 5th July asking whether there are any proposals to go before the Scottish Parliament to change the self-regulation of the legal profession.

“There are currently no plans for the Scottish Parliament to consider changes to the present system of self-regulation.”

On the 15 September 1999, Angus Brown’s MP responded:

“I refer to your letter of 4th August and our recent conversation on self-regulation of the legal profession. I cannot be unique in having constituents who feel thwarted when trying to complain about the service they have received from Solicitors and the Law Society. I have also had it pointed out to me that at times members of the profession feel that their interests might be better protected if there was a method of independent scrutiny.

“In particular I think it would be worth looking at the proposals made by the Scottish Consumer Council in their report on complaint handling by the Law Society.”

The Scottish Legal Complaints Commission SLCC was established by virtue of the Legal Profession and Legal Aid (Scotland) Act 2007 and opened its doors for business on 1st October 2008. It was supposed to replace the Law Society’s complaints procedures and appease a disheartened, sceptical public. However, even the non-lawyer members of the SLCC all have or have had legal connections and as such is not fully independent of the legal profession. Furthermore, any complaints relating to only the services provided by solicitors are handled by that body. Complaints relating to misconduct are still investigated by the Law Society. The SLCC, therefore, strikes one as a smoke screen set up to conceal their bridled operations from the enemy; the legal consumer

It is perhaps a pity the Law Society cannot be forced by the Public Petitions Committee to respond to, particularly, pages 242 to 246, 248 to 255, and 257 to 264 of the book “Legal Hell”, because that would really put the pressure on them. However, the Public Petitions Committee can read these details and form conclusions of their own.

With regards to the Law Society’s comments in its response, time has moved on. Even MSPs have recognised this because there is a 10-year review of devolution likely, so is it not time to move the regulation of solicitors into a modern 21st Century role and not leave them with antiquated self-regulatory dominance? The legal profession seems to be inherently afflicted with misology; a hatred of reason, argument or enlightenment. To all intents and purposes, it enjoys the right of self-autonomy when even the Scottish Government is restricted within the parameters of devolution, democracy and, evidently, the Justice Directorate of the Legal System Division. Is it the case, therefore, that the last mentioned gives orders to the Scottish Government couched as suggestions?

The legal consumer’s perception of even the current complaints procedures is that the whole panoply of legal profession bullying lies behind the Law Society labouring to do “anything” to disembarrass solicitors from justifiable charges against them.

The passing of time will necessitate a change in favour of democracy at the expense of self-regulatory independence. That time will come when a Scottish Government finds the courage to effect that inevitable change. And that time will always be “NOW”.

William Burns
On behalf of the “Crusade for the Protection of True Democracy”.

PS I would like to dispel any notion the Public Petition Committee members might have that this petition is some kind of stunt to promote Angus Brown’s book “Legal Hell”. It is no such thing. It is too important to be devalued by such cheap actions. The decision to include it in our submissions was entirely my own idea. It was just an afterthought by me as a supportive argument to the main substance of the petition.