Introduction
The Public Petitions Committee met on 21 September 2017 to discuss petitions PE1660 and PE1661. In short, these conjoined petitions call on Parliament to urge the Government to review and reform the system of legal complaints in Scotland by comparing it to the system in operation in England and Wales. The Committee determined to seek the views of various stakeholders including the Scottish Solicitors’ Discipline Tribunal.

Current system
It may assist the Public Petitions Committee to understand the place of the Tribunal in the system of legal complaints. Complaints against solicitors in Scotland are channelled first through the Scottish Legal Complaints Commission (SLCC). The SLCC deals with matters of inadequate professional services itself. It refers conduct matters to the Law Society. The Law Society has powers to deal with unsatisfactory professional conduct itself. The Law Society may appoint a Fiscal to prosecute the most serious cases before the Scottish Solicitors’ Discipline Tribunal as professional misconduct. Individuals cannot make complaints direct to the Tribunal.

The Scottish Solicitors’ Discipline Tribunal
The Tribunal is an independent formal judicial body constituted under statute and subject to the appellate jurisdiction of the Court of Session. The Tribunal deals with complaints of professional misconduct, complaints that a solicitor has been convicted of an offence involving dishonesty or any other more serious criminal offence, appeals stemming from the Law Society’s determinations regarding unsatisfactory professional conduct, and applications for restoration to the roll of solicitors in Scotland. The Tribunal is made up of 12 solicitor and 12 non-solicitor members. At each hearing the Tribunal comprises two solicitor and two non-solicitor members. Hearings are generally held in public.

The sanctions which the Tribunal can impose are censure, fines of up to £10,000, restriction of a solicitor’s practising certificate, suspension, strike off or prohibition on restoration to the roll, and compensation of up to £5,000 for loss, inconvenience or distress if a Secondary Complainer has been directly affected by the misconduct. Every decision of the Tribunal is published in full subject to the terms of paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980. Occasionally publicity is deferred, for example, pending the conclusion of criminal proceedings.

The Tribunal’s mission statement is to ensure so far as possible that all cases brought before the Tribunal are dealt with in accordance with the legislative framework and the principles of natural justice, bearing in mind the importance of protecting the public from harm and maintaining public confidence in the legal profession. The Tribunal
endeavours to deal with cases efficiently and expeditiously. The Tribunal has a duty to be independent, impartial and transparent.

The Tribunal is responsible for the most serious cases of misconduct relating to Scottish Solicitors. Consequently, it deals with far fewer cases than either the Law Society or the SLCC. In the year 1 November 2015 to 31 October 2016, the Tribunal met on 45 days to hear Complaints. 32 new Complaints were received during that year. The Tribunal made 22 findings of professional misconduct and one under section 53(1)(b). The Tribunal made four findings of not guilty and two were remitted to the Law Society to consider as unsatisfactory professional conduct.

PE1660 and PE1661
The Tribunal considers that the system of legal complaints in Scotland can be complicated, lengthy and expensive. To a limited extent, the procedure has been simplified following the Court of Session judgements in Anderson Strathern v SLCC [2016] CSIH 71 and Law Society v SLCC [2017] CSIH 36. However, there are still areas for improvement.

The Tribunal is currently participating in the Review of Regulation of Legal Services; its Chairman is a member of the Review. The remit of the Review is to make independent recommendations to reform and modernise the framework for the regulation of legal services and complaints handling. The Tribunal hopes that this would modernise and streamline complaints handling. The Review’s remit is to focus on the current regulatory framework and the complaints process. Its aims therefore directly cover Petition PE1660 which calls for a review of the operation of the SLCC with a view to making the process of legal complaints more transparent and independent.

The Review also overlaps Petition PE1661 which calls for reform of the regulation of legal complaints. However, the author of PE1661 calls for this to be done by creating a new independent regulator of legal services with similar powers those held by the SRA, Legal Ombudsman, BSB and SDT in England and Wales. The Tribunal observes that the Scottish Solicitors Discipline Tribunal is the direct counterpart of the SDT in England and Wales. Similarly, the SLCC performs a broadly similar though not identical role to the Legal Ombudsman. The Law Society of Scotland’s Regulation Department performs comparable functions to the SRA. The Faculty of Advocates Disciplinary Tribunal and the Bar Standards Board also have related responsibilities. The role of these bodies in the complaints system is included in the current Review and the Review may make recommendations for changes in this.

Therefore, the Tribunal considers that the issues raised in Petitions PE1660 and PE1661 are being considered in the current Review which includes an examination of the legal complaints system in Scotland and an analysis of legal complaint handling in other jurisdictions. Perhaps it would be appropriate to await the recommendations of the current Review before there is detailed consideration of the issues raised in these Petitions.