Submission from Vincent McGovern for the Legal Profession and Legal Aid (Scotland) Bill

I sent this e-mail to all 7 members of the Justice2 committee to their respective personal parliamentary e-mail addresses. I received the professional courtesy of a reply from only one member. Apart from the fact my concerns were not responded to by 6 out of 7 committee members, if I had adopted the same approach with a client then under the terms proposed for the Scottish Legal Complaints Commission, I would be liable for providing an "inadequate professional service". A solicitor who ignored a communication may indeed have a bona fide complaint to answer, unlike, of course, our MSPs some of whom were elected by the public. More significantly if after investigation said solicitor was entirely vindicated, he would still be liable for the specific penal levy, presented a figure plucked from thin air of £300. Please show some professional competence and if submissions are not replied to then at least engage in your scrutiny with an elementary standard of natural justice. Even better why not apply the simply test "would I wish to operate under such a regime which has built in punishments for solicitors irrespective of innocence and of course no independent right of appeal"?

You literally could not make it up in a properly functioning democracy:

I write as a solicitor and sole practitioner who has practised in Lanarkshire for almost 25 years, 15 of those years as a sole practitioner. The reason I have chosen to write to you are the proposals contained in the above Bill relating to the setting up of a Scottish Legal Complaints Commission.

As stated I have practised for almost 25 years without a single complaint against me for any client I have represented. I specialise in criminal law and statistics will show you that in terms of complaints against solicitors this is a negligible problem. So to be frank, on one view the whole system of complaints handling has been of very little direct relevance to me in my daily practise of law.

However so grossly unfair, ill considered and contrary to basic natural justice are the present proposals that I feel obliged to draw my concerns to you.

The first point is the proposed costing. As I understand the proposals, I as a sole practitioner will require to pay for the formation of another public body quango. I do not have an indexed linked pension with generous tax payer assistance (such as your own fabulous pension scheme) nor can I afford any qualified legal staff to relieve pressure on me at times of illness etc. If I am not at work earning money then my business fails. However this new quango will enjoy the working conditions and benefits substantially funded by me that are simply behind the means of my own business.

Further the costings seem to me to be ridiculously underestimated for a body with a staff of between 50 - 60. I need only say SCOTTISH PARLIAMENT BUILDING which is a watch word for ill thought out and negligent costings. The £2.4 million annual costs will be met by a general levy on me with a specific levy of £300 for chargeable complaints. How on earth can you budget for a new public body by charging a specific levy on an indeterminate figure. Further this specific levy will be charged on the poor individual irrespective of a finding of "inadequate professional service" In other words if the solicitor is exonerated and the complaint dismissed, he will still require to pay the specific levy. IN SHORT WOULD YOU BE WILLING TO WORK UNDER SUCH A SYSTEM IN RESPECT OF A COMPLAINT MADE BY A CONSTITUENT---OF COURSE YOU WOULDN'T. It is contrary to basic natural justice.

On the above point, I do suggest you look to your own public complaints system when considering the present proposals. If a client (constituent) makes a complaint I shall require to pay for it whether or not a complaint is upheld. In addition, I shall pay the full costs of mediation through the commission again irrespective of the merits of the complaint. This legislation would be laughably unfair were it not serious legislative proposals.
There can be no argument that there must be a workable remedy for those members of the public who have suffered at the hands of a bad professional service but please introduce some perspective and fairness. Solicitors despite their press whipping boy status (another similarity with MSPs) do an essential public service very commendably. We deserve to be judged by a system that is intrinsically fair to all the participants, the absence of any right of appeal is patently unfair to all concerned.

Frankly as a criminal lawyer I have seen much legislation from the Scottish Executive which is simply ill thought out and pandering to particular interest rather than what is the broad public interest. I therefore urge you to listen to my concerns and correct at the committee stage the staggering unfairness of these present proposals.

n.b failing to properly respond to this e-mail would under the proposed system be an "inadequate professional service" liable to costs, punishment and the specific levy!!!