Submission from Graham Gibson for the Legal Profession and Legal Aid (Scotland) Bill

I own an IT business supplying software and IT solutions to the legal profession. There are 4 of us who earn our livelihood exclusively from our target market, small to medium sized legal firms.

I see this Bill as a threat to small to medium legal businesses and, as a consequence, a direct threat to the 4 families my business supports.

From the solicitors I have spoken with the main concerns seem to be not that the Commission is being set up, to my surprise that is generally welcomed, but the way in which solicitors have been singled out for "special treatment". Here are a few of the concerns that have been voiced to me:

The Bill is modelled on the flawed complaints procedures of the Financial Services Authority. The FSA model is widely criticised because it does not distinguish between the Halifax and the Pru on one hand and the sole trader on the other. The FSA makes a charge of £1,500 for checking a change of permissions form. Not because it is an incredibly complex form, but because it could be if you were the likes of the Pru or the Halifax. The fact that the application is from a sole trader does not reduce the fee!

I understand that sole practitioners and 2 partner firms make up 60% of all Scottish legal firms. Is the Executive seriously considering foisting a complaints system on them that was designed for the likes of the Pru and the Halifax and is already widely discredited?

The Bill does not set out the boundaries of the Commission’s remit.
It is fine to say that the Commission will decide on its own rules and procedures, but the Bill does not set boundaries within which the Commission should operate. e.g.

(a) Will the Commissions powers be retrospective? Is it intended that the Commission will deal with all complaints arising from circumstances that happened after the Commission was established, or from a certain cut off date or just all complaints even if they arise from something that happened 10 years ago?

(b) The Commission is given the power of the courts to try negligence claims. Will it apply the same law as the Scottish Courts in arriving at it’s decision? The fear is that by setting out in the Bill that if “any aspect” of the service is inadequate this changes the existing test of negligence in Scots Law. Are solicitors to be measured against a standard of perfection, with any slip being enough to condemn them? No one else in Scotland will be treated this way, why should solicitors be singled out?

(c) There is no right of appeal to the courts. I have a right of appeal if I get a £60 parking ticket. I cannot believe that someone who gets fined £20,000 that might put him and his staff on the dole would not have a right of appeal.

(d) There is no mention that when imposing a penalty the Commission must take into account ability to pay. The bigger legal firms may be able to absorb a £20,000 hit, but many of the smaller to medium firms simply cannot. Not taking into account the ability to pay, particularly as it will not be possible to get insurance cover against an award by the Commission, seems to me to be harsh.

These are all fundamental safeguards to their civil liberties that all citizens are entitled to look to their Parliament to put in place in any legislation. Leaving these powers to be decided by an un-elected body, no matter how fair minded, is not what anyone would want their MSP to do.
Parliament has to establish boundaries and set out certain inalienable rights which the Commission has to take into account when formulating its rules and procedures. If it does not do so, the fear of what the Commission might do may precipitate the closure of many small legal businesses, which I am sure is not what the Executive intend.

I have already heard several conscientious, but very worried, solicitors talking about giving up their practicing certificates so that they will not be affected by the new legislation. About 50% of this year’s Law graduates are currently unable to find jobs. The longer there is uncertainty about some of these fundamentals the more this number is going to increase.

Perhaps you could ask the members of the Committee if, given the current terms of the Bill, would they encourage their sons or daughters to become a solicitor? I certainly would not and I doubt any of their constituents would either.

Please do not allow the Bill to pass in its current form.