Submission from James Marr for the Legal Profession and Legal Aid (Scotland) Bill

I am a Solicitor in private practice in Glasgow. I qualified as a Solicitor in 1974 and have practised as a principal on my own account since 1978. I wish the following representations to be placed before the Justice 2 Committee in connection with the consideration of the above Bill:-

1 The proposed Scottish Legal Services Complaints Commission ("the Commission") must be independent of the Executive. This requires *inter alia* that appointments to the Commission are not made by Scottish Ministers but independently. It is essential that lawyers are represented on the Commission, subject to appropriate safeguards against conflict of interest in particular cases.

2 Solicitors in private practice are concerned about the financing of the Commission. The Bill proposes that for each complaint a Solicitor should be charged a flat rate fee irrespective of the merits of the complaint. These unknown and at the moment unquantifiable costs are bound to affect the financial planning of firms of Solicitors, particularly small firms. Inevitably they will look at areas of business where complaints are most common and consider whether or not they should continue providing legal advice in these areas. A similar phenomenon is well established in the medical profession in the United States and elsewhere.

3 A complainer can submit a complaint to the Commission without any financial consequences at all. There is a great deal to be said for imposing an application fee payable by complainers and for considering the possibility of an expenses award against complainers who are manifestly frivolous or malicious. The market place will operate here and if the cost of complaining is nil there will be a large number of worthless complaints in and amongst those with merit. The Commission will require robust procedures to sift through complaints with a view to eliminating the frivolous and malicious at an early stage.

4 It seems inevitable that the division of responsibility for dealing with complaints about inadequate professional service and professional misconduct between the Commission and the Law Society will cause problems particularly where the distinction is not clear. The Bill must define as clearly as possible how the distinction between the two types of complaint is to be made. Although I am reluctant to admit it, there is a case for the Commission accepting responsibility for all complaints, including those of professional misconduct, to allow the Law Society to concentrate on its brief as the profession’s representative.

5 The Law Society currently administers the Guarantee Fund and Professional Indemnity Insurance is effected via private insurers. The role of the Commission with regard to both these matters needs to be clearly defined. It is not obvious what part the Commission has to play in dealing with insurance matters. Each firm of Solicitors has its own insurance policy with the indemnity insurers and claims are dealt with by the insurers according to long established insurance practice. The Committee needs to ask itself what exactly the role of the Commission would be here and, if the Commission has one, to define it with great care. Similar considerations apply to the Guarantee Fund which is an open ended commitment by Solicitors to pay back sums stolen by professional colleagues. Again the Commission’s role has to be defined with great care.

6 There must be a right of appeal against decisions of the Commission to an independently constituted tribunal. The Commission will be dealing with matters that materially affect the professional careers and economic well being of Solicitors and the material interests of complainers and a right of appeal is essential.

7 As a more general point the Bill gives the impression that the interests of the consumer have overriding importance and should dictate the tone and contents of the
legislation. I am not sure that this is the case. The consumer’s interests are important and must be protected by sensible regulation. The overall public interest is however of greater importance and there is an overwhelming public interest in ensuring that the legal profession is independent of the Executive and that its regulatory procedures are not susceptible to undue influence by the Executive. There are already alarming signs that the Executive does not understand the importance of an independent profession (and indeed an independent prosecution service). This is not a political point – it is a point of fundamental importance to all parties interested in the administration of justice in Scotland.

Please acknowledge receipt of this letter and confirm that these points will be placed before the Committee.