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Confidential Filing

Report of the Royal Commission on legal
Services in Scotland

SCOTLAND

April 1980

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SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

Paul Stockton Esq
Lord Chancellor's Department
House of Lords
LONDON
SW1A 0PW

PAAB
3/12

2 December 1987

Dear Paul

Thank you for copying to me your letter of ^{*Alan*} 26 November to Alan Maxwell.

Lord James Douglas-Hamilton is delighted to learn that the Lord Chancellor is preparing an article on the Scottish Legal System, and would wish to see him supplied with whatever assistance he might need.

I should be very grateful however if the officials concerned in your Department and the Lord Advocate's Department could keep the Scottish Home and Health Department in touch with developments.

I am copying this letter to Alan Maxwell and to **Andy Bearpark** at No 10.

Yours
Mike

MIKE FOULIS
Private Secretary

SCOTLAND: Legal Services Apr 80





12/12
Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone Direct Line 01-212 0100
Switchboard 01-212 7676

Paul Stockton Esq
Private Secretary to the
Lord Chancellor
Lord Chancellor's Department
House of Lords
LONDON SW1A 0PW

1 December 1987

Dear Paul,

Thank you for your letter of 26 November concerning the request to the Lord Chancellor, from "The Independent", for an article on the Scottish Legal System.

I have shown your letter to the Lord Advocate and he has no objection to what is proposed.

If you do require any assistance with providing a draft for the Lord Chancellor's consideration please do not hesitate to contact me.

I am copying this letter to Mike Fowlis at the Scottish Office and to Andy Bearpark at 10 Downing Street.

Yours ever,
Ala

ALAN MAXWELL
PRIVATE SECRETARY

MS
2/12

SCOTLAND

LEGAL SERVICES

1/10

FROM THE PRIVATE SECRETARY



Alan Maxwell Esq.
Lord Advocates Department
Fielden House
10 Great College Street
London SW1B 3SL

26th November 1987

HOUSE OF LORDS,
LONDON SW1A 0PW

The Bearpark

I am not very happy
about this. Any analysis
you changes that could
usefully be reproduced
in England with a view
to start a campaign for their
introduction on the not unreasonable
grounds that they have been canvassed
by the Lord Chancellor, I doubt
whether it is wise for the Lord Chancellor
to write this article

Press Office

Jan 30 1988

Dear Alan,

The Lord Chancellor has been asked to contribute an article to a Scottish Supplement to be produced by "The Independent" on the Scottish Legal System and the differences between it and the English Legal System, including changes that could usefully be introduced in England on the basis of Scottish experience. The article would be about 1,000 words long.

The Lord Chancellor is willing to do this, subject to there being no objection from colleagues.

I should add that we may have to call upon you for some assistance: as you can imagine, I cannot guarantee to the Lord Chancellor the quality of any draft prepared by this department about the Scottish Legal System!

I am copying this letter to Mike Fowles at the Scottish Office and to Andy Bearpark at 10 Downing Street.

Paul Stockton

Paul Stockton

A. Lytton

A. Bearpark
is nervous but
OK on basis of

The Lord Chancellor is quite keen
to do this - in a non controversial way - and
is happy to show us a draft.

If you are still unhappy perhaps you
could speak to Paul Stockton direct?

Jan 30 1988

Paul
30/11



10 DOWNING STREET

From the Private Secretary

Free
ce: Ho
LEO
WPO
LOD
h Adv. D
Scotland
2 February 1981

The Prime Minister has seen the Secretary of State for Scotland's minute of 30 January, about the proposal for a Scottish Department of Legal Affairs.

She accepts your Secretary of State's recommendation that there should be no change in existing organisation, despite the recommendation of the Royal Commission on Legal Services in Scotland.

She is content that your Secretary of State should announce this decision by means of an arranged Parliamentary Question at a stage when it can be linked with decisions on other recommendations of the Commission.

I am sending copies of this letter to Stephen Boys Smith (Home Office), Michael Collon (Lord Chancellor's Office), Jim Buckley (Lord President's Office), Jim Nursaw (Law Officers' Department) and Mary Howat (Lord Advocate's Department).

M. A. PATTISON

Godfrey Robson, Esq.,
Scottish Office.

2



Prime Minister

1) Agree that there should be no change in Scottish legal Affairs organisation, despite Royal Commission recommendation?

Yes
not

2) Content for Mr

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

Younger to announce this; or, as a machinery of govt matter, do you wish to do so?

Yes
not

MM 391

30 January 1981

Prime Minister

REPORT OF THE ROYAL COMMISSION ON LEGAL SERVICES IN SCOTLAND - PROPOSED SCOTTISH DEPARTMENT OF LEGAL AFFAIRS

The Lord Advocate and I have now considered the recommendation (Chapter 20 of the Commission's Report (Cmnd 7846, May 1980)) that there should be a Scottish Department of Legal Affairs. The grounds advanced by the Commission for this were (a) that Scotland is probably unique in being a country with its own wholly distinct legal system but without a distinct Ministry of Justice or similar department, and (b) that the present division of responsibility between the Secretary of State and the Lord Advocate is based on no readily discernible principles. The views of the Royal Commission were broadly in accord with those expressed by the Scottish Law Commission in a memorandum commenting on the previous Government's White Paper relating to the proposals for devolution.

2. The Lord Advocate's main departmental responsibilities derive from his position as the senior Scottish Law Officer of the Crown and his responsibilities for the criminal prosecution system. Since 1972 he has had in addition a variety of functions, transferred from the Secretary of State, relating to the jurisdiction and procedure of the civil courts, the enforcement of judgments, procedure in inquiries before certain tribunals, approval of the programme of the Scottish Law Commission, limitation of actions, and certain other matters. The resulting division between functions carried out on the Secretary of State's behalf by the Scottish Home and Health Department and those carried out by the Scottish Courts Administration broadly reflects a distinction between substantive and adjectival law, though the distinction is not one always readily apparent to outsiders.

3. The Royal Commission considered as options -

- (a) a Department of the Scottish Office with a senior Minister;
- (b) a Department under the Lord Advocate;
- (c) a totally new Department.

The majority favoured (a).

4. The original impetus for establishing a Department of Legal Affairs arose largely in the context of the devolution legislation under which there would have been a separate Scottish Administration. The Royal Commission's reasoning seems to us to be very superficial, being based at least in part on a misconception of the role of the Lord Chancellor's Department. We recognise that the present division of responsibility between the Secretary of State and the Lord Advocate may not be readily understood by the public at large; but the system nevertheless works well.

E. R.

5. Of the Royal Commission's options (a) would in practice effect no improvement on the present arrangements and would almost certainly require an additional Minister of State. Option (b) - a Department under the Lord Advocate - would make the same Minister responsible for criminal prosecution, for courts administration and for criminal legal aid, and would be likely to meet justifiable criticism. Option (c) - a totally new Department - would weaken the role of the Lord Advocate and, since the Minister in charge would not be in the Cabinet, would produce results opposite to those the Royal Commission had in mind. It would be quite contrary to our policy on Civil Service numbers; and there would not be a role for a politician of standing.

6. For these reasons, the Lord Advocate and I have concluded that a Department of Legal Affairs should not be established. There have always been close relationships between the Scottish Office and the Departments which serve the Lord Advocate, and I believe that the Lord Advocate has traditionally been involved much more closely in policy matters over the whole range of Scottish affairs than are the Law Officers in England. These close arrangements will of course continue, and neither of us sees advantage in further transfer of administrative responsibilities to the Lord Advocate. Nor, while we do not rule out some administrative adjustment, would we wish to propose any substantial change in the distribution of responsibilities of the respective Departments involved.

7. A decision on this issue must precede decisions on other recommendations of the Royal Commission. Although the Lord Advocate and I have reached the view that there should be no change, the machinery of government is involved and I therefore seek your approval. If you agree I would announce this decision by arranged PQ at a stage when I can link it with decisions on other recommendations of the Commission.

8. I am sending copies of this minute to the Home Secretary, the Lord Chancellor, the Lord President of the Council, the Attorney General and the Lord Advocate.

C. Y.

Scotland



FROM THE SECRETARY
MR G M FAIR

ROYAL COMMISSION ON LEGAL
SERVICES IN SCOTLAND
27 ROYAL TERRACE
EDINBURGH EH7 5AH
TELEPHONE: 031-557 2050

[Handwritten signature]

Michael Patteson Esq
Private Secretary
10 Downing Street
LONDON
SW1

13 May 1980

Dear Private Secretary,

Thank you for your letter of 7 May which reached me this morning.

I am sorry that my letter of 2 May enclosing a Confidential Final Revise of this Commission's Report did not reach your office until midday on 7 May which, as you say, was the day the Report was published. It will not perhaps surprise you to learn that HMSO's printers were consistently behind schedule with deliveries of proofs and at a later stage, CFRs; and indeed at the eleventh hour the publication date itself was in jeopardy. As it was, we were only able to get CFRs to the Scottish Office for delivery to you and other Whitehall Departments on 7 May. I appreciate the irritation that such late delivery can cause and I can only apologise for it. I am glad to have your assurance that no harm was, in fact, done.

*Yours sincerely,
George Fair*

FILE

VLB

7 May 1980

Thank you for your letter of 2 May, with which you enclosed a confidential final revise of the Report of the Royal Commission on Legal Services in Scotland.

This in fact reached us at mid-day on Wednesday, 7 May, the date of publication, although no harm was done.

M A PATTISON

G. M. Fair, Esq.,
Royal Commission on Legal Services
in Scotland.

19

file BK
Scotland

2 May 1980

The Prime Minister has seen the enclosures to your letter to me of 29 April, about the Report of the Royal Commission on Legal Services in Scotland.

She is content with the proposed initial handling of the Report, and was grateful for the background note.

M. A. PATTISON

Godfrey Robson, Esq.,
Scottish Office

Gr



ROYAL COMMISSION ON LEGAL
SERVICES IN SCOTLAND
27 ROYAL TERRACE
EDINBURGH EH7 5AH
TELEPHONE: 031-557 2050

FROM THE SECRETARY
MR G M FAIR

IN CONFIDENCE

C A Whitmore Esq
Principal Private Secretary
10 Downing Street
LONDON

Copies of Report
housed in separate
folder.

2 May 1980

Dear Whitmore.

Because of printing delays, I have not been able to send before now the enclosed copy of the Confidential Final Revise of this Commission's Report for the advance information of the Prime Minister.

As earlier intimated by my Chairman, Lord Hughes, the Report (Cmd 7846) is being presented to Parliament on Tuesday, 6 May and will be published at 11am on Wednesday, 7 May.

*Yours sincerely,
G M Fair*

ENC

PRIME MINISTER

REPORT OF THE ROYAL COMMISSION ON LEGAL SERVICES IN SCOTLAND

I attach:

(a) a simple reply which Mr. Younger proposes to give to an arranged Question on publication day;

(b) a note by the Scottish Office on the major recommendations.

No early announcement of the Government's views is intended. One particular problem will be reconciling these recommendations with those of the English Commission which reported in October and which reached opposite conclusions on significant matters such as legal aid administration and the conveyancing monopoly.

MAD

30 April 1980

Scotland



SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

Mike Pattison Esq
Private Secretary
No 10 Downing Street
LONDON SW1

29 April 1980

Dear Mike,

Thank you for your letter of 23 April. I now enclose a background note on the Report of the Royal Commission on Legal Services in Scotland, together with the draft of an arranged Question and Answer, which the Prime Minister may wish to consider.

As you will see from the note, my Secretary of State is not disposed to offer an early reaction to the Report: its recommendations are many and complex, and some have significant public expenditure implications. It therefore seems desirable to do no more, at the stage of publication, than repeat the Government's thanks to Lord Hughes and his colleagues, and indicate that it will all now be carefully considered.

The attached background note should provide you with sufficient fodder if the matter should be raised with the Prime Minister, for example in supplementary questions in the House.

I am sending copies of this letter to Molly Howat (LAD), John Stevens (Chancellor of the Duchy's Office) and Michael Pownall (Lords Chief Whip's Office).

Yours sincerely,

GODFREY ROBSON
Private Secretary

WRITTEN

HOUSE OF COMMONS

To ask the Prime Minister when the Report of the Royal Commission on Legal Services in Scotland is to be published.

SUGGESTED REPLY

The Report is being published today [7 May]. I should like to express to Lord Hughes and his fellow Commissioners the Government's thanks for having undertaken this arduous task. Given the width of the Commission's terms of reference their recommendations necessarily cover a wide field, and we shall study all of them very carefully.

mt

BACKGROUND NOTE

ROYAL COMMISSION ON LEGAL SERVICES IN SCOTLAND

The Commission's Report contains over 200 recommendations some calling for action by outside bodies, notably the legal profession itself. Of those directly concerning the Government, the main recommendations are -

- (1) a Scottish Department of Legal Affairs under a senior Minister free from other responsibilities to assume the existing legal affairs functions of SHHD and the SCA - the assumption being that the Lord Advocate's responsibilities would then relate solely to his duties as a Law Officer of the Crown and to his responsibility for the system of criminal prosecution;
- (2) jurisdiction in divorce should be conferred on the sheriff courts (legal members dissenting);
- (3) responsibility for administration of the civil legal aid scheme should be removed from the Law Society and vested in a new Legal Services Commission, which would have various other executive functions, including the development of law centres and the preparation and dissemination of information about the law and legal services to the public (majority recommendation - the legal members dissenting);
- (4) the solicitors' monopoly in conveyancing would be ended, and restrictions on solicitors' advertising removed;
- (5) there should be an independent review body, appointed by the Secretary of State, to keep under review and recommend fee levels for the profession, where these are fixed by pre-determined tables to be regarded as maxima. This would include the fixing of fees for court work, at present determined by the Lord President of the Court of Session;
- (6) various changes in the legal aid scheme are recommended. While some of these would reduce legal aid costs they are bound up with changes in divorce jurisdiction and procedure, which are likely to be controversial. Having regard to other proposals for improvements in legal aid and for the creation of various new advisory and executive bodies, there can be no guarantee that overall the proposals would lead to a net saving in public expenditure.

2. In three of the areas mentioned above, the recommendations cannot in practice be considered without regard to the corresponding recommendations of the English Commission, which reported last October, and which in two of these areas, reached the opposite conclusion. The English Commission (like the legal members of the Scottish Commission) recommended that legal aid administration should continue to rest with the Law Society; and (by a majority) that the conveyancing monopoly should not be changed. Insofar as both Commissions recommended changes in the legal aid scheme, these should be considered together since in all fundamentals the scheme has necessarily to apply on the same conditions throughout the UK. Both Commissions recommend new machinery, in the form of an independent standing advisory committee for each country to be appointed respectively by the Lord Chancellor and the Secretary of State, for the fixing of tables of lawyers' remuneration (where this is in the form of pre-determined maximum scales).

3. Given the nature of the English Commission's recommendations, there has been no great pressure for action on them in England, and departmental consideration of them has been proceeding fairly slowly. While the Scottish Commission's proposals will inevitably provoke more lively discussion and controversy and stimulate activity by various pressure groups, we see no reason, given the very large number of recommendations made, why early announcement of the Government's views on them should be

expected. Many of the proposals for advisory committees of various kinds would clearly have significant public expenditure implications, as would the proposals for changes in the basis of legal aid notwithstanding that some of the Commission's suggestions are designed to save expenditure.

4. We suggest that the opportunity be taken, by means of arranged Written PQ to the Prime Minister (on lines attached) on 7 May, to announce the Report's publication and to place on record the Government's thanks to the Commission for the time and effort they have put into its preparation. Given the very large number of recommendations, no early announcement of the Government's views on them is to be expected. The recommendations would affect a large number of departments and agencies, and a period of digestion and reflection is needed before a coherent strategy can be evolved. There will thus be an initial period of internal consideration within the Government machine, initiated by the Scottish Office in close consultation with the Lord Advocate's Department and with Whitehall Departments most directly concerned. Thereafter there may have to be consultation with the different branches of the profession and other interested bodies, though those most closely concerned may be expected to submit their comments in due course without specific invitation to do so.



See Handls

*cc 50
Lord Advocate*

10 DOWNING STREET

THE PRIME MINISTER

24 April 1980

Thank you for your letter of 21 April 1980 in which you told me about the programme leading to publication of the Royal Commission's Report on 7 May 1980. I am grateful to you also for letting me have in advance a copy of the Commission's recommendations.

The terms of reference given to your Commission called for a wide-ranging review of the legal profession and legal services in Scotland; and it is clear from the many changes and improvements embodied in the Commission's recommendations that you and your colleagues have given much consideration and time to the remit of the Commission over the last 3½ years.

The Government, as well as the profession, will of course need time to study a major Report of the kind your Commission has produced. Our first task will be to consult the main interests and thereafter consider a programme of future action. I thought I should write immediately, however, to thank you and your fellow Commissioners most warmly for having discharged so ably what must have been a very demanding task. My colleagues in the Government and I are deeply appreciative of all the work that your Commission has done.

(SGD) MARGARET THATCHER

The Rt. Hon. Lord Hughes, C.B.E.

vb

OUR
b.c.
Press Office

23 April 1980

We spoke today about the Report of the Royal Commission on Legal Services in Scotland. You agreed to ensure that the Prime Minister is informed of your Secretary of State's initial reaction, and of the kind of welcome he proposes to give the Report, by 2 May.

I am sending copies of this letter to Miss Howat (Lord Advocate's Department), John Stevens (Chancellor of the Duchy of Lancaster's Office) and Michael Pownall (Government's Whips' Office, House of Lords).

M. A. PATTISON

Godfrey Robson, Esq.,
Scottish Office.



FROM THE SECRETARY
MR C M FAIR

ROYAL COMMISSION ON LEGAL
SERVICES IN SCOTLAND
27 ROYAL TERRACE
EDINBURGH EH7 5AH
TELEPHONE: 031-557 2050

C A Whitmore Esq
Principal Private Secretary
10 Downing Street
LONDON

23 April 1980

Dear Whitmore,

My Chairman, Lord Hughes, wrote to the Prime Minister on 21 April 1980 to inform her about the impending presentation and publication of this Commission's Report.

I understand that it is standard practice for the Secretary of the Commission to prepare a draft of a reply which the Prime Minister might send to the Commission's Chairman. In accordance with this arrangement, I now enclose for consideration a draft reply for the Prime Minister.

Yours sincerely,

C M Fair

ENC

DRAFT REPLY FOR THE PRIME MINISTER TO SEND TO:

The Rt Hon Lord Hughes CBE
Chairman
Royal Commission on Legal
Services in Scotland
27 Royal Terrace
Edinburgh
EH7 5AH

Thank you for your letter of 21 April 1980 in which you told me about the programme leading to publication of the Royal Commission's Report on 7 May 1980. I am grateful to you also for letting me have in advance a copy of the Commission's recommendations.

The terms of reference given to your Commission called for a wide-ranging review of the legal profession and legal services in Scotland; and it is clear from the many changes and improvements embodied in the Commission's recommendations that you and your colleagues have given much consideration and time to the remit of the Commission over the last $3\frac{1}{2}$ years.

The Government, as well as the profession, will of course need time to study a major Report of the kind your Commission has produced. Our first task will be to consult the main interests and thereafter consider a programme of future action. I thought I should write immediately, however, to thank you and your fellow Commissioners most warmly for having discharged so ably what must have been a very demanding task. My colleagues in the Government and I are deeply appreciative of all the work that your Commission has done.

E.R.

PRIME MINISTER

Lord Hughes has written to you about the publication of the Report of the Royal Commission on Legal Services in Scotland. It is to be presented to Parliament on the 6th and published the following day.

The recommendations, of which he sends you an advance copy, are numerous.

I have asked that Mr. Younger let you have a first reaction, and a note of what he will say on the record when the Report is published, by 2 May.

I attach an acknowledgement for you to send Lord Hughes.

Re. 210
MP
Copy PM's letter to
Scottish Office
and Advocate's Office

23 April 1980



FROM THE CHAIRMAN
THE RT HON LORD HUGHES CBE

ROYAL COMMISSION ON LEGAL
SERVICES IN SCOTLAND
27 ROYAL TERRACE
EDINBURGH EH7 5AH
TELEPHONE: 031-557 2050

The Rt Hon Margaret Thatcher MP
Prime Minister
10 Downing Street
LONDON
SW1

21 April 1980

Dear Prime Minister

I am writing to let you know that the Royal Commission completed its work on 29 February 1980 with the signing of its Report and that, in conjunction with HMSO, I am arranging to have the Report presented to Parliament on Tuesday, 6 May with publication taking place on the following day, Wednesday, 7 May 1980.

The interval between presentation and publication is only 24 hours; but this, I understand, will not present difficulty. I have considered it desirable to secure publication of the Commission's Report before the Annual Conference of the Law Society of Scotland begins on 9 May 1980. HMSO have informed that that while the printing timetable is very tight, publication will be possible on 7 May. This will give the solicitors in Scotland a very brief period in which to study the Commission's Report and recommendations before the Law Society's Annual Conference takes place. This, however, is much to be preferred than publication taking place immediately after the Conference. If the latter had happened, the profession would inevitably have suspected that the timing had been deliberately contrived.

I am enclosing for your information a copy of the Commission's recommendations which, as you will see, point to the need for a substantial number of changes in present arrangements. Some of these recommended changes will be bound to give rise to controversy within the legal profession; and some indeed may not be viewed with complete enthusiasm by the Government in existing circumstances. However, the Commission decided to take a long view and a number of our recommended improvements are for the longer, rather than the shorter, term.

I am sending a copy of this letter and the enclosure to the Secretary of State for Scotland and to the Lord Advocate. I am also copying the letter, but not the enclosure, to the Chancellor of the Duchy of Lancaster and to the acting Leader of the House of Lords.

*Yours sincerely
Hughes*

ENC

RECOMMENDATIONS

CHAPTER 6: INFORMING THE PUBLIC

			<u>Paragraph</u>
Legal education in schools	R6.1	All pupils should be taught for one period per week in the third year of their secondary school curriculum about the law, the legal system and legal services.	6.6
	R6.2	The Department of Legal Affairs (see R20.1) should be associated with the Scottish Education Department in ensuring that appropriate school courses are made available.	6.8
	R6.3	The Department of Legal Affairs and the Scottish Education Department, in conjunction with the Law Society, should consider what part <u>solicitors</u> might play in the provision of legal education in schools.	6.8
Public information	R6.4	It should be the responsibility of government to ensure that important changes in the law are widely advertised in the press and by radio and television as they are implemented.	6.15

- R6.5 The financial and explanatory memorandum introducing each government Bill should include a statement of the amount proposed to be spent on initial publicity for the measures the Bill contains. 6.15
- R6.6 Community education should be recognised as an important part of the work of Citizens Advice Bureaux and Law Centres. 6.17
- R6.7 The Legal Services Commission (see R20.3) should carry initial responsibility for securing the adequate provision of public information on legal rights and legal services in Scotland. 6.18
- Advertising by solicitors R6.8 As proposed by the Monopolies and Mergers Commission, the Law Society should replace their present rules on advertising with practice rules drawn up after consultation with the Office of Fair Trading, breach of which should be treated as professional misconduct. These practice rules should embody the principles set out by the Monopolies and Mergers Commission and reproduced in paragraph 6.34. 6.36

RECOMMENDATIONS

CHAPTER 7: ACCESSIBILITY OF ADVICE

Paragraph

Generalist advice services	R7.1 Improved access to legal services should be promoted by the development of generalist advice centres.	7.5
Lay help at tribunals	R7.2 Encouragement should be given to developing the provision of lay advice and representation before those tribunals in which lay participation is appropriate, and adequate training should be provided for lay representatives.	7.12
	R7.3 Responsibility for developing the system of lay advice and representation before tribunals, and for ensuring that adequate financial resources are made available, should be given to the Legal Services Commission.	7.12
Law Centres	R7.4 The Legal Services Commission should study and experiment with the best use of Law Centres in Scotland, bearing in mind the principles stated in paragraph 7.15.	7.15
	R7.5 A code of practice regarding the circumstances in which clients should be required to pay for Law Centre services should be drawn up by the Legal Services Commission after consultation with the Law Society and lay users.	7.17

Administration

R7.6 In special cases Citizens Advice Bureaux management committees should be able to authorise their solicitor to proceed under legal aid, if applicable, or to charge fees. 7.20

R7.7 The Legal Services Commission should, with funds allotted to it by central government, give grants to advice centres and Law Centres, conduct research, experiment with ways to provide services and set standards for advice services. 7.28

R7.8 Each centre should be run by an independent local management committee. 7.28

R7.9 Area advice services committees should be established. 7.29

Assistance to legal firms

R7.10 The Legal Services Commission should have power to provide financial assistance to firms of solicitors to establish offices in under-provided areas of the country. 7.32

R7. 11 District councils should be ready 7.32
to give planning permission for
solicitors' offices in shopping
centres and residential areas, and
to let residential property to
solicitors for use as offices
where this will make legal
services more readily accessible.

RECOMMENDATIONS

CHAPTER 8: PAYING FOR LEGAL SERVICES

Paragraph

The scope of
civil legal
aid

- R8.1 Legal aid for advice and assistance and for representation in civil matters should only be available to help citizens to assert or protect their rights, and not to assist them in arranging their affairs for the benefit of themselves or others. 8.17
- R8.2 Legal aid should be available for representation at a tribunal, but only if the client would otherwise be unable to follow the proceedings and if there is no lay representation available locally which is recognised by the tribunal as suitable. 8.21
- R8.3 A tribunal should have power to grant legal aid where it considers that the matter before it gives rise, or is likely to give rise, to a substantial point of law. 8.21
- R8.4 All tribunals at which a substantial point of law is likely to arise should include a legally qualified member. 8.21
- R8.5 Legal aid should be available to pursue or defend an action of defamation. 8.22

R8.6 The civil legal aid scheme should 8.26
have no upper eligibility limit of
disposable income, and should have
a scale of contributions which rises
sharply with income and is reviewed
annually.

R8.7 No account should be taken of 8.27
capital in assessing eligibility
for civil legal aid, or in computing
the contribution payable.

R8.8 Civil legal aid should not be 8.28
available to businessmen or traders
for litigations relating to a business
or trade, even if the business or trade
is owned by an individual, this
exclusion to be in addition to the
exclusion of bodies
corporate or unincorporate.

Liability
for expenses

R8.9 The expenses of the successful 8.29
opponent of a legally-aided party
should be recovered from the unused
balance of the legally-aided party's
contribution; to the extent that
they exceed any such balance, they
should be met by the legal aid fund.

- R8.10 The right of recovery 8.29
from the legal aid fund should extend to individuals and one-man businesses, but not to litigants who are bodies corporate or unincorporate unless such a body can satisfy the court that inability to recover from the legal aid fund would result in severe hardship to individuals.
- An integrated scheme R8.11 Civil legal aid and legal advice and assistance should be integrated into a single scheme, which should simply be a legal aid scheme. 8.31
- R8.12 The assessment of an applicant's eligibility for civil legal aid and the setting of a maximum contribution should be done by the solicitor to whom the client applies. 8.32
- Collecting contributions R8.13 Where contributions are to be paid by instalments to the central administration every effort should be made to introduce alternative and convenient methods of payment, such as by post office giro. 8.36
- R8.14 It should always be possible for the solicitor and client by mutual agreement to make their own arrangements for payment of the contribution direct to the solicitor. 8.37

- Assessing the merits of proposed litigation
- R8.15 (i) where the solicitor has assured himself that the "probabilis causa" and reasonableness tests are satisfied, he should be able to grant legal aid himself; 8.40
- (ii) where the solicitor is in doubt he should refer the application to a statutory independent committee to be set up by the body responsible for administering legal aid;
- (iii) where the solicitor thinks the tests are not satisfied he should have no power to refuse legal aid, but should have to refer the application to the committee, unless the client is satisfied, on the solicitor's advice, that such a referral would be hopeless.
- Recovery of expenses
- R8.16 The present rule, whereby the legal aid fund undertakes the recovery of all the expenses awarded to successful assisted persons, should be changed. 8.45
- Sums recovered
- R8.17 While the legal aid fund should still look to sums recovered to defray its expenses when recovery of expenses from the other side is difficult, 8.47

the assisted person should have first claim on a part of any sum recovered.

- | | | | |
|---|-------|--|----------------|
| The statutory deduction from civil legal aid fees | R8.18 | The ten per cent deduction from civil legal aid fees should be abolished. | 8.49 |
| Legal aid for accused persons | R8.19 | Legal aid should be provided to enable all accused persons to receive initial advice on how to plead and, where appropriate, to be given help in the preparation of a plea in mitigation. | 8.51 |
| | R8.20 | The criteria for granting criminal legal aid to defend a summary prosecution should be laid down in statute. Legislation should specify the offences where there is no risk of imprisonment or where the risk is so small as not to justify a grant of criminal legal aid. | 8.52 -
8.54 |
| | R8.21 | Authority to grant, but not refuse, criminal legal aid should be delegated to sheriff clerks in suitable cases, provided that the clerks receive adequate training for the purpose. | 8.57 |

- R8.22 Where a decision on an application 8.57
for criminal legal aid has to be
taken by a judge, it should be
done in chambers.
- R8.23 Accused persons who receive criminal 8.59
legal aid, and are tried and
found guilty, should be liable
to contribute to the cost of
their defence.
- Duty R8.24 All accused persons in custody 8.62
solicitor should be entitled to see a duty
solicitor and before they do so they
should have full details of any crime
alleged against them.
- R8.25 Court advisory committees 8.63
(see R15.2) should prepare
duty plans to ensure the attendance of
solicitors to provide legal services for
accused persons.
- Legal advice R8.26 Public funds should pay for 8.64
in prison regular legal clinics in prisons.
- Administration R8.27 Legal aid should be administered 8.73-
of legal aid by an independent authority in the 8.74
form of the Legal Services Commission
which we propose in Chapter 20.

Choice of defence agent R8.28 An accused person should be entitled to choose his own defence agent, using legal aid if he is eligible. 8.79

Public defender R8.29 There should be an experiment to assess whether or not a public defender system could with advantage be introduced in Scotland to run in parallel with the service provided by solicitors in private practice supported by legal aid. The points detailed in paragraph 8.82 should be borne in mind in the design of the experiment. 8.81 - 8.82

Public interest litigation R8.30 The Department of Legal Affairs should consider the use of legal aid to facilitate appeals where an important legal point is at issue. 8.91

RECOMMENDATIONS

CHAPTER 9: CONVEYANCING

		<u>Paragraph</u>
Registration of Title	R9.1 Any extra cost incurred on first registration in the Land Register of properties over what might be charged for recording under the present system should be borne by the State.	9.12
	R9.2 The land certificate should disclose as many as possible of the overriding interests affecting a property.	9.13
	R9.3 There should be set up a Standing Committee appointed by, and reporting to, the Secretary of State for Scotland which should have responsibility for overseeing the new Land Register, recommending such improvements and simplification as seem desirable, and considering the longer term operation of the system. The membership should comprise representatives of the Land Register staff, the legal profession and any other related profession, and the general public.	9.15

- R9.4 The Standing Committee should 9.15
advise when registration of title
should become universally
compulsory. When this happens
without any change of ownership
the full costs of such a registration
should be borne by the State.
- Simplification of procedures and documents
- R9.5 The Standing Committee should 9.16
examine the feasibility of
introducing a simpler system of
transferring property which might
be provided by the State at a
much reduced cost to the public.
- R9.6 The legislature and the profession 9.18
should ensure that the documents
used for conveyancing are written
so far as possible in simple
language.
- R9.7 A specialist committee with lay 9.20
representation should be appointed
to review the scope for simplifi-
cation and standardisation of legal
documents used in conveyancing.

The conveyancing monopoly	R9.8	The present monopoly should not be extended to bring within it the missives stage of the purchase and sale of heritable property.	9.31
	R9.9	Domestic conveyancing should no longer be restricted exclusively to the legal profession; members of other professional bodies who satisfy prescribed standards as detailed in paragraph 9.45 should be entitled to undertake conveyancing work for a fee.	9.45
Building society valuations	R9.10	Building societies should adopt standard specifications for valuations, appoint a common panel of valuers and instruct all valuations through a common agency.	9.53
	R9.11	An expert committee should consider the difficulties involved in making building society valuation reports available to potential borrowers.	9.57

- R9.12 The same expert committee should 9.59
examine whether the difficulties
in requiring sellers to provide
a survey report can be overcome.
- R9.13 The same expert committee should 9.61
consider whether sellers should be
obliged by statute to provide
certain information to purchasers.
- R9.14 The same expert committee should 9.62
consider whether a person who
instructs a survey but does not buy
the house should pay the surveyor
for his time only.
- Instalment
purchase R9.15 A detailed study should be made 9.75
of instalment purchase contracts
with a view to effecting changes in
the substantive law which will offer
the purchaser in an instalment sale
better protection than the law at
present affords.
- Oppressive
conditions
in missives R9.16 The question of oppressive conditions 9.76
in missives should be referred to the
Office of Fair Trading.

RECOMMENDATIONS

CHAPTER 10: DIVORCE

Paragraph

Jurisdiction to sheriff courts	R10.1	Sheriff courts should be granted jurisdiction in actions for divorce.	10.17
	R10.2	In divorce actions the sheriff court should have exclusive jurisdiction as a court of first instance.	10.18
Power to remit cases to Court of Session	R10.3	A sheriff on cause shown by the parties, or of his own accord, should have power to remit divorce actions to the Outer House of the Court of Session.	10.19
Designation of particular divorce courts	R10.4	Sheriffs Principal, when they think it appropriate, should designate particular courts within their sheriffdom to deal with divorce cases.	10.20
Right of pursuer to select court	R10.5	The pursuer in a divorce action should be able to choose between raising the action in his or her local sheriff court or in the defender's local sheriff court if this were different.	10.21

Sheriff's right
to remit action
to another
sheriff court

R10.6 A sheriff of his own accord 10.21
should have power to remit any
divorce action to any other
sheriff court where, for instance,
he has grounds for believing that
this would be in the best interests
of any children affected by the
action.

One category of
divorce based
on separation

R10.7 Parliament should consider 10.23
whether there should be only
one category of divorce based on
separation; whether this
category of divorce should not
require consent; and whether the
period of separation which would
establish evidence of irretrievable
breakdown should not be longer
than two years.

Special reports
on custody of
children

R10.8 Special reports on custody 10.25
arrangements should be obtained
in all divorce actions
involving children.

R10.9 In every divorce action 10.31
(defended as well as undefended)
where children under the age of
16 are involved the case should

be referred by the court to the appropriate reporter to the children's panel for special reports on custody arrangements.

Review of custody
or access orders

R10.10 In any case where a court has made an order for custody or access, the reporter to the children's panel should be under a duty to review the working of the order after a period of, say, 6 months and to report to the court if he considers that any change is required.

10.34

R10.11 Any child over the age of 10 to whom a custody or access order relates should be entitled as a matter of right to contact the reporter directly and seek a review. In such cases the reporter would have a duty to review and report to the court if he considered a change were required.

10.34

<p>Review of supervision or committal orders</p>	<p>R10.12</p>	<p>Any local authority subject to an order which has placed children of divorced parents under its supervision or care should be required after, say, one year after the making of the order to report to the court as to whether or not the order should remain in force.</p>	<p>10.35</p>
<p>Grants to authorities for services of reporters</p>	<p>R10.13</p>	<p>The Department of Legal Affairs in discussion with the local authorities concerned should make <u>ad hoc</u> grants to cover the extra costs incurred by the courts' use of reporters' services.</p>	<p>10.36</p>
<p>Privacy for divorce actions</p>	<p>R10.14</p>	<p>Defended divorce actions in the sheriff court should be heard in private, subject to the right of the press to attend and report the minimum that is considered essential in the public interest.</p>	<p>10.40</p>
<p>Restrictions on press reporting in custody of children cases</p>	<p>R10.15</p>	<p>Privacy of proceedings with restrictions on press reporting should apply in all cases concerning custody of children, whether they are divorce actions or not.</p>	<p>10.40</p>

Law reports	R10.16	Divorce actions held in private should still be subject to reports in law journals but using the "A v B" technique to preserve privacy.	10.41
Evidence and corroboration	R10.17	In undefended divorce actions the court in place of affidavit evidence should be able to proceed on written forms completed by pursuers with a signed declaration that what is stated is the truth, and without need for corroborative evidence.	10.45
Need for simple forms in divorce actions	R10.18	Simple forms should be introduced which would enable a litigant to apply personally for a divorce, if he or she so wishes.	10.46
Cessation of full legal aid for undefended divorce actions	R10.19	Only initial legal advice and assistance under the proposed integrated legal aid scheme should be available to parties seeking divorce where there are no matters in dispute.	10.47

Entitlement to
expenses

R10.20 Consideration should be given
to the proposition that no
expenses should be awarded
against the defender in
undefended divorce actions.

10.48

RECOMMENDATIONS

CHAPTER 11: SMALL CLAIMS

Paragraph

An improved procedure	R11.1	There should be a small claims procedure within the sheriff court which is sufficiently simple, cheap, quick and informal to encourage individual litigants to use it themselves without legal representation.	11.21
	R11.2	In drawing up the rules for a new procedure, the Sheriff Court Rules Council should consult consumer and business, as well as legal, interests.	11.21
	R11.3	The rules of the new procedure should embody the principles set out in paragraph 11.21.	11.21 (i-vii)
New procedure to supplant the summary cause	R11.4	The new small claims procedure should supplant the summary cause and be the sole procedure available for claims of small amounts.	11.24

RECOMMENDATIONS

CHAPTER 12: DEBT ENFORCEMENT
AND DEBT COUNSELLING

Paragraph

- | | | | |
|------------------|-------|--|-------|
| Debt counselling | R12.1 | The Legal Services Commission should give high priority to developing a money management counselling service in Scotland, in consultation with Citizens Advice Bureaux and social workers. | 12.10 |
| | R12.2 | The Scottish Association of Citizens Advice Bureaux should give higher priority to money management counselling in their training programmes; and such counselling should be given due priority in the training of social workers. | 12.10 |
| | R12.3 | As many school pupils as possible should have an opportunity, in appropriate subject departments, to learn money management. | 12.12 |

RECOMMENDATIONS

CHAPTER 13: ADMINISTRATION OF ESTATES

Paragraph

Obtaining
confirmation
to an estate

R13.1 The Confirmation to Small Estates 13.8
(Scotland) Act 1979 should be brought
into force without delay.

R13.2 Sheriff clerks should assist executors 13.11-12
who apply in person for confirmation,
in the ways indicated in paragraph 13.11.
This assistance should, at least
initially, be restricted to estates valued
at up to 80% of the threshold for capital
transfer tax.

Administration
of the estate

R13.3 In a printed leaflet about services 13.19
in connection with estates an indication
should be given of what kind of information
the client ought to expect to receive from
his solicitor at the outset of the business.

R13.4 The Law Society should issue rules 13.20
of practice for the administration
of estates which would set out a
minimum frequency with which lay
executors and beneficiaries would
have to be informed of progress, of

the steps still to be taken,
and of the estimated date of
completion.

R13.5 There should be a procedure by 13.22
which, firstly, a lay executor or
beneficiary can bring to the
attention of the court delay in
the winding up of an estate, and,
secondly, the court can in appropriate
cases take continuing control over
the administration.

R13.6 Legal aid should not be available 13.25
for representation in chambers at
a hearing under this procedure
unless at the discretion of the
court.

Public
information

R13.7 Written information and guidance 13.26
about what needs to be done about
the estate of a person who has
died should be provided by registrars
when issuing death certificates.

R13.8 The Legal Services Commission 13.28
 should produce a
 leaflet describing the steps that
 citizens should take to
 leave their affairs in order
 so that, when they die, others
 will be saved needless worry
 and expense.

The property
of the
mentally
disordered

R13.9 The measures in connection with 13.32
 the affairs of the mentally
 incapacitated suggested in
 paragraphs 13.29-31 should be
 considered immediately.

RECOMMENDATIONS

CHAPTER 14: THE COURTS

		<u>Paragraph</u>
Civil procedure and jurisdiction	R14.1 A committee should be appointed by the Secretary of State for Scotland, after consultation with the Lord President of the Court of Session, to review the structures, jurisdiction and procedures of the civil courts in Scotland.	14.13
Working methods of the courts	R14.2 A separate review of the working methods of both the civil and the criminal courts should be carried out.	14.14
Facilities needed at courts	R14.3 Microphones should be installed in courts with poor acoustics.	14.18
	R14.4 Participants in civil business should not have to share facilities with participants in criminal business.	14.19
	R14.5 Central and local government must give higher priority than they have done in the past to remedying the manifest physical shortcomings of local courts.	14.22

R.14.6 As soon as funds can be made
available, existing proposals
for improvements to Parliament
House should be put into effect.

14.25

RECOMMENDATIONS

CHAPTER 15: THE LEGAL PROFESSION:
STRUCTURE AND ORGANISATION

			<u>Paragraph</u>
Law Society records	R15.1	The Law Society should examine urgently the adequacy of its internal administration and records in the light of our Report and should, if necessary, be subject to a statutory obligation to keep the information discussed in paragraph 15.12.	15.12
Court Advisory Committees	R15.2	Every Sheriff Principal should establish for each sheriff court or group of courts, for which he is responsible, an advisory committee comprising representatives of the local Bar, court staff, procurators fiscal, social workers and appropriate outside lay elements. The advisory committee would advise the Sheriff Principal on any matters affecting the work of the court or the convenience of the users of the court.	15.14
	R15.3	Consideration should be given to the best form for a similar advisory committee or committees for the Court	15.14

of Session and High Court of
Justiciary.

Edinburgh
correspondents

R15.4

The Committee on Civil Procedure

15.16

(R14.1) should examine the requirements as to Edinburgh solicitors in Court of Session actions, and as to advocates being accompanied in court by solicitors.

Notaries Public

R15.5

The status of Notary Public should

15.19

be conferred on all solicitors admitted in future solely by virtue of their admission as solicitors.

Incorporation
of solicitors'
firms

R15.6

The restrictions on the incorporation

15.20

of solicitors' partnerships should be removed subject to suitable safeguards.

Multi-disciplinary
partnerships

R15.7

The present statutory restriction on

15.22

solicitors sharing fees with others, so far as it prevents the development of multi-disciplinary partnerships and associations, should be removed so that they can be permitted. The professional restrictions which prevent solicitors and advocates combining in partnerships in relation to practice in Scotland should remain.

Instruction of advocates	R15.8	Only solicitors should instruct counsel in court matters; certain other professional agents should be entitled to instruct counsel direct for an opinion or in relation to proceedings before a tribunal or inquiry although counsel may at his discretion refuse to accept such instructions.	15.33
Cab Rank Rule	R15.9	The cab rank rule which applies to advocates should be retained subject to a change which would permit seniors over the age of 50 to be selective in the kind of work which they undertake.	15.41
Fusion	R15.10	The legal profession in Scotland should continue to consist of two branches, namely solicitors and advocates.	15.50
Rights of audience	R15.11	Rights of audience in the supreme courts should not be extended to solicitors.	15.54
Use of computers	R15.12	The legal profession should urgently examine the application of computers in: the maintenance of time and cost records; financial accounts, both for	15.58

the practitioner and the client,
and trust accounts; controlling
and organising court work and the
extensive documentation involved;
and the processing of conveyancing.

- R15.13 An examination of the potential 15.59
 use of computers in court procedures
 should be undertaken by those
 responsible for the administration
 of Scottish courts.
- R15.14 Subject to suitable safeguards, access 15.60
 to information kept on the Land
 Register should be available through
 the use of computer terminals anywhere
 in Scotland and consideration should
 be given to maintaining other public
 records on computer and giving access
 to them throughout Scotland.
- R15.15 The Department of Legal Affairs and the 15.64
 Legal Services Advisory Committee (see
 R20.2) should be charged with
 ensuring that the development of
 computers with regard to the law
 and provision of legal services in
 Scotland is actively pursued.

RECOMMENDATIONS

CHAPTER 16: EDUCATION AND TRAINING I: LAWYERS

			<u>Paragraph</u>
Admission of law students	R16.1	Universities should use wider criteria than academic attainment at school when selecting law students for admission.	16.9
	R16.2	A test of aptitude to study law should be developed for use in Scotland as one element in the process of selecting students for entry to the faculties of law.	16.10
The LLB degree	R16.3	As the Diploma in Legal Practice is introduced, the LLB syllabus should be revised to encourage students to study a social science or a modern language.	16.16
	R16.4	The Law Society should reduce to the minimum the requirements they effectively place on students to study particular courses.	16.17
	R16.5	The LLB degree should require a four years course of study.	16.18
The honours LLB	R16.6	There should be a four years honours degree in law.	16.20

Teaching
Methods

R16.7 Greater use should be made of 16.22-23
teaching methods other than
lecturing and rote learning,
following the principles stated
in paragraphs 16.22 and 23.

Examinations

R16.8 Some examinations should be 16.24
conducted on the basis that
students have access to statute and
standard texts.

Resources

R16.9 Universities should ensure that 16.25
law faculties are enabled to
maintain student/staff ratios which
are in line with those of other
comparable faculties.

The Diploma
in Legal
Practice

R16.10 In five years time from autumn 16.35
1980 the Joint Standing Committee
on Legal Education should review,
in the light of the circumstances then
prevailing, whether it would be
realistic and desirable to alter
the Diploma curriculum to a sandwich
basis.

R16.11 Arrangements should be made for 16.36-38
practice in oral advocacy with
mock trials; there should be a
compulsory element on legal ethics;
and students should have some introduction
to methods of office efficiency and
management.

Post-graduate
study in law

R16.12 The scope for postgraduate study 16.41
in law should be examined by the
Joint Standing Committee on Legal
Education.

Training
records

R16.13 Every trainee solicitor should be 16.46
required to maintain a training
record.

In-office
training

R16.14 Apprentices should be required 16.46-47
to spend some part of their
training in each of at least three
areas of law. The Law Society should
stipulate the minimum length of
experience normally necessary to attain
the required level of proficiency in each
area.

R16.15 Training standards should be laid 16.48
down by the Law Society.

R16.16 Every principal who has 16.48
responsibility for an apprentice
should be required to report on the
trainee's performance at the end of the
training period. In addition, there
should be at least one interim report.
These reports should be disclosed to the
trainee.

R16.17 A trainee who does not 16.49
satisfactorily complete his apprenticeship
in two years should be required to undergo
a further period of training in a different
firm.

- R16.18 The Law Society should provide training courses and guidelines for apprentice masters. 16.50
- R16.19 The Law Society should maintain a list of firms shown by experience to be unsuitable for taking apprentices. No such firm should be allowed to employ further apprentices. 16.51
- R16.20 Every trainee should be required to report to the Law Society on the quality of his training immediately after completing his apprenticeship. 16.51
- Training in court work
R16.21 The Law Society should maintain a register of trainee solicitors. 16.53
- R16.22 Trainees who have been on the register for a year should be allowed to speak in court but only under the immediate supervision of the solicitor in full charge of the case. 16.53
- Restricted practising certificate
R16.23 When a solicitor is first admitted the Law Society should grant him a practising certificate which will not permit him to practise as a principal until he has had further experience for a period of (a) two years where he is to become a partner in a firm of which one partner at 16.57

least has had at least three years experience as a principal and (b) three years when he is to practise on his own or in a partnership where there is no partner with more than three years experience as a principal.

Professional training: advocates

R16.24 The post-Diploma training of advocates should take a minimum of two years with at least nine months spent devilling and at least another nine months working in a solicitor's office. 16.59

R16.25 The Faculty should consult with solicitors' firms who regularly employ intending advocates as apprentices and prepare general guidelines on agreed principles for the mutual benefit of the trainee, the Faculty and the firms involved. 16.60

Devilling

R16.26 The Faculty should strongly encourage all devils (trainee advocates) to obtain a wide range of experience. 16.61

R16.27 Devils should be required by the Faculty to keep a training record. 16.61

- R16.28 The devil master should be required to report to the Dean of Faculty on the performance of his devil at the end of his training. 16.62
- R16.29 All devils should be told that they can approach the Vice-Dean in connection with their training; and the Vice-Dean should arrange to interview all devils on the completion of their training. 16.62
- R16.30 The Faculty should organise mock trials at which devils would be able to plead in open court in a fictitious case. 16.63
- R16.31 Devils should be able to speak in court under the immediate supervision of their devil master. 16.64
- R16.32 An experiment should be carried out in the provision of posts for devils or newly qualified advocates as assistants to supreme court judges. 16.65
- R16.33 The possibility and desirability of making grants from public funds available to devils ought to be reviewed from time to time. 16.66

R16.34 The Faculty should consider the possibility of arranging a wider loan scheme for devils than is at present available. 16.66

Continuing education and competence

R16.35 The Law Society should establish effective reporting arrangements with various persons and bodies who are in a position to monitor the quality of professional work done by solicitors. 16.69

R16.36 The Law Society should introduce a structured progressive scheme of training in their continuing education programme. 16.71

R16.37 The Law Society should ensure that adequate attention is given to management techniques and modern office practice in their continuing education programmes. 16.72

Continuing education - court work

R16.38 The Law Society should take steps through their continuing education programme to achieve a substantial improvement in court work skills, particularly of the younger members of the profession. 16.74

R16.39 Sheriffs Principal should meet 16.75
the local Bar of each court in the
Sheriffdom from time to time to
convey to the Bar as a whole, and
particularly to its younger members,
the main ways in which the presentation
of cases could be improved.

Interest
groups of
lawyers

R16.40 The Law Society and Faculty should 16.77
encourage the formation of
groups of lawyers with special
interest in particular areas of law.

Continuing
education:
advocates

R16.41 The Faculty should organise 16.79
occasional seminars for advocates,
conducted by judges or senior
advocates.

RECOMMENDATIONS

CHAPTER 17: EDUCATION AND TRAINING II: OTHER PROVIDERS OF LEGAL SERVICES

Paragraph

Judges' training

- R17.1 Justices should in the course of their training learn something of police work and methods; and the present requirement on them to visit penal-institutions should apply before the justice tries his first case. 17.4
- R17.2 Courses for new sheriffs should place greater emphasis on sentencing and on developments in civil procedures. 17.5
- R17.3 Sheriffs' training should devote more attention to the value of sensitive judicial handling of the court-room. 17.7
- R17.4 Newly-appointed supreme court judges should participate in induction courses, particularly on sentencing. 17.8
- R17.5 The appropriate authorities should take steps to see that judges at all levels are familiarised with penal institutions and the practical working of criminal penalties of all kinds (including such matters as probation). 17.9

Chairmen and
members of
tribunals

R17.6 The Council on Tribunals should 17.10
undertake a review of the training
provided for tribunal chairmen and
members, with a view to establishing
standards of training.

Procurators
fiscal

R17.7 The Crown Office should re-assess 17.13
staff training needs, particularly
of their less-experienced members,
and should devote adequate resources
to secure a satisfactory level of
training.

R17.8 Senior fiscals should devote more 17.14
time to supervising the work of
junior fiscals in court.

Advice centre
staff

R.17.9. More responsibility for providing 17.17
Citizens Advice Bureaux training
should be transferred to national
or area Bureaux authorities.

R.17.10 Citizens Advice Bureaux training 17.18
schemes should be developed along
progressive lines, so that individual
workers may choose to specialise in
one or two particular areas after
they have completed their basic general
training.

R17.11 The different advice agencies, 17.19
both specialist and generalist,
should collaborate in the provision
of training to their mutual
advantage.

Solicitors'
staff

R17.12 Structured, progressive training 17.21
should be provided for solicitors'
staff.

RECOMMENDATIONS

CHAPTER 18: PROFESSIONAL CONDUCT, COMPLAINTS AND DISCIPLINE

		<u>Paragraph</u>
Professional conduct: solicitors	R18.1 The Law Society should promulgate an authoritative guide to the professional conduct of solicitors in Scotland, which should be in terms comprehensible to laymen.	18.4
	R18.2 A solicitor should be under a professional obligation to give a prospective client his best estimate of the cost of the work to be undertaken and the time it will take to complete it.	18.5
	R18.3 The proposed guide should be supplied to the profession and to the staff of advice agencies; it should also be available to the public.	18.6
Professional conduct: advocates	R18.4 The Faculty of Advocates should promulgate an authoritative written guide to the professional conduct expected of advocates which should be supplied to advocates and be available to the public.	18.7
Discipline Tribunal: amount of fine	R18.5 The maximum fine which the Tribunal should be able to impose should be at least £2,000 at present day values and should be periodically reviewed to take account of inflation.	18.20

Disciplinary procedures: Law Society	R18.6 The Law Society should prosecute disciplinary procedures whether or not negligence is involved without waiting for the initiation or completion of civil court proceedings.	18.26
Claims for compensation	R18.7 The power which we propose for the Tribunal to award compensation (R18.10) should only be available if the client has expressly waived any right to claim damages.	18.26
New complaints procedure: solicitors	R18.8 A single, reasonably simple procedure for investigating and acting on all complaints against solicitors should be established.	18.30
	R18.9 A new Discipline Tribunal should be established to replace the present Scottish Solicitors' Discipline Tribunal and the Law Society's legal aid complaints committee. The Tribunal should have a wide range of sanctions.	18.31
Compensation	R18.10 The Tribunal should be able to award compensation in the ways stated in paragraph 18.33.	18.33

- R18.11 Both the solicitor and the complainer 18.33
 should have a right of appeal to the
 Court of Session in relation to
 disciplinary findings and sanctions
 determined by the Tribunal although
 there should be no appeal in respect of
 award or non-award of compensation.
- Composition of Tribunal R18.12 The membership of the 18.34
 Discipline Tribunal should be drawn
 from a panel consisting of say 5 practising
 solicitors appointed by the Lord President
 and an equal number of laymen appointed by
 the Secretary of State. A legally quali-
 fied President should be appointed by
 the Secretary of State or the Lord
 President.
- Procedure for lodging and investigating complaints R18.13 All complaints should be addressed 18.35
 in the first instance to the Law Society
 for investigation.
- R18.14 The committee of the Law Society 18.35
 responsible for investigating complaints
 should include lay members appointed by
 the Secretary of State.

Progress
report

R18.15 The Law Society should make regular reports to complainers on the progress of their investigations into the complaints they have received. On any complaint outstanding for three months a report should be made to the Lay Observer. 18.36

Lay Observer:
powers

R18.16 The Lay Observer should continue to receive and investigate complaints from clients who are not satisfied by the investigation and action taken by the Law Society. He should be empowered to take complaints to the Tribunal at his own instance. 18.37

Legal Aid:
complaints

R18.17 Complaints by the Legal Services Commission against solicitors in relation to the provision of legal aid should be investigated in the first place by the Law Society. 18.38

Cost of
Tribunal

R18.18 The direct cost of the new Tribunal should be a charge on public funds. 18.40

Solicitors'
lien

R18.19 The Discipline Tribunal should be given a discretion to suspend the operation of solicitors' lien in cases where it thinks this appropriate. 18.44

- New complaints procedure: advocates R18.20 18.46
- The Lord President of the Court of Session should be empowered at the request of the Dean of Faculty to convene an ad hoc Discipline Tribunal to deal with complaints against advocates. The Tribunal should be chaired by a judge and should have an advocate and a layman as members. The Tribunal should have similar sanctions to those proposed for the solicitors' Discipline Tribunal.
- Lay Observer: function in relation to complaints against advocates R18.21 18.47
- The Lay Observer should be empowered to receive and investigate complaints which have not been dealt with to the satisfaction of the client by the Dean of Faculty or any committee appointed by him. The Lay Observer should have power to request the Lord President to convene an ad hoc Discipline Tribunal. The Lay Observer should arrange for the client's case to be prosecuted before the Tribunal.
- Complaints involving both solicitors and advocates R18.22 18.48
- Where a complaint involves both a solicitor and an advocate the Faculty and the Law Society should make joint arrangements to investigate it. When necessary, an ad hoc Tribunal could be appointed by the Lord President.

- R18.23 A leaflet should be produced describing 18.49
 briefly the procedures for lodging
 complaints against solicitors and/or
 advocates; this leaflet should be
 readily available to the public.
- R18.24 The findings of the Discipline Tribunal 18.50
 should always be released to the press
 as well as being adequately reported
 in the professional journals.
- R18.25 Existing advice agencies should formulate 18.52
 and make clear to their clients their
 procedures for dealing with complaints.

RECOMMENDATIONS

CHAPTER 19: REMUNERATION

		<u>Paragraph</u>
Pensions	R19.1 Solicitors' firms should make adequate pension provision for their staff.	19.34
	R19.2 Solicitors' firms should make adequate pension provision for partners.	19.34
Surveys to assist in fixing fees	R19.3 Any body that may be involved in fee fixing should undertake surveys of different types of work undertaken by solicitors to ensure that if pre-fixed fees are used they are based on sound cost information.	19.45
Entry to the Bar	R19.4 The Legal Services Advisory Committee should keep under continuing review entry to the Faculty of Advocates to ensure a sufficient supply of advocates.	19.67
Payment of counsel's fees	R19.5 Where appropriate, payment in full or to account of counsel's fees should be made by solicitors and in the case of legal aid fees by the legal aid authority before the solicitor's account is received and approved.	19.68

Travelling,
etc. expenses

R19.6 Advocates' outlays should be charged separately from their fees.

19.69

Pre-fixed
fees

R19.7 The Secretary of State for Scotland should appoint a statutory independent legal fees body with appropriate membership to promulgate any pre-fixed fees which should be set as maxima. The body should take over from the Lord President responsibility for court fees. It should have adequate staff and resources to enable it to undertake investigation and research. Any table of fees proposed by the Law Society should not be operative unless approved by the body.

19.99

Fee fixing

R19.8 Fees should be calculated by use of an hourly cost rate for each fee earner, based on adequate time records, a proper apportioning of the overheads and a fair return on capital.

19.102

Bases of
court fees

R19.9 Expenses payable by the losing side in a court action should be those necessary for the successful party to have his case conducted in a proper manner. The statutory bases for taxation should be clarified and simplified by the appropriate Rules Councils of the Court of Session and Sheriff Courts. 19.106

Special
charging
agreements

R19.10 Special charging agreements between lawyers and their clients should be permitted provided they are in writing and include a statement that one effect of the contract is that it excludes taxation of the fee. 19.107

R19.11 It should be a practice rule that an advocate or solicitor who took an unfair advantage of a client in such an agreement by charging a grossly excessive fee should be subject to professional discipline. 19.107

Fee
adjudication
services

R19.12 An integrated taxation system should be organised on the basis of a Department of the Auditor of Court. 19.109

- R19.13 All auditors of court should be salaried and all fees charged for adjudication of fees should be payable to the Treasury. 19.115
- R19.14 Auditors of Court should have the power to adjust fees to take account of whether work has been necessary or there has been any delay in completing it. 19.116
- Legal aid fees R19.15 We make no recommendation as to the way in which legal aid fees should be taxed or adjudicated. 19.118 - 19.122
- Interest on money held by solicitors R19.16 Interest on money held for clients should wherever possible be paid to clients. A Scottish Law Foundation should be established for public purposes in the field of legal services funded in the ways stated in paragraph 19.126. 19.126

RECOMMENDATIONS

CHAPTER 20: CENTRAL OVERSIGHT OF LEGAL SERVICES

			<u>Paragraph</u>
Department of Legal Affairs	R20.1	All Scottish legal affairs, except for the Lord Advocate's functions of providing legal advice to the government and of prosecuting crime, should be the responsibility of a new Department of Legal Affairs under a Senior Minister who should have no other departmental responsibilities.	20.8
Legal Services Advisory Committee	R20.2	There should be a Legal Services Advisory Committee to which the Minister for Legal Affairs could look for guidance on the delivery of legal services in Scotland.	20.9
Legal Services Commission	R20.3	A Legal Services Commission should be established with a range of executive functions for publicly funded legal services as outlined in paragraph 20.10.	20.14
Manpower fore- casting	R20.4	The Department of Legal Affairs should convene regular meetings with appropriate interests to consider forecasts of legal manpower requirements.	20.16

Information
and research

R20.5 There should be a review
of the information on legal
services collected and
published by government.

20.17

R20.6 An adequate research budget
should be available to the
Department of Legal Affairs
to cater both for its own
research and for research which
it commissions from outside
bodies.

20.18



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